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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0950**

In re the Marriage of:  
Timothy Kevin Ransom, petitioner,  
Respondent,

vs.

Gail Mary Ransom,  
Appellant.

**Filed July 15, 2008  
Affirmed  
Schellhas, Judge**

Mille Lacs County District Court  
File No. 48-FA-05-100

Rebecca A. Chaffee, Best & Flanagan LLP, 225 South Sixth Street, Suite 4000,  
Minneapolis, MN 55402 (for respondent)

Gail Ransom, 7414 Blaisdell Avenue South, Richfield, MN 55423 (pro se appellant)

Considered and decided by Shumaker, Presiding Judge; Hudson, Judge; and  
Schellhas, Judge.

## UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's denial of her motion to reopen the judgment in a dissolution proceeding. Because the district court did not abuse its discretion in denying appellant's motion, we affirm.

### FACTS

The parties were married in 1983. In January 2005, respondent Timothy Kevin Ransom commenced a marriage dissolution proceeding. The trial was continued twice, the second time at the request of appellant Gail Marie Ransom. Ultimately, the parties were scheduled for trial on July 26, 2006. Respondent appeared with counsel and appellant did not appear and no one appeared on her behalf. The district court found no evidence that appellant had not received notice of the trial date, and appellant does not deny that she received notice of the trial date. Appellant states that her non-appearance was due to her failure to put the trial date on her calendar. Appellant's counsel represents that he began his representation of appellant in April 2006, but at the time of trial, no certificate of representation was on file for appellant.<sup>1</sup> In a letter dated June 27, 2006, respondent's counsel sent a letter to appellant's counsel in which he referred to the July 26, 2006 trial date. Appellant's counsel acknowledges that he received that letter, but states that the "date was not placed on [his] calendar by [his] staff who typically maintain

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<sup>1</sup>Appellant's counsel at the commencement of the dissolution proceeding filed a notice of withdrawal on August 2, 2005. In April 2006, a new attorney agreed to represent appellant, but no certificate of representation was filed with the district court until August 8, 2006. All references to "appellant's counsel" refer to the latter attorney.

and track [his] calendar for [him]. . . . Nor, for that matter, did [appellant] provide [him] or [his] employees with a copy of the trial notice that [appellant] must have received.”

The district court determined at trial that appellant had failed to respond to requests for admissions after respondent’s repeated attempts to obtain answers. The district court considered all matters addressed in respondent’s requests for admissions to be deemed admitted for the purpose of trial, pursuant to Minn. R. Civ. P. 36.01. Appellant’s admissions, in pertinent part, established that: (1) the fair market value of the parties’ homestead was \$128,500; (2) appellant was capable of self-support; (3) respondent should be awarded the homestead; (4) the parties’ assets were listed in respondent’s prehearing statement; (5) respondent had been solely responsible for all of the children’s expenses since appellant left the family home; and (6) appellant had paid no child support to respondent.

The district court heard testimony from respondent at trial. Respondent testified that: (1) he and appellant had already divided their household goods and furnishings and that he was agreeable to the division; (2) appellant was residing in the homestead, which had been appraised at \$122,500; (3) the balance of the mortgage encumbering the homestead was “somewhere in the \$20,000 range,” leaving a net equity of “about \$98,000”;<sup>2</sup> (4) various accounts existed in the parties’ names, including a co-op account valued at \$12,696, which respondent agreed should be awarded to appellant; (5) respondent agreed with the division of the parties’ automobiles as they were

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<sup>2</sup> While there is some apparent inconsistency in the values of the homestead, mortgage, and equity in the home, the values set forth here reflect the values that the district court deemed admitted by appellant or are based on respondent’s trial testimony.

ultimately awarded by the district court;<sup>3</sup> and (6) respondent agreed to assume all of the parties' debt, with the exception of \$6,000 charged to a credit card for appellant's attorney fees.

On August 22, 2006, judgment was entered, and on December 21, 2006, the district court heard appellant's motion to reopen the judgment, pursuant to Minn. Stat. § 518.145, subd. 2(1) (2006) for mistake or excusable neglect. In an order filed February 27, 2007, the district court denied appellant's request to reopen the judgment and grant a new trial pursuant to the statute and explained that it had ordered that the trial proceed notwithstanding appellant's absence for the following reasons:

(1) the unmistakable notice of the upcoming trial date that court administration sent to the parties, and which [appellant] almost certainly received; (2) the altogether lack of response or any other communication from either [appellant] or her attorney regarding [respondent's counsel's] attempt to obtain discovery and discuss settlement; and (3) the absence in the file of any indication that [appellant's attorney's] firm had resumed representation of [appellant].

