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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2211

Kraig Erickson, et al.,
Respondents,

vs.

Thomas J. Bothwell, et al.,
Appellants.

Filed June 24, 2013
Affirmed and remanded
Schellhas, Judge

St. Louis County District Court
File No. 69DU-CV-11-758

John D. Kelly, David L. Tilden, Hanft Fride, Duluth, Minnesota (for respondents)

Jerome D. Feriancek, Thibodeau, Johnson & Feriancek, PLLP, Duluth, Minnesota (for appellants)

Considered and decided by Hudson, 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

SCHELLHAS, Judge

In this interlocutory appeal, appellants argue that respondents lack standing and their claims are moot and that the district court therefore erred by denying their motion for summary judgment. We affirm and remand.

FACTS

This dispute arises from the purchase of a Duluth home (the property) by respondents Kraig Erickson and Tracy Erickson (Ericksons) from appellants Thomas Bothwell; Natalie Bothwell (Bothwells); and Joseph Bothwell, the Bothwells' son, who is not a party in this case. When the parties entered into a purchase agreement for the property in October 2009, Bothwells delivered to Ericksons a Seller's Property Disclosure Statement, which disclosed that Bothwells acquired the house in February 2009, had no problems with flooding or damages caused by flooding, and had no knowledge of any problems with mold in the house. Later, in an addendum to a counteroffer, Bothwells again represented that they had never had an issue with moisture in the basement of the home. But, in both the Seller's Property Disclosure Statement and the addendum to a counteroffer, Bothwells disclosed that the previous owner had apparently had problems with water seepage and leakage into the basement when the sump pump burned out. Ericksons moved into the property about 30 days before closing and paid Bothwells rent until the closing in December 2009. Ericksons financed their purchase of the property by granting a $167,902 mortgage to Bank of America.

In August 2011, Ericksons sued Bothwells, alleging (1) fraudulent misrepresentation; (2) negligent misrepresentation; (3) misrepresentation by omission; (4) failure to disclose; (5) breach of express warranty; (6) breach of contract; (7) unjust enrichment; (8) detrimental reliance; and (9) deceptive trade practices. Ericksons claim that, during the spring and summer of 2010, the basement flooded repeatedly and they discovered signs of long-term water damage and mold issues when they attempted to

repair the flood damage. They also claim that tests revealed "highly elevated levels" of airborne mold and that they suffered respiratory problems and therefore moved out of the home in August 2010 and have not re-occupied the home. Ericksons allege that Bothwells knew about the long-term water damage and mold and deliberately concealed it and that Ericksons have "suffered damages and incurred expense in excess of $50,000 for clean-up, testing, hotels, mileage, loss of income and other costs directly associated with the problems created by the water damage, water intrusion and mold in the home."

Bothwells moved for summary judgment on all of Ericksons' claims. The district court granted summary judgment on Ericksons' negligent-representation, contract, warranty, and trade-practices claims and denied Bothwells summary judgment as to Ericksons' fraudulent-misrepresentation or misrepresentation-by-omission claim and unjust-enrichment claim.[1]

During the district court proceedings, the Ericksons defaulted on their mortgage. Bank of America foreclosed the mortgage by advertisement and purchased the property at a foreclosure sale on October 2, 2012. Bothwells then moved for summary judgment, requesting that the district court amend its scheduling order to permit the summary-judgment motion and arguing that the court should dismiss Ericksons' remaining claims because the mortgage-foreclosure sale deprived Ericksons of standing and rendered their claims moot. The district court permitted Bothwells to argue their summary-judgment motion and denied the motion on November 27, 2012.

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[1] On appeal, the parties address only the fraudulent-misrepresentation and unjust-enrichment claims.

This interlocutory appeal follows.

