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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1151**

Jeffrey J. Boelter,
Appellant,

vs.

Jeramie R. Steinert,
Respondent.

**Filed April 27, 2020
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CV-18-1986

Peter Lind, Tewksbury & Kerfeld, P.A., Minneapolis, Minnesota (for appellant)

Corinne G. Ivanca, Mark W. Hardy, Geraghty, O'Loughlin & Kenney, P.A., St. Paul,
Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Segal,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

This is a legal-malpractice case. In the underlying quiet-title action, attorney Jeramie Steinert represented property owner Jeffrey Boelter in Boelter's lawsuit to reclaim foreclosed property from a bank. We dismissed Boelter's appeal from summary judgment favoring the bank in that action because Steinert failed to timely file Boelter's appellate

brief. The district court in this malpractice suit against the attorney also granted summary judgment against Boelter, reasoning that Boelter's underlying quiet-title action was doomed regardless of Steinert's failure to file Boelter's appellate brief because the action lacked a statutory basis. We affirm because Boelter's property was not an "owner-occupied, single-family dwelling," a classification necessary to meet an element of his underlying quiet-title action.

FACTS

The Mortgages and Foreclosures

The underlying foreclosure suit concerned appellant Jeffrey Boelter's six parcels in the City of McGregor. A gravel pit occupied five of them, and two residences—a single-family home where Boelter lived and a small guest cabin that he rented to one of his employees—sat on the other. Boelter encumbered the property with two mortgages to secure loans with State Bank of McGregor (now Grand Timber Bank). The first, in 2004, encumbered the five gravel-pit parcels, and the second, in 2005, encumbered the residential parcel. Boelter fell behind on his payments, and the bank initiated foreclosure proceedings in 2011.

The bank issued a Notice of Mortgage Foreclosure Sale identifying the sale date of July 28, 2011. The notice described Boelter's right to redeem, saying, "The time allowed by law for redemption by said mortgagors, their personal representatives or assigns is twelve (12) months from the date of sale" And it described Boelter's duty to vacate:

TIME AND DATE TO VACATE PROPERTY: If the real estate is an owner-occupied, single-family dwelling, unless otherwise provided by law, the date on or before which

the mortgagor(s) must vacate the property if the mortgage is not reinstated under section 580.30, or the property is not redeemed under section 580.23, is 11:59 p.m. on July 28, 2012.

The sheriff administered a sale on July 28, 2011, and the bank purchased the property. Twelve months passed without redemption, and the bank successfully prosecuted an eviction action against Boelter. Boelter vacated and the bank took possession.

The Underlying Quiet-Title Action

Boelter engaged respondent-attorney Jeramie Steinert to bring a quiet-title action against the bank. Boelter's civil complaint asked the district court to declare that Boelter was entitled to possess the property. The complaint alleged deficiencies in the bank's notice of foreclosure sale, asserting that the notice misrepresented the deadlines for Boelter's right to redeem and the date to vacate. It asserted specifically that the notice incorrectly listed the redemption and vacation deadlines as Saturday, July 28, 2012, instead of the correct date of Monday, July 30, 2012, and that this error justified voiding the foreclosure sale.

After discovery, the bank successfully moved for summary judgment. The district court rejected Boelter's argument that the notice of foreclosure sale listed the incorrect redemption deadline. Boelter appealed from summary judgment. Still represented by Steinert, Boelter moved this court to extend the deadline for filing his appellant's brief. We granted the motion. Boelter then moved for another extension, and the bank asked us to deny the motion and either affirm the district court or dismiss Boelter's appeal. We concluded that Boelter failed to show good cause to extend the deadline further, and we denied his motion. We then dismissed the appeal based on the lack of an appellant's brief.

The Current Malpractice Action

Boelter sued Steinert for legal malpractice in January 2018 based on Steinert's allegedly negligent failure to timely file Boelter's appellant's brief in the quiet-title action. He limited his complaint to the residential parcel. Both parties moved for summary judgment. Steinert argued that he was entitled to summary judgment because Boelter's quiet-title action would have failed. He argued specifically that the statute that the bank allegedly violated, Minnesota Statutes section 580.04(b) (2010), did not apply to the residential parcel because it is not an owner-occupied, single-family dwelling, and that Boelter suffered no cognizable damages because his debt exceeded the property's value.

