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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-182

Hawkins Tree and Landscaping, Inc.,
Plaintiff,

vs.

Paul Thomas Homes, Inc., et al.,
Defendants,
Andrew Rute, et al.,
Appellants,
American Home Mortgage, a New York corporation, et al.,
Respondents.

Filed September 7, 2010
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CV0720045; 71CV091287

John R. Neve, Neve Law, P.L.L.C., Minneapolis, Minnesota (for appellants)

Rebecca F. Schiller, Reiter & Schiller, P.A., St. Paul, Minnesota; and

Katherine M. Melander, Coleman, Hull & Van Vliet, P.L.L.P., Minneapolis, Minnesota (for respondents)

Considered and decided by Stauber, Presiding Judge; Lansing, Judge; and Peterson, Judge.

U N P U B L I S H E D   O P I N I O N

STAUBER, Judge

On appeal from the district court's refusal to reopen a mortgage foreclosure judgment, appellant-mortgagors argue that the district court abused its discretion (1) by refusing to reopen the judgment based on respondents' Truth In Lending Act violations and respondents' lack of standing; (2) by granting respondents' motion for substitution of the parties; and (3) by refusing to enjoin the foreclosure of appellants' property. We affirm.

FACTS

In February 2007, appellants Andrew and Gayla Rute sought to refinance their home mortgage through respondent American Home Mortgage (AHM). On February 20, 2007, Gayla Rute executed and delivered to AHM an adjustable rate note in the original principal amount of $1,365,000. To secure payment of the indebtedness evidenced by the Note, the Rutes simultaneously executed and delivered to respondent Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for AHM, a mortgage securing the Rutes' home. The mortgage was registered in the office of the Hennepin County Registrar of Titles on March 9, 2007. Shortly thereafter, AHM assigned its interest in the adjustable rate note to Wells Fargo Bank, N.A.

In September 2007, Hawkins Tree and Landscaping, Inc. (Hawkins) commenced a mechanics-lien-foreclosure action against the Rutes, alleging that the Rutes failed to pay for landscaping services. AHM and MERS (collectively "respondents") were named as defendants in the action, along with the Rutes. Respondents subsequently filed a cross-claim against the Rutes seeking a judgment of the amount due and owing under the Note. Respondents also sought foreclosure of the Rutes' real property pursuant to the mortgage and a deficiency judgment in the event that the proceeds of the foreclosure sale were insufficient to satisfy the judgment.

The district court entered a default judgment against Gayla Rute and in favor of respondents in the amount of $1,497,737.58, the principal and interest then owing on the Note. The court also ordered a sheriff's sale of the Rutes' property to satisfy the judgment, and further ordered a deficiency judgment against Gayla Rute in the event that the proceeds of the sale were not sufficient to satisfy the judgment. The sheriff's sale was scheduled for March 27, 2009.

On March 10, 2009, the Rutes sent correspondence to AHM, MERS, and Wells Fargo asserting their rights of rescission under the Truth In Lending Act (TILA). Two weeks later, the Rutes moved to reopen the foreclosure judgment and for a temporary restraining order enjoining the sheriff's sale. Following a hearing, the district court granted the motion for the temporary restraining order, postponing the March 27, 2009 foreclosure sale and scheduling an evidentiary hearing.

MERS assigned its interest in the mortgage to Wells Fargo on July 15, 2009. Shortly thereafter, the evidentiary hearing was held on the Rutes' motion to reopen the judgment and for a temporary injunction. At the hearing, Andrew Rute testified that shortly before the closing date of the refinance of their property, he and his wife discovered that the terms of the loan were different than originally communicated. Because they could not afford the proposed loan payments, Andrew Rute contacted Tonii

Greene, the Rutes' "mortgage guy" and an employee of AHM. According to the Rutes, they were told by Greene that if they paid a $100,000 mortgage broker fee to J.T. Horizons, he would fix the loan after closing by promptly refinancing the Rutes into better, more favorable loan terms with lower, more affordable payments. In apparent reliance on Greene's statements, the Rutes closed on their refinancing with AHM and later wired $100,000 to J.T. Horizons. However, the $100,000 broker fee was never reduced to writing, and the Rutes never received the more favorable terms which Greene had promised. The Rutes also testified that, at the closing, they received only three Notices of Right to Rescind (NORs), which they claim was a violation of the TILA's requirement that they receive four NORs. Finally, the Rutes claimed that the TILA was violated because the interest rate on the Note was higher than the APR interest rate in the Truth in Lending Disclosure.

