STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0651

Archer Daniels Midland Company,
Respondent,

vs.

C.A. Rose & Company, et al.,
Defendants,

Burwell Family Limited Partnership,
supplemental defendant and the garnishee,
Appellant.

Filed May 6, 2008
Reversed and remanded
Minge, Judge

Hennepin County District Court
File No. 27-CV-04-011222

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Considered and decided by Minge, Presiding Judge; Toussaint, Chief Judge; and Kalitowski, Judge.

U N P U B L I S H E D O P I N I O N

MINGE, Judge

Appellant argues that the district court abused its discretion in denying its motion to reopen a default judgment pursuant to Minn. R. Civ. P. 60.02, that the default judgment was improperly entered, and that the entry of judgment violated a federal bankruptcy stay. Because retroactive relief had been granted from the from the bankruptcy stay, we deny the latter claim. However, because the district court should have reopened the default judgment pursuant to Minn. R. Civ. P. 60.02, we reverse and remand for further proceedings. We do not reach appellant's claims of procedural error.

FACTS

In late November 2004, respondent Archer Daniels Midland Company (ADM) obtained a default judgment against John Burwell (Burwell) and C.A. Rose & Company for $690,488.11. On February 10, 2006, ADM served a garnishment summons and non-earnings disclosure on appellant Burwell Family Limited Partnership (BFLP). Based on deposition testimony, ADM initiated a supplemental collection proceeding against BFLP, alleging that BFLP owed $497,450.96 to Burwell, that it wrongfully failed to comply with the garnishment, and that it was liable to the judgment creditor, ADM, for the judgment debt. BFLP subsequently returned the garnishment disclosure, stating that it neither held property of the debtor Burwell nor owed him money.

On August 30, 2006, Albert Kelly (Kelly), general partner of BFLP, signed an acknowledgement of the receipt of the pleadings on behalf of BFLP in the supplemental collection action. However, BFLP never interposed an answer. By papers dated October

3, 2006, ADM moved for default judgment in the amount of $863,108.05. On October 4, 2006, the original judgment debtor, Burwell, filed for bankruptcy in the United States Bankruptcy Court, District of Minnesota (bankruptcy court). He sought to discharge over $2 million in unsecured debt, mostly accrued as a result of several failed business ventures.

A hearing on ADM's motion for default judgment against BFLP as a garnishee was held on October 6, 2006. Attorney Mark Bigelow (Bigelow), who represented Kelly (BFLP's general partner) in prior proceedings, appeared at the default hearing, and apparently argued that pursuant to federal law, the filing of the bankruptcy automatically stayed the state court garnishment proceeding, and that a default judgment could not be entered. A default judgment for $863,108.05 was entered on October 6, 2006. BFLP moved to reopen the judgment or to grant a new trial on November 13, 2006, just over a month later. On January 22, 2007, the district court entered judgment denying BFLP's motion to reopen the October 6, 2006 default judgment against it.

We note that the docket and actions of the United States Bankruptcy Court for the District of Minnesota disclose several matters relevant to this proceeding. On June 25, 2007, the bankruptcy court entered an order concluding that Burwell acted with fraudulent intent in various transfers and other undisclosed transactions between his companies and himself and denied him a bankruptcy discharge. The Burwell bankruptcy trustee asserted control over all of BFLP's assets as part of the bankruptcy estate and entered into a settlement agreement with ADM, subject to the bankruptcy court's approval. On August 9, and August 22, 2007, the bankruptcy court entered orders

granting the trustee control of all assets and records owned by, or held in the name of, BFLP and approving the trustee/ADM settlement agreement. As a part of the court-approved agreement, ADM was granted retroactive relief from the automatic stay with respect to the default judgment at issue here. Although these developments may render much of the controversy in this appeal moot, appellant BFLP asserted at oral argument that the outcome of these proceedings may affect liabilities of Kelly as a general partner and neither party requested dismissal of this action. Therefore, we proceed with our consideration of this appeal.

D E C I S I O N

I.

First we consider whether the automatic stay resulting from the Burwell bankruptcy voids the district court's default judgment against BFLP as a garnishee. A federal bankruptcy automatically stays judicial proceedings against a debtor and his property. 11 U.S.C. § 362(a)(1) (2000); *Lanesboro State Bank v. Hennessey*, 317 N.W.2d 49, 52 (Minn. 1982); *see Wallace T. Bruce, Inc. v. Najarian*, 249 Minn. 99, 107-08, 81 N.W.2d 282, 293 (1959) (stating that an action to enforce mechanic's lien may not be instituted after filing of bankruptcy petition, or, if already instituted, may not continue without the consent of the bankruptcy court). It also stays enforcement against a debtor of a judgment obtained before the bankruptcy filing. 11 U.S.C. § 362(a)(2) (2000). A creditor cannot bring a supplemental complaint against a garnishee that holds the funds of a debtor in bankruptcy "because that complaint would not actually be seeking to recover the assets of the garnishee but, rather, would be an action to recover the assets of the

debtor, which had been subjected to the automatic stay of the Bankruptcy Code, 11 U.S.C.A. § 362." *Johnson Motor Co. v. Cue*, 352 N.W.2d 114, 116 (Minn. App. 1984), *review denied* (Minn. Oct. 11, 1984).

After the automatic stay has taken effect, the district court lacks jurisdiction over the action. *Bernick v. Caboose Enterps., Inc.*, 395 N.W.2d 412, 414 (Minn. App. 1986). Lack of jurisdiction renders a judgment void. *Matson v. Matson*, 310 N.W.2d 502, 506 (Minn. 1981); *see Bernick*, 395 N.W.2d at 414 (holding that when a default judgment is entered against the debtor or his assets after a bankruptcy petition is filed, no element of discretion exists and the judgment must be set aside). However, we note that a Minnesota bankruptcy court has held that actions in violation of the automatic stay are voidable, rather than void. *In re Profile Systems, Inc.*, 193 B.R. 507, 511 (Bankr. D. Minn. 1996). We further note that federal courts have recognized that retroactive relief from the stay can be granted. *In re Schwartz*, 954 F.2d 569, 572-73 (9th Cir. 1992). In *In re Schwartz*, the Ninth Circuit determined that, based on the language of 11 U.S.C. § 362(d), a bankruptcy court has the power to grant such relief retroactively even if the initial judgment was void. *Id.*

Here, ADM initiated a levy as a part of its garnishment proceeding against BFLP. This action was, by its nature, against any assets of the debtor, Burwell, that were in BFLP's possession. The Minnesota bankruptcy court has determined that BFLP did have possession of Burwell's assets and has included all of BFLP's assets in the Burwell bankruptcy estate. Because as of October 4, 2006, this action by ADM was effectively

against the bankruptcy estate, the federal bankruptcy stay applied to this proceeding. *See Johnson Motor Co.*, 352 N.W.2d at 116.

ADM points out the settlement adopted by the bankruptcy court on August 9, 2007, retroactively lifts the automatic stay and that this revives the judgment. As previously stated, the default judgment was entered on October 6, 2006, after a bankruptcy petition was filed on October 4, 2006. At the time the default judgment was entered, the district court did not have jurisdiction over the action. *See Bernick*, 395 N.W.2d at 414. Jurisdiction was instead vested in the bankruptcy court. *See id.* Under our state caselaw, the default judgment was void.[1] *See Matson*, 310 N.W.2d at 506. As noted, the Minnesota bankruptcy court has indicated that a more appropriate characterization is voidable. However, we need not further consider that distinction in this proceeding because the United States Bankruptcy Court granted *retroactive* relief from the stay. Accordingly, we conclude that the violation of the automatic stay was cured by order of the Minnesota bankruptcy court.[2] On remand, we direct that the appropriate orders from the Burwell bankruptcy be docketed in the district court file. We also direct that, if the district court determines there is any uncertainty in the bankruptcy record, it instruct the parties to obtain any necessary clarification from the bankruptcy court and add that to the record.

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[1] We note that void judgments also merit the grant of a new trial. Minn. R. Civ. P. 60.02(d). BFLP did not move for a new trial on those grounds.

[2] This outcome is unusual. Normally the state court judgment would simply be void. We cannot emphasize strongly enough that the parties and the district courts respect the automatic stay of a bankruptcy filing and obtain relief from the stay. But for the retroactive relief here, we would vacate the October 6, 2006 default judgment.

II.

