STATE OF MICHIGAN

COURT OF APPEALS

ORONDE SHAWN MANSON, Plaintiff-Appellant,	UNPUBLISHED March 22, 2002
v	No. 227504 Wayne Circuit Court
HAROLD STEHLIK and JERRY E. STEHLIK, Defendants-Counterplaintiffs-Appellees.	LC No. 98-839563-CH

Before: O'Connell, P.J., and White and Cooper, JJ.

PER CURIAM.

Plaintiff Oronde Shawn Manson appeals as of right from the May 3, 2000, opinion and order of the trial court denying his motion for summary disposition and granting judgment in favor of defendants Harold and Jerry E. Stehlik under MCR 2.116(I)(2) in this action to quiet title. We affirm.

The underlying facts of this action are not complex or disputed by the parties. Plaintiff's parents, Herman and Ella Mae Manson, purchased the subject property, 9569 Asbury Park, Detroit, in March 1978. This deed was recorded with the Wayne County Register of Deeds. In December 1984, Herman and Ella divorced. The December 14, 1984, default judgment of divorce provided that Ella retain custody of plaintiff, who was born September 3, 1975. As part of the property settlement, Ella also was awarded the martial home, the subject property in the instant appeal, "free and clear of any claims of [Herman Manson]." The parties do not dispute that the divorce judgment awarding Ella the property was not recorded with the Wayne County Register of Deeds.

Ella subsequently died intestate on February 15, 1987. Ella was not married when she died in 1987, and plaintiff, a minor at the time of her death, was her sole heir. Documents filed in the Wayne County Probate Court and filed in the record in the instant case indicate that Ella's sister, Elnora Walker, was appointed administrator of the estate and plaintiff's conservator. As relevant to the present appeal, plaintiff inherited the property at 9569 Asbury Park in Detroit. However, it does not appear from the record that the documents concerning the probate of Ella's estate were filed with the Wayne County Register of Deeds.

The taxes on the subject property became delinquent in 1990. In 1993, defendant Jerry Stehlik purchased the property from the state at tax sale for the amount of the delinquent taxes, $161.63. A tax certificate was issued to Stehlik on April 19, 1994, MCL 211.71, and a tax deed was issued to Stehlik on August 24, 1994, MCL 211.72.[1] Plaintiff does not challenge the forfeiture of the property to the state, or the subsequent sale to Stehlik. See, generally, *Smith v Cliffs on the Bay Condominium Ass'n*, 463 Mich 420, 425; 617 NW2d 536 (2000). Instead, plaintiff's sole argument on appeal is that he was not properly served with notice of his right to redeem his interest in the property in accordance with MCL 211.140.

Jerry Stehlik provided the Wayne County Sheriff with a notice of redemption to be served on Herman and Ella Manson, as well as the "owner/occupant" of the subject property on October 3, 1994. The parties agree that at the time Ella and Herman, as well as any occupants of the property, were to be served with the notice of redemption, plaintiff was residing at the property with Herman. On October 6, 1994, a notice of return was filed with the Wayne County Clerk, indicating that Herman Manson was personally served with the notice of redemption on October 4, 1994. However, an undated letter from the sheriff to Jerry Stehlik indicated that service was not effectuated on Ella Manson, on the basis of information "per her husband, Herman Manson" that she died in 1987. After Jerry Stehlik sent an October 12, 1994, letter to the sheriff indicating that an "extended search for the whereabouts" of Ella Manson was unsuccessful, the sheriff provided Stehlik with a return of failure of service on October 31, 1994. This indicated that the sheriff, "after careful inquiry," was unable to ascertain the post office address of Ella Manson.

An affidavit of publication in the lower court file reflects that defendants posted the notice of redemption in The Legal Advertiser, a Detroit-area newspaper, on November 24, December 1, 8, and 15, 1994. As relevant to this appeal, notice was directed to Herman and Ella Manson, as well as the owner and occupants of 9569 Asbury Park. Because defendants did not receive a response to their notice attempts, Jerry Stehlik sent a letter addressed to "Herman Manson & or occupant" on July 12, 1995, advising that she was the record owner of the subject property. In the letter, Stehlik advised that any parties residing in the home would need to vacate, or make arrangements to stay longer. The parties do not dispute that following receipt of this letter, Herman Manson entered into a lease agreement with Jerry Stehlik on August 11, 1995, for $300 a month. The lease agreement listed plaintiff as one of the occupants of the premises. According to the record, plaintiff and Herman Manson resided at 9569 Asbury Park under the lease agreement without incident until 1998, when defendants instituted an eviction action in district court for the nonpayment of rent.

Plaintiff commenced the present action in Wayne Circuit Court on December 10, 1998, seeking to quiet title to the property. In the complaint, plaintiff alleged that defendants failed to properly notify him of his redemption rights. Plaintiff further alleged that because Ella Manson was deceased, defendants were required to serve him with a notice of redemption as her heir. According to the complaint, title was vested in plaintiff because defendants failed to conduct a "careful inquiry" into the whereabouts of Ella's heirs. In the remaining two counts of the three-

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[1] MCL 211.71; 72 are to be repealed effective December 31, 2003. 1999 PA 123, § 4.

count complaint, plaintiff sought an injunction to halt the proceedings in the district court, and the return of rent paid by Herman Manson to defendants.[2]

On January 15, 1999, defendants filed a countercomplaint, seeking to quiet title. In the countercomplaint, defendants alleged that plaintiff was properly served with the notice of redemption and that absolute title vested in defendants once plaintiff failed to redeem his interest in the property. After some discovery was conducted, plaintiff moved for summary disposition under MCR 2.116(C)(8), (9), and (10) on January 14, 2000, arguing that he was not properly served with notice of redemption.

After hearing argument on March 10, 2000, the trial court reserved its ruling until May 3, 2000. In a six-page written opinion, the trial court denied plaintiff's motion for summary disposition, indicating that it reviewed plaintiff's motion pursuant to MCR 2.116(C)(10). The trial court concluded that notice was properly given to plaintiff as an occupant of the subject property because his father, Herman Manson, who also resided there, was served on plaintiff's behalf. Relying on this Court's decision in *Youngblood v DEC Properties*, 204 Mich App 581; 516 NW2d 119 (1994), the trial court recognized that, as plaintiff's father, Herman Manson was likely to come into contact with plaintiff and advise him that he was served with notice of his redemption rights. Judgment was then granted in favor of defendants pursuant to MCR 2.116(I)(2).

This Court reviews de novo a trial court's grant of summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

> In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden, supra* at 120.]

The trial court denied plaintiff's motion for summary disposition, and entered judgment in favor of defendants pursuant to MCR 2.116(I)(2). "'Summary disposition is properly granted [under this rule] to the opposing party if it appears to the court that that party, rather than the moving party, is entitled to judgment.'" *Gyarmati v Bielfield*, 245 Mich App 602, 604; 629 NW2d 93 (2001), quoting *Sharper Image v Dep't of Treasury*, 216 Mich App 698, 701; 550 NW2d 596 (1996).

Our analysis regarding whether plaintiff was properly served with notice of his right to redeem his interest in the subject property following the issuance of a tax deed to defendants

[2] In an order entered December 17, 1998, the trial court enjoined the 36th District Court from hearing or adjudicating defendants' claim against Herman Manson for nonpayment of rent.

centers on a review of MCL 211.140. When defendants attempted to serve notice of the right to redeem on interested parties in October 1994,[3] this provision provided in pertinent part:

> (1) A writ of assistance[4] or other process for the possession of land the title to which was obtained by or through a tax sale, except if title is obtained under [MCL 211.131], shall not be issued until 6 months after there is filed with the county treasurer of the county where the land is situated, a return by the sheriff of that county showing service of the notice prescribed in subsection (2). The return shall indicate that the sheriff has made personal or substituted service of the notice upon 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 land, or of an interest in the land, according to the record of the county register of deeds.
>
> (b) The person or persons in the actual open possession of the land.
>
> (c) The grantee or grantees under the tax deed issued by the state treasurer for the latest year's taxes then appearing of record in the registry of deeds.
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> (d) The mortgagee or mortgagees named in all undischarged recorded mortgages, or assignments thereof of record.
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> (e) The holder of record of all undischarged recorded liens.
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> * * *
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> (4) If a person entitled to notice as prescribed in subsection (1) is dead, or if a person's estate is under control of a trustee or guardian, the notice may be served upon the executor or administrator of the decedent's estate, or upon the decendent's heirs if there is not an executor or administrator, or upon the trustee or guardian of an incompetent person, with like effect as if served upon the grantee, mortgagee, or assignee.
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> (5) If the sheriff of the county where the land is located makes a return that after

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[3] MCL 211.140 was subsequently amended by 1996 PA 476, effective December 26, 1996. Moreover, the Legislature has provided that this section is to be repealed, effective December 31, 2006. 1999 PA 123 § 5.

[4] As our Supreme Court observed in *Ramsdell v Maxwell*, 32 Mich 285, 287 (1875):

> A writ of assistance is the regular process for carrying out a decree of possession, and lies on foreclosure sales. Its object is to compel parties who are bound by a decree to give up the possession which by the decree and sale under it they have become estopped from further asserting, and when they have thus become tenants at sufferance.

> careful inquiry the sheriff is unable to ascertain the whereabouts of the post-office address of the persons upon whom notice may be served as prescribed in this section [service of the notice shall be made by publication]. The notice shall be published for 4 successive weeks, once each week, in a newspaper published and circulated in the county where the land is located, if there is one. If no paper is published in that county, publication shall be made in a newspaper published and circulated in an adjoining county, and proof of publication, by affidavit of the printer or publisher of the newspaper, shall be filed with the county treasurer. This publication shall be instead of personal service upon the person or persons whose whereabouts or post-office address cannot be ascertained as prescribed in subsection (3).
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> (6) Service may be made upon a resident of this state by leaving the notice at that person's usual place of residence with a member of that person's family of mature age, and upon a non-resident of this state by serving the notice on the nonresident personally while in this state and the return in this case shall be made by the sheriff of the county in which service was made.
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> * * *
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> (8) 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 return shall be prima facie evidence of the facts stated in the return.

As our Supreme Court, considering a predecessor to § 140 of the GPTA, observed in *Winters v Cook*, 140 Mich 483, 487; 103 NW 869 (1907):

> This section was designed as a relief to owners of delinquent tax lands, and to prevent the divestiture of their titles, beyond redemption, through ignorance, inattention, or carelessness. It plainly indicates that the purchaser is expected to give an express notice, wherever practicable, with a six-months interval thereafter, within which the land may be redeemed. It imposes upon the purchaser the obligation of good faith, and an earnest effort to ascertain the owner and his whereabouts, and an honest attempt to give him actual notice and the statutory opportunity. Any effort to avoid it through fraud or collusion, or intentional omission to comply with the spirit of the statute, should not be permitted to be effective, if the courts can legitimately avoid it.

Section 141 of the GPTA "provides a right of redemption that lasts for six months after the tax sale purchaser complies with the notice requirements of § 140 of the GPTA." *Ottaco, Inc v Kalport Development Co*, 239 Mich App 88, 91; 607 NW2d 403 (1999). If proper notice is not served pursuant to § 140, the statutory redemption period does not begin to run, *id.*, and the tax sale purchaser claiming title to the land holds the status of trespasser. *Brousseau v Conklin*, 301 Mich 241, 244; 3 NW2d 260 (1942); *Huron Land Co v Robarge*, 128 Mich 686, 687; 87 NW 1032 (1901). "Actual notice is not enough to satisfy the statute's notice requirements." *Brandon Twp v Tomkow*, 211 Mich App 275, 284; 535 NW2d 268 (1995); see also *Stein v Hemminger*, 165 Mich App 678, 682; 419 NW2d 50 (1988). Until notice to redeem is served on all parties

entitled to such notice, the right of redemption remains to all. *GF Sanborn & Co v Richter*, 176 Mich 562, 565; 142 NW 755 (1913).

