

NO. A11-1925

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Marine Credit Union,

Appellant,

vs.

Anne K. Detlefson-Delano and Jack Antonio,

Respondents.

RESPONDENT ANNE K. DETLEFSON-DELANO'S BRIEF

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SUMMARY OF ARGUMENT

The district court correctly held that the Mortgage was void under Minn. Stat. § 507.02 because it lacked the signatures of both spouses. Minnesota Statutes section 507.02 states in part that “no conveyance of the homestead ... shall be valid without the signature of both spouses.”

Detlefsen does not contest Marine Credit's claim that the quit claim deed given by Antonio to Detlefsen preceded the Mortgage. The dates of these documents are clear from their face. However, the timing of the quit claim deed is immaterial and the district court correctly concluded that it did not frustrate the strict requirements of Minn. Stat. § 507.02 or sever Mr. Antonio's homestead rights in the Property.

Detlefsen therefore respectfully requests that this Court affirm the district court's decision that the Mortgage is void.

STANDARD OF REVIEW

A district court's decision to grant summary judgment is reviewed de novo. *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 758 (Minn. 2010). The interpretation of a statute is a question of law that is also subject to de novo review. *Weston v. McWilliams & Associates, Inc.*, 716 N.W.2d 634, 638 (Minn. 2006).

ARGUMENT

I. The district court correctly ruled that the Mortgage was void under Minn. Stat. § 507.02 because it lacked the signatures of both spouses.

Minnesota Statutes Section 507.02 states that:

If the owner is married, no conveyance of the homestead, except a mortgage for purchase money under section 507.03, a conveyance between spouses pursuant to section 500.19, subdivision 4, or a severance of a joint tenancy pursuant to section 500.19, subdivision 5, shall be valid without the signature of both spouses. A spouse's signature may be made by the spouse's duly appointed attorney-in-fact.

A husband and wife, by their joint deed, may convey the real estate of either. A spouse, by separate deed, may convey any real estate owned by that spouse, except the homestead, subject to the rights of the other spouse therein; and either spouse may, by separate conveyance, relinquish all rights in the real estate so conveyed by the other spouse. Subject to the foregoing provisions, either spouse may separately appoint an attorney-in-fact to sell or convey any real estate owned by that spouse, or join in any conveyance made by or for the other spouse. Use of a power of attorney is subject to section 518.58, subdivision 1a. A minor spouse has legal capacity to join in a conveyance of real estate owned by the other spouse, so long as the minor spouse is not incapacitated because of some reason other than that spouse's minor age.

This statute is remarkable in many respects. Its direct lineage is over one hundred years old. *See Law v. Butler*, 44 Minn. 482, 47 N.W. 53 (Minn. 1890); *Alt v. Vanholzer*, 39 Minn. 511, 40 N.W. 830 (Minn. 1888). The importance and reverence that the courts over the decades have given the strictures of this statute were aptly described by the Minnesota Supreme Court in 1926:

[The] statute, which renders any attempted alienation of the homestead of a married owner, not executed by both spouses, not unenforceable merely but void. It is a statute which courts are bound to regard “in equity as well as at law.” It is “not a mere rule of evidence, but a limitation of judicial authority

to afford a remedy.” If statutory limitations upon judicial action were to be so disregarded, the purpose of the law making power, which here is to protect the homestead from creditors, would be thwarted and the door opened to the very thing which the legislature intended to prevent, an alienation of the homestead without the formal written consent of both husband and wife. It is not for judicial power so to thwart legislative purpose.

See Butler Bros. Co. v. Levin, 166 Minn. 158, 207 N.W. 315, 316 (Minn. 1926).

The essence of this statute, as it pertains to the issues in this case, has been clear for over a century; one spouse cannot convey any interest (even that spouse's separate interest) in a homestead without the signature of the other spouse on the conveyance. “This statute evidences the clear and unambiguous legislative policy of ensuring a secure homestead for families.” *Dvorak v. Maring*, 285 N.W.2d 675, 677 (Minn. 1979).

