STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2142

Thomas Fallon, et al.,
Respondents,

vs.

Art Hogenson, individually, and
d/b/a Diversified Water Diversion, Inc.,
Appellant.

Filed August 18, 2009
Affirmed in part, reversed in part, and remanded
Lansing, Judge

Hennepin County District Court
File No. 27-CV-07-3348

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Considered and decided by Halbrooks, Presiding Judge; Lansing, Judge; and Shumaker, Judge.

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

LANSING, Judge

Following pretrial arbitration in a personal-injury action, the district court entered a judgment finding Art Hogenson liable for injuries that Thomas Fallon sustained at a construction site. Hogenson moved to vacate the judgment for lack of subject-matter jurisdiction, excusable neglect under Minn. R. Civ. P. 60.02(a), and excessive and unsupported damages under Minn. R. Civ. P. 60.02(f). We affirm the district court's determination that relief is not warranted under rules 60.02(a) and 60.02(f). But because the district court's denial of the motion on jurisdictional grounds relies on an error of fact, we reverse and remand for further consideration.

F A C T S

It is undisputed that Thomas Fallon suffered an injury to his foot in October 2004 when he fell from a ladder at a construction site in Maple Grove. After the accident, Fallon completed a first report of injury and submitted it to the Minnesota Department of Labor and Industry. He stated that his employer was Diversified Water Diversion, Inc., and that the "contact name" for his employer was appellant Art Hogenson, who is a co-owner of Diversified. Diversified's compensation carrier notified Fallon on October 20, 2004, that it denied primary liability for his claimed work-related injury. The notice explained, "Fallon is not, never has been an employee of Diversified Water Diversion. . . . Fallon was not asked to be at the job site on the day of the injury. [He] just walked on site, engaged in activity not requested, [and] sustained an injury."

Fallon did not file a workers' compensation claim to challenge the primary-liability determination. But six months later, in April 2005, Fallon filed a complaint against "Art Hogenson, individually, and d/b/a Diversified Water Diversion," stating that Fallon was hired by "Art Hogenson, and/or Art Hogenson d/b/a Diversified Water Diversion," to work on a construction project in Maple Grove; that on October 4, 2004, while Fallon was standing on a defective ladder to install a wall panel, the ladder buckled and caused Fallon to fall; that Hogenson provided Fallon with the defective ladder; that Hogenson's negligence was therefore the direct and proximate cause of Fallon's injuries; and that Fallon was seeking damages in excess of $50,000.

The district court scheduled an arbitration hearing for August 2007. Hogenson failed to appear at the hearing. The arbitrator determined that Hogenson was "100% causally negligent for [the] accident and [Fallon's] injuries" and awarded damages, costs, and interest totaling $737,679.65. The district court entered judgment on the arbitrator's determination in September 2007. The Fallons later assigned their judgment against Hogenson to MWH Properties, LLC in exchange for $62,500 plus fifty percent of the amount collected, after expenses, in excess of $62,500.

Hogenson directly attacked the judgment in January 2008, by moving for the district court to "vacat[e] the judgment" and "dismiss[] the . . . case as a matter of law." In his memorandum accompanying the motion, Hogenson argued that the judgment must be vacated and the case dismissed because the Minnesota Workers' Compensation Act (WCA) provided the exclusive remedy for Fallon's injury, and the district court therefore lacked subject-matter jurisdiction over Fallon's personal-injury action. Instead of citing

Minn. R. Civ. P. 60.02(d), which provides for relief from a void judgment, Hogenson cited Minn. R. Civ. P. 60.02(a), and the district court analyzed the motion under that rule.

The district court denied Hogenson's motion and did not expressly address the jurisdictional argument. But, in applying the factors applicable to rule 60.02(a), the district court rejected Hogenson's argument that the WCA provided Fallon's exclusive remedy, implicitly holding that the judgment in the personal-injury action was not void for lack of subject-matter jurisdiction.

