STATE OF MICHIGAN

COURT OF APPEALS

MILTON H. ADELSON,

Plaintiff-Appellant,

v

JP MORGAN CHASE, CHASE HOME FINANCE L.L.C.,

Defendants-Appellees,

and

TROTT & TROTT P.C.,

Defendant.

UNPUBLISHED
August 11, 2011

No. 298219
Genesee Circuit Court
LC No. 09-091736-CK

Before: CAVANAGH, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Plaintiff brought numerous claims against defendants related to Chase Home Finance LLC's ("Chase") attempts to foreclose upon real property located at 215 Grove Street, Otisville, Michigan. Plaintiff, *in propria persona*, appeals as of right the trial court's dismissal of his case when it granted summary disposition in favor of defendants. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In conjunction with plaintiff purchasing the real estate involved with the instant matter, plaintiff granted a mortgage[1] in favor of JP Morgan Chase Bank, who later assigned the mortgage to Chase. The terms of the mortgage agreement required plaintiff to make escrow payments:

[1] The mortgage secured $41,412 worth of debt, which was payable over a 30-year period.

> Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." . . . Borrower shall pay Lender the Funds for Escrow Items unless Lender waives the obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. . . .
>
> * * *
>
> Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

Plaintiff made the required payment of $457.89[2] every month, until November 2008. On the November 2008 invoice, Chase stated that $510.77 was now due, thereby increasing the amount for escrow from $182.37 to $235.25. Plaintiff, instead of paying the $510.77, paid the prior amount of $457.89. The following month, Chase again billed plaintiff for $510.77, but this time plaintiff paid only $275.52, which was the amount attributable to the principal and interest portion of the bill. Even after receiving warnings from Chase, plaintiff continued to make this $275.52 payment monthly until July 2009, when Chase instituted foreclosure proceedings and set a foreclosure sale date of July 29, 2009.[3]

After plaintiff filed his 15-count[4] complaint against defendants,[5] the foreclosure sale was adjourned. On February 16, 2010, plaintiff served a Request for Admissions upon Chase. Chase

[2] The breakdown of this $457.89 was $275.52 for principal and interest and $182.37 into escrow.

[3] During this time of paying only $275.52, plaintiff requested that Chase waive the escrow requirement, but Chase denied the request.

[4] The "counts" are: Wrongful Foreclosure/Declaratory Action; Breach of Contract; Terminate Foreclosure by Advertising and for Temporary and Permanent Restraining Order; Quiet Title; Negligence and Gross Negligence; Intentional Infliction of Emotional Distress; Unreasonable Debt Collection Practices; Violation of the Michigan Debt Collection Practices Act; Deceptive Trade Practices; Breach of Fiduciary Duty; Punitive Damages; Fraud; Wrongful Foreclosure by Advertisement; Attorney Fees.

[5] Defendant, Trott & Trott P.C., was later dismissed pursuant to a stipulated order.

served its response to the request on March 15, 2010. Both parties also filed competing motions for summary disposition.

Plaintiff's motion was based on the belief that his Requests for Admissions should be deemed admitted because Chase never denied them or responded to them in a timely manner. Chase argued that plaintiff was grossly mistaken since its responses and denials were served on March 15, 2010, which was within the 28-day limit imposed by MCR 2.312(B)(1).

The trial court found plaintiff's argument completely lacking merit since Chase's response to the Request for Admissions was, indeed, within the 28 days allotted by the court rule. Accordingly, the trial court denied plaintiff's motion for summary disposition. And without plaintiff producing any other evidence to support his claims, the trial court granted defendants' motion for summary disposition and dismissed plaintiff's case. A month after the trial court ruled on the motions for summary disposition, the home was sold, in a sheriff's sale, on May 26, 2010.

II. SUMMARY DISPOSITION – MCR 2.116(C)(10)

Plaintiff argues that the trial court erred when it determined that defendants were entitled to judgment as a matter of law. We disagree. A trial court's decision on a motion for summary disposition brought under MCR 2.116(C)(10) is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 166; 713 NW2d 717 (2006). The motion is properly granted if the evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Michalski v Bar-Levav*, 463 Mich 723, 730; 625 NW2d 754 (2001).

At the trial court, plaintiff sought summary disposition, asserting that Chase had failed to timely respond to plaintiff's Request for Admissions, therefore, essentially admitting liability. MCR 2.312(B)(1) provides that

> [e]ach matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter.

Plaintiff served the request on Chase on February 16, 2010. As a result, Chase had 28 days, or until March 16, 2010, to serve its response. Contrary to plaintiff's assertions, Chase served its response in a timely manner. The proof of service, which accompanied the response, stated it was served on plaintiff's counsel by being placed in the United States mail on March 15,

2010.[6] Plaintiff offered no evidence, documentary or otherwise, to refute the validity of this date.

On appeal, plaintiff relies on an exchange between the trial court and Chase's counsel at the motion hearing to show that the actual date was later:

> *THE COURT:* I just want you to tell me the date, so I'm clear, whether the date you responded to the request to admit was 3-18 or some other date? Just so I have it on the record from your prospective [sic].
>
> *[Chase's Counsel]:* On March 18th, 2010 we served our responses to the request to admit. And a proof of service to that effect has been filed with the court. I'm sorry. That's the request for production of documents. I beg your pardon, your Honor.
>
> On March 15, 2010, we served our responses to request for admissions and a proof of service is included as part of those responses, which was filed with the court.

Even though the meaning of the above statement is undeniably clear, plaintiff attempts to portray the statement as one which attributes March 18, 2010, as the date that Chase filed its responses to the requests for admissions. Plaintiff's brief on appeal is misleading in that it omits the salient portion of counsel's exchange with the trial court, where counsel admitted to misspeaking and clarified that March 18, 2010, was the date Chase responded to the request for production of documents.

Therefore, there is no genuine issue related to this material fact. We need not consider plaintiff's other arguments on this issue because they were never presented to the trial court below. Instead, plaintiff maintained he was entitled to summary disposition based solely on the "fact" that Chase failed to timely respond to his Requests for Admissions. This Court "need not address arguments first raised on appeal." *Green v Ziegelman*, 282 Mich App 292, 300; 767 NW2d 660 (2009). Accordingly, summary disposition was properly granted in defendants' favor, and plaintiff's claim fails.

III. FORECLOSURE BY ADVERTISEMENT

Defendant next argues that the May 26, 2010, foreclosure sale was void because Chase did not provide notice in accordance with MCL 600.3208. But in order to preserve issues for appellate review, they must have been raised and addressed at the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Here, plaintiff never raised this issue at the trial court. And because the foreclosure sale occurred *after* the trial court entered its rulings on the motions for summary disposition, the trial court never had occasion to address the issue. Accordingly, because this Court need not consider issues that have not been properly presented

[6] MCR 2.107(C)(3) states that "[s]ervice by mail is complete at the time of mailing."

or preserved, we decline to address the issue. *Royal Property Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 721; 706 NW2d 426 (2005).

Affirmed. Appellees, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder
/s/ Donald S. Owens