

STATE OF MICHIGAN
COURT OF APPEALS

HUNTINGTON NATIONAL BANK,

Plaintiff-Appellant,

v

ARTHUR G. ELLIOTT FAMILY LIMITED
PARTNERSHIP,

Defendant-Appellee.

UNPUBLISHED

December 14, 2004

No. 249811

Grand Traverse Circuit Court

LC No. 03-022677-CH

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant under MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

We review de novo issues concerning the proper interpretation of a statute, as well as a trial court's grant of summary disposition under MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 562; 664 NW2d 151 (2003).

The material question in this case is whether the trial court correctly determined that private, offsite easements are not to be considered in calculating the size of residential property for purposes of determining the applicability of the one-month redemption period prescribed in MCL 600.3240(10). The statute provides for a one-month redemption period following a mortgage foreclosure sale for "residential property . . . not more than three acres in size," which meets certain abandonment and mortgage debt conditions. In this case, the property in question includes a sixty-six-foot-wide easement for purposes of ingress and egress, and utility installation. According to the county's elected surveyor, the total acreage of the property is less than three acres if the portions of the easement that cross over other peoples' property are not considered, but exceeds three acres if those portions are included in the calculation.

The cardinal principle of statutory construction is to give effect to legislative intent. *Dressel*, *supra* at 562. If the legislative intent is clearly expressed by the statutory language, judicial construction is unwarranted. *Id.* An act must be construed as a whole to harmonize its provisions and carry out the legislative intent. *Nowell v Titan Ins Co*, 466 Mich 478, 482 n 5; 648 NW2d 157 (2002). Words used in a statute are given meaning by context or setting. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 318; 645 NW2d 34 (2002).

We reject plaintiff's claim that the definition of "property" in the State Real Estate Transfer Tax Act, MCL 207.522(b), or the definition of "real property" in the Urban Redevelopment Corporation Law, MCL 125.903, or property valuation principles under the General Property Tax Act, MCL 211.1 *et seq.*, are relevant to the construction of MCL 600.3240(10). These acts do not relate to the same subject matter or share a common purpose with MCL 600.3240, which is applicable to statutory mortgage foreclosures, such that they should be construed together as one law. *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998).

MCL 600.3240 is part of MCL 600.3201 *et seq.*, which prescribes the procedures for a mortgagee to effectuate a foreclosure by advertisement on "real estate" when a mortgage contains a power of sale. *Senters v Ottawa Savings Bank*, 443 Mich 45, 51; 503 NW2d 639 (1993). Because its terms are not defined within the act, we turn to the general rules for statutory construction set forth in MCL 8.3. Accordingly, "real estate" means "lands, tenements and real estate, and all rights thereto and interests therein," MCL 8.3i, and the term "size" is to be construed in accordance with its commonly understood usage as "spatial dimensions." MCL 8.3a; *Random House Webster's College Dictionary* (1997), p 1209.

Examined in this context, "residential property" as used in MCL 600.3240(10) would encompass easement rights that run with the land when it is foreclosed upon. But merely because a mortgage or other documents identifies an easement right does not mean that its spatial dimensions are part of the "size" of the residential property. An easement is an interest in land, but "gives no title to the land on which it is imposed and is not an estate in land." *Thies v Howland*, 424 Mich 282, 289 n 5; 380 NW2d 463 (1985). An easement is a right to use the land of another, but does not displace the general possession of the owner of that land. *Rusk v Grande*, 332 Mich 665, 669; 52 NW2d 548 (1952).

Having considered the statutory language and the context in which it is used, we conclude that the Legislature did not intend that spatial dimensions of property owned by persons other than the defaulting mortgagor be considered in determining if property is subject to the one-month redemption period prescribed in MCL 600.3240(10). Because an easement does not displace the general possession of the owner of the servient estate and the easement holder acquires no title, the spatial dimensions of the easement cannot be considered for purposes of computing the size of the "residential property." Without the spatial dimensions of the easement, the size of the property in this case is less than three acres. Hence, the trial court correctly granted summary disposition to defendant under MCR 2.116(C)(10).

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens