STATE OF MICHIGAN

COURT OF APPEALS

KENNETH ADAMS,

Plaintiff-Appellant,

v

ESTATE OF ANNA L. ADAMSKI ADAMS, NORBERT ADAMS, and PHYLLIS ADAMS,

Defendants-Appellees.

UNPUBLISHED
December 6, 2005

No. 262599
Monroe Circuit Court
LC No. 04-019783-CH

Before: Jansen, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying plaintiff's motion for summary disposition and granting summary disposition in favor of defendant.[1] We vacate and remand for proceedings consistent with this opinion.

At issue is a parcel of real property in Monroe County. Anna Adams acquired the property in 1974, but did not meet her tax obligations. Plaintiff acquired title to the property by purchasing a tax deed from the state, which was issued on June 25, 2002. Anna Adams died on August 29, 2003, and her children, defendants Norbert and Phyllis Adams, continue to live at the property.[2]

Plaintiff filed his complaint to quiet title, for permanent injunction, and for ancillary relief, in October 2004. Defendant argued that, because plaintiff took title in 2002, before the effective date of repeal of MCL 211.140, the estate was entitled to notice and then a final six-month opportunity to redeem the property. Plaintiff argued that the repeal of § 140 rendered it a nullity for present purposes. On cross-motions for summary disposition, the trial court sided with defendant, explaining as follows:

[1] Although all three defendants are designated as appellees, only the estate of Anna L. Adamski Adams opposed plaintiff's motion for summary disposition and filed a responsive brief to the claim of appeal. Accordingly, the singular defendant refers to the estate only.

[2] Plaintiff's affidavit indicates that the decedent, Anna L. Adamski Adams, was plaintiff's mother. The parties do not explain whether plaintiff is a sibling of the individual defendants.

> The Court will take notice that in our history nothing's been fought over, excluding our freedoms, more than children and property, and where property is involved, everyone knows that transactions [in] property must be in writing for obvious reasons, as supported by the Statute of Frauds. And the Court understands and would hold the legislature to recognize this as well.
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> And, therefore, in drafting this legislation [if] they wanted some type of a savings clause[,] they could have inserted that. If they wanted it to be applied retroactively, they certainly could have said that as well. But there is no indication to this Court that was their intent. And it's not for this Court to act as a super-legislature and try to fill in gaps where the gaps may appear. So I'm going to give it very strict interpretation. I would not make it retroactive. I would adopt the arguments made by [defense counsel] today, deny the plaintiff's motion for summary disposition, but grant the motion for summary disposition as requested by the defendant. . . .

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). Statutory interpretation also presents a question of law, calling for review de novo. *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004).

Section 137 of the General Property Tax Act[3] authorizes the circuit court, on application, to put the purchaser of any lands sold under the provisions of the act "in possession of the premises by writs of assistance." MCL 211.137. At the time plaintiff took title to the subject property, § 140 provided, in pertinent part, that no "writ of assistance or other process for the possession of property the title to which was obtained by or through a tax sale" would be issued until six months after service of notice on the last grantee, and upon persons actually living on the property, informing them of the tax sale and advising them of a right to redeem the property "within 6 months . . . upon payment to the treasurer of the county in which the property is located, of all sums paid for the tax sale purchase, together with 50% in addition, and the fees of the sheriff for the service or cost of publication of this notice." MCL 211.140. The Legislature repealed § 140, first designating December 31, 2006, as the effective date of repeal, 1999 PA 123, § 5, but later changing the date of repeal to December 31, 2003, 2001 PA 94, § 1.

MCL 211.125 provides that "rights which have accrued or become vested" under tax laws that have been subsequently modified "shall remain in force, . . . for the completion of all proceedings heretofore begun for the collection of taxes or the enforcement of all the requirements of such laws." This is a codification of the common-law principle that vested

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[3] MCL 211.1 *et seq.*

rights or accrued interests are not affected by subsequent statutory enactments. See *Bradfield v Estate of Burgess*, 62 Mich App 345, 351-352; 233 NW2d 541 (1975) (the law at the time a claim accrues governs the case).

