STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1343

OWB REO, LLC,
Respondent,

vs.

George L. Tyus, IV,
Appellant,

Janice M. Tyus, et al.,
Defendants.

Filed May 13, 2013
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-HG-CV-11-1034

Amanda M. Govze, Shapiro & Zielke, LLP, Burnsville, Minnesota (for respondent)

George L. Tyus, IV, St. Paul, Minnesota (pro se appellant)

Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant challenges the district court's award of default judgment for respondent in an eviction proceeding, arguing that the district court lacked subject-matter

jurisdiction, respondent lacked standing to bring the eviction action, and appellant's due-process rights were violated. We affirm.

FACTS

This appeal stems from an eviction action that followed the foreclosure on appellant George L. Tyus IV's real property. On September 23, 2010, respondent OWB REO LLC (the bank) purchased Tyus's property at a sheriff's sale. Because Tyus and his wife remained in possession of the property after expiration of the six-month statutory-redemption period, the bank commenced an eviction action in April 2011.

Tyus sued the bank and its eviction counsel in a separate action, alleging defects in the underlying foreclosure. In his suit, Tyus sought and received a stay of the eviction action. The bank and its counsel removed the Tyus case to federal court, the federal district court dismissed the case with prejudice, and the eviction action—no longer stayed based on the Tyus lawsuit—was reopened in February 2012.

Tyus filed for federal bankruptcy protection three times between February and July 2012. The first case was dismissed on February 27, and the second case was dismissed on April 3. Tyus filed for bankruptcy a third time on June 19, at which point the bank obtained an order from the bankruptcy court confirming that no automatic stay was in effect. Tyus then moved the bankruptcy court to set aside that order.

The district court held a hearing in the eviction proceeding, and Tyus failed to appear. The district court granted the bank a default eviction judgment and awarded the bank immediate possession of the property under a writ of recovery of premises. This appeal follows.

D E C I S I O N

The decision to grant or deny a motion for default judgment lies within the discretion of the district court, and an appellate court will not reverse absent an abuse of that discretion. *Black v. Rimmer*, 700 N.W.2d 521, 525 (Minn. App. 2005), *review dismissed* (Minn. Sept. 28, 2005).

I.

We begin by addressing the bank's argument that this appeal is moot because the bank was unable to execute the writ of recovery before it expired. The doctrine of mootness requires appellate courts to "decide only actual controversies and avoid advisory opinions." *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). If a court cannot grant effective relief, the matter is generally dismissed as moot. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005). Mootness, however, is "a flexible discretionary doctrine, not a mechanical rule that is invoked automatically." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 439 (Minn. 2002) (quotation omitted). "If a party to an appeal suggests that the controversy has, since the rendering of judgment below, become moot, that party bears the burden of coming forward with the subsequent events that have produced that alleged result." *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 98, 113 S. Ct. 1967, 1976 (1993).

There are two exceptions to the mootness doctrine: (1) if an issue is capable of repetition yet evading review and (2) if collateral consequences may attach to the otherwise moot ruling. *McCaskill*, 603 N.W.2d at 327. Where real and substantial limitations will arise from a judgment, courts do not require actual evidence of such

limitations and instead presume that collateral consequences will attach. *See id.* at 329-31 (holding that discharge from civil commitment before completion of appeal does not render appeal moot because of a civil commitment's collateral consequences); *Morrissey v. State*, 286 Minn. 14, 16, 174 N.W.2d 131, 133 (1970) (holding that collateral consequences attach to a criminal conviction because of the "the stigma of conviction"). A judgment of restitution in an eviction action can have a collateral-estoppel effect on the issue of the right to possession. *Cole v. Paulson*, 380 N.W.2d 215, 218 (Minn. App. 1986). We therefore decline to apply the mootness doctrine in this case.

II.

We now turn our attention to Tyus's arguments. Tyus contends that the district court lacked subject-matter jurisdiction over the eviction proceeding. "Subject-matter jurisdiction is a court's power to hear and determine cases of the general class or categor[ies] to which the proceedings in question belong." *Bode v. Minn. Dep't of Natural Res.*, 594 N.W.2d 257, 259 (Minn. App. 1999) (quotation omitted), *aff'd* 612 N.W.2d 862 (Minn. 2000). The Minnesota Constitution provides that the district court shall have "original jurisdiction in all civil and criminal cases." Minn. Const. art. VI, § 3; *see also* Minn. Stat. § 504B.321, subd. 1(a) (2012) (stating that "[t]o bring an eviction action, the person complaining shall file a complaint with the [district] court"). "Because subject matter jurisdiction goes to the authority of the court to hear a particular class of actions, lack of subject matter jurisdiction may be raised at any time, including for the first time on appeal." *Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 432 (Minn. App. 1995), *review denied* (Minn. May 31, 1995).

Tyus asserts that the district court lacked subject-matter jurisdiction because his most recent bankruptcy filing automatically stayed the eviction proceeding. Generally, when a party files for federal bankruptcy protection, an automatic stay is imposed, which halts other judicial proceedings against a debtor. 11 U.S.C. § 362(a)(1) (2006). But when a debtor files for bankruptcy and has had two or more pending bankruptcy cases dismissed within the previous year, the automatic stay does not go into effect upon the filing of the most recent bankruptcy action. 11 U.S.C. § 362(c)(4)(A)(i) (2006). Because two of Tyus's bankruptcy filings were dismissed within the year preceding his third filing, no automatic stay went into effect. Thus, the bankruptcy court issued an order explicitly stating, "no automatic stay is in effect."

