

This opinion will be unpublished and may not be cited except as provided by Minn.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
A12-0881**

U. S. Bank, N. A.,
Respondent,

vs.

Ogonnaya Vincent Ofor,
Appellant,

Lisa Ofor,
Defendant.

**Filed March 25, 2013
Affirmed
Hudson, Judge**

Ramsey County District Court
File No. 62-HG-CV-10-2352

Kalli L. Ostlie, Shapiro & Zielke, LLP, Burnsville, Minnesota (for respondent)

Ogonnaya Vincent Ofor, New Brighton, Minnesota (pro se appellant)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant challenges the district court's denial of his motion to extend a stay of an eviction action. Specifically, appellant argues that the district court abused its discretion by declining to extend the stay based on pending federal lawsuits that raise defenses

necessary to the resolution of the eviction action. Because the district court did not abuse its discretion by refusing to stay the proceeding, and litigation involving possible defenses to the eviction is no longer pending, we affirm.

FACTS

In August 2010, respondent U.S. Bank, N.A., as trustee, filed an action to evict appellant Vincent Ogonnaya Ofor from residential property in New Brighton after he defaulted on a mortgage, the mortgage was foreclosed, and the property was sold at a sheriff's sale. Ofor, represented by counsel, moved to stay the eviction action, arguing that he had a pending federal lawsuit challenging the mortgage and foreclosure proceedings, which alleged federal Truth-in-Lending-Act violations and violations of Minnesota law in recording the mortgage. The Minnesota federal district court had dismissed Ofor's claims, but Ofor appealed that decision to the Eighth Circuit Court of Appeals. *See Ofor v. Ocwen Loan Servicing, LLC*, Civil No. 09-1402 (PAM/JJG), 2010 WL 2133013 (D. Minn. May 27, 2010).

The Ramsey County Housing Court referee originally denied Ofor's motion, stating that his claims were unlikely to succeed on the merits and that it was undisputed that he had defaulted on the mortgage and that U.S. Bank owned the property. But on reconsideration, the referee granted the stay, concluding that the pending lawsuit involved issues of ownership and the right to possession, which would be presented as defenses in the eviction action, and that the Truth-In-Lending-Act claims would require interpretation of a federal statute, which was outside housing-court jurisdiction.

The Eighth Circuit Court of Appeals rejected Ofor's claims. *Ofor v. Ocwen Loan Servicing, LLC*, 649 F.3d 808 (8th Cir. 2011). But Ofor appeared pro se in housing court, requesting a continued stay on the basis that he was seeking certiorari review before the United States Supreme Court. The referee denied his request, noting that the Supreme Court took very few cases and that filing for certiorari review did not stay a writ of recovery. The same day, with district court approval, the parties reached a settlement, agreeing that U.S. Bank was entitled to recover the property and that Ofor would vacate within a week, with a writ of recovery to issue if that condition was not met. But Ofor simultaneously sought review of the referee's decision, arguing for a continued stay and demanding a jury trial. He also filed a new lawsuit, which was removed to federal court, in which he asserted Truth-in-Lending-Act and quiet-title claims, wrongful eviction, and refusal to engage in a short sale.

Although judgment had not yet been entered in the eviction action, the district court ordered the stay of a writ of recovery until the Supreme Court resolved the first federal lawsuit, with the condition that Ofor pay rent to U.S. Bank in a reasonable amount. But Ofor again requested a continued stay of the eviction action; a jury trial; and a stay of the order to pay rent until ownership of the property was conclusively established.

In February 2012, after an additional hearing, the parties reached a revised settlement, providing that the stay would remain in effect, and setting reasonable rent at \$900 per month, to start March 1, 2012. Ofor moved to extend the time before rent was due and to reduce the amount of rent. At U.S. Bank's request, the district court then

issued a writ of recovery. Ofor moved to cancel or extend execution of the writ; the district court denied his motion.

On March 14, 2012, Ofor appealed the order approving the February settlement to this court, which dismissed it as premature. Five days later, the United States Supreme Court denied his petition for certiorari in the first federal action. *Ofor v. U.S. Bank, N.A.*, 132 S. Ct. 1747 (March 19, 2012), *rehearing denied*, 132 S. Ct. 2426 (May 14, 2012). The district court denied Ofor's motion to restore him to the property. After the district court entered judgment in the eviction action, Ofor filed this timely appeal of that judgment.

D E C I S I O N

Ofor argues that the district court abused its discretion by denying his motion to extend the stay of the eviction action. “Generally, whether to stay a proceeding is discretionary with the district court, [and] its decision on the issue will not be altered on appeal absent an abuse of that discretion.” *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 358 (Minn. App. 2006).

