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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1636**

Barbara Kosmider,  
Appellant,

vs.

Deutsche Bank National Trust Company,  
as Trustee on behalf of GSAA Home Equity Trust 2007-6,  
dated: July 23, 2009,  
Respondent.

**Filed May 29, 2012  
Affirmed  
Schellhas, Judge**

Hennepin County District Court  
File No. 27-CV-10-14043

Barbara Kosmider, Wayzata, Minnesota (pro se appellant)

Jared M. Goerlitz, Peterson Fram & Bergman, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and  
Randall, Judge.\*

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

## UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's dismissal of her complaint against respondent in connection with its foreclosure of her homestead mortgage. We affirm.

### FACTS

Appellant Barbara Kosmider owned real property in Orono. On February 23, 2007, Kosmider executed a promissory note in favor of Countrywide Bank N.A. for \$1,080,000 and, to secure the note, granted a mortgage against her homestead to Mortgage Electronic Registration Systems Inc. (MERS), as nominee for Countrywide Bank. Beginning October 1, 2008, Kosmider defaulted on the note. In November 2008, Countrywide Home Loans Servicing L.P. notified her of its intent to accelerate the note and in July 2009 that it was initiating foreclosure of her mortgage due to her default. On July 31, 2009, MERS assigned its mortgagee's interest to respondent Deutsche Bank National Trust Company and recorded the assignment on August 19, 2009.

Deutsche Bank sent a notice of foreclosure and related notices to Metro Legal Services LLC for service upon the property's occupants. On September 23, 2009, a Metro Legal Services agent approached the property and, through the windows, observed lights on inside the house, a purse on the counter, and a woman walking around upstairs. After the agent rang the doorbell several times and yelled into an open window, the lights went out and the woman yelled that she was calling the police. The agent informed the woman that he was attempting to serve a notice regarding the foreclosure. The woman told him to leave the document in the door, which he did. The agent executed an affidavit of service

upon the occupants of the property describing these events and swearing that he served the foreclosure documents on Jane Doe, a person believed to be Barbara Kosmider, who refused to provide her name. On December 8, 2009, Deutsche Bank purchased the property at a foreclosure sale.

In June 2010, Kosmider sued Deutsche Bank, alleging that the foreclosure was invalid due to lack of service on the occupant. In April 2011, two weeks before trial, Kosmider sent the district court a letter in which she requested that the court consider whether Deutsche Bank owned the subject mortgage. The court construed the letter as a request to amend the complaint and denied it because of its untimeliness. Based on the evidence adduced at trial, the court dismissed Kosmider's complaint, concluding that valid service of the foreclosure notice on the property's occupant occurred on September 23, 2009.

Kosmider appeals.

## **DECISION**

Kosmider does not challenge the district court's conclusion that the September 23 service of foreclosure documents was valid. Rather, Kosmider asserts that the court erroneously failed to address whether Deutsche Bank "actually had [a] right to be involved in the [foreclosure]," asserting that MERS's transfer of the mortgage to Deutsche Bank was invalid. Kosmider's assertion is unpersuasive.

The district court "is required to base relief on issues either raised by the pleadings or litigated by consent." *Folk v. Home Mut. Ins. Co.*, 336 N.W.2d 265, 267 (Minn. 1983). The only claim that Kosmider pleaded in her complaint was that the foreclosure was

invalid due to lack of service. Because we conclude that the district court did not err by denying Kosmider's request to amend her complaint, Kosmider's assertion on appeal is beyond the scope of our review. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) ("The scope of review of an appellate court is narrowly defined. The function of the court of appeals is limited to identifying errors and then correcting them.").

Moreover, Kosmider's assertions on appeal are unsupported by any applicable legal authority. Kosmider asserts that MERS's assignment of its mortgagee's interest to Deutsche Bank is invalid because it is "unverifiable" and was based on "questionable execution." In part, Kosmider bases these assertions on statements allegedly made by MERS on its website. Kosmider's assertions are unpersuasive. First, they are contrary to the district court's factual finding that MERS "assigned the Mortgage to Defendant Deutsche Bank" and the sheriff's certificate of sale that states that the mortgage was "Assigned to: Deutsche Bank National Trust Company" on July 31, 2009. *See U.S. Bank N.A. v. Cold Spring Granite Co.*, 802 N.W.2d 363, 370 (Minn. 2011) ("Under Minn. R. Civ. P. 52.01 we may not set aside findings of fact . . . unless clearly erroneous. . . . If there is reasonable evidence to support the district court's findings of fact, a reviewing court should not disturb those findings." (quotations and citation omitted)). Second, we will not consider the statements allegedly made by MERS on its website because those statements are not in the record on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582–83 (Minn. 1988) ("An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.").

We conclude that the district court did not err in its findings of fact, conclusions of law, or order and therefore we affirm.

**Affirmed.**