Shortly after the district court denied Hogenson's motion, Hogenson requested leave from the court to file a motion for reconsideration, emphasizing that his motion to vacate was based on a jurisdictional argument. Because the district court judge who had denied the motion was no longer on the civil-division rotation, a different judge heard the reconsideration motion. The newly assigned judge denied the reconsideration motion. Six days later Hogenson filed a second motion, arguing that the judgment should be vacated under Minn. R. Civ. P. 60.02(a) for excusable neglect and under Minn. R. Civ. P. 60.02(f) for excessive and unsupported damages. When Fallon objected on procedural grounds, the district court held a telephone conference and ruled that the motion was proper because it was based on new facts. Ultimately, the district court rejected both grounds for the motion. On the rule 60.02(f) ground, the district court concluded that Hogenson "failed to demonstrate the exceptional circumstances required." On the rule 60.02(a) ground, the district court declined to reconsider the ruling of the first judge who had "found [Hogenson] had not complied with 60.02(a)."

Hogenson appeals from the district court's denial of his motions to vacate, reasserting his arguments on subject-matter jurisdiction, excusable neglect under rule 60.02(a), and excessive and unsupported damages under 60.02(f).

D E C I S I O N

I

We address, first, Hogenson's argument that the judgment in the personal-injury action is void for lack of subject-matter jurisdiction. When a party directly attacks a judgment within a reasonable period of time and demonstrates that the district court lacked subject-matter jurisdiction, the judgment must be set aside as void under Minn. R. Civ. P. 60.02(d). *Hengel v. Hyatt*, 312 Minn. 317, 319, 252 N.W.2d 105, 106 (1977) (stating that "motion to vacate a judgment for lack of jurisdiction merely asserts that the judgment is void"); *see also Bode v. Minn. Dep't of Natural Res.*, 612 N.W.2d 862, 866-70 (Minn. 2000) (addressing reasonable-time requirement).

We generally review issues of subject-matter jurisdiction de novo as questions of law. *Bode*, 612 N.W.2d at 866. But when a jurisdictional issue turns on disputed facts, we review the district court's findings for an abuse of discretion. *See Hengel*, 312 Minn. at 318-19, 252 N.W.2d at 106 (noting that personal-jurisdiction issue depended on "fact question" about place of abode and concluding that district court did not abuse discretion because record provided reasonable basis for court's order). We will not sustain a determination on a motion to vacate when the district court's reasoning is based on facts not supported by the record. *See Roehrdanz v. Brill*, 682 N.W.2d 626, 631-32 (Minn. 2004) (evaluating district court's discretionary ruling on motion to vacate default

judgment); *Duenow v. Lindeman*, 223 Minn. 505, 518, 27 N.W.2d 421, 429 (1947) (reversing order denying motion to vacate because "plain and decisive facts were entirely overlooked by the trial judge").

Hogenson's subject-matter-jurisdiction argument rests on his assertion that the WCA provides the exclusive remedy for Fallon's injury. It is, of course, well established that when the WCA "provides the employee's exclusive remedy, the district courts have no jurisdiction." *McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995). But the issue of whether the WCA provides Fallon's exclusive remedy is more complicated than Hogenson suggests.

The WCA would provide Fallon's exclusive remedy if Fallon sustained the injury while employed by Diversified, a company that carries the insurance required by the WCA. Minn. Stat. § 176.031 (2008). But, in addition to alleging that he was hired by "Hogenson d/b/a Diversified," Fallon has also alleged, based on Diversified's response to his first report of injury, that he was hired by Hogenson in his individual capacity. If Fallon sustained the injury while employed by Hogenson in his individual capacity, the WCA would not provide Fallon's exclusive remedy unless Hogenson personally carried the insurance required by the WCA. *Id.*; *see also Klemetson v. Stenberg Constr. Co.*, 424 N.W.2d 70, 72 (Minn. 1988) (observing that employee may sue for damages at common law when employer fails to comply with WCA). Hogenson has never asserted or presented any evidence that he personally carried the insurance required by the WCA at the time of Fallon's injury.

Fallon's arguments addressing Hogenson's status as a sole proprietor do not affect the determination of whether the WCA provides Fallon's exclusive remedy. *See* Minn. Stat. § 176.041, subd. 1(4) (2008) (listing family members of sole proprietor among excluded "employments"). The WCA applies to employees of a sole proprietor if they are not related to the sole proprietor. *Id.* (excluding only persons who are employed as sole proprietors and their family members, not all persons who are employed by sole proprietors); *cf. Meyer v. Duluth Bldg. Trades Welfare Fund*, 299 F.3d 686, 691 (8th Cir. 2002) (analyzing sole-proprietor provision and determining that it applies to employee who is spouse). There is no evidence suggesting Hogenson is related to Fallon.

The issue of subject-matter jurisdiction and the validity of the judgment, therefore, turn on an issue of fact: whether Fallon was an employee of Diversified or an employee of Hogenson in his individual capacity. The record from the personal-injury action indicates that neither the arbitrator nor the district court made a finding on this issue before entering judgment. And the record from the post-judgment proceedings does not provide a conclusive answer to the fact question. To support his assertion that Fallon was an employee of Diversified, Hogenson submitted Fallon's first report of injury in which Fallon stated that his employer was Diversified. He also submitted an affidavit stating that Hogenson "did not do any contracting, waterproofing, or related work, at the jobsite where the claimed injury in this case occurred or elsewhere, other than through Diversified." In response, Fallon submitted an affidavit stating that Hogenson personally hired Fallon on several occasions, that Hogenson paid Fallon in cash, that Fallon never

applied for a job at Diversified, and that Fallon never received any payments from Diversified.

The district court, in addressing Hogenson's motion to vacate, found that Fallon was not hired by Diversified, and Fallon contends that this finding is a sufficient basis for affirming the district court's implicit determination that the judgment is not void for lack of subject-matter jurisdiction. The district court's finding, however, was based on an erroneous assumption that Fallon had filed a workers' compensation claim and had been denied coverage by the Minnesota Department of Labor. The record is not well developed, but it contains no indication that Fallon filed a workers' compensation claim. He filed a first report of injury, and Diversified's compensation carrier denied primary liability for his claimed work-related injury. Unlike "a decision by a compensation judge, the Worker' Compensation Court of Appeals, or the Minnesota Supreme Court," a compensation carrier's denial of liability is "not legally significant" and does not have an issue-preclusive effect in subsequent legal proceedings. *Hodel v. Gundle Lining Constr. Corp.*, 572 N.W.2d 764, 765 (Minn. App. 1997) (holding that, employer's workers' compensation carrier's claim denial is not legally significant or issue preclusive).

Because the district court's finding that Fallon was not an employee of Diversified was based on an erroneous assumption, we reverse the determination on subject-matter jurisdiction and remand for a finding on the issue of whether Fallon was an employee of Diversified or an employee of Hogenson in his individual capacity. If Fallon was an employee of Hogenson in his individual capacity, and Hogenson failed to carry workers' compensation insurance, the court's subject-matter jurisdiction is not subject to attack.

If, on the other hand, Diversified was Fallon's employer when he sustained his injury, the judgment must be vacated to allow Fallon to pursue his remedy under the WCA.

We recognize that more than four years have passed since Fallon filed a written report of his injury and that the statute of limitations contained in the WCA provides that "[a]ctions or proceedings by an injured employee to determine or recover compensation" must be brought within "three years after the employer has made written report of the injury." Minn. Stat. § 176.151(a) (2008). We also recognize, however, that the supreme court has specifically addressed similar circumstances and held that an employer is estopped from pleading the three-year statutory time bar against an injured worker when the employer is primarily responsible for the employee's failure to file a claim petition. *Neuberger v. Hennepin County Workhouse*, 340 N.W.2d 330, 332 (Minn. 1983) (applying principle when "employer's payments of 'long-term' disability benefits, coupled with the misleading assurances of the employer's agent, whether or not purposely deceptive, were the primary reasons for the employee's failure to file"); *see also Kahn v. State*, 289 N.W.2d 737, 745-46 (Minn. 1980) (holding that employer is estopped from asserting time bar when employee fails to file timely complaint because employer's agent misled employee's spouse into believing that injury was not compensable claim).

