

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1542**

Lake State Federal Credit Union,
Respondent,

vs.

Richard Tretsven, a/k/a Richard J. Tretsven, et al.,
Defendants,

Kenneth D. Woodard,
Appellant.

**Filed July 15, 2008
Affirmed
Schellhas, Judge**

Carlton County District Court
File No. 09-CV-05-3704

John M. Gassert, William T. Helwig, Rudy, Gassert, Yetka & Pritchett, P.A., 813
Cloquet Avenue, Cloquet, MN 55720 (for respondent)

Kenneth D. Woodard, 609 Marie Avenue, South St. Paul, MN 55075-2039 (pro se
appellant)

Considered and decided by Hudson, Presiding Judge; Shumaker, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's ruling depriving him of rights to property against which he extended a mortgage. Because we hold that (1) as an individual, appellant has no standing to appeal the district court's ruling; and (2) appellant's claim to rights in the property fails because the alleged mortgagee was an unregistered limited liability company, we affirm.

FACTS

On October 24, 2004, Defendant Richard Tretsven entered into a purchase agreement for a 160-acre parcel of property near Moose Lake, Minnesota. On December 3, the property was appraised at \$190,000 in an appraisal obtained by Tretsven for Pinnacle Mortgage, Inc. Pinnacle Mortgage apparently never provided mortgage financing in connection with the property. Later in December, Tretsven applied to respondent Lake State Federal Credit Union (Lake State) for a \$148,000 purchase-money mortgage. Lake State agreed to finance the purchase and to allow Agility Title, Inc. (Agility), to handle the closing. Tretsven disclosed that he was an employee of Agility and wanted to use Agility to close on his purchase because, as an employee, he could receive a discount on the closing costs. Tretsven told Lake State that Agility had already prepared a title insurance commitment and appraisal on the property for Pinnacle Mortgage. Lake State received verification from Agility that it was an authorized agent of First American Title Insurance Company and could provide a title insurance commitment to Lake State, close the purchase, and record the documents on Lake State's

behalf. Lake State then approved a \$148,000 purchase-money mortgage to Tretsven. At this time, the president of Agility was Amanda M. Mahn, who apparently later became Tretsven's wife.¹

Before the closing, on December 10, 2004, the sellers executed a warranty deed. On January 10, 2005, Lake State wired to Agility \$148,000 in mortgage proceeds and Agility closed the sale of the property to Tretsven. Tretsven was the sole signor of the mortgage note and mortgage running in favor of Lake State. Immediately after the closing, Agility provided Lake State copies of the executed warranty deed, settlement statement, promissory note, and mortgage, each document listing only Tretsven as purchaser, borrower, and grantee. Agility promised Lake State that it would immediately record the warranty deed and mortgage, but it failed to do so.

Sometime after the closing, Mahn's name was added to the original warranty deed as an additional grantee.² Mahn's typewritten name is not aligned with, and is typed in a different font from, the other text in the warranty deed. There is no affidavit or other document in the file indicating that this alteration of the deed corrected or was intended to correct a clerical error or other error in the deed. On February 11, 2005, using the altered warranty deed, Mahn purported to grant a mortgage on the property to Hunter Financial, LLC. At that time, the sole shareholder of Hunter Financial was appellant

¹ Mahn's name appears as "Amanda Michelle Tretsven" in a document filed in federal district court by a United States Attorney on August 17, 2006, charging in part that "defendant Tretsven and her husband" fraudulently obtained loans against the property. At a district court hearing in the case now before this court, Lake State's attorney asserted that Mahn and Tretsven were married in August 2005.

² Since the closing, the grantors have attested that Mahn's name was not on the warranty deed when they executed it.

Kenneth D. Woodard, and Hunter Financial was not registered with the Minnesota Secretary of State as a limited liability company (LLC); it was not registered as an LLC until September 13, 2005.³ Neither the mortgage note nor the mortgage allegedly granted to Hunter Financial, LLC, contains any mention of Woodard. Only Mahn signed the mortgage note and mortgage; Tretsvan signed neither document. Woodard allegedly wired \$57,000 in mortgage financing to Mahn on February 11, 2005 and recorded the warranty deed in the Carlton County Recorder's Office on March 1, 2005. At that time, Lake State's mortgage had not yet been recorded.

