STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0952

Jill M. Larsen,
Appellant,

vs.

Wells Fargo Bank NA,
Respondent.

Filed March 9, 2020
Affirmed in part, reversed in part, and remanded
Bratvold, Judge
Concurring in part, dissenting in part, Connolly, Judge

Anoka County District Court
File No. 02-CV-18-5291

Jonathan L. R. Drewes, Drewes Law, PLLC, Minneapolis, Minnesota (for appellant)

Charles F. Webber, Adam J. Pabarcus, Faegre Drinker Biddle & Reath LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Connolly, Judge.

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

BRATVOLD, Judge

Appellant-mortgagor challenges the judgment entered in favor of respondent-mortgagee following the foreclosure of appellant's home by advertisement. Appellant argues that the district court erred by determining that respondent's published notice

complied with federal and Minnesota law. Appellant asks this court to reverse the district court's decision and reinstate her two claims; one claim seeks to void the foreclosure sale, and the second claim separately seeks damages under Minnesota Statutes section 58.18 (2018).

Relying on a long line of Minnesota caselaw, we first determine that Minnesota law requires a mortgagee to strictly comply with statutory requirements when it elects to foreclose by advertisement and does not require a mortgagor to show prejudice before voiding foreclosure. Second, we determine that federal law does not preempt state law on the redemption period for a mortgagor, and respondent's notice erroneously stated that appellant's redemption period is 12 months when the correct period is six months. Thus, we reverse the district court's grant of summary judgment to respondent on appellant's first claim, void the foreclosure sale, and remand for the district court to enter a partial judgment in appellant's favor. But, because we agree with respondent that appellant did not establish that she was injured by the error in respondent's published notice, we affirm the district court's grant of summary judgment on appellant's section 58.18 claim. Thus, we affirm in part, reverse in part, and remand.

FACTS

Appellant-mortgagor Jill M. Larsen purchased a home in Anoka County. In June 2008, Larsen executed a $204,770 mortgage agreement with TMG Real Estate and Financial Services LLC (TMG). TMG recorded the mortgage and later assigned it to respondent-mortgagee Wells Fargo Bank NA (Wells Fargo). In February 2015, Larsen

executed a second mortgage, junior to Wells Fargo's interest, in favor of the United States Secretary of Housing and Urban Development.

Sometime before June 2017, Larsen fell behind on her mortgage payments. Wells Fargo began foreclosure-by-advertisement proceedings. Wells Fargo published a notice of mortgage foreclosure sale in the Anoka County Union Herald for six consecutive weeks. In relevant part, the notice stated, "The time allowed by law for redemption by said mortgagor(s), their personal representatives or assigns is twelve (12) months from the date of sale." The notice also stated that $169,265.49 was due.

On August 11, 2017, Wells Fargo executed a foreclosure sale, purchased the property for $168,000, and recorded the sheriff's certificate of sale.

Larsen served Wells Fargo with a summons and complaint in June 2018, alleging that Wells Fargo's published notice failed to comply with statutory requirements because it misstated her redemption period. Larsen's complaint stated two causes of action, one to void the foreclosure sale and a separate claim for damages, costs, and reasonable attorney fees under Minn. Stat. § 58.18.[1]

[1] Larsen's complaint alleged that Wells Fargo did not properly serve her with the published notice, as required by Minn. Stat. § 580.03 (2018). Larsen's complaint stated that she found the foreclosure notice in an unaddressed envelope in her front yard and was not personally served. In support of its motion for summary judgment, Wells Fargo submitted its process server's sworn affidavit stating that he handed Larsen the foreclosure papers. In her written response to Wells Fargo's motion, Larsen did not respond on the service-of-process issue. The district court's summary-judgment decision determined that, by failing to respond, Larsen "waived her insufficient service of process claim by moving for summary judgment on other grounds." On appeal, Larsen does not challenge this aspect of the district court's summary-judgment decision.

Wells Fargo denied Larsen's allegations. Two months later, Wells Fargo moved for summary judgment and argued, first, that its published notice accurately stated the redemption period, which was governed by federal and not state law, and, second, that Larsen failed to show prejudice from the alleged error and therefore was not entitled to void the foreclosure sale. Wells Fargo also contended that it was entitled to summary judgment on Larsen's Minn. Stat. § 58.18 claim because she was not "injured" by the alleged error, as required under the statute. Larsen responded and opposed Wells Fargo's summary-judgment motion as well as moved for partial summary judgment.

After a hearing, the district court issued an order granting Wells Fargo's summary-judgment motion and denying Larsen's summary-judgment motion. In its amended order and accompanying memorandum of law, the district court determined that Wells Fargo's published notice "appropriately applied the Federal Code when it published a twelve-month redemption period" and that Larsen could not recover under Minn. Stat. § 58.18 because "Wells Fargo complied with applicable federal code and state statutes." Thus, the district court entered judgment in favor of Wells Fargo on both counts in Larsen's complaint.

