

STATE OF MICHIGAN
COURT OF APPEALS

JP MORGAN CHASE BANK, N.A.,

Plaintiff/Counter-defendant-
Appellee,

v

NICK LUCAJ, a/k/a NICA LUCAJ, and HANNA
LUCAJ, a/k/a HANA LUCAJ,

Defendants/Counter-plaintiffs-
Appellants,

and

LILJANA LUCAJ,

Defendant/Counter-plaintiff,

and

UNITED STATES OF AMERICA and
DEPARTMENT OF TREASURY,

Defendants.

Before: STEPHENS, P.J., and CAVANAGH and MURRAY, JJ.

PER CURIAM.

In this action to bar a dower right, defendants Nick and Hanna Lucaj¹ appeal as of right the trial court's order granting summary disposition in favor of plaintiff JP Morgan Chase Bank, N.A., on all claims pursuant to MCR 2.116(C)(7) and (C)(9). We affirm.

¹ This opinion addresses Nick and Hanna as "defendants" because Liljana Lucaj, the United States, and the Michigan Department of the Treasury were dismissed from the suit by the trial court and are not parties to this appeal.

UNPUBLISHED
November 17, 2015

No. 323490
Oakland Circuit Court
LC No. 2013-132673-CH

I. BACKGROUND

At all times pertinent to the issues raised in this appeal, defendants were a married couple. In 2005, Nick entered into a mortgage agreement for the subject property with Chase Manhattan Bank USA, N.A., which was later assigned to plaintiff. The mortgage and note were only signed by Nick and referred to Nick as unmarried or single. Eventually, Nick stopped making the monthly payments on the mortgage and defaulted, and plaintiff began foreclosure proceedings. After a sheriff's sale on August 18, 2009, plaintiff was issued a sheriff's deed for the property, after being the highest bidder for \$143,016, which was substantially less than the amount owed on the \$400,000 mortgage. The sheriff's deed listed the redemption period as six months. However, the property, being larger than three acres, was entitled to a redemption period of 12 months. Realizing this, Nick sued plaintiff alleging that the sheriff's sale and deed should be voided due to the faulty redemption period. Hanna was not a party to that suit and the complaint made no mention of a dower right. Plaintiff filed no counter-complaint. The action was dismissed with prejudice.

Plaintiff later became aware that defendants were married and that the mortgage, note, and foreclosure proceedings only mentioned Nick. Subsequently, plaintiff filed the instant action requesting that the trial court bar Hanna's right to dower. They also requested a deficiency judgment and asserted other claims in the alternative. Nick and Hanna responded with a counter-complaint alleging that Hanna's extant dower right served to void the foreclosure proceeding. Plaintiff moved the trial court for summary disposition of all the claims in the suit. It argued that Hanna's dower interest was extinguished after the expiration of the redemption period, and that defendants' counter-complaint should be dismissed both for a lack of standing and because said action was barred by res judicata. Defendants argued that, because Hanna was never a party to the mortgage, loan, or foreclosure proceedings, it would be unjust to bar her dower right, and that Hanna's counter-claim for her dower right should remain because res judicata does not apply where she was not a party to the first suit. Defendants also argued that plaintiff's suit should be barred by res judicata, asserting that plaintiff's claims should have been raised in the first suit brought by Nick.

The trial court granted summary disposition in favor of plaintiff. The court barred Hanna's dower right, granted a deficiency judgment under MCR 2.116(C)(9), and consequently dismissed Nick and Hanna's counter-complaint. Defendants now appeal those decisions.

II. SUMMARY DISPOSITION

A. RIGHT TO DOWER

Defendants first argue that the trial court improperly granted summary disposition in favor of plaintiff and barred Hanna's dower rights. We disagree. "This Court reviews decisions on motions for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law." *Alcona Co v Wolverine Environmental Prod, Inc*, 233 Mich App 238, 245; 590 NW2d 586 (1998). "Summary disposition under MCR 2.116(C)(9) is proper when the defendant's pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiff's right to recovery." *Slater v Ann Arbor Public Schools Bd of Ed*, 250 Mich App 419, 425-426; 648 NW2d 205 (2002).

