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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2376**

Sherry Demuth,
Appellant,

vs.

Maryknoll, LLC,
and all other persons unknown claiming any right, title,
estate or lien in the real estate described in the Complaint herein,
Respondent.

**Filed December 9, 2008
Affirmed
Ross, Judge**

Washington County District Court
File No. 82-C7-07-002674

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Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

This appeal involves an ownership dispute between Maryknoll, LLC, and Sherry
Demuth occasioned by Maryknoll's foreclosure purchase of a condominium unit that

Demuth owned before the property fell into foreclosure. After Maryknoll purchased the unit and the statutory redemption period lapsed, Demuth sued, claiming that she was still the rightful owner because the foreclosure sale occurred one day before statutorily allowed and because the unit was sold for a grossly inadequate price. The district court dismissed Demuth's suit. Because the foreclosure sale occurred six weeks after the initial notice was published, its timing satisfies Minnesota Statutes section 580.03. And the district court properly applied the general rule that a foreclosure sale will not be set aside for an inadequate price alone. We therefore affirm.

FACTS

Sherry Demuth owned a condominium unit in Washington County. The unit was part of the Oakdale Condominium Association, which, like many condominium associations, collects monthly dues from member owners. But Demuth stopped paying her association dues, and on June 22, 2006, Oakdale filed a lien for assessments on her unit. It then commenced a foreclosure by publishing a Notice of Assessment Lien Foreclosure Sale, once a week for six consecutive weeks. The first publication occurred on Thursday, July 27, 2006, and the last occurred on August 31, 2006. On Thursday, September 7, 2006, the Washington County Sheriff conducted the foreclosure sale. Maryknoll bought the unit for the high-bid price of \$3,196.35, far below the alleged fair market value of \$135,000. The unit remained subject to redemption by statute until March 7, 2007. But Demuth did not attempt to redeem the unit before the redemption period expired.

On April 20, 2007, Demuth sued Maryknoll, alleging that she still owned the unit. She asserted that the sale should be voided because the notice period was too short and because Maryknoll bought the property at a grossly inadequate price. The parties filed competing dispositive motions, and the district court dismissed Demuth’s complaint with prejudice. She appeals.

D E C I S I O N

I

Demuth contends that the district court erroneously granted Maryknoll’s motion for judgment on the pleadings because the foreclosure sale occurred too soon. She argues that the sale is invalid because it occurred exactly six weeks after the first notice of sale was published. She bases this argument on her view that Minnesota Statutes section 580.03 requires that six weeks—before and exclusive of the day of the foreclosure sale—must elapse between the first published notice and the day the sale occurs. We construe the statute otherwise.

Our review of a district court’s order granting judgment on the pleadings “is limited to the facts asserted in the pleadings interpreted in the light most favorable to the [nonmoving party.]” *Capitol Supply Co. v. City of St. Paul*, 316 N.W.2d 554, 554 (Minn. 1982). The district court determined that the statutory requirement that there be “six weeks’ published notice” between the date of first publication and the date of a foreclosure sale was satisfied because the sale occurred six weeks after the first notice was published. Demuth’s appeal requires us to decide whether this determination rests on the proper construction of the statute. We consider statutory construction *de novo*, as

a question of law. *In re Maltreatment and Disqualification of Kleven*, 736 N.W.2d 707, 709 (Minn. App. 2007).

Our construction of the relevant statutes leads us to the same understanding of the notice period's length as decided by the district court. A condominium association may foreclose on a lien for assessments in the same manner as a mortgage is foreclosed. Minn. Stat. § 515B.3-116(h)(1) (2006). "The association shall have a power of sale to foreclose the lien pursuant to chapter 580." *Id.* One of the notice methods afforded under chapter 580 is notice by advertisement. Section 580.03, which governs foreclosure notice by advertisement, provides, "Six weeks' published notice shall be given that such mortgage will be foreclosed by sale of the mortgaged premises." Minn. Stat. § 580.03 (2006). Section 645.15 directs how to compute the six-week period of published notice required by chapter 580.03:

Where the performance or doing of any act . . . is ordered or directed, and the period of time or duration for the performance or doing thereof is prescribed and fixed by law, the time . . . shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time.

Minn. Stat. § 645.15 (2006).

The initial publication of notice here occurred on Thursday, July 27, 2006, and notice was published for six consecutive weeks until the sixth and last publication of Thursday, August 31, 2006. Excluding July 27, the first day of notice, and including September 7, the day of sale, the foreclosure sale occurred exactly 42 days—six calendar weeks—after the initial publication. If the statute contemplates the day of sale to be

included in the six-week notice period, the district court correctly held that the sale was valid.

Demuth argues that the district court erred in this computation because it relied primarily on *Worley v. Naylor*, 6 Minn. 192 (1861), which Demuth argues is no longer good law because it interpreted a statute from 1858 that has since been repealed.¹ *Worley* is old, but not dead. *Worley*'s facts mirror ours. In *Worley*, a notice of sale was first published on August 3, 1859, and it was published for six consecutive weeks as required by the extant statute. *Id.* at 5. The foreclosure sale occurred on September 14, 1859, exactly 42 days after the initial publication of notice. *Id.* Although the sale occurred on the last day of the sixth week, the court held the sale was valid. *Id.* The *Worley* court rejected the argument that the six weeks of notice preceding the sale is exclusive of the day of sale. *Id.* Applying *Worley* to this case, the district court reasoned that "because the sale was made on the forty-second day of publication, the sale is valid under *Worley*." Contrary to Demuth's contention regarding *Worley*'s viability, the relevant notice requirements in 1859 are substantively the same today, since both require that notice be published for six consecutive weeks before a foreclosure sale. *Compare* Minn. Pub. Stat. ch. 75, § 4 (1858) ("Notice that such mortgage will be foreclosed by sale . . . shall be given by publishing the same for six successive weeks . . ."), *with* Minn. Stat. § 580.03 ("Six weeks' published notice shall be given that such mortgage will be foreclosed by sale."). *Worley*'s holding remains intact.

