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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1569**

Anovus, L.L.C.,  
Appellant,

vs.

Wade Ysker,  
Respondent

**Filed April 21, 2014  
Affirmed in part and reversed in part  
Worke, Judge**

Jackson County District Court  
File No. 32-CV-13-23

Nathan A. Busch, Anovus, L.L.C., Windom, Minnesota (for appellant)

Ronald J. Schramel, Kristi L. Meyeraan, Schramel Law Office, Windom, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Worke, Judge; and Kirk, Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

Appellant law firm argues that the district court erred by ruling that appellant could not enforce an attorney lien against respondent's homestead property and could not establish an attorney lien against a second property because respondent is not the record owner of the property or against certain personal property. Appellant also asserts that the

district court deprived it of due process of law and lacked subject matter jurisdiction over the matters at issue. We affirm in part and reverse in part.

## **FACTS**

In 2010, respondent Wade Ysker purchased a piece of property from Jason and Natalie Ysker for \$110,000. Although the purchase agreement covered one parcel consisting of 14.63 acres, Ysker's mortgage company refused to mortgage the property unless it was divided into two parcels, one containing the homestead residence (parcel A) and one containing several buildings used for farm operations (parcel B). At the closing, Jason and Natalie Ysker refused to give Ysker a warranty deed for parcel B.

Ysker hired appellant Anovus, L.L.C., to secure title to parcel B. Ysker signed a retainer agreement with Anovus and its sole attorney, Nathan Busch, agreeing to pay Anovus on an hourly basis at the rate of \$250 per hour, plus a finance charge of 1.5% per month on all unpaid invoices. Busch advised Ysker that his fees could be in excess of \$100,000. Ysker signed the retainer agreement but he did not sign a homestead-exemption waiver. Anovus issued a summons and complaint, and obtained a temporary injunction and partial summary judgment on Ysker's behalf. The dispute was finally resolved by mediation in August 2012. Anovus presented Ysker with a bill for attorney fees and costs in the amount of \$327,940.88.

On February 11, 2013, Anovus withdrew as counsel at Ysker's request. On the same date, Anovus filed attorney liens against parcels A and B and against Ysker's interest in various items of personal property, including the abstract of title and the warranty deed for parcel B, crops and farm equipment, and a \$10,000 check from the

district court returning the bond Ysker posted for the temporary injunction. Although Ysker asked Anovus for the abstract, the warranty deed, and his case file, Anovus refused to return them.

Anovus moved the district court to establish and determine the amount of the attorney liens and for entry of judgment against real and personal property involved in the Ysker case. After a hearing, the district court concluded that Anovus established a valid attorney lien in the amount of \$327,940.88 against parcel A, but added that Anovus could not foreclose or enforce this lien because parcel A is homestead property worth less than the homestead exemption of \$390,000. The district court denied Anovus's lien against parcel B because the property was not titled in Ysker's name, as a consequence of Anovus retaining the abstract and the warranty deed, which had not been recorded.

The district court also denied Anovus's lien claims against (1) the abstract, the warranty deed, and any other documents in its possession; (2) the \$10,000 bond check; (3) hay and corn harvested by Ysker; and (4) other items of personal property. The district court ordered Anovus to return the abstract of title and the deed to Ysker, and to either give Ysker the \$10,000 check or return it to the court administrator. This appeal followed.

## **D E C I S I O N**

We review the district court's interpretation of the attorney-lien statute de novo, as a question of law. *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 420 (Minn. App. 2008). That statute, Minn. Stat. § 481.13, subd. 1 (2012), provides:

An attorney has a lien for compensation whether the agreement for compensation is expressed or implied (1) upon the cause of action from the time of the service of the summons in the action, or the commencement of the proceeding, and (2) upon the interest of the attorney's client in any money or property involved in or affected by any action or proceeding in which the attorney may have been employed, from the commencement of the action or proceeding, and, as against third parties, from the time of filing the notice of the lien claim, as provided in this section.

### ***Homestead exemption***

The district court concluded that Anovus established an attorney lien in the amount of \$327,940.88<sup>1</sup> against parcel A, but it further concluded that Anovus was barred from enforcing the lien until the property value exceeded \$390,000. The district court found that parcel A is classified as homestead property, which is exempt from foreclosure, except in certain circumstances not relevant here, until its value exceeds the statutory homestead exemption amount. *See* Minn. Stat. §§ 510.01, .02 (2012) (defining homestead, describing exemption, and setting forth amount of the homestead exemption).