DECISION

On appeal from summary judgment, an appellate court's task "is to determine whether genuine issues of material fact exist, and whether the district court correctly applied the law." *Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013) (quotation omitted). The district court properly grants summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. Appellate courts conduct a de novo review of the district court's summary-judgment decision. *McKee v. Laurion*, 825 N.W.2d 725, 729 (Minn. 2013). We "view the evidence in the light most favorable to the party against whom summary judgment was granted." *Id.*

Bothwells argue that the district court erred by concluding that Ericksons did not lack standing and that their claims were not moot.

Standing

The district court noted that Ericksons' six-month redemption period had not yet expired and reasoned that, until the redemption period expired, Ericksons retained standing, as owners, to pursue claims relative to the property. Bothwells argue that Ericksons lacked standing to litigate issues related to the property because they "no longer have any interest in the . . . property" because it was "sold at public auction." Bothwells argue that the court erred by not dismissing Ericksons' claims in their entirety.

Standing is a question of law, and this court reviews a district court's standing determination de novo. *Builders Ass'n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 176 (Minn. App. 2012). Standing "requires a party to demonstrate a 'sufficient stake in a justiciable controversy to seek relief from a court.'" *Id.* (quoting *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007)). For standing to exist, "a party must have suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant," and the injury must be "traceable to the challenged action" and "capable of being redressed in court." *Id.* (quotation omitted). "Economic injury may be sufficient to establish standing, so long as it is not abstract or speculative." *Id.*

In Minnesota, "during the period of redemption from foreclosure[, a mortgagor] retains his right of ownership, including the right to possession and the right to rents and profits." *Woodmen of World Life Ins. Soc'y v. Sears, Roebuck & Co.*, 294 Minn. 126, 131, 200 N.W.2d 181, 184 (1972); *accord Mut. Ben. Life Ins. Co. v. Frantz Klodt & Son, Inc.*, 306 Minn. 244, 247, 237 N.W.2d 350, 353 (1975). Moreover, Minnesota Statutes section 580.12 (2012) provides that the purchaser of a foreclosed property only receives the "right, title, and interest" from the mortgagor after, among other things, the "expiration of the time for redemption" has passed.[2] Ericksons therefore retained their right of ownership in the property during the redemption period. *See Woodmen*, 294 Minn. at 131, 200 N.W.2d at 184. During the mortgage-foreclosure redemption period,

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[2] We cite the most recent version of Minn. Stat. § 580.12 because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

Ericksons did not lack standing to pursue their claims against Bothwells.[3] *See Peterson*, 733 N.W.2d at 503, 505 (concluding that mortgagor had standing to pursue statutory home-warranty claim against builder during mortagor's redemption period).

Bothwells argue that the holding in *Peterson* should be construed narrowly to apply only to the statutory home-warranty claim in *Peterson*, not to Ericksons' claims. Bothwells emphasize that, in *Peterson*, the district court dismissed the mortgagor's breach-of-contract and negligence claims against the builder, allowing the mortgagor to proceed only on its statutory home-warranty claim. *Id.* at 504. But the mortgagor in *Peterson* did not appeal the dismissal of any claims, and this court's opinion contains no information about the reasons for the dismissals. *Id.* at 502–06. This court predicated its reasoning in *Peterson* on the principle of law that, during the redemption period, a mortgagor retains an interest in the encumbered property. *Id.* at 505 (noting that mortgagor "retained ownership and possession of the home during the redemption period" (citing *Woodmen*, 294 Minn. at 131, 200 N.W.2d at 184)). Bothwells' argument is unavailing.

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[3] In their brief, Ericksons state that, if they "are successful at trial, they will be able to redeem their property and repair their home." The redemption period expired April 2, 2013. The record contains no information to suggest that Ericksons redeemed the property. The district court addressed only whether Ericksons had standing to pursue their claims during the redemption period, and that is the sole issue before this court. *See Peterson v. Johnson*, 733 N.W.2d 502, 505 n.1 (Minn. App. 2007) ("Despite respondent's apparent intent not to redeem, the record does not show whether she redeemed. The district court limited its holding to the narrow issue of whether respondent was a vendee entitled to pursue her . . . claim during the redemption period, and our review is similarly limited.").

