

STATE OF MICHIGAN  
COURT OF APPEALS

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LAURA GRECH,

Plaintiff,

and

JOSEPH GRECH,

Plaintiff-Appellant,

v

AMERICAN HOME MORTGAGE SERVICING,

Defendant-Appellee.

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UNPUBLISHED

September 28, 2010

No. 292121

Wayne Circuit Court

LC No. 08-016468-CH

Before: MURPHY, C.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

In this action to quiet title to property following a mortgage foreclosure, plaintiff Joseph Grech appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

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). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. *Id.* at 120. A reviewing court must consider the affidavits, depositions, admissions, and other documentary evidence submitted by the parties and, viewing that evidence in the light most favorable to the nonmoving party, determine whether there is a genuine issue of material fact for trial. *Id.*

Plaintiff contends that the trial court erred in granting defendant's motion for summary disposition because there is a genuine issue of material fact concerning whether defendant complied with the posting requirement of MCL 600.3208.

In support of its motion, defendant presented an affidavit in which the affiant averred that he posted a notice of the foreclosure sale on the premises on January 4, 2008, by attaching it in a secure manner to the front door.<sup>1</sup> In opposition to defendant's motion, plaintiffs presented an affidavit in which they both averred that, although they resided at the subject property, they "never observed a Notice of Foreclosure posted on the front door or any other conspicuous place on the premises."

The party challenging the sufficiency of the posting has the burden of proof. *Cox v Townsend*, 90 Mich App 12, 15; 282 NW2d 223 (1979). Although plaintiffs' affidavit stated that they "resided" at the property and never observed a notice of foreclosure posted on the front door or any other conspicuous place, the affidavit does not state that they had occasion to observe the front door on or around the date of the purported posting and that the notice was not present. Their failure to observe the posting does not by itself contradict defendant's evidence that the notice was properly posted on the front door.

Furthermore, even if plaintiffs' affidavit established a genuine issue of material fact regarding defendant's compliance with the posting requirements of MCL 600.3208, a defect in notice only renders a foreclosure sale voidable, not void. *Jackson Investment Corp v Pittsfield Prod, Inc*, 162 Mich App 750, 755-756; 413 NW2d 99 (1987). Additionally, the holding in *Jackson Investment Corp*, 162 Mich App at 756, "allows for an examination of whether any harm was caused by the defect." Plaintiffs did not allege, much less demonstrate, that they lost a potential opportunity to preserve their interest in the property as a result of the alleged defect in posting. They repeatedly indicated that they had secured a means of payment, but only at a reduced amount. Plaintiffs have never contended that they would have been able to pay the amount owed on the mortgage and preserve their interest in the property if the posting had occurred. In this case, the allegations and evidence do not indicate that plaintiffs were harmed by the alleged defect. Therefore, plaintiffs did not establish grounds for invalidating the sale.

Affirmed.

Defendant may tax costs, having prevailed in full. MCR 7.219(A).

/s/ William B. Murphy  
/s/ David H. Sawyer  
/s/ Christopher M. Murray

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<sup>1</sup> There is no dispute that defendant properly advertised the notice of foreclosure. MCL 600.3208.