Tretsvan failed to make the August, September, October, and November 2005 mortgage payments to Lake State. Thereafter, Lake State discovered that Agility had not recorded the original warranty deed, that the warranty deed had been altered, and that the altered warranty deed had allegedly been used to obtain mortgage financing from Hunter Financial. On December 5, 2005, Lake State commenced a foreclosure action against the property, notified all other lienholders, including Hunter Financial, and joined them as defendants.⁴ Lake State obtained summary judgment against Hunter Financial, the district court determining that the alleged mortgage given by Mahn to Hunter Financial was "void, having been obtained as the result of fraud," and ordering that the property be foreclosed and the proceeds from the foreclosure sale awarded to Lake State with any surplus sale proceeds paid into district court. This appeal followed.

³ The Minnesota Secretary of State administratively terminated the registration of Hunter Financial, LLC, on January 11, 2007.

⁴ Around December 2005, Mahn became the subject of a criminal investigation.

DECISION

Standing

Respondent argues that Woodard does not have standing to bring this appeal. “Whether a party has standing is a question of law that appellate courts review de novo.” *In re Horton*, 668 N.W.2d 208, 212 (Minn. App. 2003). Woodard was not a party to the original case; Hunter Financial, LLC, was the named defendant in the district court action and appeared pro se.⁵ This appeal is brought by Woodard, individually and pro se, not by Hunter Financial. Woodard’s standing to participate in the district court proceedings was not raised in that court because he was not a party. Here, we address Woodard’s standing to pursue this appeal because “the question of standing cannot be waived and may be raised at anytime.” *Id.*

Standing is essential to a court’s exercise of jurisdiction. *Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989). A party may acquire standing either by suffering an injury-in-fact or through a legislative act granting standing. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). The fact that a party is not named in the original action does not necessarily deprive that party of standing to appeal a decision as to that action. *See Annandale Advocate*, 435 N.W.2d at

⁵ An LLC must be represented by an attorney in district court. *See Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 754 (Minn. 1992) (requiring corporations to be represented by attorneys in legal proceedings); *Stone v. Jetmar Properties, LLC*, 733 N.W.2d 480, 486 (Minn. App. 2007) (noting that the law governing corporations is the basis for, and guides our interpretation and application of, the law governing LLCs). The district court should have insisted that Hunter Financial obtain legal counsel before allowing it to prosecute its claim in district court.

26 (holding that a police chief not named in an action to release information pertaining to a meeting about his discharge had standing to appeal the decision to release the information); *In re Block*, 727 N.W.2d 166, 174-75 (Minn. App. 2007) (holding that the Minnesota Federated Humane Societies had standing to appeal a conditional use permit for a dog kennel despite not being a party to the original action). “[T]he general rule is that a person may appeal from a judgment that adversely affects his or her rights, even if the person was not a party to the proceeding below.” *In re Marriage of Sammons*, 642 N.W.2d 450, 456 (Minn. App. 2002).

Lake State argues that Woodard does not have standing to appeal because he was simply a member, albeit the sole member, of the LLC named in the original action. Woodard argues that he is the proper party to this case because he personally issued the funds for the mortgage from his own account before Hunter Financial was registered. Although Woodard did not register Hunter Financial as an LLC until months after Mahn allegedly granted Hunter Financial a mortgage, the record is clear that the mortgagee in the mortgage allegedly granted by Mahn is Hunter Financial, not Woodard. And, the record does not establish whether Woodard transferred or assigned any of his interests to Hunter Financial after he registered the LLC and Woodard did not raise the question of mortgage ownership in the district court. As a general rule, we will not consider issues that were not argued and considered in the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Minnesota Statutes, section 322B.88, provides that “a member of a limited liability company is not a proper party to a proceeding by or against a limited liability company,”

unless (1) the proceeding involves “member’s right against, or liability to, the limited liability company”; or (2) “the proceeding involves a claim of personal liability or responsibility of that member and that claim has some basis other than the member’s status as a member.” Minn. Stat. § 322B.88 (2006). Because the case before us involves neither exception, we conclude that Woodard, as an individual, lacks standing as an individual to pursue this appeal.⁶

Because Woodard’s right to bring this appeal is precluded by Minn. Stat. § 322B.88, we need not consider the question of whether Woodard or his LLC had any legitimate rights in the foreclosed property. But because the parties may attempt to resolve this question with additional litigation, we find it in the interests of justice to address it here. *See* Minn. R. Civ. App. P. 103.04 (permitting our review of any matter as the interest of justice may require).

