

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0763**

Landmark Community Bank, N.A.,
now doing business as Flagship Bank Minnesota,
Respondent,

vs.

James L. Lang,
Appellant.

**Filed March 7, 2022
Affirmed
Worke, Judge**

Pope County District Court
File No. 61-CV-20-370

Donald R. McNeil, Jeffrey A. Scott, Brian W. Varland, Heley, Duncan & Melander, PLLP,
Minneapolis, Minnesota (for respondent)

Michael C. Mahoney, Mahoney Lefky LLC, Wayzata, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Segal, Chief Judge; and Ross,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this appeal from summary judgment, appellant argues that the district court (1) erred in determining as a matter of law that the default judgment against him must be satisfied by a money payment by the judgment debtor; (2) erred by concluding that there are no genuine issues of material fact for trial; and (3) abused its discretion by denying his

motion for a continuance to conduct discovery. Because the district court did not err by granting summary judgment in favor of respondent and did not abuse its discretion by denying appellant's motion for a continuance, we affirm.

FACTS

In February 2008, appellant James L. Lang executed a mortgage and promissory note in favor of respondent Landmark Community Bank N.A. (Landmark) for \$1,300,000.¹ Lang secured the note with a mortgage on three properties located in Crow Wing and Aitkin Counties. In March, Landmark increased Lang's available credit by \$65,000 in exchange for the first mortgage on a property Lang owned in Pope County.

Lang defaulted on the note and Landmark commenced judicial foreclosure proceedings for the properties located in Crow Wing and Aitkin Counties. In October 2010, these properties sold at a foreclosure sale for \$916,000. Landmark began judicial foreclosure proceedings for Lang's Pope County property to satisfy the remaining debt.

In January 2011, the district court entered default judgment in favor of Landmark for the remaining note balance of \$143,473.40 and authorized the sale of the Pope County property with the proceeds to be placed toward the remaining debt. Lang's Pope County property was then sold at auction for \$75,950.38. The district court entered a deficiency judgment in favor of Landmark for the remaining \$75,114.91.

In June 2019, Lang moved the district court to vacate the default judgment. In September, the district court denied Lang's motion because the motion was not filed

¹ Landmark now conducts business as Flagship Bank Minnesota.

“within a reasonable time after entry of judgment.” Lang appealed, this court affirmed the default judgment, and the Minnesota Supreme Court denied Lang’s petition for further review. *Landmark Cmty. Bank, N.A. v. Lang*, No. A19-1718, 2020 WL 3635576 (Minn. App. July 6, 2020), *rev. denied* (Minn. Sept. 29, 2020).

In July 2020, Landmark filed a complaint in district court seeking to renew the default judgment against Lang. Landmark moved the district court for summary judgment. Lang then moved the district court for a continuance to complete discovery for the purpose of defending against Landmark’s pending summary-judgment motion.

Lang also submitted his opposition to Landmark’s summary-judgment motion arguing that the district court “should either continue the motion to permit [Lang] to conduct necessary discovery to defend the summary judgment motion . . . or deny the motion because of material fact disputes.”

In April 2021, the district court granted summary judgment in favor of Landmark and renewed the default judgment against Lang in the amount of \$151,003.92. In May, the district court docketed the judgment noting that “costs and interest will accrue on any money judgment amounts from the date of entry until the judgment is satisfied in full.” This appeal followed.

DECISION

Summary judgment

Summary judgment is appropriate only when “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. On appeal from summary judgment, this court reviews *de novo* whether there are

any genuine issues of material fact and whether the district court erred in applying the law. *Ruiz v. 1st Fid. Loan Servicing, LLC*, 829 N.W.2d 53, 56 (Minn. 2013). We must “view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

A genuine issue of material fact exists when there is sufficient evidence that could lead a rational trier of fact to find for the nonmoving party. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). To survive summary judgment, the nonmoving party must “extract specific, admissible facts from the record that demonstrate that a genuine issue of material facts exists.” *Beecroft v. Deutsche Bank Nat’l Tr. Co.*, 798 N.W.2d 78, 82 (Minn. App. 2011) (quotation omitted), *rev. denied* (Minn. July 19, 2011).

Money payment

Lang argues that the district court erred by concluding that a default judgment must be satisfied with a money payment by the judgment debtor. As stated above, a district court’s application of the law is reviewed de novo. *Ruiz*, 829 N.W.2d at 56.

The district court’s summary-judgment order provided that “[a] personal monetary judgment shall be entered . . . in favor of [Landmark], in [the] amount of \$75,114.91, plus statutory interest pursuant to Minnesota Statute § 549.09, subd. 1 (c)(2) . . . in the amount of \$75,012.01 . . . plus costs and disbursements of \$877.00, for a total judgment of \$151,003.92.” Under Minn. Stat. § 549.09, subd. 1(a) (2020), “[w]hen a judgment or award is for the recovery of money . . . interest from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator.”

Lang argues that because Minn. Stat. § 548.15, subd. 1(4) (2020), provides an alternative remedy to a monetary payment of a judgment the district court erred in determining satisfaction of the judgment required such a payment. However, this remedy requires that “an order of the court, made on motion, requiring the execution of a certificate of satisfaction, or directing satisfaction to be entered without it” be recorded with the court administrator. Minn. Stat. § 548.15, subd. 1(4). The record reveals that the district court was not moved for an order to execute a certificate of satisfaction, nor is there evidence of such an order being filed with the court administrator.

Under Minn. Stat. § 548.15, subd. 1(4), district courts are permitted to order the execution of a certificate of satisfaction or to direct that satisfaction be entered without a certificate, but they are not required to do so. We conclude that the district court did not err as a matter of law by determining that a monetary payment was required to satisfy the default judgment.

Satisfaction of default judgment

Lang argues that the district court erred in granting summary judgment in favor of Landmark because genuine issues of material fact exist whether the default judgment has been satisfied either in full, or in part. “We review a district court’s application of the law de novo.” *Harlow v. State Dep’t of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016).

As an initial matter, we emphasize that Landmark’s renewal action was authorized by law. “Under Minnesota law, a civil judgment survives for a period of ten years after entry of judgment.” *Dahlin v. Kroening*, 796 N.W.2d 503, 505 (Minn. 2011) (citing Minn. Stat. § 548.09, subd. 1 (2010)). But a party may renew a judgment by commencing a civil

action on that judgment within ten years of its entry. *Id.* (citing Minn. Stat. § 541.04 (2010)); *see also Shamrock Dev., Inc. v. Smith*, 737 N.W.2d 372, 376 (Minn. App. 2007) (*Shamrock I*) (explaining requirements for renewal-of-judgment action), *rev'd on other grounds*, 754 N.W.2d 377, 380 (Minn. 2008) (*Shamrock II*).

In September 2020, Landmark moved the district court to renew the default judgment in the amount of \$75,114.91 plus statutory interest. The parties agree that the district court entered a default judgment against Lang in January 2011 and that Landmark commenced its renewal action within ten years of the recorded default judgment. *See* Minn. Stat. § 548.09, subd. 1 (2020). The renewal action was therefore timely and authorized.

Turning to appellant's argument that there exists a genuine issue of material fact regarding whether he satisfied the judgment in part or in full, we note in the record an affidavit from Landmark's vice president stating that "[t]he judgment entered against [Lang] in the amount of \$75, 114.91 . . . has not been paid and remains unsatisfied." For a judgment to be satisfied, one of the following must be filed with the court administrator:

- (1) an execution satisfied, to the extent stated in the sheriff's return on it;
- (2) a certificate of satisfaction signed and acknowledged by the judgment creditor;
- (3) a like certificate signed and acknowledged by the attorney of the creditor . . . ;
- (4) an order of the court, made on motion, requiring the execution of a certificate of satisfaction, or directing satisfaction to be entered without it;
- (5) where a judgment is docketed on transcript, a copy of either of the foregoing documents, certified by the court administrator in which the judgment was originally entered and in which the originals were filed.