The district court granted Steinert's summary-judgment motion based only on his statutory argument, rejecting the alternative argument and dismissing Boelter's malpractice action. It reasoned that, even if this court had addressed the appeal and reversed summary judgment in the quiet-title action, Boelter could not have prevailed in his effort to void the foreclosure as to the residential parcel. It based this conclusion on the notion that the residential parcel was not "an owner-occupied, single-family dwelling," which is the requisite classification of real estate falling under the notice-to-vacate statute that Boelter maintained the bank violated with its notice. *See* Minn. Stat. § 580.04(b).

Boelter appeals. Steinert also appeals, challenging the district court's decision not to grant summary judgment on his alternative argument.

DECISION

Boelter challenges the district court's grant of summary judgment. We review a district court's summary-judgment decision de novo. *Montemayor v. Sebright Prods., Inc.*,

898 N.W.2d 623, 628 (Minn. 2017). In doing so, we will affirm if Steinert established that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law. See Minn. R. Civ. P. 56.01. We consider the evidence in the light most favorable to Boelter, the party against whom summary judgment was granted. See *STAR Ctrs., Inc. v. Faegre & Benson, LLP*, 644 N.W.2d 72, 76–77 (Minn. 2002). We apply this standard to the summary-judgment dismissal of Boelter’s legal-malpractice claim.

Boelter can prevail in his legal malpractice suit if, in addition to other elements, he proves that but for Steinert’s alleged negligence, Boelter would have been successful in his quiet-title action. See *Blue Water Corp. v. O’Toole*, 336 N.W.2d 279, 281 (Minn. 1983). Failure to prove any of the malpractice elements defeats the entire claim. *Noske v. Friedberg*, 670 N.W.2d 740, 743 (Minn. 2003). We decide this case on this single element.

Boelter asks us to address this but-for issue narrowly, considering only whether we would have reversed the district court’s summary-judgment decision in the quiet-title appeal, not broadly, considering whether he would have also then prevailed in winning the case after a summary-judgment reversal. Boelter is mistaken. But-for causation requires a legal-malpractice plaintiff to show that, but for the attorney’s negligence, he “would have been *successful in the prosecution* or defense of the action.” *Blue Water*, 336 N.W.2d at 281 (emphasis added). So even if Boelter demonstrates that a timely and well-reasoned brief would have led us to reverse summary judgment, he must go further and establish that he would have also succeeded in prosecuting his action generally. Cf. *Hyduke v. Grant*, 351 N.W.2d 675, 677 (Minn. App. 1984) (observing that the but-for standard in the plaintiff’s legal-malpractice claim required him to show that the appeal would have

resulted in either outright reversal or a new trial, *and* that he likely would have been successful had a new trial been ordered), *review denied* (Minn. Oct. 16, 1984). In our de novo consideration of summary judgment, we therefore must decide whether Boelter would have succeeded in his quiet-title action to void the foreclosure after prevailing on appeal from the summary-judgment decision.

The district court rightly concluded that Boelter would not have succeeded on his quiet-title allegation that the bank failed to comply with the following notice-to-vacate statute:

If the real estate is an owner-occupied, single-family dwelling, the notice must also specify the date on or before which the mortgagor must vacate the property The notice must state that the time to vacate the property is 11:59 p.m. on the specified date.

Minn. Stat. § 580.04(b). Boelter’s claim requires us to consider what the undisputed facts in the record say about whether the contested real estate constitutes “an owner-occupied, single-family dwelling” within the meaning of the statute and to discern the statute’s meaning. We construe statutes de novo. *Ruiz v. 1st Fidelity Loan Servicing, LLC*, 829 N.W.2d 53, 56 (Minn. 2013). We base our construction on the plain and ordinary meaning of the words of the statute. *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012). We are satisfied that the phrase, “is an owner-occupied, single-family dwelling” lends itself to a single, straightforward interpretation.

Based on this language, we believe that the legislature intended the statute to apply only to real estate with a single dwelling, not real estate with multiple single-family dwellings with at least one being owner-occupied, as Boelter contends. The statute applies

only if the subject real estate “*is an owner-occupied, single-family dwelling.*” Minn. Stat. § 580.04(b) (emphasis added). Boelter implicitly contends that the meaning of the phrase depends upon what the meaning of the word “is” is. We can indeed decide the case primarily on that question. If the legislature wanted the provision to apply to parcels encompassing multiple dwellings, one or more of which is a single-family dwelling, we are confident that the legislature would have phrased it differently, using a word like “includes” or “contains” instead of “is.” The use of singular language informs our understanding that the statute encompasses property that contains only one dwelling, and only when that one dwelling is occupied by its owner. The language stands in contrast to other foreclosure statutes, which plainly apply even when only a part of the property fits the description. *See, e.g.,* Minn. Stat. §§ 580.07, subd. 2 (applying “[i]f *all or a part* of the property to be sold is classified as a homestead under section 273.124 and *contains* one to four dwelling units” (emphasis added)), 582.041, subd. 1 (requiring notification of homestead designation “[i]f a mortgage on real property is foreclosed and the property *contains a portion* of a homestead” (emphasis added)) (2018). Based on the statute’s plain terms, we reject Boelter’s position that the legislature intended the statute to apply to property having multiple dwellings.

The undisputed facts about the residential parcel resolve the summary-judgment dispute against Boelter. The property contains two residences, not one. An appraisal identifies one as a “single-family home” and the other as a “guest cabin.” Boelter lived in the single-family home, having three bedrooms, a bathroom, a kitchen, a dining room, and a basement. The guest cabin constituted a different residence, having a bedroom, a living

room, a bathroom, and a kitchen. The two residences had different addresses and separate mailboxes. Boelter leased the guest cabin to one of his employees, who lived there for years, until the bank initiated foreclosure proceedings. Based on these undisputed facts, the real estate “is” *not* “an owner-occupied, single-family dwelling.” Boelter therefore could not have prevailed in his underlying quiet-title action claiming that the bank failed to provide the notice required to foreclose only on real estate that “is an owner-occupied, single-family dwelling.”

Boelter argues that the district court erred by considering this preliminary issue of whether his property was an owner-occupied, single-family dwelling for two reasons: the bank had not raised the argument during the summary-judgment proceedings in the quiet-title action, and there was no evidence about it before the district court in that action. It is true that the bank did not rely on section 580.04(b) when it moved for summary judgment. But we are not here deciding whether the bank was entitled to summary judgment in the quiet-title action based on the arguments it presented; we are deciding whether Boelter would have prevailed in prosecuting his claim that the bank’s foreclosure was void because it violated section 580.04(b). Regardless of the bank’s omission, nothing would have prevented it from later raising this argument to defeat Boelter’s claim on any remand. More important, the burden of proof would have been on Boelter, who could have voided the foreclosure based on his notice-to-vacate argument only if he met his burden to prove all elements to establish that the bank violated section 580.04(b). This includes the prerequisite element of the nature of the real estate as an owner-occupied, single-family

dwelling. Because his inability to prove this element in the quiet-title action would have barred his success, he fails to establish that his action would have succeeded.

We are not persuaded otherwise by Boelter’s assertion that the bank had referred to the parcel as having been “improved by an owner occupied single family dwelling.” Saying that a property “was improved by an owner occupied single family dwelling” is not an admission that the *only* improvement to the property was erecting an owner-occupied, single-family dwelling. And the undisputed evidence demonstrates that, to the contrary, the property included two dwellings as improvements, not just one.

We do not intend to address whether the statute applies to property containing one single-family dwelling and other substantial nonresidential buildings. Answering only the question before us, we are satisfied that the statute was not meant to apply here, where the property contains two distinct residential dwellings, only one of which was occupied by the owner. We hold then that Boelter could not have prevailed in his quiet-title action on his claim that the bank failed to comply with the notice-to-vacate statute. We therefore conclude that Boelter has not identified any disputed fact that could reasonably satisfy the but-for element of his legal-malpractice action and that Steinert is entitled to judgment as a matter of law. We need not address Steinert’s cross-appeal contention that the district court’s decision could rest on Steinert’s alternative argument.

Affirmed.