

STATE OF MICHIGAN
COURT OF APPEALS

JOHN S. HODGE and JULIE C. HODGE,

Plaintiffs-Appellees,

v

DONN ULMER and SHARON ULMER,

Defendants-Third-Party
Plaintiffs-Appellants,

v

ANTHONY TROGAN,

Third-Party Defendant,

and

MIDWEST GUARANTY BANK,

Intervening Cross Plaintiff-Appellee.

Before: Wahls, P.J., and Taylor and Hoekstra, JJ.

PER CURIAM.

Defendants appeal an order quieting title to certain real property in plaintiffs. Defendants also appeal an order awarding attorney fees to plaintiffs. We affirm the order quieting title, but vacate the award of attorney fees and remand for further proceedings.

This case involves the foreclosure sale of a parcel of real property located in Troy (hereinafter "the property"). The property was originally owned by plaintiffs. On April 24, 1992, plaintiffs executed a quit claim deed for the property in favor of both John Hodge and defendant Donn Ulmer. Both parties agreed that this transfer was intended to secure a previous loan from Ulmer to Hodge.

Hodge defaulted on the loan, prompting Ulmer to institute legal proceedings to recover on the debt. This initial dispute was resolved by a settlement agreement whereby Ulmer agreed to convey the property back to plaintiffs in return for a mortgage on the property. Plaintiffs and Ulmer subsequently executed a quit claim deed which transferred ownership of the property back to plaintiffs. This deed was not signed by Ulmer's wife, Sharon.

Plaintiffs subsequently defaulted on the mortgage, and Ulmer foreclosed on the property. Ulmer obtained a Sheriff's deed dated October 11, 1994. Plaintiffs attempted to procure funds from Midwest Guaranty Bank (hereinafter "Midwest") to redeem the property. However, Midwest would not close on the loan because Sharon Ulmer's potential dower interest constituted a cloud on the title. Before the statutory redemption period was set to expire, plaintiffs sent defendants' attorney a letter indicating that they wished to redeem. The letter explained that they needed Sharon Ulmer's signature on a quit claim deed; a condition imposed by Midwest. Defendants refused to have Sharon Ulmer sign any document relinquishing her dower rights.

On April 11, 1995, the day the statutory redemption period was set to expire, plaintiffs filed a complaint seeking to set aside the foreclosure sale, or alternatively, to stay or extend the redemption period so that the circuit court could determine the ownership of the property. The circuit court issued a temporary restraining order (TRO) that stayed the effect of the Sheriff's deed and the expiration of plaintiffs' right of redemption, and also ordered that plaintiffs retain title to the property until resolution of the legal proceedings. On April 17, 1995, plaintiffs tendered sufficient funds and redeemed the property.

The circuit court was then called on to determine the validity of plaintiffs' redemption. The court held that the absence of Sharon Ulmer's signature on the quit claim deed constituted a cloud on the title. The court found that this cloud, which defendants refused to cure, constituted an irregularity in the foreclosure that justified the extension of the redemption period. The court then held that plaintiffs' redemption was valid.

Based upon the circuit court's determination that the redemption was valid, plaintiffs filed a motion to quiet title, which was granted. Believing that the court erred in its ruling, defendants filed a motion to have all rental proceeds from the property placed into escrow until a final determination was made as to ownership of the property. The court denied this motion, and also ruled that the motion was frivolous and awarded plaintiff \$1,000 in attorney fees. Defendants then filed this appeal, challenging the circuit court's extension of the redemption period as well as its award of attorney fees.

Defendants first argue that the circuit court erred in determining that there was an irregularity in the foreclosure proceedings and, therefore, that the court erred in extending the redemption period. We disagree.

Foreclosure by advertisement proceedings are controlled by statute. MCL 600.3201 *et seq.*; MSA 27A.3201 *et seq.* In the present case, the parties agree that plaintiffs had six months to redeem the property from the date of the Sheriff's deed. Thus, the redemption period was set to expire on

April 11, 1995. However, the circuit court allowed plaintiffs to redeem the property on April 17, 1995. Although the right to redeem is statutory, a court may exercise its discretion to extend the redemption period in irregular circumstances such as fraud, accident or mistake. *Flynn v Korneffel*, 451 Mich 186, 207; 547 NW2d 249 (1996); *Senters v Ottawa Savings Bank*, 443 Mich 45, 55; 503 NW2d 639 (1993); *Palmer v Palmer*, 194 Mich 79, 80-81; 160 NW 404 (1916); *Schulthies v Barron*, 16 Mich App 246, 248; 167 NW2d 784 (1969). Defendants contend that this rule is limited to irregularities in the foreclosure proceedings and cannot be used to attack the mortgage itself. However, the language in the cited cases does not contain any such restriction.