Minn. Stat. § 548.15, subd. 1 (2020). The record contains no evidence that any of these documents were filed. Lang provided no evidence that the debt had been satisfied, *see id.*, and thereby failed to carry his summary-judgment burden of “extract[ing] specific, admissible facts from the record” that demonstrate a genuine issue of material fact. *Beecroft*, 798 N.W.2d at 82. The district court therefore did not err as a matter of law by concluding that no genuine issue of material fact existed and ordering summary judgment on Landmark’s renewal action.

Discovery

Lang argues that the district court erred by denying his motion for a continuance to conduct additional discovery. The district court has wide discretion in granting or denying discovery requests, *Rice v. Perl*, 320 N.W.2d 407, 412 (Minn. 1982), and we will not disturb the district court’s order absent an abuse of discretion. *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45 (Minn. App. 2010). Nevertheless, discovery continuances should be liberally granted in the summary-judgment context. *Rice*, 320 N.W.2d at 412. In reviewing the district court’s order denying a discovery request, we are limited to “determining whether the district court made findings unsupported by the evidence or [improperly applied] the law.” *In re Comm’r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007).

At the summary-judgment stage, when the nonmoving party shows by affidavit that it cannot present facts essential to justify its opposition to a summary-judgment motion, the district court may, among other things, “allow time to obtain affidavits or to take discovery.” Minn. R. Civ. P. 56.04. The district court should consider two factors when considering a nonmoving party’s rule 56.04 continuance request: (1) whether the

nonmoving party has “been diligent in obtaining or seeking discovery,” and (2) whether the nonmoving party is “seeking further discovery in the good faith belief that material facts will be uncovered, or . . . merely engaging in a fishing expedition.” *Rice*, 320 N.W.2d at 412. But “if the discovery would not assist the district court or change the result of the summary judgment motion, the district court does not abuse its discretion by granting the summary judgment motion without granting the continuance.” *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass’n*, 778 N.W.2d 393, 400 (Minn. App. 2010).

Lang moved the district court for a continuance to conduct discovery to defend against Landmark’s summary-judgment motion. Lang provided affidavits in support of his discovery requests which, in part, focused on his need for any of Landmark’s records, documents, depositions, answers to interrogatories, and the names and locations of individuals with factual knowledge of Landmark’s transactions related to the sale of Lang’s real and personal property. *See Molde*, 781 N.W.2d at 45 (stating that an affidavit in favor of continuance “must be specific about the evidence expected, the source of discovery necessary to obtain the evidence, and the reasons for the failure to complete discovery to date”) (quotation omitted).²

The district court’s determination that Lang appeared to be diligent in his efforts seeking discovery, “but there is no good faith reason to believe that the discovery [Lang]

² At the time *Molde* was decided, the rule governing discovery continuances was numbered 56.06. In 2018, the supreme court promulgated amendments to the rules of civil procedure, which included rephrasing and renumbering the former rule 56.06 into the current rule 56.04. *Order Promulgating Amendments to the Rules of Civil Procedure*, No. ADM04-8001 (Minn. Mar. 13, 2018).

seeks will uncover material facts to oppose [Landmark's] summary judgment motion" is supported by the record. The district court noted that (1) Lang's discovery requests that were closely related to the values and sales of his real and personal property were likely intended to be used by Lang for "a collateral attack on the underlying judgment," (2) Lang's remaining discovery requests focused on alleged misconduct by Landmark that was unrelated to the renewal of default judgment. *See QBE Ins. Corp.*, 778 N.W.2d at 400. Because the district court's decision to grant Landmark's summary-judgment motion without additional discovery is supported by sufficient evidence and its interpretation of the law proper, we affirm.

Affirmed.