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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2047**

Robert Lee Fern,
Appellant,

vs.

Robert H. Schlossberg, et al.,
Respondents.

**Filed January 13, 2009
Reversed and remanded
Peterson, Judge**

Hennepin County District Court
File No. 27-CV-06-10367

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from summary judgment, appellant-contract-for-deed vendor argues that the district court erred in concluding that because the deed granting ownership of property to the vendor had not been recorded when the contract for deed was executed,

the vendor had no interest in the property that could be conveyed to respondent-contract-for-deed vendees. We reverse and remand.

FACTS

Appellant-vendor Robert Lee Fern acquired real property in Minneapolis in the early 1980s. On August 17, 2004, respondent-vendees Robert H. Schlossberg and Julie A. Tveit entered into a contract for deed to buy the property from Fern. The contract for deed states: “Upon Purchaser’s prompt and full performance of this contract, Seller shall . . . [e]xecute, acknowledge and deliver to Purchaser a Marketable Warranty Deed, in recordable form, conveying marketable title to the Property to Purchaser,” and “Seller shall initiate and pay for a quiet title action which shall be completed prior to the pay-off of the Contract for Deed.” The balance due on the contract for deed was to be paid in monthly installments. Beginning in February 2005, the vendees fell behind in their payments.

In February 2006, the vendor began this action against the vendees seeking payment of the balance due under the contract for deed. In July 2006, the vendor filed a motion for default judgment. At the hearing on the motion, the district court gave the vendees additional time to file an answer and continued the hearing until September 15, 2006. The vendees did not appear for the September 15 hearing, and the hearing was continued until September 28, 2006. On September 26, 2006, the vendees, acting pro se, filed (1) an answer, in which they denied the vendor’s breach-of-contract claim and sought cancellation of the contract for deed; and (2) a motion to cancel the contract for

deed. The vendees provided the answer to the vendor at the September 28 hearing. The district court did not grant default judgment following the September 28 hearing.

In December 2006, the vendees retained an attorney, who learned that the property that is the subject of the contract for deed is registered property and that the registered owner is Gloria J. McKay. The vendor claims that he acquired the property from Theodore J. Phillips.¹ There is no certificate of title that shows that the property was owned by either Phillips or the vendor.

The vendees moved to amend their answer to add the defense that the contract for deed was void because the vendor had no interest in the property and to assert a counterclaim for fraud and misrepresentation. At a May 22, 2007, hearing, the district court orally granted the motion but indicated that a written order would follow after the district court researched whether fraud had been pleaded with sufficient particularity. No written order was issued, and no amended answer was filed.

On May 24, 2007, McKay executed a quit-claim deed granting her interest in the property to the vendor. The next day, the vendor's attorney attempted to file the quit-claim deed, but the deed was not acceptable for filing because \$14,524.18 in property taxes were owed on the property.

The vendees moved for summary judgment. Following a hearing, the district court granted the motion, and judgment was entered for the vendees. This appeal followed.

¹ The district court indicated in the memorandum that accompanied its order that Phillips was McKay's attorney.

DECISION

On appeal from summary judgment, this court examines the record to determine whether any genuine issues of material fact exist and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We perform this review de novo. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). We “view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). No genuine issue for trial exists “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (alteration in original) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)); *see also Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006) (stating that “summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents sufficient evidence to permit reasonable persons to draw different conclusions” (emphasis omitted)).

The district court concluded that because the vendor had no recorded interest in the property at the time the contract for deed was signed, the vendor did not have registered title to the property, and without registered title, the vendor was legally incapable of selling or conveying the property to the vendees. We have found no authority that required the vendor to have registered title to the property when the contract for deed was executed.

In the memorandum that accompanied its order, the district court cited Minn. Stat. § 508.47(1) (2008) as authority for the principle that no conveyance of registered property occurs until the instrument of conveyance is registered. That statute states:

An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. An owner of registered land may use any form of deed, mortgage, lease, or other voluntary instrument sufficient in law for the purpose intended. No voluntary instrument of conveyance purporting to convey or affect registered land, except a will, and a lease for a term not exceeding three years, shall take effect as a conveyance, or bind or affect the land, but shall operate only as *a contract between the parties*, and as authority to the registrar to make registration. The act of registration shall be the operative act to convey or affect the land.

Minn. Stat. § 508.47(1) (emphasis added).

Based on this statute, the district court correctly concluded that because no deed from McKay to the vendor had been registered, the property had not been conveyed to the vendor. But this statute does not support the district court's further conclusion that because no deed had been registered, the vendor was legally incapable of selling or conveying the property to the vendees. When quoting Minn. Stat. § 508.47(1), the district court omitted the phrase, "a contract between the parties," and in doing so, the district court apparently failed to recognize that the fact that no deed conveying the property to the vendor had been registered does not necessarily mean that the vendor could not obtain a legal interest in the property that the vendor could convey to the vendees upon their full performance of the contract.

In *Cook v. Luettich*, 191 Minn. 6, 7, 252 N.W. 649 (1934), the appellant, whose name appeared on the certificate of title as the owner of residential property, gave a quit-claim deed for the property to the respondent and then leased the property from the respondent for a specific term. The quit-claim deed was not registered. *Id.* When the lease term ended, appellant remained in possession and unlawfully detained possession from respondent. *Id.* Respondent brought an unlawful-detainer action, and appellant claimed that because the quit-claim deed had not been registered, it did not convey title to respondent and, therefore, the unlawful-detainer action could not be successfully maintained. *Id.*

The supreme court found the claim to be without merit and, citing the predecessor statute to Minn. Stat. § 508.47(1),² stated: “Under that provision, although the unregistered quitclaim deed did not affect the title nor create any interest in the premises, it did operate as a contract between the parties.” 191 Minn. at 8, 252 N.W. at 649. Here, the record contains a quit-claim deed for the property naming Gloria J. McKay as grantor and Robert Lee Fern as grantee. Although, under Minn. Stat. § 508.47(1), this deed does not take effect as a conveyance, or bind or affect the land, it does operate as a contract between McKay and Fern. Based on this deed, it appears that it could be possible for the vendor to meet his obligation under the contract for deed to deliver to the vendees a warranty deed, in recordable form, conveying marketable title to the property, upon their full performance of the contract. The vendees challenge the validity of this deed, but

² The statute has been recodified since *Cook* was decided, but the language remains the same.

addressing that issue involves questions of fact that cannot be resolved on summary judgment.

Appellant raises additional issues on appeal, but because the district court's order and memorandum indicate that the district court did not consider these issues when deciding the motion for summary judgment, we will not consider them for the first time on appeal. *See Thayer v. American Financial Advisers, Inc.*, 322 N.W.2d 599, 604 (Minn. 1982) (stating that a "reviewing court must limit itself to a consideration of only those issues that the record shows were presented and considered by the trial court in deciding the matter before it"), *abrogated on other grounds by Onvoy, Inc. v. Shal, LLC*, 669 N.W.2d 344, 351 (Minn. 2003).

Reversed and remanded.