

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1964**

Deutsche Bank National Trust Company as Trustee,  
Respondent,

vs.

Frances S. Bland,  
Appellant,

Byron A. Bland,  
Defendant

**Filed April 21, 2014  
Affirmed  
Worke, Judge**

Scott County District Court  
File No. 70-CV-13-4247

Christina M. Snow, Wilford, Geske & Cook, P.A., Woodbury, Minnesota (for  
respondent)

Jonathan L.R. Drewes, Drewes Law, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Klaphake,  
Judge.\*

---

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

## UNPUBLISHED OPINION

**WORKE**, Judge

In this eviction action, appellant argues that the district court abused its discretion by requiring her to post security in order to stay the proceedings pending resolution of a related federal action, and, after lifting the stay, erred by issuing a writ of recovery of the premises without further hearing. We affirm.

### FACTS

Appellant Frances S. Bland and her late husband, defendant Byron A. Bland, mortgaged their home in Shakopee in 2004. Bland stopped making mortgage payments and respondent Deutsche Bank National Trust Company (the bank), the assignee of the mortgage, began foreclosure proceedings. A sheriff's sale was held on July 24, 2012. On February 26, 2013, after the redemption period expired, the bank filed an eviction action. On the same date, Bland filed a lawsuit challenging the foreclosure as procedurally flawed. The bank removed this lawsuit to federal court.

Following a hearing in the eviction action, the district court stayed issuance of a writ of recovery pending a decision in the federal case. As part of the order staying the eviction action, the district court ordered Bland to pay \$4,233.98 per month, an amount equal to Bland's last monthly mortgage payment, as security for the stay. Bland did not make any of the payments.

On August 26, 2013, the federal court issued an order dismissing Bland's complaint with prejudice. On September 5, 2013, the bank moved to lift the stay granted in the eviction proceeding. Bland appealed the federal court's order dismissing her

complaint, although no one informed the district court that an appeal had been filed. On October 1, 2013, the district court lifted the stay and issued a writ of recovery. This appeal followed.

## DECISION

### *Stay*

We review a 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).

Bland argues that the district court abused its discretion by refusing to stay the eviction proceeding while her appeal of the federal district court's ruling was pending before the Eighth Circuit. From the record before us, neither party advised the district court that Bland appealed the federal district court's adverse ruling. The district court does not abuse its discretion when it does not consider facts of which it was not advised but that a party asserts in retrospect are relevant to the district court's decision. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("On appeal, a party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question."), *review denied* (Minn. Nov. 25, 2003).

As to Bland's claim that the district court abused its discretion by imposing a security requirement, we note that Bland made no payment whatsoever, yet the stay continued until more than a month after the federal district court's decision dismissing

Bland's case. We decline to issue what would be an advisory opinion. *See McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011) (stating that appellate courts do not issue advisory opinions based on hypothetical facts "merely to establish precedent").

***Issuance of the writ of recovery***

Bland argues that the district court erred by issuing a writ of recovery after lifting the stay without holding a hearing. Bland never filed an answer in the eviction action. Two hearings were held in this matter; at the first hearing, Bland did not offer any evidence and only requested a stay of issuance of the writ of recovery until her federal case was decided. At the second hearing, held on October 1, 2013, Bland did not request a jury trial, did not ask to present witnesses, did not deny the allegations of the eviction complaint, and made no argument. She requested that the stay be continued for a short period of time to permit her to raise the money for the security deposit.

"Eviction actions are summary proceedings that are intended to adjudicate only the limited question of present possessory rights to the property. Parties generally may not litigate related claims in an eviction proceeding." *Deutsche Bank Nat'l Trust Co. v. Hanson*, 841 N.W.2d 161, 164 (Minn. App. 2014) (citation omitted). "In Minnesota, not all summary proceedings preclude jury trials; however, summary proceedings characteristically are immediate and abridge formal procedures." *Boline v. Doty*, 345 N.W.2d 285, 289 (Minn. App. 1984) (superseded by statute, Minn. Stat. § 481.13. subd. 1(c) (2002)). The party seeking eviction based on a foreclosed mortgage must prove that (1) the other party remains on the real property; (2) the mortgage has been foreclosed; (3)

the time for redemption has expired; and (4) the plaintiff is entitled to possession of the property. Minn. Stat. § 504B.285, subd. 1 (2012).

The bank demonstrated that it is entitled to issuance of a writ of recovery: Bland remains on the property, the mortgage was foreclosed, the redemption period had expired, and the bank's right to possession is superior to Bland's right. Bland has not demonstrated that the bank is not entitled to judgment, nor has she attempted to do so. The summary proceeding here properly adjudicated the present possessory right to the property. The district court did not err by issuing the writ of recovery.

**Affirmed.**