

IN THE COURT OF APPEALS OF IOWA

No. 7-501 / 06-1941
Filed October 24, 2007

WELLS FARGO BANK, N.A.,
Plaintiff-Appellant,

vs.

TROY D. HUDSON and JODI HUDSON,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Richard Blane,
Judge.

Plaintiff appeals district court's grant of summary judgment for defendants
and dismissal of plaintiff's foreclosure petition. **AFFIRMED.**

David Erickson and Tara Hall of Davis, Brown, Koehn, Shors & Roberts
Law Firm, Des Moines, for appellant.

Robert Nading of Nading Law Firm, Ankeny, for appellees.

Heard by Sackett, C.J., and Huitink and Vogel, JJ.

SACKETT, C.J.

The district court dismissed on summary judgment Wells Fargo Bank's (Wells Fargo) petition for foreclosure of a real estate mortgage on property owned by defendant Troy D. Hudson. The court found the undisputed facts to be that (1) the property at the time the mortgage was given was the homestead of Troy and his wife, defendant Jodi Hudson, and (2) Jodi Hudson had not signed either the note or the mortgage. Under these facts in applying Iowa Code section 561.13 (2005), the district court found the mortgage was null and void. On appeal Wells Fargo contends (1) the district court erred in granting summary judgment, and (2) Wells Fargo should have been found to have an equitable mortgage or equitable lien on the property. We affirm.

I. BACKGROUND.

On December 28, 2004 Troy executed and delivered to Wells Fargo Bank a promissory note in the principle sum of \$185,500. As security for the note Troy, representing himself as a married person, signed and delivered to Wells Fargo a mortgage on certain real estate locally known as 1590 Northeast 70th Avenue in Ankeny, Iowa. The mortgage was duly recorded in the office of the Polk County Recorder. Jodi's signature does not appear on either the note or the mortgage.

The mortgage provided that in case of default on the note, Wells Fargo could declare the entire principal and accrued interest due and payable, exercise its right to enforce payment of the note, and foreclose the mortgage.

On July 6, 2006 Wells Fargo filed a petition in equity contending Troy was in default on the note, deeming it due and payable, and seeking foreclosure of

the mortgage. The Hudsons answered, raising as an affirmative defense that the property was a homestead.

Both parties filed motions for summary judgment. Wells Fargo's motion was dismissed after a hearing. The Hudsons contended the action should be dismissed because the mortgage held by Wells Fargo was void as to both of them; for at the time of the encumbrance, the property was a homestead and Jodi did not sign the mortgage. An affidavit by Jodi was filed wherein she stated she was Troy's lawful wife and had been his wife since before Troy obtained any interest in the real estate in question. She further stated she has resided on the property with her husband and children since before Troy gave the mortgage to Wells Fargo. In addition, she stated she never signed a document conveying any interest she might have in the property to Wells Fargo. Troy also filed an affidavit wherein he stated that he was the owner of the property and it had been his homestead when he signed the note and mortgage. The mortgage's terms required Hudson to occupy the property as his principle residence unless Hudson obtained Wells Fargo's consent. Wells Fargo did not dispute these facts. Rather, they contended that they were entitled to an equitable mortgage or equitable lien on the property.

The district court found the mortgage void, dismissed the foreclosure action without prejudice, and refused to establish an equitable mortgage or equitable lien in Wells Fargo's favor.

II. SCOPE OF REVIEW.

Our review of a grant of summary judgment is for correction of errors of law. *Wiedmeyer v. Equitable Life Assurance Soc'y of U.S.*, 644 N.W.2d 31, 33 (Iowa 2003).

III. SUMMARY JUDGMENT.

Wells Fargo contends the district court erred in granting the motion for summary judgment because they do not have an adequate remedy at law because a lien cannot attach to the Hudsons' homestead.

Summary judgment is appropriate only when the moving party shows there are no genuine issues of material fact. *Wright v. Am. Cyanamid Co.*, 599 N.W.2d 668, 670 (Iowa 1999). We examine the record in the light most favorable to the party opposing summary judgment. *Kelly v. Iowa Mut. Ins. Co.*, 620 N.W.2d 637, 641 (Iowa 2001).

The burden is on the party moving for summary judgment to prove the facts are undisputed. *Kolarik v. Cory Int'l Corp.*, 721 N.W.2d 159, 162 (Iowa 2006). A party seeking summary judgment must show "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3). A genuine issue of material fact is present if reasonable minds could differ on how the issue should be resolved. *Christy v. Miulli*, 692 N.W.2d 694, 699 (Iowa 2005). In considering whether the moving party has met its burden, we view the record in the light most favorable to the nonmoving party. *Eggiman v. Self-Insured Servs. Co.*, 718 N.W.2d 754, 758 (Iowa 2006). If the moving party has met its burden to show there are no genuine issues of material fact, the nonmoving party must set forth specific facts

to show a genuine factual issue exists. *K & W Elec., Inc. v. State*, 712 N.W.2d 107, 112 (Iowa 2006).

In a mortgage foreclosure action where the facts are not in dispute, summary judgment may be appropriate. *Willow Tree Inv., Inc. v. Wagner*, 453 N.W.2d 641, 642 (Iowa 1990). However, where rational minds could draw different inferences from the facts, summary judgment in a foreclosure action is not appropriate. *First Nat'l Bank v. Kinney*, 454 N.W.2d 589, 592 (Iowa 1990).

“Homestead rights are jealously guarded by the law.” *Iowa State Bank & Trust Co. v. Michel*, 683 N.W.2d 95, 101 (Iowa 2004); *Merchants Mut. Bonding v. Underberg*, 291 N.W.2d 19, 21 (Iowa 1980).

Iowa Code section 561.13 provides:

A conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument, or a power of attorney for the execution of the same or a like instrument, and the instrument or power of attorney sets out the legal description of the homestead.

The purpose of this section governing “conveyance or encumbrance” of the homestead is to prevent the destruction of homestead rights of married persons, except in the manner prescribed by statute. *Wright v. Flatterich*, 225 Iowa 750, 756, 281 N.W. 221, 224 (1938). The homestead right is peculiarly favored, and there can be no operative conveyance or effectual release of the exemption, unless the mode pointed out by section 561.13 is pursued with reasonable strictness. See *Pagel v. Tietje*, 193 Iowa 467, 469, 186 N.W. 938, 939 (1922). The statute providing that conveyance or encumbrance of the homestead, if the owner is married, is not valid unless and until the owner’s spouse executes the same or a like instrument, makes a deed invalid. *Martin v.*

Martin, 720 N.W.2d 732, 736-37 (Iowa 2006). It is void without the signature of both spouses, not merely voidable by the spouse who did not sign. *Id.*; see also *Thayer v. Sherman*, 218 Iowa 451, 458, 255 N.W. 506, 509 (1934). The legislative provision is for the benefit of all who are interested in the homestead, the husband, the wife, and the children. See generally *Lunt v. Neeley*, 67 Iowa 97, 98, 24 N.W. 739, 739 (1885) (naming widower and children as plaintiffs in an action asserting homestead rights to property wife alone had assigned).

The undisputed facts are that at the time the mortgage was given, Troy's wife did not sign the mortgage on the property which was the parties' homestead. The mortgage was void as to both parties. See *Martin*, 720 N.W.2d at 736. The district court did not err in dismissing Wells Fargo's petition to foreclose the mortgage.

IV. EQUITABLE MORTGAGE OR LIEN.

Wells Fargo next contends they have no adequate remedy at law and that they should have an equitable mortgage or an equitable lien.

There is some authority for the granting of a limited lien under circumstances similar to these. The North Dakota Supreme Court in *Red River State Bank v. Reiersen*, 533 N.W.2d 683, 685 (N.D. 1995), affirmed a finding that a mortgage was unenforceable against homestead property because the homestead exemption waiver clause in the mortgage was not printed in a conspicuous manner. However, the court also found a trial court did not abuse its discretion in granting the Bank an equitable lien on the homestead subject to the homestead exemption so long as the debtors occupied the property as a homestead. *Red River*, 533 N.W.2d at 685.

However, the Iowa Supreme Court reached a different result in *Iowa State Bank & Trust Co. v. Michel*, 683 N.W.2d 95, 98 (Iowa 2004), where they addressed a challenge to a trial court's granting a lender an equitable mortgage under somewhat similar circumstances. Phillip and Marci Michel, husband and wife, as security for a loan, gave a mortgage on property determined to be an agricultural homestead. *Michel*, 683 N.W.2d at 98-99. The Michels waived their statutory homestead exemption but did not sign the agricultural homestead disclosure required by Iowa Code section 561.22 (1997). *Id.* at 99. In rejecting the lender's argument that granting of the equitable mortgage should be affirmed, the court reasoned that courts of equity are bound by statutes and follow the law in absence of fraud or mistake. See *id.* at 107 (citing *Mensch v. Netty*, 408 N.W.2d 383, 386 (Iowa 1987)). The court recognized that while its conclusion in the case may result in a grave injustice to the lender, a court of equity cannot expand its jurisdiction to completely override statutes or ignore established doctrines. *Id.*; see also *Alvis v. Alvis*, 123 Iowa 546, 551-54, 99 N.W. 166, 168-69 (1904) (rejecting theories of constructive trust and subrogation and finding a conveyance unenforceable because the grantor's spouse failed to sign a deed as required for waiver of the spouse's homestead rights despite the spouse's apparent later ratification of the conveyance). Such a rule preserves the integrity of the legislature's judgment that certain transactions will be given effect only if they comply with the requirements set out in a statute. *Michel*, 683 N.W.2d at 107.

The mortgage clearly identified Troy Hudson as a married man. His wife, Jodi Hudson, neither signed nor ratified the mortgage on property which was

their homestead. There is no basis to establish an equitable mortgage or lien and we decline Wells Fargo's invitation to do so.

Having so decided we have also found there is no basis for Wells Fargo's argument that they should have equitable relief because they have no remedy at law. Even if the argument were valid, Wells Fargo does have a legal remedy. They can bring suit against Troy on the promissory note. We affirm the granting of the summary judgment.

AFFIRMED.