The district court noted that the proceeding on July 26, 2006 was a trial, not a default hearing, and that the district court's decision was rendered based upon the testimony offered and the evidence received. The district court found that: (1) appellant had offered no evidence that the judgment was unfair to her or that a new trial would benefit her; (2) appellant had no reasonable excuse for her failure to appear at the trial; (3) appellant failed to act with due diligence following notice of entry of judgment; and

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<sup>3</sup> Respondent did not testify about the value of the automobiles.

(4) reopening the judgment would prejudice respondent by causing him to incur additional fees associated with a second trial. This appeal followed.

## DECISION

### I.

Appellant argues that the district court abused its discretion when it denied her motion to reopen the judgment.

Whether to reopen a dissolution judgment under Minn. Stat. § 518.145, subd. 2 (2006), is discretionary with the district court. *See Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996) (reviewing refusal to reopen for abuse of discretion); *Haefele v. Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001) (reviewing decision to reopen judgment for abuse of discretion), *review denied* (Minn. Feb. 21, 2001); *see also Clark v. Clark*, 642 N.W.2d 459, 465 (Minn. App. 2002) (reciting general rule). The district court's decision about whether to reopen a judgment will be upheld unless the district court abused its discretion, and its findings as to whether the judgment was prompted by mistake or fraud will not be set aside unless clearly erroneous. *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998).

Minnesota Statutes, section 518.145, subdivision 2, reads, in relevant part:

On motion and upon terms as are just, the court may relieve a party from a judgment and decree, order, or proceeding under this chapter, except for provisions dissolving the bonds of marriage, annulling the marriage, or directing that the parties are legally separated, and may order a new trial or grant other relief as may be just for . . . mistake, inadvertence, surprise, or excusable neglect.

The Minnesota courts have not interpreted section 518.145, subdivision 2(1), but the language of its operative provision is identical to Minn. R. Civ. P. 60.02(a). We rely on precedent interpreting the identical language in rule 60.02(a) to analyze subdivision 2(1). See *Peterson v. Eishen*, 512 N.W.2d 338, 341 (Minn. 1994) (applying precedent interpreting rule 60.02(d) in construing functionally identical language in § 518.145, subd. 2(4)), *superseded by rule on other grounds by In re Welfare of Children of S.C.*, 656 N.W.2d 580, 583 (Minn. App. 2003).

A party seeking mistake-based relief under Minn. R. Civ. P. 60.02(a) from a default judgment must show: (1) a reasonable claim on the merits; (2) a reasonable excuse for failure to act; (3) due diligence after notice of entry of judgment; and (4) no substantial prejudice to the opposing party if the motion to vacate is granted. *Conley v. Downing*, 321 N.W.2d 36, 40 (Minn. 1982) (citing *Finden v. Klaas*, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964)). Each of these factors, known as the *Finden* factors, must be satisfied to justify relief under rule 60.02. *Nguyen v. State Farm Mut. Auto. Ins. Co.*, 558 N.W.2d 487, 490 (Minn. 1997). Because of the similarity between Minn. R. Civ. P. 60.02(a) and Minn. Stat. § 518.145, subd. 2(1), and because of the similarity of the posture of this case to a default proceeding, we conclude that the district court properly applied the *Finden* factors here. Cf. *Reid v. Strodman*, 631 N.W.2d 414, 414 (Minn. App. 2001) (applying *Finden* factors in a child-support dispute).

Appellant challenges several of the district court's findings on the *Finden* factors. We note, however, that the record before us is not complete as appellant failed to provide us with a transcript of the December 21, 2006 motion hearing.

On appeal, the duty to provide a transcript is on the party seeking review of the rulings being challenged. *See Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995) (citing *Noltimier v. Noltimier*, 280 Minn. 28, 29, 157 N.W.2d 530, 531 (1968)). While the lack of a transcript does not automatically require dismissal of an entire appeal, lack of a transcript does limit the scope of appellate review to whether the district court's conclusions of law are supported by its findings of fact. *See Duluth Herald & News Tribune v. Plymouth Optical Co.*, 286 Minn. 495, 498, 176 N.W.2d 552, 555 (1970) (addressing limited scope of review); *Mesenbourg*, 538 N.W.2d at 494 (reviewing issues within limited scope of review despite lack of transcript).

*Bender v. Bender*, 671 N.W.2d 602, 605 (Minn. App. 2003). Accordingly, we must limit our review to whether the district court's findings of fact support its conclusions. Nevertheless, we do note that the limited record before us supports the district court's findings.

The district court applied the *Finden* factors and found that appellant failed to meet even one of them. The district court found that appellant did not have a reasonable claim on the merits. The district court stated that appellant offered no evidence

to show that the judgment is unfair to her in any way whatsoever. [Appellant] does not claim that the judgment is prejudicial to her. She does not claim that the terms of the judgment are burdensome to her. And she does not even claim that she could obtain better results if a new trial were ordered.

