

STATE OF MICHIGAN
COURT OF APPEALS

IN RE PETITION BY THE WAYNE COUNTY
TREASURER FOR FORECLOSURE OF
CERTAIN LANDS FOR UNPAID PROPERTY
TAXES.

WAYNE COUNTY TREASURER,

Petitioner-Appellee/Cross-
Appellant,

v

WESTHAVEN MANOR LIMITED DIVIDEND
HOUSING ASSOCIATION and MICHIGAN
STATE HOUSING DEVELOPMENT
AUTHORITY,

Respondents-Appellees,

and

WESTERN WAYNE REALTY, L.L.C., d/b/a
RE/MAX SYNERGY,

Intervening Party-Appellant/Cross-
Appellee.

FOR PUBLICATION
February 24, 2005
9:00 a.m.

No. 249807
Wayne Circuit Court
LC No. 01-120001-PZ

Official Reported Version

Before: Neff, P.J., and Smolenski and Zahra, JJ.

SMOLENSKI, J.

This is a foreclosure case brought pursuant to the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, as amended by 1999 PA 123.¹ Western Wayne Realty, L.L.C., doing

¹ For purposes of this opinion, citations to the GPTA and to individual statutory sections contained within the GPTA refer to the statutes in effect at the time the petition was filed, June
(continued...)

business as RE/MAX Synergy (RE/MAX), appeals by delayed leave granted, MCR 7.203(B), and petitioner, the Wayne County Treasurer, cross-appeals as of right, MCR 7.207(A)(1), the circuit court's postjudgment order vacating its previous order of foreclosure on a parcel of real property² (the Westhaven parcel) and ordering that the certificate of forfeiture in favor of petitioner, as well as the subsequent quitclaim deed purporting to transfer the Westhaven parcel from petitioner to RE/MAX, be declared null and void.

The significant issue in this case concerns the circuit court's subject-matter jurisdiction over its previous judgment ordering foreclosure of the Westhaven parcel under the GPTA. The purpose of the GPTA and the statutory language of its notice provision, MCL 211.78i(2) require that if an interested party's minimum due process rights are violated, any proceeding that affected the interested party's property rights is invalidated and a cause of action may be maintained against the foreclosing governmental unit by the interested party for failure to provide the requisite statutory notice. In such a situation, we hold that the circuit court retains its subject-matter jurisdiction over its previously issued foreclosure judgment. However, because the circuit court applied the wrong standard in determining whether minimum due process was afforded, we reverse the court's postjudgment order dated June 20, 2003, and remand for a determination under the proper analysis.

I. Basic Facts and Proceedings

On June 14, 2001, petitioner filed this foreclosure action in the Wayne Circuit Court concerning several parcels of property in Wayne County, including the Westhaven parcel. The Westhaven parcel housed a government-assisted apartment complex for senior citizens. Westhaven Manor Limited Dividend Housing Association (Westhaven Manor) owned the Westhaven parcel, subject to a mortgage held by the Michigan State Housing Development Authority (MSHDA). Petitioner sought to foreclose on the Westhaven parcel for failure to pay special assessments for drainage improvements of \$34.22 for 1997 and \$61.15 for 1999, plus interest and fees, totaling approximately \$356 when the petition was filed.

On March 4, 2002, the circuit court entered a judgment of foreclosure relating to several parcels of property in Wayne County, including the Westhaven parcel. The judgment vested petitioner with "good and marketable fee simple title to the property, if all the forfeited delinquent taxes, interest, penalties and fees are not paid within 21 days after entry of the judgment." The statutory redemption period expired and, later in 2002, petitioner sold to RE/MAX the Westhaven parcel at a public auction.

On March 3, 2003, Westhaven Manor and MSHDA (respondents) initiated postjudgment proceedings before the circuit court to vacate the March 4, 2002, judgment. Respondents claimed that they did not have notice of the foreclosure action. Their motion raised issues

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14, 2001. Notably, the GPTA provisions at issue were subsequently amended twice, but neither amendment was effective as of the date the petition was filed. See 2001 PA 101; 2003 PA 263.