The second issue is whether the district court abused its discretion by refusing to reopen the October 6, 2006, default judgment against BFLP. The district court may relieve a party from a final judgment or order for "[m]istake, inadvertence, surprise, or excusable neglect" or "any other reason justifying relief from the operation of the judgment." Minn. R. Civ. P. 60.02(a), (f). To qualify for such relief, the moving party must show: (1) a reasonable claim on the merits; (2) a reasonable excuse for its failure or neglect to act; (3) due diligence after notice of entry of judgment; and (4) absence of substantial prejudice to the opponent. *Finden v. Klaas*, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964); *Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 30, 53 N.W.2d 454, 455-56 (1952). Generally, courts favor a liberal application of the four-part *Finden* test to further the policy of resolving cases on their merits. *See Taylor v. Steinke*, 295 Minn. 244, 246, 203 N.W.2d 859, 860 (1973) (stating that courts should be liberal in opening default judgments). "All four elements must be proven, but a weak showing on one factor may be offset by a strong showing on the others." *Reid v. Strodtman*, 631 N.W.2d 414, 419 (Minn. App. 2001). "The right to be relieved of a default judgment is not absolute." *Kosloski v. Jones*, 295 Minn. 177, 180, 203 N.W.2d 401, 403 (1973). Whether a judgment should be reopened is a matter largely within the discretion of the district court and will not be reversed on appeal absent a clear abuse of discretion. *Id.*

A. Reasonable Claim on the Merits

The first part of the *Finden* test is a reasonable claim on the merits. In order for relief to be available under Minn. R. Civ. P. 60.02(1), "the existence of a meritorious

claim must ordinarily be demonstrated by more than conclusory allegations in moving papers." *Charsen v. Temple Israel*, 419 N.W.2d 488, 491 (Minn. 1988). The improper application of the law to the facts constitutes an abuse of discretion. *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998).

i. Amount of the Judgment

Any indebtedness to the debtor is not attachable through a garnishment proceeding unless, at the time of the garnishment summons, it is due to the debtor absolutely, and does not depend on any contingency. Minn. Stat. § 571.73, subd. 4 (2006); *see also Polzin v. Merila*, 258 Minn. 93, 97, 103 N.W.2d 198, 202 (1960) (stating that under the garnishee summons "no obligation rests upon the garnishee as to money or property of defendant unless at the time of service of the summons the same is due absolutely and without contingencies"). The value of garnished assets includes an added cushion:

> Judgment against a garnishee shall be rendered, if at all, for the amount due to the debtor, or as much as may be necessary to satisfy the creditor's claim against the debtor, with costs taxed and allowed in the proceeding against the garnishee but not to exceed 110 percent of the amount claimed in the garnishment summons.

Minn. Stat. § 571.82, subd. 2 (2006).

At a deposition, BFLP's managing partner stated that the partnership owed Burwell $497,450.96. There was no evidence before the district court that the money the partnership may have owed Burwell was currently due without contingencies at the time the garnishment summons was served. In addition, on the record before us, no one has alleged that BFLP owes more to Burwell than a maximum of $497,450.96, and no

evidence to that effect has been provided to this court or to the district court. Judgment was entered against BFLP in the amount of $863,108.05. Although this amount was later amended to be $796,768.36, BFLP cannot be asked to pay more than 110% of what it owes to Burwell to ADM (a maximum of $547,196.06 on this record). *See* Minn. Stat. §§ 571.73, subd. 1, .82.

Because ADM conceded at oral argument that the amount of the judgment is substantially in excess of what is permitted by statute, BFLP presented a reasonable claim on the merits.[3]

ii. Application of the Federal Stay

As previously stated, federal bankruptcy law provides an automatic stay against judicial proceedings started against a debtor and his estate. 11 U.S.C. § 362(a)(1), (2). This includes garnishment actions. *Johnson Motor Co.*, 352 N.W.2d at 116.

Here, ADM initiated its supplemental action incident to its garnishment of BFLP. Because the federal bankruptcy stay was in effect on October 6, 2006, the day of the default judgment against BFLP and on November 13, 2006, the time the district court considered the rule 60.02 motion, the resulting default judgment was then ineffective. Retroactive relief from the stay was not granted until August 9, 2007.[4] When appellant

[3] Because the entirety of BFLP's assets are now included in the bankruptcy estate, it is possible that BFLP's ultimate liability is greater.

[4] No one claims that retroactive relief from the automatic stay has superseded the rule 60.02 action to reopen the judgment. In any event, the record before us does not disclose that the factors relevant to a motion to reopen were considered by the federal bankruptcy court.

