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11/6/2015 12:35:19 PM
Hennepin County, MN

STATE OF MINNESOTA COUNTY OF HENNEPIN	DISTRICT COURT FOURTH JUDICIAL DISTRICT
	Case Type: Other Civil
Ramone Robinson, Petitioner, v. City of Minneapolis Department of Regulatory Services, Defendant.	Court File No. ~~27-CV-15-6630~~ 27-CV-15-6850 Hon. Ivy S. Bernhardson **ORDER GRANTING PETITIONER'S MOTION TO VACATE DEFAULT JUDGMENT AND DENYING DEFENDANT'S MOTION TO DISMISS**

This matter came before the undersigned Judge of District Court on Defendant's Motion to Dismiss or in the alternative for Summary Judgment on August 7, 2015, in Courtroom 657, Hennepin County Government Center, 300 South 6th Street, Minneapolis, Minnesota.

Morgan Smith, Esq. of Smith and Raver, LLP appeared on behalf of Plaintiff.

Lee Wolf, Esq. of the Minneapolis City Attorney's Office appeared on behalf of Defendant.

Based upon the files, records and proceedings herein, including the arguments of counsel, the Court enters the following:

ORDER

1. Defendant's motion to dismiss is **denied.**

2. Petitioner's motion to vacate the default order is **granted.**

3. The memorandum that follows is incorporated herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Ivy S. Bernhardson

Dated: November 6, 2015

The Honorable Ivy S. Bernhardson
Judge of District Court

Filed in Fourth Judicial District Court
11/6/2015 12:35:19 PM
Hennepin County, MN

MEMORANDUM

Ramone Robinson owns a house at 1431 Oliver Avenue North, Minneapolis, Minnesota ("the Property"). On May 22, 2013, the Minneapolis Department of Regulatory Services issued a Notice of Revocation on the Property for illegal over occupancy. This matter was appealed and a hearing was held on August 5, 2013. On October 18, 2013, the Rental License Revocation was finalized with a vote by the Minneapolis City Council. This Revocation is certainly related to this matter, but it is not the actual subject of this motion.

About five months later, in March of 2014, the Minneapolis Department of Housing Inspections ("MDHI") obtained information from an otherwise unrelated police report that the Property which was the subject to the revocation was still occupied. Acting upon this information, an inspector visited the Property, spoke with persons present, and determined that there were people living at the Property in violation of the Revocation. The inspector issued a $2,000 citation for the unlicensed rental unit and mailed it to the Property, which Petitioner listed as his address.

Petitioner filed an appeal on April 21, 2014. On June 2, 2014, MDHI sent notice of the hearing to Petitioner at the Property, setting the hearing for June 25, 2014. Three days after the hearing was set, Petitioner notified MDHI that this date did not work for him. The hearing was rescheduled, but notice of the new hearing did not go out until July 18, 2014. MDHI asserts that it sent said notice to the Property, just as had been done before. The hearing, set for August 26, 2014, occurred, but Petitioner failed to appear. Default judgment was then entered.

Notice of the Judgment was mailed to the Property, just as before, on August 27, 2014. Petitioner appeared at MDHI on September 3, 2014 claiming not to have received the

Filed in Fourth Judicial District Court
11/6/2015 12:35:19 PM
Hennepin County, MN

rescheduled hearing notice. MDHI indicated that he was entitled to appeal to the Minnesota Court of Appeals, something that was described in the notice of Judgment itself.

Almost eight months passed. On April 20, 2015, Petitioner brought this action to vacate the Default Judgment.

It appears that at some point between September 3, 2014 and June 19, 2015, the City of Minneapolis made an assessment against the Property for the $2,000 citation. Precise dates are mostly absent from the record, but Petitioner also appealed this assessment, providing notice of such on June 19, 2015. The hearing related to the assessment was set for July 21, 2015. Counsel for Petitioner indicates in his reply brief that the Administrative Law Judge vacated the assessment without prejudice, but indicated he did not have standing to make determinations regarding the potential vacation of the Default Judgment.

LEGAL STANDARD

Under Minnesota law, a party may move to dismiss a claim if the district court lacks subject-matter jurisdiction. Minn. R. Civ. P. 12.02(a). The ultimate question is "whether the complaint sets forth a legally sufficient claim for relief." *In re Individual 35W Bridge Litigation,* 806 N.W.2d 820, 826 (Minn. 2011) (citations omitted). Since motions to dismiss can only be sustained on the premise that there is *no possible* way that the alleged facts can lead to a claim upon which relief can be granted, the Court is to "accept all facts alleged in the complaint as true and construe reasonable references in favor of the non-moving party." *Brenny v. Bd. Of Regents of Univ. of Minn.*, 813 N.W.2d 417, 420 (Minn. Ct. App. 2012) (citations omitted).

Aggrieved parties may seek in the District Court relief from an Order where there has been "[m]istake, inadvertence, surprise, or excusable neglect." Minn. R. Civ. P. 60.02(a). A party may request relief from a default order by showing he "(a) is possessed of a reasonable defense

Filed in Fourth Judicial District Court
11/6/2015 12:35:19 PM
Hennepin County, MN

on the merits, (b) has a reasonable excuse for his failure or neglect to answer, (c) has acted with due diligence after notice of the entry of judgment, and (d) that no substantial prejudice will result to the other party." *Hinz v. Northland Milk & Ice Cream Co.*, 53 N.W.2d 454, 456 (Minn. 1952). "Reopening of default judgments is to be liberally undertaken so that disputes can be resolved on their merits." *Galatovich v. Watson*, 412 N.W.2d 758, 760 (Minn. Ct. App. 1987). As a result, it is unnecessary that a party must meet all four factors in order to obtain relief under Minn. R. Civ. P. 60.02. *Northland Temporaries, Inc. v. Turpin*, 744 N.W.2d 398, 406 (Minn. Ct. App. 2008).

ANALYSIS

The Court denies the motion to dismiss, finding both that there is subject-matter jurisdiction and there has been no failure to exhaust administrative remedies. Additionally, the Court finds that there is reason to vacate the default order in accordance with the liberal standards detailed below.

1) The Court does have subject-matter jurisdiction over this quasi-judicial action under Minn. Stat. § 462.361

"Where no right of judicial review has been provided by statute or appellate rules for the quasi-judicial decisions of an administrative agency, an aggrieved party has the common law right to petition for a writ of certiorari pursuant to Minn. R. Civ. App. P. 120 and Minn. Stat. § 606.01." *Matter of Haymes*, 444 N.W.2d 257, 259 (Minn. 1989); *see also Dietz v. Dodge Cty.*, 487 N.W.2d 237, 239 (Minn. 1992) ("in the absence of an adequate method of review or legal remedy, judicial review of the quasi-judicial decisions of administrative bodies, if available,

Filed in Fourth Judicial District Court
11/6/2015 12:35:19 PM
Hennepin County, MN

must be invoked by writ of certiorari"). Minn. Stat. 606.01 indicates that "[t]he party shall apply to the Court of Appeals for the writ." (1996).[1] Where there is no standalone statutory right to challenge an act elsewhere, the Court of Appeals has exclusive jurisdiction over quasi-judicial determinations by an agency. *Lam v. City of St. Paul*, 714 N.W.2d 740, 743 (Minn. Ct. App. 2006) (*citing Heideman v. Metro. Airports Comm'n,* 555 N.W.2d 322, 324 (Minn. Ct. App. 1996)).

Generally, quasi-judicial determinations are those that "are based on evidentiary facts and which resolve disputed claims of rights." *Meath v. Harmful Substance Comp. Bd.,* 550 NW.2d 275, 279 (Minn. 1996). To clarify this, the Minnesota Supreme Court later created a three-part test, summarizing the indicia of a quasi-judicial determination as follows: "(1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim." *Minn. Ctr. for Environmental Advo. v. Met. Council,* 587 N.W.2d 838, 842 (Minn. 1999). Another group of determinations are not reviewable by certiorari, and they are called quasi-legislative acts. Comparing the two, quasi-legislative acts are generally those that "affect the rights of the public generally, unlike quasi-judicial acts which affect the rights of a few individuals analogous to the way they are affected by court proceedings." *Interstate Power Co., Inc. v. Nobles Cty. Bd. Of Com'rs*, 617 N.W.2d 566, 574 (Minn. 2000).

