# STATE OF MICHIGAN

# COURT OF APPEALS

---

EDSEL C. TROMBLEY,

Plaintiff-Appellant,

v

MICHAEL J. CZAP,

Defendant-Appellee.

---

UNPUBLISHED
March 12, 1999

No. 198304
Arenac Circuit Court
LC No. 95-004883 CZ

Before: Smolenski, P.J., and McDonald and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment dismissing his complaint to quiet title. We affirm.

This tax title case involves the interplay of several statutes. The General Property Tax Act (GPTA), MCL 211.1 *et seq*.; MSA 7.1 *et seq*., sets forth the procedure by which a person who has obtained a tax title to real property may take possession of the property. In particular, at one point during the process, service of a notice of the right to redeem the property must be made on certain persons. See, generally, MCL 211.140; MSA 7.198. Section 140(8) of the GPTA provides that service of the notice "may be made by a . . . deputy sheriff." MCL 211.140(8); MSA 7.198(8).

Section 70 of the sheriffs act, MCL 51.68 *et seq*.; MSA 5.861 *et seq*., provides in relevant part as follows:

> Each sheriff may appoint 1 or more deputy sheriffs at the sheriff's pleasure, and may revoke those appointments at any time. Persons may also be deputed by a sheriff, by an instrument in writing, to do particular acts, who shall be known as special deputies and each sheriff may revoke those appointments at any time. [MCL 51.70; MSA 5.863.]

Finally, § 73 of the sheriffs act provides as follows:

> Every appointment of an under sheriff, or of a deputy sheriff, and every revocation thereof, shall be in writing under the hand of the sheriff, and shall be filed and

> recorded in the office of the clerk of the county; and every such under sheriff or deputy shall, before he enters upon the duties of his office, take the oath prescribed by the twelfth article of the constitution of this state. But this section shall not extend to any person who may be deputed by and [sic] sheriff to do a particular act only. [MCL 51.73; MSA 5.866.]

In this case, plaintiff purchased parcels of property at a tax sale. Arenac County Deputy Sheriff Larry Nielson subsequently served notices of the right to redeem on defendant. When defendant did not redeem the property, plaintiff instituted this quiet title action.

Before trial, defendant argued that strict compliance with the notice statute was required. As relevant to this case, defendant argued that the notice had not been served by a deputy sheriff as required by § 140(8) of the GPTA because Nielson's written appointment as deputy sheriff had not been filed and recorded in the Arenac County Clerk's office as required by § 73 of the sheriffs act. Plaintiff countered that filing the appointment was not a necessary qualification for the office of deputy sheriff, but rather that the only conditions precedent to a deputy sheriff assuming his duties were to be appointed and to take the oath of office. Plaintiff also argued that even if Nielson was not a de jure deputy sheriff, he was at least a de facto deputy sheriff whose acts were valid with respect to third persons who had no notice of his true status.

The case was submitted on stipulated facts, which indicated, in relevant part, as follows:

> 7. That Larry R. Nielson was appointed as a Deputy Sheriff of Arenac County, Michigan on March 24, 1993 by Sheriff James Mosciski and took his oath of office at that time. Sheriff Mosciski and Undersheriff, Duane W. Bean, II claim, that the Appointment and Oath of Office . . . were filed with the Arenac County Clerk; County Clerk, Roma J. Dijak, claims that she does not have the Appointment and Oath of Office on file.
>
> 8. The files and records of the Arenac County Clerk do not contain the Appointment and Oath of Office for Mr. Nielson.

In a written opinion, the trial court found that Nielson was not a "duly constituted Arenac County Deputy Sheriff" at the time he served the notices of the right to redeem on defendant because Nielson's appointment had not been filed and recorded in the county clerk's office. The court found that service on defendant was therefore defective. Guided by the principles that strict compliance with the notice statute was required and that the law abhors a forfeiture, the court "reluctantly" concluded that dismissal of plaintiff's complaint was proper. The trial court did not address plaintiff's claim that Nielson was at least a de facto deputy sheriff.

