STATE OF MICHIGAN

COURT OF APPEALS

CITY OF DETROIT,

Plaintiff,

and

FRANK J. KELLY *ex rel* MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY and MICHIGAN DEPARTMENT OF NATURAL RESOURCES,

Intervening Plaintiffs-Appellants,

v

PETER ADAMO, ANDIAMO, INC., and 5900 ASSOCIATES, L.L.C.,

Defendant-Appellees.

UNPUBLISHED
February 9, 2001

No. 211553
Wayne Circuit Court
LC No. 96-638479-CE

Before: Fitzgerald, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

Intervening plaintiffs appeal as of right from a judgment entered in favor of defendants, Peter Adamo, Andiamo, Inc., and 5900 Associates, L.L.C., in this action for a declaratory judgment and injunction. We affirm.

This case was originally consolidated with Docket No. 211552. However, this Court vacated that consolidation on July 21, 1998. Docket No. 211552 continued through the appellate process, resulting in a published opinion, *City of Detroit v Adamo*, 234 Mich App 235; 593 NW2d 646 (1999), lv pending (hereinafter *Adamo I*). The underlying facts were set forth in *Adamo I* as follows:

> This case involves two pieces of property in the city of Detroit, the "Chrysler Site," located at 6501 Harper Avenue, and the "World Trade Center Site," located at 5900 Livernois. After property taxes were unpaid on the properties, the properties were bid off to the state at tax sales in May 1991 and May 1992, respectively. Defendant Andiamo, Inc., received a quitclaim deed to the Chrysler site [sic] in May 1995, and defendant 5900 Associates, L.L.C.,

> received a quitclaim deed to the World Trade Center Site in September 1996. [*Id.* at 236-237.]

On June 12, 2000, this Court entered an order granting defendants' partial motion to dismiss with respect to the World Trade Center Site. Thus, the only property at issue in the case at hand is the Chrysler Site:

> Regarding the Chrysler Site, the state gave notice to Philip Stramaglia and others that a § 131e[1] show cause hearing would be held April 12, 1994. However, plaintiff admits that at the time, the state failed to notify all persons or entities that owned a redeemable interest in the property. Stramaglia failed to appear at the hearing and did not redeem the property in the thirty days following the hearing.[2] Approximately a year later, on May 22, 1995, Stramaglia executed a quitclaim deed conveying his rights in the property to defendant Andiamo, Inc. The state later notified other owners, who had not been notified of the first hearing, that a § 131e show cause hearing would be held July 29, 1997. Defendant Andiamo, Inc., was never notified of any § 131e show cause hearings, although its quitclaim deed was recorded before the July 29, 1997, hearing. The trial court found that because the state did not give notice to all owners of the April 12, 1994, hearing, Stramaglia's right to redeem was not extinguished when he received notice. Accordingly, the trial court held Stramaglia's right to redeem was passed to defendant Andiamo, Inc., by the quitclaim deed. [*Id.* at 238-239.]

The issue before us is the exact same issue that was presented in *Adamo I*. Intervening plaintiffs argue that Stramaglia's right to redeem the Chrysler Site had been extinguished before the quitclaim deed was executed on May 22, 1995, and thus no right to redeem was passed to defendant Andiamo, Inc., by the deed. Relying on the rule against "piecemeal" extinguishing of redemption rights articulated in *White v Shaw*, 150 Mich 270, 273; 114 NW 210 (1907), the Court in *Adamo I* held that "[b]ecause the state failed to notify all interested owners of their right to redeem, defendants' grantors still had a right to redeem at the time the quitclaim deeds were executed, which was conveyed to defendants." *Adamo I*, *supra* at 243. In other words, with respect to the Chrysler Site, the *Adamo I* Court held that Andiamo, Inc., had a right to redeem the Chrysler Site because Stramaglia's right to redeem had not been extinguished when the property was conveyed in May 1995. We believe this holding controls in the case at hand. MCR 7.215(H)(1).

We note that subsequent to the decision in *Adamo I*, the Michigan Legislature amended § 131e, which now reads in pertinent part:

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[1] MCL 211.1313; MSA 7.910(3).

[2] As the *Adamo I* Court observed, when property at a tax sale is bid off to state, "Section 131e provides one final opportunity to redeem the property in the thirty days following the date of the show cause hearing." *Adamo I*, *supra* at 238.

> (5) For all property the title to which vested in this state under this section after October 25, 1976, the owner of a recorded property interest who has been properly served with a notice of the hearing under this section and who fails to redeem the property as provided under this section shall not assert any of the following:
>
> (a) That notice was insufficient or inadequate on the grounds that some other owner of a property interest was not also served.
>
> (b) That the redemption period provided under this section was extended in any way on grounds that some other owner of a property interest was also not served. [MCL 211.131e(5); MSA 7.190(3)(5).]

If this had been the way the statute read when this issue was first raised in the trial court, we would hold that Andiamo, Inc., had no right to redeem the Chrysler Site because Stramaglia's right of redemption was extinguished when he failed to redeem the property within thirty days following the April 12, 1994, show cause hearing. However, this was not the way § 131e read when judgment was entered or when the *Adamo I* Court interpreted the statute, guided by the rule of *White.*

As our Supreme Court observed in *Quinton v General Motors Corp*, 453 Mich 63, 75; 551 NW2d 677 (1996), the doctrine of separation of powers, which underlies our constitutional system of government, "preclude[s] the Legislature from reversing or setting aside a judgment entered by a court." (Footnotes omitted.) Accord *Plaut v Spendthrift Farm, Inc*, 514 US 211, 227; 115 S Ct 1447; 131 L Ed 2d 328 (1995)(observing that "Congress may not declare by retroactive legislation that the law applicable to that very case was something other than what the courts said it was"). If the 1999 amendment to § 131e were to apply in the case at hand, it would require that the courts reopen or set aside the prior judgment. See *Quinton, supra* at 82-84.[3] Such a result is precluded by the doctrine of separation of powers. *Id.*[4]

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[3] This result distinguishes the case at hand from *Quinton*. There, the Supreme Court concluded that the statutory amendment at issue modified a prior judgment, but did not reopen or set aside the judgment. *Quinton, supra* at 83.

[4] Following the interpretation of § 131e set forth in *Adamo I* is also consistent with the rule of statutory interpretation that "a change by amendment in the phraseology of a statute is presumed to indicate, in the absence of a manifest intent to the contrary, a legislative purpose to change the meaning." *Adrian School Dist v Michigan Public School Employees' Retirement System*, 458 Mich 326, 347; 582 NW2d 767 (1998). Indeed, rather than a contrary expression, the legislative history actually supports the assumption that a change in meaning was contemplated. For example, The House Legislative Analysis Section report of July 23, 1999, indicates that the then current tax delinquent property reversion process

> hamstrings land acquisition and redevelopment projects.
>
> Some have argued that an improved tax delinquency and revision system is required to facilitate a speedier return of tax delinquent properties to tax current

(continued…)

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald

(…continued)

status. . . . To these ends, legislation has been proposed in both the House and in the Senate to re-design the system. [House Legislative Analysis, HB 4489 *et al*, July 23, 1999, p 2.]