

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PINE OAKS, LLC,

Plaintiff-Appellee,

v

DANNY DEVRIES and JAYNE DEVRIES,

Defendant-Appellants.

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UNPUBLISHED  
December 9, 2004

No. 249163  
Ottawa Circuit Court  
LC No. 03-045297-AV

Before: Neff, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

Defendants appeal by leave granted an order of the circuit court affirming a judgment of possession entered by the district court following a jury trial in this summary proceedings action filed by plaintiff for possession of defendants' home. Plaintiff obtained a sheriff's deed to the home after a foreclosure sale and expiration of the subsequent redemption period. We vacate the judgment of possession, and reverse and remand for further proceedings.

I

In 1979, defendants purchased a home from Jack Poll and his wife, which Poll had mortgaged to Grand Rapids Mutual Federal Savings and Loan Association ("Grand Rapids Mutual").<sup>1</sup> According to Poll and defendants, under the sale, defendants assumed Poll's mortgage. For the next twenty-one years, defendants paid the monthly mortgage payments on the home, pursuant to billings and communications they received in their name from the bank. During this time, Grand Rapids Mutual merged with Comerica Bank, which became the mortgage holder.

In 2000 and 2001, defendants fell behind on their mortgage payments after Danny suffered health problems and was off work. Comerica initiated foreclosure proceedings under MCL 600.3201 *et seq.*, foreclosure by advertisement, with a balance due on the mortgage of

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<sup>1</sup> The factual record in this case is sketchy due to the limited nature of the summary proceedings. Our recitation of the underlying facts is not intended to be conclusive with regard to disputed issues.

\$4,439.12. The foreclosure was undertaken against Poll, not defendants, although a notice of the foreclosure was posted on defendants' home. On August 23, 2001, plaintiff, through its sole member Lynn Hunt, purchased defendants' home in the foreclosure sale for \$5,374.22.

During this time, defendants were pursuing refinancing to pay off the balance due on their mortgage. According to defendants, on August 25, 2001, two days after the foreclosure sale, they contracted with Enterprise Mortgage Corporation to refinance their home and redeem it. Apparently, due to a mistake of the title company and other mistakes and misrepresentations of Enterprise Mortgage, the redemption payment was forwarded to the mortgagee,<sup>2</sup> rather than the register of deeds or plaintiff as required by statute. The mortgagee did not inform defendants that it was not the proper party to receive the redemption payment, and based on paperwork defendants received, they believed that redemption had occurred. The net result was that the refinancing company failed to properly redeem the property within the statutory redemption period. The first defendants learned their home had not been redeemed was after the redemption period expired, when plaintiff filed this summary proceedings action on August 29, 2002, to gain possession of their home.

Defendants raised a number of affirmative defenses to the possession proceedings, essentially arguing that the foreclosure was invalid and that procedural irregularities, combined with the grossly inadequate sale price of \$5,374.22 for their home, worth approximately \$120,000, entitled them to equitable relief. On November 5, 2002, defendants moved to consolidate this case with plaintiffs' pending circuit court case contesting the foreclosure, and moved for discovery or to stay the district court proceedings pending completion of discovery in or resolution of the circuit court action. Defendants also moved for leave to file a counterclaim to quiet title in the home.

Plaintiff opposed both motions, essentially arguing that the only matter for trial in the summary proceedings was whether plaintiff was entitled to possession based on its deed following the sheriff's sale. Plaintiff argued that a stay would violate the court rules, which requires a trial within fifty-six days in a summary proceeding for possession. Plaintiff then filed a motion to exclude from the jury any evidence concerning the disparity between the home's value and the sale price or evidence of defenses other than those, if any, directly related to possession under the summary proceedings statute. The district court denied defendants' motions and granted plaintiff's motion, ruling that "issues involving the appraised value of the subject property, compliance or noncompliance with any contractual notice of default or breach and inappropriate attempts to redeem the property shall not be mentioned to the jury and excluded from evidence at trial."

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<sup>2</sup> The redemption payment was apparently sent to Washington Mutual Home Loans, Inc, which assumed the handling of defendants' mortgage as of January 31, 2001, although whether Washington Mutual was the mortgage holder or merely a mortgage servicing agent for Comerica is unclear from the record.

Following a brief trial on November 25, 2002, the jury found that plaintiff was entitled to possession. On appeal, the circuit court affirmed the district court's rulings on the motions and affirmed the judgment in favor of plaintiff.

## II

Defendants argue that the district court erred in conducting summary proceedings for possession, while disallowing defenses that the foreclosure process was flawed, and excluding evidence of the gross disparity between the purchase price and the value of the defendants' home. They also argue that the court erred in denying leave to add a counter claim to quiet title against plaintiff or consolidate the claim with defendants' action in circuit court. We agree that the district court's rulings were erroneous and require reversal.

Essentially, the question presented is whether the district court properly proceeded with plaintiff's summary action for possession despite defendants' claims concerning the validity of the foreclosure and their entitlement to equitable relief to preclude being dispossessed of their home. We hold that the summary proceedings for possession were improper in these circumstances. Although the legal authority is somewhat murky with regard to the disposition of a summary proceeding for possession in district court in the face of a pending quiet title action in circuit court, it seems clear that possession cannot properly be granted via a summary proceeding when the claim to title is legitimately disputed.

## A

In 1972, the Legislature enacted a new summary proceedings act, which involved "a complete revision and enactment of all statutes covering civil actions to recover possession of premises." 51 Mich Bar J 361 (1972). Chapter 57 of the Revised Judicature Act, added by Public Act 120 of 1972, provides for summary proceedings for recovery of possession of premises. MCL 600.5701 defines "summary proceedings" as "a civil action to recover possession of premises and to obtain certain ancillary relief as provided by this chapter and by court rules adopted in connection therewith." MCR 4.201 governs summary proceedings to recover possession of premises.

Jurisdiction over summary proceedings to recover possession of real property is vested in the district court. MCL 600.5704; *Ames v Maxson*, 157 Mich App 75, 79; 403 NW2d 501 (1987). Although possession proceedings were at one time strictly limited to the issue of possession, that is no longer the case under the current scheme for resolution of competing title claims. The former separation of actions at law and equitable claims, which mandated that equitable defenses could not be raised in a summary proceeding, *McCreery v Roff*, 189 Mich 558, 565; 155 NW 517 (1915), is therefore no longer viable.

Joinder of claims is permitted in summary proceedings. MCL 600.5739; MCR 4.201(G); *Admaski v Cole*, 197 Mich App 124, 128; 494 NW2d 794 (1992); *Ames, supra*. However, "[t]he statute limits joinder of claims to those over which the district court may properly exercise jurisdiction." *Adamski, supra*; see also *Ames, supra*. The court rule provides:

A summary proceedings action need not be removed from the court in which it is filed because an equitable defense or counterclaim is interposed.

If a money claim or counterclaim exceeding the court's jurisdiction is introduced, the court, on motion of either party or on its own initiative, shall order removal of that portion of the action to the circuit court, if the money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit. [MCR 4.201(G)(2)(a) and (b).]

Thus, "[a] party has a right to join claims and counterclaims, legal and equitable, in a summary proceedings action as permitted by [MCL] 600.5739, except as modified by MCR 4.201(G)." Longhofer & McKenna, Michigan Court Rules Practice, § 4201.8, pp 682-683.

A summary proceedings action need not be transferred to circuit court because an equitable defense or counter claim is interposed. [MCL] 600.8302 grants equitable jurisdiction to the district courts in cases arising under the Summary Proceedings Act sufficient to resolve most controversies which may arise. Should the court determine that it lacks jurisdiction over an unusual claim or defense, transfer of the action is permitted under MCR 4.002.

If, however, a money claim or counterclaim is introduced that seeks damages in excess of the court's jurisdictional limits, the court on motion of a party or on its own motion must transfer the money claim or counterclaim to the circuit court. The action for possession will be retained by the district court. [Michigan Court Rules Practice, § 4201.8, p 683 (footnotes omitted).]

Plaintiff argues that Michigan case law establishes that the defense of the invalidity of foreclosure may not be raised in summary proceedings. However, in *Federal Nat'l Mortgage Ass'n v Wingate*, 404 Mich 661, 676-677, n 5; 273 NW2d 456 (1979), our Supreme Court observed, to the contrary, that there was "some precedential support" in this state for such a defense in summary proceedings:

The proper issue in Landlord-Tenant Court is right to possession and the few Michigan cases on point support the position that validity of foreclosure is to be considered. In *Gage v Sanborn*, 106 Mich 269, 279; 64 NW 32 (1895), this Court held:

"The questions to be tried before the commissioner under this statute (for summary proceedings) in a foreclosure case are: (1) the fact of the mortgage sale and *its validity*; (2) the holding over after expiration of the period of redemption. If these questions cannot be tried by the commissioner the statute is farcical, as jurisdiction would always be lost as soon as a plausible claim of invalidity of the sale should be raised. Hence a mortgagor is permitted to question the validity of the sale in this proceeding . . . ." (Emphasis added.)

