

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM J. FOGNINI,

Plaintiff-Appellee,

v

MICHAEL L. VERELLEN and
NICHOLAS A. VERELLEN,

Defendants-Appellants,

and

JANE DOE VERELLEN, CHARLES H. EARL
RESIDUAL TRUST, VINCENT CRUDO, SR.,
LICIA CRUDO, FERDINAND CRUDO,
THERESA CRUDO and PHILLIP D. STEVENS,

Defendants.

Before: Whitbeck, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

This is an action to quiet title to a vacant parcel of real property in Oakland County that plaintiff William J. Fognini purchased at a tax sale. Defendants Michael and Nicholas Verellen appeal as of right the circuit court's order granting Fognini's motion for summary disposition. We reverse the order granting summary disposition to Fognini against Nicholas Verellen, but affirm the order as it relates to Michael Verellen.

I. Basic Facts And Procedural History

In July 1980, Michael Verellen purchased a vacant lot in Troy from husband and wife Ferdinand and Theresa Crudo and from husband and wife Licia and Vincent Crudo, Sr., under a land contract recorded with the Oakland County Register of Deeds.¹ Michael Verellen's son,

¹ The Crudos were originally defendants in this action and a default judgment was entered against them and other defendants. They do not appeal.

Nicholas Verellen, acquired a mortgage on the property. Because no one paid property taxes on the land for tax years 1991 and 1992, the property was offered for public sale in May 1994. In May 1995, Fognini purchased these tax liens. He received a tax deed for the 1991 lien in 1995 and a tax deed for the 1992 lien in 1996.

An Oakland County Sheriff personally served Michael Verellen, who resided in Oakland County, with a reconveyance notice in mid-November 1996. A similar reconveyance notice was given to the Macomb County Sheriff to be served on Nicholas Verellen, who resided in Macomb County. Macomb County Deputy Sheriff John Osier attempted to serve this notice on Nicholas Verellen in person. However, because Osier was unable to serve the notice, he filled out a preprinted form on the notice, stating:

I Do Hereby Certify and Return, that the within Notice was delivered to me for service on the 13th day of November 1996, and that after careful inquiry, which has been continued from that time until this date, I am unable to ascertain the whereabouts or post office address of Nicholas Verellen, last known address 56680 Stoney Creek Rd., Apt 28, Shelby Twp MI [sic] Five attempts at service have been made. No one ever answers the door.

Fognini filed this form recording Osier's failure to serve notice on Nicholas Verellen in late November 1996. Fognini then published a reconveyance notice addressed to Nicholas Verellen in the Oakland County Legal News for four weeks beginning March 21, 1997.²

In mid-April 1997, Fognini filed a copy of the personal service reconveyance notice that had been served on Michael Verellen and the published reconveyance notice intended for Nicholas Verellen with the Oakland County Treasurer. The Oakland County Treasurer then certified these notices and verified that the 1991 and 1992 delinquent taxes on the property at issue were not paid, meaning that no one had redeemed the property. Fognini recorded the notices with the Oakland County Register of Deeds in late October 1997.

In early January 1997, Fognini filed his complaint to quiet title in the property in himself. He also sought a writ of assistance. After Michael Verellen failed to respond to the complaint in a timely fashion, Fognini moved for a default against him, which was entered. Michael Verellen filed an answer and affirmative defenses in mid-March 1998. Nicholas Verellen filed the same answer and alleged the same defenses in mid-April 1998. In early September 1998, Fognini moved for entry of default judgment against Michael Verellen and various defendants not involved in this appeal. Fognini also moved for summary disposition pursuant to MCR 2.116 (C)(9) and (10) against Nicholas Verellen and, alternatively, against Michael Verellen.

At the motion hearing, the trial court concluded that defendants were properly served with reconveyance notices and that title to the property vested in Fognini after they failed to pay the delinquent taxes in the statutory redemption period. After noting and rejecting defendants'

² This notice was also directed to some of the other defendants who do not participate in this appeal, including Jane Doe Verellen, Nicholas Verellen's wife. Nicholas Verellen, however, maintains that he has never been married.

argument that they lacked notice of Fognini's tax deed, the trial court determined that no question of fact existed concerning whether defendants had failed to present a valid defense to Fognini's claim to quiet title in the disputed property. Thus, the trial court granted the motion for summary disposition against defendants,³ presumably under MCR 2.116(C)(10) because the trial court looked to materials other than the pleadings in reaching this conclusion.⁴ Defendants later moved for reconsideration, but the trial court denied this motion.

On appeal, defendants argue that notice by publication to Nicholas Verellen was inappropriate because the Macomb County Sheriff filed the return of service when, because the property is in Oakland County, the Oakland County Sheriff had this obligation. They contend that summary disposition against Michael Verellen was improper because the period in which he had to redeem the property did not commence until Nicholas Verellen received notice of the tax sale.

II. Standard Of Review And Legal Standard

Whether the trial court erred in granting summary disposition is a question we review de novo.⁵

A motion for summary disposition under MCR 2.116(C)(10) tests the factual underpinnings of a claim other than an amount of damages, which requires the deciding court to consider all the evidence, affidavits, pleadings, admissions, and other information available in the record.⁶ The deciding court must look at all the evidence in the light most favorable to the nonmoving party, who must be given the benefit of every reasonable doubt.⁷ Only if there is no factual dispute would summary disposition be appropriate.⁸ However, the nonmoving party must present more than mere allegations in order to demonstrate that there is a genuine issue of material fact in dispute, making trial necessary.⁹

³ The trial court also granted Fognini's motion for entry of default judgment against the other defendants, who are not involved in this appeal.

⁴ See MCR 2.116(G)(5) ("Only the pleadings may be considered when the motion [for summary disposition] is based on subrule (C)(8) or (9).").

⁵ *Spiek v Dep't of Transportation*, 456 Mich 331; 337; 572 NW2d 201 (1998).

⁶ MCR 2.116(G)(5); *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).

⁷ *Atlas Valley Golf & Country Club, Inc v Village of Goodrich*, 227 Mich App 14, 25; 575 NW2d 56 (1998).

⁸ See *Auto Club Ins Ass'n v Sarate*, 236 Mich App 432, 437; 600 NW2d 695 (1999).

⁹ MCR 2.116(G)(4); *Etter v Michigan Bell Telephone Co*, 179 Mich App 551, 555; 446 NW2d 500 (1989).

III. Nicholas Verellen

MCL 211.140, as it existed before December 26, 1996,¹⁰ sets forth the procedure for service of notice of the right to redeem property that was obtained at a tax sale, stating in pertinent part:

(1) A writ of assistance or other process for the possession of land 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 there is filed with the county treasurer of the county where the land is situated, a return by the sheriff of that county showing service of the notice prescribed in subsection (2). The return shall indicate that the sheriff has made personal or substituted service of the notice upon [people with certain interests in the land].

* * *

(3) If the grantee or grantees, or the person or persons holding the interest in the land as prescribed in subsection (1) are residents of a county of this state other than the county in which the land is situated, the return as to that person shall be made by the sheriff of the county where that person or persons reside or may be found. . . .

* * *

(5) *If the sheriff of the county where the land is located* makes a return that after careful inquiry the sheriff is unable to ascertain the whereabouts or the post-office address of the persons upon whom notice may be served as prescribed in this section. The notice shall be published for 4 successive weeks, once each week, in a newspaper published and circulated in the county where the land is located, if there is one. If no paper is published in that county, publication shall be made in a newspaper published and circulated in an adjoining county, and proof of publication, by affidavit of the printer or publisher of the newspaper, shall be filed with the county treasurer. This publication shall be instead of personal service upon the person or persons whose whereabouts or post-office address cannot be ascertained as prescribed in subsection (3).^[11]

The plain language of MCL 211.140(5) required the sheriff of the county where the land is located to file the return indicating that a person entitled to notice cannot be located. The property Fognini purchased at the tax sale is located in Oakland County. Therefore, to trigger service of notice of redemption to Nicholas Verellen by publication under MCL 211.140(5), the *Oakland County Sheriff* had to file the return of service indicating that the whereabouts of

¹⁰ The parties agree that the version of the statute effective before December 26, 1996, see 1996 PA 476, applies to this case.

¹¹ Emphasis added.

Nicholas Verellen could not be ascertained. Though the Macomb County Sheriff filed this return of service concerning Nicholas Verellen, the record clearly demonstrates that the *Oakland County Sheriff* never took this prerequisite action.

This is certainly a hypertechnical requirement, especially because MCL 211.140(3) allowed the Macomb County Sheriff to serve notice on Nicholas Verellen in Macomb County. However, parties must strictly comply with statutory tax sale notice provisions because the effect of these proceedings is to divest the true owners of title to their property.¹² Only MCL 211.140(5) provided for notice by publication when personal notice fails. Consequently, notice by publication to Nicholas Verellen had to comply with subsection 5. The trial court therefore erred when it granted summary disposition in favor of Fognini relating to Nicholas Verellen.

IV. Michael Verellen

The parties agree that Michael Verellen received proper notice of the tax sale and failed to challenge it within six months. The critical legal question we must resolve is whether the noncompliance with the statutory notice requirement in MCL 211.140(5) with respect to Nicholas Verellen tolled the redemption period for Michael Verellen.

MCL 211.143 provides that individuals with interests in the subject property who have been notified of their redemption rights and who fail to redeem the subject property within six-months period “shall thereafter be barred from questioning the validity of such tax title or tax deed mentioned therein.” MCL 211.73a also provides, in relevant part:

A person who has himself been properly served with notice and failed to redeem from a sale in accordance with this act, within the period herein specified, shall not thereafter be entitled to question or deny in any manner the sufficiency of notice upon the ground that some other person or persons entitled to notice was not also served.

We interpreted the interplay of these two statutory provisions in *Halabu v Behnke*¹³ and concluded that, in order to give full effect to the statute, the period for contesting the sufficiency of the notice to other interested parties stated in MCL 211.73a is the six-month redemption period set forth in MCL 211.143.¹⁴ Outside that six-month period, a “defendant has no standing to argue that strict compliance was not achieved.”¹⁵ True, in *Detroit v Adamo*,¹⁶ we followed *White v Shaw*¹⁷ rather than *Halabu* in order to hold that the redemption period is tolled until all interested parties are properly notified. However, in *Adamo* we drew a distinction between

¹² See *Halabu v Behnke*, 213 Mich App 598, 606; 541 NW2d 284 (1995).

¹³ *Id.*

¹⁴ *Id.* at 603-605.

¹⁵ *Id.* at 606.

¹⁶ *Detroit v Adamo*, 234 Mich App 235, 243; 593 NW2d 646 (1999).

¹⁷ *White v Shaw*, 150 Mich. 270; 114 NW 210 (1907).

private and governmental entities.¹⁸ As a result, because the parties to this case are all private actors, it is clear that Michael Verellen lacks standing to challenge Fognini's failure to comply with the statutory notice provisions relating to Nicholas Verellen under *Halabu*. Thus, summary disposition against him was proper.

Because we conclude that the trial court erred when it granted summary disposition as it related to Nicholas Verellen, we need not address defendants' remaining arguments.

Reversed in part, affirmed in part. Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ William B. Murphy

/s/ Kurtis T. Wilder

¹⁸ *Adamo, supra* at 242-243.