On appeal, plaintiff does not address the basis of the trial court's decision.[1] Rather, plaintiff first argues that Nielson was a special deputy and that the trial court erred in failing to consider the last sentence of § 73 of the sheriffs act, which provides that the filing and recording requirements do not apply to special deputies. However, plaintiff raised this argument only in his motion for reconsideration

pursuant to MCR 2.119(F), which was denied by the trial court. In *Charbeneau v Wayne Co General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987), this Court held that a court does not abuse its discretion in denying a motion for reconsideration "resting on a legal theory and facts which could have been pled or argued prior to the trial court's original order." In this case, plaintiff's theory that Nielson was a special deputy, and the facts on which this theory was based, could have been pled and argued before the trial court issued its original written opinion. Accordingly, we cannot say that the court abused its discretion in denying plaintiff's motion for reconsideration. *Id*.

However, plaintiff once again contends that Nielson was a de facto deputy sheriff whose acts were valid as to third parties. As indicated previously, the trial court did not address this argument below. Issues not addressed by the trial court are generally not preserved for appellate review. *Herald Co v Ann Arbor Pub Schools*, 224 Mich App 266, 278; 568 NW2d 411 (1997). Moreover, plaintiff has failed to cite sufficient authority to permit us to address this issue. Specifically, in support of his argument that Nielson was a de facto deputy sheriff, plaintiff cites only nonbinding authority from other jurisdictions. It is true that Michigan likewise recognizes the doctrine that the actions of a de facto officer will be valid with respect to the general public or third parties. See, generally, *Greyhound Corp v Public Service Comm'n*, 360 Mich 578; 104 NW2d 395 (1960); *Carleton v People*, 10 Mich 250 (1862); see also 19 Callaghan's Michigan Civil Jurisprudence, § 26, p 145. However, in Michigan there can be no de facto officer where no public office, and thus officer de jure, is provided for. *Carleton, supra* at 256 (Campbell, J., with Christiancy, J., concurring), 257 (Manning, J.); *People v Carlin*, 225 Mich App 480, 489; 571 NW2d 742 (1997), lv gtd 457 Mich 855 (1998).

In *People v Gosch*, 82 Mich 22, 30; 46 NW 101 (1890), our Supreme Court found that a regularly appointed deputy sheriff was an officer de jure. This Court is bound by decisions of our Supreme Court until such decisions are modified or overruled. *Mahaffey v Attorney General*, 222 Mich App 325, 339; 564 NW2d 104 (1997). If a regularly appointed deputy sheriff is an officer de jure, with the implication that the position of deputy sheriff is a public office, then it would follow that a deputy sheriff whose appointment is invalid in some respect but who is nevertheless exercising the duties of his office could be considered a de facto officer whose acts were valid as to third parties.

However, in *Schultz v Oakland Co*, 187 Mich App 96, 101; 466 NW2d 374 (1991), this Court held that the plaintiff, a deputy sheriff, was a public employee, not a public officer. In particular, this Court noted that it did not believe that "the statute by which plaintiff's position was created, MCL 51.70; MSA 5.863, evinces any legislative intent to imbue the position of deputy sheriff with the status of a 'public office.'" *Schultz, supra*; see also *Carlin, supra* at 486 (deputy sheriff not a public officer). This Court "must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals . . . ." MCR 7.215(H)(1). Therefore, if the position of deputy sheriff is not a public office, then there can be no de jure deputy sheriff and, thus, no de facto deputy sheriff.

Plaintiff has not attempted to reconcile or distinguish these competing lines of Michigan authority concerning the status of a deputy sheriff or otherwise cite Michigan authority in support of his argument. Because plaintiff has failed to support his argument with sufficient authority to address this issue, we

decline to do so. A party may not merely announce a position and leave it to the Court of Appeals to discover and rationalize the basis for the claim. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 178; 568 NW2d 365 (1997). Likewise, this Court will not search for authority to support a party's position. *Weiss v Hodge (After Remand)*, 223 Mich App 620, 637; 567 NW2d 468 (1997).

In summary, there appears to be no dispute that defendant actually received the requisite notice required in this case. However, plaintiff has not challenged the basis of the trial court's decision in this case and has otherwise failed to cite sufficient authority that would permit this Court to reverse the trial court. Thus, as did the trial court, we conclude that we must reluctantly affirm.

Affirmed.

/s/ Michael R. Smolenski
/s/ Gary R. McDonald
/s/ Henry William Saad

[1] Where the appellants failed to address the basis of the trial court's decision on appeal in *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997), this Court noted that it "need not even consider granting [appellants] the relief they seek."