STATE OF MICHIGAN

COURT OF APPEALS

BAERE COMPANY, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED April 1, 2008
v	No. 268238 Kent Circuit Court
ADVANTAGE 99 TD, Defendant/Counter-Plaintiff-Appellant.	LC No. 04-012262-CH

Before: Sawyer, P.J., and White and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court's opinion and order quieting title in plaintiff and ordering defendant to pay plaintiff damages for lost rental income. We reverse.

I

Defendant acquired a tax deed interest in the property by paying the delinquent 1996 taxes at the 1999 tax sale, pursuant to the General Property Tax Act (GPTA), MCL 211.1 *et seq.*[1] On August 8, 2002, defendant began the process of perfecting title to its deed by delivering notices of tax deed interest to the Kent County Sheriff's Department for service upon the property's occupant and on Robert Twiggs, the last owner in the chain of title recorded with the Kent County Register of Deeds. Kent County Civil Deputy Sheriff Larry Crace initially made multiple unsuccessful attempts to serve Twiggs at a house on Alexander Street owned by Twiggs' mother. According to Crace, further investigation revealed that Twiggs' mail was being forwarded to an address on Gilbert Street, and on September 24, 2002, Crace made substituted service on Shantay Carter, the adult daughter of defendant's girlfriend, at the Gilbert Street address. On October 21, 2002, the notices and proofs of service were filed with the Kent County Treasurer's Department, where they remained on file for the six-month redemption period. On

[1] It appears that plaintiff had purchased the 1995 taxes at the 1998 sale, but had not recorded that purchase, and thus was not entitled to notice. Plaintiff does not rely on any rights incident to the earlier tax purchase, and all such rights would have been extinguished.

April 25, 2003, the Treasurer's Department certified defendant's notices and proofs of service as having met the GPTA's requirements for perfecting tax deeds. On May 7, 2003, the notice by persons claiming title under tax deed was recorded with the Kent County Register of Deeds.

Over a year later, on December 7, 2004, plaintiff obtained a quitclaim deed to the property from Twiggs for $500. Twiggs also executed an affidavit averring that he had always resided at the Alexander Street address, and had never resided at the Gilbert Street address. On December 16, 2004, plaintiff commenced this action against defendant to quiet title to the property, claiming that defendant failed to provide the required notice to Twiggs of its tax deed interest. Plaintiff subsequently filed an amended complaint, seeking lost rents it claims it could have received had defendant not claimed title to the property. Defendant filed a counterclaim to quiet title, alleging that Crace made substituted service on Twiggs by leaving notice with an adult family member at Twiggs' usual place of residence under MCL 211.140(6), and that its tax lien was properly perfected.

The circuit court conducted a bench trial, primarily focusing on the factual issues involving Twiggs' "usual place of residence." Plaintiff asserted that it obtained Twiggs' interest in the property by quitclaim deed in December 2004. Defendant argued that the quitclaim deed was invalid because it was acquired in bad faith because plaintiff had been informed by Twiggs that he had sold the property; that Twiggs had no right of notice under the GPTA, and could not transfer that right to plaintiff via a quitclaim deed; that Crace's attempted service on Twiggs was a bona fide, good-faith effort; that defendant obtained Twiggs' interest in the property when it made substituted service on him at his usual place of residence and he did not redeem the tax notice; and, that where plaintiff did not have a superior interest in the property, it was not entitled to any rent amounts because they were speculative.

The trial court found that plaintiff's quitclaim deed was valid as to defendant; that Twiggs had a right to notice under the GPTA; that Crace's bona fide and good faith effort at service had no bearing on the case because service of notice was not made at Twiggs' usual place of residence under the GPTA; and that plaintiff was entitled to reimbursement for lost rental income. The trial court entered judgment, quieting title in favor of plaintiff and awarding plaintiff a money judgment for lost rents. Defendant moved for reconsideration under MCR 2.119(F), and the trial court denied the motion.

II

The General Property Tax Act (GPTA), MCL 211.1 *et seq*., controls the taxation of property and the procedures for selling real property for unpaid taxes. Several years ago, the Legislature extensively overhauled the process and replaced the tax sale and redemption process at issue in this case with a system of forfeiture, foreclosure, and sale. See 2001 PA 94; 1999 PA 123[2]. The statutes pertinent to this case were repealed effective December 31, 2003 or December 31, 2006. See *Burkhardt v Bailey*, 260 Mich App 636, 647 n 5; 680 NW2d 453 (2004).

