STATE OF MICHIGAN

COURT OF APPEALS

In re Petition of ISABELLA COUNTY TREASURER.

ISABELLA COUNTY TREASURER,

Petitioner-Appellant,

v

DAWN KRANTZ,

Respondent-Appellee.

UNPUBLISHED
October 21, 2008

No. 277017
Isabella Circuit Court
LC No. 05-004096-CF

Before: Hoekstra, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Petitioner appeals as of right the order of the circuit court setting aside its order of foreclosure that had been entered against respondent via a default judgment for failure to pay delinquent property taxes. We affirm the circuit court's order setting aside the foreclosure.

On June 7, 2005, Isabella County Treasurer Steven W. Pickens filed a petition of foreclosure against respondent for failing to pay her property taxes for the 2003 tax year. According to the forfeiture report attached to the petition, respondent owed a total of $1,069.87, including base tax, interest, and fees, as of June 1, 2005, for a parcel of land she owned at 812 South University in Mount Pleasant. Respondent testified that on or about February 16, 2004, she paid her 2003 property taxes in the amount of $1,528.37 for the 2003 tax year. Respondent's taxes for 2003 were due on December 31, 2003, and she acknowledged that by paying them late, additional interest and fees were applicable; however, respondent testified that she would not know the additional amount she owed unless the city advised her as to this amount. Respondent testified that she paid her taxes in person, and was told the amount that she owed by a city employee. Despite her payment in February 2004, however, respondent testified that in December 2005, she received a delinquent property tax statement from the city for tax year 2003, notifying her that she owed approximately $1,205 in back taxes. Respondent called Pickens and was told that the delinquent tax statement had been issued because respondent's "personal residential exemption" had been denied for 2003. Respondent testified that Pickens directed her to pursue the matter with the city's tax assessor, which she did.

According to respondent, the city's tax assessor confirmed that her request for a principal residence exemption on the 812 South University property had been denied, resulting in additional taxes owed by respondent to the city. The city assessor indicated during his conversation with respondent that he would forward an appeal on her behalf to the Michigan Department of Treasury; however, respondent later learned that the proper venue to contest the denial of the exemption was the Michigan Tax Tribunal ("the Tribunal"), not the Department of Treasury. A judgment of foreclosure was entered against respondent on February 17, 2006, for failure to pay delinquent property taxes for the 2003 tax year. On cross-examination, respondent stated that she did not receive notice of the foreclosure hearing on February 17, and so did not appear to contest it. Respondent also testified that based on her communications with the city assessor and Pickens, she believed that the foreclosure would not proceed while her appeal was pending, and so she did not have to appear at any previously scheduled hearings on the matter.

After learning that the city assessor had sent her appeal to the Department of Treasury rather than to the Tribunal, in May 2006, respondent filed an appeal herself before the Tribunal, contesting the denial of her principal residence exemption for tax years 2003 and 2004. The Tribunal found that respondent had established that 812 South University was her principal address for the period in question.

Based on respondent's ability to establish principal residency at 812 South University, the Tribunal concluded that respondent should have been granted a principal residence exemption on the subject property for the 2003 and 2004 tax years, and ordered that respondent be issued a refund to reflect the exemption. On or about September 15, 2006, Pickens sent respondent a letter accompanied by a check in the amount of $643.08 as a refund for taxes paid. However, the letter indicated that respondent still owed a balance of $21.14, and advised respondent that the Tribunal's decision and the county treasurer's refund did not cancel the foreclosure process.

On November 15, 2006, respondent filed a motion to set aside the judgment of foreclosure, contending that Pickens had failed to give notice of the $21.14 deficiency in her tax payment. Respondent further alleged that application of the "limited remedy" provided by the General Property Tax statute, MCL 211.78, in the instant case would impermissibly interfere with the court's authority pursuant to MCR 2.612; and that fundamental fairness required the court to return respondent's property due to the "insubstantial deficiency" and the absence of the competing interest of a bona fide purchaser. The court found that although Pickens had provided respondent with notice as required by statute, respondent had also taken reasonable action to resolve the issue. The court stated that as a matter of equity, respondent was entitled to have the order of foreclosure set aside, even though the action of foreclosure was not wrongful.

