

STATE OF MICHIGAN
COURT OF APPEALS

FRANKEN SUB-1, INC.,

Plaintiff/Counter-Defendant-
Appellee,

v

JAMES A. DELAINE, JR., Individually and as
Personal Representative of the Estates of JAMES
DELAINE, Deceased, and THELMA DELAINE,
Deceased,

Defendant/Counter-Plaintiff/Third-
Party Plaintiff-Appellant,

and

MONROE COUNTY TREASURER and
KENNETH FRANTZ,

Third-Party Defendants.

Before: Murray, P.J. and Gage and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting plaintiff's motion for summary disposition and denying his own motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

Defendant inherited a twelve and one-half acre parcel of property upon the deaths of his parents. Defendant failed to pay taxes on the property. In 1999, plaintiff paid the taxes for the year 1996 and acquired a tax lien on the property. On or about March 1, 2001 the Monroe

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County Sheriff's Department served a notice of tax deed interest on defendant.¹ On April 3, 2001 plaintiff filed proofs of service with the Monroe County Treasurer's Office. On October 15, 2001 the Treasurer certified that the notice and proofs of service had been filed. The notice and proofs of service were recorded with the Monroe County Register of Deeds.

Plaintiff filed a complaint to quiet title to the property. The complaint alleged that because defendant failed to redeem the property within the statutory six-month period, plaintiff acquired absolute title to the property. Defendant filed a counter complaint against plaintiff and a third-party complaint against the Treasurer and Kenneth Frantz, plaintiff's attorney, and sought a writ of mandamus compelling the Treasurer to accept his payment to redeem the property.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). He asserted that the certificates issued by the Treasurer indicated that the proofs of service were filed in that office on October 15, 2001, and argued that the six-month redemption period began on that date. Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(9), arguing that the six-month redemption period began on April 3, 2001 when the proofs of service were filed in the Treasurer's office. Plaintiff submitted an affidavit from a Treasurer's office employee who stated that she received the proofs of service for filing on April 3, 2001. The employee stated that on October 15, 2001 she received payment and a request for true copies of the statutory notice, and at that time erroneously wrote the date of filing as October 15, 2001 rather than April 3, 2001.

The trial court granted plaintiff's motion for summary disposition and denied the motion for summary disposition filed by defendant. The trial court found that the undisputed evidence showed that the proofs of service were delivered to the Treasurer's office for filing on April 3, 2001, and reasoned that the date of October 15, 2001 could only be characterized as a scrivener's error. The trial court concluded that the six-month redemption period began on April 3, 2001. Defendant did not redeem the property within the six-month period; therefore, he lost all right to claim title to the property. The trial court's order quieting title to the property in plaintiff resolved all pending claims and closed the case.

II. Analysis

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).²

Under the General Property Tax Act, MCL 211.1 *et seq.*, notice must be served on the last grantee in a regular chain of title of property sold to a private buyer in a tax foreclosure sale

¹ Plaintiff served separate notices on defendant in his capacities as an individual and as the personal representative of his parents' estates. The notices were identical.

² The trial court did not specify on which subsection of MCR 2.116(C) it relied when it granted plaintiff's motion for summary disposition. However, because the trial court relied on matters outside the pleadings, we construe the motion as having been granted pursuant to MCR 2.116(C)(10). *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997).

of the right to redeem the property after return of service is filed. MCL 211.140(1). The right of redemption lasts for six months after the tax sale purchaser complies with the notice requirements of § 140(1). MCL 211.141(1).

Defendant argues that the trial court erred by denying his motion for summary disposition and granting the motion filed by plaintiff. We disagree. The parties agreed that pursuant to MCL 211.140(1) and MCL 211.141(1), defendant had six months from the date the proofs of service were filed with the Treasurer's office to redeem the property. The parties disagreed as to the date on which the proofs of service were filed. A document is filed when it is delivered to and received by the proper officer to be kept on file. *Keenan v Dep't of Corrections*, 250 Mich App 628, 634; 649 NW2d 133 (2002). The trial court relied on documentation, including a receipt issued by the Treasurer's office and the affidavit from the Treasurer's office employee, to find that the undisputed evidence showed that the proofs of service were filed in the Treasurer's office on April 3, 2001 rather than on October 15, 2001. The trial court correctly found that no genuine issue of fact existed as to when the proofs of service were delivered to the Treasurer's office for filing. The redemption period began on April 3, 2001 and expired on October 3, 2001. Defendant did not attempt to redeem the property within that period; therefore, he lost all right to claim title to the property. MCL 211.143. The trial court properly granted summary disposition in favor of plaintiff.

Affirmed.

/s/ Christopher M. Murray
/s/ Hilda R. Gage
/s/ Kirsten Frank Kelly