Defendants argue that the cloud on the title, which plaintiffs assert prevented them from procuring the necessary financing for redemption, did not constitute a sufficient irregularity to warrant an extension of the redemption period. Upon review of the record, it appears that plaintiffs made attempts to have the cloud cleared prior to the expiration of the redemption period. However, defendants refused to have Sharon Ulmer discharge any dower rights she might have. Because of defendants' refusal, plaintiffs were unable to procure the necessary financing. It does not appear that plaintiffs were lax in their attempts to procure financing. Instead, it seems clear that defendants' lack of cooperation prevented plaintiffs from redeeming during the statutory period. Defendants should not be heard to argue that the cloud on the title was insufficient to justify an extension of the redemption period when they alone had the power to clear that cloud, and where all they had to do was sign the quit claim deed provided by plaintiffs. Under these circumstances, the circuit court did not err in determining that the cloud on the title constituted a sufficient irregularity to justify an extension of plaintiffs' redemption period.

Defendants argue that the circuit court erred in determining that the April 24, 1992, document constituted a deed as opposed to an equitable mortgage. We need not address this issue. The *possibility* that Sharon Ulmer had a dower interest in the property was sufficient to create a cloud on the title. Whether she actually held such an interest is irrelevant.

Defendants next claim that the circuit court's decision to extend the redemption period without permitting them to present testimonial and documentary evidence was a deprivation of their right to due process. However, it is clear from the record that the evidence they wished to present dealt with the question whether Sharon Ulmer actually had a dower interest in the property. As noted above, this evidence was irrelevant. The trial court's refusal to hear irrelevant evidence did not deny defendants due process. See *Master Craft Engineering v Dep't of Treasury*, 141 Mich App 56, 73; 366 NW2d 235 (1985).

Finally, defendants argue that the circuit court erred in summarily awarding attorney fees to plaintiffs. They contend that the court awarded fees without considering the proper factors and without justifying the amount of the award. A trial court's finding with respect to whether a claim was frivolous and the resulting award of attorney fees will not be disturbed on appeal unless it is clearly erroneous. *Siecinski v First State Bank of East Detroit*, 209 Mich App 459, 465-466; 531 NW2d 768 (1995).

Although the circuit court did not indicate which court rule it relied on in awarding attorney fees, it did find that the defendants motion was frivolous. Under these circumstances, the circuit court was authorized to award plaintiffs attorney fees under two different sections of the applicable court rule.

MCR 2.114(E) provides:

If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

MCR 2.114(F) provides:

In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

MCR 2.625(A)(2) states as follows:

In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591; MSA 27A.2591.

MCL 600.2591; MSA 27A.2591 provides:

(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

(2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(3) As used in this section:

(a) “Frivolous” means that at least 1 of the following conditions is met:

(i) The party’s primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

- (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
- (iii) The party's legal position was devoid of arguable legal merit.
- (b) "Prevailing party" means a party who wins on the entire record.

If the trial court determines that a claim is frivolous, it is mandatory that the trial court award sanctions. *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 268; 548 NW2d 698 (1996).

Here, the only basis for defendants' motion for escrow of rent was their belief that the circuit court's prior ruling was erroneous. The court found that the acrimonious nature of defendants' motion was outrageous, and that defendants' belief that the court's ruling was incorrect could not be considered a meritorious legal basis justifying their motion. After reviewing the record, we conclude that the court's decision to award attorney fees was not clearly erroneous.

While the circuit court's decision to award sanctions was not clearly erroneous, due process requires a hearing to allow defendants "to know and respond to the evidence." *Klco v Dynamic Training Corp*, 192 Mich App 39, 42; 480 NW2d 596 (1991). While a full evidentiary hearing is not mandated, the record contains no evidence regarding plaintiffs' costs, nor was there any opportunity for defendants to refute the amount of those costs. Thus, we remand for a hearing on these issues.

We affirm the order quieting title in plaintiffs, but vacate the award of attorney fees and remand for further proceedings. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Myron H. Wahls
/s/ Clifford W. Taylor
/s/ Joel P. Hoekstra