STATE OF MICHIGAN

COURT OF APPEALS

CLARENCE LONG and JOYCE LONG,

Plaintiffs/Counterdefendants-Appellants,

v

JERRY STEHLIK,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
April 21, 2000

No. 212504
Wayne Circuit Court
LC No. 97-709406-CH

Before: Zahra, P.J., and Saad and Gage, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition for defendant pursuant to MCR 2.116(C)(10) in this action to quiet title to an improved parcel of real property. We affirm.

On January 5, 1993, plaintiffs were quitclaimed the residential property known as 19455 Houghton, Detroit, by Patricia Uhl, f/k/a Patricia Kukuk, in exchange for $500. At that time, Uhl and her then deceased father, Bernard Daniel Fair, were the titled owners of record. Plaintiffs never performed a title search, did not acquire title insurance, and failed to record their deed until March 25, 1994.

Apparently unbeknownst to plaintiffs, the 1989 Wayne County taxes on the property were not paid and defendant purchased the delinquent tax certificate in May 1992 for $188.66. On April 9, 1993, defendant received the delinquent tax certificate and was issued a tax deed for the property on September 27, 1993. According to plaintiffs, they never received notice that defendant had acquired title to the property by way of the tax sale.

On March 27, 1997, plaintiffs brought the present action to quiet title to the property, alleging they were not given proper notice of their right to redeem the property subsequent to the tax sale pursuant to MCL 211.140; MSA 7.198. Defendant's motion for summary disposition was granted on the basis that the notice provided was statutorily sufficient. On appeal, plaintiffs argue that the trial court

erred in granting summary disposition because there are disputed issues of fact as to whether statutory notice provisions were complied with. We disagree.

We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Id.* at 337; *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). A court must consider the affidavits, pleadings, depositions, admissions or any other documentary evidence submitted in a light most favorable to the nonmoving party in deciding whether a genuine issue of material fact exists. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); *Rollert v Dep't of Civil Service*, 228 Mich App 534, 536; 579 NW2d 118 (1998). All reasonable inferences are resolved in the nonmoving party's favor. *Dagen v Hastings Mut Ins Co*, 166 Mich App 225, 229; 420 NW2d 111 (1987).

MCL 211.140(1); MSA 7.198(1) prescribes the procedure for service of notice of the right to redeem property that was obtained by or through a tax sale, providing, in part:

> (1) A writ of assistance or other process for the possession of property the title to which was obtained by or through a tax sale, except if title is obtained under section 131, shall not be issued until 6 months after the sheriff of the county where the property is located files a return of service with the county treasurer of that county showing service of the notice prescribed in subsection (2). The return shall indicate that the sheriff made personal or substituted service of the notice on the following persons who were, as of the date the notice was delivered to the sheriff for service:
>
> (a) The last grantee or grantees in the regular chain of title of the property, or of an interest in the property, according to the records of the county register of deeds.
>
> (b) The person or persons in actual open possession of the land.
>
> (c) The grantee or grantees under the tax deed issued by the state treasurer or the latest year's taxes according to the records of the county register of deeds.
>
> (d) The mortgagee or mortgagees named in all undischarged recorded mortgages, or assignees of record.
>
> (e) The holder of record of all undischarged recorded liens. [footnote omitted.]

The notice provided under that section must state that a tax sale occurred and that the right to redeem the subject property extends for six months after the return of service of the notice. MCL 211.140(2); MSA 7.198(2). Because proceedings under the tax law have the effect of divesting the true owners of their title to property, strict compliance with statutory tax sale notice provisions is required. *Halabu v Behnke*, 213 Mich App 598, 606; 541 NW2d 285 (1995); *Andre v Fink*, 180 Mich App 403, 407-408; 447 NW2d 808 (1989).