The act which occurred here, an adjudication of a matter and entry of a default order, strikes the Court as a quintessential quasi-judicial act. Under the test in *Minnesota Center for Environmental Advocacy*, both acts by Defendant are quasi-judicial; first, when it determined that there was a violation of the City Code and acted to cite Petitioner for it. This is apparent from a case called *Buchanan v. City of Minneapolis Dept. of Regulatory Services*, where the

[1] This portion concerning the Court of Appeals was added in 1996; prior to this, this phrase was absent.

Filed in Fourth Judicial District Court
11/6/2015 12:35:19 PM
Hennepin County, MN

Court of Appeals reviewed a matter involving citations for property use in ways that violated zoning requirements. 2011 WL 2982621, at *2 (Minn. Ct. App. July 25, 2011).[2] As for the entry of the default judgment order, this Court is unable to locate any cases evaluating whether such a determination constitutes a quasi-judicial act. However, it certainly meets all the hallmarks laid out in *Minnesota Center for Environmental Advocacy*. Defendant investigated the underlying issue leading to the citation, determining that the citation should issue. Defendant applied its standards for default when Petitioner did not appear and issued a binding decision as a result. This is a quasi-judicial determination.

Having determined that threshold consideration, the Court now must examine whether there is a separate statutory basis for relief from the district court that would avoid the normal requirement to seek review via a writ of certiorari. Minnesota law provides that in cases regarding the exercise of certain statutorily-created zoning powers, the district court can provide remedies:

> "Any person aggrieved by an ordinance, rule, regulation, decision or order of a governing body or board of adjustments and appeals acting pursuant to sections 462.351 to 462.364 may have such ordinance, rule, regulation, decision or order, reviewed by an appropriate remedy in the district court, subject to the provisions of this section."

Minn. Stat. § 462.361, Subdv. 1.

As indicated above, this case is novel. There do not appear to be any cases concerning the appeal to district court (or the Court of Appeals, for that matter) of a default judgment issued by an administrative agency. Indeed, a vast majority of the cases concerning zoning determinations concern whether the Court of Appeals has jurisdiction, not whether the district court would have

[2] Oddly, the Court of Appeals never actually used the phrase "quasi-judicial" in the opinion. However, in establishing the relevant standards, they cited a case using those same standards because the determination was quasi-judicial. *See, Neitzel v. Cnty. of Redwood*, 521 N.W.2d 73, 76 (Minn. Ct. App. 1994).

Filed in Fourth Judicial District Court
11/6/2015 12:35:19 PM
Hennepin County, MN

jurisdiction. *See, e.g. Buchanan* 2011 WL 2982621, at *2.[3] In *Buchanan*, the Court of Appeals determined that a party appealing a determination that they had operated an "entertainment" business without a license could skip the stop at the district court. *Id*. Another case, *White Bear Rod and Gun Club v. City of Hugo*, determined that while the Court of Appeals certainly had jurisdiction, the district court might have concurrent certiorari jurisdiction if a writ was sought. 388 N.W.2d 739, 742 (Minn. 1986).[4]

Turning to the plain reading of the statute providing for jurisdiction, the Court determines that it does have subject-matter jurisdiction. Minn. Stat. § 462.361 provides that "orders" issued by a "board of adjustments and appeals" acting pursuant to the relevant statute can be the subject of actions seeking "appropriate remedy" in the district court. There has been an order here, for default, issued pursuant to Minn. Stat. § 462.362, under which Petitioner now seeks relief. Additionally, the relief sought is for vacation of an order under Minn. R. Civ. P. 60.02, a type of relief that district courts routinely provide. Whether Petitioner could have done this via certiorari is another matter as the statute here provides that he can seek a remedy from the district court.

This Court also does not find persuasive the argument that Petitioner did not exhaust his administrative remedies. Defendant points to the Minneapolis Municipal Code which provides that "[a]n aggrieved party may obtain judicial review of the decision of the hearing officer by petitioning the Minnesota Court of Appeals for a writ of certiorari pursuant to Minnesota

[3] An exception is the previously-mentioned *Nitzel v. Cnty. of Redwood*. 521 N.W.2d at 76. Even though this case did involve zoning restrictions and a question as to whether the district court would be the proper venue, the decision actually hinged specifically on the fact that the Court of Appeals determined that the quasi-judicial action was not covered by Minn. Stat. § 462.361. *Id*. They made this determination because a county zoning decision was at issue, and the statute providing for district court review covers only municipal zoning issues. *Id*.

