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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0142**

Carl Green, d/b/a Signature Capital,  
assignee for C & L Asset Group Ltd. Fiduciary Trust Company,  
Appellant,

vs.

Tom Blonigen,  
Respondent,

John Sanner, et al.,  
Respondents.

**Filed February 3, 2009  
Affirmed  
Peterson, Judge**

Stearns County District Court  
File No. 73-C0-96-001832

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respondents John Sanner and Rick Hondl)

Considered and decided by Shumaker, Presiding Judge; Peterson, Judge; and  
Stauber, Judge.

## UNPUBLISHED OPINION

**PETERSON**, Judge

In this real-estate dispute, pro se appellant argues that the district court erred by (1) dismissing his claims against respondent Tom Blonigen for failure to state a claim on which relief can be granted and (2) dismissing his claims against respondents John Sanner and Rick Hondl because they were not properly served. We affirm.

### FACTS

Respondent Tom Blonigen and his wife owned property in Stearns County described as Lot 8, Block 1, Blonigen's Addition, Plat 4 (lot 8); and a 1/17th interest in Lot 17 and the South One-half of Lot 16, Blonigen's Addition (fractional interest). These interests were conveyed to Blonigen in two separate deeds.

Eric Licht obtained a judgment against Blonigen in conciliation court and then assigned the judgment to C & L Asset Group, Ltd., Fiduciary Trust Company (C & L Fiduciary). On April 28, 2003, C & L Asset Group, Ltd. (C & L),<sup>1</sup> describing itself as "assignee for Eric Licht," obtained a Writ of Execution in Stearns County District Court to collect against property owned by Blonigen. Becky Eull, levy processing officer for C & L Fiduciary, then sent a letter to the Stearns County Sheriff's Office, requesting that

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<sup>1</sup> The record contains a copy of a certificate of incorporation for C & L Asset Group, Ltd., which was issued on July 2, 1998. The record also contains a copy of a certificate of incorporation for Aaimes Information Services, Inc., which was issued on October 13, 1997, and a copy of a November 22, 1999, amendment of articles of incorporation that changed the name of Aaimes Information Services, Inc. to C & L Asset Group Ltd. Fiduciary Trust Company. In a separate case, this court determined that C & L and C & L Fiduciary are "two separate entities, but both are owned by Carl Green and use the same business address." *Jazzville, Inc. v. C & L Asset Group, Ltd.*, No. C8-00-1076, 2001 WL 242599, at \*1 (Minn. App. March 13, 2001).

the judgment be satisfied by levying on Blonigen's property. The letter described the property as:

An undivided one-seventeenth (1/17th) interest in and to the following described tract: Lot Seventeen (17) and the South One-Half of Lot Sixteen (S1/2 of 16), BLONIGEN'S ADDITION, Stearns County, Minnesota.

Said tract being conveyed for the purpose of attachment to a contiguous lot, to wit: "Lot Eight (8) in Block One (1) of BLONIGEN'S ADDITION Plat 4, Stearns County, Minnesota, and which tract hereafter shall not be considered a separate tract, lot, parcel, or subdivision of land for purposes of conveyance, but rather part of the lot or tract to which it is being attached, unless said tract shall become a part of a duly recorded plat. Together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions: Subject to all easements, restrictions and reservations of record.

On July 16, 2003, respondent Rick Hondl, a deputy in the Stearns County Sheriff's Office, issued a Notice of Sheriff's Execution Sale, describing the property to be sold with the exact description provided in the June 20, 2003, letter from C & L Fiduciary. On October 3, 2003, a Report of Sheriff's Sale (report of sale) and a Sheriff's Levy and Certificate were filed with the Stearns County Recorder as document number 1084246. The report of sale identifies C & L Fiduciary as the purchaser at the sheriff's sale and describes the property sold as: "An undivided one-seventeenth (1/17) interest in Lot Seventeen (17) and the South One-Half of Lot Sixteen (S1/2 of 16) Blonigen's Addition, Stearns County Minnesota." A Return on Execution that was filed in the Stearns County District Court on November 14, 2003, was signed by respondent John Sanner, the Stearns County Sheriff, and states that the judgment "entered in favor of C & L ASSET GROUP

LTD ASSIGNEE FOR ERIC LICHT and against TOM BLONIGEN” was “[s]atisfied in full.”

