

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

5408 SINGING HILLS TRUST,  
Appellant,  
vs.  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE, IN TRUST  
FOR THE REGISTERED HOLDERS OF  
MORGAN STANLEY ABS CAPITAL I  
INC. TRUST 2006-HE7, MORTGAGE  
PASS-THROUGH CERTIFICATES,  
SERIES 2006 HE7,  
Respondent.

No. 80517-COA

**FILED**

APR 12 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER VACATING JUDGMENT AND REMANDING*

5408 Singing Hills Trust (the Trust) appeals from a final judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

The original owners of the subject property, the Nunleys, failed to make periodic payments to their homeowners' association (HOA). Through its foreclosure agent, Nevada Association Services, Inc. (NAS), the HOA recorded a notice of delinquent assessment lien and thereby initiated nonjudicial foreclosure proceedings pursuant to NRS Chapter 116. It is undisputed on appeal that the superpriority portion of the HOA's lien was comprised of the five months of unpaid assessments preceding the notice of delinquent assessment lien, an amount totaling \$756.25. As delinquencies continued to accrue, the Nunleys made multiple partial payments totaling \$2,870.00—of which \$1,153.18 was retained by or disbursed to the HOA and applied to past due assessments—but they ultimately failed to satisfy the HOA's entire lien. Accordingly, the HOA proceeded to foreclose on the property and sell it to the Trust. Respondent Deutsche Bank National Trust

Company (Deutsche Bank)—the beneficiary of the first deed of trust on the property—then initiated the underlying action seeking to quiet title, and the Trust counterclaimed seeking the same.

The matter proceeded to a bench trial, following which the district court ruled in favor of Deutsche Bank, finding that the HOA adopted an Assessment Collection Policy (ACP) requiring it to apply payments to the oldest assessments due, that the Nunleys made payments totaling \$1,080.00 following the HOA's adoption of the policy, and that their payments therefore exceeded and satisfied the superpriority portion of the HOA's lien. Accordingly, the district court concluded that the HOA's subsequent foreclosure sale was void as to the superpriority portion of its lien and that the Trust therefore acquired the property subject to Deutsche Bank's deed of trust. The district court further concluded that the Trust was not a bona fide purchaser (BFP) and that such status was irrelevant in light of the preservation of Deutsche Bank's deed of trust as a matter of law. This appeal followed.

This court reviews a district court's legal conclusions following a bench trial de novo, but we will not disturb the district court's factual findings "unless they are clearly erroneous or not supported by substantial evidence." *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018).

On appeal, the Trust contends that the district court incorrectly determined that, because the HOA adopted the ACP<sup>1</sup> and the Nunleys thereafter made payments exceeding the superpriority amount of the HOA's

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<sup>1</sup>Contrary to the Trust's arguments on appeal, substantial evidence in the record supports the district court's finding that the HOA actually adopted the ACP. See *Radecki*, 134 Nev. at 621, 426 P.3d at 596.

lien, those payments were necessarily applied to that portion of the lien. Because we agree with the Trust that the district court's findings on this point are inconsistent with our supreme court's recent opinion in *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 459 P.3d 227 (2020)—of which the district court did not have the benefit at the time it entered judgment in this matter—we vacate the judgment and remand for further consideration consistent with the principles set forth in that opinion.

In *Cranesbill*, the supreme court held that “[a]llocating partial payments by a homeowner to her HOA depends on the express or implied intent and actions of the homeowner and the HOA and, if indeterminate, an assessment of the competing equities involved.” *Id.* at 82, 459 P.3d at 232. Specifically, the court noted that a debtor generally has the right to appropriate a partial payment to particular obligations outstanding, but if the debtor does not do so, “the creditor may determine how to allocate the payment.” *Id.* at 80, 459 P.3d at 231. Moreover, if the creditor makes an allocation, it may not thereafter allocate the payment to a different debt, and its right to make an allocation terminates when a controversy surrounding application of the funds arises. *Id.* Finally, if neither the debtor nor the creditor specifically allocate the payment, the court must determine how to allocate it in equity.<sup>2</sup> *Id.*

Here, the district court did not find—nor does Deutsche Bank contend—that the Nunleys specifically appropriated their payments to the

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<sup>2</sup>On this point, the supreme court noted that “[o]ther jurisdictions have stated a legal preference for paying the earliest matured debts,” *Cranesbill*, 136 Nev. at 81, 459 P.3d at 231, which, under the facts and circumstances presented here, are the assessments comprising the superpriority portion of the HOA's lien.

superpriority portion of the HOA's lien. Rather, the district court relied on the ACP in essentially determining that the HOA was obligated under its own policy to apply payments to the oldest unpaid assessments and that it therefore allocated them accordingly. But the district court's own factual findings contradict its decision on this point, as the court specifically found that—of the \$1,080.00 in post-ACP payments the Nunleys made to NAS—only \$418.18 was disbursed to the HOA and allocated to past due assessments, with NAS applying the remaining \$661.82 to its own collection fees and costs. Thus, in line with the district court's own findings, only \$418.18 was actually applied to the oldest unpaid assessments, which is \$338.07 short of the superpriority portion of the HOA's lien.<sup>3</sup> *See id.* (providing that if the creditor makes an allocation, it may not thereafter allocate the payment to a different debt).

Accordingly, based on the district court's findings, the HOA specifically allocated only \$418.18 to the Nunleys' oldest unpaid assessments, meaning the district court should have allocated the remainder of the funds submitted or disbursed to the HOA (\$735) in accordance with the equitable principles set forth in *Cranesbill*. *See id.* at 80-81, 459 P.3d at 231-32. Regardless, in light of the fact-intensive nature of this inquiry, as well as the extent to which the district court did not have the benefit of *Cranesbill* and therefore did not engage in the specific analysis set forth therein, we vacate the district court's judgment and remand this matter for the court to reconsider the evidence admitted at trial

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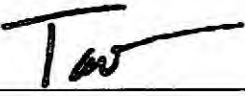
<sup>3</sup>Although Deutsche Bank might contend that the ACP itself constituted an allocation of the full \$1,080.00 to the oldest unpaid assessments, it makes no effort in its answering brief to explain how that could be so in light of NAS's retention of \$661.82.



in light of *Cranesbill*. See *id.* at 81-82, 459 P.3d at 232 (remanding for application of the foregoing analysis on grounds that appellate courts are not well-suited to making factual determinations, and noting that the appellate courts will not address issues the district court did not directly resolve); see also *SFR Invs. Pool 1, LLC v. U.S. Bank Nat'l Ass'n*, Docket No. 75722 (Order Vacating and Remanding, March 25, 2020) (vacating and remanding for further proceedings in light of *Cranesbill*); *SFR Invs. Pool 1, LLC v. Marchai B.T.*, Docket No. 74416 (Order Vacating Judgment and Remanding, March 18, 2020) (same).

It is so ORDERED.<sup>4</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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<sup>4</sup>Because the Trust's purported BFP status may be irrelevant depending on how the district court rules on remand, we decline to address the issue further at this time. See *Cranesbill*, 136 Nev. at 82, 459 P.3d at 232 (declining to address whether appellant was a BFP and noting that, assuming it so qualified, "that status would not override the void sale that results when a foreclosure sale proceeds in the face of a cured default"). And insofar as the parties raise additional arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Chief Judge, Eighth Judicial District Court  
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