BFLP made the motion to reopen the judgment, it had a strong, clear claim on the merits that, because the district court lacked jurisdiction, no judgment should be entered.

B. Reasonable Excuse for Failure to Act

The district court had been advised of the Burwell bankruptcy. The application of the federal stay as indicated in part I, *supra*, provides BFLP with a reasonable excuse for failing to appear and defend at the default hearing.

C. Due Diligence

The third *Finden* factor is whether the moving party exercised due diligence in pursuing his claims. The parties dispute whether the appellant acted with due diligence in making his motion to reopen the default judgment against him. Whether the appellant acted within a reasonable time after notice of entry of judgment is determined on a case-by-case basis. *Compare Kemmerer v. State Farm Ins. Co.*, 513 N.W.2d 838, 841 (Minn. App. 1994) (finding vacating judgment not an abuse of discretion even though movant waited three months before making motion to vacate), *review denied* (Minn. Mar. 29, 1994); *with Hovelson v. U.S. Swim and Fitness, Inc.*, 450 N.W.2d 137, 142 (Minn. App. 1990) (finding that the district court did not abuse its discretion in holding that a company did not act diligently, despite its response nine days after the entry of judgment, because of its "seemingly purposeful failure to respond to notices of the suit"), *review denied* (Minn. Mar. 16, 1990); *and with Valley View, Inc. v. Schutte*, 399 N.W.2d 182, 185 (Minn. App. 1987) (finding that the district court abused its discretion in denying a motion to vacate a default judgment where the movant made its motion six days after receiving notice of judgment), *review denied* (Minn. Mar. 18, 1987).

Just over five weeks passed between the entry of the default judgment on October 6, 2006, and BFLP's motion to reopen the judgment or to grant a new trial on November 13, 2006. The district court did not find that BFLP failed to exhibit due diligence in pursuing its claim after it was notified of the entry of judgment. BFLP makes a reasonable showing under this factor.

D. Substantial Prejudice

The final *Finden* factor is prejudice. Prejudice is always inherent when the trial of a case is delayed, as it is when "an adversary . . . changes his position from an attitude of conciliation and negotiation to an attitude of resistance." *Finden*, 268 Minn. at 272, 128 N.W.2d at 751. But prejudice inherently incidental to the reopening of a case is not enough to constitute the substantial prejudice to deny a motion to vacate. *See id.*; *see also Kemmerer*, 513 N.W.2d at 841 (stating that the inconvenience of opening and closing a file cannot be considered substantial prejudice). It is the movant's burden to show that the opposing party will not be substantially prejudiced by a new trial. *Bentonize, Inc. v. Green*, 431 N.W.2d 579, 584 (Minn. App. 1988).

In this proceeding, there is no evidence of unfair prejudice that might result from reopening the judgment. The orders in the Burwell bankruptcy in the United States Bankruptcy Court indicate that the bankruptcy trustee has been granted control of the assets of BFLP. Moreover, both parties presumably still have access to relevant witnesses and documents.

In sum, we conclude that BFLP made a showing that the judgment should be reopened under rule 60.02 and that the district court abused its discretion in not setting

aside the judgment. Accordingly, we reverse and remand for further proceedings. In reaching our conclusion, we recognize the confusion over how appellant BFLP can be pursuing this appeal when the Burwell bankruptcy trustee has apparent control of BFLP's assets and respondent ADM is working in cooperation with the trustee. However, appellant has claimed that the general partner of BFLP has an interest in this matter.[5] The district court should determine the control of BFLP and related matters on remand.

III.

The third issue is whether default judgment was properly entered. BFLP argues that the default judgment was not proper, because (1) it made appearances in the litigation; and (2) it was not given proper notice of the default hearing. Because of the result we reach on the motion to reopen the judgment under rule 60.02 and the remand, we do not reach these matters.

Reversed and remanded.

Dated:

[5] BFLP has voiced its fear that the partnership's general partner, Kelly, will be held liable for the remainder of any judgment after BFLP's assets have been exhausted. This is a garnishment proceeding. By its very nature, it can reach only the assets in BFLP's possession that in fact belong to Burwell. *See Johnson Motor Co.*, 352 N.W.2d at 116. However, when the garnishee is notified that the debtor's funds must be impounded, it has a responsibility to hold them and may not release them to the debtor. *Id.* If the garnishee does so, it must replace those funds and pay the creditor from its own assets. *Id.*