The Minnesota Constitution provides the basis for the homestead exemption. Minn. Const. art. I, § 12 (“A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability.”). The homestead exemption protects the house owned and occupied by a debtor as his homestead, together with up to 160 acres of the land on which it sits, if the debtor has not agreed in writing that the debt may be

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<sup>1</sup> Although Ysker challenged the reasonableness of the fees in district court, he has not filed a related appeal, and we will not address this issue. *See In re Guardianship of Pates*, 823 N.W.2d 881, 884-85 (Minn. App. 2012) (stating that a respondent's request for review of a judgment or order is not properly before an appellate court if no notice of related appeal is filed).

charged against the homestead or if the debt is not for work done on the homestead. Minn. Stat. §§ 510.01, .02.

Anovus argues that the district court exceeded the scope of the attorney-lien statute because it sought to address how Anovus could enforce the lien, rather than limiting its scope of inquiry to whether Anovus had established a lien. Anovus asserts that the statute provides for a summary proceeding, during which the district court can establish the lien and determine the amount of the lien, and nothing else. *See* Minn. Stat. § 481.13, subd. 1(c).

In order to establish a lien, “the district court must determine (1) the lienholder; (2) the subject of the lien as defined by the attorney-lien statute; and (3) the amount due.” *Grossman*, 749 N.W.2d at 422. In doing so, the district court identifies the property and can “declare rights, status, and other legal relations affected by the contract or statute.” *Id.* (quotation omitted). This language, particularly the reference to the district court’s ability to “declare” the nature and extent of the parties’ “rights,” is broad enough to permit the district court to declare that the lien is subject to the homestead exemption, despite the summary nature of the proceedings.

### ***Property title***

The district court found that Ysker was unable to record the warranty deed transferring title of parcel B from the previous owners to himself because Anovus refused to return the deed to Ysker. The district court concluded that because the deed had not been recorded, ownership had not transferred, and Anovus could not file an attorney lien against the property.

Minnesota has two property title systems, the Torrens system and the abstract system. *Fingerhut Corp. v. Suburban Nat'l Bank*, 460 N.W.2d 63, 65 (Minn. App. 1990). Under the Torrens system, title to land is registered with the appropriate registrar's office; the act of registering an instrument of conveyance is "the operative act to convey or affect the land." *Id.* (quotation omitted). In the Torrens system, an unregistered warranty deed, even if properly executed and delivered, would not be effective to convey title. *Id.* at 66. The registered title is conclusive evidence of title. *Id.*

But parcel B is abstract property. Under the abstract system, the abstract is "notice to the world of recorded interests, encumbrances, and liens." 25 Eileen M. Roberts, *Minnesota Practice* § 3.1 (2013 ed.) But it is not conclusive proof of ownership because "[t]he county recorder does not scrutinize ownership or other matters when accepting instruments for recording." *Id.* In the abstract system, "[d]eeds and other instruments are effective upon delivery . . . ; recording generally has no effect on their validity." *Id.*

Thus, title to parcel B depends on whether the warranty deed was delivered to Ysker. See *In re Estate of Savich*, 671 N.W.2d 746, 750 (Minn. App. 2003). "The essential elements of delivery are surrender of control by the grantor and intent to convey title. Physical delivery is not necessary; the grantor must merely show a present, unconditional intention to part with ownership." *Id.* (citations omitted). Delivery to a third party is effective if "the grantor evinced an intention presently and unconditionally to part with all control [of the property]." *Slawik v. Loseth*, 207 Minn. 137, 139, 290 N.W. 228, 229 (1940).

Here, after a partial summary judgment granting title to Ysker and after a mediated settlement of all other issues, Jason and Natalie Ysker signed a warranty deed conveying parcel B to Ysker and delivered it to Ysker's attorney. This is sufficient to show surrender of control and intent to convey. The district court erred by concluding that Ysker was not the property owner. We therefore reverse the district court's order refusing to establish an attorney lien against parcel B.<sup>2</sup>

### ***Personal property lien***

Anovus claimed an attorney lien against various items of personal property, including the abstract of title and warranty deed to parcel B, all documents relating to the file in its possession, other personal property located on parcel B, Ysker's crops, and the \$10,000 bond filed in support of the temporary injunction.

#### *Abstract of title, warranty deed, and file*

The district court found that an attorney lien cannot properly be asserted against the abstract of title, the warranty deed, and Ysker's case file. Anovus argues that these items are part of Ysker's cause of action and it is therefore permitted to have an attorney lien on these items. *See* Minn. Stat. § 481.13, subd. 1 (stating that attorney has a lien for compensation on client's cause of action).

