

No. A09-1591

STATE OF MINNESOTA

IN COURT OF APPEALS

Mirab Y. Bakken, f/k/a Mirab Y. Helgeson

Plaintiff/Appellant,

vs.

Olaf Helgeson, Estate of Olaf Helgeson,
Walter Holcomb, Carol J. Lindgren, Myrna O. Warwick,
Mary A. Hickerson, Linda L. Winkler, Wayne H. Yoemans,
Catherine Yoemans, Spruce Shadows, Inc., a Minnesota corporation,
Erich Schissel, First National Bank, Bagley, Fosston,

Defendants/Respondents.

BRIEF OF RESPONDENTS, SPRUCE SHADOWS, INC., AND ERICH SCHISSEL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF THE ISSUE iv

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 1

STANDARD OF REVIEW 2

SUMMARY JUDGMENT STANDARD 2

SURVIVAL OF JUDGMENTS 4

ENFORCEMENT OF JUDGMENT 5

ARGUMENT 5

CONCLUSION 6

TABLE OF AUTHORITIES

COURT DECISIONS

<u>A & J Builders, Inc. v. Harms</u> , 288 Minn. 124, 179 N.W.2d 98 (Minn. 1970)	4
<u>Anderson v. Liberty Lobby, Inc.</u> , 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)	3
<u>Bob Useldinger & Sons, Inc. v. Hangsleben</u> , 505 N.W.2d 323, 328 (Minn. 1993)	4
<u>Carlisle v. City of Minneapolis</u> , 437, N.W.2d 712 (Minn. Ct. App. 1989)	3
<u>Celotex Corp. v. Catrett</u> , 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (186)	3
<u>Cook v. Connolly</u> , 366 N.W.2d 287 (Minn. 1985)	3
<u>Dent v. Casaga</u> , 208 N.W.2d 734 (Minn. 1973)	4, 5
<u>DLH, Inc. v. Russ</u> , 566 N.W.2d 60, 69 (Minn. 1997)	3
<u>Gaspord v. Washington County Planning Comm'n</u> , 252 N.W.2d 590 (Minn. 1977)	2
<u>Klapmeier v. Town of Center</u> , 346 N.W.2d 133 (Minn. 1984)	6
<u>Lowry Hill Properties, Inc. v. Ashbach Const., Co.</u> , 194 N.W.2d 767 (Minn. 1971) <i>reh'g denied</i> (Mar. 16, 1972)	3
<u>Matsushita Electrical Industrial Co. v. Zenith Radio Corp.</u> , 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538, <i>on remand</i> , 807 F.2d 44 (3d Cir. 1986), <i>cert. denied</i> , 481 U.S. 1029, 107 S.Ct. 1955, 95 L.Ed.2d 527 (1987)	3
<u>Murphy v. Country House, Inc.</u> , 307 Minn. 344, 351, 240 N.W.2d 507, 512 (Minn. 1976)	4
<u>Nazarenko v. Mader</u> , 362 N.W.2d 1 (Minn.Ct. App. 1985)	4, 5
<u>Patton v. Newmar Corp.</u> , 538, N.W.2d 116 (Minn. 1995)	4
<u>Sauter v. Sauter</u> , 70 N.W.2d 351, 353 (Minn. 1955)	3
<u>Schulte v. Corner Club Bar</u> , 544 N.W.2d 486, 488 (Minn. 1996)	4
<u>Wallin v. Letourneau</u> , 534 N.W.2d 712 (Minn. 1995)	2
<u>Zappa v. Fahey</u> , 310 Minn. 555, 245 N.W.2d 258 (Minn. 1978)	4

COURT RULES

Minn.R.Civ.P. 56.03 2

Minn.R.Civ.P. 56.05 4

STATUTES

Minn. Stat. §548.09 4, 5

Minn. Stat. §550.01 5

STATEMENT OF THE ISSUE

I. WAS THE TRIAL COURT CORRECT IN GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, DISMISSING PLAINTIFF'S COMPLAINT BECAUSE THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT DEFENDANTS ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW?

The District Court ruling: The District Court was correct. It determined that defendants were entitled to summary judgment because there were no genuine issues to any material fact and that defendants were entitled to judgment as a matter of law.

Apposite Authorities:

Marquette National Bank of Minneapolis v. Mullin, 287 N.W.233 (Minn. 1939);

Atwater v. Manchester Savings Bank, 48 N.W.187 (Minn. 1891);

Redmond v. Redmond, 594 N.W.2d 272 (Minn. Ct. App. 1999); and

Weston v. Jones, 199 N.W.431 (Minn. 1924).

STATEMENT OF THE CASE

This action arose as an attempt by Appellant, Mirab Y. Bakken, f/k/a Mirab Y. Helgeson, to claim that a marital lien she received in 1983 against real property located in Beltrami County, Minnesota, was actually a mortgage against the property and that she should be entitled to foreclose the mortgage.