The dower right is codified at MCL 558.1, which states, “[t]he widow of every deceased person, shall be entitled to dower, or the use during her natural life, of $\frac{1}{3}$ part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.” “In addition to the statutory provisions of MCL 700.2202 and MCL 558.1, the Michigan Constitution recognizes the right of dower.” *In re Miltenberger Estate*, 275 Mich App 47, 51; 737 NW2d 513 (2007). “Article 10, § 1, which abolished the disabilities of coverture as to property, provides that “[d]ower may be relinquished or conveyed as provided by law.” *Id.* Pursuant to Michigan law, a husband is not permitted to bargain away his wife’s dower interest. *Slater Mgt Corp v Nash*, 212 Mich App 30, 32; 536 NW2d 843 (1995). A wife’s dower right, however, is an inchoate right. *Tuller v Detroit Trust Co*, 259 Mich 670, 676; 244 NW 197 (1932). “[T]he inchoate right of dower of the wife of a mortgagor vests her with the equitable right to redeem from foreclosure against his property.” *Id.* The wife’s right to redeem “is not affected by foreclosure proceedings to which she is not a party.” *Id.*

Under Michigan law, while the dower right does not require a wife’s signature to create a valid mortgage, it does afford the right to redeem the mortgaged property during any redemption period under a forfeiture or foreclosure. Therefore, the mortgage and foreclosure proceedings in this case were proper, and Hanna had an opportunity, pursuant to her dower right, to redeem the property. It is undisputed that Hanna did not redeem the property within the 12-month redemption period. Hanna’s inchoate right depended on her husband’s right to ownership of the property. Both Nick and Hanna lost any interest in the foreclosed property when neither redeemed it during the redemption period. See *Tuller*, 259 Mich at 676. The trial court properly granted summary disposition in favor of plaintiff on the dower right.

B. DEFICIENCY JUDGMENT

Next, defendants argue that the trial court improperly granted a deficiency judgment to plaintiff. On this issue, defendants first argue that plaintiff’s motion for summary disposition was only in regards to their counter-complaint. A review of the record belies this argument. The motion for summary disposition on its face requested that the court enter a deficiency judgment and, also bar Hanna’s dower claims. Additionally, plaintiff’s complaint requested a deficiency judgment. The trial court’s decision in this regard is supported by the record.

C. CALCULATION OF DAMAGES

Defendants next argue that there was insufficient evidence to support the trial court’s calculation of damages. This issue was not argued before the trial court and is therefore, not preserved for review. *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW 2d 269 (2005). Additionally, on appeal, defendants fail to provide this Court with any supporting case law or evidence regarding their allegations of error with the trial court’s order granting damages. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Therefore, we decline the relief requested.

D. RES JUDICATA

Next, defendants argue that plaintiff's claims should have been barred by res judicata because plaintiff did not raise those issues in the original suit filed by Nick. We disagree.

The issues in the instant suit could have been permissively filed in the prior suit but were not issues requiring mandatory joinder. In *Ternes Steel Co v Ladney*, 364 Mich 614, 619; 111 NW2d 859 (1961), our Supreme Court held that a party is not barred from raising issues in a new suit that could have been brought in a prior suit as a counter-claim. Plaintiff, having chosen not to file a counter-claim in defendants' suit against it, was not barred from bringing its suit against defendants. See *id.*

Finally, defendants assert that their counter-complaint should not have been dismissed due to res judicata. First, this issue is not properly before this Court because defendants failed to raise the issue in their statement of questions presented. *Michigan Farm Bureau v Dep't of Environmental Quality*, 292 Mich App 106, 146; 807 NW2d 866 (2011). Further, the trial court dismissed defendants' counter-complaint based both on res judicata and because defendants lacked standing after the expiration of the redemption period. On appeal, defendants only challenge the decision based on res judicata. "When an appellant fails to dispute the basis of the trial court's ruling, [t]his Court . . . need not even consider granting . . . the relief [he] seek[s]." *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004) (internal quotations and citations omitted). As such, we need not, and do not, consider this issue on appeal.

Affirmed. Plaintiff, being the prevailing party, may tax costs as allowed by MCR 7.219.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Christopher M. Murray