

STATE OF MICHIGAN
COURT OF APPEALS

DESTINY 98 TD SCIO TOWNSHIP,

Plaintiff-Appellee,

v

ALL OCCUPANTS,

Defendant,

and

PETER BEAL,

Defendant-Appellant.

UNPUBLISHED

November 21, 2006

No. 270400

Washtenaw Circuit Court

LC No. 05-000235-CK

PETER BEAL,

Plaintiff-Appellant,

v

DESTINY 98 TD,

Defendant-Appellee.

No. 270401

Washtenaw Circuit Court

LC No. 05-000018-CH

Before: Murphy, P.J., and Meter and Davis, JJ.

PER CURIAM.

In these consolidated appeals concerning ownership of real property once owned by Peter Beal and purchased by Destiny 98 TD (“Destiny”) pursuant to a tax deed, appellant Beal appeals as of right from a judgment quieting title and awarding possession of the property to Destiny. The trial court entered the judgment after granting summary disposition in favor of Destiny pursuant to MCR 2.116(C)(10). We affirm.

Beal failed to pay \$2,104 in taxes for the 1995 tax year. Destiny obtained a tax certificate dated May 5, 1998, following purchase of the tax lien at a tax sale. The parties agree that Destiny was entitled to a tax deed on May 5, 1999, but did not obtain the tax deed until May 29,

2002. Eventually, in 2003, notice of Destiny's tax deed interest in the property was served on Beal and filed, triggering the start of the redemption period. Beal did not redeem the property, but remained in possession of the property.

Destiny filed an action in district court to have Beal evicted. Beal filed an action in circuit court to quiet title to the property, claiming in part that Destiny's possession was barred by the expiration of the five-year period prescribed in former MCL 211.73a. The district court action was removed to circuit court, and the two actions were consolidated.

Destiny moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it was not barred from seeking possession by former MCL 211.73a.

At the time the tax deed in question was issued, MCL 211.73a¹ stated, in pertinent part:

The right to recover possession of land, or to a refunding of the amount paid, or to secure a tax deed, by a person claiming through or under a deed executed by the auditor general or by an officer authorized to issue tax deeds under a former tax law of the territory of the state of Michigan or by virtue of a certificate of purchase issued under this act or by a former tax law, shall be forever barred by the *actual, open, and continuous possession of a person claiming that land adversely to the tax deed*, or certificate of purchase, for the period of 5 years after the purchaser of the tax title, his heirs or assigns, is entitled to a deed thereof, or by a failure of the tax title purchaser, his heirs or assigns, to make a bona fide attempt to give notice required by this act, or by a former tax law, for a reconveyance of the premises within the above specified period of 5 years. [Emphasis added.]

There is no dispute that Beal had actual, open, and continuous possession of the property. The issue addressed by the trial court and argued on appeal regards whether Beal claimed the land "adversely to the tax deed." Relying on *In re Petition of Auditor Gen*, 281 Mich 153; 274 NW 745 (1937), the trial court concluded that Beal's continued possession of the land was not under a claim adverse to the tax deed, and it granted summary disposition in favor of Destiny. The trial court reached this conclusion because it found that there was evidence that Beal had negotiated with Destiny to redeem the property by paying the taxes or through some other arrangement, and this evidence reflected that Beal was not claiming the property in an adverse and hostile manner.

We find it unnecessary to determine whether the trial court was correct in its analysis concerning the disputed statutory element and the documentary evidence because summary disposition was otherwise appropriate on the basis of an alternative argument presented by Destiny, which is that Beal cannot utilize the statute because of its repeal by the Legislature. "When this Court concludes that a trial court has reached the correct result, this Court will affirm

¹ Insignificant changes were made to this statute by 2002 PA 620, effective December 23, 2002. The statute was repealed by 1999 PA 123, effective December 31, 2003.

even if it does so under alternative reasoning.” *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998).

We are addressing the five-year adverse possession aspect of former MCL 211.73a, and the statute was repealed effective December 31, 2003, 1999 PA 123; however, the five-year period did not elapse until May 2004, which was five years after Destiny was entitled to a tax deed. MCL 211.125 provides:

All rights which may have *accrued* to any person, as well as all rights which have *accrued or become vested* in any individual, corporation, municipality, or the state, under any of the heretofore existing tax laws of the state which have been amended, modified, changed or *repealed*, shall not be affected, changed or destroyed, but the same shall remain in force, subject to review and enforcement in the courts of this state, and for the completion of all proceedings heretofore begun for the collection of taxes or the enforcement of all the requirements of such laws. [Emphasis added.]

Here, Beal’s right to claim the property in the quiet-title action is entirely predicated on the adverse possession language contained in former MCL 211.73a; however, his right to claim the property under the statute had not yet accrued or vested at the time the statute’s repeal became effective in December 2003. Accrual and vesting would not occur until May 2004. In December 2003, Beal could not have claimed the property under former MCL 211.73a. Accordingly, we hold that Beal cannot maintain his action and claim pursuant to the repealed statute.

By way of analogy, Beal argues that Michigan law recognizes that the applicable statute of limitations is the one in effect at the time the plaintiff’s cause of action arose, notwithstanding revisions in the limitations period. This is an accurate assessment of the law. See *Chase v Sabin*, 445 Mich 190, 192 n 2; 516 NW2d 60 (1994) (“The pertinent statute of limitations is the one in effect when the plaintiff’s cause of action arose.”). However, Beal fails to appreciate, in the context of this case, that his “cause of action” to quiet title based on former MCL 211.73a had not yet arisen in December of 2003, but only arose in May of 2004, at which point the statute was no longer in effect. Beal acknowledges MCL 211.125, cited above, but argues that his substantive rights accrued under former MCL 211.73a while it was in effect. This argument ignores the legal reality that Beal had no substantive right whatsoever to file a claim of adverse possession under the statute prior to the repealer’s effective date as the five-year period had not expired. The mere fact that the statute was effective when Destiny was entitled to and received the tax deed does not mean that Beal’s adverse possession rights accrued or vested at the same time; the clock started, but this did not equate to accrual and vesting. It cannot be reasonably disputed that had Destiny commenced an eviction action in January 2004, Beal could not have countered with a claim of adverse possession under the statute as the claim had not accrued and vested. The trial court correctly quieted title in favor of Destiny.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Alton T. Davis