

STATE OF MICHIGAN
COURT OF APPEALS

LOUIS WELLS,

Plaintiff/Counter-Defendant-
Appellant,

v

WAYNE COUNTY TREASURER and COUNTY
OF WAYNE,

Defendants-Appellees,

and

ERIKA DANA MCCLAIN,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED
December 23, 2008

No. 280773
Wayne Circuit Court
LC No. 06-627365-CH

Before: Murray, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Plaintiff, proceeding in propria persona, appeals by right from circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this action challenging a judgment of foreclosure for failure to provide sufficient notice of the foreclosure proceedings. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased the subject property at 15388 Quincy in Detroit on June 2, 1998. The quitclaim deed that plaintiff received from the Department of Natural Resources listed his address as 15779 Indiana in Detroit. In June 2004, defendant Wayne County Treasurer filed a petition for foreclosure under MCL 211.78g for unpaid 2002 taxes. The action culminated in a March 7, 2005, judgment of foreclosure. On September 27, 2005, defendant McClain purchased the property from the Wayne County Treasurer for \$4,000.

Approximately a year later, plaintiff filed this action claiming that he was not served with notice of the tax foreclosure action, the entry of the judgment of foreclosure, or the tax sale. He alleged that the judgment of foreclosure was void for lack of notice and violation of his due process rights, sought to quiet title to the property, and sought enforcement of his statutory

redemption rights under MCL 211.74, and recompense for unjust enrichment. The trial court recognized that plaintiff should have moved for relief from judgment in the prior foreclosure case instead of filing a new action, but declined to decide the case on that basis. Instead, the court determined that there was no genuine issue of material fact that adequate notice was given and granted defendants' motion for summary disposition under MCR 2.116(C)(10).

This Court reviews a trial court's decision on a motion for summary disposition *de novo*. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law."

The process that leads to a judgment of foreclosure is set forth in the General Property Tax Act (GPTA), specifically MCL 211.78 *et seq.*, and is discussed in *In re Petition by Wayne Co Treasurer*, 478 Mich 1, 6-7; 732 NW2d 458 (2007). Pursuant to MCL 211.78k(6), a judgment of foreclosure that is not appealed within 21 days is subject to a limited basis for attack.

If a property owner does not redeem the property or appeal the judgment of foreclosure within 21 days, then MCL 211.78k(6) deprives the circuit court of jurisdiction to alter the judgment of foreclosure. MCL 211.78k(6) vests *absolute title* in the foreclosing governmental unit, and if the taxpayer does not redeem the property or avail itself of the appeal process in subsection 7, then title "*shall not* be stayed or held invalid" This language reflects a clear effort to limit the jurisdiction of courts so that judgments of foreclosure may not be modified other than through the limited procedures provided in the GPTA. The only possible remedy for such a property owner would be an action for monetary damages [in the court of claims] based on a claim that the property owner did not receive any notice. [*In re Petition by Wayne Co Treasurer, supra*, p 8.]

Although the provisions of the GPTA bar even a property owner who was deprived of due process from attacking a judgment of foreclosure, the portion of the statute that limits the circuit court's jurisdiction to modify a judgment of foreclosure is unconstitutional as applied to property owners who are denied due process. *Id.*, pp 10-11.

Plaintiff argues that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because there was a genuine issue of material fact concerning whether the notice provided comported with due process. He contends that the statutory six-month period of redemption does not begin to run until a tax deed holder complies with the notice requirements of MCL 211.140.

Plaintiff's argument concerning the six-month redemption period under MCL 211.141 and case law addressing the need for strict compliance addresses the former system of tax sales and redemptions. It does not apply and is misplaced where there is a judgment of foreclosure. Moreover, even were we to overlook plaintiff's misguided legal analysis, however, we would find unpersuasive his argument that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10). Defendants presented evidence concerning the efforts they made to notify plaintiff including service at plaintiff's address on Indiana. Plaintiff asserted in a brief filed in opposition to defendants' motion, as he similarly does on appeal, that he never

received notice. But he failed to present any evidence as required by MCR 2.116, e.g., an affidavit, to support his factual assertions. Bald assertions in a brief are inadequate to demonstrate a genuine issue of material fact.

Plaintiff also asserts that the Wayne County Treasurer violated his right to due process of law and applicable Michigan notice statutes, but he does not expand on this claim of error. Again defendant's conclusory statement is insufficient to properly present this issue to this Court.

“It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.” [*Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Plaintiff's brief also addresses whether his complaint sufficiently stated a claim for relief. However, because the trial court did not grant summary disposition pursuant to MCR 2.116(C)(8) (failure to state a claim), it is unnecessary to consider this argument.

We affirm.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Kurtis T. Wilder