

STATE OF MICHIGAN
COURT OF APPEALS

ALICE HEDGER, Survivor of herself and
DONALD HEDGER, Deceased, and JOY D.
GROVE, as sole heir of the Estate of LLOYD E.
JOHNSON, Deceased,

UNPUBLISHED
March 11, 2008

Plaintiffs-Appellees,

v

DESTINY 98 TD - WYANDOTTE,

Defendant-Appellant.

No. 275073
Wayne Circuit Court
LC No. 05-526395-CZ

Before: Gleicher, P.J., and O'Connell and Kelly, J.J.

PER CURIAM.

Defendant appeals as of right from a judgment denying its motion for summary disposition and quieting title to disputed property in favor of plaintiff Joy D. Grove, subject to any agreement between plaintiff Alice Hedger and Grove. We affirm.

I. Basic Facts

This case concerns residential property at 3123 4th Street in Wyandotte, Michigan. Lloyd E. Johnson owned the property when he died on July 4, 1992. On September 18, 1992, Grove, as the personal representative of the Estate of Lloyd E. Johnson and Johnson's sole heir, sold the property to Alice and Donald Hedger, a married couple, on a land contract. At the time of these proceedings, there was an outstanding balance on the land contract.

In 1999, defendant acquired a tax deed interest in the property at a Wayne County tax sale that was held to recover delinquent taxes owed on the property for the tax year 1996. On June 24, 2003, defendant gave Notices of Tax Deed Interest to the sheriff's department for service in accordance with former MCL 211.140.¹ At that time, the only person with a recorded interest in the property was Lloyd E. Johnson. According to a sheriff's return of service, a copy of the statutory notice was served on "Representatives of the Estate and Heirs of Lloyd E.

¹ MCL 211.140 was repealed by 2001 PA 94, effective December 31, 2003.

Johnson” on November 10, 2003, at the property address. It is uncontested that no representative of the estate ever resided at the property address. It is also uncontested that no representative of the estate was ever served at the property address. Although probate court records identified Grove as the personal representative and sole heir of Johnson’s estate, and contained her address in California, service of notice on Grove was never attempted. Additional notices were served on February 16, 2004, on “occupant,” Lendon Hedger, and Joann Hedger, also at the property address.² On March 2, 2004, defendant filed the notices and proofs of service with the Wayne County Treasurer’s Office.

In June 2005, defendant filed an action in the district court to evict Lendon and Joann Hedger from the premises. Thereafter, on September 8, 2005, Alice and Donald Hedger filed the instant action to quiet title. They alleged that they were the owners of the property under the land contract with Grove, and that defendant failed to properly serve notice of its tax deed to persons affected by it, contrary to MCL 211.140. An amended complaint subsequently added Grove as a plaintiff.³ Together, plaintiffs alleged that the land contract was never fully executed and, therefore, Grove, as the sole heir of the Estate of Lloyd E. Johnson, remained the owner of the property, subject to Alice Hedger’s vendee interest. Plaintiffs further alleged that defendant failed to properly serve either Grove or Alice Hedger with notice of its tax deed, contrary to MCL 211.140.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). The trial court denied defendant’s motion and entered a judgment voiding defendant’s tax deed and quieting title in favor of Grove, on the basis that defendant failed to properly serve Grove with notice of its tax deed.

II. Standards of Review

Actions to quiet title are equitable in nature and are reviewed de novo. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). We also review de novo a circuit court’s decision on a motion for summary disposition. *Trost v Buckstop Lure Co*, 249 Mich App 580, 583; 644 NW2d 54 (2002). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003). In reviewing a motion under MCR 2.116(C)(10), this Court “‘must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law.’” *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 114; 617 NW2d 725 (2000), quoting *Unisys Corp v Comm’r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999). If it appears that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party. MCR 2.116(I)(2). Questions involving the interpretation of a statute are reviewed de novo. *Burkhardt, supra* at 646.

² Lendon and Joann Hedger are plaintiff Hedger’s son and daughter-in-law, respectively.

³ The caption was also amended to reflect that Donald Hedger had died.

III. Analysis

Plaintiffs' claim of superior title to the disputed property was based on defendant's failure to comply with former MCL 211.140, which provided in relevant part:

(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, 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 service 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.*

(b) The person or persons in actual possession of the land.

