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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1577
A08-2093**

Nancy C. Lazaryan,
Appellant,

Victoria C. Marchetti, et al.,
Plaintiffs (A08-1577),

Victoria C. Marchetti,
Appellant (A08-2093),

Evelyn C. Wallace,
Plaintiff (A08-2093),

vs.

City of St. Paul, et al.,
Respondents,

ReMax Resources of Stillwater, Minnesota, et al.,
Respondents,

Wells Fargo Mortgage, an Iowa corporation,
doing business in the State of Minnesota,
Respondent.

**Filed December 1, 2009
Appeal dismissed in part and affirmed in part
Halbrooks, Judge**

Ramsey County District Court
File No. 62-CV-07-1960

Nancy C. Lazaryan, 10734 West Lake Road, Rice, MN 56367 (pro se appellant)

Victoria C. Marchetti, 1033 Colne Street, St. Paul, MN 55103 (pro se appellant)

John J. Choi, St. Paul City Attorney, Judith A. Hanson, James F. X. Jerskey, Assistant City Attorneys, 750 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102 (for respondents City of St. Paul, Mike Kalis, Steve Magner, Robert Kessler, and Marcia Moermond)

David J. McGee, Natalie R. Walz, 3300 Edinborough Way, Suite 600, Edina, MN 55435 (for respondents ReMax Resources, Thad Rich and Thomas (Tom) Sawyer)

Leah K. Weaver, Rebecca F. Schiller, Reiter & Schiller, P.A., The Academy Professional Building, 25 North Dale Street, St. Paul, MN 55102 (for respondent Wells Fargo Financial Minnesota, Inc.)

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Nancy Lazaryan challenges the district court's dismissal of her complaint for lack of standing and improperly representing a party. Appellants Lazaryan and Victoria Marchetti also challenge two subsequent orders, one dismissing their request for review of a city council decision based on lack of subject-matter jurisdiction and one lifting a stay on an abatement order issued by respondent City of St. Paul. Upon notice of review, respondent ReMax Resources of Stillwater, Minnesota challenges the denial of its motion to dismiss for failing to state a claim. Because we agree that Lazaryan does not have standing to bring the types of claims she asserted in her complaint and that she cannot make legal arguments on behalf of another party, and because we conclude that ReMax was not harmed by the district court's denial of its motion to dismiss, we affirm

in part. Because we conclude that Lazaryan and Marchetti were not aggrieved by the subsequent orders due to their lack of standing, we dismiss in part.

FACTS

This consolidated appeal involves a house that is registered with respondent City of St. Paul as a “vacant building.” The city designated the house as vacant in May 2006, and sent a “Vacant Building Registration Notice” to the then-owner indicating that the house met the legal definition of a registered vacant building. Respondent Wells Fargo Financial Minnesota, Inc.¹ became the owner of the house in August 2006 following foreclosure and the expiration of the statutory redemption period. Wells Fargo engaged respondent ReMax Resources of Stillwater, Minnesota to sell the house. A “Truth in Sale of Housing” inspection occurred in 2007, and the report indicated that the property was not a registered vacant building.

Evelyn Wallace entered into a purchase agreement with Wells Fargo dated May 1, 2007. It is undisputed that Wallace did not know at that time that the property was registered with the city as a vacant building. After Wallace closed on the sale, her granddaughter, appellant Victoria Marchetti, began living in the house. Marchetti and appellant Nancy Lazaryan, Wallace’s daughter and Marchetti’s mother, made some repairs to the property; Lazaryan now claims that there was a contract between Wallace, Marchetti, and herself “that [Lazaryan] and [Marchetti] would invest substantial time and

¹ Although the original complaint named “Wells Fargo Mortgage, an Iowa corporation, doing business in the [S]tate of Minnesota” as a defendant, the motion to dismiss was brought by “Wells Fargo Financial Minnesota, Inc.,” and Wells Fargo Financial Minnesota, Inc. has responded to the appeal.

monies into the building in exchange for an equitable interest in the property.” Approximately one month after Marchetti moved in, respondent Mike Kalis, a property inspector with the city, informed her that she could not live there because the house was a registered vacant building. Lazaryan appealed the vacant-building designation in a hearing before respondent Marcia Moermond, a legislative hearing officer for the city. Moermond denied the challenge and Lazaryan appealed Moermond’s decision to the city council. The city council subsequently affirmed Moermond’s decision.