While the Rutes' motion to reopen the judgment and for a temporary injunction was under advisement, AHM, MERS, and Wells Fargo moved to have Wells Fargo substituted for AHM and MERS. The district court subsequently issued an order concluding that the Rutes did not have a reasonable defense on the merits based on the TILA or on standing. Thus, the court (1) denied the Rutes' motion to vacate the judgment and (2) denied the Rutes' motion for injunctive relief. The court also granted respondents' motion for substitution of the parties. This appeal followed.[1]

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[1] After the notice of appeal was filed, the Rutes filed a motion before this court to stay the foreclosure sale that had been scheduled for March 2010. The record pertaining to the Rutes' motion to stay indicates that a foreclosure sale has now occurred, and the Rutes'

DECISION

I.

A party may move the district court for relief from a final judgment on the ground of "mistake, inadvertence, surprise, or excusable neglect." Minn. R. Civ. P. 60.02(a). Whether to grant such a motion is discretionary with the district court, and its decision will not be reversed unless the district court clearly abused its discretion. *Riemer v. Zahn*, 420 N.W.2d 659, 661 (Minn. App. 1988). But interpretation of a statute is a question of law that is reviewable de novo. *Reider v. Anoka-Hennepin Sch. Dist. No. 11*, 728 N.W.2d 246, 249 (Minn. 2007).

Generally, to justify vacating a default judgment, the moving party must show that (1) he has a reasonable defense on the merits; (2) he has a reasonable excuse for his failing to answer; (3) he acted with due diligence after receiving notice of the judgment; and (4) no substantial prejudice will result to the plaintiff if the judgment is reopened. *Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 30, 53 N.W.2d 454, 455–56 (1952).

The Rutes argue that (1) there were certain TILA violations that allow them to rescind their mortgage and (2) respondents lacked standing to bring an action under the Note and mortgage. The Rutes argue that either ground provides them with a basis to reopen the foreclosure judgment.

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attorney at oral argument conceded that Wells Fargo purchased the property at the foreclosure sale.

A. Defenses under the TILA

The TILA's purpose is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing . . . practices." 15 U.S.C. § 1601(a) (2006); *Wise Furniture v. Dehning*, 343 N.W.2d 26, 28 (Minn. 1984). To effectuate its purposes, the TILA delegated broad regulatory and rulemaking powers to the Federal Reserve Board. 15 U.S.C. §§ 1602(a), 1604 (2006); *see Bone v. Hibernia Bank*, 493 F.2d 135, 138 (9th Cir. 1974). Acting under this authority, the Federal Reserve Board issued Regulation Z. 12 C.F.R. § 226.1. Courts have strictly enforced the requirements of the TILA and those of Regulation Z to promote the TILA's purpose of protecting consumers. *Fairley v. Turan-Foley Imports, Inc.*, 65 F.3d 475, 479–80 (5th Cr. 1995).

Under the TILA, consumers have a right to rescind a mortgage loan until midnight of the third business day following the consummation of the transaction. 15 U.S.C. § 1635(a) (2006). However, certain violations of the TILA may extend the obligor's right to cancel beyond the initial period. *See, e.g.*, 12 C.F.R. § 226.23(a)(3). Pursuant to Regulation Z, the obligor's right to rescind extends from three business days to three years if a creditor fails to deliver "the required notice or material disclosures" to the obligor. *Id.* But an obligor's right to rescind expires "upon the sale of the property." 15 U.S.C. § 1635(f) (2006).

The Rutes argue that there were three TILA violations: (1) a mortgage broker fee of $100,000 that was fraudulently obtained by a business affiliated with AHM's employees and was never disclosed in writing; (2) inaccurate disclosure of the annual percentage rate (APR) of the loan; and (3) an insufficient number of NORs provided at closing. The Rutes argue that any one of these three violations allows them to rescind their mortgage and provides them with a reasonable defense on the merits.[2]

1. Mortgage-broker fee

Under the TILA, a creditor must disclose the finance charge and the method for determining the finance charge. 15 U.S.C. § 1602(u) (2006). These disclosures must be made "clearly and conspicuously in writing, in a form that the consumer may keep." 12 C.F.R. § 226.17(a)(1). If "the required notice or material disclosures are not delivered," the consumer's right to rescind extends to three years. 12 C.F.R. § 226.23(a)(3).

