

STATE OF MICHIGAN
COURT OF APPEALS

NAUTICAL MILE INVESTMENTS,

Plaintiff-Appellee,

v

EDWARD A. MICHAEL and ANDREA G.
MICHAEL,

Defendants,

and

TWIGA LTD PARTNERSHIP

Defendant-Appellant.

UNPUBLISHED

April 6, 2001

No. 215228

Oakland Circuit Court

LC No. 97-002402-CH

Before: O’Connell, P.J., and White and Saad, JJ.

PER CURIAM.

Defendant Twiga Limited Partnership (Twiga) appeals as of right the trial court’s order granting summary disposition pursuant to MCR 2.116(C)(9) and (C)(10) in favor of plaintiff Nautical Mile Investments, and we affirm.

I. Facts and Proceedings

Nautical Mile Investments initiated this action to quiet title to a 5.3 acre parcel of vacant property in Brandon Township, Oakland County. The Oakland County Register of Deeds lists Edward and Andrea Michael as the last grantees of the property by warranty deed in 1984. The Michaels failed to pay property taxes on the land since 1987 or earlier, and both Twiga and Nautical Mile Investments claim ownership of the property through their purchase of certain tax deeds.

A tax deed for the property was issued to Tax Sale 88 Limited Partnership at a 1988 tax sale for the tax year 1985. Thereafter, Twiga claims it acquired an interest in the property on June 16, 1989, when Tax Sale 88 assigned its tax deed to Twiga. On August 18, 1989, Tax Sale 88 served a reconveyance notice on Edward Michael regarding its purchase of the 1985 taxes. Also in 1989, a tax deed to the property was issued to Douglas Marsh “or” Ronda Rider for the

tax year 1986. According to Twiga, Douglas Marsh assigned the tax deed to Twiga in March 1991. Thereafter, in tax sales in 1990 to 1993, Twiga acquired the tax deeds to the property for the tax years 1987 to 1990, all of which later expired. Neither Tax Sale 88 nor Twiga recorded any of the above tax deeds with the Oakland County Register of Deeds.

In 1994, Nautical Mile Investments purchased the taxes on the property for the tax year 1991.¹ The next year, Nautical Mile Consulting acquired the tax deed in a 1995 tax sale for the tax year 1992. In September 1996, Nautical Mile Consulting issued a reconveyance notice to Edward and Andrea Michaels for the 1992 property taxes and, unable to effect personal service, accomplished service by publication. On February 18, 1997, Nautical Mile Investments also served Twiga with notice of the reconveyance. On March 26, 1997, Nautical Mile Consulting filed a notice of reconveyance with the Oakland County Treasurer, which initiated the six month redemption period. Twiga did not redeem the 1992 taxes.

On December 16, 1997, Nautical Mile Consulting quit claimed its interest in the property for tax year 1992 to Nautical Mile Investments. On the same day, Nautical Mile Investments filed this action against Twiga and Edward and Andrea Michael to quiet title and obtain possession of the property.² On August 5, 1998, Nautical Mile Investments moved for summary disposition pursuant to MCR 2.116(C)(9) and (C)(10), claiming ownership of the property in fee simple pursuant to its perfected tax deed issued by the state for the 1992 taxes. Specifically, Nautical Mile Investments argued that Twiga had no interest in the property because its deeds expired by operation of law pursuant to MCL 211.73a; MSA 7.119, for Tax Sale 88's failure to make a bona fide attempt to serve Andrea Michael with notice. Further, Nautical Mile argued that, even though Twiga failed to perfect or record its tax deeds, plaintiff served Twiga with notices concerning the 1992 tax deed, but that Twiga ignored them and failed to pay property taxes for the years following 1991. Nautical Mile Investments also claimed interests in the property pursuant to 1991 and 1993 tax deeds.

Twiga responded to the motion arguing, *inter alia*, that Nautical Mile Consulting was not a legal entity that could hold title to property, that the State of Michigan did not issue a 1995 tax deed to any legal entity and that the 1995 tax deed was void and its notice "unavailing" because Nautical Mile Consulting was not authorized to do business in Oakland County. Twiga made additional arguments based on capacity, statute of frauds, estoppel, defective service, fraud, the five-year rule, and its "significant interest in property."

¹ On June 3, 1998, Nautical Mile Investments paid and redeemed the taxes for the year 1990 and forwarded a notice of redemption to Twiga on June 11, 1998.

² Nautical Mile Investments served defendant Andrea Michael by publication, but she failed to answer the complaint or otherwise plead. The trial court entered a default judgment against her on August 5, 1998. Defendant Edward Michael filed a one sentence answer to the complaint, failed to respond to plaintiff's requests to admit, and otherwise failed to plead, and the trial court granted summary disposition against him. Neither of these defendants have appealed the trial court's judgments.

Following oral argument on September 9, 1998, the trial court granted summary disposition to Nautical Mile. Specifically, the court ruled that the statute, MCL 211.140(1)(c); MSA 7.198(1)(c), clearly and unambiguously provides that the holder of a tax deed must serve notice on the last grantees and that Twiga failed to do so. The trial court also found that Twiga failed to register its interest and, consequently, had no right to notice regarding subsequent reconveyances. The court rejected Twiga's argument that the five-year rule did not apply for two reasons: Twiga could no longer assert an interest because Andrea Michael had not been served and also because Twiga failed to pay property taxes for the years 1991 through 1998. On October 1, 1998, the trial court entered an order quieting title in favor of Nautical Mile Investments.³

II. Analysis

This Court reviews a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). While Nautical Mile Investments filed its motion under both MCR 2.116(C)(9) and (C)(10), it appears that the trial court considered evidence outside the pleadings and found that Twiga's defenses had no factual support pursuant to (C)(10). *Weymers v Khera*, 454 Mich 639, 646-647; 563 NW2d 647 (1997). Summary disposition under this subsection is properly granted when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). Further, all issues raised by Twiga involve questions of statutory construction, which this Court also reviews de novo. *Ottaco, Inc v Kalport Development Co, Inc*, 239 Mich App 88, 92; 607 NW2d 403 (1999).⁴

Twiga argues that the trial court erred in granting summary disposition to Nautical Mile Investments because neither Nautical Mile Investments nor Nautical Mile Consulting acquired a legal interest in the property. Specifically, Twiga maintains that Nautical Mile Consulting's failure to file a certificate of assumed name in Oakland County, pursuant to MCL 445.1; MSA 19.821, prevented it from legally acquiring an interest in the property or assigning an interest to Nautical Mile Investments. We disagree.

³ On October 14, 1998, Twiga filed a motion for reconsideration which the trial court denied on October 20, 1998. Twiga filed its claim of appeal with this Court on October 21, 1998, but did not seek a stay of proceedings. Accordingly, Nautical Mile Investments asserts that, on January 8, 1999, it sold the parcel to a bona fide third party purchaser. Thereafter, Nautical Mile Investments filed a motion to dismiss Twiga's appeal which the Court denied on April 22, 1999. Twiga also filed a motion for peremptory reversal of the trial court's order, which this Court denied on July 12, 1999.

⁴ Nautical Mile Investments contends that this Court should dismiss this appeal because Twiga failed to timely file its appeal brief. Twiga filed its claim of appeal on October 21, 1998. Twiga's brief was stricken by this Court on May 3, 1999 for non-compliance with the court rules. This Court issued an order requiring Twiga to file a corrected brief by June 29, 1999 to avoid dismissal and Twiga did so on June 28, 1999. Therefore, Twiga timely filed its brief and dismissal is not warranted on this basis.

On April 21, 1992, Maurice M. Omaitis and Marstan F. Omaitis filed a Certificate of Doing Business Under an Assumed Name, Nautical Mile Investments, with the Oakland County Clerk. On January 7, 1994, Marstan F. Omaitis filed a Certificate of Doing Business Under an Assumed Name, Nautical Mile Consulting, with the Wayne County Clerk. MCL 445.1; MSA 19.821, provides, in pertinent part:

(1) A person shall not carry on, conduct, or transact business in this state under an assumed name, or under a designation, name, or style other than the real name of the person owning, conducting, or transacting that business, unless the person files in duplicate in the office of the clerk of the county or counties in which the person owns, conducts, or transacts, or intends to own, conduct, or transact, business, or maintains an office or place of business, a certificate on a form furnished by the county clerk setting forth the name under which the business owned is, or is to be, conducted or transacted, and the true or real full name and address of the person owning, conducting, or transacting the business....

* * *

(4) As used in this act:

(a) "Person" means 1 or more individuals, partnerships, trusts, fiduciaries, or other entities capable of contracting, except corporations and limited partnerships.

Nautical Mile Consulting purchased the delinquent taxes for the Oakland County property despite its failure to file an assumed name certificate in Oakland County. However, the property was later quit-claimed to Nautical Mile Investments which fully complied with MCL 445.1 by filing an assumed name certificate in Oakland County. The penalty provision of the assumed name statute, MCL 445.5, provides, in pertinent part:

The fact that a penalty is provided herein for noncompliance with the provisions of this act shall not be construed to avoid contracts; but any person or persons failing to file the certificate required by section 1 or 1a shall be prohibited from bringing any suit, action or proceeding in any of the courts of this state, in relation to any contract or other matter made or done by such person or persons under an assumed or fictitious name, until after full compliance with the provisions of this act; but no person or persons doing business under a fictitious name or as the assignee or assignees thereof shall maintain or prosecute any action, nor shall any order, judgment, or decree be made in any action heretofore or hereafter commenced in any court of this state upon or on account of any contract or contracts made or transactions had under such fictitious name after August 14, 1919, if the conduct of such business under such fictitious name has ceased, or if it is still conducted under such fictitious name, then until after full compliance with the provisions of this act.

The statute specifically states that noncompliance with MCL 445.1 does not vitiate contracts entered under an assumed name. Accordingly, Nautical Mile Consulting's purchase of the taxes is not void even if it failed to file an assumed name certificate in Oakland County. Further, MCL 445.5 does not invalidate Nautical Mile Consulting's transfer of the property to Nautical Mile Investments because of Nautical Mile Consulting's noncompliance.

Because Nautical Mile *Investments* fully complied with MCL 445.1 by filing a certificate in Oakland County, and was itself a corporation when it brought suit, the Oakland Circuit Court was not prohibited from exercising original jurisdiction in this case pursuant to Const 1963, art 6, Sec 13 and MCL 445.5; MSA 19.827.⁵ For the same reason, Nautical Mile Investments was not prohibited from redeeming the property, or, by MCL 445.5, from bringing this suit.⁶

Twiga avers that the trial court improperly granted summary disposition because Nautical Mile Consulting did not give Twiga proper notice of the reconveyance pursuant to MCL 211.140; MSA 7.198, and that Nautical Mile Investments' notices were inadequate. Specifically, Twiga says that because Nautical Mile Consulting held the tax deed and the notices were served by Nautical Mile Investments, the notices were "unavailing" and, consequently, Nautical Mile Consulting never perfected its title. For the reasons discussed below, regardless of any alleged error in listing the purchaser on the six-month notice, Twiga was not entitled to notice because it never recorded or perfected its tax deeds.

In its answer to Nautical Mile Investments' complaint, Twiga admitted to the following allegations:

15. That in accordance with the general property tax laws of the State of Michigan, the Oakland County Treasurer acting under the authority of the Treasurer for the State of Michigan, did offer for public sale the delinquent property taxes for the tax year 1992 in May of 1995, at the annual State tax sale.

⁵ Because we hold that contracts entered by Nautical Mile Consulting are valid and that Nautical Mile Investments filed an assumed name certificate in Oakland County, we need not decide whether MCL 445.1 requires a person to file an assumed name certificate in every county in which it intends to conduct business.

⁶ Twiga further contends that, pursuant to MCR 2.201(C)(2), Nautical Mile Consulting could not bring a suit using an assumed name but can only *be sued* under that name. Nautical Mile Consulting did not bring this suit; the plaintiff in this claim is Nautical Mile Investments. Nonetheless, Nautical Mile Investments may properly sue as a corporation under MCR 2.201(C)(4), and the disqualifying provisions of MCL 445.5 refers to 'a person or persons' doing business as the assignee of a person doing business under a fictitious name. A corporation is not a 'person' under the statute's definitions.

We also reject Twiga's claim that Nautical Mile Consulting, as an assumed name, is not a person or other legal entity capable of holding title to real estate in Michigan. Not only has Twiga failed to cite case law to support this position, Nautical Mile Consulting was not merely an assumed name, but a person, Marstan Omais, using an assumed name to conduct business.

27. That the Defendants, and any other parties in interest failed to render payment of the redemption proceeds to the tax deed holder or the Oakland County Treasurer within the six (6) month statutory redemption period on the 1992 property tax obligation.

Notwithstanding Twiga's admission that it offered the delinquent 1992 taxes for sale in 1995 and that it did not redeem the property within the six-month period, Twiga insists it had a "significant interest" in the property that entitled it to notice under the General Property Tax Act (GPTA).

Under the GPTA, a tax deed issued by the state to a tax sale purchaser conveys an "absolute title," subject only to the "taxes assessed and levied on the land subsequent to the taxes for which the land was bid off." MCL 211.72; MSA 7.117. This absolute title destroys and cuts off all previous liens and encumbrances. *Ottaco, Inc v Gauze*, 226 Mich App 646, 652-654; 574 NW2d 393 (1998), citing *Robbins v Barron*, 32 Mich 36, 39 (1875). However, a property owner who loses his property in a tax foreclosure sale is entitled to redeem that property from the tax sale purchaser within six months from the date the tax sale purchaser meets the statutory notice requirements contained in MCL 211.140; MSA 7.198. *Halabu v Behnke*, 213 Mich App 598, 602; 541 NW2d 285 (1995); MCL 211.141; MSA 7.199. The Section 140 notice requirements of the GPTA provide, in pertinent part:

(1) A writ of assistance or other process for the possession of property the title to which was obtained by or through a tax sale ... shall not be issued until 6 months after the sheriff of the county where the property is located files a return of service with the county treasurer of that county showing service of the notice prescribed in subsection (2). The return shall indicate that the sheriff made personal or substituted service of the notice on the following persons who were, as of the date the notice was delivered to the sheriff for service:

(a) The last grantee or grantees in the regular chain of title of the property, or of an interest in the property, *according to the records of the county register of deeds*.

(c) The grantee or grantees under the tax deed issued by the state treasurer for the latest year's taxes *according to the records of the county register of deeds*. (Emphasis added.)

According to Cassie Patterson, Deputy Treasurer of Oakland County, Tax Sale 88 filed a single notice in 1989, addressed only to Edward Michael, regarding the 1985 taxes. Twiga introduced no evidence of any effort by Tax Sale 88 to serve notice on Andrea Michael, the other prior grantee. The treasurer's office had no record of a request by Tax Sale 88 to certify the notice served on Edward Michael. Moreover, Patterson testified in her affidavit that Twiga filed no record of an assignment of the 1985 taxes by Tax Sale 88. Accordingly, Patterson deleted the 1985 taxes as expired and closed its files on that year.

Despite Twiga's claim of assignment of the 1986 taxes, no record in the treasurer's office showed that Douglas Marsh or Ronda Rider assigned those taxes to Twiga and no notices under Section 140 were filed for that year. Further, Twiga did not file any notices with the treasurer for tax years 1987 to 1990. The treasurer deleted the 1986 to 1989 taxes as expired and Nautical Mile Investments later paid and redeemed the taxes for 1990. Thus, despite Twiga's purchase of some of the tax deeds for the property, it did not register its interest with the county and there is no return of service on file for any attempt by Twiga to notify the last grantees, Edward and Andrea Michael. MCL 211.140(1)(a); MSA 7.198(1)(a). Accordingly, Twiga was not entitled to notice of subsequent reconveyances because, according to county records, Twiga did not register or perfect its interest in the property. MCL 211.140(1)(c); MSA 7.198(1)(c).

Though not entitled to notice, Twiga received actual notice of the reconveyance but chose not to redeem the property within the six-month period. Twiga now challenges the notice as defective. Thus, not only did Twiga fail to redeem the property after the tax sale, it did not question the content or sufficiency of the notice until after the six-month period ran. In *Halabu, supra*, a case addressing Section 73a of the General Property Tax Act, MCL 211.73; MSA 7.119, this Court held that parties who receive notice of their right to redeem have six months to either redeem the property or challenge the sufficiency of the notice provided to other parties. We conclude that the same reasoning applies here: Defendant cannot fail to record its tax deeds, fail to serve notices, fail to pay property taxes, fail to redeem, and then challenge plaintiff's title by noting imperfections in the notice it actually received.

We emphasize that, though strict compliance with the tax sale notice provisions is generally required, *Brandon Twp v Tomkow*, 211 Mich App 275, 284; 535 NW2d 268 (1995), Twiga received actual notice of the tax sale, *even though such notice was not required by Section 140(1)(c)*. Consequently, because Twiga neglected to redeem the property within the relevant six-month period, plaintiff's tax deed, by the unequivocal operation of the tax statutes, extinguished Twiga's alleged interest in the property. *Gauze, supra* at 654.

Moreover, MCL 211.143; MSA 7.202 provides:

Every person personally served with the notice provided for by [MCL 211.140; MSA 7.198], and every person lawfully chargeable with such notice by registered mail, as provided for in said act, together with the heirs, executors, administrators or assigns of such persons, who shall refuse or neglect to pay or tender to the purchaser as aforesaid, the sum provided for in said act within the time therein limited, and who shall have neglected within the said six months to commence suit to set aside the said tax deed, shall thereafter be barred from questioning the validity of such tax title or tax deed mentioned therein.

In other words, failure to timely redeem serves as an effective bar to a challenge of the validity of the tax sale purchaser's title. *Price v Stark*, 259 Mich 407, 413-414; 243 NW 244 (1932); *Chandler v Clark*, 151 Mich 159, 183; 115 NW 65 (1908). If a person fails to redeem the property within thirty days after the expiration of the six-month redemption period, the county treasurer must record a copy of the notice and proof of service required under MCL 211.140; MSA 7.198, which 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; MSA 7.201.

Accordingly, Twiga's claims regarding defective notice and the validity of Nautical Mile Investments' title to the property are unavailing.⁷

⁷ Twiga makes a constitutional due process argument relying on *Dow v Michigan*, 396 Mich 192; 240 NW2d 450 (1976). This Court recently held that *Dow* does not apply to cases in which a private purchaser buys the property at a private tax sale and is only applicable if the property was bid off to the state. *Kalport, supra*, 239 Mich App 96-97.

Twiga further contends that the lower court erred by granting summary disposition to Nautical Mile Investments because Twiga served notice on a tenant in common, Edward Michael or at least made a bona fide attempt to serve notice. Twiga did not raise the tenant-in-common issue below and it is not preserved for appeal. *Environair, Inc v Steelcase, Inc*, 190 Mich App 289, 295; 475 NW2d 366 (1991). MCL 211.73a; MSA 7.119:

In case of a failure to give the required notice for reconveyance within the period of 5 years from the date the purchaser . . . shall become entitled to a tax deed to be issued by the auditor general, the person or persons, claiming title under tax deed or certificate of purchase shall be forever barred from asserting that title or claiming a lien on the land by reason of a tax purchase . . .

If within the period of 5 years the tax title purchaser . . . has made a bona fide attempt to give the notice or notices required by law for the reconveyance of the premises, neither the legality or sufficiency of the sale or notice, nor the bona fides of the purchaser in his attempt to give the statutory notice, shall be questioned, raised, or adjudicated except in or by a suit in equity . . . [MCL 211.73a; MSA 7.119.]

Twiga argued below that, because it served Edward Michael, the five-year rule of Section 73a did not apply. However, review of the notice discloses that Tax Sale 88 served the notice, not Twiga. According to Twiga's logic in arguing that Nautical Mile Investments' notice was defective because Nautical Mile Consulting held the deed, Twiga's notice to Edward Michael would also be "unavailing" because Tax Sale 88 actually held the deed *and* served the notice. Moreover, Twiga does not deny that it did not even attempt to serve notice on Andrea Michael. Nautical Mile Investments followed proper procedure and made substituted service on Andrea by publication and Twiga could have done the same but made no such attempt.

Twiga argues that the trial court erred for dismissing its claim because it had "a series of six tax deeds and [Nautical Mile Investments'] predecessors and others have interfered with its right of reconveyance." Twiga does not explain who the "others" are or how they have "interfered" with its right of reconveyance. Rather, Twiga merely asserts that "its continuous tax title interest have merged." Twiga's undeveloped assertion ignores the fact that it recorded and perfected none of those tax deeds and that it failed to pay any property taxes after the certificates were issued. Because Twiga failed to adequately develop or brief the merits of this allegation of error, it has abandoned the issue on appeal and we decline to address it further. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Twiga also raises for the first time on appeal its argument that Nautical Mile Consulting
(continued...)

Affirmed.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Henry William Saad

(...continued)

was a junior tax deed holder that had no redeemable interest in the property. Twiga cites no case law in support of this proposition, which is raised for the first time on appeal. Accordingly, we decline to address this unpreserved and undeveloped issue.

Twiga also argues for the first time on appeal that Nautical Mile Consulting did not tender a sufficient amount to redeem Twiga's interest in the property and argues that Twiga holds "equitable title" to the property. Twiga did not raise and the trial court did not consider these issues below and we need not address them for the first time on appeal. *Environair, supra*, 190 Mich App 295.

We also decline to address Twiga's challenge to Cassie Patterson's affidavit. Not only is the issue unpreserved, Twiga has not directed this Court to authority substantiating its claim of error. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).