STATE OF MICHIGAN

COURT OF APPEALS

MOM'S RETIREMENT, INC.,

Plaintiff-Appellee,

v

SHIRLEY A. CAMILL, TRUSTEE OF THE SHIRLEY A. CAMILL REVOCABLE LIVING TRUST DATED JULY 1, 1992,

Defendant-Appellant.

UNPUBLISHED
July 2, 1999

No. 213221
Oakland Circuit Court
LC No. 97-548543 CH

Before: Doctoroff, P.J., and Markman and J. B. Sullivan*, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment quieting title in favor of plaintiff. We affirm. On July 28, 1997, plaintiff filed a complaint requesting declaratory relief/quiet title. Plaintiff alleged that it was the grantee of property located in Oakland County as obtained through a tax deed. Defendant was the grantee to the property pursuant to a quitclaim deed for the property. Taxes levied against the property were not paid for the year 1992. Therefore, the property was sold for delinquent taxes in accordance with the General Property Tax Act, MCL 211.72; MSA 7.117. Plaintiff alleged that notice of the sale and redemption rights were personally served on all interested parties, except defendant, despite numerous attempts to personally serve her. However, defendant had been served with notice by publication and by certified mail. After the redemption period expired, plaintiff sought absolute title to the property subject only to easements and tax liens.

Defendant contends that the trial court erred in denying her motion for summary disposition and granting plaintiff's motion for summary disposition because plaintiff failed to comply with the notice provisions for redemption of property pursuant to a tax sale. We disagree. "A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions, and other documentary evidence available to it and grant summary disposition if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. This Court reviews summary disposition decisions de novo to determine

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

whether the prevailing party was entitled to judgment as a matter of law." *Hughes v PMG Building, Inc*, 227 Mich App 1, 4; 574 NW2d 691 (1997).

Real property for which taxes remain unpaid is returned as delinquent for taxes to the county treasurer. The real property is subject to sale by the county treasurer for the collection and enforcement of the tax. MCL 211.60; MSA 7.104. A private purchaser of land pursuant to a tax sale must perfect title by giving notice of reconveyance. MCL 211.140; MSA 7.198. The latter provision sets forth the manner and language of notice. MCL 211.140(2); MSA 7.198(2) sets forth the form of the notice which is to be served upon a property owner. Review of the documentary evidence submitted by plaintiff reveals that the deputy sheriff was unable to serve defendant personally, and he opined that defendant was avoiding service. If the sheriff is unable to ascertain the whereabouts of the person to be served, service could alternatively be satisfied by publication. MCL 211.140(5); MSA 7.198(5). Review of the affidavit of publication here reveals that it, in fact, satisfies MCL 211.140(2); MSA 7.198(2). MCL 211.140(2); MSA 7.198(2) requires only that the notice be in substantially the same form as set forth in the statute. Plaintiff's affidavit of publication deviates only slightly as it interchanged the term "property" with "land." The notice must be published for four successive weeks in a newspaper published in the county in which the property is located. Plaintiff submitted the notice to The Legal Advertiser for publication which commenced on December 12, 1996, and ended four weeks later on January 2, 1997. Review of MCL 211.140(2); MSA 7.198(2) reveals that there is no requirement that the notice to be served on the property owner contain any specific language addressing whether the land contains an improved residential parcel.

MCL 211.140a; MSA 7.198(1) sets forth the form of the *proof of notice* which must be filed with the county treasurer and provides:

> (1) As used in this section, "improved residential parcel" means a parcel of land which contains a dwelling suitable for occupancy.
>
> (2) When a proof of notice on an improved residential parcel is filed with the county treasurer, the proof shall contain the statement: "this parcel is an improved residential parcel." The proof shall show the street address, if known. An additional copy of the notice on this class of property shall be provided with the filing of the proof of notice. Failure by the holder of a tax deed to include this statement and to provide a copy shall invalidate the filing and render it null and void. The county treasurer shall forward the copy of the proof of notice to the county department of social services, which shall make an attempt to contact the owner and occupant of the property to determine if the owner or occupant is in need of assistance or protection of the court. The county department shall file with the court a written report of its findings within the 6-month redemption period provided in section 142. Failure to contact the owner or occupant or to file a written report shall not invalidate the proceedings.

Review of the proof of notice here reveals that it contains the statement that the disputed property is an "improved residential parcel." Additionally, the proof of notice provides that the address of the

disputed property is 22380 Prosper, Southfield, Michigan. Therefore, the proof of notice complies with the statutory requirements set forth in MCL 211.140a; MSA 7.198(1).

Defendant asserts that the statute governing tax redemption read as a whole requires that both the notice to the property owner and the proof of notice contain the language "improved residential parcel." "In construing a statute, a court should presume that every word has some meaning and should avoid any construction that would render any part of a statute surplusage or nugatory. As far as possible, effect should be given to every phrase, clause, and word." *Beaudrie v Anchor Packing Co*, 231 Mich App 242, 251; 586 NW2d 96 (1998). "Courts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there." *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993). Defendant's contention that both the notice to the property owner and the proof of notice must contain the "improved residential parcel" language is without merit. MCL 211.140(2); MSA 7.198(2) expressly sets forth the language which must be contained in the notice to the property owner. There is no provision in this notice that the property owner be advised that "improved residential parcel" is involved in a tax sale. It appears that such an advisory to the property owner would be unnecessary because the property owner would presumably be aware of any residential properties on his own land.

However, the "improved residential parcel" language contained in MCL 211.140a; MSA 7.198(1) serves a purpose. A copy of the proof of notice on a property classified as improved residential parcel is forwarded to the county department of social services. Upon receipt of the proof of notice, the county department of social services is to make an attempt to contact the property owner or occupant to determine if there is any need for assistance or court protection. MCL 211.140a; MSA 7.198(1). It appears that the omission of the language "improved residential parcel" from the notice to the property owner was an intentional omission, and there is no basis for requiring that a property owner receive notice that his own property contains an improved residential parcel. *Farrington, supra,* at 210. Plaintiff's published notice and proof of notice complied with MCL 211.140; MSA 7.198 and MCL 211.140a; MSA 7.198(1). Therefore, the trial court did not err in granting plaintiff's motion for summary disposition and awarding quiet title to plaintiff because there was strict compliance with the provisions governing notice.[1] While not binding precedent, *Auto-Owners Ins Co v Stenberg Bros, Inc*, 227 Mich App 45, 49 n 1; 575 NW2d 79 (1997), this Court's opinion also conforms to an opinion of the Attorney General. OAG, 1995, No. 6870, at 3 (September 14, 1995).[2]

Defendant also contends that the trial court erred in holding that she had evaded personal service. In order to serve a property owner by publication, the deputy sheriff is only required to demonstrate careful inquiry into the whereabouts of the property owner. MCL 211.140(5); MSA 7.198(5). Review of the affidavits of non-service filed by the deputy sheriff reveal that he attempted on several occasions to serve plaintiff.[3] The documentary evidence submitted by defendant did not refute the deputy sheriff's allegations of attempted service. *Quinto v Cross & Peters Co*, 451 Mich 358, 372; 547 NW2d 314 (1996). Accordingly, the trial court did not err in granting plaintiff's motion for summary disposition and denying defendant's motion for summary

disposition. Our holding, that plaintiff complied with the notice provisions of the tax act, renders moot defendant's remaining issues on appeal.[4]

Affirmed.

/s/ Martin D. Doctoroff
/s/ Stephen J. Markman
/s/ Joseph B. Sullivan

[1] Defendant also takes issue with alleged failures by plaintiff to include the address in the notice of publication and to sign the publication notice. Again, MCL 211.140(2); MSA 7.198(2) sets forth the notice language. There is no requirement contained within this notice provision that the notice contain the address of the disputed property, but rather, requires that a description of the property be contained in the notice. MCL 211.140a; MSA 7.198(1) requires that the *proof of notice* contain the address, if known. Additionally, the Supreme Court has held that a typewritten signature on a notice to redeem from a tax sale is sufficient. *Bonninghausen v Roma*, 291 Mich 603, 620-21; 289 NW 921 (1939). Because there is no requirement that the notice of tax sale and redemption period addressed to the property owner contain the address and a typewritten signature is sufficient, the trial court did not err in granting plaintiff's motion for summary disposition.

[2] The opinion issued in conjunction with the instant case itself states:

> Neither section 140 nor section 140a of the General Property Tax Act impose a duty upon the sheriff serving the notice of the right to reconveyance to ascertain and certify that the land contains any dwelling suitable for residence. This obligation rests upon the tax title purchaser. Reading these sections together, the purchaser may discharge this obligation by including within *the copy of the notice of reconveyance filed with the county treasurer* to be forwarded to the county department of social services the statement "this parcel is an improved residential parcel" if the land contains a dwelling suitable for occupancy. *Smith v Grand Rapids City Comm*, 281 Mich 235, 241; 274 NW 776 (1937). Meaning is thereby given to both sections of the General Property Tax Act consistent with the manifest intent of the Legislature. *Melia v Employment Security Comm*, 346 Mich 544, 562; 78 NW2d 273 (1956).
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> It is my opinion, therefore, that the purchaser of a tax title to land sold for unpaid property taxes must include within the copy of the written notice of reconveyance filed with the county treasurer to be forwarded to the county department of social services a statement that the land is an "improved residential parcel" if the land contains a dwelling suitable for occupancy. [Emphasis added.]

Specifically, the opinion provides that the tax purchaser's notice obligation is satisfied by placing the language "improved residential parcel" in the notice of reconveyance filed with the county treasurer, also known as proof of notice. The opinion does not opine that the "improved residential parcel" language must be included with the notice submitted to the property owner.

[3] Specifically, the first affidavit of non-servce provided:

> Service was attempted on the following dates: Sat. 10/26/96 1:30 AM [SIC] 10/28/96 7:20 pm, 11/1/96 BUS OFFICE. 11/2/96 SAT 10:30 AM 11/4/96 9:30 PM ADDRESS 2411 ORTONVILLE IS FOR SALE BY RX/MAY. LEFT BUS. CARD WITH ATTEMPTS TO SERVE, (NO RETURN CALLS). AT PLACE OF BUSINESS BACK INVESTMENTS TALK TO SALES PERSON TINA (REFUSED LAST NAME); SAID MS CAMILL DOES WORK OUT OF OFFICE BUT DIDN'T KNOW WHEN SHE WOULD BE IN. REFUSED TO GIVE OFFICE PHONE NUMBER. LEFT BUSINESS CARD. (NO RETURN CALLS). HAVE HAD PROBLEMS SERVING MS CAMILL IN PASS [SIC]. LOCAL PHONE DIRECTORY LIST MS. CAMILL UNDER BACH INVESTMENT GROUP 1-810-674-3888. LEFT MESSAGES. (NO RETURN CALLS).

A second affidavit of non-service provided:

> I do certify and return that after diligent search and inquiry, I have been unable to serve the person to whom the Notice was addressed, SHIRLEY A CAMILL for the reason that MS CAMILL IS EVADING SERVICE AT HER HOME AND PLACE OF BUSNESS [SIC]. 11/23/96 PEOPLE INSIDE, CLOSED BLINDS COMPUTER ON INSIDE, YOUNG CHILD RUNNING INSIDE HOUSE, CAR IN GARAGE Service was attempted on the following dates: 10/26/96 1:30 PM 10/28/96 7:30 PM 11/1/96 BUS. OFFICE 10:30 AM 11/2/96 SAT. 10:30 AM 11/4/96 9:30 PM SAT 11/23/96 7:30 PM - ALL OCCASIONS LEFT BUS CARD WITH RETURN PHONE NUMBER.

[4] Because defendant has failed to demonstrate defective notice, the period of redemption has not tolled, as defendant contends. Accordingly, the trial court did not err in granting plaintiff's motion for summary disposition.