STATE OF MICHIGAN

COURT OF APPEALS

SWARTZ & WRIGHT,

Plaintiff-Appellee,

v

GEORGE W. HALL and ELLEN J. HALL,

Defendants-Appellants,

and

DENNIS V. SMITH,

Defendant.

UNPUBLISHED
February 4, 2000

No. 213850
Lake Circuit Court
LC No. 97-004387-CH

Before: Murphy, P.J., and Hood and Neff, JJ.

PER CURIAM.

Defendants George and Ellen Hall appeal as of right from a judgment quieting title to real estate in plaintiff. We affirm.

I

In May 1995, plaintiff successfully bid for unpaid 1992 taxes[1] on defendants' land in Elk Township, Lake County. In December 1995, the county treasurer sent a Final Notice of Redemption of 1992 Delinquent Taxes with the instruction that defendants had until May 6, 1996, to pay the taxes due and redeem their property. Defendants did not pay.

In June 1996, a tax deed was issued to plaintiff, which then caused the Notice by Persons Claiming Title Under Tax Deed ("the notice") to be served on all interested parties. The Return of Service is dated October 24,,1996. Defendants had six months from the date of the Return of Service of the notice - until April 24, 1997 - to redeem. Defendants attempted to redeem by tendering payment by check dated and mailed April 30, 1997. Their check was returned with a letter informing them that the redemption period under MCL 211.140; MSA 7.198 had expired.

Plaintiff sought to quiet title to the land based on its tax deed and compliance with statutory provisions for perfecting a tax deed. Defendants answered in propria persona but were represented by counsel at trial. After a nonjury trial and post-trial filings by both parties, the trial court granted plaintiff a declaration of quiet title, finding that plaintiff had complied with the statutory requirements for perfection of a tax deed.

II

Defendants argue that the trial court erred by quieting title in plaintiff because plaintiff failed to meet its burden of proving its strict compliance with the requirements of MCL 211.140 *et seq.*; MSA 7.198 *et seq*. On appeal defendants contend that plaintiff's proofs were deficient on seven distinct grounds. Plaintiff responds that its tax deed is prima facie evidence of its valid title, and defendants failed to meet their burden of presenting some evidence to rebut the presumption except with regard to plaintiff's alleged failure to serve them with the notice. We agree with plaintiff.

A

A quiet title action is equitable in nature, and is reviewed by this Court de novo. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). However, a trial court's findings of fact in a quiet title action are reviewed for clear error. *City of Grand Rapids v Green*, 187 Mich App 131, 135-136; 466 NW2d 388 (1991). This Court finds clear error if, after reviewing the entire record, it has a definite and firm conviction that the trial court made a mistake. *Beason v Beason*, 435 Mich 791, 803; 460 NW2d 207 (1990).

The trial court found as fact that defendants received personal service of the notice based on the credibility of the deputy sheriff (Myers) who testified that he served the notice on defendants as his return of service indicated. Although defendants denied at trial that they were served with the notice, in light of the evidence before it and the specific finding on credibility, the court's finding was not clearly erroneous and we will not disturb it.

B

Although plaintiff bore the burden of proving its right to equitable relief, defendants bore an initial burden to present some evidence to rebut the statutory presumption created by MCL 211.142a; MSA 7.201. The statute states:

> If a grantee, mortgagee, or person in possession fails to redeem the land within the 6 months, as prescribed in sections 140, 141, and 142, within 30 days after the expiration of the 6-month redemption period, the county treasurer shall cause to be recorded in the office of the register of deeds for the county in which the land is situated, in a record to be provided for that purpose, a copy of the notice and proof of service prescribed by section 140, duly certified by the county treasurer in whose office the notice and proof of service is filed. This record shall be prima facie evidence in all

courts and tribunals that the purchaser is the owner of the land under the purchase. [MCL 211.142a(1); MSA 7.201(1).]

Statutory language making proof of one fact prima facie evidence of another is like a statutory rebuttable presumption. *American Casualty Co v Costello*, 174 Mich App 1, 7; 435 NW2d 760 (1989). Prima facie evidence, if not rebutted, is sufficient by itself to establish the truth of a legal conclusion asserted by a party. *Id.* The Michigan Rules of Evidence provide that "a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast." MRE 301. *See also Nelson Drainage Dist v Filippis*, 174 Mich App 400, 408; 436 NW2d 682 (1989).

