

STATE OF MICHIGAN
COURT OF APPEALS

ALDEN STATE BANK,

Plaintiff-Counter
Defendant-Appellant,

v

GLENN A. LOY,

Defendant-Counter
Plaintiff-Appellee.

UNPUBLISHED

November 30, 1999

No. 215273

Antrim Circuit Court

LC No. 97-007294 CZ

Before: Jansen, P.J., and Hoekstra and J. R. Cooper*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment for defendant entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff held mortgages on property that defendant claimed by virtue of three tax deeds issued in May 1995. Plaintiff brought this action seeking to establish rights to redemption for the properties. The determinative issue at trial was whether defendant had properly served plaintiff with notice of his claim, as required by MCL 211.140; MSA 7.198.

At trial, the sheriff's deputy who served the notice testified that he did not recall the details of the two particular instances of service involved. The return of service signed by the deputy only identified the recipient as the Alden State Bank. The deputy was a thirty-year veteran, who had previously served documents on various employees, as directed by the bank. He was told to serve Kathy Anderson with service for this type of action. Anderson testified that she did not recall being served with the notice of claim involving these properties.

In a decision issued from the bench, the trial court found plaintiff failed to present clear and convincing proof to defeat the deputy's testimony. The court was firmly convinced that the deputy

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

served the papers at the bank, and that the lack of specific testimony regarding the actual service was insufficient to defeat the return of service.

MCL 211.140; MSA 7.198 provides that notice of a claim of interest under a tax sale must be given to mortgagees and holders of liens six months before any process for possession is issued. Subsection (7) states in part:

Service on a corporation may be made on the president, secretary, treasurer, or resident agent of the corporation, or by leaving the notice at the principal or registered office of the corporation with a person in charge of the office.

Subsection (8) provides:

Service as prescribed in this section may be made by a sheriff, undersheriff, or deputy sheriff. The sheriff shall, in the return of service, state the time when the notice was delivered to the sheriff for service, and the service shall be prima facie evidence of the facts stated in the return.

Failure to serve proper notice tolls the running of the six-month redemption period, and would allow plaintiff to redeem its interest in the property. *Halabu v Behnke*, 213 Mich App 598, 602; 541 NW2d 285 (1995). Strict compliance with the provisions of the tax sale redemption statutes is required. *Id.* at 606; *Richard v Ryno*, 158 Mich App 513; 405 NW2d 184 (1987).

Plaintiff disputes the trial court's factual finding that service was performed. A trial court's findings of fact will not be set aside unless they are clearly erroneous. MCR 2.613(C). A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Davidson v Bugbee*, 227 Mich App 264, 268; 575 NW2d 574 (1997).

There is no basis for reversing the decision of the trial court. The return of service is prima facie evidence under the statute that the service was performed. Although the return did not specify who received the service, that is not required by the statute. The court was convinced that the deputy had delivered the notices to the bank. The lack of recall of the details of the service did not defeat the efficacy of the return of service. Plaintiff failed to present evidence that would show that the decision of the trial court was clearly erroneous.

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper