

STATE OF MICHIGAN

COURT OF APPEALS

RICHARD R. SOREL,

Plaintiff-Appellant,

v

YASIR SHAMMAMI, and his wife, JANE DOE
SHAMMAMI,

Defendant-Appellee,

and

CITY OF DETROIT,

Third-Party Defendant.

UNPUBLISHED

May 30, 2006

No. 259452

Wayne Circuit Court

LC No. 04-405307-CH

Before: Cavanagh, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment granting summary disposition and quieting title to defendant.¹ The court also ordered plaintiff to pay defendant \$2,500 in costs, reasoning that plaintiff violated MCR 2.114. Because the trial court properly granted summary disposition but erred in assessing sanctions in defendant's favor, we affirm in part and reverse in part.

Plaintiff brought an action to quiet title to a parcel of property located in Detroit based upon his alleged interest in the property. Plaintiff alleges that he has a valid interest in the property based upon his redemption of a third party's tax lien in 1999 (originally issued for delinquent 1993 Wayne County taxes) and his purchase of two tax liens from the State of Michigan for the delinquent 1994 and 1996 Wayne County taxes. In 2000, the State of Michigan

¹ Because it is apparent that any interest of "Jane Doe" Shammami in this case is simply derivative of that of her husband Yasir, the term "defendant" shall refer to Yasir.

issued him a tax deed to the property, but plaintiff did not record the deed until February 21, 2002.

The City of Detroit, however, foreclosed on the property in February 1999 for its delinquent city taxes, obtaining a judgment of tax foreclosure nunc pro tunc on August 3, 2000. No one redeemed the property from that judgment, and the City of Detroit subsequently sold the property to defendant, issuing him a quit claim deed for the same in 2003. Both parties thus claimed an interest in the subject property and both moved for summary disposition in the trial court. The trial court granted defendant's motion for summary disposition, quieting title in his favor, and also awarded sanctions in the amount of \$2,500.00 against plaintiff and in favor of defendant for his having to defend against a frivolous action. Plaintiff now appeals both the summary disposition decision and the award of sanctions.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). In evaluating such a motion, the court considers the record in the light most favorable to the non-moving party, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. *Id.* Summary disposition should be granted under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

This Court reviews quiet title actions, which are equitable in nature, de novo. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). In a quiet title action, the plaintiff has the initial burden of proof and must make out a prima facie case of title. *Id.* If the plaintiff makes a prima facie showing, then the defendant has the burden of proving superior right or title. *Id.*

In the present appeal, plaintiff contends the city's foreclosure judgment is invalid against his alleged interest in the property for a number of reasons. Initially, plaintiff claims that the foreclosure judgment is void because the city failed to name him as a defendant in the foreclosure action. However, a foreclosure proceeding for failure to pay taxes is a proceeding in rem, against the land itself. *Smith v Cliffs on the Bay Condo Ass'n (On Remand)*, 245 Mich App 73, 75; 626 NW2d 905 (2001). Moreover, in its February 1999 petition, the city apparently named the owners of record as parties (see MCL 211.61a²). There is no evidence plaintiff had a recorded interest in the property at that time, and plaintiff has failed to provide any authority to support his assertion that he should have been named as a party in the action. The City therefore did not err in not naming plaintiff as a defendant in its 1999 foreclosure petition.

² Citations to the General Property Tax Act, MCL 211.1 *et seq.*, refer to sections in effect at the time the city of Detroit filed its petition on February 10, 1999.

Plaintiff next claims that because he redeemed a third-party's tax lien interest prior to the foreclosure judgment, he was a lien holder and entitled to a quitclaim deed on the property under MCL 211.141(3) and (4). We disagree. Under § 141(3), when a party redeems property, the tax title holder is required to deliver a release and quitclaim deed to the county treasurer. Under §141(4), a party who redeems, i.e., the "grantee," is entitled to a lien on the property.

Here, as to § 141(4), plaintiff redeemed the property from the 1993 tax lien purchase, but never recorded a deed that he was entitled to receive the property based on his redemption. In accordance with the foreclosure judgment, 60 days after the foreclosure judgment was entered, the city of Detroit was vested with fee simple title subject to, in relevant part, (1) any state or county taxes that have been bid to the state or remain unpaid regardless of whether the lien for such taxes became a lien prior to or subsequent to the lien foreclosed upon; (2) any estates or interests arising from taxes becoming a lien subsequent to the lien foreclosed upon; or (3) any building or use restrictions in common with other properties in the immediate neighborhood. Because plaintiff's unrecorded redemption lien does not fit any of the exceptions, the lien was rendered unenforceable as a result of the foreclosure judgment.

Plaintiff next claims that the city's foreclosure judgment did not affect his interest in the property as he had absolute title in the property based on his purchase of the 1994 tax lien and the 1996 tax deed. We disagree. Under MCL 211.72, the State Treasurer would issue a tax deed to a tax lien purchaser if the owner's one year statutory period³ to redeem the property had expired and the tax sale purchaser presented the treasurer with a certificate of sale. The tax deed allowed the tax purchaser absolute title to the property, subject only to subsequent taxes assessed on the property following the tax sale. § 72, accord *Ottaco, Inc v Gauze*, 226 Mich App 646, 652; 574 NW2d 393 (1997). However, under MCL 211.141 a purchaser's "absolute title" is still subject to a final six-month redemption period under MCL 211.141. Before this period begins to run, the tax deed holder must comply with the notice requirements of MCL 211.140. *Equivest Ltd Partnership v Foster*, 253 Mich App 450, 453; 656 NW2d 369 (2002).

As to plaintiff's 1994 tax lien purchase, plaintiff has not submitted any evidence that his interest was not subsequently redeemed or that he ever submitted a certificate of sale to the Wayne County Treasurer to obtain a tax deed. Moreover, he has never submitted an actual tax deed based on this purchase. The only evidence indicating that plaintiff may have obtained a tax deed is found in his notice of a purported 1994 tax deed that he served upon the city attorney. Thus, we conclude that there is no genuine issue of material fact and that plaintiff has not met his burden of proof that he actually obtained an interest in the property based on his 1994 tax lien purchase.

As to plaintiff's 1996 tax lien purchase, the city properly redeemed plaintiff's interest based on this purchase. Specifically, the foreclosure judgment provides that after 60 days elapsed, title vested in the city subject to, in relevant part, any taxes that had been bid to the state whether the lien became prior to or subsequent to the tax lien foreclosed on by the judgment.

³ See MCL 211.70 and MCL 211.74.

Here, the 1996 taxes were bid to the state, and plaintiff subsequently purchased the tax lien from the state. The city, however, properly redeemed plaintiff's 1996 tax purchase by depositing \$3,875.38 with the Wayne County Treasurer on June 15, 2001. Because the city had properly redeemed plaintiff's 1996 lien purchase, the tax deed to plaintiff for his 1996 purchase was improperly issued and, again, was not recorded until after the foreclosure judgment was entered. See *Long v Cleveland*, 264 Mich 426, 429; 250 NW 278 (1933) (concluding that after the plaintiff's tax lien purchase had been properly redeemed, the plaintiff had no right to a tax deed and noting that the county treasurer apparently did not inform the auditor general of the redemption).

Plaintiff next argues that he is entitled to a lien for the unpaid Wayne County property taxes for 1997 through 2000 that he paid in 2001. Plaintiff relies on *Long, supra*, in support of his proposition. However, plaintiff's reliance on *Long* is misplaced and because it was unreasonable for him to pay the delinquent 1997 through 2000 Wayne County property taxes without first determining that he had a valid ownership interest in the property, especially after the city had already foreclosed on the property and obtained a judgment of tax foreclosure. See *Booker v Detroit*, 251 Mich App 167, 177; 650 NW2d 680 (2002), rev'd on other grounds 469 Mich 892 (2003) (concluding that it was unreasonable for the decedent to pay delinquent taxes without at least obtaining a current copy of the tax bill to verify his ownership interest). Therefore, plaintiff is not entitled to a lien on the property.

Plaintiff also argues that defendant was not a bona fide purchaser of the property because defendant purchased the property after plaintiff recorded his 1996 tax deed. However, this argument is based on a flawed premise because the city properly redeemed plaintiff's 1996 tax lien purchase and a foreclosure judgment had been entered with respect to the property, rendering plaintiff's tax deed interest unenforceable.

Plaintiff finally argues that his quiet title action was not frivolous because MCL 211.72 and MCL 211.141(4)⁴ provide him with a right to bring such an action. We agree. A trial court's determination that a pleading was frivolous is subject to review for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). A decision is clearly erroneous when this Court is left with the definite and firm conviction that a mistake has been made. *Id.* at 661-662. If a pleading was signed in violation of the court rule pertaining to frivolous claims, the imposition of sanctions is required. MCR 2.625(A)(2); accord MCL 600.2591; MCR 2.114(F); *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 720-721; 591 NW2d 676 (1998). Determination of whether a claim was frivolous must be based on the circumstances that existed at the time the claim was asserted. *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003). A claim is frivolous if at least one of the following circumstances is shown:

[t]he party's primary purpose in initiating the action or asserting the defense was to harass, embarrass or injure the prevailing party[; t]he party had no reasonable

⁴ Plaintiff cites MCL 211.41; however, we presume this is a typographical error.

basis to believe that the facts underlying the party's legal position were in fact true[; or t]he party's legal position was devoid of arguable legal merit. [MCL 600.2591(3).]

In regard to MCL 211.72 and plaintiff's argument that the same allows those holding state tax deeds to commence an action for quiet title, plaintiff has not presented any evidence that he ever obtained a tax deed from his purchase of the 1994 tax lien. Therefore, § 72 does not apply for the purported 1994 tax deed. § 72 may, however, support plaintiff's position with respect to the 1996 tax deed, as he presented evidence of the same.

Plaintiff also argues that § 141(4) allowed him to bring a quiet title action because he had redeemed the property from a previous tax lien purchaser. Plaintiff's lien under § 141(4) was extinguished as a result of the city's foreclosure judgment. However, there is no indication that plaintiff knew or had reason to know that at the time he brought his quiet title action, the foreclosure judgment affected his particular claimed interest. Plaintiff was not a party to the foreclosure action and could reasonably have believed the resulting judgment only affected the specific parties' interests identified in the foreclosure action. Therefore, we conclude that it was clearly erroneous for the trial court to find that plaintiff should not have reasonably believed he was entitled to quiet title, and the award of sanctions in favor of defendant is reversed.

Affirmed in part and reversed in part.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto