

STATE OF MICHIGAN
COURT OF APPEALS

MUZAFFAR A. SHAH and AMBREEN SHAH,

Plaintiffs-Appellees,

v

RICHARD RATKUS,

Defendant-Appellant,

and

LORETTA GERTRUDE RATKUS,

Defendant.

UNPUBLISHED
February 15, 2007

No. 272065
Wayne Circuit Court
LC No. 04-417899-CH

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

In this summary disposition case involving a suit to quiet title, defendant Richard Ratkus¹ appeals as of right from the trial court's grant of plaintiffs' motion for summary disposition under MCR 2.116(C)(10). We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On September 29, 1994, plaintiffs acquired legal title via a quit claim deed to a vacant lot in Detroit, Michigan. Plaintiffs recorded this deed on October 5, 1994. In 2001, Marguerite Everson purchased two tax deeds for the subject property for the years 1995 and 1996. She recorded those deeds on April 17, 2003. Everson then quitclaimed the deeds to defendant. Defendant recorded a tax redemption lien against the property on April 25, 2003. However, those deeds were not actually recorded until November 19, 2003.

Meanwhile, on August 20, 2003, plaintiffs filed a lawsuit to quiet title against Everson. At this time, Everson was the last named grantee named in the chain of title recorded at the Wayne County Register of Deeds—defendant was not mentioned. The Wayne Circuit Court

¹ The use of “defendant” in the singular throughout this opinion refers to Richard Ratkus only as Loretta Ratkus is not a party to the appeal.

entered a default judgment finding Everson's interest to be null and void. The judgment also declared null and void any interest of any persons claiming under Everson.

Plaintiffs filed the instant lawsuit on June 11, 2004, to remove the cloud on the title created by defendant and to quiet title in favor of plaintiffs. Plaintiffs filed a motion for summary disposition, arguing that the default judgment in the prior case settled the matter and that neither Everson nor defendant could claim any interest in the property. Defendant also moved for summary disposition arguing that plaintiffs had notice of the tax deeds. As proof, defendant submitted Macomb County deputy sheriff's notice of return of service on the tax deeds. The deeds were purportedly served on plaintiff Muzaffar Shah on November 10, 2001, at his address in Warren, Michigan, in Macomb County. Defendant also argued that he was not bound by the prior default judgment because he was not served and no diligent effort had been made to find him.

Plaintiffs responded by filing an affidavit from plaintiff Muzaffar Shah, which stated that he was never personally served with any type of written notice advising him that he had a six-month-period in which to redeem the property. On May 30, 2006, the trial court issued an opinion and order granting summary disposition in favor of plaintiffs. On June 16, 2006, the trial court entered a judgment quieting title, which incorporated by reference the May 30, 2006, opinion and order. On June 30, 2006, defendant moved for reconsideration of the June 16, 2006, judgment quieting title. The trial court denied this motion. Defendant now appeals as of right.

On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Under MCR 2.116(C)(10), summary disposition is proper when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." A motion for summary disposition under (C)(10) tests whether there is factual support for a claim. *Dressel, supra*. When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

The trial court's opinion is somewhat unclear as to why summary disposition was granted. The trial court stated that defendant "has offered no document, affidavit of [sic, or] other evidence that creates a question of fact as to the failure of Ms. Everson, (through the Wayne County Sheriff) to give legal notice pursuant to MCL 211.140." Defendant argues that this indicates the trial court overlooked the returns of service he submitted. Plaintiffs counter that the trial court found the submitted returns of service to be invalid as a matter of law because a Wayne County Sheriff did not serve them.

MCL 211.140, which was in effect at the time plaintiffs were allegedly served with notice, provided in pertinent part:²

² MCL 211.140 has since been repealed and replaced by 2001 PA 94, § 1, effective December 31, 2003.

(1) A writ of assistance or other process for the possession of property the title to which was obtained by or through a tax sale . . . 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 interested parties as specified]

* * *

(3) If the grantee or grantees, or the person or persons holding the interest in the land as described in subsection (1) are residents of a county of this state other than the county in which the land is situated, the notice shall be served on that person by the sheriff of the county in which that person or persons reside or may be found

* * *

(5) If the sheriff of the county where the property is located is unable, after careful inquiry, to ascertain the whereabouts or the post office address of the persons on whom notice may be served as prescribed in this section, service of the notice shall be made by publication. The notice shall be published for 4 successive weeks, once each week, in a newspaper published and circulated in the county where the property is located This publication shall be instead of personal service upon the person or persons whose whereabouts or post office address cannot be ascertained as set forth in subsection (3).

* * *

(8) Service as prescribed in this section may be made by a sheriff, undersheriff, or deputy sheriff. The sheriff shall, in the return of service, state the time when the notice was delivered to the sheriff for service, and the return shall be prima facie evidence of the facts stated in the return.

If the proper statutory notice is not served, the six-month redemption period never begins to run and the right to redemption continues to exist. *Equivest Ltd Partnership v Foster*, 253 Mich App 450, 453-455; 656 NW2d 369 (2002). Moreover, “strict compliance with the tax sale notice provisions is required,” and even “[a]ctual notice is not enough to satisfy the statute’s notice requirements.” *Brandon Twp v Tomkow*, 211 Mich App 275, 284; 535 NW2d 268 (1995). See also *Andre v Fink*, 180 Mich App 403, 407-408; 447 NW2d 808 (1989) (strict compliance with the notice requirements of MCL 211.140 is required “because the effect of proceedings under the tax law is to divest the true owners of their title to property”). Indeed, within the realm of tax sales of real property, strict compliance with statutory requirements is an overriding policy. See generally *id.* at 407-408.

Here, for the service to have been valid under MCL 211.140(3), the sheriff of the county in which plaintiff resided or could be found was required to effect service. A Macomb County sheriff deputy signed a return of service indicating that he served plaintiff Muzaffar Shah at 29034 Nottingham, in Warren, Michigan, on November 10, 2001. The Nottingham address in

Macomb County is the address listed for Muzaffar Shah on the original quit claim deed. Thus, the returns, standing alone, do in fact show that Everson gave proper notice of the tax lien to plaintiffs before plaintiff's original lawsuit to quiet title against Everson. However, in his affidavit, Muzaffar Shah stated he was never served and he was not residing at the Macomb County address where he was purportedly served at any time during 2001. Whether Muzaffar Shah was residing at the Nottingham address in Macomb County at the time of service remains an issue of fact. Muzaffar Shah has submitted no evidence other than his affidavit to support his contention regarding his residency during this period. Defendant has submitted a document signed by a Macomb County sheriff's deputy indicating that he served Muzaffar Shah at the address in question. MCL 211.140(8) provided that "the return shall be prima facie evidence of the facts stated in the return." Additionally, the trial court is required to view documentary evidence submitted in the light most favorable to the nonmoving party. *Corley, supra* at 278.

Therefore, the trial court erred in granting plaintiff's motion for summary disposition because a genuine issue of material fact remains as to whether plaintiffs had notice of defendant's tax lien. The trial court has already determined that the default judgment against defendant should be voided because plaintiffs did not make a diligent effort to find defendant. The trial court went on to note that the issue remaining is which party has superior title to the property. The resolution of the issue whether plaintiffs received notice of the tax liens is crucial to the determination of which party has superior title.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio