STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1605

ATP Holdings, LLC,
Respondent,

vs.

Curtis Trude,
Appellant,

Martha Peterson,
Defendant.

Filed July 2, 2018
Affirmed
Johnson, Judge

Meeker County District Court
File No. 47-CV-17-756

Douglass E. Turner, Christopher T. Kalla, Hanbery & Turner, P.A., Minneapolis, Minnesota (for respondent)

Curtis Trude, Litchfield, Minnesota (*pro se* appellant)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Smith, Judge.

U N P U B L I S H E D   O P I N I O N

JOHNSON, Judge

This is an eviction case. Appellant challenges the eviction on the grounds that, first, the predecessor-in-interest of the party seeking eviction did not acquire a valid interest in the property in a mortgage foreclosure sale and, second, he was not properly served with the notice of the foreclosure sale. We affirm.

FACTS

This action concerns a 28.15-acre parcel of property in Meeker County. The property previously was owned by Charles D. Peterson and Martha M. Peterson, who granted two mortgages on the property to State Bank of Eden Valley. The Petersons executed the first mortgage on the property in June 2005, and it was recorded in early July 2005. The Petersons executed the second mortgage on the property in April 2009, and it was recorded later that month.

In November 2011, the Petersons defaulted on the loan secured by the second mortgage. The bank initiated a foreclosure by advertisement. *See* Minn. Stat. § 580.02 (2016). The bank gave the Petersons notice that the amount due on the loan was $81,734.54. On December 29, 2011, the bank purchased the property at a foreclosure sale for $84,201.35. Three days later, the Petersons conveyed their interest in the property to Curtis Trude by quit-claim deed. On January 24, 2012, Trude timely redeemed by giving the county sheriff's office a cashier's check for $84,969.24.

In June 2012, Trude defaulted on the loan secured by the first mortgage. The bank initiated another foreclosure by advertisement. *See* Minn. Stat. § 580.02. The bank gave Trude notice that the amount due on the loan was $356,771.43. On August 9, 2012, the bank purchased the property at a foreclosure sale for $361,652.76. Trude did not redeem within the six-month redemption period.

In March 2013, the bank conveyed the property to Trude by a contract for deed. The purchase price was $379,911.79, to be paid by December 15, 2014. The contract for deed was recorded later that month.

Trude did not fulfill the terms of the contract for deed. In February 2015, the bank served Trude with a notice of cancellation of the contract for deed. The notice stated that Trude was in default for his "failure to pay principal and interest due at maturity on December 15, 2014, in the amount of $274,419.78, plus additional late fees and charges in the amount of $29,679.70 as of February 9, 2015." Trude did not redeem within the 60-day redemption period.

Trude did not vacate the property. In July 2015, the bank commenced an eviction action to oust him. The district court held a hearing on July 14, 2015. The district court found that Trude was in default because he did not appear at the hearing. The district also found, by a preponderance of the evidence, that Trude did not vacate the property after notice was given, that he defaulted on the contract for deed, and that he was a holdover tenant. The district court entered judgment in favor of the bank and issued a writ of recovery. Trude did not appeal.

In February 2017, the bank (now known, after a merger, as the Farmers and Merchants State Bank of Pierz) conveyed its interest in the property to ATP Holdings, LLC. In August 2017, ATP commenced a second eviction action against Trude. Later that month, ATP moved for summary judgment and requested an immediate writ of recovery. After a hearing, the district court granted ATP's motion, entered judgment for ATP, and issued a writ of recovery. The district court later filed an order with additional findings of fact and a supplemental memorandum. Trude appeals.

D E C I S I O N

Trude argues that the district court erred by granting ATP's motion for summary judgment. A district court must grant a motion for summary judgment "if 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. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to the district court's legal conclusions on summary judgment and views the evidence in the light most favorable to the party against whom the motion was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). We note that a summary-judgment motion may have been unnecessary in this case because an eviction action is "a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property." Minn. Stat. § 504B.001, subd. 4 (2016); *see also Federal Home Loan Mortg. Corp. v. Mitchell*, 862 N.W.2d 67, 72 (Minn. App. 2015), *review denied* (Minn. June 30, 2015). A summary-judgment motion may be useful in obtaining an earlier resolution. But if there are genuine issues of material fact, either party has a right to a jury trial. *See* Minn. Stat. § 504B.335 (2016).

