STATE OF MINNESOTA
IN COURT OF APPEALS
A11-498

Weinerman & Associates, LLC,
Respondent,

vs.

Changfen Li nka Connie Li,
Appellant,

Shanghai Import and Export,
Defendant.

Filed August 22, 2011
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 27-CV-10-8817

William G. Cottrell, Cottrell Law Firm, P.A., Mendota Heights, Minnesota (for respondent)

Morgan Greenwood Smith, Smith & Raver, LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Wright, Judge; and Schellhas, Judge.

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

KLAPHAKE, Judge

Appellant Changfen Li n/k/a/ Connie Li seeks reversal of a district court order denying her motion to vacate a default judgment in an action brought by respondent

Weinerman & Associates, LLC, against appellant and Shanghai Import and Export to recover $39,566.79 owed to respondent on a business loan. Appellant claims that the default judgment should not have been granted because she did not receive effective service of process and claims that she met a four-factor test for vacating the default judgment. Because the district court did not abuse its discretion by denying appellant's motion to vacate the default judgment as appellant failed to demonstrate a proper factual basis to do so, we affirm.

D E C I S I O N

An appellate court will review for abuse of discretion a district court decision on whether to vacate a default judgment. *Hovelson v. U.S. Swim & Fitness, Inc.*, 450 N.W.2d 137, 140 (Minn. App. 1990), *review denied* (Minn. Mar. 16, 1990). A district court may vacate a final judgment for reasons of "[m]istake, inadvertence, surprise, or excusable neglect." Minn. R. Civ. P. 60.02(a). A party may seek relief from a default judgment if the party can show (1) a reasonable defense on the merits, (2) a reasonable excuse for the failure to answer, (3) that the party acted with due diligence after receiving notice of entry of judgment, and (4) that vacation of the judgment will not cause substantial prejudice to the non-moving party. *Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 30, 53 N.W.2d 454, 456 (1952); *Hovelson*, 450 N.W.2d at 140. Consistent with the judicial policy that cases should be decided on their merits, courts liberally permit vacation of default judgments. *Sommers v. Thomas*, 251 Minn. 461, 468, 88 N.W.2d 191, 196 (1958) ("courts should be liberal in opening default judgments"); *Kemmerer v. State Farm Ins. Cos.*, 513 N.W.2d 838, 841 (Minn. App. 1994) ("courts

favor a liberal application of the *Hinz* test to further the policy of resolving cases on their merits"), *review denied* (Minn. June 2, 1994). Further, a weak showing on one *Hinz* factor may be ameliorated by a stronger showing on other factors. *Hovelson*, 450 N.W.2d at 140. We address each of the *Hinz* factors, in turn.

1. Defense on the Merits

A party seeking to vacate a default judgment must "in good faith, make a showing of facts, which if established will constitute a good defense." *Frontier Lumber & Hardware, Inc. v. Dickey*, 289 Minn. 162, 164, 183 N.W.2d 788, 790 (1971) (quotation omitted). Appellant did not offer evidence of a defense on the merits. She claimed that she believed that her $39,566.79 debt was "excused" because after Citibank, the bank that had originated the loan, sold the loan to respondent, she was told by Citibank that her account was closed. Her belief that the transfer of the loan somehow extinguished her debt was not "reasonable," nor did it offer her a "reasonable" defense.

2. Excuse for Failure to Answer

Appellant claimed that her failure to receive proper services of process provided a valid excuse for her failure to answer respondent's summons and complaint. Under Minn. R. Civ. P. 4.03(a), service of a summons is made upon a person by "delivering a copy to the individual personally or by leaving a copy at the individual's usual place of abode with some person of suitable age and discretion then residing therein." Here, respondent offered two affidavits of service of process, one affidavit showing delivery to an Asian woman of approximately 45 years of age at appellant's usual place of abode,

and one affidavit showing delivery to appellant personally at her place of work. This evidence demonstrates that respondent met the service requirements of rule 4.03.

"Once the plaintiff submits evidence of service, a defendant who challenges the sufficiency of service of process has the burden of showing that the service was improper." *Shamrock Dev., Inc., v. Smith*, 754 N.W.2d 377, 384 (Minn. 2008). Further, a defendant who challenges an affidavit of service "must overcome it by clear and convincing evidence." *Imperial Premium Fin. Inc. v. GK Cab Co.*, 603 N.W.2d 853, 858 (Minn. App. 2000). While appellant claimed that she did not receive process at her business even though the affidavit of service stated that service was made to appellant personally there, such conflicts in evidence, even when presented in affidavits, are to be decided by the district court. *See Straus v. Straus*, 254 Minn. 234, 235, 94 N.W.2d 679, 680 (1959) ("Conflicts in the evidence, even though the presentation is upon affidavits, are to be resolved by the trial court."); *see DeRosier v. Util. Sys. of Am., Inc.*, 780 N.W.2d 1, 5 (Minn. App. 2010) (extending appellate court deference accorded to district court in credibility determinations to include "the evaluation of written statements and testimonial depositions"). Thus, we defer to the district court's credibility determinations on whether proper service of process was made to appellant.[1] We also note that due to the numerous other attempts that respondent made to obtain satisfaction of the debt and appellant's steadfast ignorance of them, any adverse determinations as to appellant's credibility were

[1] Appellant also admitted that her niece actually received the summons at appellant's residence, but stated that her niece has "Turner's Syndrome," and that the niece did not give her the summons. This is an insufficient challenge to the affidavit of service because appellant did not offer clear and convincing evidence that her niece was not a "person of suitable . . . discretion" due to her medical condition.

supported by the record. *See Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987) ("The finder of fact is not required to accept even uncontradicted testimony if the surrounding facts and circumstances afford reasonable grounds for doubting its credibility."). Because this court must defer to the district court's determination that appellant received service of process, appellant has not offered a reasonable excuse for her failure to answer the summons. *See Hovelson*, 450 N.W.2d at 141 (affirming district court's analysis that defendants who "negligently or purposefully ignored" opportunities to act in response to a summons did not meet the reasonable-excuse-for-failing-to-answer *Hinz* factor).

3. Due Diligence

Appellant claims that she satisfied the *Hinz* due diligence factor because, after receiving a notice of garnishment in the fall of 2010, she sought legal counsel. As the default judgment was entered on April 30, 2010, her approximately six-month delay in acting does not demonstrate due diligence.

4. Substantial Prejudice

Respondent has not argued that it would suffer substantial prejudice due to the delay from appellant's failure to answer, and the district court did not address this factor. While every delay may result in some prejudice to a party, this factor appears to be neutral in this case.

Because application of the *Hinz* factors supports the district court's determination that proper service of process was made in this case, we reject appellant's argument that

the district court abused its discretion by denying her motion to vacate the default judgment. We therefore affirm.

Affirmed.