

STATE OF MICHIGAN
COURT OF APPEALS

DAVID GILLIE,

Plaintiff-Appellant,

v

GENESEE COUNTY TREASURER and GENE
L. WHITE,

Defendants-Appellees,

and

BARRY D. FLOYD and KAREL J. FLOYD,

Defendants.

UNPUBLISHED

October 6, 2009

No. 287869

Genesee Circuit Court

LC No. 05-081012-CH

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

PER CURIAM.

In this tax foreclosure case, plaintiff appeals as of right from the trial court's order granting defendant Genesee County's motion for summary disposition and ordering the property deeded to defendant Gene L. White. For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant Genesee County foreclosed on property owned by defendant White, which he had purchased on a land contract from the Floyds. Plaintiff Gillie bought the property in the sheriff's sale but before the deed was tendered, the County decided White had not received adequate notice of the foreclosure and rescinded the sale to Gillie, refunding his payment. Plaintiff sued to quiet title and the trial court ruled that the County was authorized to cancel the sale. This Court, however, held that the County could cancel the sale later than the statutory, 30-day period only if White was deprived of constitutionally adequate notice. *Gillie v Genesee Co Treasurer*, unpublished opinion per curiam of the Court of Appeals, issued December 11, 2007 (Docket No. 257268), slip op at 9, 13. This Court remanded the case to the trial court so it could consider whether White's notice was constitutionally adequate.

On remand, the trial court held that the County failed to provide adequate notice and that White lacked actual notice of the foreclosure. The trial court granted the County's motion for

summary disposition and ordered the County to convey a deed to White and return Gillie's money.

The only issue presented here is whether the trial court correctly determined that White was not given constitutionally adequate notice and that he lacked actual notice. We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Constitutional issues are also reviewed de novo. *Sidun v Wayne Co Treasurer*, 481 Mich 503, 508; 751 NW2d 453 (2008).

"A fundamental requirement of due process in such proceedings is 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id.* at 509, quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950). Although "[d]ue process does not require that a property owner receive actual notice before the government may take his property," *Sidun, supra* at 509, quoting *Jones v Flowers*, 547 US 220, 226; 126 S Ct 1708; 164 L Ed 2d 415 (2006), "the means employed to notify interested parties must be more than a mere gesture; they must be means that one who actually desires to inform the interested parties might reasonably employ to accomplish actual notice." *Sidun, supra*, quoting *Mullane, supra* at 315. Even if a statutory scheme is reasonably calculated to provide notice in the ordinary case, the government is "required . . . to consider unique information about an intended recipient." *Sidun, supra* at 511, quoting *Jones, supra* at 230. *Sidun* further quoted, "when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Sidun, supra* at 511, quoting *Jones, supra* at 225.

The *Sidun* Court concluded that, although the government is not required "to conduct a search for a new address in a phone book or income-tax rolls," an "additional reasonable step" would have been for the government to attempt to send notice to the second address it already had in its possession. *Sidun, supra* at 516. Posting the property and publication might have been adequate had no other information been readily available to the government, but because the burden of using the additional information would have been slight, the steps taken by the county in *Sidun* were constitutionally insufficient under the circumstances. *Id.* at 515-516. The Court also noted that, "the government's constitutional obligation to provide notice is not excused by an owner's failure to keep his or her address updated in government records." *Id.* at 517. "[W]hile plaintiff should have been more diligent regarding the tax liability on her property, the government may not take that property without providing due process of law." *Id.*

As in *Sidun*, the County's attempt to send notice was returned as undeliverable. After that, the County posted the property and published notice of the foreclosure proceedings, but failed to take the reasonable step of sending notice to another address it had in its possession despite knowing the first mailing failed to give notice; additionally, in the present case, the County had successfully used White's other known address in the past. Plaintiff provides no reason why the outcome here should be any different from that in *Sidun*.

Affirmed. Defendants, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Stephen L. Borrello