Petitioner argues on appeal that respondent was given notice of foreclosure, and as such, her only remedy under the General Property Tax Statute, MCL 211.78 *et seq*. was to appeal within 21 days of the judgment of foreclosure to this Court. Respondent argues that she was not given notice of the deficiency or of the foreclosure hearing, and so was denied the opportunity to contest the judgment; thus, she was not subject to the appeal period provided by the statute and was entitled to file a motion to set aside the default judgment of foreclosure pursuant to MCR 2.603(D).

Pickens testified before the trial court that he sent notice to respondent that he was commencing the process of foreclosure numerous times in compliance with the statute. However, Pickens further testified that he sent respondent a notice via certified mail in January 2005 which he knew she did not receive, as it was returned to his office. MCL 211.78i(2) requires the foreclosing governmental unit to "determine the address reasonably calculated to apprise" owners of the property at issue before sending notice there. Pickens sent respondent notice of the foreclosure proceedings on the 812 South University address to the address listed on respondent's driver's license, 7375 North Ferris. Apparently, 7375 North Ferris was the address of respondent's marital home; however, respondent moved out of that home and into the residence at 812 South University in March 2003 due to marital problems. In its opinion, the Tribunal found that respondent lived at 812 South University throughout the period in question, and filed income tax returns indicating that that property was her residence.

Although the circuit court did not address this issue, a trier of fact could reasonably have concluded that respondent did not receive the notices sent to her former address. In *In re Petition by Wayne Co Treasurer*, 478 Mich 1, 5; 732 NW2d 458 (2007), our Supreme Court held that the property owner was not on notice of foreclosure proceedings because the petitioner treasurer sent notice to the previous owner, and did not post a notice on either of the parcels subject to foreclosure. Here, although respondent testified that she did receive one of the certified mailings sent by petitioner, this was not apparently a notice of foreclosure, but rather a notice of delinquent taxes.

In addition, MCL 211.78k(5)(f) provides that a court may find that an interested party was provided notice if the foreclosing governmental unit "followed the procedures for provision of notice by mail, for visits to forfeited property, and for publication under section 78i[.]" Pickens did not testify that he visited the property, and because respondent was apparently living on the parcel that was the subject of the foreclosure proceedings, he would have been required to attempt to personally serve respondent or to leave notice in a conspicuous manner on the property. See MCL 211.78i(3)(d). There is no evidence in the record that Pickens followed these procedures. Thus, although the circuit court did not grant relief on this basis, it was not an abuse of discretion for the circuit court to grant relief to respondent because petitioner did not comply with all of the notice requirements in the statute as he claimed. Because respondent did not receive notice of the judgment of foreclosure and was thus not afforded an opportunity to contest its entry, the provisions of the statute stipulating a period for appeal and other remedies did not apply. See MCL 211.78k(5)(f).

Further, MCL 211.78k(2) provides that a property owner may contest the validity of unpaid delinquent taxes for the reasons listed in the statute. Although respondent does not claim that the delinquent taxes assessed against her were invalid for any of the reasons listed in the statute, the Tribunal found not only that respondent did not owe the back taxes claimed by the treasurer, but that respondent was entitled to a refund for the tax years at issue. And respondent did not learn of the $21.14 deficiency until Pickens issued her refund in accord with the Tribunal's decision. It follows that if the delinquent taxes which were supposedly the underlying reason for the foreclosure are found to have been wrongfully or incorrectly assessed, then the foreclosure that is based on the nonpayment of the delinquent taxes is also invalid. Thus, petitioner cannot claim that respondent's only recourse was to appeal the judgment of foreclosure as outlined by the statute, because the original entry of foreclosure was not itself in

compliance with the statute, as it was apparently based on delinquent taxes which were not actually owed by respondent.

Affirmed. Pursuant to MCR 7.219, respondent is entitled to costs.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra