STATE OF MICHIGAN

COURT OF APPEALS

FRANK RICHARDSON,

Plaintiff-Appellant,

v

SPARK INVESTMENT LLC and WAYNE COUNTY TREASURER RAYMOND WOJTOWICZ,

Defendants-Appellees.

UNPUBLISHED
December 19, 2017

No. 335150
Wayne Circuit Court
LC No. 15-009501-CH

Before: METER, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court granting summary disposition in favor of defendants. We reverse and remand.

The essential facts in this case are not in dispute. In 2011, plaintiff purchased five lots located in the City of Westland, identified as lots 3, 4, 39, 40 and 43 of the Bakewell Hills Subdivision in the City of Westland. Lots 3 and 4 are located on Wayne Road and are improved with a building from which plaintiff operates a physical therapy business. The other three lots are unimproved and are located across the side street from the building. All five lots were transferred in a single deed. It is undisputed that proper legal descriptions for all five lots were included in the deed, that the tax parcel numbers for the lots were also included,[1] and that the deed contains a "commonly known address" for the parcels, which is the address of the building on lots 3 and 4. A transfer affidavit was also filed, though it only identified the parcel number of lots 3 and 4. Defendant Treasurer also states that "Plaintiff only recorded the deed under the tax identification number, legal description and commonly known address belonging to Plaintiff's physical therapy business". The Treasurer thus asserts that, because of this, "a search of the

[1] Lots 3 and 4 are combined into one tax parcel number.

Register of Deeds records under Lot 39, or the other two vacant lots, does not disclose that Plaintiff had an interest in" the undeveloped lots.[2]

Property tax bills were sent to plaintiff and, by all accounts, the taxes were timely paid. The problem is that the tax bills sent to plaintiff only covered lots 3 and 4. The tax bills for the undeveloped lots were sent to plaintiff's predecessor in title and went unpaid. As a result, in 2013, the Treasurer began foreclosure proceedings. It is undisputed that the Treasurer sent notice to plaintiff's predecessor in title rather than to plaintiff. Although it appears that plaintiff became aware of this in time to pay the back taxes on lots 40 and 43 and prevent their sale, he did not learn of it in time to do so with respect to lot 39. The Treasurer sold lot 39 at auction to defendant Spark Investment LLC in 2014. Thereafter, plaintiff commenced the instant quiet title action to regain title to lot 39 based upon a lack of notice. The trial court granted summary disposition in favor of defendants. We review that decision de novo.[3]

Defendants maintain that the Treasurer did all that was legally and reasonably necessary to provide notice. Specifically, the Treasurer mailed notice to plaintiff's predecessor in title believing that to be the owner of the property, published notice in the Detroit Legal News, and posted a notice on the vacant lot. Plaintiff maintains that, had the Treasurer fully searched the land records, it would have discovered plaintiff's ownership of the property. Plaintiff also argues that when the notice was posted on the vacant lot, the person posting notice should have walked across the street to inquire about the ownership of the vacant lots. We are not persuaded by this second argument as there does not appear to be any reason for the notice poster to have realized that there was common ownership. But we are persuaded by plaintiff's argument regarding the land records and that plaintiff was denied his constitutional right to due process.[4]

MCL 211.78i speaks to the county treasurer's responsibility to identify property owners of property subject to tax foreclosure. That statute provides in relevant part as follows:

> (1) Not later than May 1 immediately succeeding the forfeiture of property to the county treasurer under section 78g, the foreclosing governmental unit shall initiate a search of records identified in subsection (6) to identify the owners of a property interest in the property who are entitled to notice under this section of the show cause hearing under section 78j and the foreclosure hearing under section 78k. The foreclosing governmental unit may enter into a contract with 1 or more authorized representatives to perform a title search or may request from 1 or more authorized representatives another title search product to identify the owners of a property interest in the property as required under this subsection or to perform other functions required for the collection of delinquent taxes under this act.

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[2] It is not entirely clear to us what the Treasurer means by this statement. We presume that the meaning is that the deed was only indexed with reference to lots 3 and 4 and not indexed with reference to the other three lots.

[3] *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 277; 831 NW2d 204 (2014).

[4] This represents a constitutional issue which is also reviewed de novo. 493 Mich at 277.

(2) After conducting the search of records under subsection (1), the foreclosing governmental unit or its authorized representative shall determine the address reasonably calculated to apprise those owners of a property interest of the show cause hearing under section 78j and the foreclosure hearing under section 78k and shall send notice of the show cause hearing under section 78j and the foreclosure hearing under section 78k to those owners, and to a person entitled to notice of the return of delinquent taxes under section 78a(4), by certified mail, return receipt requested, not less than 30 days before the show cause hearing.