Trude makes two arguments. First, he argues that ATP does not have an interest in the property because ATP's predecessor-in-interest, the bank, forfeited its right to foreclose on the first mortgage, the senior mortgage, by not bidding at the foreclosure sale on the second mortgage, the junior mortgage. Second, Trude argues that the December 2011 foreclosure sale is void on the ground that ATP's predecessor-in-interest, the bank, did not properly serve him with notice of the foreclosure sale. In response, ATP argues that Trude's arguments are barred by the statute of limitations and the doctrines of *res judicata* and collateral estoppel and that the district court's decision is correct.

We note that Trude essentially asks this court to conclude that ATP did not acquire valid title to the property from the bank, making the first and second eviction actions void. We recognize that this argument goes beyond the narrow scope of an eviction action. An eviction action "merely determines the right to present possession." *Dahlberg v. Young*, 231 Minn. 60, 68, 42 N.W.2d. 570, 576 (1950). An eviction action "is not a bar to an action involving the title" and "does not adjudicate the ultimate legal or equitable rights of ownership possessed by the parties." *Id.* Nonetheless, the district court considered the issues raised by Trude's arguments, and the parties have fully briefed the issues to this court, so we will proceed to resolve the parties' dispute.

I.

Trude first argues that ATP does not have an interest in the property because ATP's predecessor-in-interest, the bank, forfeited its right to foreclose on the first mortgage, the senior mortgage, by not bidding at the foreclosure sale on the second mortgage, the junior mortgage. Trude contends that when the bank purchased the property at the foreclosure sale, its ownership interest merged with its interest in the senior mortgage, thereby extinguishing the senior mortgage. The district court rejected this argument on the ground that Trude's redemption of the property "annulled the foreclosure sale," leaving "no obligation by a senior creditor . . . to redeem." The district court also reasoned that the cancellation of the contract for deed was upheld in the prior eviction action and that ATP was the owner of record.

Trude's first argument is governed by a statute that provides, in relevant part, as follows:

> *If no redemption is made by the mortgagor, the mortgagor's personal representatives or assigns,* the most senior creditor having a legal or equitable lien upon the mortgaged premises, or some part of it, subsequent to the foreclosed mortgage, may redeem within seven days after the expiration of the redemption period determined under section 580.23 or 582.032, whichever is applicable; and each subsequent creditor having a lien may redeem, in the order of priority of their respective liens, within seven days after the time allowed the prior lienholder by paying the amount required under this section.

Minn. Stat. § 580.24(a) (2016) (emphasis added). A mortgagor and his personal representatives and assigns have the first opportunity to redeem after a mortgage foreclosure sale. *Farmers & Merchants Bank v. Junge*, 458 N.W.2d 698, 700 (Minn. App. 1990). When the mortgagor's redemption period expires, *junior* creditors have a statutory right of redemption, if certain conditions are satisfied. Minn. Stat. § 580.24(a).

In this case, Trude was an assignee of the mortgagor. The certificate of redemption states, "Charles Peterson and Martha Peterson are the mortgagors who have assigned their interest in such property, including their equity or redemption, to Curtis Trude." The certificate also states that Trude's redemption of the junior mortgage derives from "two (2) quit claim deeds . . . executed by Charles Peterson and Martha Peterson and naming redemptioner, Curtis Trude as the *grantee* of such properties." Accordingly, when Trude redeemed the property, he did so as the owner of the property, not as a creditor. *See Farmers*, 458 N.W.2d at 700 (defining "owner" of real property).

This distinction is relevant because a redemption of a foreclosed property by the owner "annuls the [foreclosure] sale." Minn. Stat. § 580.27 (2016). When Trude redeemed the property as the owner, the bank's purchase of the property at the foreclosure sale on the junior mortgage became null and void. *See Farmers*, 458 N.W.2d at 700 (holding "title is not acquired until all rights of redemption have expired"); *see also In re Hecker*, 496 B.R. 541, 545 n.9 (B.A.P. 8th Cir. 1986). Because the condition stated in the first clause of section 580.24 was not satisfied, other creditors were unable to redeem. *See* Minn. Stat. § 580.24(a). Thus, contrary to Trude's argument, the bank did not have an obligation to redeem under the senior mortgage.

Trude further contends that, when the bank purchased the property at the foreclosure sale, its ownership interest merged with its interest in the senior mortgage, thereby extinguishing the senior mortgage. A mortgage foreclosure sale is intended "to terminate all interests *junior* to the mortgage being foreclosed and provide the sale purchaser with a title identical to that of the mortgagor as of the time the mortgage was executed." *Farmers*, 458 N.W.2d at 700 (emphasis added) (citing *Gerdin v. Princeton State Bank*, 348 N.W.2d 868, 871 (Minn. 1986)). The plain language of section 580.24(a) expressly distinguishes between senior creditors and junior creditors. *See* Minn. Stat. § 580.24(a). The statute provides that, if and when the redemption period has expired, creditors with an existing lien on the mortgaged property that is "subsequent to the foreclosed mortgage" are allowed seven days to redeem. *See id.* This provision implies that creditors with an existing lien on the mortgaged property that is *senior* to the foreclosed mortgage have no obligation to redeem. *See id.* Thus, the foreclosure sale on the junior mortgage did not terminate the bank's interest in the senior mortgage.

When a redemption period expires, the mortgagor loses his rights in the property sold at a foreclosure sale, and title to the property vests in the purchaser. Minn. Stat. § 508.12 (2016) (final paragraph); *Farmers*, 458 N.W.2d at 699-700. When Trude did not redeem after the foreclosure sale on the senior mortgage, title vested in the bank, which later conveyed its title to ATP. Thus, the bank became the lawful holder of title to the property on February 9, 2013, when the six-month redemption period expired, as evidenced by the sheriff's certificate of sale. *See* Minn. Stat. § 580.19 (2016). Consequently, the bank conveyed valid title to ATP.

Thus, the district court did not err by rejecting Trude's argument that the bank forfeited its interest in the senior mortgage by not bidding at the foreclosure sale on the junior mortgage.

II.

Trude also argues that the December 2011 foreclosure sale is void on the ground that ATP's predecessor-in-interest, the bank, did not properly serve him with notice of the foreclosure sale.

In a foreclosure by advertisement, the mortgagee must provide notice "upon the person in possession of the mortgaged premises" prior to the foreclosure sale. *See* Minn. Stat. § 580.03 (2016). The notice must be "served in like manner as a summons in a civil action." *Id.*; *see also* Minn. R. Civ. P. 4.03(a). In general, foreclosure by advertisement requires strict compliance with the statute's requirements. *Ruiz v. 1st Fid. Loan Servicing, LLC*, 829 N.W.2d 53, 56, 59 (Minn. 2013); *Drews v. Fed. Nat. Mortg. Ass'n*, 850 N.W.2d 738, 742 (Minn. App. 2014). "Absent strict compliance with the foreclosure statute, the foreclosure proceeding is void." *Drews*, 850 N.W.2d at 742; *see also Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10, 16 (Minn. App. 2013), *review denied* (Minn. Mar. 18, 2014).

It is undisputed that the notice of foreclosure by advertisement was personally served on the Petersons, who were in possession of the property, on July 8, 2012. One day later, on July 9, 2012, the notice of foreclosure was effectively served on Trude when it was handed to and left with "a person of suitable age and discretion" who lived on the property. *See* Minn. R. Civ. P. 4.03(a). Trude does not dispute the accuracy of the sheriff's affidavits of service, which were attached to the certificate of sale. Accordingly, service of the notice of the foreclosure sale complied with the requirements of section 580.03. *See Skartum v. Koch*, 174 Minn. 47, 48-49, 218 N.W. 446, 446-47 (1928).

Thus, the district court did not err by rejecting Trude's argument that the bank did not give him proper notice of the foreclosure sale on the senior mortgage.

In light of our resolution of Trude's arguments on the merits, we need not consider ATP's responsive arguments that Trude's arguments are barred by the statute of limitations and the doctrines of *res judicata* and collateral estoppel. In sum, the district court did not err by granting ATP's motion for summary judgment.

Affirmed.