As plaintiff correctly states in his brief on appeal, because a party with an interest in property could be potentially divested of that interest, strict compliance with the tax sale redemption provisions of MCL 211.140 is required. *Halabu v Behnke*, 213 Mich App 598, 606; 541 NW2d 285 (1995); *Andre v Fink*, 180 Mich App 403, 408; 447 NW2d 808 (1989). "Substantial compliance with the statutory requirements in such matters is not sufficient." *Stockwell v Curtis*, 279 Mich 388, 392; 272 NW 717 (1937). Further, where a delinquent taxpayer challenges a third-party purchaser's title to the property acquired by way of tax sale, the burden of showing compliance with the governing statutes falls on the third-party purchaser. *Dimondale v Grable*, 240 Mich App 553, 568; 618 NW2d 23 (2000). In *Griffin v Jackson*, 145 Mich 23, 25; 108 NW 438 (1906), Justice Hooker observed that "[t]he courts are not hasty in cutting off the rights of landowners whose lands have been sold for taxes . . . ." See also *Pike v Anderson*, 136 Mich 414, 415; 99 NW 398 (1904) ("statutes providing for redemption are to be liberally construed in favor of the redemptioner.").

As an initial matter, plaintiff argues that defendants failed to properly serve him as an heir to Ella Manson's estate. As noted above, the tax sale redemption provision clearly provides that where a party entitled to notice under subsection MCL 211.140(1) is dead, notice should be provided to the executor or administrator of the estate, or the heirs of the estate if there is not an executor or administrator. See *White v Shaw*, 150 Mich 270, 271; 114 NW 210 (1907); *Clugston v Rogers*, 203 Mich 339, 343-345; 169 NW 9 (1918); *McVannel v Pure Oil Co*, 262 Mich 518, 522; 247 NW 735 (1933).

The parties do not dispute that when the Wayne County Sheriff served Herman Manson with notice in October 1994, Manson communicated to the sheriff that Ella Manson had passed away in 1987. During his September 1, 1999, deposition testimony, Harold Stehlik conceded that he and his wife were informed that Ella Manson could not be served because she was deceased. During his deposition Harold Stehlik also admitted that he and his wife did not undertake further inquiry into Ella's whereabouts after they were informed that she was dead, but that before they were given such information they attempted to locate her by using the phone book and Bressler's, an address directory. According to Harold Stehlik, he and his wife assumed that Herman Manson was Ella's only heir because of the way the property was originally deeded when Herman and Ella purchased it in 1978, and because they did not know that Herman and Ella had divorced. Also, Stehlik noted during the deposition that he and his wife were aware, presumably from a search of title, that Herman Manson had taken out a mortgage on the property in return for financing in 1989 in his own name, two years after Ella passed away.

In support of his argument that defendants failed to properly provide him with notice as an heir, plaintiff points to this Court's decision in *Richard v Ryno*, 158 Mich App 513, 516; 405 NW2d 184 (1987). In *Richard*, the plaintiff provided the sheriff with a form notice directing that notice be provided to "John H. Ryno & wife, Arvilla Marie Ryno (both deceased)." *Id.* at 516. Rather than taking steps to ascertain the deceased owners' heirs, the sheriff merely signed the return, noting that service was not effectuated. *Id.* The trial court found that the deceased owners' ten children had actual notice of the plaintiff's acquisition of the property, which satisfied the tax sale redemption statute's notice requirement. *Id.* This Court reversed, holding that "the sheriff's deputy's actions in merely signing the return and not attempting to effectuate

service [on the heirs] was not the exercise of good faith and diligence." *Id.* at 517. Specifically, the Court noted that the plaintiff was familiar with one of the defendants, and others lived in the area and could have been located with reasonable inquiry. *Id*.

