S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

STATE TREASURER,

Petitioner-Appellee,

v

GERALD RILEY,

Respondent-Appellant,

and

TOMMY HARMON,

Intervening Respondent-Appellee,

and

LOUIS ROSSIGNUOLO,

Respondent.

UNPUBLISHED
June 20, 2006

No. 258105
St. Joseph Circuit Court
LC No. 01-000701-CZ

Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this property foreclosure action, respondent Gerald Riley ("respondent") appeals by leave granted from an order denying his motion for relief from a judgment of foreclosure, and granting intervening respondent Harmon's motion to release the notice of lis pendens respondent filed against the subject property. Respondent claims that he did not receive sufficient notice of the right to redeem his property. We affirm.

Pursuant to the General Property Tax Act (GPTA), MCL 211.1 *et seq.,* as amended by 1999 PA 123,[1] the state treasurer initiated foreclosure proceedings for unpaid taxes, interest,

[1] Citations to the GPTA and to individual statutory sections contained within the GPTA refer to the statutes in effect at the time the petition was filed, June 18, 2001.

penalties and fees against four parcels respondent owned. Notices of the proceedings were sent to respondent at three different addresses, but the notices were returned as "unclaimed." Respondent concedes that he did, however, learn of the foreclosure proceedings by publication in the Three Rivers Commercial-News on December 28, 2001, January 4, 2002, and January 11, 2002, which gave notice of a judicial foreclosure hearing to be held on February 19, 2002. The notices also included the following warning:

> If you are a person with an interest in property being foreclosed:
>
> - You have the **right to redeem** this parcel from the foreclosure process by **payment** of all forfeited unpaid taxes, interest, penalties, and fees prior to the expiration of the redemption period. **You should contact the Saint Joseph County Treasurer for the amount required to redeem.**
>
> - You may lose your interest in the property as a result of the foreclosure proceeding.
>
> - The title to the property shall vest absolutely in the Foreclosing Governmental Unit unless all forfeited unpaid delinquent taxes, interest, penalties, and fees are paid within 21 days after judgment is entered in the foreclosure proceedings.

Respondent appeared at the hearing on February 19, 2002, and objected to the foreclosure of the parcels at issue. The trial court scheduled an evidentiary hearing on respondent's objections for March 25, 2002. At the evidentiary hearing, the court took testimony and heard argument on respondent's objections. Although respondent has not provided a transcript of the March 25 hearing, the trial court's subsequent April 3, 2002 opinion and order granting foreclosure states the gist of respondent's objections. The essence of respondent's claim was that he was improperly denied a homestead exemption and that the parcels were therefore assessed too high. The trial court denied the objections because respondent's claim did not come within the limited grounds for relief under MCL 211.78k(2). The court mailed the judgment to respondent at two different addresses, neither of which matched the address respondent gave to petitioner's counsel, and the post office returned both envelopes as undeliverable.

Respondent took no action during the twenty-one day redemption period, so petitioner sold the parcels at auction. Intervenor respondent Tommy Harmon purchased one of the parcels. Thereafter, respondent tried, unsuccessfully, to redeem his properties. Respondent moved for postjudgment relief from the judgment of foreclosure on the grounds that he did not receive notice of the judgment. The trial court denied the motion on the basis that the GPTA did not provide jurisdiction to grant postjudgment relief. The court also granted Harmon the right to intervene and declared the notice of lis pendens respondent filed against Harmon's parcel null and void.

Respondent contends that the trial court erred when it concluded as a matter of law that it had no jurisdiction to modify or grant relief from the judgment of foreclosure. We agree. "Whether a court has subject-matter jurisdiction is a question of law subject to review de novo." *Davis v Dep't of Corrections,* 251 Mich App 372, 374; 651 NW2d 486 (2002).

This Court has stated that the notice provisions contained in the GPTA "are designed to insure that those with an interest in the subject property are aware of the foreclosure proceedings so that they make take advantage of their redemption rights;" therefore, any proceeding conducted under the GPTA without due process is invalid. *In re Petition by Wayne Co Treasurer,* 265 Mich App 285, 292-293; 698 NW2d 879 (2005). This Court rejected the argument that a landowner's only remedy was an action for money damages under MCL 211.78l because "such an interpretation . . . would deprive an interested party of its property without being afforded due process" and "[s]uch a reading renders the statute unconstitutional." *Id*. at 295, citing *Dow v Michigan,* 396 Mich 192, 205-206; 240 NW2d 450 (1976) and *Ross v Michigan,* 255 Mich App 51, 56; 662 NW2d 36 (2003). Thus, this Court held that

> on a postjudgment motion in which the moving party alleges and proves a deprivation of its due process rights rendering a timely appeal to this Court impossible, the circuit court retains jurisdiction under MCR 2.612(C) to modify or vacate the foreclosing judgment it entered on the basis of an invalid proceeding. [*In re Petition by Wayne Co Treasurer, supra* at 300.]

