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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1753**

Prime Security Bank,
Respondent,

vs.

Mavis Hartman, et al.,
Appellants.

**Filed August 13, 2012
Affirmed
Collins, Judge***

Carver County District Court
File No. 10-CV-10-462

Thomas M. Scott, Eagan, Minnesota (for respondent)

Jeramie Richard Steinert, Minneapolis, Minnesota (for appellants)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Collins, Judge.

UNPUBLISHED OPINION

COLLINS, Judge

In this eviction action, appellants challenge the district court's judgment issuing a writ of recovery to respondent. Appellants argue that they were prejudiced by the district court's refusal to stay the eviction action under Minn. Stat. § 325N.18, subd. 6 (2010),

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

until their claims in federal court were resolved, and that the district court's finding that respondent met its burden to establish ownership of the property was clearly erroneous. We affirm.

FACTS

Appellants Roger and Mavis Hartman are husband and wife; appellant Maul Lee Hartman is their adult daughter. Roger and Mavis owned a home in Victoria, Minnesota. Attached to this property was a parcel of unplatted land. In 1988, Roger applied for a building permit to construct a commercial building on the unplatted land; instead, he built a single-family home, which he described to the City of Victoria as an out-building with no separate address. In July 2006, the Hartmans filed an official plat with Carver County, and identified Mavis as the sole owner of the newly-platted parcel, which is the property at issue here. Shortly thereafter, Mavis signed a quit-claim deed transferring the property to Maul Lee. Roger did not sign the quit-claim deed and the title does not reflect a change of ownership to Maul Lee as fee owner; the Carver County Registrar of Titles noted that "husband did not sign" as a comment on the registered title, which continued to show Mavis as fee owner. Maul Lee did not live at the property but lived elsewhere in Victoria.

Despite the purported transfer to Maul Lee, the elder Hartmans began building an addition to the house on the property. By November 2006, the property was in foreclosure and the Hartmanns, unable to obtain a loan through traditional means to resolve the foreclosure, approached Brian Smith of Midwest Equity Consultants, Inc.

Midwest Equity specialized in arranging financing for people who were unable to secure bank financing or who were in foreclosure. A series of complex transactions followed.

The subject property was appraised at \$2.5 million. In February 2007, all three Hartmans executed a warranty deed in favor of Smith, for consideration of \$280,000. Smith and his wife Jennifer obtained a \$280,000 loan from Anchor Bank, and mortgaged the property for that amount. Thereafter, the Smiths and Mavis and Maul Lee entered into a contract for deed to re-convey the property to Mavis and Maul Lee.

The original contract for deed was to balloon after 20 months but instead the parties entered into a second, similar agreement in August 2007. This time the Smiths obtained \$495,000 in financing through respondent Prime Security Bank (Prime). As part of this transaction, all three Hartmans joined the Smiths in granting a mortgage to Prime. Part of the proceeds of the loan paid off Anchor Bank; Smith, and Mavis and Maul Lee assigned the contract for deed to Prime as security.

A third round of financing occurred in November 2007, with an increase in the contract amount to \$664,000, and a balloon date of May 2008. After the Hartmans failed to make payments on the contract for deed, the Smiths sent a notice of cancellation of the contract for deed. The Hartmans sent a notice of rescission of all transactions related to the property to the Smiths and Prime, but Prime refused to rescind because it stated it had no direct transactions with the Hartmans; all of Prime's direct dealings were with the Smiths. In November, after the Smiths stopped paying on the mortgage, Prime began foreclosure proceedings. A sheriff's sale was held on February 10, 2009, and Prime purchased the property for \$707,947.54.

In June 2009, the Hartmans filed in federal district court an equity-stripping action, asserting claims under the Truth in Lending Act (TILA), the Home Owner Equity Protection Act (HOEPA), the Foreclosure Consultant Act, the Foreclosure Purchaser Statute, the Consumer Fraud Act, the Uniform Deceptive Trade Practices Act. The action also asserted claims of violations of state mortgage laws, equity, and fraud against the Smiths and Prime.

The six-month redemption period in the mortgage foreclosure expired in August 2009; Prime filed an eviction action in state district court in March 2010. After an eviction hearing in April 2010, the Hartmans moved pursuant to Minn. Stat. § 325N.18, subd. 6(a), to stay eviction pending resolution of the federal litigation; the state district court granted this stay on condition that the Hartmans file a security bond. The Hartmans failed to obtain a bond, so the district court vacated the stay and issued a writ of recovery of premises to Prime. The Hartmans sought a writ of mandamus from this court; in September 2010, we issued a partial writ ordering vacation of the writ of recovery because the district court failed to enter judgment in the eviction proceeding before issuing the writ, and we directed the district court to apply its discretion regarding whether to stay further proceedings pending the resolution of the federal litigation.

Shortly thereafter, the federal district court issued its decision granting partial summary judgment relief to both the Hartmans and Prime: it granted the Hartmans' request for a judgment declaring the warranty deed to Smith to be an equitable mortgage and dismissing Smith's counterclaim against them, and it granted Prime's request for summary judgment on the Hartmans' TILA rescission and HOEPA damages claims. The

federal court denied summary judgment on the TILA damages claim; it also denied summary judgment on (1) the parties' cross claims for summary judgment on the common law fraud allegations; (2) the Hartmans' claims under Minn. Stat. § 325N.18 (2010); and (3) the Hartmans' claims that the mortgage origination fees and points were excessive. The basis for the federal district court's decision on the TILA rescission and HOEPA damages claims against Prime was that the Hartmans did not fit within the definition of "consumer" as set forth in these acts. The federal court noted that the acts, TILA and HOEPA, afforded protections to property owners for their principal place of residence. The court concluded that Mavis had transferred the property to Maul Lee; although the property was Mavis' principal residence, it was not Maul Lee's. Therefore, Mavis' claim failed because she was no longer the owner, Roger was not listed as owner and could not claim protection under the acts, and Maul Lee's claim failed because it was not her principal residence. The federal court rejected concerns that the transfer of the property was invalid because Roger's signature, as spouse, was not on the quit-claim deed. The Hartmans asked for reconsideration, and the federal district court agreed to reconsider its order.

Thereafter, the state district court vacated the writ of recovery and its earlier order, and issued an order setting an eviction hearing. But the parties agreed to stay the eviction proceedings until the federal court issued its reconsideration order. The federal district court issued an order in June 2011 reaffirming its original order; it held that the elder Hartmans were estopped from denying the transfer of title to Maul Lee.

An eviction hearing was held on July 26, 2011. The state district court entered judgment on September 23, 2011, granting a writ of recovery to Prime; this judgment was amended on September 29, 2011, to correct errors in the original order. The Hartmans filed a notice of appeal from this judgment on October 3, 2011. The writ of recovery was executed in February 2012.

On March 19, 2012, the federal district court entered an order, based on a jury verdict, dismissing all of the Hartmans' claims. Thereafter, this court denied Prime's motion to dismiss the Hartmans' pending appeal as moot, and we denied the Hartmans' motion to (a) quash the writ of recovery, (b) be restored to the subject property, and (c) have their personal property returned to them. We will now address the appeal.

D E C I S I O N

Challenge to Findings

Eviction proceedings are governed by Minn. Stat. §§ 504B.281-.371 (2010). Minn. Stat. § 504B.001, subd. 4, defines “[e]vict” or “eviction” as “a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property by the process of law set forth in this chapter.” Despite acknowledgement that eviction courts have jurisdiction to determine broader questions, eviction hearings are summary in nature; certain counterclaims, such as allegations involving title, should be handled in other forums. *See Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 357-59 (Minn. App. 2006) (*REES*) (suggesting that defendants in an eviction action should use other options to raise issues of title). Eviction proceedings are intended to address the immediate right to possession of real property; a decision in an eviction

proceeding does not bar subsequent actions involving title or equitable rights. *Id.* at 357-58. “Generally, the only issue for determination [in an eviction proceeding] is whether the facts alleged in the complaint are true.” *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003). This court reviews the district court’s findings of fact for clear error. *Id.*

The eviction complaint here is straightforward: Prime alleged that it owned the property because it foreclosed a mortgage executed in its favor by the Smiths and the Hartmans, the time for redemption on the foreclosure had expired, and the Hartmans were holding over as occupants of the property after the expiration of the redemption period. The record before the district court contained the mortgage executed by the Smiths and Hartmans in favor of Prime and the sheriff’s certificate of sale. The certificate of title confirms that a mortgage was granted in favor of Prime by the Hartmans and the Smiths, and that a sheriff’s sale occurred. There is no evidence that the Hartmans or Smith redeemed the property from foreclosure, and it is undisputed that Prime purchased the property at the sheriff’s sale. Even if there are lingering questions about fee ownership of the property, all persons claiming an ownership interest, the three Hartmans and the Smiths, signed the mortgage in favor of Prime, which was the basis for the foreclosure action.