Because plaintiff filed the return of service with the Lake County Treasurer's Office on October 24, 1996, the six-month redemption period ended on April 24, 1997. Defendants tendered payment of the delinquent 1992 taxes, at the earliest, on April 30, 1997, and so failed to redeem the property within the redemption period.

Defendants contend that because plaintiff obtained a certified copy of the return of service from the treasurer's office on April 24, plaintiff failed to comply with the statute's requirements. However, plaintiff did not file the copy with the register of deeds until after defendants attempted to tender their payment following the end of the redemption period. The fact that a copy is certified and issued by the treasurer does not, standing on its own, make the copy prima facie evidence. It must also be recorded with the register of deeds. Under the statute, the basic fact that causes a certified copy to be prima facie evidence is the failure of the taxpayer to redeem the land within the six month period, plus the issuance of a certified copy that is then promptly filed with the register of deeds.

In the trial court, plaintiff proved that it served defendants, that it filed a certified copy with the register of deeds, and that defendants tendered after the end of the six month redemption period. Thus, plaintiff is entitled to the presumption contained in MCL 211.142a(1); MSA 7.201(1).

C

That being the case, defendants had to affirmatively show how plaintiff had failed to perfect its title. It was not enough for defendants to aver generally that plaintiff failed to meet the statutory requirements. Other than the testimony denying service of the notice, defendants did not produce anything at trial which contested other matters regarding perfection. Only in its post-trial filings were other matters raised.

Once defendants produced some evidence of a particular flaw in the perfection, i.e., the testimony regarding service, plaintiff had the burden to show by a preponderance that it had complied with the particular provision placed in issue. As noted, the testimony of the deputy sheriff satisfied plaintiff's burden in that regard. However, plaintiff did not immediately have to prove that it complied with *every* applicable statutory provision. Such a burden would negate the legislative choice in MCL

211.142a; MSA 7.201 that at some point the law ceases to favor redemption by the taxpayer, and prefers to protect the right of the purchaser of the title, so long as he acts promptly to finalize his title by recording with the register of deeds. This shift occurs when the taxpayer fails to redeem at the end of this final six month period unless he can show that the tax sale purchaser failed to comply with the requirements for perfection.

In light of this conclusion, we decline to reach defendants' other claims of error in plaintiff's perfection that were not raised early enough in the process to permit plaintiff to shoulder its burden with regard to them.

III

Defendants also claim that the trial court erred when it admitted two computer generated cover sheets for service of process in civil actions, called civil writ file inquiries, as exceptions to the hearsay rule, MRE 802, and under MRE 803(15), the exception for documents affecting an interest in property. Defendants objected to the admission of these documents under this exception in the trial court.

While admission of the documents under the exceptions to the hearsay rule was error, it was harmless. The relevance of these documents was to support plaintiff's assertion that defendants received service of the notice. Defendants' receipt of service was adequately and much more effectively supported by Deputy Myers' testimony concerning his own memories of the service. The court expressly relied on the testimony for the basis of its opinion. Thus, the admission of the documents was harmless.

IV

Defendants argue that the court impermissibly traveled outside the record, and used incompetent and improper information in deciding the case. In particular, defendants argue that the court accepted plaintiff's trial book, although it contained unmarked exhibits.

This Court reviews a trial court's evidentiary rulings for abuse of discretion. *Allen*, *supra* at 401. A trial judge sitting as the trier of fact is presumed to possess an understanding of the law that allows him to understand the difference between admissible and inadmissible evidence or statements of counsel. *In re Forfeiture of $19,250*, 209 Mich App 20, 31; 530 NW2d 759 (1995). To be subject to judicial notice, a fact must be one not subject to reasonable dispute because it is either "(1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." MRE 201(b).

During trial, the parties submitted, and the court expressly and individually admitted other copies of most of the items in plaintiff's trial book as either plaintiff's or defendants' exhibits. At the close of trial, the court retained several items remaining in the trial book that had not been so admitted. The court determined that all the items were a matter of public record. The court did not abuse its discretion in so ruling.

After trial, defendants presented that court with numerous new allegations of plaintiff's failure to comply with the statutes in their supplemental trial brief. These matters were not properly before the court. If the court went outside the record to try to accommodate these new allegations, then defendants caused any arguable error committed by the court. Reversible error cannot be error to which the aggrieved party contributed by plan or negligence. *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997).

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Janet T. Neff

[1] Defendants also failed to pay taxes for the years after 1992 and plaintiff paid those taxes as well.