STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0205

Linda Carter,
Respondent,

vs.

Alexander Lakanu,
Appellant,

Oluwatoyin T. Lakanu,
Defendant

Filed January 20, 2009
Affirmed
Collins, Judge*

Dakota County District Court
File No. C5-06-8685

Alexander Lakanu, 1405 Castlebrook Way, Marietta, GA 30066 (pro se appellant)

David P. Graham, Tara Vavrosky Iversen, Oppenheimer, Wolff & Donnelly, Plaza VII, Suite 3300, 45 south Seventh Street, Minneapolis, MN 55402; and

Bryan R. Battina, Brock & Battina, Suite 336, 333 Washington Avenue North, Minneapolis, MN 55401 (for respondent)

Considered and decided by Hudson, Presiding Judge; Larkin, Judge; and Collins, Judge.

---

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

COLLINS, Judge

Appellant challenges the district court's decisions leading to summary judgment in favor of respondents, arguing that he was denied the opportunity to present evidence raising a genuine issue of fact. We affirm.

FACTS

Lexington Group LTD (Lexington) is a Minnesota corporation owned by appellant Alexander Lakanu (Lakanu). In mid-2004, the bank holding respondent Linda Carter's mortgage foreclosed on Carter's home. Shortly thereafter, Lakanu, acting on behalf of Lexington, approached Carter and told her that he may be able to save her home. To do so, Carter and Lakanu entered into a transaction in which Carter conveyed the title to her property to Lakanu's wife, defendant Oluwatoyin Lakanu.[1] Carter became dissatisfied after various problems with the transaction began to surface, including substantial undisclosed fees and unexpectedly increased monthly payments. She then brought this action against Lexington and the Lakanus, claiming among other things, that (1) Lakanu violated the foreclosure-consultant statutes, Minn. Stat. §§ 325N.03-.04 (2004), by using his wife "as a straw party" to acquire an interest in Carter's property; and (2) the Lakanus

[1] The notice of appeal purports to name both of the Lakanus as appellants, but only Alexander Lakanu actually signed it. Although the Lakanus presumably intended to appeal jointly, Alexander Lakanu is not an attorney and cannot represent his wife before this court; his signature as a pro se party does not extend to her. As Oluwatoyin Lakanu has not filed a separate notice of appeal or otherwise appeared before this court, she is not a party to this appeal. *See Sorrels v. Hoffman*, 578 N.W.2d 22, 24 (Minn. App. 1998) (stating that timely filed and served notice of appeal is jurisdictional), *review denied* (Minn. June 17, 1998). Nevertheless, we have considered the arguments Alexander Lakanu raises with respect to his wife's liability, but we find them to be without merit.

committed multiple violations of the foreclosure-purchaser statutes, Minn. Stat. §§ 325N.10-.12, .17 (2004).

On September 19, 2006, Carter served discovery demands on Lexington. Included were a number of requests for admission under Minn. R. Civ. P. 36.01. Neither Lexington nor the Lakanus had responded to the requests by November 22, 2006, when Carter first moved for partial summary judgment on Lakanu's liability for violating the foreclosure-consultant statute. Consequently, the district court deemed Lexington and the Lakanus to have admitted to the propositions asserted. Based on these admissions, the district court concluded that there was no genuine issue of material fact that Lakanu was liable for violating the foreclosure-consultant statutes. Carter subsequently moved for summary judgment on Lexington's and the Lakanus' liability for violating the foreclosure-purchaser statutes, and the district court reached a similar conclusion based on the admissions. This appeal followed.

D E C I S I O N

Lakanu challenges the district court's grant of summary judgment on liability. Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from summary judgment, we review whether (1) there are any genuine issues of material fact and (2) the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

I.

Lakanu first argues that the district court erred by granting summary judgment when he was denied the opportunity to present evidence demonstrating a factual dispute for trial. According to his brief, Lakanu was unable to attend the first summary judgment hearing on December 21, 2006, because he was arrested and taken into federal custody on the day before the hearing and was not released until the day after the hearing. But there is no evidence supporting this assertion in the record.

Moreover, even if Lakanu was unable to attend the first summary-judgment hearing because he was in federal custody, there is no indication that he took any action to rectify the situation, such as seeking a continuance or notifying the district court of his arrest. Instead, Lakanu argues that he was automatically entitled to a continuance based on Minn. Stat. § 629.24 (2008), which provides:

> A person brought into this state by, or after waiver of, extradition based on a criminal charge, shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which the person is being or has been returned, until the person has been convicted in the criminal proceeding, or, if acquitted, until the person has had reasonable opportunity to return to the state from which the person was extradited.

Minn. Stat. § 629.24. But this statute is unavailing for a number of reasons. First, Lakanu was not "brought into this state by, or after waiver of, extradition based on a criminal charge"; he was already in Minnesota, attending a settlement hearing in St. Paul when he claims to have been arrested. Second, he had already been served with process in the instant case long before the date of his purported arrest. And third, Lakanu has not demonstrated that the reason for his purported arrest arose "out of the same facts" as in the case before us.

Lakanu also cites to Minn. Stat. § 629.47 (2008), which provides:

> Subject to the right of the accused to a speedy trial as prescribed by the Rules of Criminal Procedure, a court may adjourn a hearing or trial from time to time, as the need arises and reconvene it at the same or a different place in the county. During the adjournment, the person being tried may be released in accordance with rule 6.02 of the Rules of Criminal Procedure.

Minn. Stat. § 629.47. Although Lakanu would have been "the accused" in such criminal proceedings, his reliance here on the statute is misplaced. Section 629.47 is a criminal statute not applicable to civil proceedings. Thus, the district court did not err by rejecting these arguments in granting summary judgment.

II.

Lakanu next argues that the district court erroneously determined that he violated the foreclosure-consultant and foreclosure-purchaser statutes. He asserts that the district court erroneously based its decision on his absence from the partial summary-judgment hearing. This argument lacks merit.

"A party may serve upon any other party a written request for the admission . . . of the truth of any matters within the scope of [the discovery rules] . . . that relate to statements, opinions of fact, or the application of law to fact." Minn. R. Civ. P. 36.01. If the party does not respond to the request within 30 days of being served, the matter is deemed admitted. *Id.* "Any matter admitted pursuant to [rule 36] is conclusively established unless the court on motion permits withdrawal or amendment of the admission." Minn. R. Civ. P. 36.02. And although it is not a favored way to dispose of litigation, failure to respond to a request for admission may determine the ultimate facts of a case. *Cf. Dahle v. Aetna Cas. & Sur. Ins. Co.*, 352 N.W.2d 397, 402 (Minn. 1984) (holding that disposing of case based on untimely response to request for admission on ultimate issue was inconsistent with policies underlying discovery rules, but distinguishing technically untimely response from failure to respond at all).

In granting partial summary judgment on the foreclosure-consultant claim, the district court determined that there was no material factual dispute that Lakanu had impermissibly acquired an interest in Carter's foreclosed home in violation of Minn. Stat. § 325N.04(5) and that he failed to provide Carter with a contract that complied with statutory requirements in violation of Minn. Stat. § 325N.04(7). The district court did not reach this conclusion on default based on Lakanu's absence from the hearing. Rather, the district court did so based on the pleadings, the transaction documents, and the unanswered requests for admission.[2] That record is sufficient for the district court to establish the Lakanus' liability for these statutory violations.

Under Minn. Stat. § 325N.04(5), a foreclosure consultant may not "acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted."

[2] While it is questionable whether Lexington's failure to respond to the requests for admission should bind the Lakanus as well, the Lakanus have waived this issue because they have not raised it either before the district court or on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that issues not addressed by the district court will not be considered on appeal); *Clark v. Peterson*, 741 N.W.2d 136, 139 n.1 (Minn. App. 2007) (noting that issues not briefed on appeal are deemed waived).

Lakanu admitted that he is a "foreclosure consultant." The transaction documents establish that Carter conveyed the title to her home to Oluwatoyin Lakanu. And the Lakanus admitted in their pleadings that they are married. Thus, the district court correctly determined that there was no genuine factual dispute that Lakanu had committed a violation of the foreclosure-consultant statutes by indirectly acquiring an interest in Carter's residence by having Carter convey the title to Lakanu's wife.

Likewise, the district court properly granted summary judgment on the foreclosure-purchaser claims. Under Minn. Stat. § 325N.17(a)(4), a foreclosure purchaser may not enter into a foreclosure reconveyance unless the foreclosure purchaser complies with various federal requirements relating to disclosure, loan terms, and conduct. Lakanu admitted his role as a "foreclosure purchaser" and his failure to comply with those federal requirements. Thus, the district court correctly determined that there was no genuine factual dispute that he had violated the foreclosure-purchaser statutes.

Affirmed.