

NO. A11-1925

State of Minnesota
In Court of Appeals

Marine Credit Union,

Appellant,

vs.

Anne K. Detlefson-Delano and Jack Antonio,

Respondents.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Detlefson's use of Minn. Stat. § 507.02 as a sword to void Marine Credit's Mortgage on her home would have this Court ignore the fact that Detlefson herself specifically sought out and benefitted from the Mortgage; that her prior Mortgage was coming due and had to be paid or refinanced; that Antonio was aware of the need to refinance the existing first mortgage; that Detlefson drafted an unconditional Quitclaim Deed for her husband to transfer the Property to her; and that the Deed was executed and delivered by Antonio to her. Detlefson then caused the Deed to be recorded and delivered a copy to Marine Credit Union in support of her request that they make the loan without requiring his signature. Detlefson further gave Marine Credit Union the impression that Antonio had abandoned her, was no longer living in the area, and was unavailable to sign the Mortgage.

Further, Detlefson's argument presumes the Quitclaim Deed was effective to facilitate a sale by her without Antonio's signature; this was ostensibly the limited, unstated purpose she presented to the district court for the Quitclaim Deed. But she would have it that the same Quitclaim Deed was ineffective for the purpose of borrowing money to refinance the Mortgage lawfully upon the Property. Now, having had no contact with Antonio for over three years, Detlefson seeks to defeat the Mortgage that she willingly signed by arguing an overly simplistic reading of Minn. Stat. § 507.02 that is not in harmony with the purpose of the statute.

Taking into consideration all of the pertinent facts of this case, this Court should reverse the district court and hold as a matter of law that the Mortgage is valid or, at minimum, remand to the district court for further findings of fact as to whether Antonio intended to waive his homestead rights.

REPLY ARGUMENT

I. ANTONIO WAIVED HIS HOMESTEAD RIGHTS WHEN HE SIGNED THE QUITCLAIM DEED TO DETLEFSON.

Detlefson cites Minn. Stat. § 510.04 and *In re Estate of Gullberg*, 652 N.W.2d 709 (Minn. Ct. App. 2002) for the general proposition that Antonio still held some interest in the homestead despite delivery for recording of the absolute Quitclaim Deed. But, critically, neither 510.04 nor *Gullberg* specifically address Minn. Stat. § 507.02. Section 510.04 addresses debtor exemptions and Detlefson cites no authority tying this statute to 507.02. The purpose of section 510.04 can be summarized by saying the legislature knew couples can hold title jointly, or in one name, and wished to afford homestead protection in both instances. This is different from a situation as here where a spouse having only an inchoate, non-titled interest conveys outright ownership to his titled spouse. In *Gullberg*, this Court's analysis centered on the State's strong interest in recovering Medicaid benefits, which is governed by its own unique statutes. There is no holding relevant to the subsequent transfer of the homestead to a third party. Moreover, even though this Court concluded that Mr. Gullberg continued to have some legal interest in the homestead sufficient to justify recovery of the Medicaid benefits paid, the Court also noted that interest was "contingent on any number of factors." 652 N.W.2d at 713.

As much as Detlefson may not want the Court to consider all of the relevant facts in this case, there is substantial evidence that Antonio gave up his homestead rights and that Detlefson knowingly mortgaged the Property and received the benefit thereof. In claiming that she intended to sell the Property, Detlefson herself drafted a Quitclaim Deed for Antonio to sign in order to facilitate the sale since he was frequently absent without any contact for extended periods of time. (A0086.) So Detlefson must necessarily concede the Quitclaim Deed would have been effective for that purpose. It is undisputed that Detlefson presented to Marine Credit Union that she had received a Quitclaim Deed from her husband extinguishing his interest and/or authorizing her to execute a Mortgage of the Property, to support her request for a Mortgage loan. To say that he was willing to allow Detlefson to sell the Property but not make a lesser conveyance—the Mortgage—instead is at least disingenuous. Detlefson further admitted that Antonio was aware of the need to refinance and thought it was necessary. (A0087.) Detlefson also gave Marine Credit Union the impression that Antonio had abandoned her, was no longer living in the area, and was unavailable to sign the Mortgage. (A0108.) This is not a case of an unwitting spouse losing a home, which is the situation 507.02 seeks to prevent.

Next, Detlefson attempts to distinguish *Blackowiak v. Mielke*, 692 N.W.2d 897 (Minn. Ct. App. 2005) from this case but in doing so oversimplifies the Court's holding. Marine Credit has acknowledged that the property in *Blackowiak* was not the homestead, but the analysis can still be applied in this case. In *Blackowiak*, this Court specifically included Minn. Stat. § 507.02 in its analysis and expressly confirmed that married

spouses can transfer an interest in real estate to one of the spouses individually, even the homestead. Notably, *Blackowiak* did not limit its holding to non-homestead property. Rather, it conducted its analysis as if the property were in fact homestead. Applied here, the subsequent conveyance—the mortgage to Marine Credit Union—was valid because it followed a valid transfer from Antonio to Detlefson, especially under the facts of this case. The Court wrote:

The plain meaning of sections 500.19, 507.02, and 519.06 together is that if one or both spouses own an interest in property, the one(s) with the record ownership interest may transfer that interest directly to the other spouse.

Blackowiak, 692 N.W.2d at 899.

Lastly, Detlefson claims that Marine Credit Union’s argument would undermine the purpose of section 507.02 and lists a few vague “legitimate reasons” for which a spouse might deed to the other spouse without further discussion. Detlefson also argues that the “the question in future cases will be for how long [the homestead right is terminated] and under what circumstances is the homestead right ‘returned’ to the spouse.” Though unnecessary to a decision in this case, a second deed could be recorded and would simply resolve Detlefson’s claimed concern.

II. THERE IS, AT MINIMUM, A GENUINE DISPUTE OF MATERIAL FACT WHETHER ANTONIO INTENDED TO WAIVE HIS HOMESTEAD RIGHTS.

Even if there were deemed to be insufficient facts to hold that Antonio was not required to sign the Mortgage, there is at minimum a genuine dispute of material fact as to his intent and the surrounding circumstances that requires reversal of the district court and remand for further fact finding. Though the Quitclaim Deed was absolute in its terms

as prepared by Detlefson, and she evidently intended that it be legally sufficient for her to sell the home without Antonio's signature, she states in an affidavit that the Quitclaim Deed was given solely for the convenience of the realtor in connection with selling the Property. The district court apparently adopted this assertion as true. This claim should not be heard because it is precluded by the parol evidence rule. See *Mollico v. Mollico*, 628 N.W.2d 637, 642-643 (Minn. Ct. App. 2001), which rejected parol evidence offered to suggest that a deed was given only on a certain condition:

The issue in this case is whether the deed was intentionally delivered. Because the instruction expressly addresses that issue and unambiguously states that delivery was without any conditions, there is no room for the admission of parol evidence

In addition, Detlefson has claimed in a hearsay statement that Antonio was still asserting his homestead rights at the time of the Mortgage. But testimony from the Marine Credit Union loan officer who assisted Detlefson with the Mortgage directly contradicts Detlefson's claims. He was given the impression that Antonio had abandoned her, was no longer living in the area, and was unavailable to sign the Mortgage.¹ (A0108.) Detlefson supported her request to Marine Credit Union with the Quitclaim Deed she had recorded. And, significantly, Antonio has never appeared and offered his own account of the Quitclaim Deed and his interest in the Property, nor has there been any testimony from the realtor. If Marion Credit Union is not entitled to judgment as a matter of law, and if the Deed is subject to interpretation, then the fact dispute becomes

¹ Based on this testimony, it is evident that Marine Credit Union was not "negligent" as Detlefson suggests. Rather, it was acting in good faith by making a loan to Detlefson which she actively sought and needed. Detlefson should not be rewarded for misrepresenting Antonio's involvement or availability.

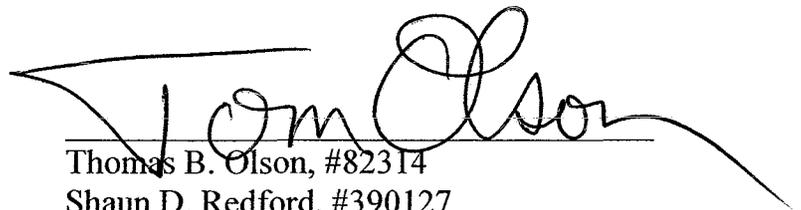
significant. If Antonio gave the deed under any circumstance to authorize Detlefson to deal with the Property without him, e.g., because he was willing to allow Detlefson to sell the property and/or later mortgage it, then Detlefson's argument under 507.02 completely fails and the Mortgage is valid.

Especially in light of the procedural oddity in which the district court granted summary judgment to Detlefson when she made no such motion, this Court should alternately remand for further findings of fact on Antonio's intent to waive the homestead right and the surrounding circumstances related to the signing of the Mortgage.

CONCLUSION

For all the foregoing reasons, Marine Credit Union respectfully requests that this Court reverse the district court and hold as a matter of law that the Mortgage is valid or, alternatively, reverse the district court and remand for further fact findings on whether Antonio intended to waive his homestead rights.

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