STATE OF MICHIGAN

COURT OF APPEALS

BENNETT D. SHULMAN and JUDITH B. SHULMAN,

Plaintiffs/counterdefendants-Appellants,

v

ELGIE N. ZEROD, WALTER H. ZEROD, DEBRA L. SPANNAGEL, WALTER G. ZEROD, and PATRICK J. ZEROD,

Defendants-Appellants,

and

PRESTON J. ZEROD,

Defendant/Counterplaintiff-Appellant,

and

RICHARD R. MROZINSKI, ISABELLA MROZINSKI, DIANA LEE, AND KATHRYN MacRAE,

Defendants

UNPUBLISHED
January 30, 2001

No. 220607
Bay Circuit Court
LC No. 96-003726-CH

Before: Sawyer, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Defendants-appellants appeal as of right the order granting summary disposition pursuant to MCR 2.116(C)(8) and (10) in favor of plaintiffs in this action to quiet title to an improved residential parcel that was purchased at a tax sale. We affirm.

Defendants Elgie N. Zerod and Walter H. Zerod are the titleholders of the property. The 1991 property taxes on the property were not paid. At a 1994 tax sale, plaintiffs purchased a certificate for the unpaid 1991 property taxes. See MCL 211.71; MSA 7.116. Plaintiffs were issued a tax deed to the property, MCL 211.72; MSA 7.117, that was recorded on August 29, 1995. On July 17, 1996, plaintiffs filed this action to quiet title.

The primary issue in this appeal involves whether appellants received proper notice of their right to redeem the property under the General Property Tax Act (GPTA), MCL 211.1 *et seq.;* MSA 7.1 *et seq.* Section 141 of the GPTA, MCL 211.141; MSA 7.199, provides a right of redemption that last for six months after the tax sale purchaser complies with the notice requirements of § 140 of the GPTA, MCL 211.140; MSA 7.198. *Halabu v Behnke*, 213 Mich App 598, 602; 541 NW2d 285 (1995). Defendants Walter H. Zerod, Elgie N. Zerod, Debra Spannagel, and Patrick J. Zerod, all of whom the sheriff attempted to personally serve but who refused to comply with service of process, contend that, because their whereabouts were known, substituted service of the notice by publication was not permitted under § 140. We disagree.

A plain reading of § 140 reveals that the primary purpose of the statute is to give notice. In *Winters v Cook*, 140 Mich 483; 103 NW 869 (1905), the Court, in discussing § 140, stated:

> This section was designed as a relief to owners of delinquent tax lands, and to prevent the divestiture of their titles, beyond redemption, through ignorance, inattention, or carelessness. It plainly indicates that the purchaser is expected to give an express notice, wherever practicable, with a six-months interval thereafter, within which the land may be redeemed. It imposes upon the purchaser the obligation of good faith, and an earnest effort to ascertain the owner and his whereabouts, and an honest attempt to give him actual notice and the statutory opportunity. Any effort to avoid it through fraud or collusion, or intentional omission to comply with the spirit of this statute, should not be permitted to be effective, if the courts can legitimately avoid it. The statute imposes a duty of ascertaining, if possible, where the landowner lives, and, if it can be learned by reasonable endeavor that he lives in any county in this state, the notice must go to the sheriff of that county for service, and *be served by him, if it can be.*

Here, the returns reveal that the sheriff attempted on more than one occasion to serve these defendants at their residences and that each defendant refused to comply to accept service of process. The sheriff's return indicating an inability to serve the notice was conclusive, justifying service by publication. The evidence shows that plaintiffs did everything possible to carry out the spirit of the statute; thus, there is no question regarding "careful inquiry" with regard to these defendants. In view of these facts, the returns show sufficient cause to justify substituted service by publication.

Defendant Preston J. Zerod, whose whereabouts and post office address were unknown to the sheriff, argues that publication of the notice of the tax sale in the Pinconning Journal violated his due process rights because of the limited circulation of the paper. Again, we disagree. MCL 211.140(5); MSA 7.198(5) provides in pertinent part that "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." The language of this subsection is clear and unambiguous and, therefore, judicial construction is not permitted. *Heinz v Chicago Rd. Investment Co*, 216 Mich App. 289, 295, 549 NW2d 47 (1996). There is no dispute that the Pinconning Journal is published and circulated in Bay County where the property is located. Hence, the publication complied with the plain language of the statute.