[2] 1999 PA 123 was itself repealed by 2005 PA 183, effective October 20, 2005.

MCL 211.140 provided, in pertinent 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 . . . 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 following persons who were, as of the date the notice was delivered to the sheriff for service:

> (a) The last grantee . . . 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.

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(6) Service may be made on a resident of this state by leaving the notice at that person's usual place of residence with a member of that person's family of mature age.

MCL 211.141 provided, in pertinent part:

(1) The following people are entitled to receive from a person claiming title under a tax deed . . . 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, a release and quitclaim of all right and interest in the property acquired under the tax deed upon payment to the treasurer of the county in which the land is situated the amount paid for the purchase, together with an additional 50%, and personal or substituted service fees, which fees shall be the same as provided by law for service of subpoenas, for orders of publication, or for the cost of service by certified mail, without additional cost or charge:

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> (a) A person with an estate in the property.
>
> (b) A person with an interest in the property, either in fee, for life, or for years.

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(2) A person . . . 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. Redemption shall be made by paying to the treasurer of the county in which the property is situated, all sums paid as a condition of the purchase, together with an additional 50%. Upon

payment, the tax title and all the certificates of sale shall become void and of no effect against the property to be redeemed.

III

Because we find defendant's third claim of error dispositive, we address it first. Defendant asserts that because Twiggs had conveyed his interest in the property to a third party before the tax sale, he had no right to notice under MCL 211.140 or to a right to redeem under MCL 211. 141. The trial court rejected these arguments:

> Advantage argues that when Baere received a quit claim deed from Mr. Twiggs, it did so in bad faith because Baere knew that Mr. Twiggs had sold the Property sometime in the 1980's. Therefore, Advantage asserts that Baere did not take any interest in the Property when it acquired the quit claim deed.
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> Baere argues that its interest may be subject to the person's interest who [sic] Mr. Twiggs sold the Property in the 1980's; however, Baere contends that its interest is still superior to Advantage's, regardless of whether the quit claim deed was acquired in good faith. "It is elementary that to prevail in an ejectment proceeding the plaintiff must rely upon the strength of his own title, not on the weakness of defendant's title." *Hurd v Hines*, 346 Mich 70, 77; 77 NW2d 341, 344 (1956); citing *Ridgley v Roma*, 282 Mich 682; 276 NW 872. In this case, Baere contends that it has made out a prima facie case. Further, Baere argues, Advantage, as counter-plaintiff, must rely on the strength of its own title, not the weakness of Baere's .
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> This Court agrees with Baere that its quit claim deed was not invalid as to Advantage. Although, Baere's interest may be inferior to the person's who purchased the Property from Mr. Twiggs in 1980's, one party cannot creat a superior title in itself through the alleged fraud on a third party. *Bonninghausen v Hansen*¸ 305 Mich 595, 605; 9 NW2d 856 (1943). As Justice Cooley wrote in his opinion in *Raynor v Lee*, 20 Mich 384, 388 (1870):
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> > We are of opinion therefore, that the complainant made out a *prima facia* title. It was not essential that he should show a title which would be perfect against all the world; if apparently good against the defendant, that would be sufficient. – *Hall v Kellogg*, 16 Mich, 135.
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> Therefore, this Court holds that Baere need not prove that its interest is superior to anyone's other than Advantage. At the time Baere acquired the quitclaim deed from Mr. Twiggs, Baere received whatever interest in the Property that Mr. Twiggs had.
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> *** * ***
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> Advantage argues that the quit claim deed could not convey Mr. Twiggs' statutory rights of notice under the Act of Baere because he had no such rights. The two statutes at issue here are MCL 211.140(1)(a) and MCL 211.141(1)(b).

> §140(1)(a) states that the sheriff must make personal service of notice or substitute service upon, "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." §141(1)(b) states that "a person with an interest in the property, either in fee, for life, or for years" is entitled to redeem property acquired through a tax sale.
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> In *Burkhardt v Bailey,* 260 Mich App 636, at 652; 680 NW2d 453, (2004), the Michigan Court of Appeals held: "We conclude that only those persons or entities entitled to notice under §140, or their successors in interest, who *continue* to hold an existing interest described in §141, have the right to redeem." Advantage argues that Mr. Twiggs had no right to redeem the Property because he sold it in the 1980's and, therefore, he also had no right of notice.
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> However, the Courts hold that MCL 211.140(1) governs whether Mr. Twiggs was entitled to notice. Because he was the last grantee in the regular chain of title of the Property, he was entitled to receive a Notice of Tax Deed Interest. "If proper statutory notice is not served, the six-month redemption period never begins to run, and the right to redemption continues to exist." *Ottaco, Inc* v *Kalport Development Co., Inc,* 239 Mich App 88, 91; 607 NW2d 403 (1999). In this case, the six-month redemption period never began to run against Mr. Twiggs and he subsequently, and validly, quitclaimed his interest in the Property to Baere. [footnote omitted.]

A

We first address plaintiff's argument that there is no support for the assertion that Twiggs conveyed away his interest prior to the quitclaim conveyance to plaintiff. There was, in fact, ample evidence that Twiggs had conveyed the property, and the trial court's opinion impliedly recognizes the conveyance. When plaintiff's counsel asked Twiggs to identify his signature on "an original certified recorded deed from Robert L. Twigg to Beare Company," dated December 2004, Twiggs stated:

> Yes. He [plaintiff's agent] told me that my name was on this, my name was the last name on there. I told him that I had sold it, but, yes, that's my signature.

Twiggs also testified:

> Q. Back in - - as you've mentioned, you at least considered that you had sold the property back in 1982 or so?
>
> A. Yes
>
> Q. Back in the eighties, anyway?
>
> A. Yes.
>
> Q. Do you have – were you able to find any copy of any paper that showed you sold that?

A. No.

Q. Did anyone ever tell you that that property was still in your name, not including the person that brought you that deed?

A. Yeah, one time I had got stopped by the police and they asked me what was my address, and I told him 1023 Alexander, and he asked - -

Q. Do you know about when that was, any idea?

A. No. It had to be in the eighties because my name was still on the – he said which Robert Twiggs stay at this address? I say used to be me, but I moved. I sold that house. I don't remember, I don't remember what year it was the police stopped me.

Bernard Schaefer, plaintiff's agent in procuring the quitclaim deed, testified:

Q. Mr Schafer, you acquired the quitclaim deed for the property from Robert Twiggs?

A. Yes.

Q. Do you recall whatever discussions you may have had with him at the time that you acquired the quitclaim deed and the affidavit? Did you get an affidavit from him at that time, too?

A. Yes.

Q. And could you relate to me what discussions you had with him?

A. I can't remember word for word.

Q. Paraphrasing will be good.

A. I basically looked for him when the notices that Baere Company served expired and there wasn't a redemption. I went by 816 Adams, because the address for Twiggs on the taxpayer rolls was 816 Adams. The house was empty. I went by 1023 Alexander, Southeast, where he was listed in the phone book, and asked him, basically, what was up with the property, and he said that he had basically sold it in the early eighties, and that was it, in terms of basically what we talked about.

Thus, the record supports, without contradiction, that Twiggs sold the property in the early eighties and asserted no ownership interest in the property, notwithstanding that the deed to the third party had not been recorded. The record further supports, without contradiction, that plaintiff secured the quitclaim deed knowing that Twiggs disavowed ownership of the property.

B

The trial court was correct in concluding that notwithstanding the earlier conveyance, Twiggs had a right to notice under § 140, as the last person in the record chain of title. Twiggs did not, however, have a right to redeem the property from the tax sale under § 141(1), because he had no longer had an estate or interest in the property. MCL 211.141(1)(a)-(f); *Burkhardt, supra.* Twiggs had no rights in the property except the statutory right to receive notice based on his being the last grantee of record. This is not an interest in the property itself. Thus, Twiggs' quitclaim deed to plaintiff transferred no interest in the property.

The trial court recognized that this might be the case, but concluded that defendant could not assert title to the property by challenging plaintiff's title. Defendant, however, did not base its claim to title on any failure of plaintiff's title. Rather, defendant's claim of title is based on the tax deed. Indeed, it is plaintiff that asserts a property interest based on the inadequacies of defendant's title. While Twiggs was the last owner of record, he disclaimed any legal interest in the property, and having already sold his interest, he had nothing to convey to plaintiff. Plaintiff's entire position rests on the inadequacy of the notice to Twiggs. Plaintiff argues that because of that notice, defendant's tax deed conveyed no rights. Plaintiff fails, however, to acknowledge that it has no interest itself if Twiggs had no interest to convey.