In 2004, Blonigen initiated a quiet-title action against C & L Fiduciary to clarify an ambiguity caused by the description in the July 16, 2003, Notice of Sheriff’s Execution Sale, which potentially suggested that lot 8 had also been sold at the sheriff’s sale. Blonigen’s attorney, John Koch, searched the Minnesota Secretary of State filings for C & L Fiduciary, which listed Carl Green as its registered agent. Koch attempted service at the listed address, which was returned unserved because no person could be identified at that address. Koch located a second address for C & L Fiduciary and attempted service at that address, which also was returned unserved because no officer or agent could be located at that address. Koch then filed the summons and complaint on the secretary of state, waited 90 days, and scheduled a hearing with the court. The defendant did not answer or appear, and on October 25, 2004, findings of fact, conclusions of law, and an order declaring that Blonigen and his wife are the owners in fee simple of lot 8 free and clear of any claim of C & L Fiduciary was filed in Stearns County District Court.

On March 17, 2006, under the case number of the original action by Eric Licht against Blonigen, but with the plaintiff identified as “Signature Capital Assignee OF C&L Asset Group Ltd. Fiduciary Trust Company,” appellant Carl Green d/b/a Signature Capital filed a motion for an order compelling delivery of possession of property as a matter of law, requesting an order directing the sheriff to deliver possession of lot 8 and the fractional interest. Appellant’s claimed right to possession of the property was based

on an Assignment of Sheriff's Certificate that assigns to Signature Capital C & L Fiduciary's interest in the Sheriff's Certificate of Sale executed by Sanner on September 24, 2003, and filed with the Stearns County Recorder on October 9, 2003, as document number 1084246. On June 21, 2006, the Stearns County District Court issued an order denying appellant's motion on the ground that the motion was essentially a motion for summary judgment arguing that appellant's interest in lot 8 was not extinguished by the quiet-title action; the court concluded that resolution of the dispute depended on a factual determination whether C & L and C & L Fiduciary were separate and distinct entities.

On August 3, 2006, C & L executed an assignment of the judgment that Licht had assigned to C & L. This assignment, which assigned C & L's interest in the judgment to Signature Capital, was filed in the district court on August 7, 2006.

On September 26, 2006, appellant filed a "Motion for Joinder of Persons Needed for Just Adjudication," arguing that respondents Sanner and Hondl must be brought into the action because they were responsible for the allegedly mistaken property description in the report of sale.<sup>2</sup> On May 2, 2007, the district court filed an order allowing appellant to amend his complaint to add Sanner and Hondl as defendants. Appellant then apparently attempted to serve Sanner and Hondl by mailing service to Assistant Stearns County Attorney Marcus Miller, who, at the time, had been deployed in military service for a number of months. Sanner and Hondl moved to dismiss the action against them for lack of personal jurisdiction and for insufficiency of service of process.

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<sup>2</sup> Appellant also contends that C & L, rather than C & L Fiduciary, was the buyer at the sheriff's sale.

On September 17, 2007, the district court issued an order dismissing all of appellant's claims with prejudice. The district court determined that (1) service upon Sanner and Hondl was improper because they were not personally served, and (2) appellant failed to state a cause of action upon which relief can be granted. This appeal followed.

## **DECISION**

### **I.**

Appellant argues that the district court erred by dismissing his claims against respondent Blonigen for failure to state a claim on which relief can be granted. In considering Blonigen's argument that there is no cause of action or remedy that allows the district court to compel delivery of possession of the property, the district court considered both appellant's claims and the facts in the record. Thus, the district court's disposition was essentially a summary judgment. *See* Minn. R. Civ. P. 12.03 (if matters outside pleadings are presented to and considered by district court, motion shall be treated as one for summary judgment). Accordingly, we review the record to "determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law." *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). We view the evidence in the record "in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). A genuine issue of material fact exists if the evidence would "permit reasonable persons to draw different conclusions." *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002).

Appellant argues that he stated a legal claim because Blonigen's default judgment in the quiet-title action only extinguished the rights of C & L Fiduciary in lot 8, not the rights of C & L. Appellant contends that the report of sale incorrectly identified C & L Fiduciary, rather than C & L, as the purchaser at the sheriff's sale, and incorrectly omitted lot 8 from the description of the property sold.