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<sup>2</sup> But parcel B is also covered by the homestead exemption and a lien against it is subject to the same limitations. The homestead exemption can apply to more than one parcel of land, so long as the parcels are contiguous and the land is "occupied and cultivated as one piece or parcel of land, on some part of which is located the residence." *Michels v. Kozitza*, 610 N.W.2d 368, 371-72 (Minn. App. 2000), *review denied* (Minn. Jul. 25, 2000). Here, it is undisputed that these conditions are satisfied.

Before 1976, an attorney could enforce a retaining lien. *St. Cloud Nat'l Bank v. Brutger*, 488 N.W.2d 852, 855 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992). A retaining lien “gave the attorney the right to retain a client’s papers or money until the client paid the attorney’s bill.” *Boline v. Doty*, 345 N.W.2d 285, 288 (Minn. App. 1984). Under the current system, however, an attorney may enforce a charging lien “on the cause of action and on the client’s interest in any money or property involved in or affected by any action or proceeding in which he may have been employed and on the judgment.” *Id.* at 288-89. Anovus’s attempt to retain the abstract, deed, and case file until Ysker pays the attorney fees resembles a retaining lien, which is no longer permissible.

Minn. Stat. § 386.375, subd. 1(b) (2012), states that “[a] person holding an abstract of title to real estate located in Minnesota shall, within ten days of receipt of a written request from the . . . fee owner . . . , transfer the abstract of title to . . . [the] fee owner.” Subdivision 1(c) entitles the fee owner to collect civil damages up to \$500 if the abstract is not transferred after a request. Anovus argues that because section 481.13 does not specifically forbid an attorney from placing a lien on an abstract, the district court erred by “drafting such an exclusion” into the statute. But the district court’s reasoning is reinforced by Minn. R. Prof. Conduct 1.16(d), which requires an attorney to return all papers to which a client is entitled upon termination of representation. This includes all documents delivered to the attorney on behalf of the client, and transactional documents. *Id.*(e). The rules specifically state, “A lawyer shall not condition the return of client papers and property on payment of the lawyer’s fee or the cost of copying the

files or papers.” *Id.*(g). Furthermore, failure to return documents is a basis for disciplinary action. *See In re Disciplinary Action Against Cowan*, 540 N.W.2d 825, 827 (Minn. 1995) (citing as misconduct a lawyer’s failure to return an abstract of a client’s property despite numerous requests by subsequent purchaser and investigation by Office of Lawyer’s Professional Responsibility).

Anovus argues that sections 386.375 and 481.13 can be harmonized by holding “a request under § 386.375, subd. 1(b) . . . in abeyance until such time as the attorney lien is either resolved or satisfied.” But the laws and rules mandating return of documents belonging to a client are clear, particularly as to the responsibility of an attorney to return client papers and property despite unpaid fees. We may not disregard the letter of the law when it is “free from all ambiguity.” Minn. Stat. § 645.16 (2012). The district court did not err by denying Anovus’s request for a lien on the abstract, warranty deed, or client file.

*Personal property and crops*

The district court found that the physical personal property, including farm equipment, machinery, and crops, against which Anovus attempted to establish a lien was (1) not owned by Ysker; (2) no longer on the property at the time the attorney lien was filed; and (3) not included in Ysker’s cause of action, which dealt with ownership of the real property. The district court found that the underlying cause of action had nothing to do with “crops, the harvesting of crops, or income received from the sale of the crops” and that nothing in the record showed when or from which parcel the crops were harvested. The district court concluded as a matter of law that these items were not part

of the cause of action or were not money or property involved in the underlying action or proceeding. Anovus did not challenge these findings of fact.

The attorney-lien statute is intended to prevent a client from benefiting from the efforts of an attorney's services without paying for those services. *Grossman*, 749 N.W.2d at 420. Anovus's efforts did not benefit Ysker as to these items of personal property, which were merely incidental to the real issue of the underlying lawsuit, the ownership of parcel B. The district court did not err by refusing to establish a lien against the personal property and the crops.

*\$10,000 injunction bond*

The district court found that the court administrator released the \$10,000 bond that Ysker posted for the temporary injunction and mailed a check payable to Ysker and attorney Busch to Anovus, and that Anovus continued to hold the check and refused to give it to Ysker. Without explanation, the district court invoked Minn. R. Civ. P. 67.03, directing Anovus to deposit the money with the court or to deliver it to Ysker. Anovus argues that the \$10,000 check is subject to its attorney lien on personal property because (1) Ysker was directed to post the money as part of the litigation and could have forfeited it had the court determined that the temporary injunction was improper and caused damage to the enjoined parties; (2) Ysker had an interest in the money; and (3) the bond was "involved in or affected by" the proceeding and therefore was potentially subject to an attorney's lien.