Next, defendants contend that the trial court erred by considering the facts surrounding the sheriff's proof of service with regard to Preston Zerod when ruling on plaintiffs' motion for summary disposition because the affidavit of facts constituted an "amendment of the return that cannot relate back to the original filing." See, e.g., *Stein v Hemminger*, 165 Mich App 678; 419 NW2d 50 (1988). Defendants have failed to provide a copy of the transcript of the March 13, 1997, hearing on the motion for summary disposition. The appellant must provide this Court with the lower court record, *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000), by filing all transcripts in the lower court file. MCR 7.210(B)(1)(a); *Nye v Gable, Nelson, & Murphy*, 169 Mich App 411, 414; 425 NW2d 797 (1988). This Court will refuse to consider issues for which the appellant failed to produce the transcript. *Myers v Jarnac*, 189 Mich App 436, 444; 474 NW2d 302 (1991).[1]

Defendants next argue that the trial court erred by refusing to allow them to present witnesses at the March 17, 1997, hearing on the motion for dismissal. Defendants have failed to supply a copy of the transcript of the hearing on the motion, and have simply attached a few random pages of the transcript to their brief in support of their position. Hence, we decline to review this issue. MCR 7.210(B)(1)(a).

Next, defendants assert that the trial court erred by refusing to grant their motion to dismiss because the Bay County treasurer failed to serve the Department of Social Services (DSS) with notice of the tax sale pursuant to MCL 211.140a(2); MSA 7.198(2). Although § 140a provides that "failure by the holder of a tax deed to include this statement and to provide a copy shall invalidate the filing and render it null and void," nothing in the plain language of § 140a indicates that the proceedings will be invalidated if the treasurer fails to serve the DSS with notice of the sale.[2]

Next, defendant Preston Zerod contends that the trial court erred by granting summary disposition of plaintiffs' claim against him without giving him the opportunity to amend his

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[1] Nonetheless, we find defendants' reliance on case law holding that "an amended return cannot make good that which was not originally good" misplaced because there is no allegation that the original return was defective. Rather, the trial court originally indicated that the facts presented were insufficient to make a determination whether "careful inquiry" into Preston Zerod's whereabouts was made and told the parties to prepare to answer the question in future proceedings.

[2] Defendants have failed to provide a copy of the transcript of the hearing on the motion to dismiss. Nonetheless, a review of the trial court's opinion reveals that the trial court found that plaintiffs presented two affidavits in support of their assertion that the DSS was given notice of the tax sale and defendants failed to provide sufficient evidence to create a genuine issue of material fact regarding whether the treasurer provided the notice.

answer. Defendant Preston Zerod failed to provide this Court with a copy of the transcript of the March 20, 1998, hearing on plaintiffs' motion for summary disposition and, therefore, we will not consider this issue.

Next, defendants argue that the trial court failed to make findings of fact regarding the issue of notice. We disagree. A review of the trial court's numerous opinions reveals that the trial court made substantial findings of facts to support its rulings.

Defendants[3] maintain that the trial court abused its discretion by denying their motion to amend their answer. We disagree. The motion was made nearly a year *after* the court granted summary disposition with regard to these defendants, and *after* the court denied reconsideration. Hence, we find no abuse of discretion in the trial court's finding that the motion was untimely.

Defendants also argue that the trial court erred by granting a default judgment against Walter G. Zerod and Patrick J. Zerod.[4] Defendants have failed to file a copy of the transcript of the October 6, 1997, hearing on plaintiffs' motion for default judgment and, therefore, we decline to consider this issue.

Last, defendant Preston, in a three sentence argument without supporting facts or authority, argues that summary disposition of his counterclaim was improper because the court failed to make findings of fact regarding the validity of plaintiffs' tax deed and failed to allow him to amend his answer. The appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), nor may he give issues cursory treatment with little or no citation of supporting authority. *People v Kelly*, 231 Mich App 627, 641; 588 NW2d 480 (1998).

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald

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[3] Not including Preston J. Zerod

[4] Defendants also name Diana Lee in this issue, but Diana Lee is not an appellant and has not challenged the default judgment against her.