

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROGER McFADDEN,

Plaintiff/Counterdefendant-Appellant,

v

EDWARD BARGEIL<sup>1</sup> and HENRY BARGEIL,

Defendants,

and

DUANE STUEVER,

Defendant/Counterplaintiff-Appellee,

and

INTERNAL REVENUE SERVICE, LYLE E.  
CAUGHEL and DEBRA CAUGHEL,

Defendants.

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Before: Bandstra, C.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

Plaintiff Roger McFadden appeals as of right the trial court's order granting summary disposition to defendant Duane Stuever ("defendant") under MCR 2.116(C)(10). We affirm.

This appeal arises from a dispute concerning a piece of property sold to plaintiff at a tax sale in 1995. The property was originally owned by Edward and Henry Bargeil. In 1995, the property was sold to plaintiff for the amount of the unpaid 1992 taxes. A tax deed was issued to plaintiff on June 14, 1996, after the initial redemption period had passed. Parties of record holding an interest in the

property were notified of the right of redemption; the proofs of service were filed with the St. Clair County Treasurer on November 12, 1996.

The property was sold to defendant on November 22, 1996. On December 3, 1996, counsel for defendant, Bernard Penzien, sent a check for the unpaid taxes to the St. Clair County Treasurer with the following letter:

Re: Bargiel/Stuever Closing

Dear Clerk:

Enclosed please find a check for \$6,831.89 for the 1992-1995 Taxes for Tax #: 7426-021-3001-000-01.

Should you have any questions, please feel free to contact me.

The treasurer returned the check on the basis that (1) it did not cover the November 1996 interest, and thus was insufficient to cover the four years noted, (2) it was in the form of a personal check, not a cashier's check or a money order, and (3) there was no proof of ownership. The check never reached counsel's office.

After the redemption period had passed, plaintiff filed the instant action seeking to quiet title, claiming that the property had not been redeemed within the period provided by law. Defendant counterclaimed to quiet title, contending that he was entitled to the property because he had tendered the amount required for redemption. Both parties moved for summary disposition under MCR 2.116(C)(10). The court granted summary disposition to defendant, concluding that (a) because plaintiff had not served notice on the department of social services (now the family independence agency), the redemption period was tolled, and (b) defendant had tendered a sufficient amount to the county treasurer to redeem the property during the redemption period.

Plaintiff contends that summary disposition was improper because defendant never paid the amount required to redeem. We disagree. This Court reviews de novo a ruling on a motion for summary disposition. *Ottaco, Inc v Gauze*, 226 Mich App 646, 650; 574 NW2d 393 (1997). A court reviewing a motion for summary disposition under MCR 2.116(C)(10) must consider the pleadings, affidavits, depositions, admissions, and any other admissible evidence in the light most favorable to the party opposing the motion to determine whether there is a genuine issue of material fact. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Ottaco, supra* at 650. In addition, statutory interpretation is an issue of law that this Court reviews de novo. *In re MCI Telecommunications Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999).

After a piece of property has been purchased at a tax sale and a tax deed has been issued, MCL 211.141(2); MSA 7.199(2) allows certain individuals, who are enumerated in MCL 211.141(1); MSA 7.199(1), with an interest in property that has been sold at tax sale to redeem the property after a tax deed has been issued to the purchaser. The individuals may redeem the property by paying the sale

amount plus fifty percent to the county treasurer within six months after proofs of service are filed with the treasurer. MCL 211.141(2), (3); MSA 7.199(2), (3).

The policy of the law is to favor redemption of property sold at tax sale. *Geraldine v Miller*, 322 Mich 85, 96; 33 NW2d 672 (1948). However, because the right to redemption is statutory only, strict compliance with the law is required to redeem property. *Halabu v Behnke*, 213 Mich App 598, 606; 541 NW2d 285 (1995). Notwithstanding the requirement for strict compliance, if an individual makes a good faith attempt to pay the amount required for redemption during the redemption period, the amount is tendered to a person authorized to accept the payment, but through mistake or fault of the authorized person the payment is not accepted, this Court will consider the tender to be the equivalent of payment. *Palmer v State Land Office Bd*, 304 Mich 628, 635; 8 NW2d 664 (1943).

In the present case, counsel for defendant tendered a check for \$6,831.89, purportedly covering four years of taxes, including 1992, the year for which the property was sold to plaintiff. The amount tendered may have been insufficient to cover all four years; however, it was clearly sufficient to cover 1992, the year for which the property had been sold. In addition, sufficient information was provided to place the county treasurer on notice as to the parcel for which the payment was being made. Although the money was returned by the county treasurer, there was no violation of the requirements for redemption, and as a result no statutory authorization for the treasurer's refusal to accept the money. The tender of the money was sufficient to be deemed payment.

This is not a case in which defendant made a legally insufficient, but good faith, effort to redeem the property, as in *Hill v Wurm*, 194 Mich App 573, 576; 487 NW2d 512 (1992). The tender of the payment in this case was proper, even if the county treasurer's office did not accept the payment. The entire amount required to redeem the property from tax sale was tendered. It is irrelevant that the check was insufficient to pay all the back taxes; only the 1992 taxes had to be paid, with penalties, in order to redeem the property. In addition, the tender of the back taxes in the form of a personal check is irrelevant. MCL 211.141(3); MSA 7.199(3) does not specify the means by which payment must be made. Further, although the county treasurer may have had a policy against accepting personal checks, there is nothing in MCL 211.141(3); MSA 7.199(3) that authorizes the county treasurer to require that payment be made in any specific form. We decline to engraft into the statute requirements that the Legislature has not seen fit to include.

Finally, we find irrelevant the failure to show proof of ownership to the county treasurer. After the tax sale but before the tax deed is issued, the amount tendered to the county treasurer for redemption must be accompanied by proof of ownership. MCL 211.74; MSA 7.119. However, this case involves a payment tendered to the county treasurer after the tax deed has been issued. MCL 211.141(2); MSA 7.199(2), which addresses redemption after the tax deed has issued, contains no requirement that the payment be accompanied by proof of ownership. The exclusion of language from one portion of an act, when the language is included in another part of the act, is evidence that the exclusion was deliberate on the part of the Legislature. *People v Holt*, 207 Mich App 113, 120; 523 NW2d 856 (1994). We presume the Legislature understood the effect of the omission of this language when it had included the language elsewhere. *People v Ramsdell*, 230 Mich App 386, 392; 585 NW2d 1 (1998). We do not hold that the county treasurer need not be given enough information to

ascertain the property and tax year or years to which the amount tendered is intended to be applied. However, in this case, the letter from Penzien sufficiently identified the property and the tax year which had been the basis of the tax sale.

In sum, the redemption amount was tendered in a proper form to the county treasurer within the redemption period. Given our disposition of this issue, we need not reach the issue of whether the redemption period was tolled because the department of social services was not served with notice of the tax sale. Summary disposition was properly granted to defendant.

We affirm.

/s/ Richard A. Bandstra

/s/ Donald E. Holbrook, Jr.

/s/ E. Thomas Fitzgerald

<sup>1</sup> Defendants' surnames appear in the appellate record spelled both "Bargeil" and "Bargiel". This Court will use the spelling that appears on plaintiff's claim of appeal. However, when quoting from the record, this Court will spell defendants' surname as it appears.