The uncontradicted facts establish that Diversified's compensation carrier stated in its denial of primary liability that Fallon was not an employee of Diversified; that, relying on this statement, Fallon filed a lawsuit against "Hogenson, individually, and d/b/a Diversified Water Diversion" in April 2005, less than a year after Fallon filed his report

of the injury; that the president of Diversified, Jack Gieseke, subsequently sent Fallon's attorney a letter stating that he does the hiring for Diversified and never hired Fallon; and that Hogenson himself, co-owner of Diversified, did not respond to Fallon's lawsuit until January 2008, more than three years after Fallon made his report of injury. As the *Neuberger* court stated, "it is reasonable for an employee to rely on the employer's presumably greater knowledge" of compensation claims and, when misleading statements of an employer's agent are the primary reasons for the employee's failure to file a compensation claim, it does not matter "whether or not" the statements are "purposely deceptive." *Neuberger*, 340 N.W.2d at 332.

II

We now turn to Hogenson's argument that he was entitled to relief from judgment on the basis of excusable neglect under Minn. R. Civ. P. 60.02(a). Minnesota courts analyze motions seeking relief from judgments under Minn. R. Civ. P. 60.02(a) by applying a four-factor test that was established in *Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 30, 53 N.W.2d 454, 456 (1952); *see also Finden v. Klaas*, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964) (stating that motions to vacate on ground of excusable neglect are analyzed under four factors set forth in *Hinz*). The *Hinz* factors require consideration of whether the movant has (1) a reasonable defense on the merits; (2) a reasonable excuse for the failure or neglect to answer; (3) acted diligently after notice of entry of the judgment; and (4) demonstrated that no substantial prejudice will occur to the other party. *Hinz*, 230 Minn. at 30, 53 N.W.2d at 256.

With two notable exceptions, Minnesota courts have broad discretion in deciding whether to grant or deny a rule 60.02 motion. *Northland Temporaries, Inc. v. Turpin*, 744 N.W.2d 398, 402, 406 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008). A district court must grant relief if a party satisfies all four *Hinz* factors. 237 Minn. at 30, 53 N.W.2d at 456. And a district court must deny relief if the moving party fails to satisfy the first factor by demonstrating a reasonable defense on the merits. *Hengel*, 312 Minn. at 319, 252 N.W.2d at 106. Furthermore, we will not sustain a district court's decision if it acts under a misapprehension of the law or bases its reasons on facts unsupported by the record. *Northland*, 744 N.W.2d at 402-03.

Hogenson primarily contends that the district court erred in determining that he did not have a reasonable defense on the merits under the critical first factor. He asserts that he has three reasonable defenses on the merits: that Fallon's exclusive remedy is under the WCA because Fallon was an employee of Diversified, not Hogenson; that Fallon "was comparatively negligent or assumed an unreasonable risk in choosing to do his work with a ladder that he knew to be dangerous"; and that, if the judgment were vacated, Hogenson "would be entitled to indemnification from Diversified . . . and more importantly from the corporation's liability insurer, for any liability which he might have to [Fallon]." None of Hogenson's three proposed defenses warrant reversal of the district court's determination under the first *Hinz* factor.

Hogenson's first proposed defense, that the WCA provides the Fallons' exclusive remedy, is a jurisdictional argument that is properly addressed—as we have in section I—as a void-judgment argument under Minn. R. Civ. P. 60.02(d). *See McGowan*, 527

N.W.2d at 833 (stating that, when the WCA "provides the employee's exclusive remedy, the district courts have no jurisdiction"); *Hengel*, 312 Minn. at 318, 252 N.W.2d at 106 (stating that "motion to vacate a judgment for lack of jurisdiction merely asserts that the judgment is void" and should be examined "without regard to such factors as the existence of a meritorious defense").

Hogenson's second proposed defense on comparative negligence and assumption of risk is unsupported by the record. *See Charson v. Temple Israel*, 419 N.W.2d 488, 492 (Minn. 1988) (stating that reasonable-defense factor is satisfied by specific information that clearly demonstrates existence of debatably meritorious defense). The WCA specifically states that, when the employer's failure to carry insurance justifies an employee's action in district court, "[t]he defendant may not plead as a defense that . . . the employee assumed the risk of employment, or that the injury was due to the contributory negligence of the employee, unless it appears that such negligence was willful on the part of the employee." Minn. Stat. § 176.031. Nothing in the record indicates that, if negligent, Fallon was *willfully* negligent. Thus Hogenson's contention that Fallon "was comparatively negligent or assumed an unreasonable risk" is not a reasonable defense on the merits.

Additionally, the indemnity issues that Hogenson raises implicate the obligations of third parties to Hogenson, not Hogenson's obligations to Fallon. *See Black's Law Dictionary* 837 (9th ed. 2009) (defining indemnity in part as "[r]eimbursement or compensation for loss, damage, or liability in tort; esp., the right of a party who is secondarily liable to recover from the party who is primarily liable for reimbursement of

expenditures paid to a third party for injuries resulting from a violation of a common-law duty"). Consequently, an indemnification claim is not relevant to the issue of whether Hogenson has a reasonable defense to the Fallons' personal-injury claim.

We conclude that Hogenson lacks a reasonable defense on the merits and therefore has not satisfied the critical first *Hinz* factor. Thus, we affirm the district court's denial of Hogenson's rule 60.02(a) motion.

III

Finally, Hogenson contends that the district court erred when it rejected his argument that the judgment should be vacated under Minn. R. Civ. P. 60.02(f) because the damages are excessive or unsupported by the record. Rule 60.02 lists five specific reasons for which a court may relieve a party from a final judgment and adds, under clause (f), that the court may also grant relief for "[a]ny other reason justifying relief from the operation of the judgment." Clause (f) is "designed only to afford relief in those circumstances exclusive of the specific areas addressed by clauses (a) through (e)." *Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 924 (Minn. 1990). Courts have applied rule 60.02(f) to relieve parties from excessive damages. *See, e.g.*, *Wiethoff v. Williams*, 413 N.W.2d 533, 536-37 (Minn. App. 1987) (holding that damages of $20,000 were not support by evidence and reversing denial of motion to vacate), *review denied* (Minn. Mar. 16, 1990). Appellate courts review the denial of a motion to vacate under rule 60.02(f) for an abuse of discretion. *Chapman*, 454 N.W.2d at 923.

The district court, in denying Hogenson's rule 60.02(f) argument, recognized that the judgment amount of $737,679.65 was "exceptionally large." But it emphasized that,

according to Fallon's affidavit, he shattered his ankle and "had [eight] pins put into it," he "cannot stand for any period of time," he "is prohibited from working as he did before," and he "continues to suffer pain and be less employable." The district court observed that the arbitrator carefully "delineated between past and future medical costs as well as past and future pain and suffering." And the court concluded that, "when broken down into its component parts, this Court cannot find [the amount] unreasonable. Therefore, [Hogenson] has failed to show the exceptional circumstances necessary under Rule 60.02(f) to vacate the underlying judgment."

The record demonstrates that the district court's determination is supported by the facts and was within the court's discretion. Fallon's affidavit establishes that he suffered and continues to suffer from a significant injury, and the arbitrator's award carefully sets forth the amount awarded under each category:

Past medical expenses:	$28,240.99
Likely future medical expenses:	$20,000.00
Lost wages/ income:	$34,000.00
Reasonably likely future lost income, diminution of earning capacity:	$175,000.00
Pain and suffering to date:	$200,000.00
Pain, suffering, disability likely to suffer in future:	$250,000.00
Loss of consortium:	$25,000.00

The record also shows that the interest on the judgment was $5,115.66 and the costs totaled $323, bringing the "total judgment amount" to $737,679.65.

Hogenson suggests that the district court's denial of his rule 60.02(f) motion constitutes an abuse of discretion because the record does not contain sufficient evidence supporting the arbitrator's findings. But the fact that the record does not contain

evidence expressly supporting the arbitrator's findings demonstrates only that the evidence was not entered into the district court record. *Cf. LaFee v. Winona County*, 655 N.W.2d 662, 665 n.1 (Minn. App. 2003) (observing, in context of arbitration pursuant to collective-bargaining agreement, that record of arbitration proceedings is generally not as complete as civil trial because different rules apply), *review denied* (Minn. Mar. 27, 2003). It does not demonstrate that Fallon failed to present any evidence to the arbitrator.

For these reasons, we conclude that the district court acted within its discretion when it denied Hogenson's motion for relief under rule 60.02(f).

Affirmed in part, reversed in part, and remanded.