Larsen appeals.

D E C I S I O N

A district court's decision granting summary judgment is reviewed de novo. *Anderson v. Christopherson*, 816 N.W.2d 626, 630 (Minn. 2012). We determine "whether there are any genuine issues of material fact," and whether the district court erred in its application of the law. *Id.* (quotation omitted); *see* Minn. R. Civ. P. 56.01. We review the

evidence in the light most favorable to the nonmoving party. *Anderson*, 816 N.W.2d at 630. We review a district court's conclusions of law de novo, including its interpretation of statutes. *Id.*

I. Because a mortgagee must strictly comply with Minnesota statutory requirements for foreclosure by advertisement and Wells Fargo failed to do so, the foreclosure sale is void and Larsen is entitled to summary judgment on her first claim.

Foreclosure by advertisement permits a mortgagee to "foreclose in the absence of judicial supervision" and is an alternative to foreclosure by action. *Ruiz v. 1st Fid. Loan Servicing, LLC*, 829 N.W.2d 53, 56 (Minn. 2013). *Ruiz* explained that foreclosure by advertisement was created "'to avoid the delay and expense of judicial proceedings.'" *Id.* (quoting *Soufal v. Griffith*, 198 N.W. 807, 809 (Minn. 1924)). Foreclosure by advertisement is "faster and more efficient." *Id.* But *Ruiz* cautioned that the mortgagee's exercise of the "power of sale" derived from the mortgage is "regulated by statute," specifically, chapter 580. *Id.* Indeed, Minnesota statutes have regulated foreclosure by advertisement for over 100 years, and the earliest laws were enacted in 1849, when Minnesota was still a territory. 1849 Minn. Laws Ch. 63, §§ 41-43; *see also Jackson v. Mortg. Elec. Registration Sys., Inc.*, 770 N.W.2d 487, 494 (Minn. 2009). Currently, Minnesota Statutes chapter 580 governs foreclosure by advertisement. *See* Minn. Stat. §§ 580.01-580.30 (2018).

A mortgagee may foreclose on a mortgaged property by sale after six weeks' published notice. *See* Minn. Stat. § 580.03. Minnesota Statutes section 580.04(a), provides seven requirements that must appear in the published notice, such as the mortgagor's name,

each assignee of the mortgage, the principal amount secured by the mortgage, the date of the mortgage and when and where it was recorded or registered, the amount claimed to be due on the mortgage, a description of the mortgaged premises, and the time and place of the sale. Minn. Stat. § 580.04(a)(1)-(7). Relevant to this appeal, section 580.04 also requires the published notice to state:

> the time allowed by law for redemption by the mortgagor, the mortgagor's personal representatives or assigns;

Minn. Stat. § 580.04(a)(6). The redemption period has particular significance to the mortgagor. As discussed in the district court's order, the mortgagor can continue to live in the home during the redemption period. *See* Minn. Stat. § 580.041, subd. 2a; *see also* Minn. Stat. § 580.12 (providing that the recorded sheriff's certificate operates as a conveyance of the mortgagor's "right, title, and interest" to the purchaser once the redemption period expires). And the mortgagor may use the redemption period to pay the amount bid at the sheriff's sale, plus interest, and thus "redeem" the home, or, as the district court described it, "get back his rights to the property." *See* Minn. Stat. § 580.23, subds. 1, 2.

Wells Fargo's published notice for Larsen's foreclosure stated that she had 12 months after the sheriff's sale to redeem. Larsen argues that the notice failed to strictly comply with statutory requirements because, under Minnesota law, she had six months after the sale to redeem. Wells Fargo argues that its published noticed stated the correct redemption period because relevant federal law preempts state law on the redemption period. Alternatively, Wells Fargo argues that because the published notice stated a longer

period than allowed by Minnesota law, and because Larsen was not prejudiced by any alleged error in the notice, the district court correctly refused to void the sale.

To resolve the disputed issues on appeal, we first consider whether Minnesota law requires a mortgagee who proceeds with foreclosure by advertisement to strictly comply with the published-notice requirements, as stated in section 580.04, and whether any error in Wells Fargo's notice may be excused if Larsen cannot prove prejudice. Next, we determine whether federal law preempts Minnesota state law on the redemption period applicable to Larsen's foreclosure.

A. Minnesota requires a mortgagee to strictly comply with statutory requirements for foreclosure by advertisement and, when a mortgagee fails to comply, Minnesota has not required a mortgagor to show prejudice before voiding a foreclosure sale.

