

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2132**

Norman Fonss,
Respondent,

vs.

Rachel Andrea Fonss,
Respondent,

Rick Donato DeMartini,
defendant and third party plaintiff,
Appellant,

vs.

Ardell Fonss, third party defendant,
Respondent.

**Filed September 6, 2011
Affirmed
Peterson, Judge**

Redwood County District Court
File No. 64-CV-09-358

Frank F. Munshower, Jr., Estebo, Schnobrich, Frink & Gilk, Redwood Falls, Minnesota
(for respondent Norman Fonss and Ardell Fonss)

Rachel Andrea Fonss, Lamberton, Minnesota (pro se respondent)

Rick Donato DeMartini, Jr., Lamberton, Minnesota (pro se appellant)

Considered and decided by Schellhas, Presiding Judge; Peterson, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Pro se appellant challenges the district court's denial of his motion for default judgment and sua sponte grant of summary judgment dismissing appellant's claims against respondents for slander of title, fraud, and conversion in relation to assets divided in marital-dissolution proceedings. We affirm.

FACTS

Respondent Norman Fonss brought this action against his daughter, respondent Rachel Andrea Fonss, and appellant Rick Donato DeMartini, who was then married to Rachel Fonss. Norman Fonss sought payment of a note that had been assigned to him. Appellant filed an answer and asserted claims for (1) slander of title against Norman Fonss and respondent Ardell Fonss, alleging that they wrongfully filed a mortgage against the marital home of appellant and Rachel Fonss; (2) fraud against all three respondents, alleging that they committed fraud by encumbering the home with a mortgage; and (3) conversion against Norman and Rachel Fonss, alleging that appellant was entitled to 50% of the value of two vehicles titled in their names.

Appellant moved for default judgment against Rachel Fonss based on her failure to file a timely answer to the cross-claims against her. The district court found that Rachel Fonss believed that the issues raised in appellant's cross-claims against her were before the court in a pending divorce action and that Rachel Fonss had a reasonable excuse for her failure to answer. The district court denied appellant's motion for default judgment and directed Rachel Fonss to file an answer within 30 days. Rachel Fonss did

not file an answer but did file a letter with the court, which was sent to all other parties, asking that all of appellant's claims against her be dismissed because they were subject to the jurisdiction of the court in the divorce action. On appellant's renewed motion for default judgment, the district court determined that Rachel Fonss was not in default because she had "otherwise defended" against the action and, therefore, denied appellant's motion.

The district court directed the parties to submit written arguments stating the legal bases for their claims and addressing whether appellant's claims against Rachel Fonss were properly before the court. Appellant failed to do so. The district court granted summary judgment dismissing all of appellant's claims and scheduled Norman Fonss's claim against appellant for trial. Norman Fonss did not appear for trial, and the district court dismissed his claim against appellant. This appeal followed.

DECISION

"A district court may, sua sponte, grant summary judgment if, under the same circumstances, it would grant summary judgment on motion of a party." *Estate of Riedel by Mirick v. Life Care Ret. Cmtys., Inc.*, 505 N.W.2d 78, 81 (Minn. App. 1993). A reviewing court will not reverse an otherwise appropriate sua sponte grant of summary judgment "unless the objecting party can show prejudice from lack of notice, from procedural irregularities, or from the lack of a meaningful opportunity to oppose summary judgment." *Id.*

On appeal from summary judgment, this court examines the record to determine whether any genuine issues of material fact exist and whether the district court erred in

applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We “view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). No genuine issue of material fact exists when a party fails to present evidence that is “sufficiently probative with respect to an essential element of the . . . party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997); *see also Schroeder v. St. Louis Cnty.*, 708 N.W.2d 497, 507 (Minn. 2006) (stating that “summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents sufficient evidence to permit reasonable persons to draw different conclusions”) (emphasis omitted).

Slander of title

To prevail in a slander-of-title action, a plaintiff must show (1) a false statement concerning the plaintiff’s real property, (2) published to others, (3) maliciously, (4) causing it special damages. *Paidar v. Hughes*, 615 N.W.2d 276, 279-80 (Minn. 2000). “Special damages are those that are the natural, but not the necessary and inevitable result of a wrongful act.” *Id.* at 277 n.1 (quotation omitted).

Appellant argues that the mortgage exceeded by \$70,000 the amount of money loaned by Norman and Ardell Fonss to appellant and Rachel Fonss. The district court stated: “[Appellant] has not claimed that he suffered any pecuniary loss as a result of the mortgage, even assuming that the other elements of the claim were met. Rather, [appellant], in the relief requested as part of this counterclaim, is asking that the mortgage be quashed or removed.” The house with the mortgage was awarded to Rachel Fonss in

the marital-dissolution action, and the property distribution was affirmed on appeal. *Fonss v. DeMartini*, No. A10-411, 2011 WL 292034, at 1, 3-4 (Minn. App. Feb. 1, 2011). Because appellant claimed no pecuniary loss and because he no longer has a legal interest in the property, the district court properly granted summary judgment dismissing appellant's slander-of-title claim.

Fraud

Appellant argues that respondents acted fraudulently in encumbering the home with the mortgage. Appellant argues that the mortgage was a fraud upon the court because the judge in the marital-dissolution action relied on the amount of the mortgage in distributing the parties' marital assets. This claim is an impermissible collateral attack on the parties' dissolution judgment. *See Taylor v. Taylor*, 413 N.W.2d 587, 589 (Minn. App. 1987) (stating that "even an excessive decree" cannot be collaterally attacked in subsequent proceeding); *Boom v. Boom*, 367 N.W.2d 536, 538 (Minn. App. 1985) (stating that property division in dissolution judgment is final when time period for appeal has expired), *review denied* (Minn. June 27, 1985). The district court, therefore, properly granted summary judgment dismissing appellant's fraud claim.

Conversion

Appellant argues that two vehicles were the property of a corporation that he and Rachel Fonss owned and that the corporation made all payments due and owing on the vehicles. Both vehicles were included in the property distribution in the marital dissolution. Thus, the conversion claim is also a collateral attack on the dissolution judgment, and the district court properly granted summary judgment dismissing it.

Even if the district court erred in finding that Rachel Fonss “otherwise defended” against appellant’s claims against her, because both claims were collateral attacks on the dissolution judgment, the district court properly denied appellant’s motion for a default judgment against Rachel Fonss. *See* Minn. R. Gen. Pract. 117.02 (“A party entitled to judgment by default shall move the court for judgment in that party’s favor, setting forth by affidavit the facts which entitle that party to relief.”).

Affirmed.