STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0034

Teresa Mae Lentz,
Appellant,

vs.

Minnesota Housing Finance Agency,
Respondent,

Woods of Elk River Station Association,
Defendant.

Filed August 18, 2025
Affirmed
Cochran, Judge

Sherburne County District Court
File No. 71-CV-24-698

Theresa M. Lentz, Elk River, Minnesota (pro se appellant)

Kevin T. Dobie, Liebo, Weingarden, Dobie & Barbee, PLLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Schmidt, Presiding Judge; Reyes, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's order dismissing her complaint for failure to state a claim upon which relief can be granted. Appellant argues that her complaint states a claim that respondent's foreclosure by advertisement was invalid and states a claim that the foreclosure by advertisement violated her right to due process. Because the district court correctly concluded that appellant's complaint fails to state a claim, we affirm.

FACTS[1]

Appellant Teresa Mae Lentz executed a mortgage encumbering a residential property. The property was subsequently foreclosed upon by respondent Minnesota Housing Finance Agency. Minnesota Housing commenced foreclosure by advertisement, and on November 22, 2022, the Sherburne County Sheriff held a foreclosure sale at which Minnesota Housing was the high bidder. Lentz did not redeem the property.

In May 2024, Lentz filed a complaint in district court alleging that the foreclosure was invalid. She also simultaneously recorded a notice of lis pendens[2] in the county recorder's office. In September 2024, Minnesota Housing filed a motion to dismiss Lentz's complaint for failure to state a claim upon which relief can be granted and to discharge the notice of lis pendens. In response, Lentz filed a motion for a temporary injunction. In

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[1] The following facts are based on the allegations in Lentz's complaint taken as true, construing all reasonable inferences in favor of Lentz as the nonmoving party. *See Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021) (stating that when reviewing a motion to dismiss, we "accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party" (quotation omitted)).

[2] A lis pendens is a notice, filed with the county recorder's office, to inform "purchasers and encumbrancers" of the pendency of a legal action regarding the "title to, or any interest[s] in or lien upon, real property." Minn. Stat. § 557.02 (2024); *see also Black's Law Dictionary* 1115 (12th ed. 2024) (defining lis pendens as "[a] notice, recorded in the chain of title to real property, . . . to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome").

support of her motion, Lentz claimed for the first time that foreclosure by advertisement deprived Lentz of her constitutional right to due process.

In October 2024, the district court held a hearing on Minnesota Housing's motion to dismiss and Lentz's motion for a temporary injunction. In a written order, the district court granted Minnesota Housing's motion to dismiss Lentz's complaint and discharged the notice of lis pendens. The district court construed Lentz's complaint, without objection, to allege that "the requisites for foreclosure [by advertisement] have not all been complied with." The district court concluded that Lentz's complaint failed to state a claim upon which relief could be granted because the complaint did not allege facts establishing noncompliance with statutory foreclosure requirements. In the same order, the district court also denied Lentz's motion for temporary injunctive relief, concluding that Lentz failed to establish a basis for injunctive relief.

Lentz appeals.

DECISION

Lentz challenges the district court's order dismissing her complaint for failure to state a claim upon which relief can be granted pursuant to Minnesota Rule of Civil Procedure 12.02(e). We review a district court order granting a motion to dismiss pursuant to rule 12.02(e) "de novo to determine whether the pleadings set forth a legally sufficient claim for relief." *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 68 (Minn. 2020). In conducting our review, we must "accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Halva*, 953 N.W.2d at 500 (quotation omitted). But we are "not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim." *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008).

Lentz appears to argue that the district court erred in granting Minnesota Housing's motion to dismiss because her complaint stated a legally sufficient claim that Minnesota Housing's foreclosure by advertisement and subsequent sale of her property were invalid. Lentz makes three primary arguments in support of her contention that her complaint stated a legally sufficient claim. We discuss each argument in turn below.

Requisites for Foreclosure

Lentz first argues that the district court erred in granting Minnesota Housing's motion to dismiss because she stated a claim that Minnesota Housing did not meet the statutory requisites for foreclosure by advertisement and thus the foreclosure sale of her property was invalid. Section 580.02 sets forth the requisites for foreclosure by advertisement. This section requires that a party foreclosing by advertisement comply with Minnesota Statutes sections 580.021 (2024) and, if applicable, 582.043 (2024). Minn. Stat. § 580.02(4)-(5). Lentz argues that her complaint stated a claim that Minnesota Housing did not comply with sections 580.021 and 582.043. We disagree.

Section 580.021 applies to foreclosures of mortgages by advertisement. Minn. Stat. § 580.021, subd. 1. This statute requires a party foreclosing on a mortgage to provide information to the mortgagor notifying the mortgagor that foreclosure prevention counseling services are available and that the foreclosing party will transmit the mortgagor's "name, address, and telephone number to an approved foreclosure prevention agency." Minn. Stat. § 580.021, subd. 2. The foreclosing party must provide the mortgagor's information to a foreclosure prevention agency within one week of providing notice to the mortgagor. *Id.*, subd. 3. But section 580.021 applies only "to foreclosure of mortgages . . . on property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residency." *Id.*, subd. 1.

Lentz argues that section 580.021 does not apply to her property and, as a result, Minnesota Housing could not comply with one of the requirements for foreclosure by advertisement, thereby rendering the foreclosure invalid. *See* Minn. Stat. § 580.02(4). In support of her argument, she notes that her complaint alleges that her property is part of a building that consists of six family dwelling units, but section 580.021 applies only to "foreclosure of mortgages . . . on property consisting of one to four family dwelling units." Minn. Stat. § 580.021, subd. 1. Consequently, she argues that her property is not subject to section 580.021. But even accepting as true Lentz's allegation in her complaint, and her interpretation of section 580.021, the inapplicability of section 580.021 does not invalidate the foreclosure. Instead, it merely relieves Minnesota Housing of complying with the mortgage-counseling requirements under section 580.021. *See* Minn. Stat. §§ 580.02(4), .021, subd. 1. Consequently, Lentz has failed to state a claim that Minnesota Housing's foreclosure by advertisement was invalid for failure to comply with section 580.021.

Lentz also argues that she stated a claim that Minnesota Housing did not meet the requirements of foreclosure by advertisement because it did not comply with section 582.043. *See* Minn. Stat. § section 580.02(5) (requiring compliance with section 582.043 prior to foreclosure). Section 582.043 provides that if the loan servicer has received a "loss mitigation application" from the mortgagor, the loan servicer must evaluate the mortgagor's "loss mitigation options" before proceeding to foreclosure except as otherwise provided. Minn. Stat. § 582.043, subds. 5(3), 6. A "[l]oss mitigation option" includes a "forbearance agreement." *Id.*, subd. 1(c). A mortgagor has a cause of action to set aside the foreclosure of a property if there is a violation of section 582.043, including the requirement that the loan servicer cease foreclosure proceedings due to the existence of a loss mitigation option. *Id.*, subd. 7(a). But a mortgager can bring an action under section 582.043, subdivision 7(a), *only if* a lis pendens has been recorded prior to the expiration of the mortgagor's redemption period, and a failure to do so results in a "conclusive presumption that the servicer has complied with [section 582.043]." *Id.*, subd. 7(b). A mortgagor's redemption period for a foreclosure by advertisement is either six or twelve months after the foreclosure sale of the home, depending on the circumstances of the mortgage. Minn. Stat. § 580.23, subds. 1-2 (2024).

Lentz's complaint alleges that Minnesota Housing's loan servicer approved her for a forbearance plan. As stated by the district court in its order, this allegation "raises a potential claim" to set aside the foreclosure sale of Lentz's property under section 582.043. But Lentz's complaint does not allege that she recorded a lis pendens prior to the expiration of the statutory redemption period as provided by section 580.23. *See* Minn. Stat. § 582.043, subd. 7(b) (explaining that to obtain relief under section 582.043, the mortgagor must file a notice of lis pendens within the redemption period as provided for by section 580.23). Instead, the complaint alleges that the sheriff's sale of the property occurred on November 22, 2022, and that Lentz filed the notice of lis pendens with her complaint in

May 2024, about one-and-one-half years after the foreclosure sale. Thus, the filing of the lis pendens was well after the expiration of either the six or twelve-month redemption period provided for by section 580.23. Because Lentz's complaint does not allege that she recorded the lis pendens within the statutory redemption period, her complaint fails to state a claim under section 582.043. Minn. Stat. § 582.043, subd. 7.

In sum, Lentz's complaint does not "set forth a legally sufficient claim" that the foreclosure of her property was invalid due to a failure to meet the requirements of a foreclosure by advertisement as described by section 580.02. *See Abel*, 947 N.W.2d at 68.

Lack of Default

Lentz also argues that she stated a valid claim for relief on the basis that Minnesota Housing's foreclosure was invalid because she did not default on her mortgage. In support of this argument, Lentz contends that she was not in default because her property was subject to "fraudulent" assessments and an "unlawful" lien. But in her complaint, Lentz does not allege specific facts to support such a claim. Instead, she simply asserts "there is no default in the mortgage." And, in both her complaint and her brief, she does not provide any legal basis to support such a claim. Consequently, Lentz's complaint does not set forth a legally sufficient claim based on a lack of default on the mortgage. *See id.* (stating that this court reviews a grant of a motion to dismiss "to determine whether the pleadings set forth a legally sufficient claim for relief"); *see also Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (stating that an argument based on "mere assertion" unsupported by legal authority is forfeited "unless prejudicial error is obvious on mere inspection").[3]

Due Process

Lentz further argues that the district court erred in granting Minnesota Housing's motion to dismiss because foreclosure by advertisement deprived her of her constitutional right to due process. Minnesota Housing responds that the Minnesota Supreme Court rejected this same argument in *Guidarelli v. Lazaretti*. 233 N.W.2d 890 (Minn. 1975). We agree with Minnesota Housing.

Lentz argues that foreclosure by advertisement violated her right to due process because foreclosure by advertisement denied her an "opportunity to be heard . . . before [her] home [was] sold at a sheriff's sale." In *Guidarelli*, the supreme court rejected the argument that foreclosure by advertisement violates the mortgagor's right to due process because it deprives them of their property without a hearing prior to the sale. *Id.* at 892. The supreme court reasoned that foreclosure by advertisement "provides for 4 weeks' prior notice before sale, it permits the mortgagor to redeem [her] property within either 6 months or 1 year, and most importantly, [she] is not deprived of the use and possession of the

[3] Lentz's brief makes one other argument challenging the grant of the motion to dismiss. Lentz argues that she was entitled to a "statement in writing showing the entire amount remaining unpaid on the mortgage" pursuant to Minnesota Statutes section 580.09 (2024). Her brief asserts that she received no such document. But Lentz does not appear to have asserted a claim on this basis in her complaint. Consequently, Lentz's complaint does not set forth a legally sufficient claim that she is entitled to relief based on a violation of section 580.09. *See Abel*, 947 N.W.2d at 68 (stating that this court reviews a grant of a motion to dismiss "to determine whether the *pleadings* set forth a legally sufficient claim for relief" (emphasis added)).

property prior to the public foreclosure sale." *Id.* (footnotes omitted). Lentz makes no argument distinguishing the circumstances of this case from *Guidarelli*, and we are bound by supreme court precedent. *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *rev. denied* (Minn. Sept. 21, 2010). Lentz's due-process argument is unavailing.[4]

In sum, Lentz has not "set forth a legally sufficient claim" that Minnesota Housing's foreclosure and subsequent sale of her property failed to comply with statutory requirements, was invalid due to lack of default, or violated her right to due process. *See Abel*, 947 N.W.2d at 68. The district court therefore did not err when it granted Minnesota Housing's motion to dismiss Lentz's complaint for failure to state a claim upon which relief can be granted.[5] *See id.*

Affirmed.

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[4] In her brief, Lentz also appears to suggest that she was denied due process at the hearing on Minnesota Housing's motion to dismiss because the hearing started late and because she was denied a meaningful opportunity to be heard. However, Lentz did not order a transcript of the hearing, and as a result we cannot discern whether the motion hearing complied with the requirements of due process. *See Fischer v. Simon*, 980 N.W.2d 142, 144 (Minn. 2022) (stating that "a party seeking review has a duty to see that the appellate court is presented with a record which is sufficient to show the alleged errors" (quotation omitted)).

[5] To the extent that Lentz also challenges the district court's denial of her motion for a temporary injunction, Lentz makes no argument beyond her assignment of error. Because we discern no prejudicial error on mere inspection, we conclude any such argument is forfeited. *See Schoepke*, 187 N.W.2d at 135 (stating that an assignment of error in a brief based on "mere assertion" and not supported by argument or authority is forfeited unless "prejudicial error is obvious on mere inspection").