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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0157

Wells Fargo, N.A.,
Respondent,

vs.

Lana Schulz, et al.,
Appellants.

Filed October 28, 2013
Affirmed
Stauber, Judge

Olmsted County District Court
File No. 55CV124853

Curt N. Trisko, Rebecca F. Schiller, Schiller & Adam, P.A., St. Paul, Minnesota (for respondent)

William L. French, Rochester, Minnesota (for appellants)

Considered and decided by Hooten, Presiding Judge; Schellhas, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from summary judgment in this eviction action following foreclosure of appellants' home mortgage, appellants argue that respondent-bank's motion for summary judgment was not timely; that they were not allowed a meaningful opportunity to oppose the bank's motion for summary judgment; that the case should be stayed pending resolution of a related federal appeal; and, in the alternative, that appellants are entitled to a trial on all affirmative defenses, including collateral attacks on the validity of the underlying foreclosure. We affirm.

FACTS

In January 2008, appellants Lana and Richard Schulz executed a mortgage in favor of respondent Wells Fargo, N.A., encumbering their property in Rochester, Minnesota, where appellants live and operate a business. In 2010, appellants sought a loan modification under the Home Affordable Modification Program (HAMP), but were denied. Appellants stopped making their mortgage payments after their September 2010 payment.

In January 2011, respondent commenced foreclosure proceedings. A sheriff's sale was scheduled for February 2011, but was rescheduled numerous times. The sale was finally held on November 28, 2011. The redemption period expired on May 28, 2012, with no redemption by appellants. Respondent commenced this eviction action on July 24, 2012, alleging holdover following foreclosure.

Shortly thereafter, appellants filed a civil lawsuit in state district court alleging wrongful foreclosure, false advertising, consumer fraud, and promissory estoppel. Respondent removed the lawsuit to federal district court. While the federal case was pending, respondent moved for summary judgment on its eviction action, and appellants moved to stay resolution of the eviction until the federal court ruled on their foreclosure challenge. The district court held a hearing on both motions. Following the hearing, the district court granted appellants' motion to stay the proceedings pending the resolution of the federal district court case, and reserved decision on respondent's summary judgment motion.

On December 18, 2012, the federal district court dismissed appellants' lawsuit for failure to state a claim upon which relief could be granted. Specifically, the court concluded that, under Minnesota law, appellants' claims constituted an "impermissible collateral attack" on the foreclosure following the expiration of the redemption period. Appellants filed a notice of appeal to the Eighth Circuit Court of Appeals, and two days later, the state district court granted respondent's summary judgment motion, concluding that there were no issues of fact in dispute that were material to the outcome of the eviction action. Appellants subsequently filed this appeal, paying a bond into court to stay execution of the writ of recovery.

D E C I S I O N

I. Summary judgment standard

This court reviews a district court's summary judgment decision de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). Upon review, "we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Id.*

II. Timing of motion

Appellants argue that respondent's motion for summary judgment was not timely and therefore the judgment should be reversed. This court reviews the construction and application of procedural rules de novo. *St. Croix Dev., LLC v. Gossman*, 735 N.W.2d

320, 324 (Minn. 2007). Under Minn. R. Gen. Pract. 115.03(a), the moving party on a motion for summary judgment must serve its motion on the opposing party at least 28 days prior to the hearing. The parties agree that the hearing on respondent's motion for summary judgment was held fewer than 28 days after the motion was filed.

But eviction actions are summary court proceedings governed by statute. *See* Minn. Stat. 504B.001, subd. 4 (2012). The general rules of civil procedure apply in eviction cases, except when they conflict with the eviction statute. Minn. Stat. § 504B.335(c) (2012). The eviction statute requires the district court to decide the action at the initial appearance, which must be held between 7 and 14 days after serving the complaint. Minn. Stat. §§ 504B.321, subd. 1(d), .335(a) (2012). The district court may grant a continuance of no more than six days unless all parties agree, and then may not grant a continuance of more than three months. Minn. Stat. § 504B.341 (2012). The general rules of civil practice provide that courts may alter time limits, except that on a motion for summary judgment, the motion cannot be served fewer than ten days before the hearing. Minn. R. Gen. Pract. 115.01(b); Minn. R. Civ. P. 56.03.