The district court also found that appellant did not have a reasonable excuse for her failure to act. The only excuse appellant offered for her failure to appear at trial is that she had not put the trial date on her calendar. Appellant's counsel offered virtually the same excuse and it is unavailing.

The district court next found that appellant failed to act with due diligence following the entry of the judgment. The district court discussed the deficiencies in appellant's counsel's representation, particularly his failure to file a certificate of representation and that the court had to prompt him to file a formal motion for a new trial, which was not timely heard.<sup>4</sup> The district court also noted that as of the issuance of its order denying appellant's motion to reopen the judgment, appellant had yet to comply with respondent's discovery requests.

Finally, the district court found that respondent would be sufficiently prejudiced should the judgment be reopened because he would be required to bear the legal fees associated with a second trial. The burden is on appellant to establish "that no substantial prejudice will result to the other party." *Nelson v. Siebert*, 428 N.W.2d 394, 395 (Minn. 1988).

Ordinarily, added expense and delay alone are not sufficient to show prejudice. If it is perceived by the trial court that there is intentional ignoring of process, the additional expense must be viewed in a different light. To force a claimant to go to the expense of a hearing in court, to gather evidence and expert testimony and the concomitant preparation, all either by inexcusable neglect or by intent, colors the prejudice with a deeper hue.

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<sup>4</sup> The district court found that appellant's motion was not timely heard, citing Minn. R. Civ. App. P. 59.03, which requires that "[a] notice of motion for a new trial . . . shall be heard within 60 days after such general verdict or notice of filing, unless the time for hearing be extended by the court within the 60-day period for good cause shown." This finding was in error. Appellant's motion was not based on rule 59, but on Minn. Stat. § 518.145, subd. 2, which does not contain the same 60-day requirement, but requires "[t]he motion must be made within a reasonable time, and for a reason under clause (1) . . . not more than one year after the judgment and decree, order, or proceeding was entered or taken." Despite this error, the district court's finding that appellant failed to act with due diligence still stands on the other reasons found by the district court.

*Hovelson v. U.S. Swim & Fitness, Inc.*, 450 N.W.2d 137, 142 (Minn. App. 1990) (citation omitted), *review denied* (Minn. Mar. 16, 1990). In its order denying appellant’s motion, the district court detailed several examples of appellant’s ignoring of process. Appellant failed to meet her burden to show that no substantial prejudice to respondent would result if the judgment were reopened. *See Black v. Rimmer*, 700 N.W.2d 521, 528 (Minn. App. 2005) (holding that appellant made a weak showing that respondent would not suffer prejudice and that appellant’s case fit the exception noted in *Hovelson* where appellant’s conduct “weakened the element of prejudice”), *review dismissed* (Minn. Sept. 28, 2005).

The district court concluded that “[i]nasmuch as [appellant] is incapable of satisfying any of the four factors, . . . the Court feels compelled to deny [appellant’s] motion for a new trial.” The district court’s findings support this conclusion. The district court did not abuse its discretion in denying appellant’s motion.

## II.

“A trial court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion.” *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). A district court abuses its discretion regarding a property division if its findings of fact are “against logic and the facts on [the] record.” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Appellate courts “will affirm the trial court’s division of property if it had an acceptable basis in fact and principle even though [the appellate court] might have taken a different approach.” *Antone*, 645 N.W.2d at 100. “We defer to the trial court’s findings of fact and will not set them aside unless they are

clearly erroneous.” *Id.* “To challenge the trial court’s findings of fact successfully, the party challenging the findings must show that despite viewing that evidence in the light most favorable to the trial court’s findings . . . the record still requires the definite and firm conviction that a mistake was made.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

Appellant challenges the original judgment and decree on the grounds that the district court abused its discretion in the division of the marital property, and that the district court failed to make adequate findings of fact to support the division of the property. The record before us contains no evidence that appellant raised these issues in the district court. As noted previously, we have not been provided a transcript of the December 21, 2006 hearing but the district court’s order denying appellant’s motion to reopen the judgment specifically states that appellant offered no evidence to show that the judgment was unfair, prejudicial, or burdensome to her, or that she could obtain a more favorable result if the judgment were reopened. On appeal, appellant does not challenge this finding by the district court. Her district court motion papers are silent as to any prejudice she may have suffered as a result of the judgment.

We have concerns whether appellant’s challenge of the judgment itself is timely under the rules, as appellant did not make a motion for a new trial pursuant to Minn. R. Civ. App. P. 59.01, nor did she file her notice of appeal within 60 days of entry of the judgment pursuant to Minn. R. Civ. App. P. 104.01, subd. 1. But even if we were to exercise our discretion to review under Minn. R. Civ. App. P. 103.04, because appellant

did not raise these issues before the district court, they are not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court will not consider matters not argued and considered in the court below). Thus, appellant is not entitled to relief on her substantive challenge to the judgment itself.

**Affirmed.**