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**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**A10-1762**

**A10-2113**

**A10-2221**

Weavewood, Inc.,  
Appellant, (A10-1762, A10-2113),  
Respondent (A10-2221),

vs.

S & P Home Investments, LLC,  
Respondent,

Palladium Holdings, LLC, et al.,  
Defendants,

M. Jacqueline Stevenson,  
Respondent,

Highland Bank,  
Appellant (A10-2221).

**Filed September 19, 2011**  
**Affirmed in part, reversed in part, and remanded**  
**Larkin, Judge**

Hennepin County District Court  
File No. 27-CV-10-3540

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Considered and decided by Stoneburner, Presiding Judge; Larkin, Judge; and Muehlberg, Judge.\*

## **UNPUBLISHED OPINION**

**LARKIN**, Judge

In this mortgage-foreclosure dispute, appellant-mortgagor Weavewood, Inc., challenges the district court's denial of its motion for summary judgment and the district court's award of summary judgment to respondent S&P Home Investments, LLC, the senior lien holder. Because there is a genuine issue of material fact, we affirm the denial of Weavewood's motion for summary judgment. But because the district court erred in its determination that Weavewood's ability to seek declaratory relief is time barred, we reverse, in part, the award of summary judgment to S&P and remand for further proceedings. Weavewood also challenges the district court's retroactive dissolution of a temporary restraining order that stayed expiration of the statutory redemption period. Because the district court erred by dissolving the temporary restraining order retroactively, thereby eliminating Weavewood's statutory redemption right, we reverse the retroactive dissolution and remand with instructions that the district court reinstate the days remaining in Weavewood's statutory redemption period when the temporary restraining order was issued.

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

Appellant Highland Bank, the junior lienholder, appeals the district court's denial of its motion to intervene in the Weavewood-S&P litigation and the district court's denial of its motion for a temporary restraining order. Because our remand for reinstatement of the days remaining in Weavewood's statutory redemption period restores Highland's prospective redemption right, which is the relief Highland seeks, we do not address Highland's appellate claims.

### **FACTS**

Appellant-mortgagor Weavewood, Inc. is the registered owner of real property legally described as Tracts E and F, Registered Land Survey No. 412, Hennepin County, Minnesota. On September 10, 1998, Weavewood, through its trustee, M. Jacqueline Stevenson, granted a mortgage against the property to James Malcolm Williams. The mortgage, which was in the amount of \$100,000, was filed with the Hennepin County Registrar of Titles on September 21, 1998. Williams died on October 17, 1999, and his estate was probated.

In April 2000, Weavewood filed a claim in the Williams probate proceeding, asserting that the mortgage "was given to secure payment of attorney fees to be earned by Williams, the consideration for which has totally failed." In May 2001, Weavewood was notified that its probate claim would be barred unless Weavewood filed a petition for allowance or commenced a proceeding against the personal representative of the estate not later than two months after the mailing of the notice of disallowance. Weavewood did not act to preserve its probate claim.

In November 2001, Weavewood commenced an action against Stevenson and the Williams estate, asserting causes of action for slander of title, breach of fiduciary duty, and conversion. The claims were based on an assertion that the mortgage was fraudulent. Although Stevenson and the Williams estate served answers to Weavewood's claims, Weavewood did not pursue its lawsuit.

In April 2004, the probate court determined that the Williams mortgage was an asset of the Williams estate and assigned 50% interests in the mortgage to Stevenson and Williams's wife. In March 2006, appellant Highland Bank obtained a junior interest in the property under a mortgage granted to Highland by Weavewood. In March 2009, Stevenson and Williams's wife assigned their interests in the Williams mortgage to Palladium Holdings. Later that month, Palladium Holdings assigned its interest in the Williams mortgage to respondent S&P Home Investments, LLC. S&P filed the assignment of the Williams mortgage with the registrar of titles.

S&P commenced foreclosure proceedings by advertisement. A sheriff's sale was scheduled for August 5, 2009. On July 31, 2009, Weavewood filed suit against S&P, seeking an order directing the registrar of titles to "show" that the mortgage was void or an order directing the registrar of titles to "show" that the mortgage was satisfied. Weavewood asserted that Stevenson breached her fiduciary duties, that the mortgage was "invalid and unenforceable based on a lack of consideration and failure to perform the promised services," and that the mortgage had been paid and satisfied in full. Weavewood also sought to enjoin the sheriff's sale. The district court granted Weavewood's motion for a temporary restraining order (TRO) and cancelled the sheriff's

sale pending further hearing. But on August 19, the district court dissolved the TRO, denied Weavewood's motion for a temporary injunction, and dismissed the case in its entirety, stating, "Weavewood failed to take action to timely secure and file satisfaction of the Mortgage. It is unlikely that Weavewood will prevail on any underlying claim, which would be barred by the applicable statute of limitations." The sheriff's sale was held on September 1, and S&P purchased the property for \$152,184. On December 9, Highland filed notice of its intent to redeem, as the most senior lienholder subsequent to S&P's foreclosure.

In February 2010, Weavewood filed the underlying lawsuit against S&P. The complaint asserts the following causes of action: fraud; breach of contract; conversion; unjust enrichment; slander of title; set aside mortgage and foreclosure pursuant to Minn. Stat. § 580.28 (2010); and set aside mortgage and foreclosure pursuant to Minn. Stat. § 582.25 (2010). In its complaint, Weavewood makes many of the same allegations that it made in its probate claim, in its 2001 action against Stevenson and the Williams estate, and in its 2009 action against S&P. On February 26, the district court issued a TRO staying expiration of the statutory redemption period. Thereafter, S&P moved to dissolve the TRO and to deny Weavewood's request for a temporary injunction. The parties also brought cross-motions for summary judgment.

On March 10, Highland requested that the parties to the Weavewood-S&P litigation stipulate to Highland's intervention in that litigation. That stipulation was never obtained. Highland foreclosed its mortgage, and a sheriff's sale on the foreclosure

of the Highland mortgage was held on June 17. At that sale, Highland purchased the property for \$232,884.65.

On August 24, the district court lifted the TRO and refused to issue a temporary injunction. The district court reasoned that Weavewood would not be successful on its claims because the claims are barred by the applicable statutes of limitations. The district court also stated, in conclusion of law 22, that “[t]he period of redemption from the foreclosure sale is six months from the date of this order.” On September 30, the district court issued an amended order, amending conclusion of law 22 “as a clerical error pursuant to Minn. R. Civ. P. 60.01.” The amended conclusion states, “The period of redemption from the foreclosure sale that occurred was six months from the date of the sale.” Under the amended conclusion, Weavewood’s statutory redemption period expired on March 1, 2010—over six months earlier.

On October 8, Weavewood appealed the August 24 and September 30 orders dissolving the TRO (A10-1762). On that same day, Highland moved to intervene in the Weavewood-S&P litigation, to amend the amended order, and for a TRO. The district court scheduled a hearing on Highland’s motion, but two days before the scheduled hearing, the district court granted S&P’s motion for summary judgment and denied Weavewood’s motion for summary judgment. The district court notified the parties by facsimile that “the hearing . . . regarding Highland Bank’s Motion to Intervene is hereby stricken. The case is now closed.” A flurry of court activity followed.

On October 12, the district court issued an order staying, pending appeal, its September 30 order dissolving the TRO. On October 22, Highland moved this court to

intervene in Weavewood’s appeal or for leave to file an amicus brief. On November 3, the district court entered final judgment on its August 24 and September 30 orders. On November 16, this court issued a special term order denying a motion by Weavewood to extend review to the summary judgment order and to expedite the appeal; denying Highland’s motion to intervene or file a brief as amicus curiae; and remanding to the district court issues related to the order staying dissolution of the TRO. The special term order explained that Highland could separately appeal the district court’s implicit denial of its motion to intervene and for a TRO. On November 30, Weavewood filed a second appeal challenging the district court’s summary judgment order (A10-2113). And on December 16, Highland appealed the district court’s denial of its motion to intervene and for a TRO (A10-2221). On January 6, 2011, this court consolidated the Weavewood and Highland appeals. And lastly, on March 8, the district court stayed its September 30 order dissolving the TRO, subject to several conditions.

## **DECISION**

### **I.**

This section addresses Weavewood’s appellate claims. We first review S&P’s argument that Weavewood’s claims are moot. Next, we review the district court’s summary-judgment determinations and its dissolution of the TRO.