* * *

(3) . . . *If a person entitled to notice under subsection (1) is not a resident of this state, the sheriff, if the post office address of the person can be ascertained, shall send to the nonresident person a copy of the notice by certified mail, and attach the receipt indicating postal delivery of the notice to the return and file the return with the county treasurer's office. If service on the nonresident is not made by mail, the sheriff shall cause a copy of the notice to be served personally on the nonresident, and when the notice is personally served outside of this state, proof of service shall be made by affidavit of the person making service*

(4) *If a person entitled to notice as prescribed in subsection (1) is dead, or if a person's estate is under control of a trustee or guardian, the notice may be served on the executor or administrator of the decedent's estate, or upon the decedent's heirs if there is not an executor or administrator, or upon the trustee or guardian of an incompetent person, with the same effect as if served upon the grantee, mortgagee, or assignee.*

(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. . . .

* * *

(8) . . . the return shall be prima facie evidence of the facts stated in the return. [Emphasis added.]

Inasmuch as tax sale proceedings serve to divest owners of their property interests, the statutory notice requirements must be strictly complied with. *Burkhardt, supra* at 647.

Defendant first argues that the trial court erred by quieting title in Grove because she is estopped from asserting any legal rights to the disputed property, as she did not attempt to enforce the land contract within the six-year limitations period applicable to contracts. MCL 600.5807(8). We disagree. This case does not involve an action to recover damages for breach of contract or to enforce the land contract. Instead, this is an action to quiet title in Grove on the basis of defendant's failure to provide to Groves the notice required by MCL 211.140.

Defendant next argues that Grove was not entitled to notice of its tax deed because she no longer held an interest in the property having already sold it to the Hedgers. We again disagree. A person is only entitled to notice under MCL 211.140 if that person continues to hold an interest in the property as of the date the notice was delivered to the sheriff for service. *Burkhardt, supra* at 651-652. The evidence established that while Grove sold the property to the Hedgers on a land contract, it was never fully paid off and no deed was ever delivered to them. Thus, Grove continued to have an interest in the property, see *Cardinal v United States*, 26 F3d 48, 49 (CA 6, 1994), and, accordingly, was entitled to the statutory notice. *Burkhardt, supra* at 651-652; MCL 211.141(1)(e).

We also disagree with defendant's contention that there was sufficient compliance with MCL 211.140 because the evidence established a good-faith effort to provide the statutory notice. At the time of service, defendant was aware of Johnson's death and that a representative of the estate needed to be provided notice. However, the sheriff's proof of service relied upon by defendant, does not state that an individual at the property address identified himself as an heir and representative of Johnson's estate. More significantly, the evidence showed that Grove was clearly identified as the personal representative and sole heir of Johnson's estate in probate court records, and that she resided in California.⁴ Defendant concedes that this information was available to it, yet failed to serve Grove. In light of this evidence, defendant could not have had a good-faith belief that it properly served Johnson's heir or personal representative. Because Grove was within the class of persons entitled to notice under MCL 211.140 and she was never served with the required statutory notice, the trial court did not err in concluding that defendant failed to comply with MCL 211.140.

We also reject defendant's argument that the trial court could not quiet title in favor of Grove because she failed to comply with statutory procedures for the recovery of the possession of premises and that, if anything, she was only entitled to final payment on the land contract. This was not a foreclosure action, so the statutes governing such proceedings were not applicable.

Defendant's argument that plaintiff Hedger cannot properly rely on any defect in notice to plaintiff Grove is without merit. Unlike *Halabu v Behnke*, 213 Mich App 598; 514 NW2d 285

⁴ Although MCL 711.140(3) allowed for service on nonresidents by certified mail, defendant does not claim that such service was attempted in this case.

(1995), this case does not involve one party's attempt to assert redemption rights based on the failure to provide notice to another party. Here, the court gave recognition to Grove's property rights based on the failure to serve her with the statutory notice, not anyone else.

Finally, defendant contends that any noncompliance with MCL 211.140 should not effect its tax deed interest because that statute was repealed, effective December 31, 2003. Even accepting defendant's contention, at the time the second amended complaint was filed, Grove was still entitled to redeem the property pursuant to MCL 211.141, which was repealed effective December 31, 2006. We find no error requiring reversal.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Patrick D. O'Connell
/s/ Kirsten Frank Kelly