STATE OF MICHIGAN

COURT OF APPEALS

EUGENE TOMASSUCCI,

Plaintiff-Appellee,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, and DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT,

Defendants-Appellants.

UNPUBLISHED
October 23, 2012

No. 300937
Iron Circuit Court
LC No. 10-004285-CH

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

PER CURIAM.

In this tax-foreclosure case, defendants appeal as of right the trial court's order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10), and denying defendants' motion for summary disposition. Because we conclude that defendants failed to comply with the notice procedure required by MCL 211.131c(5),[1] we affirm.

On appeal, the issue before us is whether defendant complied with the notice procedures required for foreclosure of real property set forth by the version of the General Property Tax Act, MCL 211.1 *et seq.*, then in effect. Plaintiff owned real property, hereafter "the camp," located in Iron County. The camp property was offered for sale at the 1994 annual tax sale because real property taxes from 1991 were not paid. On May 2, 1995, title to the camp property vested in the state of Michigan, and the deed was recorded on October 12, 1995.

Pursuant to the statutory notice requirement under MCL 211.131c, Adrian Jentoft, a Department of Natural Resources (DNR) employee, inspected the camp property on January 5, 1996. Jentoft was not deposed, nor did he submit an affidavit to the trial court in this case. The only evidence regarding the circumstances of his inspection is the notice form he completed. The notice form has several blank spots for the land inspector to complete. In this case, Jentoft

[1] We note that the tax-foreclosure statutes at issue were repealed; however, the statutory provisions were in effect at the time of the tax sale in this case.

filled in the legal description of the property, the year it was deeded to the state, the county, the tax code, and the name and address of the "last owner from county tax records." Jentoft did not fill out the section that requires the name and address of the "present occupant." That section was left blank on the form. Carole Tomassucci, plaintiff's late wife, signed the signature line acknowledging receipt of the notice. The form does not indicate where Carole was when she signed the form, but defendants do not claim that Carole was present at the camp property. The land inspector also signed the form, certifying that on January 5, 1996, he "made an attempt to notify the occupant of the above premises of the State's interest, as provided by Section 131c."

In June of 1996, a notice of hearing regarding the camp property was sent by certified mail to plaintiff's home in accordance with MCL 211.131e. Plaintiff maintains that while the notice bears a signature purporting to be his, he never signed the document. Plaintiff supposes that Carole must have signed his name on the notice of hearing. No one attended the July 5, 1996 show cause hearing regarding the camp property on behalf of plaintiff, and the final redemption date for the camp property expired on August 4, 1996. Plaintiff maintains that he was not aware of the tax-foreclosure on the camp property until May 2001, after Carole passed away and he discovered documents regarding the property tax issues. Nevertheless, plaintiff continued to use the camp property without interruption until 2009, when a surveyor visited the camp to prepare for the sale of the property. In response, plaintiff filed this action to quiet title to the property on June 16, 2010.

The parties both filed motions for summary disposition. Plaintiff filed for summary disposition pursuant to MCR 2.116(C)(10), and defendants filed for summary disposition pursuant to MCR 2.116(C)(7) and (C)(10). After hearing oral arguments, the trial court issued its opinion from the bench. The trial court concluded that proper notice was never provided because Carole was not the owner of the property, no occupant of the property was identified, and notice was not posted on the property. Accordingly, the trial court granted plaintiff's motion for summary disposition because defendants failed to comply with MCL 211.131c(5). A conforming order granting plaintiff's motion for summary disposition and denying defendants' motion for summary disposition was entered on October 14, 2010. Defendants now appeal as of right.

On appeal, defendants argue that the redemption notice they provided to plaintiff was sufficient to satisfy the statutory requirements set forth in MCL 211.131c(5) because serving notice on Carole was reasonable, and therefore, they substantially complied with the statute. Alternatively, defendants argue that Carole qualified as "a person occupying the land" under MCL 211.131c(5), and thus, serving her satisfied the statutory requirements under MCL 211.131c(5).

