STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1537

Don Magnuson,
Appellant,

vs.

Minnesota Therapeutic Recreation Association, et al.,
Respondents,

John Doe, et al.,
Defendants.

Filed June 9, 2025
Affirmed in part and reversed in part
Connolly, Judge

Ramsey County District Court
File No. 62-CV-21-3810

Timothy R. Maher, Joseph D. Kantor, Guzior Armbrecht Maher, St. Paul, Minnesota (for appellant)

V. John Ella, Anna M. Swiecichowski, Fafinski Mark & Johnson, P.A., Eden Prairie, Minnesota (for respondents)

Marie O. Ellis, Minnesota Council of Nonprofits, St. Paul, Minnesota (for Amicus Curiae Minnesota Council of Nonprofits)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In this appeal involving a now-dissolved nonprofit corporation and two of its former directors, appellant, who was also a director, argues that the district court erred by (1) dismissing his defamation claims against respondent-directors as barred by statutory immunity; (2) vacating a default judgment against respondent-nonprofit corporation; (3) granting summary judgment in favor of respondent-nonprofit corporation; and (4) awarding certain costs to respondents. We affirm on all issues except the decision awarding respondents the cost of appellant's deposition, which we reverse.

FACTS

At all times relevant to this appeal, appellant Don Magnuson and respondents Karen Bone and Kayla Saiko were certified recreational therapists. Magnuson, Bone, and Saiko were also members of the board of directors of respondent Minnesota Therapeutic Recreation Association (MTRA),[1] and Bone was the president. MTRA was a non-profit corporation formed to promote and advance understanding of the therapeutic recreation profession.

In March 2021, MTRA sent a newsletter to its membership that contained an article composed by Magnuson. The article was entitled "Ten Reasons to Host an Intern, and Twenty Reasons For Interns to Appreciate Their Supervisor." One of the stated reasons for interns to appreciate their supervisor was:

> The supervisor provides guidance when other parts of an intern's life starts to crumble, *such as boyfriend/girlfriend issues, workplace crushes, financial problems, death of loved ones,*

[1] Bone, Saiko, and MTRA will, hereinafter, collectively be referred to as respondents.

> *psychological problems, pregnancy issues, et cetera*. Good supervisors have seen it all and nothing surprises them. They provide a steady hand at the wheel.

(Emphasis added.) Another reason stated that an intern "*should never throw the supervisor under the bus, both during and after the internship*." (Emphasis added.)

After the March newsletter was distributed, Bone received emails expressing concerns about Magnuson's article. In response, Bone sent an email to Saiko and Jim Wise, who was also an MTRA board member. The email, which was sent by Bone in her capacity as president of MTRA, contained the following heading in the subject line: "Removal of [Magnuson] from the board." In the email, Bone apologized "for the recent newsletter article that went out," and stated that she "received several emails which have brought to light very serious ethical concerns regarding [Magnuson] and past interns."

Shortly thereafter, Bone sent another email to Saiko that was copied to the entire MTRA membership. In that email, Bone accepted responsibility for the "content" of the newsletter and again stated that she was "made aware of some serious ethical violations that have greatly concerned me." Saiko later sent both of Bone's emails to Magnuson's work supervisor, and the second email to Magnuson's co-worker. And, "as both a mandated reporter, and as a concerned health care professional," Saiko sent an additional email to Magnuson's supervisor at his place of employment. In that email, Saiko conveyed that Magnuson authored a "concerning" article in the MTRA newsletter, that MTRA's president received a "handful of . . . concerning allegations" against Magnuson in response to the article, that Magnuson had been removed as an MTRA board member, and that she was "concerned about [Magnuson] having an intern right now."

On March 30, 2021, the MTRA board of directors held a board meeting at which Magnuson was removed as a board member. About two weeks later, on April 13, 2021, the MTRA board of directors voted to dissolve MTRA. A special meeting of the voting members of MTRA was then convened on June 22, 2021. At the meeting, the members voted to ratify the resolution to dissolve MTRA.

In July 2021, Magnuson filed this action against Bone, Saiko, "Unknown Defendants John Doe, and Jane Roe," and MTRA. Magnuson asserted claims against Bone, Saiko, and the unknown defendants for defamation and alleged that MTRA was vicariously liable for the actions committed by Bone and Saiko because their "tortious conduct" was committed in the "course and scope" of their positions with MTRA. Magnuson also sought a declaration that (1) his "removal from the Board of Director's was not valid"; (2) "MTRA's adoption of a resolution to dissolve the association was not valid"; and (3) "[t]he vote of the members of the MTRA to ratify the resolution to dissolve the MTRA was invalid."

MTRA's board of directors decided not to answer Magnuson's complaint because MTRA was financially defunct and previously voted to dissolve the organization. MTRA's articles of dissolution were then adopted on July 28, 2021, and filed with the Office of the Minnesota Secretary of State. The secretary of state issued a certificate of dissolution the same day.

At about the same time, Bone and Saiko moved to dismiss Magnuson's claims against them, asserting statutory immunity under Minn. Stat. § 317A.257 (2024). The district court granted the motion, concluding that, because "[m]anaging the response to its own publication was indisputably within the scope of the MTRA's mission," Bone's and

Saiko's "behavior" constituted "an action 'on behalf of' the [nonprofit] organization." The district court, therefore, dismissed the claims against Bone and Saiko, as well as the claims against MTRA for vicarious liability.

In September 2022, Magnuson filed an amended complaint substituting Jessica McCoy and Kirsten Windbiel as defendants in his defamation claims against John Doe and Jane Roe. Both McCoy and Windbiel interned for Magnuson at a previous employer prior to Magnuson joining the MTRA board of directors. After being named in Magnuson's lawsuit, McCoy and Windbiel noticed a deposition of Magnuson, and he was deposed in May 2023. Magnuson later settled his claims against McCoy and Windbiel and a stipulation for dismissal was filed on July 12, 2023, dismissing Magnuson's claims against McCoy and Windbiel "with prejudice and without costs, disbursements, or fees to any party."

In September 2023, Magnuson moved for a default judgment against MTRA. The district court granted the motion. A few days later, however, MTRA moved to vacate the default judgment. After addressing the factors set forth in *Finden v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964), the district court granted the motion.

MTRA moved for summary judgment on Magnuson's remaining declaratory-judgment claim. The district court determined that, because "MTRA has been dissolved," the question of whether Magnuson's removal as director was appropriate is moot. The district court then determined that Magnuson's other requests for declaratory relief "are also moot, futile, and barred for lack of justiciable controversy because MTRA simply no longer exists. There is nothing this Court can do to protect [Magnuson's] rights, assuming a right exist[s]." As such, the district court granted MTRA's motion for summary judgment.

Respondents applied for taxation of costs, seeking to recover, among other things, the cost of Magnuson's deposition. The court administrator allowed the cost of Magnuson's deposition to be taxed, and Magnuson appealed to the district court. The district court determined that the deposition was useful to MTRA because it was used in MTRA's motion for summary judgment, which resulted in a final judgment for MTRA. And the district court determined that the taxation of the deposition was reasonable because counsel's "choice to use the previously noticed deposition made the costs of that deposition more reasonable than the costs of a duplicative deposition would have been." Thus, the district court affirmed the court administrator's taxation of costs. This appeal follows.

DECISION

I.

Magnuson challenges the district court's decision to dismiss his claims against Bone and Saiko for failure to state a claim under Minn. R. Civ. P. 12.02(e). This court reviews a district court's grant of a motion to dismiss for failure to state a claim de novo to determine whether the pleadings set forth a legally sufficient claim for relief. *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 68 (Minn. 2020). "We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014).

Immunities are based on the "special status of a defendant" and the principle that "though the defendant might be a wrongdoer, social values of great importance required that the defendant escape liability." *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997) (quotation omitted). An immunity protects a defendant from suit. *Id.* at 332-33. "[T]he

application of an immunity is typically a matter of law that is best resolved before the parties engage in lengthy discovery." *Id.* at 332. "Because the determination of an immunity's application is best decided by the [district] court at the earliest possible juncture . . . the [district] court's determination necessarily will include mixed questions of law and fact." *Id.* at 333. Therefore, the reviewing court "will correct erroneous applications of the law, but accord the [district] court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard." *Id.*

Subject to exceptions not applicable here, Minnesota law provides that

> a person who serves without compensation as a director, officer, trustee, member, or agent of an organization exempt from state income taxation under section 290.05, subdivision 2, . . . is not civilly liable for an act or omission by that person if the *act or omission was in good faith, was within the scope of the person's responsibilities* as a director, officer, trustee, member, [or] agent, . . . and *did not constitute willful or reckless misconduct*.

Minn. Stat. § 317A.257, subd. 1 (emphasis added).

Magnuson argues that section 317A.257 "only applies to negligent behavior," and "provides no protection for intentional torts." (Emphasis omitted.) He argues that, because he sued Bone and Saiko for defamation, which he asserts is an intentional tort, section 317A.257 is not applicable to their conduct. Thus, Magnuson argues that the district court "erred by applying Minn. Stat. § 317A.257 to [his] defamation claims."

We are not persuaded. The Minnesota Supreme Court has stated that:

> To prevail on a defamation claim, a plaintiff must show: (1) that the defendant made a false and defamatory statement about the plaintiff; (2) that the statement was an unprivileged publication to a third party; (3) that the statement had a

> tendency to harm the plaintiff's reputation in the community; and (4) that the defendant was at fault (*at least negligent*).

McGurie v. Bowlin, 932 N.W.2d 819, 823 (Minn. 2019) (emphasis added).

The supreme court's statement that, to prove defamation the plaintiff must prove, among other things, that the defendant was "at least negligent," indicates that defamation need not be intentional or willful. And "Minnesota law does recognize a claim of negligent defamation." *Farmers Ins. Exch. v. Hallaway*, 564 F.Supp.2d 1047, 1051 (D. Minn. 2008); *see Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 329 (Minn. 2000) (acknowledging that a negligence standard for private individuals asserting defamation claims has been adopted in Minnesota); *see also Britton v. Koep*, 470 N.W.2d 518, 520 (Minn. 1991) (stating that the elements of a cause of action for defamation include, among other things, "at least negligence"). And section 317A.257 will protect otherwise negligent behavior so long as it is not "willful or reckless misconduct" and made in good faith. Minn. Stat. § 317A.257, subd. 1.

Here, there is no specific allegation that Bone and Saiko's conduct was willful or reckless. In fact, there is no allegation that their behavior constitutes "misconduct"; rather the complaint merely asserts that the conduct was "tortious." Tortious conduct is not necessarily "misconduct." *See Black's Law Dictionary* 1798 (12th ed. 2024) (explaining that "[t]ortious conduct is typically one of four types," including "a nonculpable act resulting in accidental harm"). Therefore, because Magnuson never alleged that Bone and Saiko engaged in willful or reckless misconduct, and Minnesota recognizes that

defamatory conduct can be negligent, we conclude that the district court did not err in determining that section 317A.257 is applicable to Magnuson's claims.

Magnuson also contends that the district court's application of *Rehn* was incorrect. To support his position, Magnuson refers to the district court's citation to *Rehn* as support for its statement that "section 317A.257 grants statutory immunity that is best resolved before the parties engage in lengthy discovery." He argues that the statement in *Rehn* that immunity issues should be decided before the parties engage in lengthy discovery is, "in essence, dicta." Thus, Magnuson argues that "*Rehn* did not mandate the dismissal of [his] claims under [r]ule 12," and a "[r]emand for further proceedings is appropriate."

Magnuson's argument misconstrues the district court's order and is otherwise unavailing. Although the district court cited *Rehn* in its order dismissing the claims against Bone and Saiko, it never concluded that *Rehn* mandated the dismissal. Rather, the district court determined that, based on the allegations in Magnuson's complaint, Bone and Saiko were entitled to statutory immunity because their "behavior . . . was an action 'on behalf of'" MTRA.

Moreover, in granting the motion to dismiss, the district court cited *Rehn* for the proposition that "statutory immunity . . . is best resolved before the parties engage in lengthy discovery." This is an accurate statement of the law. The supreme court in *Rehn* specifically stated that "the application of an immunity typically is a matter of law that is best resolved before the parties engage in lengthy discovery." 557 N.W.2d at 332. In fact, this statement has been repeated by the supreme court since *Rehn*. *See Sletten v. Ramsey County*, 675 N.W.2d 291, 299 (Minn. 2004) (stating that "the application of an immunity

typically is a matter of law that is best resolved before the parties engage in lengthy discovery"). As such, Magnuson has not shown that the district court's reliance on *Rehn* was erroneous.

