

*This opinion is nonprecedential except as provided by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
A20-1056**

Theresa M. Anderson,
Appellant,

vs.

MidFirst Bank,
Respondent,

Collection Resource LLC, et al.,
Respondents.

**Filed June 1, 2021
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CV-18-10763

Theresa M. Anderson, Brooklyn Park, Minnesota (*pro se* appellant)

Melissa L.B. Porter, Gary J. Evers, David R. Mortensen, Shapiro & Zielke, LLP,
Burnsville, Minnesota (for respondent MidFirst Bank)

Jack E. Pierce, Bernick Lifson, P.A., Minneapolis, Minnesota (for respondents Collection
Resource LLC and Kent Rossman)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant brought two claims: one to vacate the foreclosure of her home by her creditor, and the other against the other two respondents who hold an interest in her former home. Appellant claims the district court improperly dismissed both claims. Because we conclude no genuine issues of material fact exist as to whether the creditor properly foreclosed on appellant's property and that appellant lacks standing to bring suit against the other two respondents, we affirm.

FACTS

In 2012, respondent MidFirst Bank (the bank) became the assignee of a mortgage granted by appellant-mortgagor Theresa M. Anderson in connection with the purchase of a home, properly registered in Hennepin County, in 2008.

Due to Anderson's failure to make monthly mortgage payments since July 2012, the bank foreclosed and purchased the property at a sheriff's sale on January 2, 2018. After the statutory six month redemption period¹ expired without Anderson redeeming the property, respondent Collection Resource² redeemed the property from the bank. Collection Resource then conveyed the property to the third respondent, Kent Rossman.

¹ "When lands have been sold in conformity with the preceding sections of this chapter, the mortgagor, the mortgagor's personal representatives or assigns, within six months after such sale . . . may redeem such lands." Minn. Stat. § 580.23, subd. 1(a) (2020).

² Collection Resource held a right of redemption as a junior lien holder pursuant to Minn. Stat. § 580.24(a) (2020), which states that "[i]f no redemption is made by the mortgagor . . . the most senior creditor having a legal or equitable lien upon the mortgaged premises . . . and each subsequent creditor having a lien may redeem, in the order of priority of their

Anderson, proceeding *pro se*, filed an amended complaint³ against the bank contesting the foreclosure and against Collection Resource and Rossman contesting the redemption of the property following the foreclosure. The bank moved for summary judgment, which the district court granted. The district court later granted Collection Resource and Rossman’s rule 12 motion to dismiss. This appeal follows.

DECISION

I. The district court properly granted the bank summary judgment.

The district court granted the bank summary judgment on all of Anderson’s claims.⁴ The district court determined Anderson had received proper notice of the bank’s foreclosure and that the bank’s delinquent payment demand was proper. Anderson argues this was an error because genuine issues of material fact exist as to two issues: whether the bank properly served her with notice of the default and whether the bank improperly demanded payment of “previously-excused” monthly payments.

Appellate courts review a district court’s ruling on motions for summary judgment *de novo*. See *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). Granting summary judgment is appropriate where there are no genuine issues of material

respective liens, within seven days after the time allowed the prior lienholder by paying the amount required under this section.”

³ The original complaint named the bank as the sole defendant.

⁴ Anderson alleged negligence, fraud, breach of the implied covenant of good faith and fair dealing, wrongful foreclosure, improper accounting, and quiet title against the bank. The district court, in granting the bank summary judgment on all claims, determined that “there is no genuine issue on the validity of the foreclosure proceeding initiated by the bank and the resulting sheriff’s sale” and therefore “dismiss[ed] all claims” against the bank. Anderson seeks only review of the district court’s foreclosure decision.

fact and the district court correctly applied the law. *Id.* The nonmoving party cannot rely on averments or denials set forth in its pleadings, and instead must offer particular facts showing that there is a genuine issue for trial. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69-71 (Minn. 1997) (stating that nonmoving party must produce “substantial evidence” to establish genuine issue of material fact). There is no genuine issue of material fact “when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.” *Id.* at 71.

A. Notice

Minnesota Statutes section 580.032, subdivision. 4 (2020), states that in foreclosure-by-advertisement proceedings, “[m]ailed notice is deemed given upon deposit in the United States mail *first class*, postage prepaid, and addressed to the person requesting notice.” (Emphasis added.) The mortgage Anderson signed includes a similar requirement, stating “any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower.”

The record reflects that the bank sent Anderson a letter by certified mail in August 2017, stating that Anderson was “presently in default due to [her] failure to make required monthly mortgage payments,” and that she must pay “past due monthly mortgage payments from [April 2017] through [August 2017], late charges, and allowable fees” to cure the default. It also stated that if this amount was not paid by September 13, 2017, “[the] property will be sold at a foreclosure sale and you may be required to vacate the premises.”

A notice of delivery was left at Anderson's home and the certified letter, which was unclaimed, was returned to sender approximately one month following the delivery.

The district court concluded that the "the United States Postal Service attempted delivery of the August 7, 2017 default notice to the Property, but when the intended recipient could not be found, it left a notice regarding the mail. The mail went unclaimed for approximately a month before it was sent back to the sender." The record supports this conclusion. The district court determined that Anderson's "mere assertion that she did not receive" the notice was not sufficient to create a genuine issue of material fact. In support, the district court cited *Nemo v. Local Joint Exec. Bd. and Hotel and Restaurant Emp. Local No. 556*, 35 N.W.2d 337, 339 (Minn. 1948), which states that "[i]n the absence of proof to the contrary, it is presumed that mail properly addressed and posted, with postage prepaid, is duly received by the addressee." We agree with this analysis.

Anderson acknowledged in her affidavit that notice of the letter was delivered to her home and that this letter was a foreclosure notice from the bank, and that the mail went unclaimed by her. Her admission establishes that the statutory notice obligation was satisfied by the bank. Therefore, Anderson, as the party resisting summary judgment, did not meet her burden of producing "substantial evidence" of a genuine issue of material fact as to whether the notice requirements were satisfied. *See DLH*, 566 N.W.2d at 70. Mere allegations that the certified mailing did not satisfy the "first class" mailing requirement of the statute is not sufficient to create an issue of material fact to overcome a motion for summary judgment. *See id.* at 69-71.

B. Payment Demand

Anderson also asserts that the bank's foreclosure was improper because the bank demanded previously "excused" payments. The record reveals no evidence of "excused" payments nor a demand for such payments, if indeed any had been "excused."

Anderson admits that she made no monthly payments on the mortgage since 2012 and lived on the property until 2017. After two unsuccessful attempts to foreclose in 2013 and 2016, the bank began its third attempt at foreclosure in 2017 by notifying Anderson by letter that she "must" begin making monthly payments on the mortgage from April 2017 to prevent default:

Please accept this letter as notification that you ***must begin making monthly payments on the referenced loan, including the payment due for April 1, 2017, to prevent a default under the note and mortgage.***

(emphasis added). The bank then sent Anderson monthly mortgage statements from April 2017 through July 2017, identifying the monthly mortgage amount and previously unpaid amounts following April 2017, which equaled the total amount due.

The mortgage agreement states that, if the borrower "defaults by failing to pay in full any monthly payment, then [the bank] may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest." By requesting monthly payments from April 2017, the bank complied with the terms of the mortgage.

In summary, because there exist no genuine issues of material fact as to whether the bank properly foreclosed the property, the district court's decision to grant the bank summary judgment on all claims is affirmed.

II. The district court properly determined that Anderson did not have standing to pursue claims against Collection Resource and Rossman.

Pursuant to Minn. R. Civ. P. 12.02(e), the district court dismissed Anderson's claims⁵ against Collection Resource and Rossman on the ground that Anderson lacked standing. "Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court." *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007). Whether a party has standing is a question of law we review *de novo*. *Builders Ass'n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 176 (Minn. App. 2012).

"When real property is sold pursuant to a foreclosure, the mortgagor may redeem the property within a certain time period after the sale, by paying the amount for which the property was sold and certain other expenses." *Riverview Muir Duran, LLC v. JADT Dev. Group, LLC*, 776 N.W.2d 172, 177 (Minn. App. 2009). The relevant time period is six months, subject to exceptions not here applicable. Minn. Stat. § 580.23 (2020). "When so recorded, upon expiration of the time for redemption, the [sale] 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." Minn. Stat. § 580.12 (2020).

⁵ Anderson alleged fraud, judgment procured by fraud, slander of title, and quiet title against Collection Resource and Rossman, which relate to the transfer of the property after foreclosure.

Following the expiration of Anderson's six month redemption period on July 2, 2018, and her failure to redeem the property, the bank recorded the sheriff's sale certificate reflecting its ownership of Anderson's property, followed by Collection Resource's redemption of the property from the bank as a junior creditor. Collection Resource then conveyed the property to Rossman. Because Anderson was divested of her interest in the title to the property due to the lapse of the redemption period, and the recording of the sheriff's sale certificate confirmed ownership in the bank, Anderson lacks standing to pursue claims against Collection Resource or Rossman. The district court properly dismissed these claims.

Affirmed.