

STATE OF MICHIGAN
COURT OF APPEALS

VINCENT A. BURTON,

Plaintiff-Appellant,

v

NATIONWIDE ADVANTAGE MORTGAGE
COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 22, 2005

No. 255749
Wayne Circuit Court
LC No. 03-337863-NZ

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action to set aside a sale of his property pursuant to a foreclosure by advertisement after failing to redeem it. See MCL 600.3201 *et seq.* His sole claim on appeal is that the statutory foreclosure-by-advertisement proceedings denied him his constitutional right to due process. This issue has not been preserved because it was not raised and addressed below. *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000).

Furthermore, plaintiff's argument is without merit. "It is unquestioned that state action is required in order to assert a denial of due process under both the Michigan and United States Constitutions." *Nat'l Airport Corp v Wayne Bank*, 73 Mich App 572; 574; 252 NW2d 519 (1977). "[F]oreclosure by advertisement is not a judicial action and does not involve state action for purposes of the Due Process Clause, but rather is based on contract between the mortgagor and the mortgagee." *Cheff v Edwards*, 203 Mich App 557, 560; 513 NW2d 439 (1994).

Affirmed.

/s/ Michael R. Smolenski
/s/ Bill Schuette
/s/ Stephen L. Borrello