We review a trial court's decision to grant summary disposition de novo. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). Summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim based on the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. *Id.* The evidence is viewed in the light most favorable to the nonmoving party. *Id.* at 567-568. "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to a judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Issues of statutory interpretation are also questions of law that we review de novo. *Driver v Naini*, 490 Mich 239, 246; 802 NW2d 311 (2011). The goal of statutory interpretation is to discern the intent of the Legislature by examining the plain language of the statute. *Id.* at 246-247. "When the language is clear and unambiguous, we will apply the statute as written and judicial construction is not permitted." *Id.* at 247. Absent an alternative definition set forth in the statute, "every word or phrase of a statute will be ascribed its plain and ordinary meaning." *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). Although we must enforce clear and unambiguous language in a tax statute as written, we construe any ambiguities against the government in favor of the taxpayer. *Signature Villas, LLC v Ann Arbor*, 269 Mich App 694, 699, 702; 714 NW2d 392 (2006). Strict compliance with statutory notice provisions is required in a tax sale, alternative forms of notice, including actual notice, are insufficient to satisfy the requirements. *Brandon Twp v Tomkow*, 211 Mich App 275, 284; 535 NW2d 268 (1995); *Ross v Michigan*, 255 Mich App 51, 58; 662 NW2d 36 (2003).

Under the version of the General Property Tax Act in effect when defendants foreclosed on plaintiff's property, the state needed to use the following procedures to perform a tax-foreclosure sale:

> Property may be sold at a tax sale three years after the failure to pay taxes. Once property is sold, there is a one-year redemption period. After this one-year redemption period expires, absolute title vests in the state of Michigan. Thereafter, another redemption period arises until the first Tuesday in November. During this period, the [Department of Natural Resources] must either attempt to personally serve the person occupying the land with the redemption notice or post the notice on the premises. After these redemption periods expire, MCL 211.131e requires the Department of Treasury to hold a hearing to allow owners of recorded property interests the opportunity to show cause why the tax sale and deed to the state should be cancelled. [*Ross*, 255 Mich App at 55-56 (internal quotation marks and case citations omitted), citing MCL 211.67; MCL 211.74(1); MCL 211.131c(1).

At issue on appeal is whether defendants, during the second redemption period, properly gave the notice required by MCL 211.131c(5), which provides:

> During the periods of redemption provided by subsection (1) or (2), the director of the department of natural resources or his or her authorized agent shall make a personal visit to each parcel of land deeded to the state for the purpose of ascertaining whether or not the land is occupied. If the land appears to be occupied, the director or his or her authorized agent shall attempt to personally serve upon a person occupying the land a copy of a notice, stating that the property has been deeded to the state, and unless redeemed, shall be sold to the highest bidder, deeded to a local unit of government, or retained by the state. If unable to personally serve the notice, the notice shall be placed in a conspicuous manner on the premises.

According to the statute's plain language, service of the notice can be effectuated either by personally serving the notice on a person "occupying the land" or by posting the notice "in a conspicuous manner" on the land, if personal service cannot be accomplished.

Defendants' initial argument in support of finding that service of the notice in this case was proper is that the method actually employed by their agent of personally delivering the notice to Carole was superior to merely posting notice on the property. However, even were we to agree, defendants cite no authority permitting them to bypass the statutorily required duties through substitution of another method. To the contrary, notice provisions require strict compliance. See *Ross*, 255 Mich App at 58 (noting that "it has repeatedly been held that strict compliance with the notice provisions in tax sales is required"). Accordingly, personal delivery to Carole can only be proper under MCL 21.131c(5) if she was "a person occupying the land."

In this respect, defendants argue that Carole was "a person occupying the land" as used in MCL 211.131c(5). Defendants rely on the definition of "occupant" in Black's Law Dictionary, which defines "occupant" in part as "[o]ne who has possessory rights in, or control over, certain property or premises." Black's Law Dictionary (9th ed). Defendants claim that Carole satisfies this definition because she was plaintiff's wife, plaintiff was the owner of the property, and Carole "visited the property intermittently." However, this evidence fails to address a critical component of an "occupant;" namely, did Carole have possessory rights in the property or control over the property. Defendant offers no legal support for inferring occupancy from these facts. Further, we cannot conclude that alone they support a finding that Carole had the requisite rights or control of the property to constitute "a person occupying the land" pursuant to MCL 211.131c(5). Consequently, we agree with the trial court that defendants failed to serve the notice in the manner required under the statute, and plaintiff is entitled to redemption.

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

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Joel P. Hoekstra