

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN FRANKLYN and SHELIA FRANKLYN,

Plaintiffs-Appellants,

v

WAYNE COUNTY TREASURER and COUNTY
OF WAYNE,

Defendants-Appellees.

UNPUBLISHED

April 23, 2009

No. 278375

Wayne Circuit Court

LC No. 06-625694-CH

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order dismissing their complaint for equitable relief with regard to defendants' tax foreclosure of two parcels of real property. Because we conclude that there were no errors warranting relief, we affirm. This appeal has been decided without oral argument under MCR 7.214(E).

In June 2005, the Wayne County Treasurer petitioned to foreclose two parcels of real property owned by plaintiffs to recover delinquent taxes owed for 2003 and 2004. On March 30, 2006, the trial court entered a judgment of foreclosure on the properties.

Plaintiffs moved for a stay of the foreclosure on March 31, 2006; plaintiffs asked the court to stay the foreclosure based on financial hardship and asked the court to approve a payment plan to settle the delinquency. The trial court issued a stay and held a hearing in May 2006. After the hearing, the trial court extended the redemption period to June 30, 2006. However, plaintiffs did not redeem the properties by that date and, thereafter, the properties were to be sold at a foreclosure sale in September 2006.

On September 11, 2006, plaintiffs filed the present complaint for equitable relief. In the complaint, plaintiffs alleged that they had tried numerous times to pay the delinquent taxes on the parcels, but that the payments had not been accepted. Plaintiffs requested a temporary restraining order to prevent the sale and an order compelling defendants to accept plaintiffs' payments. The trial court held a hearing on the requested relief in January 2007.

At the hearing, the trial court informed plaintiffs that it did not have jurisdiction to order defendants to accept a payment plan and that, under the law, the properties had to be redeemed in full—that is, partial payments were not permitted. Plaintiffs asserted they were seeking

refinancing, so the trial court agreed to give plaintiffs more time by setting another hearing date. However, by the next hearing date, plaintiffs still had not made any payments. On April 3, 2007, the trial court entered an order modifying the original 2006 foreclosure judgment to be effective as of March 30, 2007. Thus, the new redemption deadline was April 20, 2007. The trial court also dismissed plaintiffs' complaint with prejudice.

Plaintiffs first argue that they are entitled to an extension of the redemption period based on their financial hardship under MCL 211.78k(4). Under this statute, if a court determines that a property owner is "undergoing a substantial financial hardship, the court may withhold that property from foreclosure for 1 year or may enter an order extending the redemption period as the court determines to be equitable." MCL 211.78k(4). The provision for an extension is clearly discretionary—the trial court does not have to withhold the property from foreclosure or extend the redemption period even if it determines that the property owner is undergoing a substantial financial hardship. In any event, in this case, the trial court actually did exercise its discretion and withheld the properties at issue from foreclosure sale for one year and gave plaintiffs the ability to redeem the property for an additional 21 days after the revised foreclosure date. On this record, we cannot conclude that the trial court erred when it refused to further extend the period of redemption.

Plaintiffs next argue that defendants' refusal to accept partial payment of the delinquent taxes violates state law. We find no merit to this claim. Plaintiffs provide no current law supporting their position that foreclosed property can be redeemed through partial payments. In order to redeem their properties, plaintiffs had 21 days to pay the county treasurer the "*total amount* of unpaid delinquent taxes, interest, penalties, and fees for which the property was forfeited" in addition to interest and other fees. See MCL 211.78g(3)(a) (emphasis added). Thus, under the plain language of the statute, partial payments will not suffice to redeem the properties.

Finally, plaintiffs assert that defendants are retaliating against them by listing the properties as available for sale during this appeal. However, defendants provided evidence that the properties were removed from the sale list. Therefore, we decline to address this issue as moot.

The trial court correctly stated that it lacked authority to compel defendants to accept partial payment and did not err in declining to further extend the redemption period.

Affirmed. Defendants having prevailed on appeal, they may tax costs under MCR 7.219(A).

/s/ Stephen L. Borrello

/s/ William B. Murphy

/s/ Michael J. Kelly