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may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2014).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0071**

In the Matter of the Estate of: John Stanley LaSha, Deceased.

**Filed August 29, 2016
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27PAPR13308

John N. Bisanz, Jr., Henson & Efron, P.A., Minneapolis, Minnesota (for appellant Sharon Nordstrom)

Gregory J. Holly, Law Offices of Gregory J. Holly, Dellwood, Minnesota (for respondent Kenneth Welton)

Considered and decided by Stauber, Presiding Judge; Reyes, Judge; and Toussaint, Judge.*

UNPUBLISHED OPINION

REYES, Judge

On appeal after remand, appellant argues that the district court erred in its application of the law by prioritizing payment to respondent over appellant as personal representative for the costs and expenses of administering the estate. In addition,

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

appellant argues that the district court erred by failing to reopen the record on remand. We affirm.

FACTS

In January 2000, respondent Kenneth Welton loaned John Stanley LaSha a/k/a Peter LaSha \$33,000.¹ The loan had an interest rate of seven percent, evidenced by a promissory note from LaSha to Welton and secured by a mortgage on LaSha's real property. The mortgage was recorded with the county in November 2000. Welton's son also advanced funds to LaSha for repairs on LaSha's homestead in exchange for a one-half interest in the property. LaSha died intestate in 2012 having made no payments on the promissory note.

In April and July of 2013, Welton and his son provided notice of their claims against LaSha's estate. In September 2013, appellant Sharon Nordstrom, personal representative of the estate, disallowed both claims. The mortgaged property was sold in October 2013. Prior to the sale, the parties entered into an agreement to allow for the sale of the property (property agreement).² Pursuant to the property agreement, Welton executed and delivered a satisfaction of mortgage at closing but retained his same priority and rights to the sale proceeds that he had immediately prior to the execution and

¹ Welton advanced funds to his son who in turn advanced funds to LaSha. Welton's son has since assigned his interest to Welton. As such, the promissory note is referred to for the purposes of this opinion as being directly between Welton and LaSha.

² The property agreement does not indicate the date on which it was entered into. Nordstrom states, and Welton does not dispute, that the parties entered into the property agreement prior to closing.

delivery of the satisfaction of mortgage. Net proceeds from the sale amounted to \$129,596.05 and were placed in an escrow account.

In November 2013, Welton, on behalf of himself and his son, filed a petition for allowance with the probate court. Welton subsequently moved for summary judgment. The district court granted Welton's summary-judgment motion, determining that Welton is owed \$64,185.73, comprised of the original \$33,000.00 loan plus \$31,185.73 in accrued interest through June 30, 2014,³ and ordering that Welton's claims be given priority over payment to Nordstrom as personal representative. The district court also determined that Welton's son is entitled to half of the sale proceeds, or \$64,798.03, for his interest in the property.⁴ Nordstrom sought review of this decision. In addition, Nordstrom petitioned the district court for the payment of costs incurred in selling LaSha's property, which amounted to \$27,474.18. Because Nordstrom filed this petition while the first appeal was pending, the district court delayed ruling on the petition.

On appeal, we affirmed in part, reversed in part, and remanded. *In re Estate of LaSha*, No. A15-0106, 2015 WL 5664894, at *7 (Minn. App. Sept. 28, 2015) (*LaSha I*). In particular, we remanded for the district court to determine the priority of payment of claims in accordance with Minn. Stat. § 524.3-805(a) (2014). *Id.* at *5-6. On remand, the district court clarified that its order dealt not only with claims against the estate, which must be paid pursuant to the order provided for in Minn. Stat. § 524.3-805(a), but

³ The district court also ordered that Welton be paid interest from July 1, 2014 at the rate of \$6.33 per day.

⁴ Welton's son's claim to half the sale proceeds is not in dispute as part of this appeal.

also with a dispute over the validity of Welton’s mortgage and the parties’ property agreement. The district court ordered payments from the estate in the following order: (1) to Welton for his mortgage interest, pursuant to the property agreement; (2) to Nordstrom for the costs and expenses of administering the estate; and (3) to Welton for any deficiency on his mortgage interest. Nordstrom appeals.

D E C I S I O N

Generally, in a civil proceeding, a district court shall grant summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03; *see Payne v. Lee*, 222 Minn. 269, 278, 24 N.W.2d 259, 265 (1946) (noting that a judge in a probate matter is “like a judge in any other civil proceeding”); *In re Guardianship of Doyle*, 778 N.W.2d 342, 348 n.5 (Minn. App. 2010) (citing this aspect of *Payne*).

On appeal from summary judgment, [appellate] court[s] review[] de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law to the facts. [Appellate courts] view the evidence in the light most favorable to the party against whom summary judgment was granted

Commerce Bank v. W. Bend Mut. Ins. Co., 870 N.W.2d 770, 773 (Minn. 2015) (citation omitted). “[Appellate courts] also review de novo 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).

I.

Nordstrom argues that the district court erred in its application of Minn. Stat. § 524.3-805(a) by prioritizing payment to Welton for his mortgage on the property over the costs and expenses of administering the estate. We disagree.

In *LaSha I*, we noted that Minn. Stat. § 524.3-805(a) makes no distinction between secured and unsecured claims. 2015 WL 5664894, at *5. Because we determined that the district court gave priority to Welton's claims in a manner that was inconsistent with the priority set forth in Minn. Stat. § 524.3-805(a), we concluded that the district court erred in its application of the law. *Id.* at *5. On remand, the district court divided Welton's claim into his mortgage interest and his claim against the estate for any deficiency. The district court ordered that Welton be paid first from the property-sale proceeds for his mortgage interest but prioritized Welton's deficiency claim for any amount he was still owed for his loan to decedent in accordance with Minn. Stat. § 524.3-805(a).