The language of the statute in *Gage* is very similar to RJA, § 5714(1)(e) quoted in part in footnote 6, *infra*. See also *Reid v Rylander*, 270 Mich 263, 267; 258 NW 630 (1935) ("We again hold that validity of the [foreclosure] sale may be

tested in a summary proceeding based thereon, insofar as invalidity thereof appears in the procedure . . ."). See, e. g., *Guardian Depositors Corp v Keller*, 286 Mich 403, 409; 282 NW 194 (1938).

Subsequently, in *Manufacturers Hanover Mortgage Corp v Snell*, 142 Mich App 548, 553; 370 NW2d 401 (1985), this Court expressly recognized the general availability of equitable defenses in foreclosure and summary eviction proceedings:

The Supreme Court has long held that the mortgagor may hold over after foreclosure by advertisement and test the validity of the sale in the summary proceeding. *Reid*[, *supra*, at] 267; *Gage*[, *supra*, at] 279. Otherwise, the typical mortgagor who faces an invalid foreclosure would be without remedy, being without the financial means to pursue the alternate course of filing an independent action to restrain or set aside the sale. *Reid*, *supra* [at] 267; see also, 16 Michigan Law and Practice, Mortgages, § 174, pp 438-439. The mortgagor may raise whatever defenses are available in a summary eviction proceeding. MCL [] 600.5714 []; *Federal National Mortgage Ass'n*[, *supra* at] 676 n 5. *The district court has jurisdiction to hear and determine equitable claims and defenses involving the mortgagor's interest in the property.* MCL [] 600.8302(3);[]; DCR 754.7(b)(1). [Emphasis added.]

Given this precedent, we conclude that, at the very least, the district court erred in disregarding defendants' equitable claims and proceeding with the summary proceedings action for possession.

Nonetheless, when there are competing claims of title to real property, the proper action is one of quiet title, under MCL 600.2932, and accompanying court rules under MCR 3.411:

The summary proceeding is available only to determine the bare right of possession. If the plaintiff seeks to eject the defendant on grounds that his title is superior to the defendant's adversely claimed title, or *if the defendant claims a right to possession by virtue of his own superior title* or under the adverse title of a third person, the remedy must be by an action to determine interest in land in the circuit court, under [MCL] 600.2932 and MCR 3.411. [Longhofer & McKenna, § 3411.13, p 564 (emphasis added; footnote omitted).]

"A statutory summary proceeding is provided in cases, inter alia, when any person continues in possession of any premises sold by virtue of a mortgage after the expiration of the time limited by law for the redemption of the premises. If the occupant asserts claims that have not been foreclosed by the decree, a summary possessory proceeding will not lie." Michigan Law and Practice Encyclopedia, Real Property, § 1029, Possession by Purchaser, p 476 (footnotes omitted).<sup>3</sup>

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<sup>3</sup> MCL 600.2932(2) bars mortgagees from using § 2932 to recover mortgaged property until title to the property has become absolute.

In this case, defendants presented ample evidence of a competing claim for title to their home. There was evidence of significant procedural irregularities with respect to the default, foreclosure, and redemption. The home was sold for more than \$100,000 less than its alleged value. The foreclosure was not undertaken against defendants, the owners of the home, but instead against Poll, who had received no communications from the mortgagee in more than twenty years. Poll received no notice of default or foreclosure. According to defendants and Poll, defendants assumed Poll's mortgage. This certainly raised an issue whether there was an assumption of the mortgage, either by a formal assumption or waiver. There was evidence to support defendants' claim that they believed the home to be redeemed following their refinancing. The district court had jurisdiction to consider defendants' equitable claims, if nothing else to determine whether they merited recognition such that the summary proceedings for possession were improper. The court could then have granted appropriate relief to permit resolution of the title claims, either by hearing the claims in district court or dismissing or staying the possession action until the title claims were resolved in circuit court.

Plaintiff argues that its action for possession of defendants' home on the basis of the sheriff's deed should have priority over defendants' equitable claims of title to their home. Plaintiff asserts that "[t]o allow the occupants to raise defenses extrinsic to this record would place an impossible burden on potential bidders and discourage anyone from submitting bids" on foreclosure property because bidders cannot determine whether the foreclosure process was flawed. We disagree. Absent bizarre or extraordinary circumstances, it is unlikely that an owner would sacrifice a \$120,000 home by failing to redeem it after a foreclosure sale for merely \$4,439.12, particularly here, where the home was occupied and owned by the same family for more than twenty years. Anyone bidding on this property would surmise something was amiss under these circumstances, and, consequently, plaintiff's public policy argument fails.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Michael R. Smolenski

/s/ Bill Schuette