But appellant's initial claim that Signature Capital has a right to possess the property was based on an Assignment of Sheriff's Certificate that assigned to Signature Capital C & L Fiduciary's interest in the Sheriff's Certificate of Sale executed by Sanner on September 24, 2003, and filed with the Stearns County Recorder on October 9, 2003, as document number 1084246. If C & L, rather than C & L Fiduciary, was the purchaser at the sheriff's sale, C & L Fiduciary had no property interest to assign to Signature Capital.

The only evidence that appellant submitted to demonstrate that Signature Capital obtained a property interest from C & L is the August 3, 2006, assignment of judgment that assigns to Signature Capital C & L's interest in the original judgment against Blonigen. But this assignment does not demonstrate that Signature Capital has an interest in the property sold at the sheriff's sale because the judgment did not convey a property interest. A Certificate of Sheriff's Sale produced after a judgment is executed and the property is purchased at the sheriff's sale conveys a property interest. *See* Minn. Stat. § 550.22 (2008) (certificate "shall operate as a conveyance to the purchaser of all right, title, and interest of the person whose property is sold").

Furthermore, when C & L executed the assignment of judgment to Signature Capital, C & L no longer held a judgment against Blonigen. The report of sale recorded with the Stearns County Recorder on October 9, 2003, which was signed by Hondl, states that Hondl applied the balance of the proceeds from the sale “upon the annexed execution, and I hereby return the annexed Execution satisfied in full.” On November 14, 2003, the Return on Execution was filed in the Stearns County District Court, and it states that the execution was “[s]atisfied in full.” Thus, the assignment of judgment did not give appellant an interest in the property because the judgment it assigned had already been satisfied.

Finally, the only authority for his motion that appellant asserted in the district court is Minn. Stat. § 581.11. That section allows the district court to compel delivery of possession of land when possession is wrongly withheld after the time for redemption in a mortgage foreclosure by action. Minn. Stat. § 518.11 (2008). Appellant cites no authority that indicates that Minn. Stat. § 581.11 applies following the sale of property on execution of a judgment or that a motion for an order compelling delivery of possession of property as a matter of law may be used to correct purported errors or irregularities that occur during a sheriff’s sale.

Because nothing in the record demonstrates that appellant acquired from C & L any legal interest in any property sold at the sheriff’s sale or that Minn. Stat. § 581.11 applies following the sale of property on execution, the district court did not err in dismissing appellant’s claims for failing to state a claim for which relief can be granted.



## II.

Appellant argues that the district court erred by dismissing his claims against Hondl and Sanner on the ground that they were not properly served. “Determination of whether service of process was proper is a question of law reviewed de novo.” *Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d 609, 611 (Minn. App. 2000), *review denied* (Minn. Jan. 26, 2001).

The general rule is that service is made “by delivering a copy to the individual personally or by leaving a copy at the individual’s usual place of abode with some person of suitable age and discretion residing therein.” Minn. R. Civ. Proc. 4.03(a). Unless service of process is effectuated, the district court lacks personal jurisdiction over a defendant. *Ryan Contracting, Inc. v. JAG Invs., Inc.*, 634 N.W.2d 176, 181 (Minn. 2001). “[A]ctual notice of the lawsuit will not subject defendants to personal jurisdiction without substantial compliance with Rule 4.03.” *Tullis v. Federated Mut. Ins. Co.*, 570 N.W.2d 309, 311 (Minn. 1997).

The record demonstrates that neither Sanner nor Hondl was properly served. Appellant sent copies of the summons and complaint only to the Stearns County Attorney’s Office. Appellant argued at the August 17, 2007, motion hearing that “the rules do allow service on the County or any party if they’re willing to accept service, and [Assistant Stearns County Attorney] Marcus Miller clearly led me to believe that he was willing to accept service on behalf of the County for” Sanner and Hondl. The rule provides “If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a

state official to receive service of summons, service may be made in the manner provided by such statute.” Minn. R. Civ. P. 4.03(a). But there is no evidence in the record that either Sanner or Hondl consented to any other method of service or appointed Miller to receive service for them, and appellant has not cited any statute that designates Miller as a state official to receive service. Accordingly, the district court properly dismissed the claims against Hondl and Sanner for insufficient service.

**Affirmed.**