Jack Antonio and Anne Detlefsen were married on October 29, 2005. (A-0117.) Antonio and Detlefsen, along with Detlefsen's children, made their marital homestead at property located at [REDACTED], Minnesota (“Property”). (A-0117.) On July 24, 2007, Antonio signed and delivered a quit claim deed for the Property to Detlefsen. (A-0130; A-0117.) Approximately six months later, on or about January 18, 2008, Detlefsen signed a note and mortgage in favor of Marine Credit (“Mortgage”)(A-0007; A-0012; A-0117; A-0094, ln 19). Antonio did not sign the Mortgage even though the Property was his homestead. (A-0117.) These facts are undisputed. Detlefsen and Antonio were married when the Mortgage was signed, the Property was their homestead, and Antonio did not sign the Mortgage. If a conveyance of a homestead is made without the signature of both spouses, the transaction is “not merely voidable but is void and the buyer

acquires no rights whatsoever.” *Dvorak v. Maring*, 285 N.W.2d 675, 677 (Minn. 1979).

Without Antonio's signature, the mortgage was absolutely void, and the district court's ruling was correct.

II. The strict requirements of Minn. Stat. § 507.02 are not set aside by a quit claim deed between spouses.

Marine Credit's argument that Antonio waived his homestead rights when he signed a quit claim deed to Detlefsen is not supported by the law and is untenable. Pursuant to Minn. Stat. 510.04, a homestead interest does not depend upon record title to the real estate. It reads as follows:

If the debtor be married the homestead title may be vested in either spouse, and the exemption shall extend to the debts of either or of both. Any interest in the land, whether legal or equitable, shall constitute ownership, within the meaning of this chapter, and the dwelling house so owned and occupied shall be exempt, though situated on the land of another.

While Antonio may not have had legal title to the Property at the time of the Mortgage, he did have an equitable homestead interest based on his marriage to Detlefsen and the fact that the Property was his homestead. It is long standing law in Minnesota that the validity of the mortgage in question must be determined by the conditions which existed at the time of the execution thereof. *See Schultz v. Stiernagle*, 270 N.W.2d 269, 271 (Minn. 1978). At the time of the execution of the mortgage in this case, Jack Antonio was married to Anne Detlefsen and asserting his homestead rights in the Property.

Spouses have a common ownership interest in property regardless of who holds title. *See In re Estate of Gullberg*, 652 N.W.2d 709, 713 (Minn. Ct. App. 2002)(citing *Searles v.*

Searles, 420 N.W.2d 581, 583 (Minn. 1988). In *Gullberg*, the husband conveyed his interest in the homestead by quit claim deed to his wife. *Id.* Approximately 16 months later the husband died. *Id.* In rendering its opinion, this Court stated that despite the preceding quit claim deed given by the husband to the wife, the husband continued to have some legal interest at the time of his death for the simple fact that he and his wife were married. *Id.*

The only case cited by Marine Credit in support of its claim that the quit claim deed extinguished Mr. Antonio's homestead rights in the Property is *Blackowiak v. Mielke*, 692 N.W.2d 897 (Minn. App. 2005). The essential, fundamental distinction between *Blackowiak* and this case is that the property in *Blackowiak* was not the homestead. *Id.* at 898.

Mr. and Mrs. Blackowiak signed a quit claim deed that gave Mrs. Blackowiak title to the property. *Id.* The reasons for the quit claim deed are immaterial. After his death, Mrs. Blackowiak sold the non-homestead property on a contract for deed to Mr. Blackowiak's son, and the tenant in possession challenged the validity of the quit claim deed between Mr. and Mrs. Blackowiak. *Id.* This Court held that the quit claim deed was valid, and therefore, the subsequent contract for deed was also valid. *Id.* at 900. Similarly, if the Property in this case had not been the homestead of Detlefsen and Antonio, the quit claim deed given to Mrs. Detlefsen would have allowed her to convey it without Mr. Antonio's signature. In that case, the requirements of § 507.02 would not have applied. "A spouse, by separate deed, may convey any real estate owned by that spouse, *except the*

homestead... .” Minn. Stat. § 507.02 (emphasis added).

In an attempt to reconcile this fundamental distinction, Marine Credit focuses on footnote 3 of the opinion which states that both spouses' signatures are not required when the conveyance is to the other spouse, even if it's the homestead. *See Blackowiak v. Mielke*, 692 N.W.2d at 900, n.3. Marine Credit then incorrectly concludes that this premise applies to a conveyance of homestead property to a third party. The holding in *Blackowiak* was that the quit claim deed between the spouses was a valid conveyance, and, as a result, the subsequent conveyance by one spouse of **non-homestead property** was valid. *Blackowiak* does not hold that if there is a valid conveyance from one spouse to the other, any subsequent conveyance **of a homestead** to a third party without both spouses' signatures is valid. The conveyance at issue here is the conveyance of a homestead to a third party, not the conveyance between the spouses. *Blackowiak* does not address the signature requirements of a homestead conveyance by one spouse to a third party and cannot be read so broadly as to destroy such a substantial right.

Marine Credit's argument that a non-contemporaneous quit claim deed between spouses should then allow the grantee spouse to convey the other spouse's homestead to a third party at any time in the future without the consent of the other spouse. This would undermine the simple requirement of § 507.02 and the protection it provides. Adopting such a position would be unsettling and have far-reaching implications.

There are many reasons why one spouse might sign a quit claim deed for the homestead property to the other spouse without the intent of waiving their homestead

rights. A wife could sign a quit claim deed to her husband for estate or tax planning purposes or at their realtor' suggestion. The wife has no intention of waiving her equitable homestead rights; the purpose is simply to change the title owner for legitimate reasons. If this Court adopts the position Marine Credit is advancing, it would be perfectly acceptable for the husband to convey the marital home six months later without the wife's consent.

The purpose of Minn. Stat. § 507.02 is to protect a spouse from these types of a transactions; an alienation of the homestead without the consent of both spouses. The beauty of Minn. Stat. § 507.02 is that we aren't required to consider the motivation of the parties when one spouse gives a quit claim deed to the other. We aren't required to determine whether the spouse intended to waive his or her homestead rights. Minn. Stat. § 507.02 simply requires that both spouses sign the conveyance of the homestead to a third party.

If this Court adopts the position that a quit claim deed between spouses does terminate the homestead rights of the spouse, the question in future cases will be for how long and under what circumstances is the homestead right “returned” to the spouse. For how long can the spouse alienate the homestead without the other's consent. One year, five years, 20 years? If husband signed a quit claim deed to wife because they were separated, and they later reconciled and the husband returned to the marital home, does the husband regain his homestead rights? And if so, when? As soon as he moves back in? After he's been there for 1 year?

The law as it stands now, and as it has stood for well over one hundred years, is simple and clear. Any conveyance of a marital homestead requires the signatures of both spouses. Absent both signatures, the conveyance is void. *See Dvorak v. Maring*, 285 N.W.2d 675, 677 (Minn. 1979). Adopting Marine Credit's argument would result in uncertainty and would prove untenable.

Marine Credit also suggests that only the non-signing spouse should be able to assert the protections of 507.02. However, “[t]here is nothing in the text of section 507.02 that suggests that it can only be asserted by the non-signing spouse.” *Gores v. Schultz*, 777 N.W.2d 522, 525 (Minn. Ct. App. 2009), *review denied* (Minn. March 16, 2010). In fact, in *Gores* this Court concluded that the protections under § 507.02 are “not a personal defense requiring privity” and allowed the bank to challenge the validity of the mortgage. *Id.* at 526.

III. Strict compliance with Minn. Stat. § 507.02 under these circumstances furthers the public policy of protecting the marital homestead.

“The purpose of Minn. Stat. § 507.02 is to ensure 'a secure homestead for families' by 'protecting the alienation of the homestead without the willing signature of both spouses.’” *National City Bank v. Engler*, 777 N.W.2d 762, 765 (Minn. Ct. App. 2010)(quoting *Wells Fargo Home Mortgage, Inc. v. Newton*, 646 N.W.2d 888, 895 (Minn. Ct. App. 2002)(quotations omitted), *review denied* (Minn. Sept. 25, 2002). The Minnesota Supreme Court has stated its unwillingness to grant a remedy “where the strict requirements of the statute are not satisfied, since to do so would undermine this statutory protection of the homestead.”

Dvorak v. Maring, 285 N.W.2d 675, 678 (Minn. 1979).

Marine Credit relies on two cases supporting its position on this issue. Both cases are distinguishable. In *Engler*, husband and wife refinanced their homestead. *National City Bank v. Engler*, 777 N.W.2d 762, 764 (Minn. App. 2010). The wife signed preliminary documents as a potential borrower, was present at the closing, and signed the mortgage as a “Non-Borrower”. *Id.* In addition, directly below the wife's signature line were the words, “Signing solely for the purpose of waiving any and all Homestead Rights.” *Id.* Her waiver of her homestead rights was contemporaneous with the signing of the mortgage and was unequivocal.

In this case, Mr. Antonio was not present at the closing of the Mortgage, knew nothing about the Mortgage,¹ and signed a quit claim deed six months prior to the closing of the Mortgage and almost four months before Detlefsen began talking to Marine Credit about the refinance. (A-0087, ln 23). In addition, the quit claim deed contained no explicit language indicating Mr. Antonio intended to waive his homestead rights. (A-0130). The homestead exemption is a constitutional right. Article 1, section 12, of the Minnesota Constitution states that a “reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability.” This constitutional, homestead right may be waived “by an act which evidences an unequivocal intention to do so.” *In re Guardianship of Huesman*, 381 N.W.2d 73, 76 (Minn. Ct. App. 1986). Unlike in *Engler* where the wife signed “solely for the purpose of waiving any and all Homestead Rights”, there is

¹ Mrs. Detlefsen did not discuss the Marine Credit refinance with Jack Antonio. They talked about refinancing generally, but the Marine Credit loan and mortgage were never discussed. (A-0118).

no evidence of Mr. Antonio's unequivocal intention to waive his homestead rights by signing the quit claim deed.

Marine Credit also relies on *Karnitz v. Wells Fargo Bank, N.A.*, 572 F.3d 572 (8th Cir. 2009). While the court in *Karnitz* stated that strict compliance with the statute “in these circumstances” didn't further the policy, the circumstances in *Karnitz* are very different from those in this case. *Id.* at 575. Mrs. Karnitz testified that she knew her husband was seeking a mortgage from Wells Fargo, she approved of the mortgage, and she wanted to obtain the loan in exchange for the mortgage. *Id.* at 573. There is no such evidence in this case. Mr. Antonio didn't even know his wife was seeking a mortgage from Marine Credit. (A-0118). Unlike in *Karnitz*, strict statutory compliance under these circumstances does further the public policy of preventing the alienation of one's marital homestead without the willing signature of both spouses.

CONCLUSION

The law on this topic is long-observed and well settled. The purpose is to protect married people from having their homestead interests conveyed without their consent. The requirements of Minn. Stat. § 507.02 are clear and strict. In addition, the statute places little burden on the grantee, in this case a professional lender. It simply requires that both spouses sign the conveyance. That didn't happen in this case.

Marine Credit should have known of and complied with the requirements of the

statute. Marine Credit is in this position because of their own negligence, and is now arguing that the shield designed over a century ago to protect married individuals from an unknowing alienation of their homestead, should not be used for those individuals, but to protect Marine Credit from its own negligence.

For all the reasons stated above, Anne Detlefsen respectfully requests that the district court's decision that the Mortgage is void be affirmed.

Dated: December 19, 2011

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