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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1418**

Wells Fargo Bank, N. A.,
Respondent,

vs.

Wulter Perez, et al.,
Appellants.

**Filed March 24, 2014
Affirmed
Worke, Judge**

Hennepin County District Court
File Nos. 27-CV-HC-13-3553, 27-CV-HC-13-3554

Jeffrey D. Klobucar, Curt N. Trisko, Schiller & Adam, P.A., St. Paul, Minnesota (for respondent)

William Bernard Butler, Butler Liberty Law, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellants argue that the district court abused its discretion by refusing to stay eviction proceedings while a related quiet-title action was pending in federal court, and challenge the district court's grant of summary judgment to respondents, asserting that

the record failed to show that respondent was entitled to possession of the property. We affirm.

FACTS

Appellants Wulter Perez and Soila Llapa had a residential mortgage that was assigned in 2011 to U.S. Bank, N.A., (the bank) as trustee for CWMBS 2006-R2, a real estate trust. Perez and Llapa fell behind on the mortgage payments, and the bank began foreclosure proceedings. On December 30, 2011, the bank's attorney drafted a notice of pendency (NOP) of foreclosure proceedings and a power of attorney. The bank published the first notice of foreclosure sale on January 3, 2012, and recorded the NOP on January 4, 2012. The bank was the high bidder at the sheriff's sale on May 9, 2012. Perez and Llapa did not redeem the property. On March 21, 2013, after expiration of the redemption period, the bank quitclaimed title to the property to respondent Wells Fargo, N.A. Perez and Llapa continued to live at the property and made no mortgage payments. Wells Fargo began an eviction action on June 20, 2013.

In May 2013, Llapa began a quiet-title action in Hennepin County contesting the foreclosure action and the bank's title to the property. The bank removed the case to federal court. Llapa challenged the foreclosure on the ground that the bank failed to comply strictly with the statutory procedure because the NOP was filed the day after the first publication of the notice of foreclosure sale.¹

¹ On December 27, 2013, the federal magistrate issued a report recommending that Llapa's claims be dismissed with prejudice and the bank's motion to dismiss be granted. Llapa did not file objections to the report and recommendation.

The district court heard cross motions for summary judgment in the eviction action on July 19, 2013. Perez and Llapa moved for a stay of the eviction proceedings pending the outcome of a quiet-title action in federal court. The district court granted summary judgment in favor of Wells Fargo, and denied Perez and Llapa's request for a stay. This appeal followed.

D E C I S I O N

Stay of eviction proceedings

We review the district court's decision on whether to stay an eviction proceeding for an abuse of discretion. *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312, 317 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008).

When deciding whether to stay an eviction proceeding because of other pending litigation, a court considers "judicial economy, comity between courts, and the cost to and the convenience of the litigants." *Fed. Home Loan Mortg. Corp. v. Nedashkovskiy*, 801 N.W.2d 190, 192 (Minn. App. 2011) (quotation omitted). Even when a party provides a basis for a stay, "a stay is not required" in light of "the considerable discretion" a district court has in determining whether to grant a stay. *Id.*

Llapa and Perez rely heavily on *Bjorklund*, in which this court reversed the district court's decision to deny a stay of an eviction action as an abuse of discretion. 753 N.W.2d at 313-14. This court held that "when the counterclaims and defenses are necessary to a fair determination of the eviction action, it is an abuse of discretion not to grant a stay of the eviction proceedings when an alternate civil action that involves those counterclaims and defenses is pending." *Id.* at 318-19. But in *Bjorklund*, it was not clear

whether appellant purchased the property or had a lease agreement, or who was entitled to possession of the property. *Id.* at 316, 319. For this reason, this court concluded that the district court abused its discretion by denying appellant a stay of the litigation. *Id.* at 319-20.

Here, Perez and Llapa's civil action was filed after the foreclosure, the sheriff's sale, and the expiration of the redemption period. The sheriff's certificate of sale is "prima facie evidence that all the requirements of law [for foreclosure] have been complied with." Minn. Stat. § 580.19 (2012). This record do not present the same confusion of possessory interest that existed in *Bjorklund*. As this court noted in *Nedashkoviskiy*, foreclosed property owners have other options to protect their property interests, including filing a notice of lis pendens. 801 N.W.2d at 193. On these facts, the district court did not abuse its discretion by denying Perez and Llapa a stay of the eviction action.

Summary judgment

We review the district court's grant of summary judgment to determine whether there are genuine issues of material fact and whether the district court erred in applying the law. *Dahlin v. Kroening*, 796 N.W.2d 503, 505 (Minn. 2011). Eviction actions are governed by Minn. Stat. §§ 504B.281-.371 (2012). An eviction action is a "summary court proceeding." Minn. Stat. § 504B.001, subd. 4. "The person entitled to the premises may recover possession by eviction when . . . any person holds over real property . . . after the expiration of the time for redemption on foreclosure of a mortgage." Minn. Stat. § 504B.285, subd. 1. In the eviction proceedings following a foreclosure, the party

seeking eviction must prove that (1) the mortgage was foreclosed; (2) the time for redemption has expired; (3) the defendant is occupying or holding over on the premises; and (4) the plaintiff is entitled to possession of the property. Minn. Stat. § 504B.285, subd. 1. The scope of an eviction action is limited to the question of who is entitled to present possession of the property; matters outside this narrow question should be decided in a separate proceeding. *Deutsche Bank Nat'l Trust Co. v. Hanson*, 841 N.W.2d 161, 164 (Minn. App. 2014).

We see no reason “to interfere with the summary nature of eviction proceedings.” *Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 446 (Minn. App. 2001). Challenges such as those raised by Perez and Llapa to the underlying foreclosure proceedings may be, and in this case have been raised, in separate court proceedings. *Id.* at 445-46. Although this court has concluded that the scope of an eviction proceeding can include other defenses to foreclosure, this is an extremely narrow exception available only when “the eviction action presents the only forum for litigating these claims.” *Fraser v. Fraser*, 642 N.W.2d 34, 41 (Minn. App. 2002). This is not the case here.

Wells Fargo demonstrated that it complied with the four requirements for eviction: (1) the mortgage was foreclosed; (2) the time for redemption has expired; (3) the defendant is occupying or holding over on the premises; and (4) its right to possess the property is superior to that of Perez and Llapa. Because Perez and Llapa opposed summary judgment on the sole ground that the foreclosure was procedurally defective, the district court did not err by granting summary judgment in the eviction action.

Affirmed.