

STATE OF MICHIGAN  
COURT OF APPEALS

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JOLENN VALRIE SYLVESTER,  
  
Plaintiff-Appellant,

UNPUBLISHED  
December 22, 2009

v

NATIONAL CITY REAL ESTATE SERVICES,  
L.L.C.,

No. 288804  
Oakland Circuit Court  
LC No. 2008-092813-CH

Defendant-Appellee.

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Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right a circuit court order granting defendant's motion for summary disposition in this dispute regarding real property that was foreclosed on by advertisement and sold at a sheriff's sale. We affirm.

Defendant's predecessor in interest secured a mortgage from James and Modia Martin in 2003. The mortgage contained a power of sale clause. The Martins defaulted, and defendant instituted proceedings for foreclosure by advertisement in 2007. The sale was held on January 8, 2008, and defendant purchased the property and obtained a sheriff's deed. On July 8, 2008, the last day of the redemption period, plaintiff filed this action. She claimed that she purchased the property from the Martins around the time the Martin's mortgage was first secured and that she did not receive proper notice of the foreclosure sale. The complaint did not contain any allegations that plaintiff had attempted to redeem the property during the redemption period. Plaintiff sought an order enjoining defendant from evicting her from the property, an order quieting title to the property in favor of plaintiff, and an order awarding plaintiff consequential, incidental, and exemplary damages resulting from defendant's wrongful actions. A preliminary injunction was issued, enjoining defendant from interfering with plaintiff's possession and occupancy of the property.

Subsequently, defendant filed a motion for summary disposition under MCR 2.116(C)(8) and (10), arguing that proper notice of the foreclosure had been given pursuant to MCL 600.3208. Attached to defendant's motion was the mortgage, the sheriff's deed on mortgage sale, an affidavit of posting indicating that a foreclosure notice had been posted in a conspicuous place upon the mortgaged premises, i.e., the front door, a publisher's affidavit reflecting newspaper publication on four separate dates of a foreclosure-sale notice, a non-military affidavit, and an affidavit of purchaser. In plaintiff's response to defendant's motion for summary disposition,

plaintiff presented arguments concerning plaintiff's recent participation in Chapter 13 bankruptcy proceedings. Plaintiff stated that defendant had initiated an attempt in the United States Bankruptcy Court to have the automatic stay lifted, which stay had been implemented when plaintiff filed her bankruptcy petition. The order from the bankruptcy court attached to plaintiff's response indicated that the court was actually reopening the Chapter 13 case for the limited purpose of allowing defendant to file and prosecute a motion to annul the automatic stay. Because the matter was still pending before the bankruptcy court, plaintiff argued that the circuit court here lacked jurisdiction to hear the summary disposition motion.

Later, defendant filed a reply to plaintiff's response, maintaining that the bankruptcy court had now entered an order annulling the automatic stay ab initio, validating the foreclosure proceedings and sale, and recognizing the expiration of the redemption period. An order to that effect from the bankruptcy court was attached to defendant's reply. Plaintiff then provided a notice to the circuit court expressing that she had filed an appeal of the bankruptcy court's order. Nonetheless, a hearing was held on defendant's motion for summary disposition, at which time plaintiff asked the circuit court to turn the case over to the bankruptcy court. The circuit court indicated that it could not transfer anything to a federal court, and it found that defendant had complied with the statutory notice requirements set forth in MCL 600.3208 relative to the foreclosure proceedings. The court dismissed plaintiff's action with prejudice under MCR 2.116(C)(8) and (10). Plaintiff appeals as of right.

We conclude that the trial court properly dismissed the case under MCR 2.116(C)(10), making it unnecessary to address MCR 2.116(C)(8). MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). Initially, the moving party has the burden of supporting its position with documentary evidence, and, if so supported, the burden then shifts to the opposing party to establish the existence of a genuine issue of disputed fact. *Quinto*, 451 Mich at 362; see also MCR 2.116(G)(3) and (4). "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in [the] pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Quinto*, 451 Mich at 362. Where the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 363. A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). A trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007).

