

STATE OF MICHIGAN
COURT OF APPEALS

NADIA AWAD,

Plaintiff-Appellant,

v

GENERAL MOTORS ACCEPTANCE CORP
(GMAC),

Defendant-Appellee,

and

WAYNE COUNTY BOARD OF
COMMISSIONERS and ORLANS
ASSOCIATES, P.C.,

Defendants.

UNPUBLISHED

April 24, 2012

No. 302692

Wayne Circuit Court

LC No. 01-013011-CK

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

In this consumer lending case, plaintiff, Nadia Awad, appeals as of right the trial court's order granting defendant, GMAC Mortgage, LLC's, motion for summary disposition pursuant to MCR 2.116(C)(8). On appeal, Awad asserts that the trial court erred by finding that she lacked standing to bring her complaint, that her complaint was barred by the doctrine of laches, that MERS's assignment to GMAC was valid, and that she was not able to amend her pleadings. We affirm on the issue of standing.

I. FACTS

On September 14, 2007, Awad and non-party Amer Haidar-Ahmad received a loan in the amount of \$283,500 to purchase a property located in Dearborn Heights, Michigan. Their promise to repay this loan was evidenced by a promissory note that Haidar-Ahmad signed and that was secured by a mortgage on the property. Non-party Mortgage Electronic Registration Systems, Inc. (MERS) was named as the mortgagee on the mortgage. On September 21, 2007, GMAC became the servicer of the loan. On January 5, 2010, MERS assigned the mortgage to GMAC. And on January 15, 2010, the assignment was recorded with the local register of deeds.

Upon default of the mortgage loan obligations, GMAC commenced foreclosure proceedings on March 31, 2010, in accordance with the power of sale to which Awad expressly agreed in the mortgage. A sheriff's sale occurred on May 26, 2010. Non-party Federal National Mortgage Association (Fannie Mae) was the successful bidder at the sheriff's sale. Pursuant to the sheriff's deed, Awad's statutory right to redeem the property was six months, which expired on November 26, 2010.

Awad failed to redeem the property before the expiration of the redemption period. Instead, she filed suit on November 8, 2010. Awad alleged the following counts against GMAC: Count I—Quiet Title (MCL 600.2932); Count II—Declaratory Judgment (MCR 2.705); Count III—Slander of Title (MCL 565.108); and Count IV—Temporary Restraining Order/Preliminary Injunction. Awad asserted that the foreclosure was improper and that the sheriff's deed was void because GMAC lacked standing to foreclose. As a result, Awad sought a declaration that the sheriff's sale be set aside, a declaration that the mortgage was void, the issuance of a temporary restraining order/preliminary injunction prohibiting eviction from the property, and damages.

GMAC then moved for summary disposition under MCR 2.118(C)(8). GMAC argued that Awad: (i) lacked standing to challenge the foreclosure sale because the statutory redemption period had expired and, therefore, she no longer had an interest in the property; (ii) was guilty of laches because she unreasonably delayed bringing this lawsuit; and (iii) failed to plead a prima facie case regarding irregularities in the foreclosure process to support a claim for quiet title.

After hearing oral arguments on the motion, the trial court granted GMAC's motion for summary disposition on the ground that Awad failed to redeem the property before expiration of the redemption period and, therefore, she lacked standing to challenge the foreclosure sale. Specifically, the trial court held that:

Plaintiff did not redeem the property She lost all right, title, and interest in the property when she failed to redeem within the period. Therefore, she lacks standing to bring a lawsuit regarding this property.

Awad now appeals.

II. MOTION FOR SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Awad argues that the trial court erred in granting GMAC summary disposition because she presented a prima facie case to quiet title and she had standing. According to Awad, she had an interest in the property, and there was a legal cause of action.

“A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of a claim and is tested on the pleadings alone.”¹ “All factual allegations must be taken as pleaded, as well as any reasonable inferences that may be drawn therefrom.”² A court

¹ *Singerman v Muni Serv Bureau, Inc*, 455 Mich 135, 139; 565 NW2d 383 (1997).

² *Id.*

should grant the motion only “when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery.”³ This Court reviews de novo a trial court’s grant of summary disposition.⁴ This Court also reviews de novo issues regarding whether a litigant has standing.⁵

B. STANDING

In July 2010, in order to “restore Michigan standing jurisprudence to be consistent with the doctrine’s long-standing, prudential roots,” the Michigan Supreme Court overruled the standing test that had been applied in Michigan since 2001.⁶ Specifically, the Court stated that:

[A] litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.^[7]

Here, Awad brought her action under MCL 600.2932, which provides the right of a party to bring an action to quiet title. Specifically, it provides:

(1) Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

However, following foreclosure, a different statutory scheme governs the rights and obligations of the subject parties.

Under MCL 600.3240, after a sheriff’s sale is completed, any lawfully entitled person under the mortgage may redeem the property by paying the requisite amount within the applicable prescribed time limit, which in this case was six months.⁸ If the mortgagor does not redeem the property within the requisite period, the purchaser of the sheriff’s deed is vested with

³ *Kuhn v Secretary of State*, 228 Mich App 319, 324; 579 NW2d 101 (1998).

⁴ *Spiek v Dep’t of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998).

⁵ *Manuel v Gill*, 481 Mich 637, 642; 753 NW2d 48 (2008).

⁶ *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349, 353; 792 NW2d 686 (2010).

⁷ *Id.*

⁸ MCL 600.3240(1) and (8).