The purpose of the attorney-lien statute is to protect against "a successful party receiving a judgment secured by an attorney's services without paying for those

services.” *Thomas A. Foster & Assocs., LTD v. Paulson*, 699 N.W.2d 1, 5 (Minn. App. 2005). “[I]f a client recovers money as a result of an attorney’s services, the attorney has a lien on the recovery as security for fees owed by the client.” *Id.*

To a certain extent, Anovus is correct: the \$10,000 bond was part of the underlying action because Ysker was required to post the money in order to obtain a temporary injunction. After the successful conclusion of the action, Ysker was entitled to recover the money posted; had he been unsuccessful, the enjoined parties could recover damages and attorney fees from the bond. *See NewMech Cos. v. Indep. Sch. Dist. No. 206*, 558 N.W.2d 22, 24 (Minn. App. 1997) (stating that enjoined party may recover attorney fees and damages from injunction bond if trial on merits determines that temporary injunction was not justified).

On the other hand, an attorney has a lien if a client recovers money as a result of the attorney’s representation. *Thomas A. Foster*, 699 N.W.2d at 5. The return of the bond here is, in effect, a neutral act: the court required Ysker to post it and the court likewise was required to return the bond after no claim was made against it and the matter was resolved. Anovus played no role in the return of the bond and cannot claim that the bond was returned because of its efforts.

In a criminal case involving an attempt to establish an attorney lien against cash bail posted by a defendant, this court theorized that the cash bail was not related to the cause of action, because the client’s interest in the money or property was not at issue in the action or proceeding. *State v. Clark*, 375 N.W.2d 59, 63 (Minn. App. 1985). But this decision was based on this court’s determination that attorney liens are limited to civil

actions; its analysis of the attorney-lien statute is dicta. *Id.* But the rationale articulated in *Clark* also applies here. The \$10,000 bond was not related to the underlying action, which involved the title to parcel B. The district court did not err by refusing to extend the lien to the bond.

### ***Due process***

Anovus argues that the district court's order directing it to deliver the abstract of title, warranty deeds, the case file, and the \$10,000 bond check to Ysker violated its constitutional right to due process. Anovus asserts that it was deprived of a fair hearing and the district court lacked subject matter jurisdiction because Ysker had not specifically raised the issues of ownership or possession of the abstract, deeds, case file, and bond check in his responsive filings with the court. Absent this, Anovus argues, the district court had no evidence on which to base its order to return these items of personal property.

An attorney lien is established in a summary proceeding tried to the court without a jury. *Boline*, 345 N.W.2d at 289. “[S]ummary proceedings characteristically are immediate and abridge formal procedures.” *Id.* Because an attorney lien “is a claim against an interest in property that may result in the deprivation of that property . . . minimal due process requires the state to afford a meaningful opportunity to be heard.” *Id.* Both parties to the lien action, Anovus and Ysker, attended the hearing on Anovus's motion to establish and determine attorney liens. Thus, Anovus's claim that it did not receive due process is not supported by the record.

Anovus also argues that the district court did not have subject matter jurisdiction over the requested liens against the abstract, deeds, and bond money because Ysker had not specifically discussed these items or provided evidence that they were in Anovus's custody. Because of this, Anovus asserts, the district court had no evidence concerning whether the items existed and whether they were in Anovus's custody. For this reason, Anovus argues that there was no case or controversy before the court. For purposes of this appeal, we assume that this argument addresses or involves the district court's subject matter jurisdiction. *But see Moore v. Moore*, 734 N.W.2d 285, 287 n.1 (Minn. 2007) (noting the lack of precision with which the term "subject matter jurisdiction" is often used), *review denied* (Minn. Sep. 18, 2007).

But Anovus sought to establish a lien against the abstract, deeds, and bond money, and filed a UCC statement claiming an interest in them. Further, Anovus's attorney Busch, in a letter that is part of the record, wrote to Ysker specifically declining Ysker's request to return the abstract and the deed to parcel B. Anovus placed the ownership or possession of the abstract, deed, and check into question. There is no basis for its challenge to the district court's order on the grounds of denial of due process or lack of subject matter jurisdiction.

**Affirmed in part and reversed in part.**