In reaching this conclusion, the *Richard* Court relied on the Supreme Court's earlier decision in *Clugston, supra*. In *Clugston*, the sheriff filed a return of notice indicating that after careful inquiry, he was unable to locate the grantee named in the last recorded deed, or the grantees' heirs. *Id.* at 341. The Supreme Court concluded that the sheriff did not attempt to locate the grantees' heirs in good faith, where the record reflected that the grantees were prominent in the Alpena community, and that the sheriff was well-acquainted with the grantees' families, and any reasonable effort could have led to locating the heirs. *Id.* at 344.[5]

To the extent that plaintiff argues that defendants and the Wayne County Sheriff failed to undertake a careful inquiry into the whereabouts of Ella Manson's heirs after being informed that she was deceased, this argument finds support in the case law. In the instant case, it is not in dispute that after being informed that Ella Manson was deceased, defendants did not investigate whether she had any heirs, and did not attempt to contact the administrator of her estate, given their assumption that Herman Manson was her only heir. However, the facts in the present appeal may be distinguished from those in *Richard, supra*, and *Clugston, supra*, because there is no indication in the record that the sheriff was personally acquainted with plaintiff, or that Ella Manson was a prominent figure in the community to the extent that locating her heirs would be a simple task.[6]

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[5] As support for his argument, plaintiff also points to our Supreme Court's decision in *Hildie v Eckhart*, 203 Mich 346, 350; 169 NW 14 (1918). In *Hildie*, the grantee in the last recorded deed in the chain of title of property in Ogemaw County resided in the Detroit area. *Id.* at 348. The Ogemaw County Sheriff attempted to locate the grantee by undertaking a search in Detroit, and by enlisting the aid of the Wayne County Sheriff. *Id.* at 349. As relevant to the present appeal, the *Hildie* Court rejected the plaintiff's argument that the sheriff's return of notice should have reflected that he was unable to locate the grantee's heirs where the sheriff did not possess any information that the grantee was deceased. *Id.* at 350. See also *Mercer v Stephens*, 185 Mich 290, 293-294; 151 NW 1032 (1915) (notice not required to be served on heirs where sheriff unaware that grantee is deceased).

[6] But see *Chilton's, Inc v Wilmington Apartment Co*, 365 Mich 242, 247; 112 NW2d 434 (1961). In *Chilton's, supra* at 247, the plaintiff purchased the subject property from the Wilmington Apartment Company, but did not record his deed. The tax sale purchaser provided notice to redeem to the apartment company, but did not notify the plaintiff. The *Chilton's* Court rejected the plaintiff's assertion that he was entitled to notice and that defendants were required to undertake a "careful inquiry" to ascertain his interest.

> The person or persons entitled to the notice of the tax sale must be determined in accordance with the records showing the chain of title of the land in question in the office of the register of deeds of the county where the property is located. There is no requirement that the purchaser at the tax sale shall make service on a party or parties not specified by the tax law. [*Id.* at 247.]

(continued…)

In any event, we agree with the trial court in this case that notice was properly effectuated on plaintiff, a party in open possession of the land in accordance with MCL 211.140(1)(b), by serving his father Herman Manson. MCL 211.140(6). Thus, this case presents a somewhat unique scenario, because the heir of the deceased grantee in the last recorded instrument in the chain of title was also an occupant of the premises. It is well-settled in Michigan that a tax sale purchaser must serve notice to those in actual open possession of the land. *Otto v Phillips*, 250 Mich 546, 547; 230 NW 940 (1930); *Taskey v Paquette*, 324 Mich 143, 148-149; 36 NW2d 876 (1949); *US v Varani*, 780 F2d 1296, 1303 (CA 6, 1986); see also *Curry v Backus*, 156 Mich 342, 344-345; 120 NW 796 (1909).

Further, MCL 211.140(6) provides that "service may be made on a resident of this state by leaving notice at that person's usual place of residence with a member of that person's family of mature age . . . ." See *Merrill v Myers*, 197 Mich 356, 360; 163 NW 954 (1917) (concluding that service of the notice to redeem on the plaintiff's wife was appropriate under predecessor to MCL 211.140(6)). In *Youngblood, supra* at 583,[7] this Court made the following observations regarding the purpose of this statutory provision.

> The purpose of this statute is to achieve notice. . . . [T]he relevance of 'family' does not pertain to blood or lineage, but rather to members of a household likely to have contact with the person who is to be served. Thus, the Legislature's requirement that the person be of mature age. Again, the emphasis is not on the origin of the relationship but the nature of the relationship and its likelihood to guarantee contact between the one to whom notice is given and the one to whom notice is due.

In the present appeal, the trial court concluded that defendants properly served plaintiff with his notice to redeem by serving his father.

> In the present case, service was made upon Plaintiff's father. Plaintiff and his father resided together at the home. The notice was voluntarily accepted by Plaintiff's father. Clearly, [Plaintiff's father] would qualify as a person of mature age and would be likely to come in contact with Plaintiff. Based on this, this court is inclined to agree with Defendant[s] that notice was served upon both Mr. Herman Manson and consequently, the Plaintiff.

On appeal, plaintiff argues that service was not properly effectuated on him by serving his father on his behalf because defendants were unaware of plaintiff's existence at the time notice was served and did not specifically intend to serve him. In support of this assertion,

(…continued)

The *Chilton's* Court went on to state that the plaintiff's failure to properly record his deed "subjected [the property] to the hazards of the situation resulting therefrom." *Id*. at 248.

[7] In *Youngblood, supra* at 582, the defendant served a copy of the notice to redeem on the twenty-five-year-old daughter of the plaintiff's fiancé that resided with the plaintiff. The issue in *Youngblood* was whether the word "family" in the statute should be given a restrictive biological definition. *Id.* at 582-583. This Court decided that it should not. *Id.* at 583.

plaintiff points to the deposition testimony of Jerry Stehlik, in which she indicated that the Stehliks were unaware that Ella and Herman Manson had a son with an interest in the property until they entered into the lease agreement with Herman Manson. Plaintiff further argues that the notice to redeem provision of the GPTA contemplates that a tax sale purchaser consciously and deliberately serve notice on a specific, enumerated individual.

The plain language of MCL 211.140(1)(b) provides, in pertinent part, that "[t]he return [of] service shall indicate that the sheriff has made personal or substituted service of the notice upon the following persons who were, as of the date the notice was delivered to the sheriff for service: [t]he person or persons in the actual open possession of the land." Where the language of a statute is clear and unambiguous, we must presume that it manifests the Legislature's intent, and further judicial construction is inappropriate. *Herald Co v Bay City*, 463 Mich 111, 117; 614 NW2d 873 (2000). In the instant case, there is nothing in the plain language of either MCL 211.140(1)(b) or MCL 211.140(6) that requires that the tax sale purchaser specifically intend to serve an identified enumerated person. Consequently, we decline plaintiff's invitation to read into the statute a requirement that the Legislature did not intend. See *Herald Co*, *supra* at 121 (Courts do not have authority to impose requirements not found in the plain language of the statute); *In re Juvenile Commitment Costs*, 240 Mich App 420, 427; 613 NW2d 348 (2000) ("Nothing may be read into the statute that is not within the manifest intent of the Legislature as gathered from the act itself.").