Larsen argues that the Minnesota Supreme Court "seems to demand perfection particularly in the notices of foreclosure sale" and has articulated a "strict compliance standard." Wells Fargo's brief to this court does not take a position on whether strict compliance with Minn. Stat. § 580.04(a)(6) is required.

The oldest cases interpreting Minnesota's foreclosure-by-advertisement statute required strict compliance, reasoning that the foreclosure-by-advertisement process occurs without judicial supervision. *See Moore v. Carlson*, 128 N.W. 578, 579 (Minn. 1910) ("One who avails himself of [the foreclosure-by-advertisement] provisions must show an exact and literal compliance with its terms."); *Peaslee v. Ridgway*, 84 N.W. 1024, 1025 (Minn. 1901) ("This court has very uniformly held parties to a strict compliance with the statutes in the matter of the foreclosure of mortgages by advertisement."); *Clifford v.*

Tomlinson, 64 N.W. 381, 381 (Minn. 1895) ("This foreclosure by advertisement is a statutory remedy, and all the essential requisites must be strictly pursued, or the proceedings will be held void.").

Recently, the Minnesota Supreme Court and our court relied on *Moore* and required strict compliance with the foreclosure-by-advertisement statute. *See Ruiz*, 829 N.W.2d at 56 (citing *Moore*); *Jackson*, 770 N.W.2d at 494 (same); *Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10, 16 (Minn. App. 2013) (same), *review denied* (Minn. Mar. 18, 2014). In *Jackson*, the supreme court stated that it "require[s] a foreclosing party to 'show exact compliance' with the terms of the [foreclosure-by-advertisement] statutes" and "[i]f the foreclosing party fails to strictly comply with the statutory requirements, the foreclosure proceeding is void." 770 N.W.2d at 494 (quoting *Moore*, 128 N.W. at 579). Based on this long line of cases, we conclude that a mortgagee must strictly comply with Minn. Stat. § 580.04(a)(6) when it elects to foreclose by advertisement.

Wells Fargo contends that requiring strict compliance with the foreclosure-by-advertisement statute is a "separate question" from requiring damage before a plaintiff may void a foreclosure sale. Wells Fargo argues, "even assuming that Minn. Stat. § 580.04(a)(6) required Wells Fargo to state a redemption period of only six months in its foreclosure notice, Larsen suffered no conceivable harm from the error" and she cannot void the foreclosure. Larsen contends that harm is not required to void the foreclosure sale and relies on *Hunter*, in which we determined that the mortgagee did not strictly comply with section 580.08 and rejected the mortgagee's argument that prejudice was required before voiding the foreclosure. 842 N.W.2d at 17.

Wells Fargo relies heavily on *Young v. Penn Mut. Life Ins. Co.*, and *Leeco, Inc. v. Cornerstone Bank*, in support of its argument that Larsen must prove that she suffered harm from the failure to strictly comply with the published-notice requirement before the foreclosure sale will be voided.[2] But both cases are distinguishable.

In *Young*, the Minnesota Supreme Court examined a foreclosure-by-advertisement proceeding in which a published notice allegedly overstated the amount owed on the mortgage by $116.55. 265 N.W. 278, 279-81 (Minn. 1936). The supreme court determined that the notice did overstate the amount owed, but concluded that this error "should not vitiate the sale" because the appellant "suffered no harm." *Id.* at 281.

Since it was issued in 1936, *Young* has not been cited by our appellate courts for the notion that a showing of harm is required to void a foreclosure sale. Rather, *Ruiz* and *Jackson* relied on *Moore*. *Ruiz*, 829 N.W.2d at 56; *Jackson*, 770 N.W.2d at 492. And *Moore* specifically rejected the proposition that a mortgagor must show harm by the mortgagee's failure to strictly comply with the foreclosure-by-advertisement statute before voiding the sale. 128 N.W. at 579. *Moore* held, "One who avails himself of [foreclosure-by-advertisement] provisions must show an exact and literal compliance with

[2] Wells Fargo also relies on two cases that required prejudice or harm before a mortgagor could obtain relief, but neither case involves foreclosure by advertisement. In *Berke v. Resolution Tr. Corp.*, this court determined that a low foreclosure bid, "without additional harm," was not enough to void a foreclosure sale. 483 N.W.2d 712, 718 (Minn. App. 1992), *review denied* (Minn. May 21, 1992). Because *Berke* did not involve foreclosure by advertisement, it did not consider or discuss strict compliance. In *Sneve v. First Nat'l Bank & Tr. Co. of Minneapolis*, the supreme court stated that appellant needed to show damages in order to recover on her conversion claim; it did not address the foreclosure-by-advertisement statute or strict compliance. 261 N.W. 700-01 (Minn. 1935).

its terms." *Id.* From this, we conclude that *Moore* provides controlling precedent. *State v. Allinder*, 746 N.W.2d 923, 925 (Minn. App. 2008) ("[T]his court is bound to follow supreme court precedent.").

In *Leeco*, this court considered whether a foreclosure sale would be voided where the mortgagee allegedly misstated the amount due on the mortgage in the published notice. 898 N.W.2d 653, 659 (Minn. App. 2017), *review denied* (Minn. Sept. 27, 2017). Citing century-old caselaw, *Leeco* first noted that it is not "absolutely necessary to state with certainty the exact amount legally due." *Id.* (quoting *Spencer v. Annon*, 4 Minn. 542, 544, 4 Gil. 426 (Minn. 1860)). *Leeco* also stated that "caselaw recognizes that a mortgagee, under a mistake of law or fact may honestly claim more than by law he would be entitled to"; if that is the case and "the other party is not shown to be prejudiced thereby, the sale should not be disturbed." *Id.* (quotation omitted).

Leeco does not persuade us that prejudice is required before voiding a foreclosure sale because *Leeco* did not consider or address whether strict compliance with the foreclosure-by-advertisement statute is required. *Leeco* upheld the foreclosure sale after determining that the amount claimed in the published notice was accurate. 898 N.W.2d at 660 (concluding that mortgagee "did not overstate the amount due on the mortgage"). Because the published notice in *Leeco* complied with the foreclosure-by-advertisement statute, it was unnecessary to consider whether the mortgagor was prejudiced or whether any remedy was necessary. Thus, *Leeco* does not speak to the question of whether prejudice is required when a published notice fails to comply with the foreclosure-by-advertisement statute.

In contrast, the Minnesota Supreme Court and our court have voided foreclosure each time the mortgagee failed to strictly comply with a specific provision of the foreclosure-by-advertisement statute and has not required a showing of prejudice. *See Ruiz*, 829 N.W.2d at 58 (voiding foreclosure sale after holding section 580.02(3) (2012) "unambiguously mandates strict compliance"); *Graybow-Daniels Co. v. Pinotti*, 255 N.W.2d 405, 407 (Minn. 1977) (affirming writ of mandamus to compel redemption and void foreclosure sale because "redemption requirements of Minn. St[at]. [§] 580.24 must be strictly adhered to"); *Hunter*, 842 N.W.2d at 17 (voiding foreclosure sale after holding "section 580.08 [(2012)] requires strict compliance"); *Beecroft v. Deutsche Bank Nat'l Tr. Co.*, 798 N.W.2d 78, 84 (Minn. App. 2011) (voiding foreclosure sale after holding "exact compliance" is required with Minn. Stat. § 580.02 (2010)), *review denied* (Minn. July 19, 2011). In *Hunter*, we specifically held that when a mortgagee fails to strictly comply with the foreclosure-by-advertisement statute, "the foreclosure sale is void, without any need for the mortgagor to prove additional facts, such as fraud, prejudice, or good cause." 842 N.W.2d at 17.[3]

[3] Wells Fargo does not make the argument, raised in *Hunter*, that no previous appellate decision has required strict compliance with section 580.04 and, therefore, we cannot require strict compliance in this case. *See* 842 N.W.2d at 16-17. Nonetheless, we note that such a position is untenable and was rejected in *Hunter*. As explained in *Hunter*, this view of strict compliance would "require this court to wait until the supreme court adopts a strict-compliance approach on a section-by-section basis, and it would require this court to apply contrary caselaw until such time as the supreme court decides a case that raises the precise issue that is raised in this case." *Id.* at 16. Because the supreme court's "caselaw is broad enough and clear enough," *id.*, we follow *Hunter* and conclude that Minnesota requires strict compliance with Minn. Stat. § 580.04(a)(6).

Our conclusion that a mortgagor need not prove prejudice to void a foreclosure sale accords with the purpose of the foreclosure-by-advertisement statute. The legislature authorized foreclosure by advertisement to allow mortgagees, like Wells Fargo, to choose to avoid judicial supervision, and public policy supports an accurate published notice when foreclosure operates outside the judicial process. We conclude that enforcing strict compliance with chapter 580 dovetails with the expedience and convenience of foreclosure outside the judicial process. If a mortgagor must prove prejudice each time a mortgagee fails to comply with chapter 580, judicial review of foreclosure will follow and undermine the expedience sought by the mortgagee. Thus, strict compliance with published-notice requirements without a showing of prejudice matches the legislature's goal of allowing foreclosure by advertisement to occur outside the court system.