#### *Mootness*

The doctrine of mootness requires appellate courts to “decide only actual controversies and avoid advisory opinions.” *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). If a court cannot grant effective relief, the matter is generally dismissed as

moot. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005). Mootness, however, is “a flexible discretionary doctrine, not a mechanical rule that is invoked automatically.” *Jasper v. Comm’r of Pub. Safety*, 642 N.W.2d 435, 439 (Minn. 2002) (quotation omitted). “If a party to an appeal suggests that the controversy has, since the rendering of judgment below, become moot, that party bears the burden of coming forward with the subsequent events that have produced that alleged result.” *Cardinal Chem. Co. v. Morton Int’l, Inc.*, 508 U.S. 83, 98, 113 S. Ct. 1967, 1976 (1993).

S&P argues that because Highland foreclosed its mortgage on the property and Weavewood did not redeem the property from that foreclosure, “even if Weavewood were to prevail on its underlying challenges to the validity of S&P’s Mortgage or its foreclosure, it would mean that Highland’s foreclosure was valid, resulting in Weavewood having nevertheless lost all of its interest in the property to Highland by failing to have redeemed from Highland’s foreclosure.” Essentially, S&P argues that Weavewood’s appeal is moot because Weavewood is going to lose the property to Highland if it does not lose the property to S&P. Although that may be the ultimate outcome, a justiciable controversy nonetheless exists between S&P and Weavewood regarding the validity of the Williams mortgage. And this court has the authority to grant Weavewood effective relief—if Weavewood prevails in its lawsuit, it will not lose the property to S&P. Weavewood’s potential loss of the property to Highland does not render its claims regarding the validity of the Williams mortgage moot.



### *Summary Judgment*

“A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). “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). “We review de novo whether a genuine issue of material fact exists” and “whether the district court erred in its application of the law.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). “[T]he reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio*, 504 N.W.2d at 761.

The district court awarded summary judgment to S&P, concluding that Weavewood’s claims are barred by the applicable statutes of limitations. “The construction and application of a statute of limitations, including the law governing the accrual of a cause of action, is a question of law and is reviewed de novo.” *MacRae v. Grp. Health Plan, Inc.*, 753 N.W.2d 711, 716 (Minn. 2008).

S&P argues that the applicable statutes of limitations bar all of Weavewood’s claims. Weavewood counters that its claims are not barred under the statutes of limitations because the claims are defensive and the statutes of limitations do not apply to defenses. In its district court submissions in opposition to S&P’s motion for summary

judgment, Weavewood argued: “[W]hile S&P can assert that Weavewood’s claims are barred by the statute of limitations, it cannot assert that Weavewood’s defenses are barred by the statute of limitations.” Weavewood’s argument finds support in caselaw. This court has previously held that “there is no statute of limitations for declaratory judgment actions” and the “statutes of limitations apply to claims and not to defenses.” *State v. Joseph*, 622 N.W.2d 358, 362 (Minn. App. 2001), *rev’d on other grounds*, 636 N.W.2d 322, 326-27 (Minn. 2001) (noting that the court of appeals held that the statute of limitations does not apply to declaratory-judgment actions or defenses and that the district court erred in applying collateral estoppel, but explaining that the principal question before the supreme court was whether a declaratory judgment entered in an earlier proceeding barred an insurer from asserting an insurance-coverage defense in a later proceeding).

In its complaint against S&P, Weavewood sought monetary damages under several counts. But Weavewood also challenged the validity of the S&P mortgage and asked the district court to set aside the mortgage and foreclosure sale under counts one (fraud), four (unjust enrichment), six (Minn. Stat. § 580.28), and seven (Minn. Stat. § 582.25). And Weavewood’s prayers for relief include a request for judgment declaring that “the Mortgage is void and of no force and effect; in the alternative deem the Mortgage satisfied; find that [S&P] has no legal right to foreclose upon the Property and to take legal title or obtain any legal interest in the Property.” “[P]leadings are liberally and broadly construed.” *Midwest Family Mut. Ins. Co. v. Schmitt*, 651 N.W.2d 843, 846 (Minn. App. 2002). And liberal construction of Weavewood’s complaint reveals a

request for declaratory relief, even though the complaint does not reference the Uniform Declaratory Judgments Act. *See* Minn. Stat. §§ 555.01-.16 (2010). Moreover, the language of the complaint is broad enough to provide notice of Weavewood’s intent to seek declaratory relief in addition to monetary damages. *See Save Our Creeks v. City of Brooklyn Park*, 682 N.W.2d 639, 646 (Minn. App. 2004) (“Minnesota is a notice-pleading state. The primary function of notice pleading is to give the adverse party fair notice of the theory on which the claim for relief is based.” (quotation and citation omitted)), *aff’d*, 699 N.W.2d 307 (Minn. 2005). To the extent that Weavewood’s complaint seeks declaratory relief, it is not barred by the statutes of limitations. *See Joseph*, 622 N.W.2d at 362. We therefore reverse the district court’s award of summary judgment to S&P in part.