The Rutes argue that the $100,000 mortgage-broker fee paid to JT Horizons was a "finance charge" which must be disclosed in writing under the TILA. The Rutes contend

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[2] Because the record shows that a foreclosure sale occurred, 15 U.S.C. § 1635(f) allows the inference that the Rutes' right to rescind has expired. At oral argument, the Rutes claimed that because they asserted their right to rescind *before* the foreclosure sale, they preserved their right to rescind, and the language of section 1635(f) is not applicable here. While the Rutes failed to offer any legal support for their argument, respondent did not disagree with the Rutes' position, and, because the foreclosure sale occurred after the parties submitted their principal briefs, the issue was not briefed by either party. The peculiar facts, record, and oral argument in this case suggest that the parties assume both that the foreclosure sale constitutes a "sale" for purpose of 15 U.S.C. § 1635(f), and that the notice that the Rutes provided of their TILA claims before that sale preserves their right to rescind that mortgage despite the fact that a foreclosure sale has now occurred. These questions were not presented to, or decided by, the district court and were not briefed or otherwise argued to this court. For purposes of deciding this appeal, we adopt the parties' assumptions without commenting on their propriety under the TILA or other authorities. *Cf. Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only questions presented to and considered by the district court).

that because this fee was not disclosed in writing, the district court erred in concluding that there was no TILA violation.

The TILA defines a “finance charge” as “the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit.” 15 U.S.C. § 1605(a) (2006). The United States Supreme Court has recognized that the phrase “‘incident to’ does not make clear whether a substantial (as opposed to a remote) connection is required.” *Household Credit Services, Inc. v. Pfennig*, 541 U.S. 232, 241, 124 S. Ct. 1741, 1748 (2004) (holding that the term “incident to” is ambiguous). Because of this ambiguity, the Court held that courts must defer to Regulation Z’s interpretation of what constitutes a “finance charge” under the TILA. *Id.* at 242. Regulation Z indicates that “[f]ees charged by a mortgage broker (including fees paid by the consumer directly to the broker. . .) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.” 12 C.F.R. § 226.4(a)(3).

The Rutes claim that they would not have closed on the AHM loan but for Greene’s assurances that Greene would promptly change the terms of the loan to make them more favorable and affordable. Thus, the Rutes argue that the $100,000 fee was a finance charge because it was clearly connected to the AHM loan transaction.

We disagree. The record reflects that the closing occurred on February 20, 2007, but the wire transfer to JT Horizons did not occur until March 7, 2007. Moreover, Mr. Rute testified that the $100,000 was paid to J.T. Horizons to refinance the mortgage which closed on February 20, 2007, for more favorable terms. Specifically, Mr. Rute testified that "for $100,000 [Greene would] change the terms for us and make them more favorable, which would include *doing a refinance*." (Emphasis added.) In other words, the $100,000 fee was for a future loan; one that refinanced the February 20, 2007 loan with AHM. Although the Rutes may not have closed on the AHM loan transaction but for the conversation with Greene, the record does not support the contention that the $100,000 fee was incident to the loan transaction with AHM. Therefore, the district court did not err in concluding that the failure to include the $100,000 fee in writing was not a violation of the TILA.

2. A.P.R. disclosures

The TILA requires creditors to disclose certain credit terms to consumers, including the APR, which is designated a material disclosure. 15 U.S.C. §§ 1638(a)(8), 1602(u) (2006); 12 C.F.R. § 226.18(e). The TILA defines the term "APR" as the "cost of your credit as a yearly rate." 12 C.F.R. § 226.18(e). If a creditor violates the TILA by failing to comply with disclosure requirements, the time in which a consumer is entitled to rescind the transaction is extended from three days to three years. 15 U.S.C. § 1635(f); 12 C.F.R. § 226.23(a)(3).

