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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2266**

Wilmington Trust Company, as Trustee,
Respondent,

vs.

Kenneth F. Northwick, et al.,
Appellants.

**Filed June 2, 2014
Affirmed
Kirk, Judge**

Dakota County District Court
File No. 19HA-CV-13-4233

Kalli L. Ostlie, Shapiro & Zielke, LLP, Burnsville, Minnesota (for respondent)

William B. Butler, Butler Liberty Law, LLC, Minneapolis, Minnesota (for appellants)

Considered and decided by Hooten, Presiding Judge; Kirk, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

On appeal from an eviction judgment arising from a mortgage foreclosure,
appellants argue that respondent lacked standing to commence the eviction action. We
affirm.

FACTS

The facts in this case are undisputed. In April 2004, appellants Kenneth F. Northwick and Felicia Northwick executed a mortgage for \$188,000 in favor of Mortgage Electronic Registration Systems, Inc. (MERS), as a nominee for Lehman Brothers Bank, FSB. The mortgage encumbered real property located in Apple Valley. In January 2011, MERS assigned its interest under the mortgage to CitiMortgage, Inc.

The mortgage was subsequently foreclosed, and the Dakota County Sheriff held a foreclosure sale. CitiMortgage bought the property at the sheriff's sale and recorded the sheriff's certificate in Dakota County. CitiMortgage later assigned its interest in the sheriff's certificate to respondent Wilmington Trust Company as trustee for the Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2004-16XS, and the assignment was recorded in Dakota County. The Northwicks did not redeem during the six-month redemption period. In April 2013, Dakota County issued a certificate of title to Wilmington Trust Company. The Northwicks remain in possession of the property.

In October, Wilmington Trust Company filed an eviction summons and complaint in the district court, seeking to evict the Northwicks from the property. Following a court trial, the district court found that Wilmington Trust Company is entitled to immediate possession of the property, and the court administrator entered judgment for Wilmington Trust Company. This appeal follows.

DECISION

“Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court.” *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007). A plaintiff must have standing before courts can exercise their jurisdiction. *Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989). A plaintiff may acquire standing by: (1) suffering an injury-in-fact; or (2) being the beneficiary of a legislative act that grants standing. *Enright*, 735 N.W.2d at 329. Whether a party has standing is a question of law that appellate courts review de novo. *Builders Ass’n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 176 (Minn. App. 2012).

The Northwicks argue that Wilmington Trust Company did not have standing to commence the eviction action because it has not suffered an injury-in-fact. “An injury-in-fact is a concrete and particularized invasion of a legally protected interest.” *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136 (1992)).

“A purchaser of property at a foreclosure sale takes title subject to an equitable right of redemption in the previous owners of the property.” *Bradley v. Bradley*, 554 N.W.2d 761, 764 (Minn. App. 1996), *review denied* (Minn. Dec. 23, 1996). The purchaser of the sheriff’s certificate acquires a type of vested ownership interest in the property that is subject only to “the limited redemption rights of the foreclosed owner.” *Harbal v. Fed. Land Bank of St. Paul*, 449 N.W.2d 442, 447 (Minn. App. 1989), *review denied* (Minn. Feb. 21, 1990). Under Minn. Stat. § 580.12 (2012), “When any sale of real property is made under a power of sale contained in any mortgage, the officer shall

make and deliver to the purchaser a certificate” and, after the certificate has been recorded and the redemption period has expired, it “shall operate as a conveyance to the purchaser or the purchaser’s assignee of all the right, title, and interest of the mortgagor in and to the premises named therein.” *See also id.* at 446 (stating that as soon as the redemption period ends, the property is conveyed to the sheriff’s certificate holder). Further, “[e]very sheriff’s certificate of sale made under a power to sell contained in a mortgage shall be prima facie evidence that all the requirements of law in that behalf have been complied with, and prima facie evidence of title in fee thereunder in the purchaser at such sale.” Minn. Stat. § 580.19 (2012).

Here, CitiMortgage assigned its interest in the sheriff’s certificate to Wilmington Trust Company, as trustee, and the assignment was recorded. After the redemption period expired and the Northwicks failed to redeem, Wilmington Trust Company became the owner of the property. *See* Minn. Stat. § 580.12 (stating that after the sheriff’s certificate has been recorded and the redemption period has expired, it “shall operate as a conveyance to the purchaser *or the purchaser’s assignee*” (emphasis added)). As the owner of the property, Wilmington Trust Company had a right to possess the property as soon as the redemption period expired. When the Northwicks did not allow Wilmington Trust Company to take possession of the property, they invaded Wilmington Trust Company’s legally protected interest in the property. *See Lorix*, 736 N.W.2d at 624. Therefore, Wilmington Trust Company suffered an injury-in-fact that gave it standing to commence the eviction action against the Northwicks.

The Northwicks argue that Wilmington Trust Company's possession of the sheriff's certificate is insufficient to establish that it holds the title to the property because the presumption of title is rebuttable. *See Casey v. McIntyre*, 45 Minn. 526, 48 N.W. 402 (1891). But the sheriff's certificate is prima facie evidence that all the requirements of law have been complied with and that the purchaser or its assignee has obtained title. Minn. Stat. § 580.19. And the Northwicks fail to acknowledge that Dakota County also issued a certificate of title to Wilmington Trust Company in April 2013 after a Torrens proceeding. The Northwicks do not dispute that they defaulted on their mortgage, did not redeem, and currently are in possession of the property.

Finally, the Northwicks appear to challenge the validity of the foreclosure sale. But the scope of an eviction proceeding is limited to addressing the present possession of the property. *Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445 (Minn. App. 2001). We disagree with the Northwicks' assertion that they have standing under a recent Minnesota Supreme Court case, *Gretsch v. Vantium Capital, Inc.*, __ N.W.2d __, __, 2014 WL 1304990, at *3-4 (Minn. Apr. 2, 2014). *Gretsch* is irrelevant to this case because it was not an eviction action. Accordingly, the Northwicks' arguments attacking the validity of the title and the foreclosure are outside the scope of this case.

Affirmed.