On August 3, 2007, Wallace completed a “Limited Power of Attorney” form granting “a limited and specific power of attorney” to Lazaryan. In the space provided to list the specific acts that Lazaryan was authorized to undertake on Wallace’s behalf, the address of the house appears. Appellants, pro se, subsequently served a summons and complaint on nine defendants appealing the determination of the legislative hearing officer and seeking damages. The complaint was filed in Ramsey County District Court. Lazaryan and Marchetti signed the complaint individually, and Lazaryan also signed as the “attorney-in-fact” for Wallace.

Appellants’ complaint alleged that the city (including Kalis, Steve Magner, and Robert Kessler named in their individual capacities) failed to give adequate notice of the vacant-building designation to Wells Fargo, gave improper notice of the designation to the then-owner because he was deceased, failed to make a public record of the vacant-building designation, and failed to demonstrate that the building met the legal criteria of a registered vacant building. The complaint also alleged a taking due to the city’s unlawful designation of a vacant building and due-process violations by the city due to improper

notice; failure to provide the city council the file on the property prior to Lazaryan's appearance before the council; false assertions by Kalis, Magner, and Kessler; and a false determination by Moermond. The complaint further alleged that Wells Fargo and ReMax (including Thomas Sawyer and Thad Rich, named in their individual capacities as the listing agent and broker) had a duty to disclose the vacant-building status to appellants and failed to do so (thereby committing fraud) and that Wells Fargo and ReMax failed to exercise due diligence in examining records prior to the sale.

Respondents brought three separate motions to dismiss.² The district court issued an order on February 20, 2008, dismissing all claims of Lazaryan and Marchetti based on lack of standing because they have no equitable interest in the property. The district court denied Lazaryan the right to represent Wallace but, in the interest of fairness, addressed the arguments made by Lazaryan on Wallace's behalf. The only claim to survive the motions to dismiss was Wallace's claim against ReMax for failing to give her notice of the vacant-building designation. ReMax moved to dismiss because Wallace did not allege in her complaint that ReMax had any knowledge of the vacant-building designation prior to Wallace's purchase of the house. Because ReMax's memorandum was untimely, the district court gave Wallace 14 days from the date of the hearing to respond to ReMax's memorandum in support of its motion to dismiss. Lazaryan responded, including with her response an affidavit stating that Sawyer had admitted taking a photograph of the house that was posted on the Multiple Listing Service and that

² The City of St. Paul moved to dismiss on behalf of the city, Kalis, Magner, Kessler, and Moermond. ReMax moved on behalf of ReMax Resources of Stillwater, Rich, and Sawyer. Wells Fargo filed its own motion.

the photograph showed a blue placard in the window, which Lazaryan claimed was the vacant-building notice. In denying ReMax's motion, the district court stated:

While [ReMax is] correct in asserting that the Complaint does not contain a specific allegation that they had knowledge of the property's vacant property status, the record reflects that it was the Remax agents who listed the property for sale, presumably toured the property, and photographed the property showing the City's notice on the front door. These allegations, if true, could give rise to knowledge on the part of [ReMax], and accordingly, dismissal is inappropriate as to this claim by Wallace.

Lazaryan appealed the partial judgment entered pursuant to the February 20, 2008 order, again signing on behalf of Wallace based on her limited power-of-attorney status.

Following the district court's order, appellants sought review of the city council's decision to uphold the vacant-building designation. The district court held a hearing on the matter on June 26, 2008. Only Lazaryan appeared on behalf of appellants at this hearing, and, although the district court restrained her from offering legal argument due to her lack of standing, it allowed her to make an appearance on Wallace's behalf based on the limited power of attorney. The district court issued an order on July 15 stating that Lazaryan is not authorized to practice law and restraining her from offering legal argument on Wallace's behalf. The order also stayed a summary-abatement order requiring the house to be boarded pending the district court's determination of appellants' petition. The July 15 order has not been appealed.