² Tax parcel no. 056-035-06-0656-300.

concerning whether statutory notice errors occurred and whether their due process rights were violated. Respondents argued that a "proof of personal visit" that petitioner had filed with the circuit court in support of its request for foreclosure misrepresented that the Westhaven parcel was vacant, and that a notice of foreclosure had not been posted in a conspicuous place.

At a hearing in May 2003, the circuit court determined that respondents were entitled to relief from the March 4, 2002, judgment under MCR 2.612(C). The court granted respondents' respective motions on the basis of its determination that petitioner failed to adhere to the statutory procedures regarding personal visits and placement of the foreclosure notice on the property. The court also noted that, when it ordered foreclosure of the Westhaven parcel, it did not conduct an individual analysis with respect to the property and petitioner's compliance with the statutory notice procedures. Thus, the court concluded that petitioner's actions failed to comport with due process. On June 20, 2003, the circuit court entered its order vacating the March 4, 2002, judgment of foreclosure with regard to the Westhaven parcel. Westhaven Manor was ordered to pay the outstanding special assessments, including penalties and interest, within twenty-one days of the order. The circuit court further ordered that the certificate of forfeiture in favor of petitioner, as well as the subsequent quitclaim deed purporting to transfer the Westhaven parcel from petitioner to RE/MAX, be declared null and void.

II. Subject-Matter Jurisdiction

The principal issue on appeal is whether the circuit court had subject matter jurisdiction over its previous March 4, 2002, judgment of foreclosure on the Westhaven parcel that vested title in petitioner, allowing the court to modify the judgment pursuant to MCR 2.612(C) (relief from judgment or order).

A. Standard of Review

"Whether a court has subject-matter jurisdiction is a question of law subject to review de novo." *Davis v Dep't of Corrections*, 251 Mich App 372, 374; 651 NW2d 486 (2002). Also, the interpretation and application of a statute is a question of law reviewed de novo by an appellate court. *Parkwood Ltd Dividend Housing Ass'n v State Housing Dev Auth*, 468 Mich 763, 767; 664 NW2d 185 (2003).

B. Analysis

This case turns on our interpretation of the GPTA. The principles of statutory interpretation are well established. The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. And the statutory language is the best indicator of the Legislature's intent. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). Importantly, statutory language should be construed reasonably, keeping in mind the purpose of the act. *Draprop Corp v City of Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001). The rules of statutory interpretation apply equally to the interpretation of court rules. *In re KH*, 469 Mich 621, 628; 677 NW2d 800 (2004).

In general, subject-matter jurisdiction has been defined as a court's power to hear and determine a cause or matter. *Bowie v Arder*, 441 Mich 23, 36; 490 NW2d 568 (1992). The

circuit court has "original jurisdiction in all matters not prohibited by law" Const 1963, art 6, § 13. Further, MCL 600.605 provides:

Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.

Thus, circuit courts are presumed to have subject-matter jurisdiction unless jurisdiction is expressly prohibited or given to another court by constitution or statute. *Bowie, supra* at 38. Here, the essential question is whether the GPTA, as amended in 1999, divested the circuit court of jurisdiction to correct errors pertaining to tax foreclosure actions after a judgment of foreclosure was entered and the period for redemption expired.

MCL 211.78(2) states:

It is the intent of the legislature that the provisions of this act relating to the return, forfeiture, and foreclosure of property for delinquent taxes satisfy the minimum requirements of due process required under the constitution of this state and the constitution of the United States but that those provisions do not create new rights beyond those required under the state constitution of 1963 or the constitution of the United States. The failure of this state or a political subdivision of this state to follow a requirement of this act relating to the return, forfeiture, or foreclosure of property for delinquent taxes shall not be construed to create a claim or cause of action against this state or a political subdivision of this state *unless the minimum requirements of due process accorded under the state constitution of 1963 or the constitution of the United States are violated.* [Emphasis added.]

And the GPTA's applicable notice provision provides in pertinent part:

(2) The foreclosing governmental unit or its authorized representative shall determine the address reasonably calculated to apprise those owners of a property interest of the pendency of the show cause hearing under section 78j and the foreclosure hearing under section 78k and shall send notice of [these hearings] to those owners, to a person entitled to notice of the return of delinquent taxes under section 78a(4), and to a person to whom a tax deed for property returned for delinquent taxes was issued pursuant to section 72 as determined by the records of the state treasurer, by certified mail, return receipt requested, not less than 30 days before the show cause hearing. *The failure of the foreclosing governmental unit to comply with any provision of this section shall not invalidate any proceeding under this act if the owner of a property interest or a person to whom a tax deed was issued is accorded the minimum due process required under the state constitution of 1963 and the constitution of the United States.* [MCL 211.78i(2) (emphasis added).]

Clearly, the applicable provisions of the GPTA require that interested parties, at a minimum, be provided with due process.

The notice provisions contained in MCL 211.78i, and MCL 211.78j and 211.78k by reference, are designed to ensure that those with an interest in the subject property are aware of the foreclosure proceedings so that they may take advantage of their redemption rights. Indeed, this is the very purpose of due process in a tax foreclosure situation. The federal and state constitutions require that one be given notice and afforded an opportunity to be heard before being deprived of a property interest. *Dow v Michigan*, 396 Mich 192, 205-206; 240 NW2d 450 (1976); *Ross v Michigan*, 255 Mich App 51, 56; 662 NW2d 36 (2003). Thus, because of the constitutionally mandated due process protection, the GPTA further provides that any proceeding under the act conducted without due process is *invalid*. MCL 211.78i(2).

If the proceeding on which an order was based is subsequently determined to be invalid, as were the foreclosure proceedings in this case, then it follows that the order itself is invalid. MCL 211.78k(5)(f) requires that the circuit court include in the foreclosure judgment a finding that all interested parties were afforded due process.³ A subsequent determination to the contrary inherently voids that finding. And the circuit court stated that it did not make specific findings with regards to the Westhaven parcel as required in MCL 211.78k(5)(f). We believe that, in such a circumstance, the circuit court retains jurisdiction over the foreclosure matter and, under MCR 2.612(C), retains the ability to modify or vacate the judgment or order it issued pursuant to an invalid proceeding after finding that an interested party whose rights were adversely affected by the judgment order was not afforded minimum due process.

The minority would apparently reject such a conclusion given its reading of MCL 211.78k(6) and (7). MCL 211.78k(6), provides:

Fee simple title to property set forth in a petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after the entry of judgment shall vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property. *The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and shall not be stayed or held invalid except as provided in subsection (7).* [Emphasis added.]

MCL 211.78k(7) provides that a "person claiming to have a property interest under section 78i in property foreclosed under this section may appeal the circuit court's judgment foreclosing property to the court of appeals."

The minority would conclude that these provisions, when read together, mandate that only this Court may hold invalid the foreclosing governmental unit's absolute title to the

³ MCL 211.78k(5)(f) states that the circuit court's judgment shall specify, "A finding that those entitled to notice and an opportunity to be heard have been provided that notice and opportunity."

property. But MCL 211.78k(7) also states that the appeal is to be made within twenty-one days after the circuit court's judgment foreclosing property is entered. To do so, the interested person must have had knowledge of the judgment's entry. The provision does not speak to situations in which, as here, the interested party allegedly had no such knowledge and, therefore, could not possibly appeal the judgment within the specified time.

The problem created by such an interpretation cannot be dismissed by relying on a remedy provision contained within the GPTA. MCL 211.78l(1) states:

If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.

The section further provides that the Court of Claims has exclusive and original jurisdiction in claims for monetary damages. MCL 211.78l(2).

If the minority's interpretation were adopted, the owner of the extinguished property interest, regardless of the circumstances under which his interest was extinguished, would be limited to a cause of action in the Court of Claims for monetary damages for the notice deficiency. We simply cannot agree with such an interpretation that would deprive an interested party of its property interest without being afforded due process. Such a reading renders the statute unconstitutional. *Dow, supra; Ross, supra*. Statutes are presumed to be constitutional and should be construed in such a manner if at all possible. *Michigan United Conservation Clubs v Dep't of Treasury*, 239 Mich App 70, 76; 608 NW2d 141 (1999), *aff'd* 463 Mich 995 (2001).