An eviction action is a summary proceeding, which determines only the existing possessory rights to real property. Minn. Stat. § 504B.001, subd. 4 (2012); *see Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 555 (Minn. App. 1985) (stating that in an eviction proceeding, “the only issue for determination is whether the facts alleged in the complaint are true”), *review denied* (Minn. Feb. 19, 1986). The summary nature of an eviction proceeding makes it an inappropriate forum for litigating

equitable defenses if there is an alternative proceeding in which they may be raised. *Amresco Residential Mtg. Corp. v. Stange*, 631 N.W.2d 444, 445–46 (Minn. App. 2001).

A district court abuses its discretion by declining to stay an eviction proceeding “when . . . counterclaims and defenses are necessary to a fair determination of the eviction action” and “an alternate civil action that involves these counterclaims and defenses is pending.” *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312, 318–19 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008). But “[i]n the absence of some showing that the lack of a stay will compromise a party’s interest in the subject property, a district court does not abuse its discretion by denying a motion to stay an eviction proceeding.” *Fed. Home Loan Mortg. Corp. v. Nedashkovskiy*, 801 N.W.2d 190, 193 (Minn. App. 2011).

The district court initially stayed the eviction proceeding, concluding that Ofor’s pending federal lawsuit might determine issues of his ownership and right to possess the home, which could be presented as defenses to the eviction. The district court renewed the stay while Ofor appealed his first federal lawsuit to the United States Supreme Court on the condition that he pay reasonable rent to U.S. Bank. The record contains no evidence that he met that condition. “A party is not entitled to a stay of an eviction proceeding merely because he has a pending related action.” *Id.* We conclude that the district court did not abuse its discretion by declining to further extend the stay.

Additionally, we may take judicial notice that the Supreme Court has now denied review in Ofor’s initial federal lawsuit; therefore, his claims in that proceeding are no longer pending. *Cf. O’Meara v. State*, 679 N.W.2d 334, 336 (Minn. 2004) (noting that a

case is pending until “the availability of direct appeal has been exhausted, the time for a petition for certiorari has elapsed or a petition for certiorari with the United States Supreme Court has been filed and finally denied”); *Matter of Trusts by Hormel*, 543 N.W.2d 668, 671 (Minn. App. 1996) (stating that district court may take judicial notice of its prior decisions and appellate courts’ review of those decisions in later action involving same parties and property).¹

Ofor argues that the existence of his second pending federal lawsuit also supports a continued stay. But we take judicial notice that, since this appeal was filed, the Minnesota federal district court has also rejected his claims in that action. *Ofor v. U.S. Bank*, No. 11-CV-3724 (MJD/TNL), 2012 WL 3113702 (D. Minn. July 31, 2012). In its decision, the federal district court concluded that, to the extent Ofor had asserted a wrongful eviction, his claim was barred by the doctrine of res judicata, and he was precluded from bringing additional claims arising from the same nucleus of operative facts relating to the property and his eviction. *Id.* at *1; *see Lundquist v. Rice Mem’l Hosp.*, 238 F.3d 975, 977 (8th Cir. 2001) (noting that, under the doctrine of res judicata, a party is barred from bringing repetitive lawsuits involving claims that were litigated in a previous action or could have been raised in that action). And although Ofor has now appealed the judgment in the second federal action, “[t]he rule that the finality of a

¹We note that, generally, an appeal may be dismissed as moot if, pending appeal, an event occurs making a decision on the merits unnecessary or an award of effective relief impossible. *In re Application of Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997). Although this appeal is arguably moot, we consider it in the interests of justice. *See* Minn. R. Civ. App. P. 103.04 (stating that an appellate court may “review any other matter as the interest of justice may require”).

judgment, for res judicata purposes, is not defeated by a pending appeal, is well established in the federal courts.” *Brown Wilbert v. Copeland Buhl & Co.*, 732 N.W.2d 209, 221 n.7 (Minn. 2007) (citations omitted). Therefore, the most recent federal decision does not provide Ofor with a legal basis to contest the eviction action, but rather precludes him from asserting additional defenses to that action.

Ofor argues that, even if his claims in the federal actions were to fail, the district court abused its discretion by declining to consider his equitable arguments that he maintained the home during his occupancy, including installing a water system and basement waterproofing; that the eviction has rendered him homeless and will affect his credit rating; and that after the eviction, U.S. Bank disposed of his personal belongings. But “[e]ven where a moving party provides the district court with a reason for a stay, a stay is not required.” *Nedashkovskiy*, 801 N.W.2d at 192. The district court stayed the eviction action for over 18 months and allowed appellant to retain possession of the property during that period. Under these circumstances, the district court did not abuse its discretion by failing to extend its stay of the eviction proceeding.

Affirmed.