FILED
November 12, 2024
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN COURT OF APPEALS

A24-0153

Reuben Elijah Penske,

Appellant,

vs.

Steven Michael Pappenfus,

Respondent.

ORDER OPINION

Wright County District Court
File No. 86-CV-20-5877

Considered and decided by Schmidt, Presiding Judge; Segal, Chief Judge; and Ede, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Reuben Elijah Penske sued respondent Steven Michael Pappenfus for civil theft, conversion, fraud and misrepresentation, and transferring stolen property. Penske alleged that Pappenfus stole four puppies from him and never returned them.

2. Penske's complaint included an affidavit attesting that Pappenfus was personally served with the complaint to initiate the action.

3. After Pappenfus failed to timely answer, Penske moved for default judgment.

4. At a hearing in January 2021, the district court found "Pappenfus [was] in default" but continued the hearing for Penske to prove damages. The court suggested that Penske provide notice to Pappenfus and contact him about the continued hearing. The district court neither entered an order on its finding of default nor entered default judgment.

5. At the continued hearing in May 2021, Pappenfus appeared. Pappenfus stated that he had moved his residence in August 2020 and had not received any documents or pleadings related to the case since he moved. Pappenfus requested a continuance to hire an attorney. The district court again continued the hearing.

6. After Pappenfus retained counsel, he filed an answer and an affidavit attesting to circumstances for his failure to timely answer. At the next hearing in June 2021, Pappenfus' attorney appeared and the district court heard arguments from both parties. The court then "vacate[d] [its] finding that [Pappenfus was] in default because he[] filed [an] answer." But the district court ordered Pappenfus to "pay $500 in attorney[] fees" to remedy the prejudice to Penske for Pappenfus' "failure to answer."

7. The district court issued a written order in August 2021, noting that it initially "found [Pappenfus] in default, but did not enter judgment." The court noted Pappenfus' statement that he had received no filings in the case after he moved residences. The court further noted that Penske's attorney informed the court that some filings sent to Pappenfus had been returned as undeliverable. The district court vacated its previous finding that Pappenfus was in default "[b]ased upon [Pappenfus'] appearance and filing of his answer prior to entry of judgment[.]" The court required Pappenfus to pay $500 in attorney fees and stayed further proceedings to allow Penske to appeal the order.

8. In September 2021, Penske filed a petition for discretionary review of the district court's decision. *See* Minn. R. Civ. App. P. 105.01. This court denied the petition, reasoning that our consideration of Penske's interlocutory appeal was not warranted "in view of the general rule that review must await a final judgment on the merits."

9. The case proceeded to a bench trial in August 2023. Penske and Pappenfus testified with inconsistent accounts of how Pappenfus obtained the puppies. After trial, the district court issued an order finding that Penske's testimony "regarding how the four puppies came into [Pappenfus'] possession" lacked credibility and found Pappenfus' testimony on the same subject to be credible. The court determined that Pappenfus was not liable, dismissed the suit with prejudice, and entered judgment. Penske appealed.

10. On appeal, Penske argues that the district court abused its discretion by vacating its initial finding that Pappenfus was in default. "The decision to grant or deny a motion for a default judgment lies within the discretion of the district court, and [we] will not reverse absent an abuse of that discretion." *Black v. Rimmer*, 700 N.W.2d 521, 525 (Minn. App. 2005), *petition for rev. dismissed* (Minn. Sept. 28, 2005).

11. Penske argues that, in vacating its finding of default, the district court abused its discretion by granting Pappenfus relief without requiring a motion under Minnesota Rules of Civil Procedure 60.02. We disagree with Penske's characterization of the district court's decision. We conclude that the district court implicitly denied Penske's original motion for default judgment rather than providing relief to Pappenfus under rule 60.02.

12. Penske also argues that the district court should be reversed for failing to analyze the *Finden*[1] factors. When denying a motion for default judgment against a defendant who belatedly appears, a district court must consider the four *Finden* factors. *Black*, 700 N.W.2d at 526. The *Finden* factors analyze whether: (1) a defendant has "a

[1] *See Finden v. Klaas*, 128 N.W.2d 748 (Minn. 1964).

reasonable defense on the merits"; (2) a defendant has "a reasonable excuse for [the] failure or neglect to act"; (3) a defendant "acted with due diligence" upon becoming aware of the failure to answer; and (4) denying the motion for default judgment would result in "substantial prejudice" to the other party. *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016) (quotations omitted); *Coller v. Guardian Angels Roman Cath. Church of Chaska*, 294 N.W2d 712, 715 (Minn. 1980) (analyzing *Finden* factors when reviewing district court's denial of a motion for default judgment). A defendant seeking to avoid default bears the burden to demonstrate all four factors. *Gams v. Houghton*, 884 N.W.2d 611, 619-20 (Minn. 2016). But Minnesota courts have long held that default judgments should be "liberally" reopened in order to promote resolution of cases on the merits. *See Sommers v. Thomas*, 88 N.W.2d 191, 196 (Minn. 1958) ("It must be remembered that the goal of all litigation is to bring about judgments after trials on the merits and for this reason courts should be liberal in opening default judgments."); *Galatovich v. Watson*, 412 N.W.2d 758, 760 (Minn. App. 1987).