Lazaryan then hired counsel on Wallace's behalf, who submitted a letter memorandum to the district court addressing Wallace's claims. The city also submitted a memorandum, and the district court issued findings and an order dated October 1, 2008.

The October 1 order dismissed the request to review the city council decision based on the district court's lack of subject-matter jurisdiction. On November 18, 2008, the district court issued another order, lifting the stay of the city's summary-abatement order. Lazaryan requested another hearing on the matter that the district court denied. Lazaryan and Marchetti then appealed the October 1 and November 18 orders pro se, asserting that the district court violated their right to due process by refusing to hear their arguments or let them present evidence. Once again, Lazaryan signed the documents on behalf of Wallace. This court subsequently consolidated the two appeals.³

DECISION

I.

Lazaryan, on behalf of Wallace, purports to appeal the judgment entered pursuant to the February 20 order based on Wallace's grant of a limited power of attorney to Lazaryan. The issue of whether a person may stand in for a pro se appellant under a limited power of attorney is a legal question. We review such issues under a de novo standard. *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). The Minnesota Supreme Court addressed the question of whether a non-attorney can represent another person in court in *In re Conservatorship of Riebel*:

³ Appellants also sought a writ of mandamus or prohibition from this court. The petition sought a writ of mandamus to compel the district court to hold a hearing regarding the lifting of the stay, or, in the alternative, a writ of prohibition precluding the district court from enforcing either its order denying review of the city council's determination or its order lifting the stay. This petition was denied. *Lazaryan v. City of St. Paul*, No. A08-2091 (Minn. App. Jan. 5, 2009) (order), *review dismissed* (Minn. Apr. 17, 2009).

We do not construe the authorizations in [Minn. Stat.] section 523.24 for an attorney-in-fact to assert and prosecute claims to empower the attorney-in-fact to appear as the attorney-at-law in asserting and prosecuting those claims. So construed, the power of attorney statute would allow anyone to authorize another person, regardless of their qualifications, to practice law on their behalf, providing a very easy means of circumventing the prohibition against the unauthorized practice of law in Minn. Stat. § 481.02. We will not construe a statute in a way that creates such an absurd result. More importantly, even if intended by the legislature, such a construction of the statute would undermine this court's exclusive authority to regulate the practice of law and would violate the doctrine of separation of powers. We are constrained to interpret statutes to preserve their constitutionality. Therefore, we do not interpret the relevant provisions of section 523.24 to mean that a power of attorney authorizes an attorney-in-fact to practice law.

625 N.W.2d 480, 482 (Minn. 2001) (citations omitted).

In *Riebel*, a mother, who was not a lawyer, attempted to represent her daughter in court based on a power of attorney. *Id.* at 481. Appellants attempt to distinguish *Riebel* by claiming that *Riebel* involved an artificial entity and that because Wallace is a natural person, she has additional rights under “common law and the constitutions.” But we see no basis to distinguish *Riebel* from the case at hand. We therefore affirm the district court's denial of Lazaryan's request to represent Wallace in court.

II.

Lazaryan challenges the district court's dismissal of Marchetti's and her complaint for lack of standing.⁴ The question of whether a person has standing to bring a claim is a

⁴ Although Marchetti did not file a notice of appeal with respect to the February 20, 2008 order (addressing standing), Marchetti did appeal the two subsequent orders. In that

question of law, which is reviewed de novo. *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). “Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court.” *Id.* (quotation omitted). “The fundamental aspect of standing is that it *focuses on the party* seeking to get his complaint before a court and *not on the issues* he wishes to have adjudicated. The essential question is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.” *Id.* (quotation and citation omitted).

Appellants assert that ReMax and Wells Fargo failed in their duty to notify them of the vacant-building status of the house before Wallace’s purchase and that the city’s improper designation of the house as vacant and failure to properly notify interested parties constituted a taking. But Lazaryan and Marchetti are not owners of the house and did not assert any property interest in their complaint. Lazaryan now claims (1) to have a contract with Wallace, the terms of which provided that she and Marchetti will perform work at the house in exchange for “an equitable interest” in the property or (2) that based on *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352 (Minn. App. 2006), Marchetti’s status as Wallace’s tenant confers standing on Marchetti.

