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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0003**

Wells Fargo Bank, N. A.,
Respondent,

vs.

Heather Rother,
Appellant,

Robert S. Rother, et al.,
Defendants.

**Filed August 27, 2012
Affirmed; motion to strike denied and motion to take judicial notice granted
Schellhas, Judge**

Hennepin County District Court
File No. 27-CV-HC-11-7708

Christopher Kalla, Usset, Weingarden & Liebo, P.L.L.P., Minneapolis, Minnesota (for
respondent)

Jeramie Richard Steinert, Steinert PA, Minneapolis, Minnesota; and

William Bernard Butler, Butler Liberty Law, LLC, Minneapolis, Minnesota (for
appellant)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

In this challenge to summary judgment granted in an eviction proceeding, appellant-foreclosed homeowner argues that the district court erred by (a) not staying an eviction proceeding pending a related federal court proceeding that challenged the validity of the foreclosure of her property and (b) granting sua sponte summary judgment in favor of respondent-bank. We affirm. We also deny appellant's motion to strike portions of respondent's appendix and grant respondent's motion to take judicial notice of a federal district court order related to the foreclosure of appellant's property.

FACTS

In 2007, appellant Heather Rother and defendant Robert Rother borrowed money from First Magnus Financial Corporation and, to secure the debt, granted a mortgage to Mortgage Electronic Registration Systems Inc. (MERS) "solely as a nominee for [First Magnus] and [First Magnus's] successors and assigns." MERS later assigned the mortgage to respondent Wells Fargo Bank, N.A. The Rothers defaulted on the mortgage, Wells Fargo foreclosed the mortgage, and the sheriff sold the property to Wells Fargo on December 7, 2010, subject to the Rothers' six-month redemption period. The Rothers did not redeem the property.

Meanwhile, appellant, Robert Rother, and six other plaintiffs commenced a lawsuit in state court against Wells Fargo and others.¹ The case (*Rother*) was removed to

¹ *Rother v. Wells Fargo Bank, N.A.*, No. 27-CV-11-12339.

federal court in June 2011.² In July 2011, while *Rother* was pending, Wells Fargo sought to evict the Rother, John Doe, and Mary Roe from the property, but the parties agreed to stay the eviction proceeding pending the resolution of *Rother*. For reasons not clear from the record before this court, in August 2011, the *Rother* plaintiffs voluntarily dismissed their case, and appellant and seven additional plaintiffs commenced a new lawsuit in state court against Wells Fargo and multiple other defendants.³ Like *Rother*, the case (*Pope*) also was removed to federal court.⁴

In December 2011, while *Pope* was pending, Wells Fargo again sought to evict the Rother, Doe, and Roe on the grounds that it had foreclosed a valid mortgage on the property; no one had redeemed the property from the foreclosure; Wells Fargo owned the property in fee simple and was entitled to possession; and the Rother, Doe, and Roe continued to occupy the property without any legal right to possession. Appellant answered, denying the validity of the mortgage assignment to Wells Fargo and the sheriff's sale of the property to Wells Fargo. At the eviction hearing, appellant moved the district court to stay the eviction proceeding on the basis that *Pope* was pending. She argued that *Pope* involved a quiet-title action in which the plaintiffs asserted that MERS did not have authority to assign its interest to Wells Fargo and that determining the extent of Wells Fargo's authority was necessary to a determination of the eviction action. The district court rejected appellant's argument, denied her motion to stay, and, on December 16, 2011, issued findings of fact, conclusions of law, order, and judgment, granting

² *Rother v. Wells Fargo Bank, N.A.*, No. 0:11-cv-01703.

³ *Pope v. Wells Fargo Bank, N.A.*, No. 27-CV-11-16073.

⁴ *Pope v. Wells Fargo Bank, N.A.*, No. 0:11-cv-02496.

judgment to Wells Fargo and issuing a writ of recovery of the property and an order to vacate.

This appeal follows.

DECISION

Denial of Motion to Stay of Eviction Proceeding

Appellant argues that the district court abused its discretion by denying her motion for a stay of the eviction proceeding because the outcome of the eviction proceeding could have collaterally estopped her in another civil action. Rother's argument is unpersuasive.