In the present case, plaintiffs challenge the manner in which notice was provided under MCL 211.140; MSA 7.198, not the content of the notice itself. See MCL 211.140(2); MSA 7.198(2). Plaintiffs have not disputed defendant's claim that, on November 22, 1993, he delivered a notice under MCL 211.140(2); MSA 7.198(2) to the Wayne County Sheriff for personal service. Wayne County Deputy Sheriff Linda Wells attempted to personally serve statutory notice upon Uhl (identified by Deputy Sheriff Wells within the return as Kukuk) and Fair, but was unable to locate either individual. The returns of failure of service, dated November 23, 1993, state that Deputy Sheriff Wells made "careful inquiry" to ascertain the whereabouts of both. Regardless, plaintiffs argue there was insufficient inquiry into the whereabouts of the last grantees in the regular chain of title. It is undisputed plaintiffs did not file their deed with the Wayne County Register of Deeds until March 1994 and, thus, were not listed as grantees in the regular chain of title as of the date notice was delivered to the sheriff. Consequently, plaintiffs, themselves, were not entitled to notice under MCL 211.140(1)(a); MSA 7.198(1)(a). However, strict compliance with MCL 211.140; MSA 7.198 required that Uhl (the last grantee in the regular chain of title) be served notice under the statute. Such is the case regardless of the fact that Uhl's interest in the property was extinguished, as she had fully conveyed the property to plaintiffs. See *Andre, supra* at 408.

Despite plaintiffs' argument that the deputy sheriff failed to take reasonable steps to determine Uhl's address and the address of individuals identified in Fair's estate, plaintiffs have failed to present evidence disputing Deputy Sheriff Wells' assertion that she conducted a careful inquiry.[1] The nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Moreover, no specific inquiry into Fair's whereabouts or the whereabouts of persons taking under his estate was statutorily necessary. Fair was not the last grantee in the regular chain of title[2] and did not otherwise qualify for notice under MCL 211.140(1)(a) to (e); MSA 7.198(1)(a) to (e). Consequently, we cannot conclude that service of notice to the last grantee of record was statutorily insufficient.

To the extent plaintiffs argue the notice was insufficient because the person in actual possession of the property was not provided notice, see MCL 211.140(1)(b); MSA 7.198(1)(b), plaintiffs' argument is without merit. According to Deputy Sheriff Wells' certified statement, on November 30, 1993, she personally served Denise Travers, the sister of the individual who occupied the property as a renter. Such service upon the occupant's family member is sufficient to presume that notice was conveyed to the occupant. See *Youngblood v DEC Properties*, 204 Mich App 581, 583; 516 NW2d 119 (1994). Therefore, service here upon the occupant is statutorily sufficient. There are no other circumstances suggesting plaintiffs were entitled to notice under MCL 211.140(1)(c) to (e); MSA 7.198(1)(c) to (e).

MCL 211.140(5); MSA 7.198(5) allows notice by publication if, after careful inquiry, personal service to interested parties identified in subsection (1) could not be achieved. That subsection provides, in pertinent part:

> (5) If the sheriff of the county where the property is located is unable, after careful inquiry, to ascertain the whereabouts or the post office address of the persons on whom

> notice may be served as prescribed in this section, service of the notice shall be made by publication. The notice shall be published for 4 successive weeks, once each week, in a newspaper published and circulated in the county where the property is located, if there is one. . . . [MCL 211.140(5); MSA 7.198(5).]

Here, notice to Kukuk,[3] Fair and the owner/occupant of the property was properly published in the Detroit Legal News on February 10, 17, 24 and March 3, 1994, pursuant to MCL 211.140(5); MSA 7.198(5). Accordingly, there is no issue of fact as to whether the notice requirements of MCL 211.140; MSA 7.198 were strictly complied with and the trial court properly granted summary disposition for defendant.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Hilda R. Gage

[1] We do not consider the effect of the several affidavits attached below to plaintiffs' motion for reconsideration and attached to plaintiffs' brief on appeal. Our review of the issue on appeal is limited to the documentary evidence available to the trial court at the time of its ruling on defendant's motion for summary disposition. See *Quinto v Cross & Peters Co*, 451 Mich 358, 367 n 5; 547 NW2d 314 (1996).

[2] At one time, Uhl and Fair had owned the property as joint tenants with rights of survivorship. However, upon Fair's death, Uhl acquired sole title in the property. Thereafter, Uhl conveyed the property to plaintiffs, who did not record their interest until March 1994. Thus, although Fair was a prior grantee in the chain of title, Uhl was the last grantee at the time notice was required.

[3] While Kukuk's last name was misspelled, "Kuruk" within the publication, the publication correctly identified Fair and the subject property and, thus, was sufficient to provide notice to the interested parties. See *Briggs v Prevost*, 293 Mich 677, 680-681; 292 NW 527 (1940); *Mercer v Stephens*, 185 Mich 290, 293; 151 NW 1032 (1915).