* * *

(6) The owner of a property interest is entitled to notice under this section of the show cause hearing under section 78j and the foreclosure hearing under section 78k if that owner's interest was identifiable by reference to any of the following sources before the date that the county treasurer records the certificate required under section 78g(2):

(a) Land title records in the office of the county register of deeds.

(b) Tax records in the office of the county treasurer.

(c) Tax records in the office of the local assessor.

(d) Tax records in the office of the local treasurer.

Again, it is undisputed that plaintiff is the actual owner of lot 39, that the deed was recorded well in advance of the foreclosure proceedings, and that plaintiff did not receive actual notice of the proceedings.

Central to this case is the Supreme Court's decision in the so-called *Perfecting Church* case.[5] In *Perfecting Church*, the church owned two parcels of land used for parking, which had been transferred to the church in a single deed. Both parcels went into tax foreclosure, though only one parcel was listed by the county treasurer. The church paid the outstanding taxes and was lead to believe that the taxes were up-to-date on both parcels. In fact, one parcel remained in tax foreclosure. The church never received notice of the proceedings. At issue in that case were provisions in the tax act that limited the right to challenge the foreclosure after title vested in the foreclosing governmental unit. The Supreme Court ultimately held that due process requires that the property owner be entitled to challenge a lack of notice. In so holding the Court[6] took note of the United States Supreme Court's ruling in *Jones v Flowers*,[7] stating as follows:

[5] *In re Petition by Wayne Co Treasurer*, 478 Mich 1; 732 NW2d 458 (2007).

[6] 478 Mich at 9.

> The United States Supreme Court recently has held that "due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " Furthermore, " 'when notice is a person's due ... [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.' " However, "[d]ue process does not require that a property owner receive *actual notice* before the government may take his property." [Footnotes omitted.]

We are not persuaded that the Treasurer's efforts complied with due process. Indeed, it did not even comply with the requirements of MCL 211.78i.[8] Apparently the local and county tax records did not reveal the correct identity of the property owner, most likely due to the inadequate transfer affidavit. But as subsections (2) and (6) make clear, mere reference to the tax records does not satisfy the Treasurer's obligations. The Treasurer must also search the land title records.

We again emphasize the point that it is undisputed that the deed was recorded and did (1) include the legal description of lot 39, (2) identify that plaintiff was the grantee, and (3) list plaintiff's business address. In short, had the Treasurer searched the land records and found the deed, plaintiff would have been identified as the owner of the property and the address to which notice should have been sent would have been discovered as well. The Treasurer's only reason for not finding the deed appears to be that the deed, while recorded in the land records, was not properly indexed to lot 39 and not included when only a summary of the records is searched. But the statute does not merely direct a search of the index or other summary, but it requires a search of the actual land title records.

Indeed, defendants' argument (as well as the trial court's conclusion) is based upon the presumption that plaintiff failed to record the deed under lot 39. But they provide no such legal basis for such a conclusion. Nor were we able to find such a duty being placed upon a grantee. Rather, MCL 565.501 authorized county commissioners, if they deem it necessary, "to cause the registers of their respective counties, to prepare a general index . . . ." And MCL 565.531 provides that "every register of deeds who shall neglect or refuse to keep up such indexes as are required by law shall forfeit the sum of 10 dollars for each and every such neglect or refusal . . . ." Accordingly, the failure to link the deed to lot 39 in the index would fall upon the Register, not the grantee. Therefore, the failure to discover that plaintiff was a person entitled to notice falls not upon plaintiff for "failing to record the deed under lot 39" as argued by defendants, but upon Wayne County because (1) the Register failed to properly index the deed and (2) the Treasurer chose to rely upon the inadequate index instead of consulting the actual land records.

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[7] 547 US 220, 226; 126 S Ct 1708; 164 L Ed 2d 415 (2006), which itself quoted *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950).

[8] We review questions of statutory construction de novo. 478 Mich at 6.

Because a thorough search of the actual land title records would have revealed plaintiff's interest in the property, and where notice could properly be sent, we conclude that plaintiff was denied due process due to a lack of notice of the proceedings. Accordingly, plaintiff, not defendants, was entitled to summary disposition.

Reversed and remanded to the trial court for entry of judgment in favor of plaintiff. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Douglas B. Shapiro