Vermont Superior Court
Filed 09/29/26
Windham Unit

STATE OF VERMONT

SUPERIOR COURT
Windham Unit

CIVIL DIVISION
Docket No. 26-CV-3313

MARK FEINBERG
Appellant

v.

on appeal from

Small Claims
Docket No. 26-SC-162

STACY PAETZEL and
JONATHAN PAETZEL
Appellees

DECISION ON APPEAL

Appellant Mark Feinberg (Defendant below) appeals from a small claims Judgment in favor of Appellees (Plaintiffs below). Oral argument on the appeal was heard on September 21, 2026. Mr. Feinberg and Appellee Stacy Paetzel both appeared remotely for the argument.

An appeal from a small claims judgment is heard and decided "based on the record made in the small claims procedure." 12 V.S.A. § 5538. The "appeal is limited to questions of law." V.R.S.C.P. 10(d).

The small claims Judge issued a Judgment for Plaintiffs below after a hearing held on May 5, 2026. Defendant Feinberg was not present at the hearing as the Judge had denied his motions to continue and appear remotely. Mr. Feinberg argues that the Judge erred when he (1) denied Mr. Feinberg's Motion to Continue the Hearing, (2) denied his Motion for Remote Appearance (3) issued a Default Judgment, and (4) denied his Motion to Vacate the Default Judgment.

In the small claims proceeding, Mr. Feinberg answered the Plaintiffs' complaint and asserted a counterclaim. A notice of hearing was sent on February 24, 2026 for a hearing to take place on May 5, 2026. The notice specified that the parties were required to appear in person.

On April 29, more than two months after the notice of hearing and one week before the hearing, Mr. Feinberg filed a Motion to Continue, giving as his reason that he needed additional time to prepare and schedule a witness. On the day before the hearing, May 4, Plaintiff Stacy Paetzel emailed the court that she opposed a continuance and that she had taken a day off from work to attend the hearing.[1]

The hearing was scheduled for 1:00 pm on May 5th. On that day, the court denied the Motion to Continue. After quoting verbatim Mr. Feinberg's reason, the Judge wrote, "There has been more than adequate time for such preparation. The motion is DENIED." At 11:00 am, Mr.

[1] She included an email from Mr. Feinberg, dated the same day he filed his motion, stating that the hearing had been postponed, which it had not.

Feinberg filed a Motion to Reconsider, stating that he had not had time to meet with his lawyer. The motion was denied as follows: "Defendant seeks reconsideration asserting that he has not yet had a chance to meet with counsel. Again, the final hearing in this matter was set more than two months ago. The motion to reconsider is DENIED."

At 12:56, Mr. Feinberg emailed the following request: "I wasn't aware that this hearing was only required in person. I am currently out of state and not available to appear. Please allow me to appear via Webex."

The hearing was held and the Judge took testimony and issued a Judgment in Plaintiff's favor. He issued the following written ruling on Mr, Feinberg's request to appear remotely:

> Defendant sought twice to have the merits hearing scheduled for May 5, 2026, at 1:00 p.m. in this matter continued for different reasons. Both motions were denied. At 12:56 p.m. today Defendant sent an email to the court asking for permission to appear remotely because he "wasn't aware that this hearing was only required in person." See email.
> The hearing notice provided fair notice to the parties of what may occur if a party failed to appear. The hearing information that accompanied the notice expressly states that the "hearing will be in Newfane in person." Defendant has been on notice for more than two months that this was an in-person hearing of the merits in this matter.
> Defendant's motion was addressed on the record at the start of the hearing. The motion to appear remotely was untimely and was, therefore, DENIED.

On June 1, Mr. Feinberg filed a Motion to Vacate the Judgment, claiming that it had been granted as a default judgment. The motion was denied in a ruling that stated in part:

> The court did not enter a default. Testimony was taken and judgment was entered on the merits.
> As the Court has stated regarding motions pursuant to V.R.C.P. 60(b)(6),
>> "that rule is a general catch-all provision that is designed to give the court the flexibility to see that the rule serves the ends of justice. Although the rule is to be liberally construed to prevent hardship or injustice, its reach is limited. The rule does not protect a party from tactical decisions which in retrospect may seem ill advised, and it is not an open invitation to reconsider matters concluded at trial...."
> Penland v. Warren, 2018 VT 70, ¶ 7 (citations and quotations omitted). It bears repeating that "the broad power granted by clause (6) is not for the purpose of relieving a party from free, calculated, and deliberate choices the party has made." Wright & Miller, 11 Fed. Prac. & Proc. Civ. § 2864 (3d ed.).
> Defendant failed to appear for the duly noticed hearing – he bears the consequences of that choice.