Bothwells also rely on two other cases to support their argument that Ericksons lacked sufficient interest in the property to retain standing to pursue their claims in this case: *In re Crawley*, 117 B.R. 457 (Bankr. D. Minn. 1990), and *Leffler v. Leffler*, 602 N.W.2d 420 (Minn. App. 1999). Bothwells' reliance is misplaced. *Crawley* is neither on point nor persuasive because the *Crawley* court did not address whether a mortgagor's interest during the redemption period is sufficient to retain standing to pursue a claim based on the foreclosed property. *See* 117 B.R. at 457–61 (concluding that debtor-mortgagor's "post-expiration possession" of foreclosed property for which redemption period had expired did not constitute "possession by the [bankruptcy] estate," nor did it make the foreclosed property "property of the [bankruptcy] estate"). Likewise, *Leffler* is neither on point nor persuasive. The *Leffler* court did not discuss a mortgagor's property interest during the redemption period, only what interest vests in a bankruptcy estate. *See* 602 N.W.2d at 420–23 (concluding that, because "all legal or equitable interests of the debtor in property" become "property of a bankruptcy estate," the appellant had no interest in the property and therefore "lack[ed] a sufficient stake" to invoke the court's jurisdiction (quotation omitted)).

Mootness

The district court reasoned that Bothwells' mootness argument failed for the same reason as the standing argument and concluded that "a foreclosure is not complete, and the foreclosure sale purchaser does not take title, until the redemption period expires" and that Ericksons' claims therefore were not barred by the doctrine of mootness. Bothwells argue that, due to the foreclosure sale, Ericksons' claims were moot because they would

not incur the expenses claimed as damages. Bothwells cite to no caselaw to support their position, and their argument is unpersuasive. Moreover, as noted above, Ericksons claim that they have incurred expenses that they claim as damages for clean-up, testing, hotels, mileage, loss of income, and other costs.

"The issue of whether a cause of action is moot is a question of law, which we review de novo." *City of West St. Paul v. Krengel*, 748 N.W.2d 333, 338 (Minn. App. 2008) (quotation omitted), *aff'd*, 768 N.W.2d 352 (Minn. 2009). Courts "generally dismiss a matter as moot when an event occurs that makes a decision on the merits unnecessary or an award of effective relief impossible." *Limmer v. Swanson*, 806 N.W.2d 838, 839 (Minn. 2011) (quotation omitted); *see Decker v. Nw. Envtl. Defense Ctr.*, 133 S. Ct. 1326, 1335 (2013) ("It is a basic principle of Article III that a justiciable case or controversy must remain extant at all stages of review, not merely at the time the complaint is filed." (quotation omitted)). "A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Decker*, 133 S. Ct. at 1335; *see In re Glendale Twp., Scott Cnty.*, 288 Minn. 340, 343, 180 N.W.2d 925, 927 (1970) ("It is well settled that if, pending an appeal, an event occurs which renders it impossible to grant any relief to appellant, or which makes a decision unnecessary, the appeal will be dismissed as presenting a moot question.").

As noted above, Ericksons retained an interest in the property during the redemption period and, therefore, the foreclosure sale did not render their claims against Bothwells moot. *See Woodmen*, 294 Minn. at 131, 200 N.W.2d at 184. Bothwells argue that no exception to mootness applies in the current circumstance. Because we conclude

that the foreclosure sale did not render Ericksons' claims moot because they retained an interest in the house during the redemption period, we do not address the Bothwells' argument.

In sum, the district court did not err when it denied Bothwells' motion for summary judgment. Ericksons retained an interest in the house during the redemption period, *see id.*; they had standing to pursue their claims against the Bothwells, *see Peterson*, 733 N.W.2d at 505; and the foreclosure sale did not render their claims moot. We therefore affirm the district court's order and remand for further proceedings consistent with this opinion.

Affirmed and remanded.