Because respondent gave appellants more than ten days to respond to the summary judgment motion, we conclude that the motion was timely. *See Kabanuk Diversified Invs., Inc. v. Credit Gen. Ins. Co.*, 553 N.W.2d 65, 69 (Minn. App. 1996) (concluding that a summary judgment motion was properly granted even though it was served nine days prior to the hearing), *review denied* (Minn. Oct. 29, 1996). In addition, appellants have not shown that they have suffered any prejudice caused by the timing of the hearing. *See Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) ("[E]rror without prejudice is not ground for reversal."); *see also* Minn. R. Civ. P. 61 (requiring harmless error to be disregarded).

III. Lack of oral argument on summary judgment motion

Appellants argue that the district court committed reversible error by not permitting oral argument in opposition to summary judgment. At the motion hearing, counsel for respondent stated that the hearing would cover two motions: respondent's motion for summary judgment and appellants' motion for a stay. The rules of civil procedure provide that, "insofar as possible, [motions may] be heard on a single hearing date." Minn. R. Gen. Pract. 115.02. While discussing the possible outcomes of the two motions, the following exchange occurred:

> RESPONDENT'S COUNSEL: If the federal court dismisses their complaint and you deny the summary judgment today, then that puts us in an awkward procedural position and makes us come back here in March, April or May or whenever it would be.
> THE COURT: Right. And that's a consideration . . . . I should kind of grant—grant the [stay] to the extent that—put this whole thing on hold and keep it status quo until the federal court rules on it.
> RESPONDENT'S COUNSEL: Correct. And you could reserve summary judgment so that once the federal court case is done—
> THE COURT: Right.
> RESPONDENT'S COUNSEL: —then you can just rule based on the arguments we made today and we don't have to have another hearing.
> THE COURT: Right.

Appellants did not object to this proposal or ask to make additional arguments during the hearing. In its order granting appellants' request for a stay, the district court stated that "[a]nother hearing on the summary judgment motion will not be required, but may be requested if additional issues arise." Appellants never requested another hearing, and according to the district court, "[t]he parties . . . agreed that . . . once the [federal district court] ruling was filed, the stay of this eviction action would be lifted, and the [state district court] could rule on the summary judgment motion without further argument."

Appellants argue that "not allowing a party to present an oral argument is, in and of itself, a basis for reversal." But appellants cite no legal authority for this argument. Even if the district court erred, appellants must have suffered prejudice to warrant reversal. *See Loth*, 227 Minn. at 392, 35 N.W.2d at 546; *see also* Minn. R. Civ. P. 61. Appellants do not state how the lack of an opportunity for oral argument harmed their case. Prior to the summary judgment hearing, appellants had ample opportunity to present their legal arguments and did so in an eight-page brief to the district court in opposition to summary judgment. On these facts, we see no reason to reverse for lack of oral argument.

IV. Stay of the case pending appeal to the Eighth Circuit Court of Appeals

Appellants argue that this eviction case should remain stayed pending the appeal of the underlying foreclosure action to the Eighth Circuit Court of Appeals. "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." *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312, 317 (Minn. App. 2008) (quotation omitted), *review denied* (Minn. Sept. 23, 2008). "In deciding whether to defer to another court, a district court considers judicial economy, comity between courts, and the cost to and the convenience of the litigants." *Id.* (quotation omitted). A court must also "assess the possibility of multiple determinations of the same dispute," but "by itself, the possibility of multiple determinations is not enough to establish that the district court abused its discretion by not staying the proceedings." *Id.* at 318 (quotation omitted). "[W]hen the counterclaims and defenses are necessary to a fair determination of the eviction action, it is an abuse of discretion not to grant a stay of the eviction proceedings when an alternate civil action that involves those counterclaims and defenses is pending." *Id.* at 318-19.

Appellants' only argument for continuing the stay is that, under the terms of the district court's order granting a stay, the federal case is still "unresolved." Respondent counters that, under the plain language of the district court's order granting the stay, the stay was rightly lifted following the filing of a ruling by federal district court. We agree. The state district court order granting the stay states that "[p]laintiff's motion for summary judgment is RESERVED pending the resolution of the United States District Court of Minnesota [case]." And the district court, in its order granting summary judgment, stated that its earlier order reflected an agreement that, "once the [federal district court] ruling was filed, the stay of this eviction action would be lifted, and the [state district court] could rule on the summary judgment motion without further argument." Therefore, respondents are correct that the state district court complied with the terms of its own order when it lifted the stay and granted summary judgment following the federal district court's filing of its ruling dismissing the federal action.

