

STATE OF MICHIGAN
COURT OF APPEALS

JOHN J. GABER and MARK J. GABER,

Plaintiffs-Appellants,

v

OTSEGO COUNTY REGISTER OF DEEDS,
AUSTIN MORTGAGE COMPANY, PRINCINE
M. PETINGA, and GERALD R. POLENSKY,

Defendants-Appellees.

UNPUBLISHED

April 18, 2000

No. 211624

Otsego Circuit Court

LC No. 97-007373-AW

Before: O'Connell, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendants under MCR 2.116(I)(2). We affirm.

Defendants Petinga and Polensky owned property that was worth approximately \$125,000 and was encumbered by a mortgage. After Petinga and Polensky defaulted on the mortgage, plaintiffs purchased the property at a sheriff's sale for \$73,072.93 and received a sheriff's deed. Pursuant to MCL 600.3240; MSA 27A.3240, defendants Petinga and Polensky had until September 13, 1997, to redeem their property, and they obtained a mortgage from defendant Austin Mortgage Company to cover the cost of redemption. Relying on the payoff amount supplied by the register of deeds to the mortgage company, and also to its mortgage insurer, Petinga and Polensky tendered a check for \$73,072.93 within the statutory time. A certificate of redemption was issued to defendants Petinga and Polensky. After the period of redemption expired, plaintiffs determined that the check was deficient as it did not include the amount of interest that accrued pursuant to MCL 600.3240(2); MSA 27A.3240(2) and to which plaintiffs were entitled pursuant to the redemption statute. Defendants Petinga and Polensky offered plaintiffs the \$1,372.92 amount owing, but plaintiffs refused. This quiet title action followed. Ultimately, the trial court dismissed the case and ordered the return of the redemption proceeds to plaintiffs.

On appeal, plaintiffs argue that the trial court could not properly use its discretion to circumvent the requirements of statutory redemption. Plaintiffs ask this Court to reverse the trial court and to enter an order reinstating the sheriff's deed.

Generally, MCL 600.3240; MSA 27A.3240 provides the requisites for redemption and that equitable factors should not be considered in the absence of fraud, accident, or mistake. *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 55; 503 NW2d 639 (1993). The statutory right to redemption should not be expanded by the courts absent some unusual circumstances or additional considerations not within the ambit of the statute. *Id.* at 54, quoting *Grossman Bldg Co v Elliott*, 382 Mich 596, 603; 171 NW2d 441 (1969); see also *Flynn v Korneffel*, 451 Mich 186, 199; 547 NW2d 249 (1996). "Any deviation from the literal requirements of the statute 'must be addressed to the conscience of the court.'" *Senters, supra* at 54, quoting *Grossman, supra* at 603.

Like the trial court, we find persuasive the holding of the Illinois Supreme Court in *Skach v Sykora Co*, 6 Ill 2d 215; 127 NE2d 453 (1955). The Illinois Supreme Court discussed at length the purpose served by the redemption statute and also recognized the penalty that would inure to the mortgagors for their failure to strictly comply with the statute:

The purpose of a mortgage foreclosure is to enforce the payment of the mortgagor's debt The statutes are not intended to take the landowner's property unjustly or for an inadequate consideration. They are not intended to penalize the debtor for his default nor to reward the purchaser by unjust enrichment above the amount of his debt at the expense of the landowner and his other creditors. The statute protects the purchaser to the extent of his bid, costs and interest on his investment. The statute contemplates redemption where the value of the property exceeds the sale price.

* * *

Here was a mistake of an officer for which appellees were in no manner responsible. For this mistake shall they lose their land, or is it within the power of a court of equity to relieve as against that mistake, and thus to protect appellees in the title to their land? [*Id.* at 456.]

In the present case, it was undisputed that redemption was attempted in good faith, that the money was paid to the proper person, and that the mortgagors believed they were paying the proper amount. We hold that where a mortgagor has made a timely, good-faith attempt to redeem, but due to reasonable reliance on a calculation error by a government official the mortgagor has underpaid on the interest, equitable relief should be granted. *Id.* at 457.

In a redemption from tax sales, generally "equity will grant relief where the honest attempt of the landowner is frustrated by the mistake, negligence or other fault of the collector." *Id.* at 457, citing *Anno: Effect of certificate, statement (or refusal thereof), or error by tax collection or other public officer regarding unpaid taxes or assessments against specific property*, 21 ALR2d 1273,

1280. Michigan cases follow this general rule in regard to redemption from a tax sale. *Tyler v Burgeson*, 229 Mich 268, 271; 201 NW 185 (1924). The *Skach* court concluded that the rule for tax sales could be applied to redemption sales:

The authority and procedure for redemptions from foreclosure sales, tax sales and sales under execution are all statutory, have the same purposes, and should be treated with the same rules of construction and enforcement. There is no logical or sensible reason or basis for equity to distinguish them. The general rule of construction is that, redemptions being statutory privileges, they must be made in substantial compliance with the statute, but, since the law favors redemptions, unless injury results to the purchaser at the sale, a liberal construction favoring redemptions will be given such statutes. [*Skach, supra* at 223-224.]

Although unlike *Skach*, the register of deeds here was under no duty to calculate the amount owing for redemption, we agree with the trial court that it was reasonable for defendants Petinga and Polensky to rely on representations by the register of deeds to Austin Mortgage Company and its insurer, Grand Valley Title Company, to arrive at the correct amount for a redemption. Considering the disparate value of the foreclosure sale with the high value of the property, defendants' good-faith attempt to redeem the property, and the small deficiency, the trial court's decision was equitable and proper.

Affirmed.

/s/ Peter D. O'Connell

/s/ William B. Murphy

/s/ Kathleen Jansen