

STATE OF MICHIGAN
COURT OF APPEALS

ROSEANNE EGLE,

Plaintiff-Appellant,

v

MOTOR CITY REAL ESTATE,
JOHN SHEFFER and JUDITH KAY SHEFFER,

Defendants-Appellees.

UNPUBLISHED

April 13, 1999

No. 206846

Wayne Circuit Court

LC No. 97-705497 CH

Before: MacKenzie, P.J., and Gribbs and Wilder, JJ.

PER CURIAM.

Plaintiff, Roseanne Egle, appeals as of right an order granting summary disposition in favor of defendants, Motor City Real Estate, John Sheffer and Judith Kay Sheffer, pursuant to MCR 2.116(C)(10). We affirm.

On November 3, 1986, a Consent Judgment in the amount of \$7,500 was entered in favor of defendants, John Sheffer and Judith Kay Sheffer, and against plaintiff, Roseanne Egle. Subsequently, defendants Sheffer caused two Writs of Execution and Levies to be issued against plaintiff in the Oakland Circuit Court. As a result, plaintiff's property was levied upon by the Wayne County Sheriff and eventually sold at public auction to defendants Sheffer. Defendants Sheffer later sold the property to defendant, Motor City Real Estate.

Plaintiff filed a quiet title action against defendants claiming that she was the rightful owner of the subject property because the second execution and levy were invalid, that she was wrongfully evicted, and that the conveyance of the property from defendants Sheffer to defendant, Motor City Real Estate, constituted an unlawful cloud on her title. The trial court granted defendants Sheffers' motion for summary disposition and dismissed all of plaintiff's claims.

On appeal, plaintiff contends that the second levy and execution, and the subsequent Wayne County Sheriff's sale of plaintiff's property, were illegal because they were in violation of the statute of limitations pertaining to levies. We disagree.

This Court reviews the grant of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Ottaco, Inc, v Gauze*, 226 Mich App 646, 650; 574 NW2d 393 (1997). Although the trial court did not specify under which subrule the motion was granted, clearly it relied on materials outside the pleadings, therefore, we will review the decision under the standards applicable to MCR 2.116(C)(10). *Spiek, supra* at 337.

Defendants Sheffer had ten years to bring an action to enforce the November 3, 1986, Consent Judgment against plaintiff. MCL 600.5809(3); MSA 27A.5809(3); *Schumacher v Tidwell*, 138 Mich App 708, 718; 360 NW2d 915 (1984). The right to execute is implicit in any money judgment. *Landy v Landy*, 131 Mich App 519, 522; 345 NW2d 720 (1984). The court that granted the judgment has the right and power to enforce the judgment by execution. *Id.* More than one execution may be issued. MCL 600.6005; MSA 27A.6005. An “execution” is a court order requiring a sheriff or court officer to levy upon property of a judgment debtor. 30 Am Jur 2d § 43, p 77. Therefore, “to levy” is to enforce the court’s order of execution.

On November 25, 1987, defendants Sheffer had an execution issued in their favor and the property at issue was levied upon on December 6, 1987. MCL 600.6001; MSA 27A.6001. While the original levy was still operational, defendants Sheffer caused a second execution to be entered against plaintiff which was levied upon on September 2, 1992.

Because a judgment creditor has at least ten years to enforce the judgment¹, it would be inconsistent to hold that the very means and methods by which to satisfy that judgment are restricted to a time limit of less than ten years. Although MCL 600.6051(2); MSA 27A.6051(2) provides a statute of limitations for existing levies, we conclude that more than one levy can be issued against the judgment debtor. This case does not involve a situation where the levy expired and became invalid. See *Brownell Realty, Inc v Kelly*, 103 Mich App 690; 303 NW2d 871 (1981). The second levy in this case, which was issued within the limitation period, was legal. As a result, the Sheriff’s sale to defendants Sheffer, and defendants Sheffers’ conveyance to defendant Motor City Real Estate, were legal transactions and the trial court properly dismissed this claim. MCL 600.6069(1); MSA 27A.6069(1).

Plaintiff also claims that she was wrongfully evicted from the premises. Plaintiff asserts that she was, at least, a “tenant at sufferance” and, thus, entitled to notice prior to eviction. There is no merit to this claim. Plaintiff was given nearly ten years of repeated notice that she could not remain on the property, through the judgment against her, the writs of execution, the levies, and the public auction. Summary disposition was properly granted.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Roman S. Gribbs
/s/ Kurtis T. Wilder

¹ MCL 600.5809(3); MSA 27A.5809(3), provides for the renewal of a judgment within the ten-year limitation.