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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0445**

Wells Fargo Bank,
National Association,
Respondent,

vs.

Thomas R. Terres,
Appellant,

United States of America,
Internal Revenue Service, et al.,
Defendants.

**Filed August 12, 2008
Affirmed
Klaphake, Judge**

Morrison County District Court
File No. C3-06-486

Courtney M. Powell, Mark D. Stephenson, 1905 E. Wayzata Blvd., Suite 220, Wayzata,
MN 55391 (for respondent)

Thomas R. Terres, OID #217446, 1101 Linden Lane, Faribault, MN 55021-6400 pro se
appellant)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and
Huspeni, Judge.*

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this real property mortgage foreclosure dispute, pro se appellant Thomas Terres challenges the district court's grant of summary judgment in favor of respondent Wells Fargo Bank. Appellant argues that the district court erred in reforming a sheriff's certificate rather than invalidating a foreclosure sale when the foreclosure documents misstated the redemption period. Under the unique facts of this case and because the party seeking reformation was the only party prejudiced, we affirm.

DECISION

This court reviews an appeal from a summary judgment to determine if there are any genuine issues of material fact, and if the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). This court reviews the district court's application of law de novo. *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998).

Appellant argues that the district court erred by failing to invalidate the foreclosure sale because the sale did not comply with all of the statutory requirements for foreclosure by advertisement under Minn. Stat. ch. 580 (2006). Minn. Stat. § 580.04 requires the notice of foreclosure sale to specify the time allowed by law for redemption by the mortgagor. Minn. Stat. § 580.12 requires that when a sale of property is made under a power of sale contained in a mortgage, a certificate of sale must contain the time allowed for redemption as specified by relevant law; in this case, Minn. Stat. § 580.23. Minn. Stat. § 580.23 applies to foreclosed properties exceeding 40 acres, and requires a

redemption period of twelve months, not six months, as was incorrectly stated in the notice of sale, the original sheriff's certificate, and the corrective sheriff's certificate.

Generally, foreclosure by advertisement requires adherence to "all statutory requirements calculated to protect the interests of the party whose rights are affected." *Hudson v. Upper Mich. Land Co.*, 165 Minn. 172, 176-77, 206 N.W. 44, 46 (1925). Although mere irregularities are not fatal to the sale unless provided by statute, the sale may be voided if those irregularities operate to "prejudice the rights of a party in interest." *Id.*

In this case, upon discovering the error, respondent commenced an action joining all parties in interest, requesting the court to reform the sheriff's certificates to reflect the correct redemption period. All parties were thereby given notice of the correct expiration for the redemption period. Given that the original 12-month redemption period had already expired by the time the district court issued its order, the court, at respondent's request, extended the expiration of the redemption period to 45 days after entry of its order to provide an opportunity for redemption by appellant and other parties with a redeemable interest. This order protected the interest of all affected parties and expanded the notice given to each of them, thus curing any prejudice caused by the mistake in the certificates.

Appellant was the only party in interest to object to the reformation sought by respondent, and he had full knowledge of the facts necessary to redeem. Under these facts, we cannot envision any prejudice to any party caused by reformation of the redemption date in the certificates, with the exception of respondent, who sought the

extension. Appellant has not alleged that he was prejudiced by this reformation: the present action extended his redemption period from July 2006 to February 2007, and appellant has not alleged that he either failed to receive notice of this extension or did not have knowledge of the revised expiration date. In fact, the junior lien holder, whose right of redemption followed appellant's redemption right, was able to redeem the property¹ upon receipt of notice of the "reinstatement" of the redemption period and its extension. Appellant had the same notice and opportunity to redeem. A nullification of the sale at this date would prejudice the junior lien holder who relied on the district court's order extending the redemption period.

Under the unique circumstances of this case, where the only party prejudiced by the extension of the redemption period was the mortgagee seeking reformation, we conclude that the district court did not err in reforming the sheriff's certificate rather than invalidating the sale. *See Cable v. Mpls. Stock-Yards & Packing Co.*, 47 Minn. 417, 421-22, 50 N.W. 528, 530 (1891) (upholding the validity of a foreclosure sale despite statutory deficiencies that included (1) the failure of the sheriff's certificate to accurately state the amount of debt secured by the foreclosed mortgage, (2) the failure of the certificate to accurately describe the mortgaged property, and (3) the failure of the certificate to state that the property was subject to redemption, and (4) the inclusion of an

¹ Although this fact was not before the district court at the time of the hearing on the motion for summary judgment and is not in the record subject to this court's review (Minn. R. Civ. App. 110.01), when evidence is documentary evidence of a conclusive nature that supports the result obtained in the district court, an appellate court may consider such evidence. *Plowman v. Copeland, Buhl & Co., Ltd.*, 261 N.W.2d 581, 583-84 (Minn. 1977); *In re Livingood*, 594 N.W.2d 889, 895-96 (Minn. App. 1999).

erroneous statement that the purchaser would be entitled to a conveyance on an apparently erroneous date).

Appellant's Additional Claims

Appellant makes several other claims that do not merit further discussion because appellant has made only bare assertions regarding these claims. To successfully oppose a motion for summary judgment, a party must present specific facts evidencing a genuine issue for trial and may not rest upon mere averments or denials. Minn. R. Civ. P. 56.05. If the non-moving party fails to provide specific facts showing a genuine issue of material fact, summary judgment is proper. *Hunt v. IBM Mid-America Employees Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986). A party waives a claim based on mere assertion without supporting argument or authority unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). In addition, appellant's failure to raise these issues before the district court, as well as his failure to raise procedural issues relating to his opportunity to participate at the summary judgment motion hearing, bars his efforts to raise them before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Affirmed.