An eviction proceeding is “a summary court proceeding to remove a[n] . . . occupant from or otherwise recover possession of real property.” Minn. Stat. § 504B.001, subd. 4 (2010). “A party is not entitled to a stay of an eviction proceeding merely because a related action is pending.” *Fed. Home Loan Mortg. Corp. v. Nedashkovskiy*, 801 N.W.2d 190, 193 (Minn. App. 2011). Instead, the party must show “a case-specific reason why a stay [is] appropriate or necessary to protect [the party's] interests,” and “even when such a showing is made, the decision whether to grant the stay is entrusted to the district court's discretion.” *Id.* But “when the counterclaims and defenses are necessary to a fair determination of the eviction action, it is an abuse of discretion not to grant a stay of the eviction proceeding when an alternate civil action that involves those counterclaims and defenses is pending.” *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312, 318–19 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008).

In the eviction proceeding in this case, Wells Fargo merely sought possession of the property, not an adjudication of title ownership. Among other things, collateral estoppel requires that the issue being litigated “be identical to one in a prior adjudication,” *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004) (quotation omitted), and “necessary and essential to the former resulting judgment,” *In re Panel Case No. 17289*, 669 N.W.2d 898, 905 (Minn. 2003) (quotation omitted). Under the eviction statute, a person may be evicted if she “holds over real property . . . after the expiration of the time for redemption on foreclosure of a mortgage.” Minn. Stat. § 504B.285, subd. 1(1)(ii) (2010). The eviction statute does not require a determination on the validity of the foreclosure. *See Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 357 (Minn. App. 2006) (stating that generally eviction proceedings do not “address matters other than the immediate right to possession of the property”). Here, the validity of the foreclosure was neither litigated in the eviction proceeding nor necessary or essential to the district court’s decision.⁵ Therefore, appellant’s collateral-estoppel argument is meritless.

Appellant also argues that the district court abused its discretion by denying her motion to stay because resolution of the claims in *Pope* was necessary to a fair determination of the eviction proceeding. In *Pope*, the plaintiffs argued that Wells Fargo and the other defendants did not own the promissory notes secured by plaintiffs’

⁵ On May 23, 2012, the federal district court dismissed the plaintiffs’ claims with prejudice, and we note that the court never mentioned Wells Fargo’s eviction proceeding or the outcome. *Pope v. Wells Fargo, N.A.*, Civ. No. 11-2496, 2012 WL 1886493, at *3–*4, *6 (D. Minn. May 23, 2012).

properties and therefore could not foreclose. 2012 WL 1886493, at *3. Appellant argues that “a void foreclosure sale offers a direct defense to the eviction proceeding because it directly refutes the elements comprising a claim for possession.” Wells Fargo argues that resolution of the claims in *Pope* was not necessary for a fair determination in the eviction proceeding because the plaintiffs’ claims in *Pope* were meritless. We agree with Wells Fargo. The Minnesota Supreme Court and the Eighth Circuit have soundly rejected the *Pope* plaintiffs’ argument. *See Jackson v. Mortg. Elec. Registration Sys., Inc.*, 770 N.W.2d 487, 490, 497–501 (Minn. 2009) (noting the ability to separate ownership of a note from ownership of an associated security instrument, the related ability to separate ownership of the equitable and legal interests in a security instrument, and the fact that when the ownership of the equitable and legal interests in a security instrument are separated, the power to foreclose follows the legal title to the security instrument); *Stein v. Chase Home Fin., LLC*, 662 F.3d 976, 980 (8th Cir. 2011) (relying on *Jackson* and noting that bank was entitled to commence a foreclosure by advertisement under Minnesota law even if another entity held the promissory note).

We conclude that the district court did not abuse its broad discretion by denying appellant’s motion to stay the eviction proceeding. *See Fed. Home Loan Mortg. Corp.*, 801 N.W.2d at 193 (“A party is not entitled to a stay of an eviction proceeding merely because a related action is pending.”).

Grant of Summary Judgment to Wells Fargo

Appellant argues that the district court erred by sua sponte granting summary judgment to Wells Fargo. Appellate courts “review a district court’s decision to grant

summary judgment to determine (1) whether any issues of material fact exist, and (2) whether the district court misapplied the law to the facts.” *Bearder v. State*, 806 N.W.2d 766, 770 (Minn. 2011).

