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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0567**

Wells Fargo Bank NA,
Respondent,

vs.

Tony Badrawi, et al.,
Appellants.

**Filed December 3, 2012
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CV-HC-12-494

Rebecca F. Schiller, Reiter & Schiller, P.A., St. Paul, Minnesota (for respondent)

Marcus A. Jarvis, Jarvis & Associates, LLC, Burnsville, Minnesota (for appellants)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Collins,
Judge.*

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellants challenge the district court's denial of their motion to stay an eviction proceeding and grant of summary judgment to respondent. We affirm.

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

FACTS

This appeal seemingly implicates two cases. On December 2, 2011, appellant Mary Badrawi filed a complaint against respondent Wells Fargo Bank NA to void a foreclosure sale of her homestead (property). *Badrawi v. Wells Fargo*, 27-cv-11-24151 (first-filed case).¹ Wells Fargo removed the case to federal district court on January 17, 2012. *Badrawi v. Wells Fargo*, 0:12-cv-00128-DWF-JJG. The first-filed case is not the subject of this appeal.²

On January 19, 2012, Wells Fargo filed an eviction action in state court against appellants Mary Badrawi and Tony Badrawi, who occupied the subject property. This appeal arises out of that eviction action (second-filed case). In its complaint, Wells Fargo alleged that appellants executed a mortgage on the property on January 3, 2003, in favor of Midamerica Mortgage Corporation, which recorded the mortgage on February 18, 2003. Midamerica Mortgage then assigned the mortgage to Wells Fargo. Appellants defaulted on the mortgage, and Wells Fargo proceeded with foreclosure of the mortgage by advertisement, purchased the property at a sheriff's sale on June 13, 2011, and recorded the sheriff's certificate and foreclosure record on June 14, 2011. Thereafter, without the permission of Wells Fargo, the Badrawis and appellants John Doe and Mary Roe remained in possession of the property.

¹ Although the record before us contains no documents from the first-filed state court action, 27-cv-11-24151, the parties seem to agree that, in that action, Mary Badrawi challenged the validity of the sheriff's foreclosure sale of the property.

² We note that in dismissing Mary Badrawi's case, the federal court did not consider issues pertaining to the state court eviction action. *Badrawi v. Wells Fargo Home Mortg., Inc.*, CIV. 12-128 DWF/JJG, 2012 WL 2178966, at *2-5 (D. Minn. June 14, 2012).

Because the first-filed case was still pending in federal court, appellants moved to stay the eviction proceeding pending resolution of the federal-court case. Wells Fargo moved for summary judgment in the eviction proceeding. The district court denied appellants' motion to stay the eviction proceeding and granted summary judgment to Wells Fargo.

This appeal follows.

DECISION

Grant of Summary Judgment to Wells Fargo

Appellants seek reversal of the district court's grant of summary judgment to Wells Fargo but argue only that the court abused its discretion by denying appellants' motion to stay the eviction proceeding. Appellate courts "review decisions granting summary judgment to determine whether there are any genuine issues of material fact that would preclude summary judgment, and whether the district court erred in its application of the law." *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 831 (Minn. 2012). Appellants do not challenge the district court's conclusion that "there are no material issues of fact to try in this case."

Denial of Motion to Stay Eviction Proceeding

An eviction proceeding is "a summary court proceeding to remove a[n] . . . occupant from or otherwise recover possession of real property." Minn. Stat. § 504B.001, subd. 4 (2010); see *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 357 (Minn. App. 2006) (noting that generally eviction proceedings do not "address matters other than the immediate right to possession of the property"); *Cimarron Vill. v.*

Washington, 659 N.W.2d 811, 817 (Minn. App. 2003) (“[G]enerally, the only issue for determination [in an eviction proceeding] is whether the facts alleged in the complaint are true.”); *Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445–46 (Minn. App. 2001) (affirming district court’s dismissal of appellants’ counterclaims in eviction proceeding, concluding that permitting appellants to assert counterclaims and equitable defenses would unnecessarily “interfere with the summary nature of eviction proceedings” because appellants could raise them in a separate proceeding); *see also State v. Spence*, 768 N.W.2d 104, 109 (Minn. 2009) (“An unlawful detainer action merely determines the right to present possession and does not adjudicate the ultimate legal or equitable rights of ownership possessed by the parties.” (quotation omitted)).

“Generally, whether to stay a proceeding is discretionary with the district court” and is subject to abuse-of-discretion review. *Fed. Home Loan Mortg. Corp. v. Nedashkovskiy*, 801 N.W.2d 190, 192 (Minn. App. 2011) (quotation omitted); *see Rice Park Props. v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556, 556 (Minn. 1995) (applying abuse-of-discretion review to district court’s grant of a stay “pending the final disposition in a related and earlier filed declaratory judgment action,” noting that district courts have “considerable discretion in scheduling matters”). A district court abuses its discretion by declining to grant a stay of an eviction proceeding “when . . . counterclaims and defenses are necessary to a fair determination of the eviction action” and “an alternate civil action that involves those counterclaims and defenses is pending.” *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312, 318–19 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008). But “a party to an eviction proceeding is not

entitled to a stay merely because a related action is pending.” *Nedashkovskiy*, 801 N.W.2d at 193. “Even where a moving party provides the district court with a reason for a stay, a stay is not required.” *Id.* at 192. Rather, “[t]he decision to stay an eviction proceeding is entrusted to the district court’s discretion, and it is made on a case-by-case basis.” *Id.* at 190 (relying on *Real Estate Equity*, 720 N.W.2d at 360 (“Case-by-case determinations of whether to enjoin pursuit of eviction proceedings are both judicially more efficient (because the decision-maker may have more information and a broader spectrum of issues before it) and more consistent with honoring the summary nature of eviction proceedings.”)).