Magnuson further argues that dismissal of his claims against Bone and Saiko was erroneous because they failed to "meet their burden of showing they are entitled to immunity." We disagree. Statutory immunity under section 317A.257 protects actions that are (1) taken in good faith, (2) within the scope of the person's responsibilities, and (3) not willful or reckless misconduct. Minn. Stat. § 317A.257; *Rehn*, 557 N.W.2d at 333. "[A] defendant relying upon an immunity bears the burden of proving he or she fits within the scope of the immunity." *Rehn*, 557 N.W.2d at 333. And a motion to dismiss on the basis of immunity may be granted if the applicability of immunity is clearly established by the allegations in the complaint. *See Walsh*, 851 N.W.2d at 603; *see also Pani v. Empire Blue Cross Blue Shield*, 152 F.3d 67, 75 (2d Cir. 1998) (stating that an assertion of immunity may be vindicated on a motion to dismiss only if the applicability of the immunity is "clearly established by the allegations within the complaint").

Here, as the district court determined, Magnuson has "not alleged that . . . Bone and Saiko engaged in willful or reckless misconduct." In fact, the face of the complaint shows nothing willful or reckless about Bone and Saiko's conduct. Rather, the alleged conduct reflects actions on behalf of MTRA in response to serious ethical allegations against a fellow board member. Moreover, Magnuson's complaint specifically alleges that the claimed tortious conduct "was committed in the course and scope of [Bone and Saiko's]

position[s] with the MTRA." As such, the second and third elements of statutory immunity under section 317A.257 are established by the allegations in the complaint.

Finally, although good faith is typically a question of fact to be determined by a jury, *Hoyt v. Duluth & I.R.R. Co.*, 115 N.W. 263, 264 (Minn. 1908), we conclude that the first element, the good-faith element, is also established by the face of the complaint, *see Walsh*, 851 N.W.2d at 603. The complaint contains all, or substantial portions of, the emails transmitted by Bone and Saiko. In the first email, sent to Saiko and Wise, Bone expressed concern that the article written by Magnuson may have violated a "code of conduct" applicable to MTRA and that the article raised "very serious ethical concerns." In addition, in the email sent to Saiko, Bone stated that she was writing the email "to all members" as the "President of MTRA" to address the recent newsletter, that the contents of an article raised "serious ethical" concerns, and that she was apologizing for "not properly review[ing] the content of the article." Finally, in the email written by Saiko to Magnuson's supervisor, she stated that she was reaching out "as both a mandated reporter, and as a concerned health care professional." The language contained in these emails shows a good-faith effort by MTRA's then president and another board member to address ethical concerns raised by a newsletter published by MTRA. And, because Saiko's email was sent in the context of her duties as a mandated reporter, the face of the email indicates that her action was taken in good faith. Therefore, the district court did not err in granting the motion to dismiss because statutory immunity under section 317A.257 was established by the allegations in the complaint.

II.

Magnuson challenges the district court's decision to vacate the default judgment entered against MTRA. "The decision to vacate judgment under rule 60.02 rests within the district court's discretion and will not be reversed absent an abuse of that discretion." *Meyer v. Best W. Seville Plaza Hotel*, 562 N.W.2d 690, 694 (Minn. App. 1997), *rev. denied* (Minn. June 26, 1997). The "district court abuses its discretion when it acts under a misapprehension of the law, or when its factual findings are clearly erroneous." *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016) (quotations and citations omitted).

A party moving for relief under rule 60.02 must establish the four *Finden* factors. *Id.* at 619; *see Finden*, 128 N.W.2d at 750. These four factors are (1) "a reasonable defense on the merits," (2) "a reasonable excuse" for the movant's failure or neglect to act, (3) that the movant acted "with due diligence after learning of the error or omission," and (4) "that no substantial prejudice will result to the other party." *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016) (citations and quotations omitted). "Although some showings may be stronger than others, the moving party must establish all four requirements for relief to be warranted." *Id.* But "[t]he relative weakness of one factor should be balanced against a strong showing on the other three." *Valley View, Inc. v. Schutte*, 399 N.W.2d 182, 185 (Minn. App. 1987), *rev. denied* (Minn. Mar. 18, 1987). And Minnesota courts have long held that default judgments should be liberally reopened in order to promote resolution of cases on the merits. *See Sommers v. Thomas*, 88 N.W.2d 191, 196 (Minn. 1958) ("It must be remembered that the goal of all litigation is to bring about judgments after trials on the merits and for this reason courts should be liberal in opening default judgments.").

A. Reasonable defense on the merits

"A reasonable defense on the merits is one that, if established, provides a defense to the plaintiff's claim. Specific information that clearly demonstrates the existence of a debatably meritorious defense satisfies this factor." *Palladium Holdings, LLC v. Zuni Mortg. Loan Tr. 2006-OA1*, 775 N.W.2d 168, 174 (Minn. App. 2009) (citation and quotations omitted), *rev. denied* (Minn. Jan. 27, 2010).

In concluding that MTRA has a "debatably meritorious defense" to Magnuson's declaratory-judgment action, the district court determined that (1) the "declaratory judgment granted was—at best—tenuously supported by the record"; (2) the "record indicates the MTRA was properly dissolved, and that Magnuson's removal may have been proper"; and (3) "the record does not contain evidence of the tortious conduct for which MTRA would be vicariously liable under the Court's prior order."

Magnuson argues that the district court's "ruling on the first factor shows an extremely weak defense on the part of MTRA." We disagree. The default judgment entered in favor of Magnuson declared that (1) MTRA is vicariously liable for Bone and Saiko's tortious conduct; (2) Magnuson's removal from MTRA's board of director's was invalid; (3) MTRA's adoption of a resolution to dissolve the associations was invalid; and (4) the vote of the members of MTRA to ratify the resolution to dissolve MTRA was invalid. In seeking to vacate this default judgment, MTRA presented "specific information" related to the dissolution of MTRA, and the removal of Magnuson as a board member, which included minutes from MTRA's meetings of the board of directors during the relevant timeframe, minutes of the meeting of the members with voting rights, and the

certificate of dissolution. This "specific information" provided a debatably meritorious defense that the dissolution of MTRA, and the removal of Magnuson as an MTRA board member, was not improper or invalid.

Moreover, at the time the default judgment was entered, the district court had dismissed the claims against Bone and Saiko, as well as the vicarious-liability claims against MTRA for Bone and Saiko's conduct, on the basis of statutory immunity. In light of this ruling, there was a debatably meritorious defense that MTRA is not vicariously liable for Bone and Saiko's conduct because such a defense had already succeeded. As such, the district court's ruling on the first factor is amply supported.

B. Reasonable excuse for the failure to act

Magnuson also challenges the district court's application of the second *Finden* factor. In addressing this factor, the district court found that the "former members of the MTRA, and their counsel, mistakenly believed they could not defend on behalf of the MTRA, or that default judgment against a dissolved corporation would result in the declaratory relief of the sort granted." The district court then cited *Cole*, in concluding that "[s]uch mistakes of law, like mistakes of fact, are able to afford grounds for the relief sought here." *See* 884 N.W.2d at 638.

In *Cole*, the movant sought to vacate a default judgment, arguing that "his counsel's neglect was 'excusable' because the online version of the rules, on which his counsel relied, did not state that rule 5.04(a) applied to actions pending before its effective date." 884 N.W.2d at 636. In addressing the second *Finden* factor, the supreme court explained that "mistakes of law, as well as mistakes of fact, may afford grounds for relief" and that

caselaw "generally reflects a strong policy favoring the granting of relief when judgment is entered through no fault of the client." *Id.* at 638 (quotations omitted). Although the supreme court never specifically concluded that the attorney's neglect was excusable, the supreme court reversed and remanded, concluding that the "district court abused its discretion in failing to consider all four *Finden* requirements." *Id.* at 639.

Magnuson argues that the district court's reliance on *Cole* is "misplaced" because that "case is distinguishable from the case at bar." He asserts that, unlike the type of "attorney neglect" involved in *Cole*, "[t]here was no mistake by MTRA or its counsel that MTRA was required to answer the [c]omplaint. They knew they had a deadline to answer," and "ignored" their obligations. He argues that, because "[i]ntentional neglect by a party is not excusable neglect," the district court improperly found "excusable neglect here."

To support his position, Magnuson cites *Black v. Rimmer*, in which a default judgment was entered against the defendant after he failed to answer, plead, or otherwise defend against the plaintiffs' lawsuits. 700 N.W.2d 521, 525 (Minn. App. 2005), *rev. dismissed* (Minn. Sept. 28, 2005). Although the defendant was pro se when the default judgment was entered, this court determined that "the district court correctly found that the '[the defendant] has no valid excuse for his failure to interpose an Answer to the Complaints.'" *Id.* at 528.

This case is distinguishable from *Black* because, unlike the defendant in *Black*, who intentionally neglected to retain counsel and respond to the plaintiffs' lawsuits, respondents were represented by counsel. The record reflects that respondents relied on counsel's advice in deciding not to respond to Magnuson's complaint or oppose the motion for a

default judgment. Specifically, Bone's declaration states that she "mistakenly believed, *after speaking to my litigation counsel*, that because the MTRA did not exist, that it was not possible or necessary to respond to the motion." (Emphasis added.) And she "also assumed, *as did my litigation counsel*, that the default judgment would only be for monetary damages," and that "[b]ecause a monetary judgment against a defunct organization would be a nullity, *my litigation counsel did not scrutinize* the declaratory relief sought by Magnuson in his proposed order *or appreciate* the potential impact such an order could have on the MTRA and the other Defendants." (Emphasis added.) This type of reliance on counsel is the type of reliance for which courts are "loath" to punish the innocent client for counsel's neglect. *See Cole*, 884 N.W.2d at 638 (stating that "even in those cases where a court has held the neglect of a client's attorney to be inexcusable, if such neglect has been purely that of counsel, ordinarily courts are loath to punish the innocent client for the counsel's neglect" (quotations omitted)).

Moreover, "it is generally for the district court to determine whether the excuse offered by the movant is true and reasonable under the circumstances." *Id.* at 639; *see also Gams*, 884 N.W.2d at 620 (stating that "the district court is in the best position to evaluate the reasonableness of the excuse" (quotation omitted)). The district court, in its discretion, determined that the mistakes made in this case are the type for which relief should be afforded. In light of the broad discretion afforded the district court, Magnuson cannot show that the district court abused its discretion in determining that MTRA had a reasonable excuse for its failure to act.

C. Due diligence

In assessing the third *Finden* factor, the district court found that "MTRA made the deliberate decision to dissolve in the face of this litigation and not answer the complaint." As such, the district court had "significant concerns that . . . MTRA's conduct . . . cannot be considered diligent in the full context of this case." Although the district court did not expressly find this factor met, such a finding is implicit in its decision to grant relief, which required that all four *Finden* factors be met. *See Cole*, 884 N.W.2d at 637.

Magnuson argues that an analysis of MTRA's conduct as a whole demonstrates that MTRA did not act with due diligence. But the supreme court has stated that the due-diligence factor "is assessed from the time that the movant learns of his or her error or omission." *Cole*, 884 N.W.2d at 639; *see Nguyen v. State Farm Mut. Auto. Ins. Co.*, 558 N.W.2d 487, 491 (Minn. 1997) ("Defendant acted with diligence upon learning of the oversight."); *see also Charson v. Temple Israel*, 419 N.W.2d 488, 491 (Minn. 1988) ("Charson moved with 'due diligence' after receiving notice of the dismissal."); *Conley v. Downing*, 321 N.W.2d 36, 41 (Minn. 1982) ("[Client] hired another attorney a short time after discovering that nothing had been done and that judgment had been entered against her."); *Coller v. Guardian Angels Roman Catholic Church of Chaska*, 294 N.W.2d 712, 715 (Minn. 1980) ("[D]efendants' attorney acted with due diligence once he became aware of his failure to serve an answer.").