13. The district court did not expressly rule on Penske's motion for default judgment or address the *Finden* factors when implicitly denying the motion. A remand may be required where a district court fails to make adequate findings. *Welch v. Comm'r of Pub. Safety*, 545 N.W.2d 692, 694 (Minn. App. 1996). Minnesota appellate courts have held, however, that "[a] remand is unnecessary . . . when we are able to infer the findings from the trial court's conclusions." *Id.* at 694; *see also State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) ("In some cases we have concluded that a remand for findings is necessary before we will decided the validity of the lower court's order. In other cases we

have decided the appeal notwithstanding the lack of findings. Where we have been able to infer the findings from the trial court's conclusions, we have not remanded.") (citations omitted). Here, the district court should have made express findings on each of the *Finden* factors when denying the motion for default judgment. But this case presents circumstances where a remand is unnecessary because we can infer from the record that the district court found all four *Finden* factors were met.

14. First, the district court accepted Pappenfus' answer, demonstrating that the court believed Pappenfus had "a reasonable defense on the merits." *Cole*, 884 N.W.2d at 637. Pappenfus' answer disputed the facts alleged in the complaint and raised meritorious defenses, as demonstrated by the defense verdict after a trial on the merits.

15. Second, from the record as a whole we can infer that the district court implicitly found that Pappenfus had a reasonable excuse for failing to answer. *Id.* The district court recited Pappenfus's statements that he had not received any filings after he moved from his residence. In addition, after answering the complaint, Pappenfus filed an affidavit attesting that he "called Plaintiff's attorney to answer the Complaint and was advised that [Penske's attorney] could make the case go away for $15,000.00." Pappenfus responded that he would not pay anything. After that conversation, Pappenfus understood "we would be going to Court[,]" but thereafter received no notice of any proceedings or filings because he moved. In similar circumstances, Minnesota appellate courts have "found excusable neglect" where the defendant called the plaintiff's attorney under the mistaken belief that a phone call would sufficiently answer a compliant. *See Galatovich*, 412 N.W.2d at 760; *see also Taylor v. Steinke*, 203 N.W.2d 859, 860 (Minn. 1973).

16. Third, from the transcripts and the order, we can infer that the district court found that Pappenfus "acted with due diligence" upon becoming aware of the failure to answer. *Cole*, 884 N.W.2d at 637. Once Pappenfus became aware of the proceedings, he appeared at the continued default hearing without an attorney and requested a continuance. His attorney then filed an answer and appeared at all subsequent hearings.

17. Finally, we can infer from the record that the district court found that Penske would not suffer "substantial prejudice" by allowing Pappenfus to answer. *Id.* The district court asked Penske's attorney about the prejudice if the court were to allow the lawsuit to proceed. Penske's attorney cited legal costs as the primary prejudice his client suffered. The district court found that the prejudice suffered from Pappenfus's failure to timely answer was limited to Penske having to appear at the prior default hearings. The district court remedied that prejudice by ordering Pappenfus to pay $500 in attorney fees.

18. Given Minnesota's longstanding approach of "liberally" reopening default judgments and clear preference for resolving cases on their merits, *Sommers*, 88 N.W.2d at 196, we infer that the district court's conclusions support the finding that Pappenfus had met the *Finden* factors.

19. Penske raises a second issue regarding the district court's order that ruled in favor of Pappenfus following the bench trial. Penske contends that the district court clearly erred in its credibility determinations.

20. "A district court's findings of fact will not be set aside unless clearly erroneous, and due regard is given to the district court's opportunity to judge the credibility of witnesses." *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). The district

court stands "in a superior position to appellate courts in assessing the credibility of witnesses." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990). Absent a jury, the district court "is the sole judge of the credibility of witnesses and may accept all or only part of any witness' testimony." *Roy Matson Truck Lines, Inc., v. Michelin Tire Corp.*, 277 N.W.2d 361, 362 (Minn. 1979).

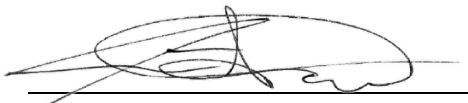
21. After hearing testimony from both parties, the district court noted it "cannot find the Plaintiff's testimony credible regarding how the four puppies came into Defendant's possession." The district court further found Pappenfus' testimony to be "credible regarding how the four puppies came into his possession." The court then cited to testimony from both parties that supported its credibility findings of fact. Given our deferential standard of review, we defer to the district court's credibility determinations. *Peterson*, 755 N.W.2d at 761.

IT IS HEREBY ORDERED:

1. The district court's order and judgment are affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: November 12, 2024 **BY THE COURT**



Judge Jon Schmidt