Appellant commenced an action against Respondents, Olaf Helgeson, Estate of Olaf Helgeson, Walter Holcomb, Carol J. Lindgren, Myrna O. Warwick, Mary A. Hickerson, Linda L. Winkler, Wayne H. Yoemans, Catherine Yoemans, Spruce Shadows, Inc., Erich Schissel, and First National Bank, Bagley, Fosston, in September, 2008, alleging that she had a valid, existing mortgage against the property and attempted to foreclose it pursuant to Minnesota Statutes §581 and §582.

A motion for summary judgment was heard by the Beltrami County District Court on May 11, 2009. The District Court granted Respondents' motions for summary judgment and dismissed Appellant's claim in its entirety, with prejudice. Appellant now appeals from the District Court's Order granting summary judgment to Respondents.

STATEMENT OF THE FACTS

1. Appellant was formerly married to Olaf Helgeson. On June 15, 1983, Appellant obtained a Judgment of Dissolution of Marriage between Appellant and Olaf Helgeson.

2. The Judgment of Dissolution of Marriage granted Appellant a marital lien against real property in Beltrami County, Minnesota, legally described as follows:

Northeast Quarter of the Northeast Quarter (NE¹/₄ of NE¹/₄), Section Fourteen (14),
Township One Hundred Forty-eight (148), Range Thirty-five (35);

in the amount of \$5,000.00.

3. The Judgment of Dissolution of Marriage was entered June 15, 1983.
4. There was never a renewal of the Judgment.
5. The property was conveyed six times after the entry of judgment. (District Court Memorandum attached to Order for Summary Judgment, p. 2.)
6. The first conveyances of the property occurred more than 21 years ago. (District Court Memorandum attached to Order for Summary Judgment, pp. 2 and 3.)
7. A portion of the real property at issue was then sold to Respondent, Spruce Shadows, Inc., and ultimately to Respondent, Erich Schissel. The property sold to Spruce Shadows, Inc., and Erich Schissel is legally described as:

The East Half of the Northeast Quarter of the Northeast Quarter (E½ of NE¼ of NE¼), less the South 66 feet of the East 330 feet of the Northeast Quarter of the Northeast Quarter (NE¼ of NE¼), Section Fourteen (14), Township One Hundred Forty-eight (148), Range Thirty-five (35).

STANDARD OF REVIEW

It is up to the Court of Appeals to review the record to determine:

- (1) Whether there are any genuine issues of material fact; and
- (2) Whether the Trial Court applied the law correctly to those facts.

Wallin v. Letourneau, 534 N.W.2d 712 (Minn. 1995).

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Minn.R.Civ.P. 56.03; Gaspord v. Washington County Planning Comm'n, 252 N.W.2d 590 (Minn. 1977). Rule 56 of the MINNESOTA RULES OF CIVIL PROCEDURE authorizes the Court to grant summary judgment when “there is no

genuine dispute regarding the material facts, and the party is entitled to judgment under the law applicable to such facts.” Minn.R.Civ.P. 56.03; DLH, Inc. v. Russ, 566 N.W.2d 60, 69 (Minn. 1997).

Judicial use of summary judgment has been substantially liberalized in recent years following a trio of Federal Court decisions which have been cited with approval by Minnesota Courts. Matsushita Electrical Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538, *on remand*, 807 F.2d 44 (3d Cir. 1986), *cert. denied*, 481 U.S. 1029, 107 S.Ct. 1955, 95 L.Ed.2d 527 (1987); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (186); Carlisle v. City of Minneapolis, 437, N.W.2d 712 (Minn. Ct. App. 1989). Their liberalized view was stated by Justice White in the Liberty Lobby decision who wrote:

Petitioners suggest, and we agree, that this [summary judgment under Rule 56] standard mirrors the standard for a directed verdict under FEDERAL RULE OF CIVIL PROCEDURE 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict.

477 U.S. at 250, 106 S.Ct. at 2511. The Minnesota Supreme Court has recognized that summary judgment serves a proper role as a procedure to relieve the Courts of burdens of unfounded litigation. Cook v. Connolly, 366 N.W.2d 287 (Minn. 1985).

On a motion for summary judgment, the moving party bears the burden of showing an absence of factual issues and the Court must view the evidence in the light most favorable to the non-moving party. Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1955). *See also*, Lowry Hill Properties, Inc. v. Ashbach Const., Co., 194 N.W.2d 767 (Minn. 1971) *reh'g denied* (Mar. 16, 1972).

Finally, summary judgment is an appropriate procedure to utilize when applying statutory language to the undisputed facts of a case. Schulte v. Corner Club Bar, 544 N.W.2d 486, 488 (Minn. 1996).