Woodard’s Rights in the Property

The district court’s ruling came in response to Lake State’s motion for summary judgment. When reviewing summary-judgment determinations, we consider whether

⁶ Hunter Financial was administratively terminated by the secretary of state several months before the district court ruled in the original action in this case; thus, Hunter Financial no longer existed as an LLC when the district court’s judgment was entered. This fact does not affect our conclusion that Woodard lacks standing to pursue this appeal because, although a member of a terminated LLC is permitted by law to bring or defend a claim on the LLC’s behalf, the member must do so “in the name of the limited liability company.” Minn. Stat. § 322B.866 (2006). Woodard did not do so. Moreover, if Woodard chooses to do so, he may not individually represent Hunter Financial or its interests. Rather, he must obtain an attorney to represent Hunter Financial. *See Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 754 (Minn. 1992) (requiring corporations to be represented by attorneys in legal proceedings); *Stone v. Jetmar Properties, LLC*, 733 N.W.2d 480, 486 (Minn. App. 2007) (noting that the law governing corporations is the basis for, and guides our interpretation and application of, the law governing LLCs).

there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We must view the record in the light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). If no genuine issues of material fact exist, we review the district court's application of the law de novo. *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989).

Woodard argues that the district court erred in determining, as a matter of law, that Hunter Financial had no interest in the property. Woodard bases much of his argument on his assertion that as a bona-fide purchaser under the Minnesota Recording Act, his interest in the property is superior to Lake State's interest. The Minnesota Recording Act provides that "[e]very conveyance of real estate . . . [that is not] recorded shall be void as against any subsequent purchaser in good faith . . . as against any attachment levied thereon . . . of record prior to the recording of such conveyance." Minn. Stat. § 507.34 (2006). Woodard argues that he recorded Hunter Financial's mortgage against the property before Lake State recorded its mortgage and with no notice of Lake State's mortgage interest in the property. Thus, Woodard argues that he is a bona-fide purchaser with superior rights to the property.

But even assuming that Hunter Financial was a bona-fide purchaser under the Recording Act, neither Woodard nor Hunter Financial can claim any interest in the property because Hunter Financial was not a registered LLC when the mortgage was issued in Hunter Financial's name. *See Stone*, 733 N.W.2d at 486 (holding that deeds cannot be delivered to nonexistent entities, whether the entities are natural or legal, and

that a deed conveying property to an unregistered LLC was void). The *Stone* court reasoned that because the LLC was a nonexistent entity, it could not accept delivery of the deed. *Id.* Although *Stone* concerned delivery requirements for deeds, a mortgage must also be delivered to a mortgagee to be valid. *Lee v. Fletcher*, 46 Minn. 49, 51, 48 N.W. 456, 457 (1891); *see also Tomlinson v. Kandiyohi County Bank*, 162 Minn. 230, 234, 202 N.W. 494, 496 (1925) (“It is elementary that delivery is essential to the validity of a deed or mortgage.”). The fact that Woodard registered Hunter Financial with the secretary of state after Mahn granted it the mortgage does not affect our analysis. In *Stone*, although the LLC was registered a year after the deed was delivered to one of its members, this court explicitly refused to recognize the LLC as a de facto entity. 733 N.W.2d at 487. “Allowing a form of future interest to vest in unorganized entities would be inconsistent with our public policy of encouraging legal organization.” *Id.* We extend this conclusion to the case now before us and hold that because Hunter Financial was registered after the mortgage was granted to it, the mortgage allegedly conveying a property interest to it was void. We hold that neither Woodard nor Hunter Financial has any rights to the property. *See id.* (affirming a district court’s finding that a deed conveying property to an unregistered LLC was void and awarding title to the property to the previous owner). We need not address the validity of the warranty deed nor Woodard’s or Hunter Financial’s alleged status as bona-fide purchasers. Similarly, we need not address what impact, if any, the voidness of the mortgage has on the debt associated with that mortgage.

Affirmed.