Moreover, "[i]n the absence of some showing that the lack of a stay will compromise a party's interests 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). "[A] district court has considerable discretion to stay an eviction proceeding . . . but that precedent does not mandate a stay when other litigation is pending." *Id.* at 192 (quotation omitted). Appellants have not shown that resolution of the pending litigation in federal court is essential to the resolution of the eviction action. In an eviction action, the plaintiff is entitled to possession "after the expiration of the time for redemption on foreclosure of a mortgage." Minn. Stat. § 504B.285, subd. 1(ii) (2012). Appellants concede that the redemption period expired with no redemption on their part. Because appellants have not shown that the claims in the federal case are "necessary to a fair determination of the eviction action," *Bjorklund*, 753 N.W.2d at 318-19, the district court did not abuse its discretion by lifting the stay. *See Nedashkovskiy*, 801 N.W.2d at 193 (concluding that a stay is unnecessary where a mortgagor has other legal options, such as filing a notice of lis pendens, to protect his interest in foreclosed property).

V. Appellants' arguments challenging the validity of the underlying foreclosure

Appellants argue that the eviction action should be dismissed, or alternatively that the case should be remanded and tried to a jury, because the sheriff's sale was void for lack of proper notice and because respondent failed to comply with HAMP. Respondent asserts that these arguments are not properly before the court due to the narrow scope of issues that can be determined in an eviction action. We agree.

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 (2012). Due to the summary nature of the eviction process, counterclaims challenging the validity of an underlying foreclosure generally must be brought in a separate civil action. *See Fraser v. Fraser*, 642 N.W.2d 34, 40 (Minn. App. 2002) (discussing *Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444 (Minn. App. 2001), in which counterclaims challenging the validity of the underlying foreclosure were dismissed in an eviction action). Where there is an alternative process, there is "no need to interfere with the summary nature of eviction proceedings." *Id.* (quotation omitted). "[O]nly if the eviction action presents the only forum for litigating these claims would it be appropriate for the district court to entertain them in that action." *Id.* at 41.

Appellants argue that the district court in Olmstead County has expanded the permissible scope of eviction actions by requiring tenants to pay rent into court on breach-of-lease claims, which therefore requires the district court to consider their arguments regarding the validity of the underlying foreclosure. Appellants cite an Olmstead County district court order in which the district court required the defendant to pay rent into court to obtain a jury trial on allegations of a material breach of the lease. But district court opinions are not precedential. *Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 537 n.5 (Minn. 2013); *see also* Minn. Stat. § 480A.08, subd. 3(c) (2012). Moreover, appellants' claims regarding the validity of the foreclosure were already heard in federal district court and dismissed. Therefore, this eviction action was not the only available forum for appellants' claims.[1]

[1] We observe that the doctrine of collateral estoppel generally bars litigants from relitigating the same claims in state district court that were already litigated in federal district court. *See Falgren v. State, Bd. of Teaching*, 545 N.W.2d 901, 905 (Minn. 1996) ("Collateral estoppel precludes parties from relitigating issues which are identical to

Appellants argue that the federal court's determination of their claims under state substantive law should be disregarded because "matters of state substantive law, as here, are determined by state courts, not federal courts." Appellants misstate the law. As respondent correctly states, the law requires that a federal court exercising diversity jurisdiction must apply state substantive law, but does not require federal courts to defer to state courts on all state-law claims. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S. Ct. 817, 822 (1938). Here, the federal district court applied Minnesota law and concluded that respondent complied with the law's requirements for proper notice by advertisement, and that appellants' arguments challenging the validity of the foreclosure constituted an "impermissible collateral attack" following the expiration of the redemption period. Therefore, appellants are not entitled to relitigate their affirmative defenses to the underlying foreclosure in this state-court eviction proceeding.

Affirmed.

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issues previously litigated and which were necessary and essential to the former resulting judgment."). This doctrine is applicable even though the previously litigated case is pending appeal. *See Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 221 (Minn. 2007) (reaffirming the rule that "a judgment becomes final when it is entered in the district court and it remains final, despite a pending appeal, until it is reversed, vacated or otherwise modified").