Respondent further contends that his due process rights were violated; consequently, he is entitled to relief under MCR 2.612(C). Because the trial court erroneously concluded it had no jurisdiction, it did not address this issue. But the record is sufficient for this Court to determine that respondent's claim fails as a matter of law. "[W]hether constitutional due process applies and, if so, has been satisfied are legal questions reviewed de novo." *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005).

Both the Michigan Constitution and the United States Constitution preclude the government from depriving a person of property without due process of law. *Reed, supra* at 159. Under the Due Process Clause of the Fourteenth Amendment, states must afford individuals whose property interests are at stake notice and an opportunity to be heard. *Dusenbery v United States,* 534 US 161, 167; 122 S Ct 694; 151 L Ed 2d 597 (2002). The required notice must be "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." *Mullane v Central Hanover Bank & Trust Co,* 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950). Process satisfies constitutional standards when "there is notice of the nature of the proceedings and a meaningful opportunity to be heard by an impartial decision maker." *Reed, supra* at 159.

Here, respondent was accorded due process. He had actual notice of the initial foreclosure hearing. He was permitted to state his objections. And, he had a meaningful opportunity for a hearing on his objections before an impartial decision maker. His due process claim is factually premised on his failure to receive a copy of the judgment of foreclosure and legally premised on his claim that an essential element of due process is the right to appeal. Respondent, however, argues that the failure to receive the judgment within 21 days deprived him of his right to appeal or redeem the property with that time frame.

Respondent's argument fails. First, respondent had actual notice that "title to the property shall vest absolutely in the Foreclosing Governmental Unit unless all forfeited unpaid delinquent taxes, interest, penalties, and fees are paid within 21 days after judgment is entered in

the foreclosure proceedings." Second, respondent fails to cite any authority that requires the trial court to notify persons filing objections to foreclosure of the entry of its judgment. Had respondent reviewed the statute, he would have discovered that the trial court was *required* to "enter judgment on a petition for foreclosure . . . not more than 10 days . . . after the conclusion of the hearing [in] contested cases." MCL 211.78k(5).

Moreover, according to respondent, he provided the attorney for petitioner, State Treasurer, his "correct address" after the February 19, 2002 hearing. Relying on MCR 2.602(D)(1), respondent appears to argue that petitioner had the "responsibility" to serve the opinion and judgment upon him at the address that he provided after the hearing.[2]

MCR 2.602(D)(1) provides:

> The party securing the signing of the judgment or order shall serve a copy, within 7 days after it has been signed, on all other parties, and file proof of service with the court clerk.

Respondent makes no effort to establish how or under what circumstances petitioner secured the signing of the judgment in this case. To the contrary, the trial court, on its own initiative, generated the opinion and judgment, and mailed them to the parties. Under these circumstances MCR 2.602(D)(1) clearly does not apply, and, consequently, respondent's claim of a due process violation in this respect is also without merit.

Respondent also contends that the trial court erred in granting Harmon the right to intervene in this case. We disagree. This Court reviews a trial court's decision on a motion to intervene for an abuse of discretion. *Vestevich v West Bloomfield Twp,* 245 Mich App 759, 761; 630 NW2d 646 (2001).

A person seeking to intervene must move the court, state the grounds for intervention and attach a pleading setting forth the claim or defense for which intervention is sought. MCR 2.209(C). Here, Harmon failed to file a motion to intervene. Rather, Harmon filed a "Motion to Release Lis Pendens and Recover Costs," but in his prayer for relief, requested that the court allow him to intervene. Petitioner initiated these proceedings against certain parcels of property for which taxes remained unpaid. By statute, the owner or any person with a property interest in the property to be forfeited had a right to appear and show cause why absolute title to that property should not vest in the foreclosing governmental unit. MCL 211.78j. When respondent filed his motion for relief from the judgment of foreclosure, Harmon had already acquired an interest in one of the subject properties. Without his intervention that interest was not otherwise adequately represented and, as a practical matter, could have been impaired or impeded. MCR 2.209(A). So, despite any procedural irregularities, we conclude that under the circumstances

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[2] Respondent makes no argument that the trial court had his correct address or made a mistake in mailing the opinion and judgment. He only faults petitioner.

the trial court did not abuse its discretion by permitting Harmon to intervene. To conclude otherwise would be putting "form over substance."

We affirm.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Jane E. Markey