The motion was denied, and this appeal followed.

Mr. Feinberg argues that it was an abuse of discretion for the Judge to deny his Motion to Continue. The motion was filed one week before the hearing and a full two months after the notice of the hearing. This gave the opposing party only a short period of time to respond. Mr. Feinberg criticizes the judge for not deciding the motion sooner but it is reasonable for a judge to give the opposing party an opportunity to respond to the motion. Plaintiff did respond by email and opposed the motion as she had taken the day off from work to attend. The reason Mr. Feinberg gave for the request was to have more time to prepare. In denying the motion, the Judge gave a specific reason for the denial responsive to the content of the motion: that there had been adequate time to prepare--two months. A judge is not required to let valuable scheduled hearing time go unused because a party has put off preparation until immediately before the hearing, especially when the opposing party would be prejudiced by having taken time off from work to attend at the scheduled time. The Judge did not abuse discretion in making that denial decision.

Mr. Feinberg argues that the court erred in denying the Motion for Remote Participation because the Small Claims Rules allow remote participation. It is correct that remote participation may be allowed in small claims court pursuant to Rule 6 (a)(2)(A), but that does not mean that a court is required as a matter of law to authorize it upon request, especially when the other party opposes and would not have had the same opportunity. Here the notice clearly required in-person attendance, and the request for remote participation was only made at the time the hearing was about to start, when the opposing party was already there. It was not supported by reasons of unforeseen circumstances, such as a medical emergency. There is no legal error in denying the request. For a court to allow such last minute requests, absent exigent circumstances and when the opposing party has not had prior notice, could easily prejudice opposing parties. The Judge did not err in his ruling.

With respect to Mr. Feinberg's post judgment Motion to Vacate, he argues that the 'default' judgment should have been vacated on grounds of excusable neglect.[2] V.R.C.P. 60 (b)(1) authorizes a court to relieve a party from a final judgment on a variety of grounds including "excusable neglect." The issue of excusable neglect has been the subject of Vermont Supreme Court decisions for over twenty years. In *In re Town of Killington,* 2003 VT 87A, the Court identified four factors to consider: danger of prejudice to the non-movant, length of delay and potential impact on judicial proceedings, whether the act was in the reasonable control of the movant, and whether the movant acted in good faith. *Id.* Particular attention is given to whether the movant was in reasonable control of the act for which excusable neglect is sought. *Id.* at 16. The Court has consistently maintained its application of these factors. For example, see *In re von Turkevich,* 2018 VT 57.

In this case, Mr. Feinberg's preparation for the hearing was entirely within his control, and his motion to continue was premised on his claim that despite two months of

[2] It is noted that the judgment was not based on default as Mr. Feinberg alleges, but on testimony given at the hearing.

notice, he needed more time to prepare. There was prejudice to the non-movant, who had arranged for time off work to be able to attend the hearing in person as noticed. There was a potential impact on judicial proceedings in that valuable hearing time would have been wasted if the court had continued the hearing at the last minute. Mr. Feinberg's good faith is called into question by him having emailed the Plaintiff stating that the hearing had been postponed when it had not—he had just barely filed a last minute motion to continue. If the Judge had granted the motion for remote participation, that would have prejudiced the opposing party, who had already taken time off work to appear at the hearing and would have been deprived of such an opportunity.

Mr. Feinberg argued at the oral argument on appeal that he had to be in Florida that day, but his contemporaneous filings do not show any emergency implicating his ability to attend the hearing in person as noticed. He faults the court for not acting on his motion to continue sooner, but he gave the opposing party very short notice and it is reasonable for the court not to act immediately on such a motion without the opportunity of the opposing party to respond. Considering the factors applied by the Vermont Supreme Court for excusable neglect, the circumstances of Mr. Feinberg's non-appearance were entirely within his control and do not amount to excusable neglect.

Mr. Feinberg argues that the combined effect of the decisions deprived him of the opportunity to be heard. However, it was his own conduct in failing to timely prepare for a hearing scheduled with plenty of notice, and with clear notice of the requirement of personal attendance, that brought about his loss of the opportunity to present evidence.

The Judge explained each ruling with specific reference to the applicable standard and the circumstances of the case, and the rulings are consistent with the facts and the law. There is no error or abuse of discretion in the rulings of the Small Claims Judge.

The Judgment of the Small Claims Court is *affirmed.*

Electronically signed September 28, 2026 pursuant to V.R.E.F. 9 (d).

Mary Miles Teachout

Mary Miles Teachout
Superior Judge (Ret.), Specially Assigned