

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA A. WALRATH,

Plaintiff-Appellee,

UNPUBLISHED
March 29, 2002

v

No. 225007
Genesee Circuit Court
LC No. 99-065467-CH

TREES, INC., a Virginia Corporation, JIM W.
ALBRIGHT, BELLA FALK, NATALIE
FERMAN, DOUGLAS MULLEN, JOHN
WHITMAN, DOROTHY WHITMAN,
NATIONAL BANK OF CHICAGO and RTL
PARTNERS, LP,

Defendants,

and

KATL PROPERTIES,

Defendant-Appellant.

Before: Owens, P.J., and Holbrook, Jr., and Gage, JJ.

PER CURIAM.

In this action to quiet title, defendant KATL Properties appeals as of right from an order of the trial court granting plaintiff's motion for summary disposition under MCR 2.116(C)(10). We affirm.

The land at issue consists of two parcels of unimproved, vacant property located in Swartz Creek, Michigan. Plaintiff acquired tax deeds for the property at a 1997 tax sale held to satisfy the delinquent 1994 property tax. KATL holds 1994 tax deeds on the property acquired in satisfaction of earlier delinquent property taxes. At the hearing on plaintiff's motion for summary disposition, the trial court concluded that no genuine issue of material fact existed in this case. The court found that KATL had received proper notice of reconveyance and had not acted within the statutory time allotted to redeem the property. Accordingly, the court granted summary disposition to plaintiff under MCR 2.116(C)(10).

KATL's argument on appeal centers on the notice it was given regarding redemption of the property. First, however, we turn to plaintiff's argument that KATL was not due notice, which we reject. MCL 211.140 provides in pertinent part:

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. [Footnote omitted.]

The documents in record show that KATL was issued tax deeds to the property in issue in 1994. Apparently these deeds were recorded with the Genesee Register of Deeds in July 1997. Accordingly, KATL was due notice as the last grantee of an interest in the property. MCL 211.140(a).¹ Further, because only a little over four years had passed between KATL's acquisition of its tax deeds and the initiation of the six-month redemption period, KATL had not lost its opportunity to assert title. MCL 211.73a.

KATL argues that service of process was defective for two interrelated reasons. This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

First, KATL argues that because the Genesee County Sheriff was unable to locate defendant Albright, plaintiff's service was flawed and therefore ineffective. We disagree. The record, including KATL's own admissions, establish that KATL received actual notice by

¹ Pursuant to the three-year rule, sale of property for unpaid taxes occurs three years after the nonpayment. No other opportunity for the acquisition of tax deeds having occurred between 1994 and 1997, and there being no other indication that title was acquired in any other way during these years, we conclude that KATL was the last grantee of an interest in the property.

certified mail. MCL 211.73a² “prohibits a party that received adequate notice of redemption from raising more than six months after receiving that notice the question of the sufficiency of that notice on the ground that some other party that was entitled to notice was not served.” *Halabu v Behnke*, 213 Mich App 598, 605; 541 NW2d 285 (1995).

This leads to KATL’s second argument, which is that its actual notice was flawed because the deputy sheriff who signed the notice was not duly authorized. KATL bases this argument on a circuit court decision that found that this same man was not a duly sworn deputy

sheriff in 1997 (apparently because the man’s oath of office was not signed by the sheriff). This says nothing about the man’s credentials in 1998, the year in which notice was sent to KATL by certified mail. Accordingly, we conclude that KATL has not established the existence of a material factual dispute. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

We also reject KATL’s assertion that the redemption process was flawed because the redemption rights of interested parties were extinguished in a “piecemeal” fashion. Again, we disagree. In support of its argument, KATL quotes from *White v Shaw*, 150 Mich 270, 273; 114 NW2 210 (1907). However, the rule of *White* is not applicable when the property in issue is bid off to a private purchaser. *Detroit v Adamo*, 234 Mich App 235, 243; 593 NW2d 646 (1999). Therefore, pursuant to § 73a, the redemption period of a party having received proper notice is not extended until all interested parties have received notice. *Halabu, supra*.

There being no material factual dispute that KATL did receive proper notice and failed to redeem the property in the statutorily mandated time frame, the circumstances surrounding service to the other party identified is irrelevant and summary disposition was properly granted to plaintiff.

Affirmed.

/s/ Donald S. Owens
/s/ Donald E. Holbrook, Jr.
/s/ Hilda R. Gage

² MCL 211.73a states in pertinent 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. . . .