Purporting to rely on *Bjorklund*, appellants argue that the district court abused its discretion by not staying the eviction proceeding. But, in the district court, appellants argued only that (1) a then-pending federal action existed in which appellants alleged “lack of standing to foreclose and potential fraud on the foreclosure court” and (2) appellants “could face the doctrine of collateral estoppel if a stay of the proceeding is not granted.” But, under *Bjorklund*, a stay is required only when counterclaims and defenses in a separate proceeding are “necessary to a fair determination of the eviction action.” 753 N.W.2d at 318. And collateral estoppel requires, among other things, that the issue being litigated “be identical to one in a prior adjudication,” *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004) (quotation omitted), and “necessary and essential to the former resulting judgment,” *In re Panel Case No. 17289*, 669 N.W.2d 898, 905 (Minn. 2003) (quotation omitted). Appellants seem to argue that a common issue between the state eviction proceeding and the federal proceeding that warranted a

stay of the eviction proceedings is whether Wells Fargo strictly complied “with the Notice of Pendency of the Foreclosure statute.” But appellants did not present this argument to the district court, the court did not consider it, and we therefore will not consider it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” (quotation omitted)). Moreover, in making this argument to this court, appellants rely on an unpublished opinion of this court, and unpublished opinions are not precedential. *See* Minn. Stat. § 480A.08, subd. 3(c) (2010) (“Unpublished opinions of the court of appeals are not precedential.”); *Columbia Cas. Co. v. 3M Co.*, 814 N.W.2d 33, 38 (Minn. App. 2012) (“Because the unpublished opinions cited by the insurers have no precedential value, we do not analyze them.”), *review denied* (Minn. June 19, 2012).

Appellants also seem to argue that the first-filed rule weighed in favor of the state district court deferring to the federal district court, arguing that such deference would have “enhance[d] judicial economy” because only one court would therefore have needed to rule on appellants’ claims instead of two courts. This argument also is unpersuasive. “The first-filed rule provides that where two courts have concurrent jurisdiction, the first to acquire jurisdiction generally has priority to decide the case.” *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 448–49 (Minn. App. 2001); *see Gavle v. Little Six, Inc.*, 555 N.W.2d 284, 290–91 (Minn. 1996) (noting that “first to file rules are not truly rules at all, but principles, a blend of courtesy and expediency” and that generally “the court which first acquires jurisdiction may dispose of the whole controversy” when

“two actions between the same parties, on the same subject, and to test the same rights, are brought in different courts having concurrent jurisdiction” (quotations omitted). “In deciding whether to defer to another court, a district court considers judicial economy, comity between courts, and the cost to and the convenience of the litigants.” *Nedashkovskiy*, 801 N.W.2d at 192 (quotation omitted); *see Gavle*, 555 N.W.2d at 290 (noting that a policy reason for the first-filed rule is “comity between courts”).

Purporting to rely on *Nedashkovskiy*, appellants also argue that the state district court abused its discretion by not staying the eviction proceeding because appellants “filed a lis pendens” and made various monthly payments “in the form of a bond to secure the interest of the Bank.” Appellants’ reliance on *Nedashkovskiy* is misplaced, and their argument is meritless. *See Nedashkovskiy*, 801 N.W.2d at 192 (“Even where a moving party provides the district court with a reason for a stay, a stay is not required.”).

Here, before the state district court denied appellants’ motion for a stay and granted summary judgment to Wells Fargo, the federal district court dismissed all of Mary Badrawi’s federal claims because she failed to state a claim for relief that was “plausible on its face,” specifically noting that her claim that Wells Fargo lacked standing to foreclose “is not a recognized cause of action in the state of Minnesota.” *Badrawi*, 2012 WL 2178966, at *2–3 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974 (2007)). And the federal district court rejected Mary Badrawi’s argument that the federal action “cannot be litigated separately from Wells Fargo’s eviction claim” because the argument “lack[ed] merit.” *Badrawi*, 2012 WL 2178966, at *2 n.1.

We conclude that the district court did not abuse its discretion by denying appellants' motion for a stay of the eviction proceeding because resolution of Mary Badrawi's federal claims was not necessary and essential to a fair determination of the issue underlying the eviction proceeding—whether the bank was entitled to recover possession of the contested premises by eviction—nor was the issue underlying the federal claims identical to the issue underlying the eviction proceeding. *See* Minn. Stat. § 504B.285, subd. 1(1)(ii) (2010) (permitting “person entitled to the premises” to “recover possession by eviction . . . after the expiration of the time for redemption on foreclosure of a mortgage”). We further conclude that the district court properly granted summary judgment to Wells Fargo.

Affirmed.