The Rutes argue that the different interest rates recited on the Note and on the APR disclosure constitute a TILA violation that allows them to rescind their mortgage. To support their claim, the Rutes point out that the interest rate on the Note is 8.125% and the APR in the Truth in Lending Disclosure is 7.937%. But respondents' expert witnesses testified that the APR and the Note rate often recite different rates. This testimony was supported by the Truth-In-Lending Disclosure statement provided to the Rutes which provides:

> This is not the Note rate for which the borrower applied. The Annual Percentage Rate (APR) is the cost of the loan in percentage terms taking into account various loan charges of which interest is only one such charge. Other charges which are used in calculation of the Annual Percentage Rate are Private Mortgage Insurance or FHA Mortgage Insurance Premium (when applicable) and Prepaid Finance Charges (loan discount, origination fees, prepaid interest and other credit costs). The APR is calculated by spreading these charges over the life of the loan which results in a rate higher than the interest rate shown on your Mortgage/Deed of Trust Note. If interest was the only Finance Charge, then the interest rate and the Annual Percentage Rate would be the same.

Therefore, the Rutes' Truth-In-Lending Disclosure statement specifically contemplates the fact that the interest rate recited on the Note may be lower than that on the APR.

The Rutes contend that the discrepancies between the interest rate on the Note and the APR constitute a TILA violation because the APR is calculated as the interest rate on the note *plus* the finance charges. Thus, the Rutes argue that it is "mathematically impossible for the APR to be lower than the interest rate on the note." The Rutes argue that "[b]y disclosing an APR that was lower than the interest rate alone, AHM made a false, inaccurate, and misleading disclosure that misrepresented the true yearly cost of the loan."

We disagree. The Rutes' mortgage was an adjustable rate mortgage. A review of the mortgage documents reflects that the Rutes' mortgage payments were calculated in a manner that would allow the APR to be lower than the Note rate. The Note commences with payments of $9,242.19 for 60 months, followed by payments of $8,673.44 for a second 60 months. These payments are also subject to interest changes every six months that are controlled by limitations including a rate floor and ceiling. Depending on interest rates, payments for the first 120 months would very likely be a negative amortization, with a more customary payment of principal and interest commencing after 120 months when payments were scheduled to increase sharply to $11,100.91 per month. Moreover, respondents' expert, Patrick Nolan, testified that the Note rate could be higher than the APR if the Rutes' loan is a "negative amortization loan." And, Shelley Dodge, respondents' other expert, testified that it seemed "to be common for adjustable rate mortgages" to have a lower interest rate. This testimony supports the district court's finding that there was no TILA violation based on the APR disclosures. *See* Minn. R. Civ. P. 52.01 (stating that "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses."). Appellants have provided no analysis of the APR and Note rates that would refute respondents' expert testimony. Accordingly, the district court did not err in concluding that there were no inaccurate disclosures pertaining to the APR of the loan.

3. Insufficient NOR's

In credit transactions involving the borrower's principal dwelling, the borrower has the right to rescind the transaction up to midnight of the third business day following the consummation of a loan transaction. 15 U.S.C. § 1635(a); 12 C.F.R. § 226.23(a)(3). The creditor must notify the borrower of this right by providing "two copies of the notice of the right to rescind to each consumer entitled to rescind[.]" 12 C.F.R. § 226.23(b)(1); 15 U.S.C. § 1635(a). If the lender fails to provide a NOR or the disclosures required by the TILA, the time limit for rescission is extended to "three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first." 15 U.S.C. § 1635(f); 12 C.F.R. § 226.23(a)(3).

The Rutes contend that respondents violated the TILA because they received only three copies of the NORs rather than the mandatory two copies each as required by 12 C.F.R. § 226.23(b)(1). But the Rutes acknowledge that they signed closing documents which included a document stating "[t]he undersigned each acknowledged receipt of two copies of the [NOR] and one copy of the Federal Truth in Lending Disclosure Statement." The TILA provides that a written acknowledgment of receipt of any disclosures required under the TILA creates a rebuttable presumption of delivery. *See* 15 U.S.C. § 1635(c). "The burden thus shifts to the borrower to prove non-receipt by testimony of the debtor that the disclosures were not given." *In re Meyer*, 379 B.R. 529, 545 (Bankr. E.D. Pa. 2007).

