STATE OF MICHIGAN

COURT OF APPEALS

In re Petition of WAYNE COUNTY TREASURER for Foreclosure.

WAYNE COUNTY TREASURER, STATE OF MICHIGAN, and AVENUE INVESTORS,

Petitioners-Appellees,

v

HENRY WATSON II,

Respondent-Appellant.

UNPUBLISHED
August 5, 2008

No. 265426
Wayne Circuit Court
LC No. 03-318698-PZ

ON REMAND

Before: Smolenski, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

This case returns to this Court on remand from our Supreme Court for consideration of issues not previously addressed. 480 Mich 1139; 745 NW2d 777 (2008).

I. Fact and Procedural History

This Court's earlier opinion in this case includes a concise statement of the underlying facts:

> This action involves a parcel of property located at 20630 Woodward Avenue in Detroit, referred to as Parcel No. 01009875. Petitioner State of Michigan (the State) owned the property, which was part of a 34-acre parcel adjacent to the state fairgrounds. The property was taxed and on June 10, 2003, the Wayne County Treasurer filed a petition for foreclosure due to unpaid property taxes from tax year 2001 and before. On December 19, 2003, the State filed suit against Wayne County and the city of Detroit claiming that the property was exempt from forfeiture because the Wayne County Treasurer erroneously levied taxes on state-owned property. On March 5, 2004, a foreclosure judgment was entered vesting title to the property in the Wayne County Treasurer. In April 2004, the State settled its lawsuit against Wayne County and the city of Detroit. The defendants agreed to cancel all taxes and take whatever steps necessary to

> vest title to the property in the State. Despite this agreement, the Wayne County Treasurer sold the property to respondent at a public auction in the fall of 2004.
>
> In January 2005, the Wayne County Treasurer sought to set aside the foreclosure judgment. The Wayne County Treasurer admitted that it erroneously subjected the property to taxes and foreclosure. The State filed a separate motion a few months later. Respondent argued that the trial court could not grant petitioners' requested relief because they failed to exercise their rights under the GPTA.[1] On June 10, 2005, the trial court vacated the foreclosure judgment because of the Wayne County Treasurer's error. The trial court stated that had it known that the property was owned by the State, it would not have entered the foreclosure judgment. [Unpublished opinion per curiam issued May 8, 2007, slip op at 1-2 (footnote omitted).]

Respondent appealed to this Court, arguing that the foreclosure judgment should not have been set aside. In the alternative, respondent argued that to the extent the foreclosure judgment was properly set aside, respondent should have been awarded his out-of-pocket costs incurred in acquiring the parcel. This Court reversed the judgment of the trial court, concluding the foreclosure judgment should not have been set aside.

Petitioners sought leave to appeal from the Supreme Court, which, in lieu of granting leave, reversed the judgment of this Court and remanded. The Supreme Court decreed, "The foreclosure sale of publicly owned property is prohibited." 480 Mich 981; 742 NW2d 109 (2007), citing MCL 211.7*l*; MCL 211.78g(1). The Supreme Court reasoned as follows:

> The Wayne County Treasurer had reason to know that the property was publicly owned during the tax years that led to the tax foreclosure, because the County was engaged in litigation with the State . . . concerning tax liability and other matters pertaining to the property. Further, prior to the property being sold to the respondent, a settlement of the litigation required removal and rescission of the assessments that were the basis for the foreclosure sale. [480 Mich at 981.]

Initially, the Supreme Court reinstated the order of the circuit court "that set aside the foreclosure sale and provided other relief." *Id.* On reconsideration, however, the Supreme Court modified its order, remanding the case to this Court "for consideration of the remaining issues raised by the respondent in that court but not addressed, in light of its prior disposition." 480 Mich 1139.

Thus we must now decide whether respondent should have been awarded his out-of-pocket costs incurred in acquiring the parcel.

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[1] The General Property Tax Act, MCL 211.1 *et seq.*

II. Analysis

Preliminarily, we note that respondent raised this issue below, but he did so in an incorrect manner. Respondent should have raised the issue before the trial court at the time of the May 20, 2005, motion hearing, when the trial court set aside the foreclosure judgment and announced what costs respondent was entitled to recover. Instead, respondent attempted to raise these issues in the course of objecting to entry of the order resulting from the May 20, 2005 hearing. The trial court concluded respondent was attempting to relitigate matters already decided and not currently before the court. We agree with the trial court's assessment. We further conclude that this issue is not properly preserved. Therefore, we review this matter only for plain error affecting substantial rights. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004).

A. Costs

"Awards of costs . . . are recoverable only where specifically authorized by a statute, a court rule, or a recognized exception." *Phinney v Perlmutter*, 222 Mich App 513, 560; 564 NW2d 532 (1997). In this case, respondent seeks reimbursement for his attorney fees, along with the costs of title search, taxes, site plan consultation, land survey, and site appraisal. However, respondent cites no authority that stands for the proposition that a good-faith tax-sale purchaser who loses his acquisition because of defects in title is entitled to reimbursement of any such expenses. Instead, respondent presents general policy arguments, including his observation that the GPTA was recently revised to minimize the risks to which innocent tax-sale purchasers were exposed.

Because respondent fails to present any authority under which he might have been awarded his costs, respondent fails to show that the trial court plainly erred in holding that respondent was entitled to no more than a refund of his purchase price plus costs in the form of interest on that refund.

B. Rate of Interest

On appeal, respondent for the first time, requests a rate of interest on the refund of his purchase price coinciding with certain provisions in the GPTA in effect at the time relevant, as opposed to the rate identified as "the Wayne County General fund interest rate," that is provided for in the order on appeal. Because Wayne County's counsel proposed the latter basis for calculating interest we surmise that it reflects the normal operations of that governmental unit.

Respondent seeks a rate of 1.25 percent per month, citing MCL 211.74. That statute, repealed effective December 31, 2006, by 2005 PA 183, prescribed that rate for those paying redemption amounts to the county treasurer except as provided by MCL 211.89. Respondent also mentions the latter, apparently only because subsections (c) and (d) thereof prescribe 1.5 percent interest. In particular, subsection (c) prescribes that rate of interest to be paid "to the treasurer" under the now-repealed MCL 211.74, and subsection (d) prescribes that rate paid to

"to the department of treasury" under MCL 211.84, which was also repealed effective December 31, 2006, by 2005 PA 183 § 2.[2]

Because those statutes concerned amounts paid to redeem property delinquent in taxes, they do not apply in this situation. Respondent cites no authority for the proposition that a court may adopt the provisions of an unrelated statute when called upon to provide for payments of interest. Nor does respondent provide any information concerning the "Wayne County General fund interest rate," let alone present authority to show that recourse to it was improper in this instance.

For these reasons, respondent has failed to show plain error in the interest rate chosen in this matter.

III. Conclusion

Respondent has failed to show plain error in the trial court's decision to restrict his compensation for his lost property to a refund of the purchase price plus interest calculated apparently in accord with Wayne County's normal course of business. We affirm the trial court's decision not to award out-of-pocket costs, and its acceptance of the interest rate provided in the trial court's order.

/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra

[2] Section 74 related to redemption of property following sale, and § 84 related to purchases of state bids after tax sales.