

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH ALLEN,

Plaintiff-Appellee,

v

STANLEY A. KACZMAREK,

Defendant-Appellant.

UNPUBLISHED

December 15, 2000

No. 217138

Macomb Circuit Court

LC No. 97-001087-CH

Before: Saad, P.J., and White, and Hoeksta, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's opinion and order quieting title in favor of plaintiff. Defendant owned a vacant parcel of property for many years, but the property was sold a tax sale in 1993, to satisfy delinquent 1990 taxes. Plaintiff bought the property from the state and brought an action to quiet title. Defendant argued that, because he had not received notice of his redemption right, the redemption period had not expired and he was still able to redeem the property by paying the delinquent taxes. We affirm.

Defendant initially argues that the trial court erred by finding that defendant's wife was his agent for purposes of receiving notice.¹ However, the trial court did not base its ruling on a conclusion that defendant's wife was his agent for receiving notice, but simply observed that defendant was unable to receive mail directly and his wife was authorized to receive mail for him. The trial court's legal conclusion was that the certified mailing of notice to defendant's address constituted adequate notice. Thus, defendant's agency argument is misplaced.

Defendant asserts that the certified mail to his address was not adequate notice, because he did not sign the return receipt and he did not receive actual notice. We disagree. A property owner may redeem property by paying the delinquent taxes at any time before the first Tuesday in November after title vests in the state. MCL 211.131c(1); MSA 7.190(1)(1). This redemption period is further extended until all owners of the property have been notified of a hearing to allow the owners to contest the tax sale. MCL 211.131e(1) and (2); MSA 7.190(3)(1) and (2).

¹ Separate redemption notices were sent by certified mail to defendant and his wife at their residential address. Defendant's wife signed both return receipts.

The redemption period expires thirty days after the hearing. MCL 211.131e(3); MSA 7.190(3)(3). In this case, defendant's redemption right expired on November 4, 1996, unless he did not receive adequate notice of the hearing.

In *Dow v Michigan*, 396 Mich 192, 211; 240 NW2d 450 (1976), our Supreme Court addressed the notice that must be given to property owners before extinguishing their redemption right. Rejecting the adequacy of service by publication, the Court explained:

Personal service is not required. Notice by mail is adequate. Mailed notice must be directed to an address reasonably calculated to reach the person entitled to notice. Mailing should be by registered or certified mail, return receipt requested, both because of the greater care in delivery and because of the record of mailing and receipt or non-receipt provided. Such would be the efforts one desirous of actually informing another might reasonably employ. If the state exerts reasonable efforts, then failure to effectuate actual notice would not preclude foreclosure of the statutory lien and indefeasible vesting of title on expiration of the redemption period.

In this case, defendant was sent, by certified mail, notice of his redemption right and of the hearing to contest the tax sale. The certified mail was addressed to defendant at his residential address, and defendant's wife signed to acknowledge receipt of the notice. This constituted mailing reasonably calculated to reach defendant under *Dow*. Further, the failure to effectuate actual notice does not preclude vesting of title in plaintiff, because the Department of Treasury exerted reasonable efforts to notify defendant of the hearing and his redemption right.

This conclusion is supported by the Supreme Court's recent decision in *Smith v Cliffs on the Bay Condominium Ass'n*, 463 Mich 420; 617 NW2d 536 (2000). In *Smith*, notice of the hearing and redemption right under MCL 211.131e; MSA 7.190(3) was sent to the landowner's last known corporate address by certified mail, but was returned as undeliverable. The landowner argued that the Department of Treasury should have attempted to ascertain its current address once the Department became aware that the notice was not delivered. The Court of Appeals agreed. Supreme Court rejected this argument and held that compliance with the notice procedures set forth in the General Property Tax Act, MCL 211.1 *et seq.*; MSA 7.1 *et seq.*, satisfied due process. *Id.* at 428-429. The Court noted that the statute generally provides for mailed notice to the owner at the owner's last known address. *Id.* at 429. See, e.g., MCL 211.61a(2); MSA 7.106(2) ("The county treasurer shall mail the notice by first-class mail, address correction requested, to each person, directed to his or her last known post office address with postage fully prepaid."). The Court held that even though one of the mailings was returned as undeliverable, the state did not have an obligation to investigate the owner's new address. *Id.*

Likewise, in the instant case, notice was sent by certified mail to the owner's last known address. In *Smith*, the notice was returned as undeliverable, and the Court held that adequate notice of the redemption right was given. In the instant case, the notice was received at the appropriate address, as evidenced by defendant's wife's signature on the return receipt. Under *Smith*, if the return receipt indicated that the notice of hearing was not received, defendant would nonetheless be deemed to have received adequate notice. Thus, where the receipt indicated that the notice of hearing was received at defendant's address, we must conclude that defendant

received adequate notice. The fact that defendant did not sign the receipt did not impose a duty on the state to attempt again to effectuate notice.

Thus, although plaintiff did not show that defendant received actual notice of his redemption right, plaintiff did show that defendant received adequate notice. Defendant was sent notice by certified mail to his residential address. This constituted notice reasonably calculated to effect actual notice under *Dow* and *Smith* and the statute. Because defendant received adequate notice of his redemption right, the redemption period expired on November 4, 1996, and the trial court did not err in quieting title in favor of plaintiff.

Affirmed.

/s/ Henry William Saad

/s/ Helene N. White

/s/ Joel P. Hoekstra