And our conclusion fits with the purpose of including a mortgagor's deadline for enforcing her right to redeem in the published foreclosure notice. *Jackson*, 770 N.W.2d at 495 (stating purpose of foreclosure-by-advertisement statute is "to ensure the mortgagor has notice and the opportunity to redeem"); *Beecroft*, 798 N.W.2d at 83 (same). As discussed above, a mortgagor has the right to remain in her home and the right to take it back from the bank upon payment of the amount bid at the sheriff's sale plus interest and costs. *See* Minn. Stat. § 580.041, subd. 2a; Minn. Stat. § 580.23. A mortgagor's notice of how long she has to exercise this right—which necessarily means paying a debt that she has been unable to pay—is fundamental to having a home and this supports requiring strict compliance without a showing of prejudice.

Because Minnesota precedent has consistently required a mortgagee to strictly comply with applicable statutes when it elects to proceed with foreclosure by advertisement, and has also held that a mortgagee's failure to strictly comply voids the foreclosure sale without a showing of prejudice by the mortgagor, we conclude that strict compliance with Minn. Stat. § 580.04(a)(6) is required and no showing of prejudice is required before voiding the foreclosure sale.

Having concluded that strict compliance is required, we next consider whether Wells Fargo's published notice strictly complied with the requirements of Minn. Stat. § 580.04(a)(6). Larsen argues that it did not because the notice misstated the applicable redemption period. Wells Fargo argues that it strictly complied because the six-month redemption period under state law is preempted by federal law.

B. Federal law does not preempt state law regarding the time allowed for a mortgagor to redeem in foreclosure-by-advertisement proceedings. Because Wells Fargo's published notice for Larsen's property failed to correctly state the mortgagor's redemption period, the foreclosure sale is void.

Larsen argues that the district court erred when it determined that federal law preempted Minnesota state law because "protection for the United States' rights as a junior creditor does not conflict in any way with Minnesota's period of redemption for the mortgagor." Wells Fargo responds that "federal law preempts any state-law requirement that a notice of foreclosure use the borrower's redemption period" because the United States is a junior lienholder on Larsen's mortgage.

Federal preemption derives from the supremacy clause. *Hous. & Redevelopment Auth. of Duluth v. Lee*, 852 N.W.2d 683, 687 (Minn. 2014); U.S. Const. art. VI, cl. 2.

"Congressional purpose is the ultimate touchstone of the preemption inquiry." *Gretsch v. Vantium Capital, Inc.*, 846 N.W.2d 424, 432-33 (Minn. 2014). When assessing whether a federal law preempts a state law, this court begins "with the assumption that the historic police powers of the states were not superseded by the federal act unless that was the clear and manifest purpose of Congress." *Id.* at 433. Generally, preemption is "disfavored." *Id.* (citing *In re Estate of Barg*, 752 N.W.2d 52, 63 (Minn. 2008)). There are three kinds of preemption: field, express, and conflict or implied conflict.[4] *Lee*, 852 N.W.2d at 687. We agree with the parties that field and express preemption are not relevant to our analysis and instead consider whether conflict or implied conflict preemption applies in this case. Conflict preemption occurs when "compliance with both state and federal law is impossible" or when "the state law is an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Barg*, 752 N.W.2d at 64 (quotation omitted).

We begin our analysis with the relevant state and federal statutes. The time allowed for redemption by a mortgagor is governed by Minn. Stat. § 580.23, subd. 1, and in relevant part, requires:

> (a) When lands have been sold in conformity with the preceding sections of this chapter, the mortgagor, the mortgagor's personal representatives or assigns, within six months after such sale. . . may redeem such lands . . . .

[4] Field preemption occurs when the federal law fully occupies the field, meaning the federal regulation scheme is "sufficiently comprehensive" to infer that Congress "left no room" for "supplementary state regulation." *Barg*, 752 N.W.2d at 63 (quotation omitted). Express preemption occurs when federal law includes "express language preempting state law." *Id.*

On appeal, the parties agree that Minn. Stat. § 580.23, subd. 1(a), afforded Larsen a six-month redemption period. Wells Fargo stated in its brief to this court that "a mortgagor such as [] Larsen normally would have six months in which to redeem property from a foreclosure."

Wells Fargo argues, however, that because the federal government is a junior lienholder on Larsen's mortgage, the relevant redemption period is governed by federal law, which states:

> Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem. . . .

28 U.S.C. § 2410(c).

The district court agreed with Wells Fargo and determined that "Wells Fargo appropriately applied the Federal Code when it published a twelve-month redemption period" in Larsen's published notice of foreclosure. The district court relied on *United States v. John Hancock Mut. Life Ins. Co.*, in which the United States Supreme Court held that 28 U.S.C. § 2410(c) preempted a Kansas state law that purported to grant the mortgagor exclusive redemption rights for one year from the date of foreclosure sale. 364 U.S. 301, 306, 81 S. Ct. 1, 5 (1960). *John Hancock* reasoned that the Kansas law essentially eliminated the federal government's right to redeem because "the United States, as junior lienor, would find its lien dissolved . . . without having had a chance to protect its right to any amount the foreclosed property might be worth in excess of the senior lien." *Id.* at 305, 81 S. Ct. at 4-5.

Larsen contends that *John Hancock* is inapposite because 28 U.S.C. § 2410(c)'s "protection for the United States' rights as a junior creditor does not conflict in any way with Minnesota's period of redemption for the mortgagor." Rather, Larsen argues that section 2410(c) "contrasts with the period Minnesota law allows for junior creditors to redeem" because Minn. Stat. § 580.24(a) provides only seven days for a junior creditor to redeem. Larsen also argues that no language in section 2410(c) conflicts directly or indirectly with the *mortgagor's* six-month redemption period as stated in Minn. Stat. § 580.23, subd. 1. Because the published notice mandated by Minn. Stat. § 580.04(a)(6) specifically requires the mortgagee to state the mortgagor's redemption period, Larsen contends that the district court erred in applying preemption before determining whether Wells Fargo's published notice complied with applicable law.

Wells Fargo responds that Minnesota's six-month redemption period for a mortgagor is an obstacle to the United States' ability to redeem property as a lienholder because the United States may need to file a quiet-title suit in order to redeem the property. Wells Fargo cites *Title Ins. Co. of Minn. v. I.R.S. of U.S.* as an example of a state statute posing an "impediment" to the federal government's redemption rights. 963 F.2d 297 (10th Cir. 1992). We are not persuaded because, in *Title Ins. Co. of Minn.*, the state and federal laws were in direct conflict. Colorado law prohibited a lienholder from exercising redemption rights unless it provided a "notice of intention" within 75 days of a foreclosure sale. *Id.* at 301; Colo. Rev. Stat. 38-39-102 & 103 (1973). On the other hand, federal law gave the IRS a right to redeem by filing a certificate of redemption within 120 days. 963 F.2d at 301; 26 U.S.C. § 7425(d). The Tenth Circuit held that the state law's 75-day

requirement "conflicts with, and impinges upon" the federal law's 120-day requirement, therefore, the federal law preempted state law. 963 F.2d at 301.

For two reasons, we determine that federal law does not preempt state law on the published-notice requirement to state the mortgagor's redemption period. First, neither Minn. Stat. § 580.04(a)(6), providing the foreclosure-by-advertisement notice requirements, nor Minn. Stat. § 580.23, subd. 1, stating the mortgagor's redemption period, are in direct conflict with 28 U.S.C. § 2410(c), providing the federal government's redemption period. Minnesota state law requires the foreclosing party to include the mortgagor's redemption period in the published notice, *see* Minn. Stat. § 580.04(a)(6), and section 2410(c) does not provide or alter a mortgagor's redemption period. *See* Minn. Stat. § 580.23, subd. 1. Section 2410(c) provides a 12-month redemption period for the United States as a junior lienholder. And Minn. Stat. § 580.04 does not require that a published notice state the redemption period for a junior lienholder or, in fact, for anyone other than the mortgagor.

Second, sections 580.04 and 580.23 do not create an impediment or obstacle to the federal government's rights as junior lienholder. Wells Fargo argues that, by requiring a published notice to state a six-month redemption period instead of a 12-month period, Minnesota law will mislead potential buyers because they may purchase the property after six months but before 12 months have expired, unaware that the federal government has 12 months to redeem the property. Although this may be true, it is a policy argument that may support amending the foreclosure-by-advertisement statute but is not persuasive to this court.

Minnesota statutory requirements for a published foreclosure notice do not alert buyers to the redemption period for *any* creditor. *See* Minn. Stat. § 580.04. And many different redemption periods apply, including the one that Wells Fargo cites for the federal government as junior lienholder. *See* Minn. Stat. § 580.23, subds. 1, 2; Minn. Stat. § 580.24; 28 U.S.C. 2410(c). Additionally, Wells Fargo acknowledged during oral argument that, after due diligence, a potential buyer would be able to determine the redemption periods of other creditors by doing a title search. Thus, to the extent that a published notice stating a junior lienholder's redemption period would provide relevant information for a prospective buyer in a foreclosure sale, this argument seeks a change in statutory law, which is well beyond the powers of the judicial branch. *See State v. Ali*, 855 N.W.2d 235, 269 (Minn. 2014) ("Amending statutes is, and always has been, the Legislature's job.").