But to the extent that Weavewood seeks monetary damages, its claims are barred by the applicable statutes of limitations. The statute of limitations for slander of title is two years. *See* Minn. Stat. § 541.07(1) (2010) (providing a two-year statute of limitations for intentional torts); *Brickner v. One Land Development Co.*, 742 N.W.2d 706, 712 (Minn. App. 2007) (indicating that slander of title is a tort), *review denied* (Minn. Mar. 18, 2008). It is undisputed that Weavewood had actual knowledge of the mortgage in 2000 when it filed a claim in the Williams probate proceeding. Moreover, Weavewood alleged slander of title in its 2001 action. Thus, the statute of limitations ran on Weavewood’s slander-of-title claim, at the latest, in 2003.

The statute of limitations for fraud is six years. Minn. Stat. § 541.05, subd. 1(6) (2010). “[T]he cause of action shall not be deemed to have accrued until the discovery

by the aggrieved party of the facts constituting the fraud.” *Id.* Once again, Weavewood was aware of the facts constituting the alleged fraud as early as 2000 and, at the latest, in 2001 when Weavewood sued Stevenson and the Williams estate, claiming that the mortgage had been fraudulently obtained. Thus, the statute of limitations on Weavewood’s fraud claim ran, at the latest, in 2007. The same six-year statute of limitations and analysis apply to Weavewood’s conversion claim, which was initially asserted in Weavewood’s 2001 lawsuit against Stevenson and the Williams estate. *Id.*, subd. 1(4) (2010).

Weavewood’s contract and unjust-enrichment claims are also barred by the statute of limitations. Where no other period is expressly prescribed, an action upon a contract or other obligation, express or implied, is governed by a six-year statute of limitations. Minn. Stat. § 541.05, subd. 1(1) (2010). In its breach-of-contract claim, Weavewood asserts that S&P’s failure to provide a satisfaction is a breach of its obligations under the mortgage. Weavewood first made the claim that nothing is owed on the mortgage, and that it should be satisfied, in the Williams probate proceeding and again in its 2001 lawsuit against Stevenson and the Williams estate. Thus, the statute of limitations ran on the breach-of-contract claim, at the latest, in 2007. This same six-year statute of limitations applies to Weavewood’s claim of unjust enrichment. *See Block v. Litchy*, 428 N.W.2d 850, 854 (Minn. App. 1988) (“The applicable time limit for bringing an action in unjust enrichment is six years.”).

We now consider Weavewood’s claims under §§ 580.28, 582.25. Weavewood asserts that S&P “is not entitled to complete its foreclosure or otherwise acquire legal title

to the property pursuant to Minn. Stat. § 580.28 because the Mortgage upon which the foreclosure is based has been paid or discharged, in whole or in part, and is void or illegal.” Weavewood also asserts that S&P is not entitled to complete its foreclosure or otherwise acquire legal title to the property under Minn. Stat. § 582.25 because the notice of sale “[f]ailed to state the amount due or failed to state the correct amount due or claimed to be due as required under Minn. Stat. § 582.25, subd. (f)” and “[f]ailed to state the original principal amount secured, or failed to state the correct original principal amount secured as required under Minn. Stat. § 582.25, subd. (p).” These assertions are unavailing.

Minn. Stat. § 580.28 does not create a separate cause of action. The statute merely sets out steps that may be taken to prevent loss of mortgaged property based on the expiration of the redemption period where it is claimed that the mortgage is fraudulent, void, or has been paid or discharged; it does not provide a method by which a mortgagor may challenge the validity of the mortgage or foreclosure sale. *See* Minn. Stat. § 580.28. Similarly, Minn. Stat. § 582.25 does not provide an independent basis to challenge a mortgage or foreclosure sale. It is curative, operating as a statute of repose to validate a foreclosure sale unless it is challenged within specified time frames. *See* Minn. Stat. § 582.25 (stating that every duly executed and recorded mortgage foreclosure sale by advertisement “is, after expiration of the period specified in section 582.27, hereby legalized and made valid and effective to all intents and purposes, as against any or all of [certain enumerated] objections”). We therefore agree with S&P that Minn. Stat. §§ 580.28, 582.25, do not create independent causes of action.