The Rutes argue that their testimony rebutted the presumption of delivery created by the written acknowledgement of receipt. But the district court found this testimony to be "insufficient to rebut the presumption." Although the court in *Meyer* found similar testimony to be sufficient to rebut the presumption, the court in that case apparently found the borrower's testimony to be credible. *See Meyer*, 379 B.R. at 545–46. In contrast, the district court here specifically found the testimony to be insufficient to rebut the presumption "based upon the testimony and credibility of [the] witnesses." The district court is in a superior position to judge the credibility of witnesses and this court defers to the district court's credibility determinations. *See Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997) (stating that the factfinder is in the best position to judge the credibility of witnesses). Therefore, because the district court did not find the Rutes' testimony on the NOR issue to be credible, the record supports the district court's decision that the Rutes were unable to rebut the presumption of delivery.

Because the district court did not err in concluding that the Rutes failed to establish certain TILA violations that would extend the rescission period to three years, the Rutes are unable to establish the first *Hinz* factor–a reasonable defense on the merits. Accordingly, the district court did not abuse its discretion in refusing to reopen the judgment based on the Rutes' allegations of the TILA violations.

B. Standing defense

The Rutes argue that both AHM and MERS lacked standing to bring the action on the Note and mortgage and, thus, the district court erred in refusing to reopen the judgment.

A standing analysis focuses on whether the plaintiff is the proper party to bring a particular lawsuit. *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). To establish standing, a plaintiff must have a sufficient personal stake in a justiciable controversy. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). A sufficient stake may exist if the party has suffered an "injury-in-fact" or if the legislature has conferred standing by statute. *Id.* To suffer an injury-in-fact, a party must allege "a concrete and particularized invasion of a legally protected interest." *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007). "[C]ourts appear hesitant to deny standing under circumstances which would prejudice the party whose standing would be found lacking." *Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 433 (Minn. App. 1995), *review denied* (Minn. May 31, 1995).

The Rutes argue that MERS lacked standing to bring the action on the Note and mortgage because MERS merely held the mortgage instrument as a nominee for the lender. Thus, the Rutes argue that MERS's lack of standing provides them with a reasonable defense on the merits.

The Minnesota Supreme Court has recognized that "a party can hold legal title to the security instrument without holding an interest in the promissory note." *Jackson v. Mortgage Elec. Registration Sys., Inc.*, 770 N.W.2d 487, 500 (Minn. 2009). In *Jackson*, the court held that "even though an assignment of the promissory note with no accompanying assignment of the security instrument constitutes a mere equitable assignment of the mortgage, it does not by operation of law need to be recorded to meet the requirements necessary to commence a foreclosure by advertisement." *Id.* at 501. The court's holding in *Jackson* demonstrates that if the party holding an equitable assignment in the mortgage can foreclose, a party holding the legal title to the security interest may also foreclose. *See id.*

Here, MERS is simply a mortgage holding company. It is undisputed that MERS held the legal title to the security interest (mortgage) at the time respondents filed their foreclosure cross-claim, and at the time the foreclosure judgment was entered. Because

MERS held a legal title to the security interest at the time of judgment was entered, MERS has standing in this action. *See id.*

The Rutes also contend that AHM lacked standing because, at the time of the cross-claim, AHM had assigned its interest in the Note to Wells Fargo. We acknowledge that AHM assigned its interest in the Note to Wells Fargo before Hawkins filed its mechanics lien complaint initiating the proceedings here. But the procedural posture of the case indicates that the district court properly concluded that there were no issues with standing. AHM was a named party when Hawkins filed the complaint initiating the action. Hawkins' complaint forced AHM to answer and begin foreclosure proceedings. Although AHM had previously assigned its interest in the Note to Wells Fargo, the district court ultimately granted respondents' motion to substitute Wells Fargo for AHM, which alleviated any standing concern. Moreover, the TILA provides that "[a]ny consumer who has the right to rescind a transaction under section 1635 of this title may rescind the transaction as against any assignee of the obligation." 15 U.S.C. § 1641(c) (2006). This provision mitigates any potential prejudice the Rutes would suffer if AHM lacked standing. Therefore, we are reluctant to conclude that AHM lacked standing in the matter. *See Cochrane*, 529 N.W.2d at 433 (stating that "courts appear hesitant to deny standing under circumstances which would prejudice the party whose standing would be found lacking").