¹ Based on our review of the legislative history, we have found no indication that the 1858 law was repealed, just amended and supplemented.

Demuth also contends that *White v. Mazel*, 192 Minn. 522, 257 N.W. 281 (1934) supports her position. But *White* is irrelevant to our analysis. The issue in *White* was the validity of a foreclosure sale that occurred 41 days, not 42 days, after the first notice. *Id.* at 524, 257 N.W.2d at 282. At oral argument, Demuth’s counsel conceded that the facts and issue in *White* are distinguishable from the facts and issue here. We agree, and we conclude that *White* does not advance Demuth’s argument that the foreclosure sale was invalid.

We recognize that the language of section 580.03, which requires that “[s]ix weeks’ published notice shall be given that such mortgage will be foreclosed by sale,” might have been construed as Demuth urges. The statute, after all, does not *expressly* require six weeks of notice before and exclusive of the day of sale. But *Worley* resolved the issue directly almost 150 years ago by determining that the day of sale may be counted in the six-week notice period. The foreclosure sale here, which occurred exactly six weeks after the initial publication, was, under *Worley* and section 645.15, valid. We affirm the well-reasoned decision of the district court.

II

Demuth’s second argument is also unavailing. She maintains that the foreclosure sale is invalid because the price of \$3,196.35 was grossly inadequate and should “shock the conscience” of this court, since she alleges that the unit had a fair market value of \$135,000. Because Maryknoll obtained the unit at a bargain-basement price, Demuth contends that we should remand and instruct the district court to void the sale. But Demuth does not overcome the general rule that foreclosure sales will not be invalidated

for inadequacy of price alone, and she points to no exception to that rule that could apply in this case.

The district court rejected Demuth's theory that an inadequate purchase price invalidated the sale, relying on the general rule "that a foreclosure sale free from fraud or irregularity will not be held invalid for inadequacy of price." *Kantack v. Kreuer*, 280 Minn. 232, 240, 158 N.W.2d 842, 848 (1968). Our de novo review leads us to the same result.

The general rule that a foreclosure sale free from fraud or irregularity will not be held invalid for inadequacy of price rests on the protection that property owners maintain through their statutory right of redemption. *In re Strawberry Commons Apartment Owners Ass'n I*, 356 N.W.2d 401, 403 (Minn. App. 1984). Contrary to Demuth's argument that a low foreclosure sale price results in an inequity, a low price actually provides the foreclosed owner with an advantage because "statutory redemption gives the mortgagor the remedy of repurchasing the property for the price paid at the sale." *In re Nelson*, 495 N.W.2d 200, 203 (Minn. 1993). And although it has been described merely as a "general" rule, Demuth cites no Minnesota caselaw, and we find none, in which an appellate court set aside a foreclosure sale for inadequacy of price alone.

We are not persuaded by Demuth's argument that *Strawberry Commons* counsels that we should set aside the sale for inadequacy of price alone. In *Strawberry Commons*, we set aside the foreclosure sale because of a combination of factors, including inadequacy of price, lack of notice to the owners, and a "hollow" redemption right. 356 N.W.2d at 405. We characterized the foreclosed owners' redemption right as "hollow"

because the condominium association failed to give the owners actual notice of foreclosure until one day after the redemption period, the association refused to accept the owners' tender of arrears, and the amount to redeem included excessive attorney's fees. *Id.* at 405. Unlike *Strawberry Commons*, in which the foreclosed owners were denied the protection afforded by a legitimate redemption period, the general rule applies here because there were no defects with the notice or the sale and Demuth's protection from an allegedly inequitable sale price remained available through her statutory right of redemption.

Demuth argues that we should carve out a *per se* exception to the general rule in the cases of assessment liens because the amounts secured by assessment liens often are only a small fraction of the foreclosed property's full value. But the legislature apparently anticipated this argument and implicitly rejected it. It specifically provided that "the amount of the association's lien shall be deemed to be adequate consideration for the unit subject to foreclosure, notwithstanding the value of the unit." Minn. Stat. § 515B.3-116(h)(4)(iv) (2006). The argument also fails because the justification for the general rule in mortgage foreclosure cases is equally applicable to assessment lien foreclosure cases. The procedure for conducting an assessment lien foreclosure sale is the same as the one for conducting a mortgage foreclosure sale. *See* Minn. Stat. § 515B.3-116(h)(1) (referencing chapter 580 and providing that a lien for assessments may be foreclosed in the same manner as a mortgage containing a power-of-sale provision). The property owner whose interest is sold at an assessment lien foreclosure sale has six months to redeem the property. Minn. Stat. § 515B.3-116(h)(4)(i) (2006).

As with a mortgage foreclosure sale, a statutory redemption period follows an assessment lien foreclosure sale. And in both situations, buyers at the foreclosure sale will naturally attempt to purchase the property at the lowest possible price. Because mortgage foreclosure sales and assessment lien foreclosure sales involve the same competing financial interests and follow identical sale procedures and redemption rights, the general rule that inadequacy of price alone will not invalidate a mortgage foreclosure sale applies also to assessment lien foreclosure sales.

Affirmed.