STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1970

Robert G. Inglett, et al.,
Respondents,

vs.

Volkswagen Bank USA, et al.,
Defendants and Third Party Plaintiffs,
VW Credit, Inc., defendant and third party plaintiff,
Appellant,

vs.

Craig K. Inglett, third party defendant,
Respondent,
Anna T. Inglett, third party defendant,
Respondent.

Filed June 9, 2009
Affirmed
Stoneburner, Judge

Houston County District Court
File No. 28CV08322

David A. Joerg, David A. Joerg, P.A., Box 257, Preston, MN 55965 (for respondents)

Michael A. Murphy, Rippe, Hammell & Murphy, P.L.L.P., 110 East Main Street, Box 149, Caledonia, MN 55921 (for appellant VW Credit, Inc.)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

On cross-motions for summary judgment in this action to determine the validity of appellant creditor's mortgage, the district court, concluding that the mortgage is void, granted summary judgment to the current owners of the property and dismissed appellant's third-party action against the former owners to compel validation of the mortgage. On appeal, appellant argues that the district court erred in determining that it failed to establish a valid mortgage. We affirm.

FACTS

The facts in this litigation are not disputed. In 1999, respondents Robert and Sharon Inglett (parents) conveyed residential property to their married son, respondent Craig Inglett. Craig Inglett and his wife, respondent Anna Inglett, occupied the property as their homestead. The deed from parents to Craig Inglett provided that in the event that Craig Inglett should transfer any part, title, or interest in the property to anyone without the prior written consent of parents, parents could secure reconveyance of the property.

In November 2003, defendant Volkswagen Bank, USA, (bank) attempted to secure a $110,000 loan to Craig Inglett and his wife Anna Inglett with a mortgage on the property, but failed to obtain Anna Inglett's signature on the mortgage despite the fact that she was present when Craig Inglett signed the mortgage, knew Craig Inglett was signing a mortgage, and consented to the mortgage. On the same date that Craig Inglett signed the mortgage, both he and Anna Inglett signed a "Borrower's Limited Title Agreement," agreeing to comply with any request by bank to correct any errors or

oversights in documents concerning the loan and mortgage. The mortgage was later assigned to appellant VW Credit, Inc. There is no evidence in the record that parents knew about or gave written consent to the mortgage.

The marriage of Craig and Anna Inglett was dissolved in 2006, and Craig Inglett was awarded the property free and clear of any claim by Anna Inglett. Craig Inglett defaulted on the mortgage and deeded the property back to his parents without consideration under the reconveyance clause of the deed from parents to Craig Inglett.

In February 2008, parents sold part of the property to third parties for value. A portion of the proceeds sufficient to satisfy the mortgage was placed in escrow pending the outcome of litigation to determine the validity of the mortgage. Parents initiated a declaratory-judgment action against appellant seeking to have the 2003 mortgage declared void.

Appellant requested that Craig and Anna Inglett "correct documentation errors" in the mortgage. Anna Inglett signed a "Consent to Mortgage," stating that she had been present at the execution of the mortgage and consented to its terms but did not sign it because she was not told that her signature was required. Anna Inglett also signed a "corrective mortgage." Appellant then initiated a third-party action against Craig and Anna Inglett seeking a determination that the mortgage was valid and granting appellant a valid first lien on the property.

Parents and appellant filed cross-motions for summary judgment. The district court found that the reconveyance clause in the deed from parents to Craig Inglett did not invalidate the mortgage, but held that, because the mortgage was void when Anna Inglett

failed to sign it in 2003 and because Anna Inglett had no interest in the property when she signed the "corrective mortgage" in 2008, the mortgage was void, and parents were entitled to summary judgment. The district court granted summary judgment to parents, denied appellant's summary judgment motion, and dismissed the third-party complaint against Craig and Anna Inglett. This appeal followed.

D E C I S I O N

"On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). There are no disputed facts in this case, and appellant raises purely legal issues. A reviewing court is not bound by and need not give deference to a district court's decision on a purely legal issue. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003) (citing *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984)).

I. Validity of the mortgage[1]

Subject to exceptions not relevant here, no mortgage of a homestead is valid unless it is signed by both spouses.

[1] Appellant identifies the first issue on appeal as "[d]oes the 'reservation to secure reconveyance' clause contained in the [1999 deed] invalidate [the mortgage]?" But the district court agreed with appellant and held that the clause did not invalidate the mortgage. Therefore we decline to address this non-issue. *See Twin Cities Metro. Pub. Transit Area v. Holter*, 311 Minn. 423, 425, 249 N.W.2d 458, 460 (1977) (stating that "[a] party who is not aggrieved by a judgment may not appeal from it").

> **Conveyances by spouses; powers of attorney** If the owner is married, no conveyance of the homestead [including a mortgage[2]] . . . shall be valid without the signatures of both spouses. . . .
>
> A husband and wife, by their joint deed, may convey the real estate of either. A spouse, by separate deed, may convey any real estate owned by that spouse, *except the homestead*, subject to the rights of the other spouse therein; and either spouse may, by separate conveyance, relinquish all rights in *the real estate so conveyed* by the other spouse. . . .

Minn. Stat. § 507.02 (2008) (emphasis added). Where either spouse's signature is omitted from a homestead mortgage, the mortgage is void and the mortgagee acquires no rights whatsoever in the homestead. *Dvorak v. Maring*, 285 N.W.2d 675, 677 (Minn. 1979).