Appellant argues that the district court lacked jurisdiction to consider the summary-judgment motion because Wells Fargo did not provide her notice of the motion, as required by Minn. R. Civ. P. 56.03 and Minn. Gen. R. Prac. 115, and that she was prejudiced by the lack of notice. Appellant’s argument is unavailing for three reasons. First, the rules that govern housing court in Hennepin and Ramsey Counties expressly exempt motions made in housing court from the time periods provided in the Minnesota Rules of Civil Procedure. Minn. Gen. R. Prac. 610. Second, the eviction statute itself requires the district court to “hear and decide the action” at “the court appearance specified in the summons” unless the district court “grants a continuance.” Minn. Stat. § 504B.335(a) (2010). Third,

[t]he district court has the authority to grant summary judgment, sua sponte, when (a) no genuine issues of material fact remain, (b) one of the parties deserves judgment as a matter of law, and (c) the absence of a formal motion creates no prejudice to the party against whom summary judgment is granted.

Hebrink v. Farm Bureau Life Ins. Co., 664 N.W.2d 414, 419 (Minn. App. 2003).

With respect to the district court’s grant of summary judgment to Wells Fargo, the eviction statute allows a person to be evicted if she “holds over real property . . . after the expiration of the time for redemption on foreclosure of a mortgage.” Minn. Stat. § 504B.285, subd. 1(1)(ii). Wells Fargo foreclosed appellant’s property by advertisement,

a process governed by Minn. Stat. §§ 580.01–.30 (2010), and obtained a sheriff’s certificate. A “certificate of sale,” i.e., sheriff’s certificate, is the record of sale in a foreclosure by advertisement. Minn. Stat. § 580.12.

When so recorded, upon expiration of the time for redemption, the certificate 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 at the date of such mortgage, *without any other conveyance*.

Id. (emphasis added).

Every 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, the purchaser’s heirs or assigns, after the time for redemption therefrom has expired.

Minn. Stat. § 580.19 (emphasis added). Wells Fargo attached to its eviction complaint its sheriff’s certificate to the property. The certificate showed that the property mortgaged by the Rothers was sold to Wells Fargo on December 7, 2010, and that the redemption period was six months from the date of sale. Wells Fargo also attached to its eviction complaint a document showing that the sheriff’s certificate was recorded against the property on December 15, 2010.

At the eviction hearing, appellant did not deny that she was in default on her mortgage in December 2010 or that she had not redeemed the property from the foreclosure. Appellant now argues that two issues precluded summary judgment: (1) the role of Selene Finance in the eviction proceeding and (2) the validity of the mortgage

assignment from MERS to Wells Fargo because it allegedly was “robo-sign[ed].” Appellant’s arguments are unsupported assertions or otherwise insufficient to rebut the presumptions of compliance with the legal requirements of conveyance established by chapter 580. And, regarding Selene Finance, the only information in the record of Selene Finance’s role in the eviction proceeding is Wells Fargo’s statement at the hearing that “Selene Finance is the entity that was servicing for Wells Fargo . . . [a]nd so their relationship with Wells Fargo is one of privity.” As to appellant’s “robo-sign[ing]” argument, we again note that generally eviction proceedings are confined to issues pertaining to possession. *Real Estate Equity Strategies, LLC*, 720 N.W.2d at 357. Moreover, appellant did not present the district court with any evidence that the signature on the mortgage assignment was the product of “robo-sign[ing].” Instead, she stated at the eviction hearing that she would subpoena the person whose signature appears on the assignment to come to court to “validate her assignment.”

We conclude that the record shows that no genuine issues of material fact exist and that Wells Fargo was entitled to possession of the property. The district court did not err by granting sua sponte summary judgment to Wells Fargo.

In her brief under the heading, “Specific Challenges,” appellant sets forth multiple paragraphs from the district court’s order, but appellant does not support her challenges with argument or authority, and no prejudicial error is obvious. We therefore do not address the challenges on appeal. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be

considered on appeal unless prejudicial error is obvious on mere inspection.” (quotation omitted)).

Motions on Appeal

Appellant moved this court to strike portions of Wells Fargo’s brief and appendix, which included mortgage and loan documents related to the property, along with district court documents. Although appellate courts normally do not consider documents not filed in the district court, we may do so “when the evidence is documentary evidence of a conclusive nature (uncontroverted) which supports the result obtained in the lower court.” *In re Livingood*, 594 N.W.2d 889, 895–96 (Minn. 1999) (quotation omitted). Because the challenged documents are uncontroverted matters of public record that are offered to affirm the district court, we deny appellant’s motion to strike.

Wells Fargo moved this court to take judicial notice of the federal district court’s order in *Pope*, 2012 WL 1886493. We grant Wells Fargo’s motion and take judicial notice of the order because it is a public record. *See Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 529–30 (Minn. 2010) (taking judicial notice of the development authority’s enabling resolution as a matter of public record).

Affirmed; motion to strike denied and motion to take judicial notice granted.