Tyus nonetheless argues that "both the Bankruptcy Court FRBP Rule 8017(b), and Federal Court FRCP Rule 60 offers [him] an automatic protection to stay [the] decision subject to the ruling on [his] Motion to Set Aside [the] July 5, 2012 ruling" that "no automatic stay is in effect." Tyus's reliance on Fed. R. Bank. P. 8017(b) is misplaced because rule 8017(b) merely provides authority for a stay in the event of an appeal of the bankruptcy court's decision. The record here contains no evidence of an appeal in the bankruptcy proceeding. Tyus moved the bankruptcy court, under Fed. R. Civ. P. 60, to set aside its order declaring the nonexistence of a stay, but that motion was not an appeal. *See* Fed. R. Civ. P. 60(b) (stating that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding" for several delineated reasons). Tyus's reliance on rule 60 to show the existence of an automatic stay is likewise misplaced because a motion under rule 60 "does not affect the judgment's

finality or suspend its operation." Fed. R. Civ. P. 60(c)(2). In sum, because there was no automatic stay, the district court could proceed with the eviction action.

Tyus offers several other "jurisdictional" arguments that actually are challenges to the validity of the underlying foreclosure action. For example, Tyus argues that "[t]he issues of robo-signing and MERS doing business in Minnesota without having registered as a foreign corporation advance a challenge to jurisdiction of the lower court." However, these arguments do not address the district court's subject-matter jurisdiction. Moreover, such challenges are not properly raised in an eviction proceeding.

An eviction action is a summary proceeding used to determine the present right of possession. *See* Minn. Stat. § 504B.001, subd. 4 (2012) ("'Evict' or 'eviction' means a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property by the process of law set out in this chapter."). Title claims may not be determined in an eviction proceeding unless the party has no alternative forum available to litigate the claims. *AMRESCO Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 444 (Minn. App. 2001) (holding that eviction proceedings "are summary in nature and the limited scope of these proceedings does not permit the adjudication of title claims"). Tyus had an alternative forum in which to litigate his foreclosure claims: he challenged the underlying foreclosure process in district court, and the case was removed to federal court. *See id*. at 445-46; *see also Fraser v. Fraser*, 642 N.W.2d 34, 40-41 (Minn. App. 2002) (holding that "to the extent wife has the ability to litigate her equitable mortgage and other claims and defenses in alternate civil proceedings, it would be inappropriate for her to seek to do so in the eviction action").

Tyus also argues that the bank lacks standing to evict him. "Standing focuses on whether the plaintiff is the proper party to bring a particular lawsuit." *Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, 770 N.W.2d 169, 174 (Minn. App. 2009) (quotation omitted), *review denied* (Minn. Oct. 20, 2009). "To establish standing, a party must have a sufficient personal stake in a justiciable controversy." *Id.* (quotation omitted). "A sufficient stake may exist if the party has suffered an injury-in-fact or if the legislature has conferred standing by statute." *Id.* (quotations omitted). An injury-in-fact involves harm that is "concrete and actual or imminent, not conjectural or hypothetical." *Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. Oct. 18, 2005). "[B]oth subject matter jurisdiction and standing may be challenged at any time." *Cochrane*, 529 N.W.2d at 433.

As the holder of the sheriff's certificate of sale, upon expiration of the redemption period, the bank owned all "right, title, and interest of the mortgagor" in the property. Minn. Stat. § 580.12 (2012). And after expiration of the redemption period, the person entitled to the premises may recover possession by eviction. Minn. Stat. § 504B.285, subd. 1(1)(ii) (2012). Thus, upon expiration of the redemption period, the bank, as the holder of the sheriff's certificate—and, hence, Tyus's interest in the property—had statutory standing to bring the eviction action. To the extent that Tyus's standing argument challenges the validity of the foreclosure process by which the bank obtained the sheriff's certificate, the argument is not properly raised in this eviction proceeding. *See AMRESCO*, 631 N.W.2d at 444.

Finally, Tyus argues that "the action of the Clerk of second District Court to refuse the filing of [his] July 20 Motion to Stay the [eviction] Hearing, and to give a 'Legal Advise' . . . that the hearing will be postponed, is a violation of [his] Due Process Rights." As support for his due-process argument, Tyus alleges that he attempted to stay the eviction hearing, but a district court clerk refused to accept his motion for a stay and told him that the scheduled hearing "would be stopped." This court does not consider Tyus's due-process argument because it was not raised and determined in the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that generally an appellate court will not consider matters not argued to and considered by the district court); *see also* Minn. R. Civ. P. 60.02 (providing a mechanism by which a party may move to vacate a final judgment or order for several reasons, including fraud, mistake, inadvertence, surprise, or excusable neglect).

In conclusion, error is never presumed on appeal. *White v. Minnesota Dep't of Natural Resources*, 567 N.W.2d 724, 734 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). To prevail, an appellant must show both error and prejudice resulting from the error. *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975). Because Tyus fails to show that the district court abused its discretion by granting default judgment in the underlying eviction proceeding, we affirm.

Affirmed.