In response to a motion for summary judgment, a non-moving party must present the Trial Court with *specific* facts demonstrating the existence of a genuine issue of material fact. Minn.R.Civ.P. 56.05; Patton v. Newmar Corp., 538, N.W.2d 116 (Minn. 1995). A material fact is one that will affect the result or outcome of the case, depending on its resolution. Zappa v. Fahey, 310 Minn. 555, 245 N.W.2d 258 (Minn. 1978). A genuine issue of material fact “must be established by ‘*substantial evidence*.’” Murphy v. Country House, Inc., 307 Minn. 344, 351, 240 N.W.2d 507, 512 (Minn. 1976). It must be real and must not be technical, theoretical, sham, or frivolous. A & J Builders, Inc. v. Harms, 288 Minn. 124, 179 N.W.2d 98 (Minn. 1970). The non-moving party cannot rely on a “metaphysical doubt” in order to defeat summary judgment. Bob Useldinger & Sons, Inc. v. Hangsleben, 505 N.W.2d 323, 328 (Minn. 1993).

Here, there are no facts in dispute. The Trial Court appropriately found that there were no genuine issues of material fact. There were only issues of law that were to be decided by the Trial Court. The Trial Court correctly determined that summary judgment was appropriate.

SURVIVAL OF JUDGMENTS

A judgment becomes a lien on real property at the time the judgment is docketed. Minnesota Statutes 548.09; Dent v. Casaga, 208 N.W.2d 734 (Minn. 1973); Nazarenko v. Mader, 362 N.W.2d 1 (Minn.Ct. App. 1985). “The judgment survives and the lien continues, for 10 years after its entry.” MINNESOTA STATUTES §548.09.

ENFORCEMENT OF JUDGMENT

At any time within 10 years after the entry of judgment a party in whose favor a judgment is given may proceed to enforce the judgment. MINNESOTA STATUTES §550.01.

ARGUMENT

It is undisputed that the alleged lien claimed by Appellant was entered and docketed more than 25 years ago. A marriage dissolution judgment and decree specifying payment to one spouse from another is a final judgment. Nazarenko v. Mader, 362 N.W.2d 1; (citing Dent v. Casaga, 208 N.W.2d 734). In both of those cases, the party in whose favor the judgment was granted attempted to enforce the judgment and lien on the real property more than 10 years after the entry of judgment. In both cases, the party in whose favor the judgment was entered was denied the ability to enforce the judgment because the 10-year Statute of Limitations had run.

The case at bar is a similar situation. The Statute of Limitations on Appellant's judgment expired more than 15 years ago, 10 years after the judgment was entered. It was not renewed. Appellant provided no proof to the Trial Court of any specific material fact that demonstrated the existence of a genuine issue. (Trial Court Memorandum, p. 2) The Trial Court's Memorandum referenced all the conveyances of the property. (Trial Ct. Memorandum, p. 1) The Trial Court correctly determined that none of the facts presented by Appellant would affect the result of the outcome of the case.

The Trial Court correctly determined that the lien on the real property expired 10 years after entry of the judgment. It became a final judgment when it was docketed in 1983 and continued for 10 years. See, MINNESOTA STATUTES §548.09; Dent v. Casaga, 208 N.W.2d 734; Nazarenko v. Mader, 362 N.W.2d 1. The Trial Court had no choice but to grant Respondents' motion for

summary judgment. It correctly applied the law to the facts. Accordingly, the Trial Court correctly granted Respondents' motion for summary judgment. (Trial Ct. Memorandum, p. 1)

It is appropriate to dismiss Appellant's Complaint based on the theory of laches. A dismissal of the case is appropriate when there is an unreasonable delay in seeking relief from the courts. Klapmeier v. Town of Center, 346 N.W.2d 133 (Minn. 1984). Respondents would have been prejudiced if the Court allowed Appellant to continue with the case at bar. This is exactly the type of situation that the doctrine of laches is intended to prevent. Klapmeier v. Town of Center, 346 N.W.2d. Since nothing was done in the last 25 years to enforce a judgment, there can be no way any purchaser would know that the alleged lien holder would ever do anything to enforce the judgment. Accordingly, Appellant's complaint was appropriately dismissed with prejudice, and summary judgment was appropriately entered in favor of Respondents.

Appellant slept on her rights and should not be able to enforce the judgment entered more than 25 years ago. It is ridiculous to think that a party may lay in the weeds for 25 years with a judgment in hand and then attempt to collect from numerous defendants 25 years later. The only thing Appellant has accomplished in this instance is to ensure that all of the Respondents have incurred large amounts of attorney's fees, and wasted their time. If Appellant wanted to enforce the judgment and lien, she should have done so within the 10-year Statute of Limitations; not 15 years after the Statute of Limitations has already run.

CONCLUSION

Appellant was granted a judgment lien against real property located in Beltrami County more than 25 years ago. The lien expired 10 years after entry of the judgment. The District Court appropriately granted summary judgment in favor of Respondents. There are no genuine issues of

material fact. The Trial Court appropriately applied the law to the facts. The Trial Court's ruling should be upheld. Appellant's appeal should be dismissed. Respondents, Spruce Shadows, Inc., and Erich Schissel, respectfully request this Court uphold the Trial Court's grant of Respondents' motion for summary judgment.

Dated: December 1, 2009.

Respectfully submitted,

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