

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD P. LYSOGORSKI and MARY J.
LYSOGORSKI,

UNPUBLISHED
December 9, 2003

Plaintiffs-Appellants,

v

NATIONAL CITY MORTGAGE CO. (f/k/a NEW
CENTURY BANK), CHARLES G. McLEOD
AND MICHAELENE McLEOD,

No. 244375
Saginaw Circuit Court
LC No. 01-039581-CH

Defendants-Appellees.

Before: Whitbeck, C.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's opinion and order granting summary disposition pursuant to MCR 2.116(C)(10) on plaintiff's claim to quiet title to a disputed boundary in this property case. Plaintiffs allege that the trial court erred when it held that the Marketable Record Title Act (MRTA), MCL 565.101 *et seq.* barred plaintiffs' complaint. Plaintiffs further allege that the trial court erred when it relied on inadmissible evidence to dismiss plaintiffs' complaint. Because we agree with both of plaintiffs allegations, we reverse.

A trial court's decision on a motion for summary disposition is reviewed de novo on appeal. *Dressel v Ameribank*, 468 Mich 557, 516; 664 NW2d 151 (2003). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether there is sufficient factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In deciding a motion for summary disposition under this section of the court rule, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the non-moving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). A motion for summary disposition pursuant to MCR 2.116(C)(10) may be granted when the moving party is entitled to judgment as a matter of law, or the affidavits or other proofs show that there is no genuine issue of material fact. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). Review is limited to the evidence that had been presented to the trial court at the time the motion was decided. *Pena v Ingham County Road Comm*, 255 Mich App 299, 313; 660 NW2d 351 (2003).

The trial court relied on the MRTA when it granted summary disposition in favor of defendants. The court, without any further elaboration, stated as follows from the bench, "the

Michigan Forty-Year Marketable Title Act is a bar to plaintiff's claim, and, therefore this matter is dismissed." The MRTA states as follows:

Any person, having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for 20 years for mineral interests and 40 years for other interests, shall at the end of the applicable period be considered to have a marketable record title to that interest, subject only to claims to that interest and defects of title as are not extinguished or barred by application of this act and subject also to any interests and defects as are inherent in the provisions and limitations contained in the muniments of which the chain of record title is formed and which have been recorded within 3 years after the effective date of the amendatory act that added section 1a or during the 20-year period for mineral interests and the 40-year period for other interests. However, a person shall not be considered to have a marketable record title by reason of this act, if the land in which the interest exists is in the hostile possession of another. [MCL 565.101.]

After reviewing the record and applying the relevant statutory law, we agree with plaintiffs that the trial court erred when it granted summary disposition in favor of defendants. Not only can defendants invoke MRTA protections, but so can plaintiffs since both parties aver that they can show an unbroken chain of title to their respective properties over a continuous forty-year period. Thus, once both chains of title are established in the trial court, their competing claims must be resolved using further property law principles.

Plaintiffs also point out that there are other factual issues that must be resolved precluding a grant of summary disposition. Plaintiffs assert that the "root of title" presented by defendants below was an unverified warranty deed dated August 3, 1953. Plaintiffs claim that defendants' August 3, 1953 warranty deed does not show the date it was recorded. Plaintiffs also argue on appeal that other documents presented by defendants below, and apparently relied on by the trial court, were not certified as authentic pursuant to MRE 902(4) and MCL 600.2109. Because plaintiffs did object to the authenticity of these documents before the trial court, and the trial court did not address these issues of fact, we find that summary disposition was improper.

We reverse and remand. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio