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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0425**

The Bank of New York Mellon
f/k/a The Bank of New York,
as Trustee for the Certificate holders of CWABS, Inc.,
Asset-Backed Certificates, Series 2006-21,
Respondent,

vs.

Jeannie Ball,
Appellant,

Midland Funding, LLC, et al.,
Defendants

**Filed December 26, 2017
Affirmed
Worke, Judge**

St. Louis County District Court
File No. 69DU-CV-16-664

Amanda Govze, David R. Mortensen, Shapiro & Zielke, LLP, Burnsville, Minnesota (for respondent)

Jeannie Ball, Duluth, Minnesota (pro se appellant)

Considered and decided by Worke, Presiding Judge; Rodenberg, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

WORKE, Judge

In this judicial-foreclosure action, appellant argues that the district court erred in granting summary judgment in favor of respondent, denying her motion to remove the action from the expedited litigation track (ELT), and denying her a continuance. We affirm.

FACTS

Appellant Jeannie Ball owns three parcels of land—A, B, and C. Ball’s residence straddles the parcels; parcel B is in the middle. In 2006, Ball executed a mortgage that secured a promissory note. The mortgage was recorded against parcels A and C, but the legal description on the mortgage excluded parcel B. In 2016, respondent The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificate holders of CWABS, Inc., Asset-Backed Certificates, Series 2006-21 (the bank) commenced a foreclosure action after Ball allegedly defaulted on the terms of the note and mortgage. The bank also sought to reform the mortgage.

Both parties moved for summary judgment. During a telephone hearing, the bank argued that the mortgage should be reformed because the legal description on the mortgage failed to include the “middle of the house.” The bank proffered evidence to show that the parties intended to encumber the entire home. Ball’s attorney challenged the bank’s request to reform the mortgage and the amount the bank claimed that she owed.

The district court denied Ball’s motion for summary judgment and granted the bank’s motion for summary judgment. This appeal followed.

DECISION

Summary judgment

Ball challenges the district court's grant of summary judgment to the bank. This court "review[s] a district court's summary judgment decision de novo. In doing so, [this court] determine[s] whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with [any] affidavits . . . 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. A genuine issue of fact exists when reasonable minds can draw different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

Ball claims that summary judgment was not appropriate and that the district court should not have reformed the mortgage because the bank "breached [the] contract by not curing [the] defect for years after [she] brought [it] to their attention." But Ball's claim that the bank waited until the foreclosure action to reform the mortgage despite knowledge of the defect does not support a conclusion that the district court erred in granting the bank's request to reform the mortgage.

"Reformation is an equitable remedy that is available when a party seeks to alter or amend language in a contract so that the contract reflects the parties' true intent when they

entered into the contract.” *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011). Reformation of a contract is appropriate when:

(1) there was a valid agreement between the parties expressing their real intentions; (2) the written instrument failed to express the real intentions of the parties; and (3) this failure was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party.

Id. at 865 (quotation omitted). First, there is no dispute that there is a valid mortgage contract. Second, the mortgage failed to include parcel B in the property’s legal description, and Ball concedes that there was a “defect” in the legal description on the mortgage. Third, the record shows that Ball intended for parcel B to be included in the legal description on the mortgage.

The mortgage includes the entire home address, which includes parcel B. Ball’s loan application includes the entire property, identified by its address. Ball indicated on her application that she applied for a conventional mortgage; she did not indicate her intent to apply for a mortgage that encumbered only two-thirds of her property. The application required Ball to provide the “subject property address,” and she provided the full address of the property that includes parcel B. Simply put, there is nothing on Ball’s loan application that suggests that she intended to include only parcels A and C. Additionally, Ball’s home was appraised during the loan-approval process and the entire residence was valued; thus, the appraised value includes parcel B. Finally, Ball filed for bankruptcy and her bankruptcy filing indicated that the entire property is encumbered by the mortgage.

The district court appropriately reformed the mortgage contract to reflect the parties' intent when they entered into the agreement.

Ball also argues that the district court erred by not ordering the bank to verify the principal balance, claiming that the amount that the bank alleged that she owes "does not match documents of evidence she has [in] a big box." But the bank provided evidence of the amount owing and Ball failed to provide evidence of payment. Further, Ball asserted in a September 13, 2011 letter to Bank of America that she had been unemployed "for some time" and believed that by December 2011 she would "be able to start to make affordable payment[s]" on her mortgage. This letter demonstrates that Ball stopped making mortgage payments and suggested that her future payments may be less than the installment amounts due. Ball has not adequately challenged the amount the bank claims that she owes. Because there is no genuine issue of material fact and the bank is entitled to a judgment as a matter of law, the district court did not err in granting the bank's motion for summary judgment.

ELT

Ball also argues that the case should have been removed from the ELT. This court reviews the application of procedural rules de novo. *See Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008).

The purpose of the ELT is to promote efficient processing of certain civil cases and reduce costs. Spec. R. Pract., First Jud. Dist., preface. Certain actions receive mandatory assignment to the ELT. Spec. R. Pract., First Jud. Dist. 1(a). "[A]ll civil matters having the case type indicator . . . [o]ther [c]ivil" shall be assigned to the ELT. *Id.* 1(b)(1). The

bank filed a complaint with case-type header other civil—foreclosure; thus, the district court properly assigned the case to the ELT.

A party may object to an ELT assignment. *Id.* 1(c). In ruling on a motion to remove a case from the ELT, a district court should consider factors, including: multiple parties or claims, multiple or complex theories of liability or damages, complicated facts that require discovery options, substantial likelihood of dispositive motions, or any factor showing that the ELT would substantially affect a fair and just resolution. *Id.*

Ball timely objected to the ELT assignment, arguing that the case included multiple claims—reformation and foreclosure—and the bank sought a monetary judgment in excess of the ELT threshold. The district court, in its order granting the bank’s motion for summary judgment, stated: “Based upon the Court’s ruling on the . . . issues, . . . Ball’s motion for removal [from the ELT] is moot. . . . [And] must be denied.”

The district court appropriately denied Ball’s motion to remove the case from the ELT. First, it was a mandatory assignment and the district court noted that “this kind of case is exactly why [the] ELT was . . . adopted into the [r]ules.” Second, Ball claims that the case was complex and required discovery to prove the amount that the bank claimed that she owed. The bank provided evidence of the amount owed. Ball claims that the amount that the bank alleged that she owes “does not match documents of evidence she has [in] a big box.” But Ball did not provide this evidence and could have provided it without discovery. Moreover, the district court’s ruling on the summary-judgment motions rendered the ELT assignment moot.

Continuance

Finally, Ball argues that the district court should have granted her a continuance. The decision to deny a continuance is discretionary, and the ruling will not be reversed absent a clear abuse of discretion. *Chahla v. City of St. Paul*, 507 N.W.2d 29, 31 (Minn. App. 1993), *review denied* (Minn. Dec. 14, 1993). “The test is whether a denial prejudices the outcome of the trial.” *Id.* at 32.

During a case-management conference held via telephone, the district court stated that it received a note that “Ball . . . was seen at the clinic today for a medical appointment and is not able to attend a court hearing due to illness.” The district court noted that the note did not say that Ball could not pick up a telephone and participate. Ball’s attorney stated that she did not know how to proceed because Ball directed her to “withdraw” from representation if the hearing was held without Ball’s presence. The district court stated:

[Y]ou’ve already done the lion’s share of the work. The legal arguments relative to the motions . . . have already been made in writing. . . . [B]oth parties have had full and ample opportunity to brief the legal issues[.] . . . [If Ball were present] she wouldn’t be arguing, . . . she’s not a lawyer[.] . . . [T]here is no withdrawal in front of me. Nothing has been filed. I have not heard from [Ball] in any way. . . . I see no reason why this matter should not move forward. . . . We are going to go through the documents . . . [and] the arguments of the attorneys, and we are going to make decisions based upon the law, not whether or not Ms. Ball is here or not. . . . [G]iven the information provided by the medical provider, and given the fact that this wasn’t sent in until long after noon today, I have no reason to grant a continuance . . . so we’re going to move forward with the motions.

The district court did not abuse its discretion by denying Ball a continuance. First, the letter arrived the day of the telephone conference. Second, the district court noted that

nothing in the letter stated that Ball was unable to participate via telephone. Third, the district court stated that Ball would not present argument because she is not an attorney and her attorney was prepared to argue the motions. The district court was not inclined to grant a continuance because the legal arguments were briefed. Further, Ball fails to argue in her brief to this court how the denial prejudiced the outcome. Based on the record, the district court did not abuse its discretion by denying Ball a continuance.

Affirmed.