In a related argument, plaintiff contends that service was not properly effectuated on him because the return of service filed by the Wayne County Sheriff with the county treasurer does not reflect that Herman Manson was served on plaintiff's behalf. Indeed, a review of the return of service filed by the sheriff regarding Herman Manson indicates that notice to redeem was served on "Herman Manson, Occupant, 9569 Asbury Park, Detroit" and does not indicate that Herman was served on plaintiff's behalf. MCL 211.140(1) provides that "[t]he return [of service] *shall indicate that the sheriff has made personal or substituted service of the notice*" on the persons, who as of the date the notice was delivered to the sheriff, are in actual open possession of the land. [Emphasis supplied.] In the instant case, the return of notice does not indicate that the sheriff made substituted service on Herman Manson on plaintiff's behalf. However, we conclude that any deficiency with regard to the notice of return does not warrant reversal of the trial court's order.[8]

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[8] Although plaintiff raised this issue in his reply brief to defendants' opposition brief to plaintiff's motion for summary disposition, the trial court did not address this specific argument in its written opinion. However, relying on *Dunn v Peck*, 255 Mich 391, 394; 238 NW 224 (1931), which in turn cited *Bradley v Williams*, 139 Mich 230; 102 NW 625 (1905), the trial court noted that "[t]here is no statutory requirement that . . . notice [to redeem] be personally addressed to the one to be served." In *Dunn*, the notice to redeem was addressed to "Will Dunn," but the plaintiff's proper name was "William H. Dunn." The *Dunn* Court found that the notice to redeem was proper, concluding that where notice is properly served on the right person, and where no one was misled, service, although slightly irregular, should be held valid. *Dunn, supra* at 394.

In *Le Boeuf v Papp*, 243 Mich 318, 321; 220 NW 792 (1928), the plaintiff argued that substituted service by publication could not be made where the notice of return was deficient. The return of service in that case failed to state the time the notice to redeem was delivered to the sheriff for service. Our Supreme Court, relying on earlier cases, rejected this argument, and made the following statement.

> "Unless compelled to do so, courts should not so construe the [notice to redeem] legislation as to make its provisions mandatory, and, so, applicable only to cases where the returns of service show exact conformity with the statute provisions. To do so would not only render the legislation abortive, but would afford the delinquent taxpayer additional security against the collection, by the State, of its revenues." [*Id.* at 322, quoting *Williams v Olson*, 141 Mich 580; 104 NW 1101 (1905).]

Concluding that substituted service by publication could be made even where the return of notice was deficient where the record reflected a good-faith attempt to effect personal service, Justice Fellows, writing for the Court, observed:

> While the statute is beneficent in purpose, and should be so construed as to aid unfortunate redemptioners, it is nevertheless true that the statute is one of grace, conferring a favor on redemptioners, and should not be given a construction as would unnecessarily impede the State in the collection of its revenues. [*Id*. at 323-324.]

See also *Weston v Moore*, 265 Mich 165, 171; 251 NW 922 (1933) (notice not deficient where sheriff's return failed to show service on those in possession of land or to state that no one was in possession of land and the plaintiff was not prejudiced); *Gustin v Ziem*, 289 Mich 219, 224-225; 286 NW 219 (1939) (return of service not deficient where it failed to state that parties served were tenants by entireties).

Although *Le Boeuf* is factually distinguishable, we believe that the reasoning articulated by the *Le Boeuf* Court is instructive here, where a thorough review of the record reveals that defendants employed good-faith efforts to comply with MCL 211.140. Specifically, defendants attempted to serve notice to redeem on the last recorded grantees in the regular chain of title, Herman and Ella Manson. Moreover, there is nothing in the record indicating that defendants were aware of plaintiff's interest in the property by virtue of the probate proceedings, or that they deliberately avoided serving him with notice. Indeed, even after personally serving Herman Manson, whom defendants believed retained the only interest in the property after Ella's death, they served additional notice by publication to other parties with an interest by publishing the notice to redeem in a local newspaper pursuant to MCL 211.140(5). Accordingly, we agree with the trial court that genuine factual disputes concerning whether plaintiff was properly served did not exist to warrant trial.

Affirmed.

/s/ Peter D. O'Connell
/s/ Jessica R. Cooper