

STATE OF MICHIGAN
COURT OF APPEALS

KARIN M. LEGGIO,

Plaintiff-Appellee,

v

MICHAEL E. HUFFER, RALPH ROBERTS
REALTY, LLC, and RALPH R. ROBERTS,

Defendants-Appellants.

UNPUBLISHED

July 3, 2012

No. 301821

Macomb Circuit Court

LC No. 2010-003686-CH

Before: SERVITTO, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Defendants appeal by right an order denying their motion for summary disposition and granting plaintiff's cross-motion for summary disposition. We affirm.

The relevant facts are not in dispute. Plaintiff defaulted on a mortgage she had with CitiMortgage, Inc., which commenced a foreclosure action that resulted in the property being sold to defendant Michael Huffer at the subsequent sheriff's sale on April 2, 2010. The sheriff's deed was then recorded and indicated that the property may be redeemed by October 2, 2010. Subsequently, Huffer went to the property and surmised that the property appeared abandoned. Huffer then advised his agent, defendant Ralph Roberts, to proceed with the necessary actions required to shorten the redemption period. Roberts went to the property and posted a notice of presumptive abandonment and apparently mailed a copy to plaintiff's last known address, which was the foreclosed property. Thereafter, an affidavit of abandonment was apparently recorded with the register of deeds on July 23, 2010, which indicated that the redemption period was shortened to 30 days from the date of the sheriff's sale (which was allegedly June 3, 2010) pursuant to MCL 600.3241a.

Subsequently, defendants failed to respond to plaintiff's three requests for payoff information to redeem the property. Plaintiff then filed this action, alleging in relevant part that the affidavit of abandonment failed to comply with MCL 600.3241a and was, therefore, null and void because neither defendant was the "mortgagee." Plaintiff requested declaratory relief in that regard and requested that defendants be required to provide the precise redemption information. Cross-motions for summary disposition were eventually filed, with plaintiff arguing that defendants' affidavit of abandonment did not comply with MCL 600.3241a; thus, defendants were not permitted to shorten the normal six month redemption period provided by

MCL 600.3240. The trial court agreed with plaintiff, holding that MCL 600.3241a plainly states that only the “mortgagee” is permitted to take measures to reduce the redemption period due to abandonment and the statutory language must be enforced as written. Thus, plaintiff’s motion for summary disposition pursuant to MCR 2.116(C)(10) was granted and defendants’ motion was denied. This appeal followed.

Defendants argue that a purchaser at a sheriff’s sale “stands in the shoes of the mortgagee” and, thus, has the same rights as the mortgagee under MCL 600.3241a; accordingly, the trial court erred when it granted plaintiff’s motion for summary disposition. We disagree.

A trial court’s decision on a motion for summary disposition is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Motions brought under MCR 2.116(C)(10) are reviewed by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party to determine whether a genuine issue as to any material fact exists. *Id.* Issues involving statutory interpretation are reviewed de novo. *Herman v Berrien Co*, 481 Mich 352, 358; 750 NW2d 570 (2008).

MCL 600.3241a provides:

For purposes of this chapter, if foreclosure proceedings have been commenced under this chapter against residential property not exceeding 4 units, abandonment of premises shall be conclusively presumed upon satisfaction of all of the following requirements before the end of the redemption period:

- (a) The mortgagee has made a personal inspection of the mortgaged premises and the inspection does not reveal that the mortgagor or persons claiming under the mortgagor are presently occupying or will occupy the premises.
- (b) The mortgagee has posted a notice at the time of making the personal inspection and has mailed by certified mail, return receipt requested, a notice to the mortgagor at the mortgagor’s last known address, which notices state that the mortgagee considers the premises abandoned and that the mortgagor will lose all rights of ownership 30 days after the foreclosure sale or when the time to provide the notice required by subdivision (c) expires, whichever is later, unless the mortgagor; the mortgagor’s heirs, executor, or administrator; or a person lawfully claiming from or under 1 of them provides the notice required by subdivision (c).
- (c) Within 15 days after the notice required by subdivision (b) was posted and mailed, the mortgagor; the mortgagor’s heirs, executor, or administrator; or a person lawfully claiming from or under 1 of them has not given written notice by first-class mail to the mortgagee at an address provided by the mortgagee in the notices required by subdivision (b) stating that the premises are not abandoned.

The rules of statutory interpretation are well-settled. The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Klooster v City of Charlevoix*, 488 Mich 289, 296; 795 NW2d 578 (2011). The first consideration in determining that intent is the specific language of the statute. *Id.* “When the language of a statute is unambiguous, the Legislature’s intent is clear, and judicial construction is neither necessary nor permitted.”

Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC, 481 Mich 618, 624; 752 NW2d 37 (2008). Unless defined in the statute, every word or phrase of a statute is accorded its plain and ordinary meaning. MCL 8.3a; *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008).

Here, defendants argue that the term “mortgagee,” which is repeated several times in this statute, should be defined so as to include third parties who purchase foreclosed properties at sheriff sales and not simply mean the “holders of a mortgage.” We cannot agree. The term “mortgagee” is not defined in MCL 600.3241a, but there can be no reasonable doubt that the plain and ordinary meaning of the term is that it refers to the holder of a mortgage on the property that was subject to the foreclosure proceeding and not the holder of a sheriff’s deed. The Legislature is presumed to be familiar with the rules of statutory construction, as well as the consequences of its use of specific statutory language. *In re Messer Trust*, 457 Mich 371, 380; 579 NW2d 73 (1998). And here, clearly the Legislature was aware of the foreclosure proceeding process, including that sheriff sales are a part of that process, yet the Legislature choose to employ the specific term “mortgagee” with regard to the rights afforded by MCL 600.3241a. We decline defendants’ invitation to re-write the plain and unambiguous language so as to grant those same rights to third-party sheriff sale purchasers. Accordingly, the trial court properly denied defendants’ motion for summary disposition and the order granting plaintiff’s cross-motion for summary disposition is affirmed.

Affirmed. As the prevailing party, plaintiff may tax costs. See MCR 7.219(A).

/s/ Deborah A. Servitto

/s/ Mark J. Cavanagh

/s/ Karen M. Fort Hood