“all the right, title, and interest” in the property.⁹ In other words, where a plaintiff does not avail herself of the right of redemption in the foreclosure proceedings before the expiration of such right, all of the plaintiff’s rights in and to the property are extinguished.¹⁰ “The law in Michigan does not allow an equitable extension of the period to redeem from a statutory foreclosure sale in connection with a mortgage foreclosed by advertisement and posting of notice in the absence of a clear showing of fraud, or irregularity.”¹¹

Here, the property was sold at a sheriff’s sale on May 26, 2010. Thus, Awad had until November 26, 2010 to redeem the property, which she failed to do. Instead, Awad chose to file suit against GMAC on November 8, 2010. Thus, the question is whether the filing of her suit tolled or avoided the redemption requirement.

In an unpublished opinion,¹² a panel of this Court, dealing with similar facts, decided that the filing of the cause of action did not toll or avoid the consequences of failure to follow the redemption procedures. In *Overton v Mortgage Electronic Registration Sys*,¹³ the plaintiff received notice that he had fallen into default on his mortgage on March 21, 2007. The property was then purchased at public auction on April 18, 2007, which set the redemption period expiration at October 18, 2007. The plaintiff filed suit against the defendants on September 21, 2007, challenging the foreclosure of his property. But “[a]t no point did [the] plaintiff attempt to redeem the property or challenge the foreclosure proceedings directly.”¹⁴ The defendants moved for summary disposition, arguing that the plaintiff had no standing because he lost any interest in the property when the redemption period expired. On appeal, the panel found the “[d]efendants’ arguments . . . legally and factually sound.”¹⁵ It explained as follows:

Plaintiff’s suit did not toll the redemption period. Plaintiff is simply trying to wage a collateral attack on the foreclosure of the property. Even if his assertions were true and the cases he cites indeed supported his arguments, plaintiff was required to raise the arguments when foreclosure proceedings began. Plaintiff made no attempt to stay or otherwise challenge the foreclosure and redemption sale. Although he filed his suit before the redemption period expired, that was insufficient to toll the redemption period. “The law in Michigan does not allow

⁹ MCL 600.3236; see *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942) (noting that the “[p]laintiffs . . . lost all their right, title, and interest in and to the property at the expiration of their right of redemption . . .”).

¹⁰ *Piotrowski*, 302 Mich at 187.

¹¹ *Schulthies v Barron*, 16 Mich App 246, 247-248; 167 NW2d 784 (1969).

¹² “Although unpublished opinions of this Court are not binding precedent they may, however, be considered instructive or persuasive.” *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010) (internal citations omitted); see MCR 7.215(C)(1).

¹³ *Overton v Mortgage Electronic Registration Sys*, unpublished opinion per curiam of the Court of Appeals, issued May 28, 2009 (Docket No. 284950).

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 2.

an equitable extension of the period to redeem from a statutory foreclosure sale in connection with a mortgage foreclosed by advertisement and posting of notice in the absence of a clear showing of fraud, or irregularity.” *Schulthies v Barron*, 16 Mich App 246, 247-248; 167 NW2d 784 (1969). Once the redemption period expired, all of plaintiff’s rights in and title to the property were extinguished. *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942); MCL 600.3236.^[16]

Another panel of this Court reached a similar result in *Mission of Love v Evangelist Hutchinson Ministries & George W Hutchinson*, where the plaintiff filed suit even before the foreclosure sale took place, yet the redemption period expired without plaintiff taking action to redeem the property.¹⁷ In that case, the plaintiff filed suit in September 2004, alleging that a warranty deed on the subject property was invalid. The property was then purchased at a foreclosure sale in March 2005. One day before the redemption period expired, the plaintiff filed a motion for contempt and clarification, arguing that the foreclosure sale violated the trial court’s permanent injunction that it issued in November 2004. The plaintiff requested the trial court to abate the redemption period or void the mortgage assignment and foreclosure sale. The trial court denied the motion and dissolved the injunction, stating that the injunction was entered to prohibit use or possession of the property, not to prohibit foreclosure. The defendants in *Mission of Love* then moved for summary disposition, arguing that they now had legal title to the property because the redemption period had expired, and the plaintiff no longer had standing to maintain its suit. The trial court agreed with the defendants and granted their motion.

On appeal, the panel of this Court, also agreed with the defendants, explaining as follows:

[D]efendants are correct that, after title vested . . . pursuant to the foreclosure, it was no longer necessary to resolve the subject matter of plaintiff’s lawsuit, i.e., the validity of the warranty deed, because plaintiff no longer had standing. In order to have standing, a party must have “a legal or equitable right, title or interest in the subject matter of the controversy.” After the redemption period expired, plaintiff no longer had any right or interest in the property, because the property had been validly purchased at a foreclosure sale. At that point, the trial court could not grant plaintiff the relief it sought (title to the property) if it were successful in its suit. Therefore, the trial court did not err in granting defendants’ motion for summary disposition and declining to decide the merits of plaintiff’s fraud claim.^[18]

We find the reasoning and decisions in *Overton* and *Mission of Love* persuasive. Although she filed suit before expiration of the redemption period, Awad made no attempt to stay or otherwise challenge the foreclosure and redemption sale. Upon the expiration of the

¹⁶ *Id.* (emphasis added).

¹⁷ *Mission of Love v Evangelist Hutchinson Ministries & George W Hutchinson*, unpublished per curiam opinion of the Court of Appeals, issued April 12, 2007 (Docket No. 266219).

¹⁸ *Id.* at 6 (internal citations omitted).

redemption period, all of Awad's rights in and title to the property were extinguished, and she no longer had a legal cause of action to establish standing.

The trial court properly dismissed Awad's complaint when Awad failed to redeem the property during the statutory six-month redemption period. Upon the expiration of the redemption period, Awad lost all right, title, and interest in the property and, therefore, lost her standing to sue.

Because our resolution of this issue is dispositive, we need not consider Awad's other arguments on appeal.

We affirm.

/s/ Kurtis T. Wilder

/s/ Peter D. O'Connell

/s/ William C. Whitbeck