Appellant does not argue on appeal that Anna Inglett ratified the 2003 mortgage by documents she signed in 2008.[3] Appellant argues that because Minn. Stat. § 507.02 provides that a spouse may, by separate conveyance, relinquish all rights in property conveyed by the other spouse, Anna Inglett's signature on the 2008 "corrective mortgage" validly relinquished her rights to the homestead, making the 2003 mortgage signed only by Craig Inglett valid. But appellant is misreading the statute. The statute

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[2] For purposes of section 507.02, a mortgage is a "conveyance." *See* Minn. Stat. § 507.01 (2008) (stating that the word "conveyance . . . includes every instrument in writing whereby any interest in real estate is created, aliened, mortgaged, or assigned").

[3] "Ratification occurs when a person with full knowledge of all the material facts, confirms, approves, or sanctions, by affirmative act or acquiescence, the originally unauthorized act of another." *Wells Fargo Home Mortg., Inc. v. Chojnacki*, 668 N.W.2d 1, 5 (Minn. App. 2003) (quotations and citations omitted). Appellant argues that because in 2008Anna Inglett approved the original mortgage, Craig Inglett's signature on the original mortgage was authorized by her and there is no "unauthorized act" for her to now ratify.

does not allow conveyance of the homestead by separate deed but only permits such conveyance of any other real estate owned by one spouse. And the statute plainly provides that the other spouse may only relinquish by separate conveyance that spouse's interest in *non-homestead property* so conveyed. We find no merit in appellant's argument that Craig and Anna Inglett's separate mortgages executed in 2003 and 2008 validly mortgaged the homestead in 2003.

Appellant next argues that because both Craig and Anna Inglett signed separate documents containing the essential terms of the 2003 mortgage, that mortgage is valid under Minn. Stat. § 507.02. Appellant relies on language in *Dvorak* rejecting an argument that wife's signature endorsing an earnest money check satisfied Minn. Stat. § 507.02 despite her failure to sign the contract for sale of the homestead, because the check did not refer to the "essential terms of the contract of sale." 285 N.W.2d at 677. Appellant asserts that *Dvorak* acknowledges that the spouses' signatures do not have to appear on the same document. We disagree. *Dvorak* only acknowledges that while section 507.02 "does not specify where *the signatures* of the husband and wife must be located . . . the requirements of the statute can only be satisfied if *both parties sign a contract* for the sale or *join in a deed conveying the homestead property.*" *Id*. (emphasis added). We do not read this language as providing that the spouses can sign separate documents. The issue in *Dvorak* was whether the appearance of both spouses' signatures endorsing the earnest money check could satisfy section 507.02: the opinion does not address the question of spouses signing separate conveyance documents. We conclude

that appellant's argument that Anna Inglett's signature on a separate conveyance of the homestead in 2008 satisfies section 507.02 is without merit.

Additionally, although the 2008 mortgage signed by Anna Inglett purports to convey her interest in the homestead, as the district court correctly noted, Anna Inglett had no interest in the property to convey in 2008, despite language in the mortgage asserting that Anna Inglett was "lawfully seized of the [p]roperty and has good right to convey the same . . . [and] will warrant and defend the title . . . against all lawful claims not . . . excepted." The purported 2008 mortgage cannot convey something that does not exist.

II. Effect of Borrower's Limited Title Agreement

Appellant argues that because Craig and Anna Inglett signed the Borrower's Limited Title Agreement in 2003 they must now be compelled under this contract to cure any defect in the 2003 mortgage. The district court concluded that any defects in the 2003 mortgage could not be cured in 2008 because neither Craig nor Anna Inglett had any interest in the property in 2008. Appellant argues that there is no authority for this holding. We disagree.

"[P]erformance of a contractual duty may be excused when, due to the existence of a fact or circumstance of which the promisor at the time of the making of the contract neither knew nor had reason to know, performance becomes impossible." *Powers v. Siats*, 244 Minn. 515, 520, 70 N.W.2d 344, 348 (1955). The only way that Craig and Anna Inglett could have "cured" the void 2003 mortgage was by executing a valid mortgage signed by both. But in 2008, neither had any interest in the property. And it is

impossible to convey a property interest without title to that property interest. *Goetz v. Walters*, 34 Minn. 241, 243, 25 N.W. 404, 405 (1885). Appellant has not asserted that the events that deprived Craig and Anna Inglett of their interest in the homestead were known or knowable in 2003. Craig and Anna Inglett's performance under the Borrower's Limited Title Agreement was excused due to impossibility in 2008. The district court did not err in concluding that Craig and Anna Inglett could not validate the 2003 mortgage after they lost all interest in the property.

III. Equitable remedy

Appellant argues that allowing parents to retain the benefit of the loan, which was used in part to pay pre-existing liens on and make improvements to the property, would result in unjust enrichment and that the "basic principles of equity require [parents] to satisfy the [mortgage] obligation."[4] But "[u]njust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully." *Servicemaster v. GAB Business Services, Inc.*, 544 N.W.2d 302, 306 (Minn. 1996) (citations omitted). And appellant fails to identify any benefit

[4] The district court did not address equitable relief. Appellant barely briefed its equitable argument in its appellate brief and did not provide legal support for an equitable-relief argument. But respondents addressed equitable relief in their appellate brief, and appellant's reply brief contained some citation to authority for its equitable-relief argument. Therefore we will address the argument, at least to explain why it is without merit. *See State Dep't of Labor & Ind. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (stating that appellate courts generally decline to reach an issue in the absence of adequate briefing).

unlawfully accepted and retained by parents. Therefore, equitable relief under a theory of unjust enrichment is not available to bank.

Affirmed.