[4] Note, however, that this might not still be true even though *White Bear* has not been overruled. When *White Bear* was decided, Minn. Stat. § 606.01, which concerned petitions for certiorari, did not contain language which seems to imply that all certiorari petitions should be directed to the Court of Appeals. *Id*. (1909). In 1996, the Legislature amended the law to indicate that parties seeking certiorari "shall apply to the Court of Appeals for the writ." *Id*. (1996).

Filed in Fourth Judicial District Court
11/6/2015 12:35:19 PM
Hennepin County, MN

Statutes, Section 606.01." M.C.O. 2.110. Defendant argues that Petitioner did not exhaust his remedies given that he never appealed to the Court of Appeals.

"[A] city cannot enact a local regulation that conflicts with state law…" *City of Morris v. Sax Investments, Inc.*, 749 N.W.2d 1, 6 (Minn. 2008). Were the Court to determine that Petitioner had failed to meet his administrative burden by failing to appeal to the Court of Appeals in accordance with M.C.O. 2.110, the necessary inference would be that a writ of certiorari is the *only* method by which a party can seek relief. This would conflict with Minn. Stat. § 462.361, which specifically allows relief from administrative appeals boards to be sought in the district court. This argument fails as a result.

2) Petitioner's request to vacate the Default Judgment Order

Having determined that this Court has jurisdiction, the subject now turns to whether the Court will grant the relief Petitioner seeks. Petitioner moves to vacate the default order in accordance with Minn. R. Civ. P. 60.02. It is first worth noting that this action does fall within the one-year period set out by the rule, as the motion was brought about eight months after the default order was entered. *Id*.

a) Petitioner has a reasonable defense on the merits

Turning to the factors, the Court first looks at the reasonable defense on the merits. This factor evaluates whether there has been some showing by the party seeking vacation that they could have prevailed in the matter subject to the default. *See*, *Vrooman Floor Covering Inc. v. Dosey*, 126 N.W.2d 377, 380 (Minn. 1964) (denying vacation of the default judgment where a party failed to provide anything other than conjecture that they might have won the case subject to the default). Petitioner's defense essentially is that he should not have been cited for violation

Filed in Fourth Judicial District Court
11/6/2015 12:35:19 PM
Hennepin County, MN

of the License Revocation due to the fact that the alleged occupants of the residence were not actually occupants at all. He has submitted two affidavits from the alleged residents that indicate they were not residents of the Property at all. Defendant does not dispute that this is sufficient to fulfill Petitioner's burden on this factor.

b) There is insufficient evidence to support that the mail sent was received and thus it appears Petitioner's excuse for not appearing is excusable

The next factor is that Petitioner has a reasonable excuse for his failure to answer. "Neglect of the party itself which leads to entry of a default judgment is inexcusable, and such neglect is a proper ground or refusing to reopen a judgment." *Howard v. Frondell,* 387 N.W.2d 205, 208 (Minn. Ct. App. 1986). This is likely the most difficult factor for Petitioner to fulfill. Defendant's argument is that it mailed the hearing notices in accordance with its regular practice to the same place that Petitioner has received mail at in the past. Defendant argues that since Petitioner received the first notice and since he also received the notice of the default judgment, he cannot credibly argue that he did not receive the letter resetting the hearing.

There is a presumption that mail with pre-paid postage will be delivered and received. *Nemo v. Local Joint Executive Board*, 35 N.W.2d 337, 339 (Minn. 1948). This is not bulletproof; when one asserts that they did not receive the communication the burden shifts to the sending party to show by preponderance that it is likely the mail was received. *Nafstad v. Merchant,* 228 N.W.2d 548, 550 (Minn. 1975). This can require, for instance, that the sender "show evidence of habit or custom with respect to mailing from the sender's office, coupled with some evidence showing compliance with the custom in the particular instance." *Id*. (*citing Dept. of Employment Security v. Minn. Drug Products, Inc.*, 104 N.W.2d 640 (Minn. 1960)). In cases where there is no evidence in the record in conformance with the above, the sender has failed to fulfill their

Filed in Fourth Judicial District Court
11/6/2015 12:35:19 PM
Hennepin County, MN

burden. *See, e.g. Phommalintho v. American Family Ins. Co.*, 1998 WL 389057, at *2 (Minn. Ct. App. July 14, 1998).

In this case, there are only averments by Defendant's attorney that the notice was sent. There is no affidavit of mailing or affidavit from someone who might have done the mailing. All we have is the bare assertion that it was sent. Even though it is plainly true that some other pieces of mail got to Petitioner, Defendant's lack of a showing has failed to satisfy the shifted burden. As a result, it appears that Petitioner's failure to appear is excusable.

c) Petitioner may not have acted with as much speed as might be optimal, but this does not prevent the Court from vacating the default order

The third factor requires that Petitioner act with due diligence in responding to the entry of judgment. *Hinz*, 53 N.W.2d at 456. This time period varies with the circumstances in each case. *Hovelson v. U.S. Swim and Fitness, Inc.*, 450 N.W.2d 137, 142 (Minn. Ct. App. 1990).

First, Petitioner appears to have immediately alerted Defendant to his belief that he did not receive the mailing after he received the order from the hearing he missed. The Default Order was sent on August 27, 2014. Assuming it took a few days to get to the address, this means that Petitioner came in to respond to the entry of judgment within two or three business days. This appears to be fairly immediate.

There was a delay, though, of eight months after this conversation and the filing of this motion to vacate. Even though this delay was apparent, it is still not outside of the one-year timeframe set out in Minn. R. Civ. P. 60.02. Further, Petitioner was unrepresented at the time of the initial default judgment and chose to obtain counsel for his attempt to remedy the situation. He appears now with counsel.

Filed in Fourth Judicial District Court
11/6/2015 12:35:19 PM
Hennepin County, MN

Even though this factor is not very far tilted in favor of Petitioner, this Court will not consider it to prevent vacation of the default order.

d) There is insufficient prejudice to Defendant that would allow the denial of the motion to vacate

The final factor concerns whether there will be prejudice to the party opposing vacation of the order. *Hinz,* 53 N.W.2d at 456. There is some amount of prejudice inherent in every delay. *Vrooman Floor Covering Inc.* 126 N.W.2d at 378. However, there must be more than a showing of added expense and delay to show sufficient prejudice. *Black v. Rimmer*, 700 N.W.2d 521, 528 (Minn. Ct. App. 2005). Where it appears that the party moving to vacate has engaged in some chicanery in an effort to delay the proceedings, their case is weakened. *Hovelson*, 450 N.W.2d at 142. Such a wrongful delay could be apparent, for instance, when a *pro se* party delayed the matter while making averments that he is seeking counsel and never does so. *Black*, 700 N.W.2d at 528.

Petitioner points out in his moving papers that the City of Minneapolis, with a budget much larger than the amount sought, will not suffer in the meantime while a hearing on the merits of this case is pursued. This is obviously true. Defendant replies that it may be difficult to find witnesses who have disappeared and difficult for those involved to recall the events. Beyond this delay, though, there does not appear to be significant prejudice to Defendant.

Additionally, unlike cases like *Hovelson* and *Black*, there are points where Petitioner seems to show interest in speeding the matter along, making it unlikely that this was a deliberate strategy. Petitioner immediately notified Defendant that he was unavailable for the first hearing three days after the notice of such was sent. He also immediately notified Defendant of his non-receipt of the rescheduled hearing letter a few days after mailing of the default order. On the

Filed in Fourth Judicial District Court
11/6/2015 12:35:19 PM
Hennepin County, MN

other hand, Defendant waited about 43 days to reschedule the hearing, which then occurred another 39 days in the future. Ultimately, all of these facts show that there is little prejudice to Defendant, and thus this factor does not justify denial of the motion to vacate.

CONCLUSION

This Court has subject-matter jurisdiction to hear this matter. Since Petitioner has made both a strong showing that he has a reasonable defense on the merits and that the has a reasonable justification for his failure to act, and that there will be little prejudice to Defendant, this Court will vacate the default order in this matter pursuant to Minn. R. Civ. P. 60.02 and application of the *Hinz* factors.

ISB