

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1326**

Colleen Cole f/k/a Colleen Wallin,
Appellant,

vs.

Caliber Home Loans, Inc.,
Respondent.

**Filed April 20, 2020
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CV-17-13668

Joseph W. Dicker, Joseph W. Dicker, P.A., Minneapolis, Minnesota (for appellant)

Christopher J. Knapp, Barnes & Thornburg LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant argues that the district court erred by granting summary judgment in respondent's favor when it determined that there were no issues of material fact regarding the amount due and owing on her mortgage in the notice of foreclosure sale. We affirm.

FACTS

In 2004, appellant Colleen Cole f/k/a Colleen Wallin entered into a mortgage contract with Bell America Mortgage LLC (Bell America). Cole executed a promissory note in favor of Bell America in the amount of \$288,000, secured by a mortgage on real property. Mortgage Electronic Registration Systems Inc. (MERS) was designated as the nominee for Bell America. The note and mortgage were later assigned to different holders and servicers, and Caliber Home Loans Inc. (Caliber) is the current holder of the note and mortgage. In 2016, Cole defaulted on the mortgage and Caliber initiated a foreclosure by advertisement. In July 2016, Caliber issued a notice of mortgage foreclosure sale (the foreclosure notice), scheduling a sheriff's sale. The foreclosure notice indicated that the total amount due and owing on the note was \$405,225.21. At the sheriff's sale, Caliber was the highest bidder and took title to the property. Cole did not exercise her statutory right of redemption.

In February 2017, Cole filed a civil lawsuit against Caliber (1) challenging the validity of the foreclosure, (2) seeking an accounting, and (3) alleging improper dual tracking. The district court dismissed counts two and three of the complaint, determining that Cole could not maintain a cause of action for accounting and that the improper-dual-tracking claim was statutorily barred. Following discovery, the district court granted Caliber's summary-judgment motion and dismissed the remaining count. The district court held that there was no issue of material fact concerning the amount due on the mortgage. Further, the district court concluded that even if it accepted Cole's argument that the

amount reflected in the foreclosure notice was incorrect, the error, if any, was not material and did not prejudice Cole. Cole now appeals summary judgment.¹

DECISION

I. Standard of review

Summary judgment is appropriate if the record reflects “no genuine issue as to any material fact” and that the moving party “is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). “[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). On appeal, “[w]e review a district court’s decision to grant summary judgment de novo to determine whether any genuine issue of material fact exists and whether the district court correctly applied the law.” *Citizens State Bank Norwood Young Am. v. Brown*, 849 N.W.2d 55, 61 (Minn. 2014). “[W]e may affirm a grant of summary judgment if it can be sustained on any grounds.” *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

¹ Cole does not challenge the dismissal of counts two and three of the complaint.

II. The district court did not err in determining that there were no issues of material fact.

Cole asserts that summary judgment was improper because deficiencies in Caliber's foreclosure notice render the foreclosure and the sale void. In a foreclosure by advertisement, a notice of foreclosure sale must contain "the original or maximum principal amount secured by the mortgage" and "the amount claimed to be due on the mortgage on the date of the notice." Minn. Stat. §§ 580.04(a)(1), (3) (2020).

Here, the foreclosure notice stated that the amount claimed to be due on the mortgage as of the date of notice was \$405,225.21. Caliber presented evidence to the district court that the amount stated on the foreclosure notice was correct. Specifically, Caliber's default service officer submitted an affidavit containing copies of Cole's payment history from January 2005 to April 2019. Cole argues that the amount is incorrect because Caliber failed to account for approximately \$30,000 of check payments she made toward the mortgage. However, it is uncontested that Caliber did not cash these checks and returned the uncashed checks to Cole. It is further uncontested that the uncashed checks were not applied to the loan balance and did not reduce the amount due and owing on the mortgage. The district court determined that the uncashed checks failed to rebut the evidence presented by Caliber. Cole did not present any other evidence demonstrating that Caliber's calculation of the mortgage balance was incorrect. Given the lack of evidence, the district court determined that there were no genuine issues of material fact as to the accuracy of the mortgage foreclosure notice and granted summary judgment in Caliber's favor.

We discern no error in the district court’s decision. At the time of the foreclosure sale, the notice of foreclosure complied with Minn. Stat. §§ 580.04(a)(1), (3) by correctly listing the amount due and owing as \$405,225.21. Cole did not present any competent evidence that the amount listed as owed on the foreclosure notice was inaccurate, and the district court specifically observed that Cole “failed to provide any evidence to suggest that the amount on [Caliber’s] foreclosure notice was incorrect.” Because there are no genuine issues of material fact concerning the amount due on the mortgage, the district court did not err by granting summary judgment.

Cole urges this court to hold that a misstatement in the foreclosure notice is presumptively prejudicial and overrule *Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653 (Minn. App. 2017), *review denied* (Minn. Sept. 27, 2017). In its summary-judgment order, the district court stated that even assuming the amount reflected in the foreclosure notice was incorrect, Cole was not entitled to relief because she did not demonstrate prejudice. The district court relied on the *Leeco* decision, which recognized that “a mortgagee, under a mistake of law or fact may honestly claim more than by law he would be entitled to. In such a situation, if the other party is not shown to be prejudiced thereby, the sale should not be disturbed.” *Id.* at 659 (citation omitted). Here, Cole did not allege that she suffered prejudice as a result of any purported error in the amount claimed on the foreclosure notice.

We decline to revisit the *Leeco* decision. As an error-correcting court, we are bound by supreme court precedent and the published decisions of this court. *Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927 N.W.2d 748, 761 (Minn. App. 2019); *see also Jackson v. Options Residential, Inc.*, 896 N.W.2d 549, 553 (Minn. App. 2017) (holding that “we are

bound by precedent established in . . . our own published opinions”). We will generally “adhere to former decisions in order that there might be stability in the law,” and we “will only overrule our precedent if provided with a compelling reason to do so.” *Ariola v. City of Stillwater*, 889 N.W.2d 340, 356 (Minn. App. 2017) (quotations omitted), *review denied* (Minn. Apr. 18, 2017). “[T]he reasons for departing from former decisions [must] greatly outweigh reasons for adhering to them.” *Id.* (alteration in original). Here, Cole has not articulated a persuasive argument compelling this court to ignore *Leeco*’s holding, and the district court did not err by applying it.

Because the district court did not err by determining that the amount listed on the foreclosure notice was accurate and supported by the record, we affirm.

Affirmed.