But MCL 211.140, on its face, did not limit a tax-deed purchaser's title; instead it imposed procedural burdens that had to be met before the purchaser could finally extinguish the interests of previous owners, or present residents, of the property. Thus, the statute did not require the tax-deed purchaser to do anything, but imposed conditions should that purchaser seek to quiet title against pre-existing owners of interests, or evict existing residents. Defendants had no vested rights in § 140's six-month redemption period, because any such rights under that section existed only as a defense against a tax-deed purchaser's legal action.

Had plaintiff acted against defendants before December 31, 2003, he would have been obliged to serve notice on defendants and recognize their prerogative to redeem the property within the six months that followed. Having waited until after that date, however, the procedural burden of the repealed statute no longer came to bear.

For these reasons, we conclude that the trial court erred in holding that § 140 continued to provide a defense against plaintiff's efforts to perfect his title to the property. However, despite the parties' failure to look outside of § 140 when arguing the question of defendants' redemption rights, both below and on appeal, we note that MCL 211.141, which remains in effect until December 31, 2006, may apply and impact the question raised on appeal.

Section 141(1) states that persons with an interest in the property are entitled, "within 6 months after the return of service is filed or the proof of publication of the notice is filed as prescribed in section 140," to receive "a release and quitclaim of all right and interest in the property acquired under the tax deed" if the property is redeemed. Subsection (2) states that "persons entitled to a release and quitclaim under subsection (1), after the issue of tax deeds on the property, or after the purchaser of the property is entitled to the tax deeds, and before service of notice or return of service, *shall have the right to redeem the property from the sale*" (emphasis added). Thus, the source of the underlying right of redemption that the instant defendants wish to preserve is actually § 141(2), not § 140. See *Equivest Ltd Partnership v Foster*, 253 Mich App 450, 453-454; 656 NW2d 369 (2002). That subsection establishes a right to redeem from the moment the tax purchaser receives, or is eligible to receive, the tax deed, limiting the time available for a would-be redemptioner to act only by referring to the notice provisions of § 140.

Section 141 was also repealed, effective December 31, 2006, along with § 140. 1999 PA 123, § 5. But while the Legislature moved up the effective date of repeal of § 140 by three years, 2001 PA 94, § 1, section 141 remains in effect until the original date of repeal.

In *Pike v Richardson*, 136 Mich 414; 99 NW 398 (1904), our Supreme Court had before it the predecessors of the instant §§ 140 and 141. They bore the same section designations, and featured substantially similar wording. *Id.* at 415. The Court adopted the position that "these two sections should be construed together," such that "the time for redemption is coterminous with the period during which the holder of the tax title may not take action." *Id.* The Court additionally stated that "statutes providing for redemption are to be liberally construed in favor of the redemptioner." *Id.*

The question this case raises, despite the parties' failure to do so, is how § 141 operates before its effective repeal date, but after that of its companion, § 140. Because this question was not addressed below, and has not been briefed on appeal, we decline to decide it here. Instead, we remand this case to the trial court for further proceedings on the question of how provisions of the General Property Tax Act other than the repealed § 140, especially § 141, affect the parties' respective rights.[4]

Vacated and remanded. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood

[4] Moreover, we note that Cameron's Michigan Real Property Law provides that MCL 211.140(1) was repealed and replaced by MCL 211.78g, MCL 211.78k, and MCL 211.78o. 2 Cameron, Michigan Real Property Law (3rd ed), § 28.38, p 1653. It further provides that the right of redemption is temporarily governed by MCL 211.131a-.131e. *Id*. at § 28.38, p 1654. While plaintiff alleges that MCL 211.140 does not apply, the parties do not brief the impact of the changes to the statute and the impact on this litigation, if any. The statute addressing tax liens on property was modified to accelerate the process. The change was necessary to address urban blight. Properties were destroyed and were not insured because of the lengthy process. See Smith, Foreclosure of Real Property Tax Liens Under Michigan's New Foreclosure Process, 29 Mich Real Prop Rev 51 (2002). Despite the changes, the holder of an interest in property is still afforded opportunities to object. See 2 Cameron, Michigan Real Property Law (3rd ed), § 28.38, p 1643. Based on the record available, we cannot conclude whether the requirements of the amendments and the action required in conjunction with remaining provisions have been fulfilled based on this sparse record.