We conclude that federal law does not preempt either Minnesota's published-notice requirements, *see* Minn. Stat. § 580.04(a)(6), or Minnesota's redemption period for the mortgagor, *see* Minn. Stat. § 580.23, subd. 1, because neither state law directly or indirectly conflicts with 28 U.S.C. § 2410(c), which provides a 12-month redemption period for the federal government. Because Wells Fargo's published notice for Larsen's foreclosure incorrectly stated that she had a 12-month redemption period instead of the six-month redemption period required by Minnesota law, we determine that the published notice failed to strictly comply with the foreclosure-by-advertisement statute.

We also conclude that Wells Fargo's failure to strictly comply with state law in its published notice voids the foreclosure sale and specifically reject Wells Fargo's argument

that Larsen is not entitled to void the sale without first showing prejudice. Minnesota precedent requires a mortgagee to strictly comply with the foreclosure-by-advertisement statute and does not require a showing of harm when a published notice fails to do so. Thus, we reverse the district court's grant of summary judgment on Larsen's first claim and void the foreclosure sale, remanding for further proceedings consistent with this opinion.

II. Because Larsen failed to show she was injured by a violation of state law regarding residential mortgages, Wells Fargo is entitled to summary judgment on Larsen's section 58.18 claim.

The district court determined that "Wells Fargo complied with applicable federal code and state statutes" in its published notice and, without a violation of the statute, Larsen's claim for damages under section 58.18 failed. Section 58.18 authorizes "[a] borrower injured by a violation of the standards, duties, prohibitions, or requirements of sections 58.13, 58.136, 58.137, 58.16, and 58.161" to "have a private right of action" and to seek damages and attorney fees.

In her opening brief to this court, Larsen asks us to "remand for further proceedings on [her] Chapter 58 claims." Wells Fargo responds that we should affirm summary judgment on Larsen's second claim for two reasons: first, Larsen waived her claim under section 58.18 when she did not argue for its reversal in her opening brief; and second, Larsen "produced no evidence that she was 'injured' by any violation of the statute." Wells Fargo raised this second argument in its summary-judgment motion but the district court did not address it.

Before considering the district court's summary judgment on Larsen's section 58.18 claim, we briefly address two initial matters. First, we conclude that Larsen did not waive

appellate review of her section 58.18 claim. Her opening brief challenged the basis for the district court's decision to grant summary judgment on her section 58.18 claim for damages and sought reversal and remand because the district court erred in concluding that Wells Fargo complied with applicable law in its published notice. This argument, although brief, is sufficient to present the issue for our review on appeal.

Second, we will consider Wells Fargo's alternative argument in support of affirming summary judgment on Larsen's section 58.18 claim. "[W]here a party litigated two separate grounds for recovery and the district court made its decision based on one and not the other, that party can stress any sound reason for affirmance even if it is not the one assigned by the trial judge, in support of the decision." *Day Masonry v. Indep. Sch. Dist. 347*, 781 N.W.2d 321, 331 (Minn. 2010).

Wells Fargo raised its no-injury argument in its motion for summary judgment and again in its appellate brief to this court. Larsen responded in her reply brief and argued that she was injured by Wells Fargo's failure to accurately state the redemption period in its published notice. Because Wells Fargo briefed its no-injury argument while in the district court and raised it again on appeal, and because Larsen briefed the issue in response, we will address Wells Fargo's alternative argument in support of its summary judgment on Larsen's claim under section 58.18.

We now turn to the district court's decision to grant summary judgment to Wells Fargo on Larsen's section 58.18 claim. In order to recover under Minn. Stat. § 58.18, Larsen must demonstrate three elements: her injury, causation, and Wells Fargo's violation of one of the enumerated statutes in section 58.18.

In response to Wells Fargo's motion for summary judgment on her section 58.18 claim, Larsen argued that Wells Fargo violated Minn. Stat. § 58.13, subd. 1(8) (2018), which provides that no "residential mortgage originator or servicer" shall violate "a provision of any other applicable state or federal law regulating residential mortgage loans." Larsen reasoned that Wells Fargo's failure to accurately state the mortgagor's redemption period in its published notice violated a state law regulating residential mortgage loans, which in turn is a violation under Minn. Stat. § 58.18, and entitles her to seek damages. We are not convinced because the published-notice requirement regulates foreclosure and not residential mortgage loans.

But, we will assume without deciding that Larsen is correct and that Wells Fargo's error in stating the mortgagor's redemption period in the published notice is evidence of a violation of "any provision of any other applicable state or federal law regulating residential mortgage loans" under Minn. Stat. § 58.13. Proceeding with this assumption, we consider whether Larsen survives summary judgment on the injury element of her section 58.18 claim. In her brief to this court and at oral argument, Larsen argues that she was injured by Wells Fargo's error in two ways.

First, Larsen claims that Wells Fargo's error in stating she had a 12-month redemption period "eliminated [her] protection from a deficiency judgment." We disagree. Minn. Stat. § 582.30, subd. 2 (2018), prohibits a foreclosing party from pursuing a deficiency judgment against a mortgagor if the law provides the mortgagor a six-month redemption period under Minn. Stat. § 580.23, subd. 1(a). It is undisputed that Larsen had a deficiency of approximately $1,200, without considering interest, fees, or penalties. And,

as we explained above, Larsen is a mortgagor entitled to a six-month redemption period under applicable law. Thus, Larsen remains protected from a deficiency judgment. *See Am. Nat'l Bank v. Blaeser*, 326 N.W.2d 163, 165 (Minn. 1982) (holding that a foreclosing mortgagee cannot extend mortgagor's redemption period and thereby pursue a deficiency judgment). Moreover, Wells Fargo has repeatedly stated, in its brief and during oral arguments, that it will not pursue a deficiency judgment against Larsen.

Second, Larsen argues that a 12-month redemption period "may result in a lower bid at [the foreclosure] sale." While some caselaw has implied that a longer redemption period for the mortgagor may affect bids at a foreclosure sale, *see Blaeser*, 326 N.W.2d at 164, Larsen offers no evidence showing this type of damages. Because Larsen's injury claim is based on sheer speculation and unsupported by any evidence, her claim cannot survive summary judgment. *Kletschka v. Abbott-Northwestern Hosp., Inc.*, 417 N.W.2d 752, 754 (Minn. App. 1988) ("[A] party cannot rely upon mere general statements of fact but rather must demonstrate at the time the motion is made that specific facts are in existence which create a genuine issue for trial."), *review denied* (Minn. Mar. 30, 1988).

We conclude that Larsen failed to meet her burden to raise a genuine issue of material fact on summary judgment and produce evidence of injury caused by Wells Fargo's failure to comply with Minnesota's statutory requirements in its published notice for Larsen's foreclosure proceedings. Thus, we affirm the district court's grant of summary judgment on her Minn. Stat. § 58.18 claim on grounds other than those relied on by the district court. *Winkler v. Magnuson*, 539 N.W.2d 821, 827 (Minn. App. 1995) ("[W]e may affirm a summary judgment if there are no genuine issues of material fact and if the

decision is correct on other grounds." (quotation omitted)), *review denied* (Minn. Feb. 13, 1996).

Affirmed in part, reversed in part, and remanded.

CONNOLLY, Judge (concurring in part, dissenting in part)

I concur with the majority that, because appellant has not shown any injury resulting from respondent's violation of Minn. Stat. § 580.23, subd. 1 (2018) (providing a six-month redemption period), she is not entitled to recover damages from respondent under Minn. Stat. § 58.18, subd. 1 (2018) (providing that "[a] borrower injured by a violation of the standards, duties, prohibitions, or requirements of section[] 58.13,subd.1(a)(8) [prohibiting a residential mortgage loan servicer from violating any provision of any other applicable state law] . . . shall have a private right of action" and may be awarded actual, incidental, or consequential damages, statutory damages, punitive damages if appropriate, and court costs and attorney fees). I also concur that the district court erred in concluding that the federal twelve-month redemption period preempted the state six-month redemption period.

However, I dissent from the majority's decision to reverse the district court's grant of summary judgment to respondent. The legislature is presumed not to "intend a result that is absurd, impossible of execution, or unreasonable" in drafting statutes. Minn. Stat. § 645.17(1) (2018). Moreover, this court has an obligation to go beyond the literal language of a statute when a literal interpretation "leads to absurd results or unreasonable results which utterly depart from the purpose of the statute." *Wegener v. Comm'r of Revenue*, 505 N.W.2d 612, 617 (Minn. 1993). Obviously, the purpose of Minn. Stat. § 580.23, subd. 1(a), and of the "strict compliance" requirement set out in *Ruiz v. 1st Fid. Loan Servicing, LLC*, 829 N.W.2d 53, 58 (Minn. 2013), is to protect mortgagors of land sold at foreclosure sales by providing them six months to redeem the land, and, as a

corollary, requiring mortgagees to wait six months before taking any action that would make redemption impossible.

Here, respondent's error gave appellant the advantage of six extra months to redeem the property and imposed on respondent the disadvantage of waiting six extra months before proceeding. Neither the statute itself nor the strict compliance requirement has any discernible purpose achieved by giving appellant a further advantage and imposing on respondent a further disadvantage through voiding the sale, which would merely compound the error. This application of the strict compliance requirement to Minn. Stat. § 580.23, subd. 1(a), would "lead . . . to absurd results . . . which utterly depart from the purpose of the statute." *See Wegener*, 505 N.W.2d at 617.