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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0869**

The Bank of New York Mellon,
Respondent,

vs.

Charles J. Cordes,
Appellant,

John Doe, et al.,
Defendants.

**Filed February 4, 2013
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 27-CV-HC-12-2408

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

William B. Butler, Bethany Catherine Suhreptz, Butler Liberty Law, LLC, Minneapolis,
Minnesota; and

Jeramie Richard Steinert, Minneapolis, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this eviction action following a residential mortgage foreclosure by advertisement, appellant-mortgagor argues that (1) because there was a pending quiet-title action in federal court that involved the same property, the district court erred by granting summary judgment in favor of respondent-mortgagee; and (2) the district court erred by making an incorrect finding of fact in the original judgment and by later amending the original judgment after the case was on appeal to this court. We affirm.

FACTS

This appeal involves a challenge to an eviction action brought after a mortgage foreclosure and sale of residential property located at 23622 Smithtown Road, Shorewood. Appellant-mortgagor Charles J. Cordes owned the property subject to a mortgage held by respondent-mortgagee The Bank of New York Mellon (the bank). In 2011, the mortgage was foreclosed by advertisement, and the property was sold to the bank at the sheriff's sale. Cordes did not redeem the property within the statutory period but remained in possession of the property, and the bank initiated an eviction action in Hennepin County District Court.

On May 4, 2012, Cordes moved to either dismiss or stay the eviction action. He asserted that he had initiated a quiet-title action in state court and that action was removed to federal district court on March 6, 2012, where it remained pending when the eviction action commenced. Among other arguments, Cordes asserted that the district court should dismiss or stay the eviction action because the federal district court had prior

exclusive jurisdiction over the matter. Following a hearing, the district court denied Cordes's motions and granted summary judgment in favor of the bank.

The original eviction judgment entered on May 9, 2012, was a fill-in-the-box form. The district court checked the "Nonpayment of rent" box as the factual basis for the eviction, rather than the factually applicable box labeled "Defendant mortgagor(s) failed to timely redeem after mortgage foreclosure sale."

A week later, the bank moved for amended findings to correct the clerical mistake. Before the district court addressed the issue, Cordes initiated an appeal to this court. On June 7, 2012, the district court amended the judgment to include the applicable factual basis for the eviction action.

On August 15, 2012, the bank moved this court to stay the appeal and remand the case to the district court to permit the district court to correct the error in the original judgment. This court issued an order on September 21, 2012, that granted the bank's "motion to allow the district court to correct the clerical error" and permitted "the June 7, 2012, amended judgment [to be] considered in this appeal." This court also denied the bank's motion to stay the appeal or remand the case to the district court, reasoning that a remand was unnecessary because the district court had authority to correct a clerical mistake and had "already addressed this mistake in its ruling on [the bank's] motion for amended findings."

DECISION

Because the district court considered evidence outside the pleadings in reaching its decision, we analyze this appeal as one from a summary judgment. *Meriwether Minn.*

Land & Timber, LLC v. State, 818 N.W.2d 557, 572 (Minn. App. 2012); *see Amresco Resid'l Mortg. Corp. v. Strange*, 631 N.W.2d 444, 445 n.1 (Minn. App. 2001) (stating that district court may sua sponte grant summary judgment “if under the same circumstances it would grant a party’s motion for summary judgment”). Summary judgment is properly granted when “there is no genuine issue as to any material fact and . . . either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. On appeal from summary judgment, an appellate court considers

whether there are any genuine issues of material fact, and whether the lower court erred in its application of the law. [The appellate court] review[s] the district court’s legal decisions on summary judgment under a de novo standard, and view[s] the evidence in the light most favorable to the party against whom judgment was granted.

RAM Mut. Ins. Co. v. Rohde, 820 N.W.2d 1, 6 (Minn. 2012) (quotations omitted).

I.

In Minnesota, an eviction action is a “summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property by the process of law.” Minn. Stat. § 504B.001, subd. 4 (2010). “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 (2010). The mortgage here was foreclosed by advertisement, which is a “non-judicial form of foreclosure designed to avoid the delay and expense of judicial proceedings.” *Jackson v. Mortg. Elec. Registration Sys., Inc.*, 770 N.W.2d 487,

494 (Minn. 2009) (quotation omitted); *see* Minn. Stat. § 580.02 (2010) (listing requirements for foreclosure by advertisement).

Cordes argues that, under the doctrine of prior exclusive jurisdiction, the district court should have dismissed or stayed the eviction action because the federal district court had jurisdiction over the separate quiet-title action before the eviction action was initiated in state court. The prior exclusive jurisdiction doctrine “avoid[s] unseemly and unmanageable conflicts between courts of concurrent jurisdiction,” *In re Trust Created by Hill*, 728 F. Supp. 564, 566-67 (D. Minn. 1990), and “is triggered where parallel proceedings involving the same property are pending in state and federal court, or when one court has continuing jurisdiction over property.” *Karnatcheva v. JP Morgan Chase Bank, N.A.*, 871 F. Supp. 834, 838 (D. Minn. 2012).

In Minnesota, an eviction action following foreclosure by advertisement determines only a party’s right to possess the property. The Minnesota Supreme Court has stated that an eviction action “merely determines the right to present possession and does not adjudicate the ultimate legal or equitable rights of ownership possessed by the parties. It is not a bar to an action involving the title.” *Dahlberg v. Young*, 231 Minn. 60, 68, 42 N.W.2d 570, 576 (1950). More recently, in *Amresco*, this court prohibited a party from enlarging the scope of an eviction action to permit assertion of counterclaims that included title challenges to the property in question. 631 N.W.2d at 446. In *Amresco*, this court noted “the limited nature and scope of an eviction proceeding” and upheld the dismissal of the title-based counterclaims, stating, “Appellants can raise their counterclaims and equitable defenses directly in [a] separate, district court proceeding[.]”

Id. at 445. Because an eviction action determines only a party's right to possess property and a quiet-title action determines legal title to the property, the actions at issue here are not in conflict with each other and do not implicate the prior exclusive jurisdiction doctrine. As in *Amresco*, Cordes's defenses to the eviction action are based on a challenge to the title of the underlying property in the quiet-title action. Therefore, the district court did not err by granting summary judgment for the bank in the eviction action.

II.

Cordes also raises several challenges to the district court's May 9 judgment and June 7 amended judgment in the eviction action. He argues that (1) the district court's order for judgment is "void" because it fails to satisfy Minn. Stat. § 504B.355 (2010) (listing required form of verdict in eviction actions); (2) the district court lacked authority to amend its findings in the eviction judgment; and (3) the district court erred by declining to stay the eviction action pending resolution of the quiet-title action in federal district court.

Cordes's challenges to the original judgment were addressed in the amended judgment that corrected the clerical error. This court's order of September 21 granted the bank's motion to permit the district court to correct the clerical error in the original judgment, permitted the amended judgment to be considered in this appeal, and denied as unnecessary the bank's motion to stay this appeal and remand to the district court.

We decline to reconsider those issues, as they were already addressed and decided in this court's September 21 order; further consideration would delay resolution of this

eviction action, which is designed to be a summary proceeding. Also, this court will not consider during an appeal on the merits an issue previously decided by this court in the same matter, because doing so would be tantamount to granting a petition for rehearing; *see* Minn. R. Civ. App. P. 140.01 (“No petition for rehearing shall be allowed in the Court of Appeals.”); *see In re Estate of Sangren*, 504 N.W.2d 786, 788 n.1 (Minn. App. 1993) (refusing to reconsider issue previously decided by court of appeals special term panel), *review denied* (Minn. Oct. 28, 1993).

Affirmed.