Even if we were to conclude that AHM lacked standing in the matter, the Rutes are unable to demonstrate that the district court abused its discretion in refusing to reopen the judgment. The second *Hinz* factor requires the party seeking to reopen the default judgment to show that he has a reasonable excuse for failing to answer. *Hinz*, 237 Minn. at 30, 53 N.W.2d at 456. Although the Rutes contend that, at the time the judgment was entered, they were not aware that the AHM mortgage had been assigned to Wells Fargo, the Rutes' attorney admitted at oral argument that the Rutes were receiving their mortgage payment slips from Wells Fargo. The fact that Wells Fargo was sending the Rutes the mortgage payment slips provided the Rutes with notice that the Note had been assigned to Wells Fargo. Thus, the Rutes had no reasonable excuse for failing to answer because they were aware, or should have been aware, of any possible standing issues at the time the foreclosure judgment was entered.

Moreover, the Rutes are unable to satisfy the fourth *Hinz* factor. *See Hinz*, 237 Minn. at 30, 53 N.W.2d at 455–56 (stating that the party seeking to reopen a judgment must show that no substantial prejudice will result to the plaintiff if the judgment is reopened). The record reflects that the foreclosure judgment, in fact, was based on a stipulation between the parties, and that no mortgage payments have been made since the time of the Rutes' default. In the meantime, the Rutes were living in a house "rent free." And, the record reflects that the property has already been sold at the foreclosure sale. In light of the foreclosure sale, respondents would suffer significant prejudice if the judgment was reopened. Accordingly, we cannot conclude that the district court abused its discretion in refusing to reopen the judgment.

II.

The Minnesota Rules of Civil Procedure provide that "[i]n case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." Minn. R. Civ. P. 25.03. The decision to grant a motion for substitution of parties is discretionary with the district court. *See Brown v. Kohout*, 61 Minn. 113, 116, 63 N.W. 248, 249 (1895).

The Rutes argue that rule 25.03 contemplates transfers of interest that occur *after* the action was filed, not transfers that occur *before* the action is filed. The Rutes argue that because the transfer of interest here occurred long before the action was filed when AHM transferred the note to Wells Fargo, the district court abused its discretion by substituting Wells Fargo for AHM and MERS.

We disagree. Initially, to the extent that Rutes' argument assumes that a motion to reopen a judgment under rule 60.02 is an action distinct from the action producing the assumption: Among other things, Rutes' motion to reopen was made in the same district court file in which the judgment was entered. *See* Minn. R. Civ. P. 60.02 (allowing a judgment to be vacated "[o]n motion"). Further, it is undisputed that when Hawkins sued to foreclose its mechanic's lien and AHM and MERS conunterclaimed seeking judgment on the note and to foreclose the mortgage, MERS had legal title to the mortgage. It was not until July 2009, five months after the Rutes moved to reopen the judgment, that MERS transferred its legal interest in the mortgage to Wells Fargo. And not only does rule 25.03 apply to "any transfer of interest[,]" but, as a result of the transfer, when Rutes moved to reopen the judgment, Wells Fargo was the beneficiary of the judgment Rutes sought to reopen. Thus, we conclude that Rutes have not shown that MERS's assignment of its interest in the mortgage to Wells Fargo *after* the action was brought (and judgment was entered and the motion to reopen was filed) is a circumstance beyond the scope of rule 25.03.

The Rutes also cannot demonstrate that the substitution of Wells Fargo for AHM was an abuse of discretion. Because the Rutes claimed that AHM lacked standing, the district court may have been attempting to rectify any standing concerns when it granted the motion to substitute Wells Fargo for AHM. Moreover, as the district court found, the Rutes did not lose any rights under the TILA by the substitution because Wells Fargo was the proper assignee of the obligation, and section 1641(c) allowed the Rutes to rescind the transaction against "any assignee of the obligation." 15 U.S.C. § 1641(c). Consequently, the Rutes cannot show any prejudice by the substitution of the parties, and any error is harmless. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored). The district court did not abuse its discretion by substituting Wells Fargo for AHM and MERS.

III.