The district court's order is consistent with our prior decision. As directed, the district court properly treated Welton's claim for any deficiency in his mortgage interest as last in priority under the statute. Additionally, the district court properly took into account Welton's rights to the proceeds from the sale of the property for his mortgage interest. The district court's order emphasized that it reached its decision based on the parties' property agreement. The property agreement acknowledges Welton's son's undivided one-half interest in the property and the recorded mortgage in favor of Welton as a first lien. Furthermore, paragraph 11 of the property agreement expressly states:

[Welton] shall have and retain the same rights and obligations (*including any priorities related thereto*) with respect to the [p]roceeds that [Welton] had with respect to the [p]roperty immediately prior to the execution and delivery of said [s]atisfaction of [m]ortgage. Specifically, any lien of mortgage that [Welton] had with respect to the [p]roperty immediately prior to the execution and delivery of said [s]atisfaction of [m]ortgage *attaches to and binds the [p]roceeds*.

(Emphasis added.)

The district court's order notes that an opportunity to sell decedent's homestead arose, and "rather than delay an advantageous sale" of decedent's homestead and put the sale at risk, Welton and Nordstrom entered into the property agreement to allow for the property sale while preserving their rights and obligations prior to the sale. The district court implicitly recognized that, prior to providing the satisfaction of mortgage, Welton could have commenced foreclosure proceedings. If Welton had done so, his mortgage interest would not have been a claim against the estate and would have been outside the scope of Minn. Stat. § 524.3-805(a). *Somsen, Mueller, Lowther & Franta, PA v. Estates of Olsen*, 790 N.W.2d 194, 196 (Minn. App. 2010) (concluding that the lender's "mortgage was not a claim against decedents' estates within the meaning of section 524.3-805(a)"); *see also* Minn. Stat. § 524.3-803(c) (stating that "[n]othing in this section affects or prevents: (1) any proceeding to enforce any mortgage").

Nordstrom's argument is premised on the assumption that, if a mortgagee declines to foreclose on its security interest and elects to proceed under the probate code, it is subject to the priority set forth in Minn. Stat. § 524.3-805(a), and any priority to proceeds

that the mortgagee would have had if he had foreclosed on his mortgage is lost.⁵ We cannot accept this view. Nordstrom’s argument ignores the parties’ property agreement and the circumstances surrounding the parties’ entering into the agreement. Although Welton did not commence foreclosure proceedings, he entered into the property agreement with Nordstrom to allow the property to be sold and to preserve his rights and priorities to the property-sale proceeds. *Cf. Dairyland Ins. Co. v. Clementson*, 431 N.W.2d 895, 898 (Minn. App. 1988) (stating that “[a] party on appeal is still bound by a stipulation which it entered at trial”). Welton did not foreclose because the parties had a willing buyer and wanted to take advantage of the sale opportunity.

As to Welton’s deficiency claim, Welton properly filed a claim against the estate to preserve his ability to pursue a deficiency, if any, following the sale of the property. *Harter v. Lenmark*, 443 N.W.2d 537, 537 (Minn. 1989) (“Although creditor may foreclose a mortgage or other lien on real property of an estate, a deficiency judgment against an estate may be obtained only through action on note after filing the requisite claim.”). Because this claim falls into the seventh and final category set forth in Minn. Stat. § 524.3-805(a), the district court correctly ordered that Welton’s deficiency claim be paid after payment to Nordstrom for the costs and expenses of estate administration.

In conclusion, we discern no error in the district court’s application of the law.

II.

⁵ In support of this argument, Nordstrom cites an unpublished opinion of this court. But unpublished opinions are not precedential. Minn. Stat. § 480A.08, subd. 3(c) (2014). Furthermore, the unpublished opinion is distinguishable both legally and factually.

Nordstrom also argues that the district court erred by failing to reopen the record on remand. We are not persuaded.

“A [district] court’s duty on remand is to execute the mandate of the remanding court strictly according to its terms.” *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn. App. 1988). But if no specific direction is given as to how to proceed, the district court “has discretion in handling the course of the cause to proceed in any manner not inconsistent with the remand order.” *Id.* “Appellate courts review a district court’s compliance with remand instructions under the deferential abuse of discretion standard.” *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759 (Minn. 2005).

In *LaSha I*, we instructed the district court “to reopen the record *at its discretion* to determine the priority of claims consistent with Minn. Stat. § 524.3-805(a).” 2015 WL 5664894, at *7 (emphasis added). We did not require that the district court reopen the record but gave the district court the opportunity to do so as it saw fit. *Id.*; *see also Duffey*, 432 N.W.2d at 476 (“Because this court’s general remand in [the prior appeal] was without specific direction as to how the [district] court was to proceed in determining permanent maintenance, the trial court had broad discretion to make that determination as it saw fit.”). And when reopening the record is mandatory, that direction is given explicitly. *See, e.g., State v. Licari*, 659 N.W.2d 243, 255 (Minn. 2003) (remanding and “direct[ing] the district court to conduct a hearing and make findings of fact on each of the remanded issues”); *State v. Perkins*, 582 N.W.2d 876, 877 (Minn. 1998) (“We reverse and remand for the limited purpose of reopening the omnibus hearing . . .”).

Furthermore, the purpose of reopening the record on remand is generally to develop a

record regarding a new issue. But here, the district court implicitly determined that reopening the record was unnecessary. The district court's decision on remand involved the application of the law to the well-developed factual record. Therefore, the district court did not abuse its discretion.

Affirmed.