Without reaching the applicability of *Jones*, it is clear that Marchetti and Lazaryan do not have standing to bring the types of claims they have alleged in their complaint. Any notice owed to prospective purchasers was owed to Wallace *prior* to her purchase.

appeal, Marchetti argues that she has standing. Our analysis addresses the standing of both Lazaryan and Marchetti, despite Marchetti’s failure to properly appeal this issue.

Even assuming that Lazaryan or Marchetti could establish a current ownership interest in the property or show that tenants have standing under *Jones*, there is no dispute that Lazaryan and Marchetti did not have any interest in the property until *after* Wallace purchased it. Similarly, any taking that allegedly occurred as a result of improper procedure by the city would have occurred at the time the house was registered as vacant, nearly a year before Wallace purchased it. As the district court stated, neither the fact that appellants incurred expenses nor the fact that Marchetti lived at the property supports a “finding of an equitable interest that would support the types of claims brought . . . in this matter.” Because we agree, we affirm the district court’s dismissal of Lazaryan’s and Marchetti’s complaint based on lack of standing.

III.

Lazaryan and Marchetti also appeal the district court orders from October 1 and November 18, 2008. Lazaryan and Marchetti contend that the orders should be reversed claiming that their right to procedural due process was violated because they were not allowed to present evidence or argue the merits of their claim. But the district court had already determined that Lazaryan and Marchetti did not have standing and that Lazaryan could not represent Wallace—questions that are now the subject of this appeal. Despite this ruling, and without waiting for a decision on appeal, Lazaryan was the only person to appear on behalf of appellants at the June 26 hearing. Lazaryan was not allowed to present any legal argument—only Wallace’s attorney was afforded this opportunity. While Lazaryan argues that she was not afforded procedural due process, she fails to understand that she was not entitled to due process. Because neither she nor Marchetti

have standing, the orders did not address their substantive rights. The orders specifically address only Wallace's rights. A party not aggrieved by a court order has no right to appeal. *Singer v. Allied Factors, Inc.*, 216 Minn. 443, 445-46, 13 N.W.2d 378, 380 (1944). Because the orders did not address the rights of Lazaryan and Marchetti, they were not aggrieved by these orders, and they have no right to appeal them. We therefore dismiss the appeal of the October 1 and November 18 orders.

IV.

The only claim that survived the three motions to dismiss was Wallace's claim that ReMax failed to disclose the vacant-building status. In its notice of review, ReMax argues that the district court erred by looking outside the pleadings on its rule 12 motion to dismiss and that the district court should therefore have converted its motion to one for summary judgment. *See* Minn. R. Civ. P. 12.02. We review de novo the legal question of whether the district court erred by denying ReMax's motion to dismiss. *See Larson v. WaseMiller*, 738 N.W.2d 300, 303 (Minn. 2007). Rule 12.02 states:

If, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment . . . and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Minn. R. Civ. P. 12.02.

A district court need not convert a rule 12.02 motion to a motion for summary judgment if it is clear that the district court did not rely on materials submitted outside the pleadings when making its determination. *In re Hennepin County 1986 Recycling Bond*

Litig., 540 N.W.2d 494, 497 (Minn. 1995). But in this case, the district court relied on Lazaryan’s affidavit in reaching its conclusion that ReMax took a photograph of the house showing the city’s notice. Therefore, the district court should have given ReMax an opportunity to respond pursuant to rule 12.02. The record shows that the district court did not afford ReMax the opportunity to respond or submit additional materials. The district court stated at the motion hearing, “I am not going to invite replies because I think I have a pretty good understanding of [ReMax’s] position and I’ve allowed [ReMax] to have oral argument on the matter.”

Although the district court should have afforded ReMax the opportunity to present additional relevant materials before ruling on ReMax’s motion to dismiss under rule 12, there is nothing in the rules that precludes ReMax from moving for summary judgment as this matter proceeds. *See* Minn. R. Civ. P. 56.02 (stating that a party against whom a claim has been asserted may “at any time” bring a motion for summary judgment). We therefore affirm the district court’s denial of ReMax’s rule 12 motion.

Appeal dismissed in part and affirmed in part.