The Rutes argue that the district court abused its discretion in denying their motion for a temporary injunction staying the mortgage foreclosure sale. Whether to grant a temporary injunction generally is left to the discretion of the district court, and its decision will not be overturned on review absent a clear abuse of that discretion. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). When reviewing a district court's decision on a temporary injunction, this court considers five factors: (1) the relationship of the parties; (2) the relative harm to the parties if the injunction is or is not granted; (3) the likelihood of success on the merits; (4) public policies expressed in statutes; and (5) the administrative burdens in supervising and enforcing the decree. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274–75, 137 N.W.2d 314, 321–22 (1965). Likelihood of success on the merits is the most important *Dahlberg* factor. *See Minneapolis Fed'n of Teachers v. Minneapolis Pub. Schs, Special Sch. Dist. No. 1*, 512 N.W.2d 107, 110 (Minn. App. 1994) (stating that probability of success in the underlying action is a "primary factor" in determining whether to issue a temporary injunction), *review denied* (Minn. Mar. 31, 1994).

A. Relationship of the parties

The Rutes argue that this factor weighs in favor of the temporary injunction because the mortgage which was the subject of the judgment is now void because of the Rutes' TILA rescission. But, there were no TILA violations and, therefore, the Rutes are unable to rescind the mortgage under the TILA. This factor does not weigh in favor of a temporary injunction.

B. Relative harm to the parties

The party seeking an injunction must establish that legal remedies are inadequate and that an injunction must be issued to prevent great and irreparable injury. *Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 221 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002). The lack of a showing of irreparable injury may be a sufficient ground for determining that the district court abused its discretion in granting a temporary injunction. *Morse v. City of Waterville*, 458 N.W.2d 728, 730 (Minn. App. 1990) (finding insufficient showing of irreparable harm where injury suffered by plaintiff discharged from employment was primarily economic), *review denied* (Minn. Sept. 28, 1990).

The Rutes contend that because they face the loss of their home, the balance of harms favors them. We agree that the denial of injunctive relief means the Rutes face losing their home after the redemption period and it does not appear that any money damages would provide adequate relief. But, the Rutes were given the opportunity for a stay by posting a bond, and they failed to do so. Thus, the Rutes cannot show that the relative hardship factor weighs in favor of the temporary injunction.

C. Likelihood of success on the merits

This factor has been thoroughly discussed above. When the issues were first raised, the district court gave the Rutes the benefit of the doubt and granted a temporary injunction to give the Rutes the opportunity to prove their claims through a contested hearing. But after thoroughly addressing the issues raised by the Rutes, the district court determined that the Rutes were unable to succeed on the merits and denied the motion to reopen the judgment. Because the district court concluded that the Rutes' claims lacked merit, the district court denied the temporary injunction. As addressed above, the district court did not err in concluding that the Rutes cannot succeed on the merits. Therefore, this most important factor weighs against injunctive relief.

D. Public policy

The Rutes argue that this factor heavily favors the issuance of an injunction because the TILA expressly allows rescission under certain circumstances. *See* 15 U.S.C. § 1635(f). But the Rutes were unable to establish any TILA violations following the evidentiary hearing and, therefore, they had no basis to rescind under the TILA. If, as was the case earlier in the litigation when the district court granted the temporary injunction, the Rutes were raising the claim that they had a valid right to rescind, then public policy would favor the temporary injunction. But at this point in the litigation, the Rutes have failed to establish any TILA violations. Consequently, the Rutes are unable to succeed on the merits, and public policy considerations no longer weigh in favor of injunctive relief.

E. Administrative Burden

The record reflects that the foreclosure sale has occurred. Prior to the foreclosure sale, the Rutes moved to stay confirmation of the sheriff's sale. The district court then set a $100,000 supersedeas bond requirement for staying confirmation of the sale pending appeal. The district court set the amount of the bond after "[t]aking into account the loss of use of the property, costs incurred on appeal, interest that will accrue during the appeal, and any other damages." The Rutes, however, failed to post the $100,000 bond. In light of the costs that would have been associated with the granting of a temporary injunction, and the administrative burden associated with unwinding a sheriff's sale, this factor does not weigh in favor of injunctive relief because the administrative burdens would be significant. Therefore, after weighing the appropriate factors, we conclude that the district court did not abuse its discretion in denying the Rutes' motion for a temporary injunction.

Affirmed.