

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

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ESSELENA WILLIAMS also known as ESTATE  
OF ESSELENA WILLIAMS, ANGELA I.  
RILEY, and VELMA WILLIAMS HOWARD,

UNPUBLISHED  
April 25, 2017

Plaintiff-Appellants,

v

ONEWEST BANK NA,

No. 330902  
Oakland Circuit Court  
LC No. 2015-147728-CH

Defendant-Appellee.

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Before: MURPHY, P.J., and MURRAY and M. J. KELLY, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(5) (lack of standing) and MCR 2.116(C)(10) (no genuine issue of material fact). This matter arises out of defendant's foreclosure by advertisement on plaintiff Esselena William's mortgage and the subsequent sheriff's sale of the property. After the expiration of the statutory redemption period, plaintiffs brought the instant suit to quiet title. Because plaintiffs lack standing to challenge the foreclosure proceeding following the expiration of the redemption period, we affirm.

**I. BASIC FACTS**

Esselena Williams purchased a house in Pontiac, Michigan in 1963. In 2007, she mortgaged her equity in the property in favor of Financial Freedom Senior Funding Corporation, and the mortgage was eventually assigned to defendant, Onewest Bank, NA. It appears that Williams defaulted on the mortgage and that defendant initiated a foreclosure by advertisement.

Williams died in March 2014, which appears to be before the foreclosure by advertisement was initiated. Her estate, however, was opened in August 2014, before the sheriff's sale for the property was held. Defendant purchased the property at the sheriff's sale

for \$13,000. The six-month statutory redemption period expired on March 16, 2014. It is undisputed that plaintiffs did not attempt to redeem the property during the redemption period.<sup>1</sup>

In March 2015, after the redemption period expired, defendant filed an action for possession of the property, and a judgment of possession was entered in its favor. In April 2015, defendant filed an application for an order of eviction, which was granted. In June 2015, plaintiffs filed the instant suit for quiet title, alleging that they had an interest in the property and that the foreclosure was in violation of MCL 600.3208 because defendant failed to post notice of the foreclosure in a conspicuous place on the property. Plaintiffs also sought an injunction to prevent defendant from evicting tenants who were renting the property. In an affidavit attached to an ex parte motion filed the same day as the complaint, plaintiff Angela Riley averred that to the best of her knowledge plaintiffs never received notice of the foreclosure and that plaintiffs were prejudiced by defendant's failure to comply with MCL 600.3208 because they would have been in a better position to preserve their interest in the property if they had known about the foreclosure sale.

The trial court granted the ex parte motion for a temporary restraining order and set the matter for a show cause on why the court should not issue a preliminary injunction. The court expressly directed the parties to be prepared to submit evidence on whether there was proper notice under MCL 600.3208. Subsequently, on July 15, 2015, the parties entered a stipulated order for a stay of eviction, which provided that the writ of eviction would be stayed for 60 days to allow the parties an opportunity to reach a settlement agreement. The parties, however, were unable to reach a settlement, and in September 2015, defendant filed a motion for summary disposition, which the trial court granted.

## II. SUMMARY DISPOSITION

### A. STANDARD OF REVIEW

Plaintiffs argue that the trial court erred in granting summary disposition under MCR 2.116(C)(5) and (C)(10). This Court reviews de novo a trial court's decision on a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). MCR 2.116(C)(5) provides that a party may move for summary disposition if the plaintiff lacks the capacity to sue. When deciding a motion under MCR 2.116(C)(5), the trial court may consider "the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *McHone v Sosnowski*, 239 Mich App 674, 676; 609 NW2d 844 (2000) (citation omitted). MCR 2.116(C)(10) provides that a party may move for summary disposition if there is no genuine issue of material fact. In reviewing a motion for summary disposition under MCR 2.116(C)(10), a court also considers "affidavits, pleadings, depositions,

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<sup>1</sup> We note that after the redemption period expired, plaintiff Angela Riley's daughter sent a letter to defendant seeking to purchase the property for the redemption price of \$13,000. She attached a bank statement showing that she had the requisite funds to purchase the property. In her letter, she acknowledged that the redemption period had expired.

admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion.” *Greene v A P Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006) (citation omitted).

## B. ANALYSIS

Plaintiffs assert that they had standing to challenge the foreclosure because they alleged fraud or irregularity in the foreclosure proceedings and that the allegations of fraud or irregularity tolled the redemption period. Plaintiffs, however, lack standing to challenge the foreclosure proceedings because the statutory redemption period expired before they brought the instant suit. In *Bryan v JPMorgan Chase Bank*, 304 Mich App 708; 848 NW2d 482 (2014), we addressed whether a mortgagor retains standing to challenge a foreclosure after the statutory redemption period expires, and we held:

Pursuant to MCL 600.3240, after a sheriff’s sale is completed, a mortgagor may redeem the property by paying the requisite amount within the prescribed time limit, which here was six months. “Unless the premises described in such deed shall be redeemed within the time limited for such redemption as hereinafter provided, such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter . . . .” MCL 600.3236. If a mortgagor fails to avail him or herself of the right of redemption, all the mortgagor’s rights in and to the property are extinguished. *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942).

We have reached this conclusion in a number of unpublished cases and, while unpublished cases are not precedentially binding, MCR 7.215(C)(1), we find the analysis and reasoning in each of the following cases to be compelling. Accordingly, we adopt their reasoning as our own. See *Overton v Mtg Electronic Registration Sys*, unpublished opinion per curiam of the Court of Appeals, issued May 28, 2009 (Docket No. 284950), p. 2 (“The law in Michigan does not allow an equitable extension of the period to redeem from a statutory foreclosure sale in connection with a mortgage foreclosed by advertisement and posting of notice in the absence of a clear showing of fraud, or irregularity. Once the redemption period expired, all of plaintiff’s rights in and title to the property were extinguished.”) (citation and quotation marks omitted); *Hardwick v HSBC Bank USA*, unpublished opinion per curiam of the Court of Appeals, issued July 23, 2013 (Docket No. 310191), p. 2 (“Plaintiffs lost all interest in the subject property when the redemption period expired . . . . Moreover, it does not matter that plaintiffs actually filed this action one week before the redemption period ended. The filing of this action was insufficient to toll the redemption period. . . . Once the redemption period expired, all plaintiffs’ rights in the subject property were extinguished.”); *BAC Home Loans Servicing, LP v Lundin*, unpublished opinion per curiam of the Court of Appeals, issued May 23, 2013 (Docket No. 309048), p. 4 (“[O]nce the redemption period expired, [plaintiff’s] rights in and to the property were extinguished. . . . Because [plaintiff] had no interest in the subject

matter of the controversy [by virtue of MCL 600.3236], he lacked standing to assert his claims challenging the foreclosure sale.”); *Awad v Gen Motors Acceptance Corp*, unpublished opinion per curiam of the Court of Appeals, issued April 24, 2012 (Docket No. 302692), pp 5–6 (“Although she filed suit before expiration of the redemption period, [plaintiff] made no attempt to stay or otherwise challenge the foreclosure and redemption sale. Upon the expiration of the redemption period, all of [plaintiff’s] rights in and title to the property were extinguished, and she no longer had a legal cause of action to establish standing.”). We hold that by failing to redeem the property within the applicable time, plaintiff lost standing to bring her claim. [*Id.* at 713-715.]

Accordingly, because it is undisputed that the redemption period expired before plaintiffs brought their claim, we conclude that the trial court correctly held that plaintiffs lacked standing and dismissed the case under MCR 2.116(C)(5).

In addition, although it is not entirely clear from their brief on appeal, plaintiffs appear to argue that there was fraud or irregularity because (1) the mortgagor, Williams, died before the foreclosure and her estate was not opened until after the foreclosure proceedings began, (2) plaintiffs attempted to redeem the property but were not allowed to do so, and (3) the statutory notice requirements in MCL 600.3208 were not satisfied. Plaintiffs, however, failed to plead fraud in their complaint, so they may not now claim fraud as a means of maintaining standing to sue. See generally MCR 2.112(B)(1) (fraud must be pleaded with particularity) and *Michigan ex rel Gurganus v CVS Caremark Corp*, 496 Mich 45, 64 n 41; 852 NW2d 103 (2014) (stating that a complaint fails to state a claim for relief if the pleaded facts only support the *mere possibility* of misconduct). Further, plaintiffs have provided no support for the proposition that initiating a foreclosure after a mortgagor has died but before his or her estate has opened is an irregularity in the proceedings that would allow a foreclosure to be set aside, and we will not search for such authority to negate or affirm their unsupported claim. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Next, although plaintiffs claim that they attempted to redeem the property and were not allowed to do so, the evidence in the record only reflects that plaintiff Riley’s daughter attempted to purchase the property for the redemption amount *after* the redemption period expired. Finally, while plaintiffs contend that notice was not posted in a conspicuous place on the property as required by MCR 600.3208, defendant has come forward with photographic evidence that the notice was posted on the front door of the property, and plaintiffs did not present any evidence to the contrary. Because a party responding to a motion under MCR 2.116(C)(10) must establish more than a mere possibility that a claim could be supported at trial, *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999), we conclude that the trial court did not err in granting summary disposition under MCR 2.116(C)(10).

Affirmed. As the prevailing party, defendant may tax costs. MCR 7.219(A).

/s/ William B. Murphy  
/s/ Christopher M. Murray  
/s/ Michael J. Kelly