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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-170**

M & I Marshall & Ilsley Bank, a Wisconsin corporation,
Respondent,

vs.

Michael W. Saxton,
Appellant,

Mary Roe Saxton, et al.,
Defendants.

**Filed August 29, 2011
Affirmed
Schellhas, Judge**

Olmsted County District Court
File No. 55-CV-10-4367

Allen E. Christy, Jr., Mackall, Crouse & Moore PLC, Minneapolis, Minnesota (for
respondent)

Michael W. Saxton, Edina, Minnesota (pro se appellant)

Considered and decided by Schellhas, Presiding Judge; Peterson, Judge; and
Halbrooks, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

On appeal from summary judgment, appellant argues that the district court erred by granting summary judgment because the parties had not yet participated in court-ordered alternative dispute resolution. We affirm.

FACTS

In June 2007, respondent M & I Marshall & Ilsley Bank (the bank), advanced appellant Michael Saxton \$650,000, and Saxton executed and delivered to the bank a negotiable mortgage note. To secure repayment of the loan and performance of the obligations under the note, Saxton executed and delivered two mortgages in favor of the bank covering two parcels of real property. Saxton defaulted on the mortgage note.

The bank commenced this action in June 2010, and Saxton filed a timely answer. On September 30, the district court issued a scheduling order that set several deadlines, including a deadline for serving and filing dispositive motions of February 15, 2011. The order states that “the parties shall participate” in alternative dispute resolution (ADR) and identified that the method would be mediation. The order set a deadline of December 1, 2010, for the parties to inform the court of the agreed-upon ADR neutral, and a deadline of March 1, 2011, for completion of ADR.

On October 12, 2010, the bank mailed its notice of motion and motion for summary judgment to Saxton, notifying him that motion would be argued on December 7. Saxton filed a timely response to the motion, but then wrote a letter to the district court, dated December 1, stating that he had a conflict on December 7. Saxton

requested “that the motion for summary judgment hearing be rescheduled and that it be rescheduled to a date after the court ordered ADR is to be completed (March 1, 2011). I also request that the court order for the completion of ADR be reaffirmed.” The court filed Saxton’s letter on December 6. The bank’s attorney submitted to the court an affidavit, dated December 3, in which he explained the communications that took place between Saxton and him on December 1 about rescheduling the hearing. The bank opposed a continuance only after counsel inquired with the court about available dates to reschedule the hearing and learned that no dates would be available until March 2011, which counsel explained to Saxton was too great of a delay.

The district court heard the bank’s motion for summary judgment on December 7. Saxton appeared by phone. The court granted the bank’s motion, concluding that the bank was entitled to judgment as a matter of law. This appeal follows.

D E C I S I O N

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 we determine whether genuine issues of material fact exist and “whether the [district] court erred in its application of the law.” *Offerdahl v. Univ. of Minn. Hosps. & Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). “[T]he party resisting summary judgment must do more than rest on mere averments”; it must provide concrete evidence of genuine and material fact issues for the elements necessary to prove its claim. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71

(Minn. 1997). We “view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Saxton does not raise any substantive challenge to the district court’s order granting summary judgment to the bank. He argues that the court erred because the parties had not yet participated in court-ordered ADR. He claims that he “relied upon” the court order mandating that the parties would participate in ADR. Saxton does not provide any authority to support his assertion that it was error for the court to grant summary judgment before the parties participated in ADR, and, in his brief, he acknowledges that his research did not reveal any supporting authority.

Saxton’s claim that the district court erred by ordering summary judgment prior to the parties having an opportunity to complete ADR is unconvincing. ADR is “[a] procedure for settling a dispute by means other than litigation.” *Black’s Law Dictionary* 91 (9th ed. 2009). Minnesota Rules of Civil Procedure and General Rules of Practice for the District Courts do not require the courts to delay a motion for summary judgment until ADR is completed. Saxton’s claim is not supported by caselaw and is contrary to policy that “seeks to dispose of litigation on the merits rather than procedural grounds . . . except in extraordinary circumstances.” *Firoved v. General Motors Corp.*, 277 Minn. 278, 284, 152 N.W.2d 364, 369 (1967).

Nor does the scheduling order in this case require that the district court delay a motion for summary judgment until after the deadline for the completion of ADR. Saxton was timely notified of the scheduling order and its deadlines. Significantly, the scheduling order conforms to Minn. Gen. R. Prac. 111.03(b). The order identifies

mediation as the method of ADR to be used and sets deadlines for informing the court of the agreed-upon ADR neutral and for the completion of ADR. *See* Minn. Gen. R. Prac. 111.03(b) (stating that scheduling order shall provide for ADR as required by rule 114.04(c)); Minn. Gen. R. Prac. 114.04(c) (stating that scheduling order “shall designate the ADR process selected, the deadline for completing the procedure, and . . . the deadline for the selection of the neutral”). The order sets a deadline for serving and filing dispositive motions, which includes motions for summary judgment, of February 15, 2011, 14 days before the deadline for the completion of ADR. *See* Minn. Gen. R. Prac. 111.03(b)(2) (stating that scheduling order may establish deadline for bringing dispositive motions); Minn. Gen. R. Prac. 115.01 (a)(1) (identifying motions for summary judgment as dispositive).

Finally, the record shows that the bank timely filed its notice of motion and motion for summary judgment and served the notice of motion and motion on Saxton; that the notice identified the date the motion would be heard by the district court; and that Saxton filed a timely answer. Saxton appeared at the hearing by phone and had an opportunity to respond to the bank’s motion. The resolution of the case on the merits through a timely motion for summary judgment, which is a dispositive motion, makes ADR unnecessary. The district court did not err by granting summary judgment before the parties completed court-ordered ADR.

Affirmed.