This opinion is nonprecedential except as provided by Minn.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
A23-0565

In the Matter of the Petition of U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust For a New Certificate of Title after Mortgage Foreclosure Sale.

Filed February 26, 2024
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-ET-CV-22-24

Matthew E. Anderson, Anderson Law Group PLLC, St. Paul, Minnesota (for appellant James Mandel)

Kevin T. Dobie, Liebo, Weingarden, Dobie & Barbee, PLLP, Minneapolis, Minnesota (for respondent U.S. Bank National Association)

Considered and decided by Schmidt, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

The owner of a parcel of land that included a dock and walkway easement over a neighboring parcel expressly included the easement when he mortgaged his parcel to a lender. The owner of the dominant parcel and the owner of the servient parcel (appellant James Mandel) entered into and recorded an easement-termination agreement that gave Mandel the right to terminate the easement by paying the owner of the dominant parcel $75,000. The mortgage holder foreclosed, purchased the dominant parcel at a sheriff's sale, and sought a new certificate of title free of the easement-termination agreement. Mandel failed to respond to the bank's discovery requests, to submit a brief opposing summary judgment, and to argue meaningfully at the summary-judgment hearing, resulting in summary judgment favoring the bank. Mandel appeals, raising two new legal arguments. Because Mandel failed to preserve these arguments in the district court, we affirm.

FACTS

This dispute concerns a dock and walkway easement burdening a Hennepin County parcel that abuts Lake Minnetonka and a neighboring parcel that does not. Before 2008, appellant James Mandel and his spouse owned the lakefront parcel, and Jonathan Aanestad owned the neighboring property with a lake-access walkway easement over the Mandels' parcel, including the right to maintain a dock. In 2008, Aanestad executed a mortgage that was later assigned to respondent U.S. Bank and that expressly defined the property subject to the mortgage to include, among other things, "all easements, appurtenances, and fixtures now or hereafter a part of the property." In 2009, the Mandels and Aanestad entered into an agreement that gave the Mandels the right to terminate the easement by paying Aanestad $75,000. The Mandels never exercised that right.

U.S. Bank foreclosed on the Aanestad mortgage in February 2020 and purchased the property at a sheriff's sale for about $1,070,000. Aanestad sued U.S. Bank to set aside the sale, and the parties settled the suit. As part of that settlement, Aanestad conveyed his interest in the property by quitclaim deed to U.S. Bank "together with all hereditaments and appurtenances belonging thereto." U.S. Bank obtained a new certificate of title, which retained all easement documents, including the easement-termination agreement.

U.S. Bank petitioned the district court in March 2022 to remove the easement-termination agreement from its certificate of title. The court-referred examiner of titles identified Mandel as a party who may have an interest in the bank's property, and the district court ordered Mandel to show cause if he objected to the bank's petition. Mandel responded by filing an answer signed by his attorney, Matthew Steffes. Mandel's answer contested the bank's effort to remove the easement-termination agreement, asserting two affirmative defenses: that the bank was not a good-faith purchaser of the foreclosed property and that its claim "may be barred by" a list of equitable doctrines.

The record informs us that Mandel did nothing further to contest the bank's petition. The district court issued a scheduling order in August 2022. The bank served its requests for discovery on Mandel in September 2022, including interrogatories, requests for document production, and requests for admission. Mandel did not respond to any of the discovery requests. The bank sent Steffes, who remained Mandel's counsel of record, an October 2022 letter demanding that Mandel answer the bank's unanswered discovery requests. Neither Mandel nor his counsel responded to the letter. The bank then telephoned Steffes. He did not answer the call. The bank left Steffes a voicemail inquiring about the unanswered discovery. He did not respond to the voicemail. The bank sent Steffes an email about the unanswered discovery. He did not respond to the email.

The bank moved for summary judgment on its petition and briefed the motion in November 2022. Mandel submitted no opposing brief. The examiner of titles conducted a hearing on the bank's motion. Steffes appeared for Mandel, saying, "I was actually here to just request a continuance on behalf of Mr. Mandel." Explaining his failure to respond to discovery or otherwise litigate the dispute for Mandel, Steffes said that he had intended only to file the answer so that Mandel could find adequate representation, that his email address "went unmonitored," and that his "recordkeeping was not fantastic." The examiner denied Mandel's oral motion to continue.

The bank's counsel argued substantively, providing the legal rationale to support summary judgment. Steffes replied in full on Mandel's behalf as follows:

> The only response would be just that the opposing party was aware of the easement termination agreement at the time of the foreclosure. So it wasn't an opportunity where they didn't have a chance to take that into account with the foreclosure procedure. But that is the extent that I am able to go into at this point.

Mandel retained a different attorney, who filed a notice of substitution of counsel.

The examiner of titles's recommended order found that the foreclosure terminated the easement-termination agreement and that Mandel failed to present any evidence supporting his good-faith-purchaser affirmative defense. The district court adopted the examiner's recommendations favoring the bank. Mandel appealed. U.S. Bank moved this court to dismiss the appeal, arguing that Mandel failed to preserve the issues he raises. This court deferred ruling on that motion. We now decide the appeal.

DECISION

Mandel challenges the district court's summary-judgment decision. We review a district court's grant of summary judgment *de novo* to determine "whether there are any genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted); *see also* Minn. R. Civ. P. 56.01. That review is truncated here because of Mandel's failure to preserve the two issues he presents on appeal. He argues first that the mortgage unambiguously provided for the easement-termination agreement to survive foreclosure. And he argues second that U.S. Bank was not a good-faith purchaser and therefore took the Aanestad property subject to the easement-termination agreement. We first explain why we do not decide this appeal based on those contentions, and then we suggest why the arguments would fail if considered on the merits.

We do not decide the appeal based on Mandel's arguments, because we do not consider issues, like those he presents, that were not raised before and decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Mandel failed to present or develop either of his appeal theories in the district court. His participation in the district court was limited to asserting two affirmative-defense theories in his answer and then offering a conclusory statement during the summary-judgment hearing. Neither effort preserved his presently raised issues. *See id.* at 582; *see also Brodsky v. Brodsky*, 733 N.W.2d 471, 478 (Minn. App. 2007) (holding that conclusory arguments made without the support of legal authority are forfeited). It is true that an appellant might not forfeit an issue by presenting it in one fashion in the district court and then refining it on appeal. *Jacobson v. $55,900 in U.S. Currency*, 728 N.W.2d 510, 523 (Minn. 2007). But Mandel did no such thing, since an argument cannot be merely refined without having first been made. We conclude that Mandel failed to preserve either of his raised issues on appeal.

We add that Mandel's arguments would fail even if we decided them on the merits. We will not elaborate thoroughly, but we reject Mandel's contention that the Aanestad mortgage expressly subordinated its interest to the easement-termination agreement. He highlights that the mortgage defined the mortgaged property as including "[a]ll easements, appurtenances, and fixtures now or hereafter a part of the property." From this premise he asserts that the easement-termination agreement constitutes an "appurtenance" and argues that the mortgage subordinated its interest to the after-acquired easement-termination agreement. But the easement-termination agreement is not an appurtenance. An appurtenance "includes all rights and interests in other property necessary for the full enjoyment of the property conveyed and which were used as necessary incidents thereto" and includes "everything necessary to the beneficial use of the property, . . . whatever is needed to complete a structure and make it capable of performing its intended function." *Ethen v. Reed Masonry, Inc.*, 313 N.W.2d 19, 20 (Minn. 1981) (quotation omitted). While it is accurate to describe the walkway-and-dock right as an easement appurtenant, it cannot be said that an agreement allowing the servient parcel's owner to terminate the easement is an appurtenance. The agreement is not "necessary for the full enjoyment of the property" or "needed to complete a structure and make it capable of performing its intended function." Because the easement-termination agreement does not constitute an appurtenance, the mortgage did not subordinate its interest to it.

Likewise unconvincing is Mandel's good-faith-purchaser argument. A property purchaser who receives a certificate of title "in good faith and for valuable consideration shall hold it free from all encumbrances and adverse claims, excepting only the estates, mortgages, liens, charges, and interests as may be noted in the last certificate of title." Minn. Stat. § 508.25 (2022). And one who purchases property with actual knowledge of a prior, unrecorded interest is not a good-faith purchaser. *In re Collier*, 726 N.W.2d 799, 809 (Minn. 2007). Mandel contends that because U.S. Bank had actual knowledge of the easement-termination agreement when it purchased the property, it took the property subject to the easement-termination agreement. The argument twists the inquiry into whether U.S. Bank had actual knowledge of the easement-termination agreement. But the bank's interest arises from the assignment of the mortgage in 2018, because an assignment is a transfer of rights or property, *S O Designs USA, Inc. v. Rollerblade, Inc.*, 620 N.W.2d 48, 54 (Minn. App. 2000), *rev. denied* (Minn. Feb. 21, 2001), which "operates to place the assignee in the shoes of the assignor[] and provides the assignee with the same legal rights as the assignor had before assignment," *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 803 (Minn. 2004). The proper inquiry is therefore whether the mortgagee knew of the easement-termination agreement when the mortgage was executed and recorded in 2008. This would of course be impossible, because the easement-termination agreement originated in 2009. Because the mortgage predated the agreement and because U.S. Bank stepped into the shoes of the prior mortgagee, the good-faith-purchaser doctrine does not help Mandel. The easement-termination agreement extinguished on foreclosure.

In sum, Mandel failed to preserve the issues he raises on appeal, and even if he had preserved them, his arguments would fail on the merits. The district court properly granted summary judgment favoring U.S. Bank. We therefore affirm and need not address the bank's motion to dismiss on the same grounds that we dispose of the appeal.

Affirmed.