“The person entitled to the premises may recover possession by eviction when . . . any person holds over real property . . . after expiration of the time for redemption on foreclosure of a mortgage[.]” Minn. Stat. § 504B.285, subd. 1 (2010). In the case of registered or torrens property, like the property here, a person may become the owner of

registered land by foreclosure and is thereafter entitled to have the title registered. Minn. Stat. § 508.58, subd. 1 (2010).

The eviction statute does not limit the right to recover property through eviction to the fee owner of a property; rather, the “person entitled to the premises” may evict an occupant. Minn. Stat. § 504B.285, subd. 1. Prime purchased the property at the sheriff’s sale, after all other claimants failed to redeem the property. To the exclusion of all other parties claiming an interest in the property, Prime is the party entitled to the premises. We thus conclude that the district court’s findings are not clearly erroneous.

Refusal to Stay Foreclosure Proceedings

The Hartmans argue that the district court erred by refusing to grant a stay of the foreclosure proceedings during the pendency of the federal district court action. By statute, a foreclosed homeowner is entitled to an automatic stay upon a “prima facie showing” that (1) he has commenced an action concerning a foreclosure reconveyance or asserted a claim of fraud in connection with a foreclosure reconveyance;¹ (2) he owns the foreclosed residence; (3) he transferred title to the foreclosed residence to a third party upon a promise that the homeowner would be able to occupy the residence; and (4) he has continuously occupied the foreclosed residence since the conveyance was made.

¹ A “foreclosure reconveyance” is a “transaction involving . . . the transfer of a title to real property by a foreclosed homeowner during a foreclosure proceeding” to a third party who promises to reconvey the interest back to the foreclosed homeowner’s possession. Minn. Stat. § 325N.10, subd. 3 (2010). The transaction between appellants and the Smiths is a foreclosure reconveyance and the Smiths are “foreclosure purchasers.” *Id.*, subd. 4 (2010). But Prime is not; federal or state chartered banks are excluded from the definition of “foreclosure purchasers.” *Id.* Prime is a state chartered bank.

Minn. Stat. § 325N.18, subd. 6(a). Alternatively, under caselaw, a district court, in its discretion, may stay eviction proceedings to permit resolution of claims related to the eviction action that are pending in another court. *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312, 318-19 (Minn. App. 2008), *review denied* (Minn. Sep. 23, 2008). This court stated, “[I]t 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.*

We observe that despite the district court’s initial failure to grant an automatic statutory stay, the foreclosure proceedings were effectively stayed for various reasons from April 2010 until September 2011, and that the writ of recovery was not executed until February 2012, shortly before the federal district court’s dismissal of all of the Hartmans’ claims that formed a basis for a stay of the eviction proceedings. *See* Minn. R. Civ. P. 61 (“[N]o error or defect in any ruling or order or in anything done or omitted by the court . . . is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice”). Thus, even if the district court abused its discretion by refusing to grant a statutory or discretionary stay, its refusal to act had no effect on the outcome and should not be grounds for reversal.

Finally, now that final judgment has been entered in the federal district court dismissing all of the Hartmans’ claims, the question of mootness arises. Appellate courts may decide only actual controversies and may not offer advisory opinions. *In re*

McCaskill, 603 N.W.2d 326, 327 (Minn. 1999). If no relief can be granted, a matter is considered to be moot. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005).

The Hartmans appealed the federal district court's judgment, but the supreme court has stated that "an appeal does not affect the preclusive nature of a judgment." *Brown-Wilbert v. Copeland Buhl & Co.*, 732 N.W.2d 209, 220 (Minn. 2007). Because there is no available effective relief to be granted, we conclude that the Hartmans' challenge of the district court's refusal to grant a stay is moot.

Affirmed.