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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0415**

CitiMortgage, Inc.,
Respondent,

vs.

Andrew McGlory, et al.,
Appellants,

John Doe, et al.,
Defendants.

**Filed August 27, 2012
Affirmed
Cleary, Judge**

Hennepin County District Court
File No. 27-CV-HC-12-790

Jared D. Kemper, Thomas J. Lallier, Jeffrey D. Klobucar, Foley & Mansfield, P.L.L.P.,
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Considered and decided by Stauber, Presiding Judge; Cleary, Judge; and
Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CLEARY, Judge

Following a mortgage foreclosure and sheriff's sale, respondent initiated this eviction action, and the district court issued summary judgment in favor of respondent. Appellants argue that the district court lacked the authority to issue summary judgment and that it erred by granting summary judgment for respondent. We affirm.

FACTS

In November 2002, appellants Andrew and Carmita McGlory executed a note for a loan in favor of American Summit Lending Corporation. The loan was secured by a mortgage on real property located in Minneapolis. Respondent CitiMortgage Inc. has alleged that it is the successor-by-merger of CitiFinancial Mortgage Company Inc., a company that was allegedly assigned the mortgage in May 2003.

Appellants subsequently fell behind on their mortgage payments, and the parties entered into a forbearance agreement in September 2009. The agreement was cancelled when appellants failed to adhere to its terms. Appellants allege that the parties entered into a second forbearance agreement in May 2011. Respondent alleges that it did not sign a second forbearance agreement and that, even if a second agreement did exist, appellants failed to adhere to the terms of that agreement.

Respondent commenced a foreclosure-by-advertisement proceeding, and a sheriff's sale of the property was held in July 2011. A Sheriff's Certificate of Sale was completed showing that respondent was the successful bidder at the sale. Appellants did not redeem the property during the six-month redemption period.

Appellants continued to possess the property, and respondent commenced this eviction action. When a hearing was held in district court, respondent moved for summary judgment. The court then gave appellants until the following morning to respond to the motion. Appellants submitted a letter brief arguing that court rules delineating timelines for summary-judgment motions had not been followed. Appellants also argued that respondent could not prove the allegations in the complaint, that the foreclosure was void, that respondent did not have standing in the matter and was not the real party in interest, and that summary judgment was therefore inappropriate.

The district court issued summary judgment in favor of respondent. The court determined that there was no evidence in the record to support appellants' assertion that there was a current, enforceable forbearance agreement in place. The court also determined that respondent had produced prima facie evidence that it was entitled to possession of the property and stated that there were no material issues of fact for trial in this eviction action, where only possession of the property was at issue. This appeal followed.

DECISION

I

Appellants argue that the district court lacked the authority to issue summary judgment because court rules that delineate timelines for summary-judgment motions were not followed. An appellate court reviews the construction and application of procedural rules de novo. *St. Croix Dev., LLC v. Gossman*, 735 N.W.2d 320, 324 (Minn. 2007). The reviewing court does not read the rules in isolation, but reads them “in light

of one another, interpreting them according to their purpose.” *Mingen v. Mingen*, 679 N.W.2d 724, 727 (Minn. 2004).

Title VII of the Minnesota General Rules of Practice for the District Courts sets forth rules for housing court in Hennepin and Ramsey counties. Minn. R. Gen. Pract. 601 states, “In Hennepin and Ramsey Counties, Rules 601 through 612 apply to all proceedings in Housing Court. These rules and, where not inconsistent, the Minnesota Rules of Civil Procedure, shall apply to housing court practice except where they are in conflict with applicable statutes.” Minn. R. Gen. Pract. 610 addresses motions in housing court, stating:

Any motion otherwise allowed by the Minnesota Rules of Civil Procedure may be made by any party orally or in writing *at any time* including the day of trial. Whenever possible, oral or written notice of any dispositive motions and the grounds therefore shall be provided by the moving party to all parties prior to the hearing.

All motions shall be heard by the court *as soon as practicable*. The court may grant a request by any party for time to prepare a response to any motion for good cause shown by the requesting party or by agreement of the parties.

The requirements of service of notice of motions and any time periods set forth in the Minnesota Rules of Civil Procedure do not apply.

(Emphasis added.)

Appellants claim that the district court lacked the authority to issue summary judgment because provisions of the Minnesota Rules of Civil Procedure and General Rules of Practice that address timing for bringing a motion for summary judgment were not followed. *See* Minn. R. Civ. P. 56.01 (“A party seeking to recover upon a claim . . .

may, at any time after the expiration of 20 days from the service of the summons . . . move with or without supporting affidavits for a summary judgment in the party’s favor upon all or any part thereof.”); Minn. R. Civ. P. 56.03 (“Service and filing of the [summary-judgment] motion shall comply with the requirements of Rule 115.03 of the General Rules of Practice for the District Courts, provided that in no event shall the motion be served less than 10 days before the time fixed for the hearing.”); Minn. R. Gen. Pract. 115.03(a) (“No motion shall be heard until the moving party pays any required motion filing fee, serves a copy of the following documents on opposing counsel, and files the original with the court administrator at least 28 days prior to the hearing . . .”). However, Minn. R. Gen. Pract. 610 applies specifically to motions brought in housing court in Hennepin and Ramsey counties and expressly states that motions in housing court may be made at any time, that motions shall be heard by the court as soon as practicable, and that service-of-notice and time-period requirements do not apply. The district court did not fail to follow applicable court rules regarding summary-judgment timelines.¹

¹ At oral argument, appellants argued that Minn. R. Gen. Pract. 610 violates equal protection by superseding the Rules of Civil Procedure in housing court in only Hennepin and Ramsey counties, while people before housing court in other counties continue to receive the protections that those rules provide. This argument was not raised before the district court and was not briefed to this court, and therefore we decline to address it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it.”) (quotation omitted); *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that an issue not argued in the appellate briefs is deemed waived).

II

Appellants argue that the district court erred by granting summary judgment because respondent failed to make a prima facie showing that it was entitled to summary judgment and because genuine issues of material fact preclude summary judgment. A district court's summary-judgment decision is reviewed de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "On an appeal from summary judgment, the role of the reviewing court is to review the record for the purpose of answering two questions: (1) whether there are any genuine issues of material fact to be determined, and (2) whether the [district] court erred in its application of the law." *Offerdahl v. Univ. of Minn. Hosps. & Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). The reviewing court may not weigh the evidence or make factual determinations, but must consider the evidence in the light most favorable to the nonmoving party. *McIntosh Cnty. Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538, 545 (Minn. 2008).

A motion for summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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. "The party moving for summary judgment has the burden to show that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). However, a party opposing summary judgment "may not rest upon the mere averments or denials of the

adverse party's pleading but must present specific facts showing that there is a genuine issue for trial." Minn. R. Civ. P. 56.05.

An eviction proceeding is a "summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property by the process of law." Minn. Stat. § 504B.001, subd. 4 (2010). A person entitled to the premises may recover possession by eviction when any person holds over real property after the expiration of the time for redemption on foreclosure of a mortgage. Minn. Stat. § 504B.285, subd. 1 (2010). An eviction proceeding "merely determines the right to present possession and does not adjudicate the ultimate legal or equitable rights of ownership possessed by the parties. It is not a bar to an action involving the title." *Dahlberg v. Young*, 231 Minn. 60, 68, 42 N.W.2d 570, 576 (1950); *see also Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444 (Minn. App. 2001) (reviewing an eviction proceeding and upholding the district court's dismissal of defenses and counterclaims that challenged the underlying mortgage foreclosure because the appellants had alternative procedures available to challenge the foreclosure and title of the real property in dispute). In an eviction proceeding, "generally the only issue for determination is whether the facts alleged in the complaint are true." *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003).

Upon expiration of the statutory redemption period, a registered certificate of sale "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." Minn. Stat. § 580.12 (2010).

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 (2010).

To succeed in this eviction action, respondent only needed to prove that a foreclosure of the mortgage on the property occurred, that the time for redemption expired, that respondent was entitled to possession of the property, and that appellants held over the property. *See* Minn. Stat. § 504B.285, subd. 1. Appellants do not dispute that they defaulted on the mortgage, did not redeem within the redemption period, and maintained possession of the property after expiration of that period. The Sheriff's Certificate of Sale is prima facie evidence that a foreclosure occurred, that a foreclosure sale was held, that respondent was the successful bidder at that sale, and that respondent is therefore entitled to possession of the property. Appellants did not produce anything to rebut this evidence and did not establish that there was a genuine issue of material fact for trial.

Appellants claim that the Certificate of Title, which lists them as the fee-simple owners of the property, rebuts the evidence that respondent is entitled to possession of the property. However, the memorials on the Certificate of Title recite that the Sheriff's Certificate of Sale was registered and that it runs in favor of respondent. Changing the ownership line on the Certificate of Title will require a separate proceeding, during which title of the property will be determined. *See generally* Minn. Stat. § 508.01 to .84 (2010)

(setting forth the process for registration of Torrens property). Appellants have cited no authority that states that this change must be completed before respondent may gain possession through an eviction proceeding. *See* Minn. Stat. § 508.58, subd. 1 (“Any person who has, by an action or other proceeding to enforce or foreclose a mortgage, lien, or other charge upon registered land, become the owner in fee of the land, or any part thereof, may have the title registered.”); *Bestrom v. Bankers Trust Co.*, 114 F.3d 741, 745 (8th Cir. 1997) (stating that, under Minnesota law, “even if the purchaser [at a foreclosure sale] has not acquired a new certificate of title, the purchaser already possesses legal title to the property. Title fully vests when the statutory redemption period expires.”).

Appellants argue that there are genuine issues of material fact regarding the title of the property, the validity of mortgage assignments, and the validity of the foreclosure. However, these issues are not properly presented in an eviction action, where the only determination to be made is which party is entitled to present possession of the property. *See Dahlberg*, 231 Minn. at 68, 42 N.W.2d at 576. Appellants have alternative procedures available to challenge the foreclosure and dispute title, such as actions to set aside the foreclosure and to quiet title. The district court did not err by issuing summary judgment in favor of respondent.

Affirmed.