We find *Burkhardt, supra*, instructive. In *Burkhardt*, the tax sale purchaser, Burkhardt, served the required notice of reconveyance on the property owner, Bailey, but failed to serve the mortgagee, Bond Corporation. Bailey failed to redeem. Later, the Bond Corporation asserted that the failure to serve the required notice on it rendered the tax deed was void. The trial court agreed. This Court affirmed in part and reversed in part in *Burkhardt v Bailey*, unpublished opinion per curiam of the court of Appeals, issued September 21, 2001 (Docket No. 223706), concluding that the trial court correctly granted summary disposition to Bond, but had erred in voiding the tax deed because Burkhardt still had time under the statute, MCL 211.73a, to properly serve Bond. The Court further held that the trial court erred in granting relief to Bailey because he failed to redeem after proper notice, and he court not rely on Burkhardt's failure to properly serve Bond. While the case was on appeal, relatives of Bailey, the Hamiltons, paid and discharged the mortgage to Bond. Later, the Hamiltons also obtained a quitclaim deed and assignment of rights from Bond. The Hamiltons intervened in the case on remand, and the trial court granted relief to Bailey and the Hamiltons, concluding that because it had not been properly served Bond had a right to redeem the property for its own benefit and Bailey's, and that Bond's right was transferred to the Hamiltons. This Court reversed, *Burkhardt, supra*, 260 Mich App 636, concluding that Bailey's rights were entirely contingent on Bond's, that Bond had a right to notice under § 140, based on its mortgage interest at the time of service of the notice of conveyance, but that it had no right to redeem under § 141, because it no longer had a mortgagee's interest at the time of redemption. The Court stated:

> We conclude that only those persons or entities entitled to notice under § 140, or their successors in interest, who *continue* to hold an existing interest described in § 141 have a right to redeem. . . . Under this construction, Bond could no longer *redeem* the property after its mortgage was discharged, even though Bond's right to *notice* continued under the strict compliance doctrine. *Equivest, supra* at 453-454. Thus, Bond could not assign any right to redeem unless it also properly assigned its mortgage on the property. [*Burkardt*, 260 Mich App at 652. Emphasis in original.]

The Court further recognized that the Hamiltons could derive no rights from Bailey, because he no longer had any to give, and that their rights depended on whether they received a valid assignment of the mortgage. After considering the facts, the Court determined that the mortgage to Bond had been discharged, and, rather than receiving an assignment of the earlier Bond mortgage, the Hamiltons received a new mortgage. Thus, they had no right of redemption.

Thus, *Burkhardt* recognizes that the right to receive notice under § 140 is not coextensive with the right to redeem under § 141. Here, Twiggs had a right to notice under § 140, as the last grantee in the record chain of title, but he had no right to redeem under § 141 because he had no estate or interest in the property at the time for redemption. Also significant is that Burkhardt's tax deed was not rendered void by his failure to properly serve Bond with the required notice of reconveyance. Rather, the remedy for the failure was that Bond retained its mortgagee's right to redeem. Similarly, in the instant case, defendant's tax deed was good against all persons and entities, except those who were entitled to, but were not given, notice. Here, the only such person was Twiggs. However, Twiggs, like Bond, had no right to redeem, because like Bond, he no longer had an interest in the property. Because Twiggs had no right to redeem, plaintiff cannot claim such a right as his assignee or grantee.

Plaintiff's assertion of Twiggs right to notice, which right was not accompanied by a right to redeem, does not render defendant's otherwise valid tax deed void. The defect in service on Twiggs[3] does not revive the rights of others who had no right to notice, or who failed to redeem. *Burkhardt, supra*. Thus, it does not resurrect plaintiff's rights as a prior tax purchaser. If defendant were required to serve another notice of reconveyance on Twiggs to strictly comply with the statute,[4] it will be of no consequence to plaintiff because Twiggs had, and consequently plaintiff has, no right to redeem. As in *Burkhardt*, defendant having otherwise complied with the statute, the tax deed itself is not void.

Because plaintiff was not entitled to a judgment quieting title in its favor, it was also not entitled to damages.

Reversed, and remanded for entry of judgment for defendant. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Helene N. White
/s/ Michael J. Talbot

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[3] We will assume that the trial court properly found the service defective.

[4] Clearly, defendant's prior effort at service was in good faith.