Here, MTRA learned of its mistake when the default judgment was entered. And when MTRA learned of its mistake, it moved to vacate the default judgment nine days after it was entered. Although two years elapsed between the filing of the complaint and the

entry of the default judgment, during which MTRA failed to respond to Magnuson's complaint, the record reflects that MTRA's failure to respond was based on MTRA's counsel's mistaken belief that no response was necessary due to the decision to dissolve MTRA. When MTRA learned of its mistake, it acted promptly. In fact, as the district court found, Magnuson "conced[ed] that in a typical case, [MTRA's] actions would be considered diligent." Because this factor is "assessed from the time that the movant learns of [the] error," we conclude that the district court did not err in implicitly finding that this factor was met.

D. Prejudice

A party seeking relief from the dismissal of a complaint under rule 60.02(a) must show that "no substantial prejudice will result to the other party." *Cole*, 884 N.W.2d at 637 (quotations omitted). Substantial prejudice "should not be presumed nor inferred from the mere fact of delay"; rather, there must be "some particular prejudice of such a character that some substantial right or advantage will be lost or endangered if relief is granted." *Id.* at 639 (quotations omitted). "In general, when the only prejudicial effect of vacating a judgment is additional expense and delay, substantial prejudice of the kind necessary to keep a judgment from being reopened does not exist." *Black*, 700 N.W.2d at 528 (quotation omitted).

Here, in assessing the prejudice factor, the district court found that, "[i]n challenging the declaratory relief granted, . . . MTRA only demands that [Magnuson] be required to provide sufficient evidence to support the relief granted." The district court then

determined that Magnuson will not "suffer any prejudice by the requirement that he support his claim for a determination on the merits."

Magnuson contends that the district court's analysis of the prejudice factor is erroneous because the court improperly "shifted the burden of showing lack of prejudice to [Magnuson]." But there is no indication that an improper burden shifting occurred. MTRA demonstrated, and the district court determined, that the only prejudice Magnuson would suffer would be having to support his claim for declaratory relief with evidence. This is not the type of particular prejudice that is of the character for which some substantial right or advantage will be lost or endangered if the default judgment is vacated. *See Cole*, 884 N.W.2d at 639. As such, Magnuson cannot show that the district court improperly assessed the fourth *Finden* factor.

In sum, the district court properly analyzed the four *Finden* factors in deciding to reopen the default judgment. And to the extent there is a relatively weak showing on the third factor, the relative weakness of that factor must be balanced against the relatively strong showing of the other three factors. *See Schutte*, 399 N.W.2d at 185. Moreover, supreme court precedent establishes that default judgments should be liberally reopened. *See Sommers*, 88 N.W.2d at 196. Thus, in light of the broad discretion afforded district courts in deciding whether to reopen a default judgment, we conclude that the district court did not abuse this discretion in deciding to reopen the default judgment against MTRA.

III.

Magnuson also challenges the district court's decision to grant summary judgment in favor of MTRA on his claim for declaratory relief. We "review a district court's grant

of summary judgment de novo and, in doing so, view the evidence in the light most favorable to the party against whom the district court granted summary judgment." *Windcliff Ass'n, Inc. v. Breyfogle*, 988 N.W.2d 911, 916 (Minn. 2023). "Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Southcross Com. Ctr., LLP v. Tupy Props., LLC*, 766 N.W.2d 704, 707 (Minn. App. 2009) (quotation omitted).

"Minnesota's Uniform Declaratory Judgments Act grants courts the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 617 (Minn. 2007) (quotation omitted). But a court "has no jurisdiction over a declaratory judgment proceeding unless there is a justiciable controversy." *Id.* A justiciable controversy exists when a plaintiff's claim "(1) involves definite and concrete assertions of right that emanate from a legal source, (2) involves a genuine conflict in tangible interests between parties with adverse interests, and (3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion." *Otto v. Wright County*, 899 N.W.2d 186, 198 (Minn. App. 2017), *aff'd*, 910 N.W.2d 446 (Minn. 2018).

In granting summary judgment in favor of MTRA, the district court determined that Magnuson "has not demonstrated a justiciable controversy, and none appears to exist." In reaching this conclusion, the district court recognized that "MTRA has been dissolved and is no longer a legal corporate entity with a Board of Directors." Consequently, the district

court determined that "whether Magnuson's removal as a director was 'proper' is a moot question." The district court also determined that Magnuson "has failed to prove that he has a right as a board member which is capable of protection." And the district court determined that Magnuson's additional claims "for declaratory relief; to determine that MTRA's adoption of a resolution to dissolve was invalid and that the vote of the organization's members to ratify the resolution to dissolve was also invalid, are also moot, futile, and barred for lack of justiciable controversy because MTRA simply no longer exists." As such, the district court concluded that "[t]here is simply no legitimate purpose for [Magnuson's] remaining claim" because "[a] declaratory judgment from this [c]ourt cannot resuscitate the dissolved corporation or reconvene a board of a dissolved nonprofit corporation."

Magnuson argues first that, if his "claims were moot, summary judgment was improper," and the district court "should have merely dismissed the case as moot, while denying MTRA's motion for summary judgment." But in *DeAntoni v. City of Bloomington*, this court affirmed the district court's entry of summary judgment in favor of the respondents, dismissing the appellant's action as moot and for failing to present a justiciable controversy. 421 N.W.2d 744, 746 (Minn. App. 1988). As such, the district court's decision to dismiss the action on summary judgment was not improper. Moreover, even if the district court should have dismissed Magnuson's action without granting summary judgment, Magnuson has not shown that he was prejudiced by any error. *See Palladium Holdings*, 775 N.W.2d at 178 ("An appealing party bears the burden of demonstrating both error and prejudice."). And finally, as explained below, because the

district court did not err in determining that there was no justiciable controversy, any error in granting summary judgment, rather than "merely dismiss[ing] the case as moot," would not require reversal. *See Bains v. Piper, Jaffray & Hopwood, Inc.*, 497 N.W.2d 263, 270 (Minn. App. 1993) (stating that an appellate court will not reverse a correct decision of the district court because the district court based that decision on incorrect reasons), *rev. denied* (Minn. Apr. 20, 1993).

Magnuson further argues that the district court erred in determining that he failed to state a justiciable claim for declaratory relief because a declaration in his favor would show that he was "right." But as the district court determined, "MTRA has been dissolved and is no longer a legal corporate entity with a Board of Directors." Because MTRA no longer exists, there is no genuine conflict between parties with adverse interests, and a judgment in Magnuson's favor would simply be an advisory opinion on hypothetical facts. *See Otto*, 899 N.W.2d at 198. As such, there is no justiciable controversy, and the declarations Magnuson seeks are moot because MTRA simply no longer exists. The district court did not err in granting summary judgment in favor of MTRA.

IV.

Finally, Magnuson challenges the district court's decision to award respondents the costs of Magnuson's deposition. Generally, the district court's award of costs and disbursements is reviewed for an abuse of discretion. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 155 (Minn. 2014). But whether the district court erred in its interpretation of the statute authorizing the award of costs and disbursements is a legal question that we review de novo. *Id.*

Minnesota law provides that, "[i]n every action in a district court, the prevailing party . . . shall be allowed reasonable disbursements paid or incurred." Minn. Stat. § 549.04, subd. 1 (2024). And "legal fees paid for certified copies of the depositions of witnesses . . . necessarily used on trial of a cause . . . shall be allowed in the taxation of costs." Minn. Stat. § 357.31 (2024).

Magnuson argues that the district court's award of costs and disbursements was an abuse of discretion because it allowed respondents to recover costs of Magnuson's deposition that were "incurred by other parties, McCoy and Windbiel, thereby misapplying the statute." (Emphasis omitted.) We agree. The language of section 549.04, subdivision 1, is clear; it allows the prevailing party to recover disbursements "incurred." Minn. Stat. § 549.04, subd. 1. Here, the cost of Magnuson's deposition was not *incurred* by respondents. Rather, it was incurred by McCoy and Windbiel in defending Magnuson's action against them that ultimately settled. Because the cost of Magnuson's deposition was not incurred by respondents, the district court abused its discretion by allowing them to recover the cost of the deposition. Accordingly, we reverse the district court's decision to award respondents the costs of Magnuson's deposition.

Affirmed in part and reversed in part.