In sum, we affirm the district court's award of summary judgment on Weavewood's claims for monetary damages and on its claims under sections 580.28 and 582.25. But because we construe Weavewood's complaint as a request, in part, for declaratory relief and "there is no statute of limitations for declaratory judgment actions," *Joseph*, 622 N.W.2d at 362, we reverse the district court's award of summary judgment on Weavewood's request for declaratory relief. And because our review of the record indicates that there are genuine issues of material fact regarding whether the Williams mortgage is "void and of no force and effect," we affirm the district court's denial of Weavewood's motion for summary judgment and remand for further proceedings on Weavewood's request for declaratory relief and any supplemental relief that may be appropriate. *See* Minn. Stat. § 555.08 (2010) ("Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper.").

#### *Dissolution of the TRO*

Weavewood argues that the district court erred in dissolving, retroactively, the February 26, 2010, TRO, which stayed expiration of the statutory redemption period. "The district court has broad discretion to grant or deny a temporary injunction, and we will reverse only for abuse of that discretion." *U.S. Bank Nat'l Ass'n v. Angeion Corp.*, 615 N.W.2d 425, 434 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000).

When the district court granted Weavewood's request for the TRO on February 26, four days remained in Weavewood's statutory redemption period. *See* Minn. Stat. § 580.23 (2010) (providing the mortgagor with six months to redeem the property following a foreclosure sale). On September 30, the district court concluded

that the redemption period had expired “six months from the date of the sale.” As a result, the district court eliminated the four days remaining in Weavewood’s statutory redemption period, and Weavewood could not redeem the property.

The purpose of a temporary injunction is to preserve the status quo until there is an adjudication of the case on the merits. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). In dissolving the stay retroactively, the district court effectively vacated the remainder of Weavewood’s redemption period and failed to maintain the status quo. To preserve the status quo, the district court should have ordered that the time remaining in Weavewood’s redemption period when the TRO was issued would begin to run on dissolution of the TRO. There can be no dispute that the district court’s retroactive dissolution of the stay significantly prejudiced Weavewood by prematurely terminating Weavewood’s redemption period. Thus, the district court’s “nunc pro tunc” dissolution of the stay was in error. *See Hampshire Arms Hotel Co. v. Wells*, 210 Minn. 286, 288, 298 N.W. 452, 453 (1941) (“Nunc pro tunc [now for then] entries of judicial action are permitted to correct the record and in furtherance of justice. . . . The rule is founded on the maxim that an act of the court shall prejudice no one.”).

S&P argues that a court cannot extend a statutory redemption period. *See State ex rel. Anderson v. Kerr*, 51 Minn. 417, 420-21, 53 N.W. 719, 719 (1892) (holding the district court has no discretionary authority to enlarge or extend the time in which a party is allowed to redeem). We agree. But although the district court may not extend the redemption period, the district court may not reduce the redemption period either. *See id.* at 420, 53 N.W. at 719 (“As a general rule, it may be said that when a valid legislative act

has determined conditions on which rights shall vest or be forfeited, and no fraud has been practiced, no court can interpose conditions or qualifications in violation of the statute.”). Moreover, allowing Weavewood the four days remaining in its statutory redemption period does not extend the redemption period—the allowance merely provides Weavewood with the full six-month redemption period to which it is statutorily entitled.

S&P also argues that Weavewood had an adequate remedy<sup>1</sup> to protect its interests under Minnesota Statutes, which provide:

When an action is brought wherein it is claimed that any mortgage as to the plaintiff or person for whose benefit the action is brought is fraudulent or void, or has been paid or discharged, in whole or in part . . . if such mortgage has been foreclosed by advertisement, *and the time for redemption from the foreclosure sale will expire before final judgment in such action*, the plaintiff or beneficiary having the right to redeem, for the purpose of saving such right in case the action fails, may deposit with the sheriff before the time of redemption expires the amount for which the mortgaged premises were sold . . . .

Minn. Stat. § 580.28 (emphasis added).