III. RE/MAX's Remaining Appellate Arguments

Having resolved the parties' jurisdictional dispute, we turn to the other issues raised by RE/MAX on appeal.

A. Due Process and the Statutory Notice Requirements

Because we have determined that a circuit court retains jurisdiction if the owner of a property interest is deprived of due process, we next address RE/MAX's claim that the court erred in concluding that Westhaven Manor was not afforded due process. Respondents argue that the circuit court's decision was correct because it was clear that petitioner did not strictly comply with the statutory notice provisions. However, strict compliance is not necessary. The GPTA's notice provision specifically states that a failure to comply with any of the notice provisions in § 78i shall not invalidate any proceeding under the act as long as the owner of a property interest or the person to whom a tax deed was issued was afforded the minimum due process required under the Michigan Constitution and the United States Constitution. MCL

211.78i(2). Therefore, the question is whether the circuit court erred in finding that Westhaven Manor was denied due process.⁴

But the circuit court did not address whether Westhaven Manor was provided minimum due process. Instead, the court erroneously believed that strict compliance with the statutory provisions was necessary to satisfy due process. The cases cited by the court and respondents regarding the necessity of strict compliance involved prior versions of the GPTA, not the one at issue in this case. Thus, the court applied the wrong standard in determining whether Westhaven Manor's due process rights had been violated. Because of the intensely factual nature of this issue and the court's admission that it did not follow the procedure in MCL 211.78k(5)(f) with respect to the Westhaven parcel, we remand this case for the circuit court to determine the issue under the correct standard: whether respondents were afforded the minimum due process required by the Michigan Constitution and the United States Constitution. If the circuit court concludes that minimum due process was not afforded, then it is within its jurisdiction under MCR 2.612(C) to enter an order vacating the foreclosure judgment, voiding the sale of the property to intervening party RE/MAX, and permitting respondents an opportunity to redeem the Westhaven parcel.

To guide the court in its analysis, we first note that Michigan's Due Process Clause has not been construed more broadly than its federal counterpart. *People v Sierb*, 456 Mich 519, 523-524; 581 NW2d 219 (1998); *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 459; 688 NW2d 523 (2004). Accordingly, the court may find helpful the due process principles discussed in *Dusenbery v United States*, 534 US 161, 167-168; 122 S Ct 694; 151 L Ed 2d 597 (2002), *Smith v Cliffs on the Bay Condo Ass'n*, 463 Mich 420; 617 NW2d 536 (2000), and *Dow, supra*.

B. Law of the Case and Stare Decisis

RE/MAX also argues that the circuit court did not follow "law of the case" and stare decisis principles, which required that the court not vacate the judgment of foreclosure. We disagree and find that neither doctrine is applicable to this case.

Under the law of the case doctrine, if an appellate court resolves a legal issue and remands to the trial court for further proceedings, the legal question determined by the appellate court will not be decided differently in a subsequent appeal in the same case if the facts remain materially the same. *Grievance Administrator v Lopatin*, 462 Mich 235, 259; 612 NW2d 120 (2000). Stated another way, the doctrine is applied when the prior appeal involves the "same set of facts, the same parties, and the same question of law" *City of Manistee v Manistee Fire Fighters Ass'n*, 174 Mich App 118, 125; 435 NW2d 778 (1989). RE/MAX presents no appellate

⁴ Presumably, compliance with the statutory notice provisions of the GPTA would satisfy the constitutional minimum due process requirements. But the constitutionality of MCL 211.78i is not before us and, therefore, we proffer no opinion on the matter.

decision that involves the same set of facts and parties as the ones involved in the instant case. Thus, RE/MAX has failed to provide a basis for the doctrine's application.

We also reject RE/MAX's argument that the doctrine of stare decisis precluded the circuit court from considering respondents' postjudgment motions. "Stare decisis" means "[t]o abide by, or adhere to, decided cases." *Robinson v Detroit*, 462 Mich 439, 463 n 20; 613 NW2d 307 (2000), quoting Black's Law Dictionary (rev 4th ed). It is a principle of policy, rather than a mechanical formula for a court to adhere to its latest decision. *Robinson, supra* at 464, citing *Helvering v Hallock*, 309 US 106, 119; 60 S Ct 444; 84 L Ed 604 (1940). Because RE/MAX has not identified any appellate decision that was binding on the circuit court for purposes of deciding the postjudgment motions, the principle of stare decisis does not support RE/MAX's position that the court could not consider respondents' motions.⁵

C. Unjust Enrichment and Constructive Fraud

RE/MAX also argues that unjust enrichment and constructive fraud are not bases for voiding petitioner's absolute title. But these contentions are of little consequence because the circuit court did not make a specific finding of fraud and did not vacate petitioner's title on the basis of a determination that petitioner would be unjustly enriched. Rather, the circuit court relied on petitioner's failure to strictly follow the statutory notice procedures. RE/MAX's arguments are not properly before this Court because RE/MAX failed to present any discussion regarding the basis of the circuit court's decision as it relates to these issues and did not cite supporting authority with respect to the standards for constructive fraud. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

Nevertheless, we agree that respondents' constructive fraud argument presented below is ultimately a claim of lack of notice. Respondents attempt to frame the essential question on appeal as involving whether petitioner was responsible for fraud or misrepresentation with respect to the personal visit requirement in MCL 211.78i(3) to justify the circuit court's jurisdiction under MCR 2.612(C)(1)(c). Respondents' claim of misrepresentation or fraud merely reiterates how they were denied notice under the GPTA and does not constitute a separate claim or action outside the GPTA. We are not bound by a party's choice of labels. To do so would place form over substance. *Kostyu v Dep't of Treasury*, 170 Mich App 123, 130; 427 NW2d 566 (1988); see also *Parkwood Ltd Dividend Housing Ass'n, supra* at 770 (nature of claim, rather than a plaintiff's characterization of the request for relief, controls whether Court of Claims has jurisdiction); *Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826 (1992) ("question of jurisdiction does not depend on the truth or falsity of the charge, but upon its nature").

⁵ See MCR 7.215(C)(2) ("published opinion of the Court of Appeals has precedential effect under the rule of stare decisis"); *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 23; 678 NW2d 619 (2004) (published opinion of this Court issued after November 1, 1990, is binding on subsequent panels of this Court and lower tribunals, but not our Supreme Court).

Lastly, RE/MAX asserts that the right of redemption is not punitive in nature. But RE/MAX does not claim, nor does the lower court record indicate, that its argument is relevant to the circuit court's decision to vacate the March 4, 2002, judgment. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims" *Peterson Novelties, supra* at 14. Accordingly, we decline to address the merits of this issue.

IV. Conclusion

In this case, the redemption amount for the unpaid special assessments in 1997 (\$34.22) and 1999 (\$61.15) totaled \$404.73 when the property was foreclosed, which included all penalties and interest. After questionable adherence to the notice procedures in MCL 211.78i, petitioner was allowed to foreclose on the multimillion dollar property and sell it at a public auction for \$19,000 to intervening plaintiff RE/MAX, which subsequently took steps to evict the residents of Westhaven Manor, a government-assisted senior citizens apartment complex that was located on the property. On the basis of our reading of the applicable provisions of the GPTA, we hold that, on a postjudgment motion in which the moving party alleges and proves a deprivation of its due process rights rendering a timely appeal to this Court impossible, the circuit court retains jurisdiction under MCR 2.612(C) to modify or vacate the foreclosure judgment it entered on the basis of an invalid proceeding. Accordingly, we hold that the circuit court retained subject-matter jurisdiction to hold invalid RE/MAX's title to the Westhaven parcel. But we reverse the circuit court's June 20, 2003, order and remand the case in order for the circuit court to determine if respondents' minimum due process rights were violated.

Reversed and remanded. We do not retain jurisdiction.

Neff, P.J., concurred.

/s/ Michael R. Smolenski
/s/ Janet T. Neff