On appeal, plaintiff argues that the trial court erred in granting the motion for summary disposition because plaintiff was denied a right to redeem the property and obtain title as a "grantee/lessee" of a quitclaim deed who had advanced the Martins money to avoid the possibility of an earlier foreclosure. We need not devote much time to this argument. Plaintiff never even claimed below that she attempted and was denied a right to redeem the property.

And plaintiff certainly did not submit any documentary evidence with respect to such an argument, which was required in response to defendant's motion for summary disposition under MCR 2.116(C)(10), where defendant supported its motion with documentary evidence. *Quinto*, 451 Mich at 362-363. Indeed, plaintiff failed to submit any documentary evidence showing that she even held an interest in the property; there is no quitclaim deed or any other document of conveyance in the record. Additionally, the bankruptcy court order validated the foreclosure proceedings and sale, implicating res judicata and collateral estoppel principles. See *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 688-693; 762 NW2d 529 (2008) (applying res judicata doctrine to circuit court action based on earlier bankruptcy proceedings).<sup>1</sup> Accordingly, plaintiff's first appellate argument lacks merit and fails.

Plaintiff also argues that the foreclosure notice was defective under MCL 600.3208; therefore, the foreclosure sale should have been voided. Again, plaintiff failed to submit any documentary evidence to create an issue of fact on the matter of notice. No evidence was produced that countered the evidence showing that notice by publication and posting had been made. Plaintiff presented no evidence even establishing an interest in the property necessary to give her standing to challenge notice. And again, there is the bankruptcy order that validated the foreclosure proceedings.

Moreover, the documentary evidence submitted by defendant reveals that defendant fully complied with MCL 600.3208, which provides:

Notice that the mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, shall be given by publishing the same for 4 successive weeks at least once in each week, in a newspaper published in the county where the premises . . . are situated. . . . In every case within 15 days after the first publication of the notice, a true copy shall be posted in a conspicuous place upon any part of the premises described in the notice.

The affidavits of publication and posting show that notice of the pending sale was published in the Oakland County Legal News on December 4, 11, 18, and 25, 2007, and that a true copy of the notice was posted on the premises on December 8, 2007, which was within 15 days of the first publication. The affidavit indicated that posting was accomplished by securing the true copy to the front door of the house, which constitutes posting in a conspicuous place. *Jennings v Arnold*, 272 Mich 599, 603; 262 NW 419 (1935). Although plaintiff complains that she did not receive personal notice, the statute does not require personal notice. *Moss v Keary*, 231 Mich 295, 299; 204 NW 93 (1925); *Cheff v Edwards*, 203 Mich App 557, 560-561; 513 NW2d 439 (1994). Further, the lack of evidence showing a legal interest in the property effectively defeats any claim that she was entitled to some kind of personal notice. Plaintiff's recitation and reliance on various cases in support of her notice argument are unavailing, where they do not address notice issues relative to foreclosure by advertisement, MCL 600.3201 *et seq.*

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<sup>1</sup> The bankruptcy court order specifically provided that "all foreclosure proceedings and the sale held on January 8, 2008, are hereby declared valid; and the redemption period . . . expired on July 8, 2008."

Finally, plaintiff presents an argument that is difficult to follow and comprehend. The argument touches on summary proceedings cases, MCL 600.5701 *et seq.*, resolution of the notice issue as a precondition to award possession, jurisdictional matters, and on the question of whether the case was prematurely filed or decided. We hold that issues regarding district court jurisdiction or the premature nature of a district court action relative to summary proceedings are absolutely irrelevant to this circuit court action and resolution of this appeal. Plaintiff filed a circuit court quiet title action that raised the issue of notice, and we hold that the circuit court had jurisdiction to hear the case and all of the issues, that the issue of notice was properly resolved in favor of defendant under the principles governing summary disposition pursuant to MCR 2.116(C)(10), that ownership and possession rights were resolved by the ruling, where it left intact the sheriff's sale and deed, with no redemption, and that the circuit court did not rule prematurely, nor was the action premature. In sum, nothing argued by plaintiff warrants reversal of the circuit court's ruling.

Affirmed.

/s/ William B. Murphy  
/s/ Kathleen Jansen  
/s/ Brian K. Zahra