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**STATE OF MINNESOTA**  
**IN SUPREME COURT**

Anne K. Detlefson-Delano,

*Appellant,*

and

Jack Antonio,

*Respondent*  
*(in Court of Appeals),*

vs.

Marine Credit Union,

*Respondent.*

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**APPELLANT'S BRIEF**

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DAVID A. JOERG, P.A.  
Dwight Luhmann (#0300238)  
209 Saint Paul Street SW  
PO Box 257  
Preston, MN 55965  
(507) 765-3862

OLSON & LUCAS, P.A.  
Thomas Olson (#82314)  
Shaun D. Redford (#390127)  
One Corporate Center I, Suite 575  
Edina, MN 55439  
(952) 224-3644

*Attorney for Appellant Anne K. Detlefson-  
Delano*

*Attorneys for Respondent Marine Credit  
Union*

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## STATEMENT OF THE ISSUE

**Does a quit claim deed, executed by one spouse to the other, divest the grantor spouse of statutory and marital homestead rights and negate the requirements of Minn. Stat. § 507.02 that both spouses sign a conveyance of the homestead to a third party?**

Marine Credit commenced a mortgage foreclosure by action against Anne Detlefson-Delano and Jack Antonio. Appellant Detlfesen alleged in her answer and counterclaim that the mortgage was void because it did not contain the signatures of both spouses. (A-0031). The district court agreed the mortgage was void and granted summary judgment to Detlefsen. The court of appeals reversed the district court. Detlefsen timely petitioned this Court for review of the decision of the court of appeals. An order granting review was filed August 7, 2012.

**Most apposite authorities:**

Minn. Stat. § 507.02

Minn. Stat. § 500.19

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

## STATEMENT OF THE CASE

This is an appeal from a decision of the Minnesota Court of Appeals, filed May 21, 2012. The case involves the spousal signature requirements of Minn. Stat. § 507.02, and came on appeal to the court of appeals from Fillmore County District Court, the Honorable Robert R. Benson presiding.

Marine Credit commenced a mortgage foreclosure by action against Detlefsen and Antonio in June of 2010. Detlefsen's counterclaim asserted that the mortgage was void because Antonio, her husband, had not signed the mortgage as required by Minn. Stat. § 507.02. On December 20, 2010, Marine Credit moved the district court for summary judgment. Detlefsen agreed there was no genuine issue of material fact, but asked the district court to deny Marine Credit's motion for summary judgment and grant summary judgment in her favor on the basis that the mortgage was void pursuant to Minn. Stat. § 507.02.

In an order filed March 4, 2011, the district court awarded summary judgment to Detlefsen, concluding that the mortgage was void because it lacked both spouses' signatures as required by Minn. Stat. § 507.02. The court of appeals reversed, holding that Antonio's signature was not required on the mortgage because he had previously signed a quit claim deed to Detlefsen.

## **STATEMENT OF FACTS**

Jack Antonio and Anne Detlefsen were married on October 29, 2005. (A-0037). Antonio and Detlefsen, along with Detlefsen's children, made their marital homestead at property located at Harmony, Minnesota. (A-0037). On July 24, 2007, Antonio signed and delivered a quit claim deed to Detlefsen that included the homestead. (ADD 20). Approximately six months later, on or about January 18, 2008, Detlefsen signed a note and mortgage in favor of Marine Credit that covered the homestead. (A-0007; A-0012). Detlefsen was identified in the mortgage as a "Married Person." (A-0013; A-0026). Antonio did not sign the mortgage even though the property was his homestead. (A-0037).

## **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 mortgage was void pursuant to 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 this 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 an interest in a marital homestead without the signature of the other spouse on the conveyance.

“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). This 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).

It is also 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). 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 quit claim deed is not evidence of Antonio's intent to waive his marital homestead interest.**

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.

In addition, property acquired by one spouse during a marriage is presumed to be marital property regardless of whether title is held individually or by the spouses jointly. *See* Minn. Stat. § 518.003, subd. 3b. Spouses have a common, marital 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 *Stassen v. Stassen*, 351 N.W.2d 20 (Minn. App. 1984), the husband had given the wife a quit claim deed for two properties, one of which was their homestead. *Id.* at 22. The husband testified that he gave his wife the quit claim deeds to protect the

property from possible judgment liens because of pending litigation. *Id.* The husband had his wife execute two blank deeds for later conveyance of the properties, but she burned them before beginning the marriage dissolution. *Id.* The trial court determined that both properties were marital property and awarded the homestead to the husband. *Id.* The wife appealed the award of the homestead to the husband, and the appellate court affirmed the trial court's decision that the property was marital property to be divided as part of the marriage dissolution. *Id.* at 24.

Protection of the marital homestead is also provided for in this State's probate laws. Minn. Stat. § 524.2-402(a) awards a surviving spouse a life estate in the homestead regardless of any testamentary or other disposition to which the surviving spouse has not consented in writing.

Because of these marital rights in real property, the absence of a spouse's signature subjects the record title to claims of unmarketability, as recognized in Title Standard 7 of the Real Property Law Section of the Minnesota State Bar Association (1992). Although the title standards are not law, they are routinely consulted and applied by lawyers and have been cited by Minnesota's appellate courts from time to time. *See Stiernagle v. County of Waseca*, 511 N.W 2d 4, 6 (Minn. 1994); *Miller v. Snedeker*, 257 Minn. 204, 216, 101 N.W2d 213, 222 (1960); *Blackowiak v. Mielke*, 692 N.W2d 897, 899 (Minn. App. 2005); *Lindberg v. Fasching*, 667 N.W2d 481, 487 (Minn. App. 2003).

While Antonio may not have had legal title to the property at the time of the

mortgage, he did have a marital homestead interest based on his marriage to Detlefsen and the fact that the property was his homestead.

Homestead rights may generally only be waived by an act which evidences an unequivocal intention to do so. *See Matter of Guardianship of Huesman*, 381 N.W.2d 73 (Minn. Ap. 1986) quoting *Argonaut Insurance Co. v. Cooper*, 261 N.W.2d 743, 744 (Minn. 1978). In a recent case, the court of appeals held that the “non-signing” spouse had unequivocally waived her marital homestead rights. *National City Bank v. Engler*, 777 N.W.2d 762 (Minn. App. 2010). In *Engler*, husband and wife refinanced their homestead. *Id.* at 764. 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.

Mr. Antonio was not present at the closing of the mortgage, knew nothing about the mortgage,<sup>1</sup> 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. The quit claim deed contained no explicit language indicating Antonio intended to waive his homestead rights. (A-0130). Unlike in *Engler* where the wife signed “solely for the purpose of waiving any and all Homestead

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<sup>1</sup> 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-0038).

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

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

Section 500.19, subd. 4 provides:

(a) Subject to section 507.02 specifying when both spouses must join in a conveyance of their homestead, one or more owners of an interest in real estate may convey all or part of the interest directly to one or more other persons or to one or more of themselves, or to any combination of one or more of themselves and other persons.

(b) Subject to section 507.02 specifying when both spouses must join in a conveyance of their homestead, conveyances between spouses are allowed under paragraph (a) to the same extent as those between unmarried persons.

Section 507.02 provides in part that “[i]f the owner is married, no conveyance of the homestead, except ... a conveyance between spouses pursuant to section 500.19, subdivision 4, ... shall be valid without the signatures of both spouses.”

Only one spouse's signature is required in a conveyance between the spouses pursuant to section 500.19, subd. 4. It allowed Antonio to sign a quit claim deed to Detlefsen. Section 500.19, subd. 4 does not, however, negate the strict requirements of section 507.02 and allow Detlefsen to subsequently sign a conveyance to a third party. Despite the fact that Antonio signed the quit claim deed to Detlefsen, Antonio's signature was still required to validly convey the homestead to someone other than his spouse.

The court of appeals held that the quit claim deed Antonio gave to Detlefsen

was a complete transfer of all of his interest in the homestead. However, the court failed to distinguish between a title interest and a marital homestead interest. For the premise that a grantor cannot retain an ownership interest after signing a quit claim deed, the court of appeals cited *Danielson v. Danielson*, 721 N.W.2d 335, 338-39 (Minn. Ct. App. 2006). While *Danielson* is a marital dissolution case, the grantor claiming to have retained an interest after signing a quit claim deed was not one of the spouses, but the brother of the husband. *Id.* at 337.

A quit claim deed between spouses could be given for the purpose of transferring legal title, but does not transfer the marital homestead interest. 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. The wife has no intention of waiving her marital homestead rights; the purpose is simply to change the title owner for legitimate reasons. If this Court affirms the lower court, it would be perfectly acceptable for the husband to later convey the marital home without the wife's consent.

The purpose of Minn. Stat. § 507.02 is to protect a spouse from this type of transaction; an alienation of the homestead without consent. Section 507.02 doesn't consider the motivation of the parties when one spouse gives a quit claim deed to the other, or require a determine as to whether the spouse intended to waive his or her homestead rights; it 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 marital homestead rights of the spouse, the question in future cases will be for how long and under what circumstances are the marital homestead rights “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?

The law as it stands now, and as it has stood for the better part of a century, is simple and clear. Any conveyance of a marital homestead requires the signatures of both spouses. Absent both signatures, the conveyance is void. *See Doorak v. Maring*, 285 N.W.2d 675, 677 (Minn. 1979). Affirming the court of appeals decision would result in uncertainty and would prove untenable.

The only case Marine Credit has relied on in support of its claim that the quit claim deed extinguished Antonio's marital homestead rights in the property and negated the requirements of section 507.02 is *Blackowiak v. Mielke*, 692 N.W.2d 897 (Minn. App. 2005). The essential, fundamental distinction between *Blackowiak* and the present case is that the property in *Blackowiak* was not the homestead. *Id.* at 898. *Blackowiak* does not address the signature requirements of a homestead conveyance by one spouse to a third party following a quit claim deed between spouses and can-

not be read so broadly as to destroy such a substantial right.

### **CONCLUSION**

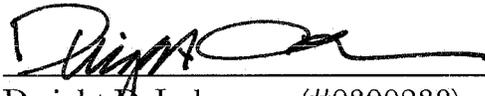
The law on this topic is long-observed and well settled. The purpose is to protect married people from having their homestead interests conveyed without their consent. The requirements of Minn. Stat. § 507.02 are clear and strict. In addition, the statute places little burden on the grantee, in this case a professional lender. It simply requires that both spouses sign the conveyance.

The court of appeals' decision in this case is a striking departure from this well-settled law. It undermines the simple requirement of § 507.02, erodes the protection it provides, and places the homestead rights of spouses in jeopardy.

For all the reasons stated above, Appellant Detlefsen respectfully requests that the decision of the court of appeals be reversed, and the district court's decision be reinstated.

Dated: September 5, 2012

DAVID A. JOERG, P.A.



Dwight J. Luhmann (#0300238)

PO Box 257

209 St. Paul Street SW

Preston, MN 55965

Attorney for Appellant Anne K. Detlefsen