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<sup>1</sup> In this appeal, the parties dispute the propriety of the district court’s dissolution of the TRO. Because the propriety of the grant of that TRO is not presented to this court for review, we do not consider whether the district court erred in granting temporary relief. *See ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 305 (Minn. 1996) (“A party may not have equitable relief where there is an adequate remedy at law available.”); *Allstate Sales & Leasing Co. v. Geis*, 412 N.W.2d 30, 34 (Minn. App. 1987) (holding that equitable relief is available only upon a showing that no adequate legal remedy exists); *see also* Minn. Stat. § 580.28 (providing a mortgagor with a remedy to protect its interest when its mortgage is foreclosed by advertisement and the mortgagor claims that the mortgage is fraudulent or void). For purposes of this opinion we assume, without deciding, that the grant of the TRO was proper.



The statute allows for a deposit with the sheriff if the “time for redemption from the foreclosure sale will expire before final judgment.” *Id.* But in this case, the time for redemption was not set to expire because expiration of the redemption period was stayed under the February 26 TRO. Although Weavewood could have availed itself of the protection of section 580.28, S&P’s brief provides no legal authority to support its assertion that Weavewood was required to comply with section 580.28 even though expiration of the redemption period was stayed under the TRO. And S&P fails to provide this court with precedential authority supporting its assertion that, because Weavewood failed to deposit funds under section 580.28, it lost the remainder of its stayed redemption period despite the TRO.

In conclusion, we acknowledge the complexity of the issues that were involved in this case and appreciate the diligence with which the district court approached them. Nevertheless, we hold that the district court failed to maintain the status quo and improperly deprived Weavewood of its statutory right to redeem the property by retroactively dissolving the TRO. We therefore reverse the district court’s order dissolving the TRO “six months from the date of the sale” and remand for the district court to provide Weavewood with the time remaining in its statutory redemption period when the TRO was issued. Because we are remanding for further proceedings on Weavewood’s request for declaratory relief, we note that our holding does not require the

district court to dissolve the TRO on remand.<sup>2</sup> But if the district court does so, the court must preserve the status quo by reinstating the days remaining in Weavewood's statutory redemption period when the TRO was issued. *See Miller*, 317 N.W.2d at 712 (stating that the purpose of a temporary injunction is to preserve the status quo until there is an adjudication of the case on the merits).

## II.

This section addresses Highland's appellate claims. Highland argues that the district court erred by denying its motion to intervene in the Weavewood action. "Orders concerning intervention as a matter of right, pursuant to Minn. R. Civ. P. 24.01, are subject to de novo review and are independently assessed on appeal." *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 499 (Minn. App. 2005). Highland also asserts that the district court erred by denying its motion for a TRO. The sole issue on appeal from an order denying a motion for a TRO is whether there was a clear abuse of the district court's discretion. *Earth Protector, Inc. v. City of Hopkins*, 474 N.W.2d 454, 455 (Minn. App. 1991).

At oral argument, Highland confirmed that the only relief it seeks, and the purpose of its motions, is to preserve its redemption right under statute. As the most senior creditor post foreclosure of the Williams mortgage, Highland has seven days to redeem the property if Weavewood fails to do so. *See* Minn. Stat. § 580.24(a) (2010) ("If no redemption is made by the mortgagor . . . the most senior creditor having a legal or

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<sup>2</sup> Although the district court conditionally stayed the dissolution of the TRO pending this appeal, it is not clear whether these conditions have been satisfied or whether the stay, and thus the TRO, is still in effect.

equitable lien upon the mortgaged premises . . . subsequent to the foreclosed mortgage, may redeem within seven days after the expiration of the redemption period . . . .”). At oral argument to this court, Highland informed the court that if the court reinstates the remainder of Weavewood’s redemption period, the court need not review the district court’s implicit denial of Highland’s motions to intervene and for a TRO.

Our ruling for Weavewood regarding the dissolution of the February 26 TRO provides the relief that Highland seeks. Even though Highland was not a direct beneficiary of the TRO staying expiration of Weavewood’s statutory redemption period, or a party to the proceeding in which it issued, the TRO indirectly affected Highland’s redemption right as a creditor, because Highland’s redemption right does not vest unless and until Weavewood fails to redeem. *See id.* We therefore reject S&P’s argument that Highland’s redemption right under section 580.24 has expired. Highland’s redemption right cannot expire before it vests. If the district court dissolves the TRO and reinstates the remainder of Weavewood’s redemption period on remand, Highland’s prospective redemption right will likewise be reinstated. In the alternative, if the district court continues the TRO and Highland wishes to intervene, the district court should consider Highland’s motion in the first instance.

**Affirmed in part, reversed in part, and remanded.**

Dated:

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Judge Michelle A. Larkin