

STATE OF MICHIGAN
COURT OF APPEALS

REGINA WOLVERTON,

Plaintiff-Appellant,

v

CASS COUNTY TREASURER and EDWARD
CLARK COBB,

Defendants-Appellees.

UNPUBLISHED

January 18, 2011

No. 296002

Cass Circuit Court

LC No. 09-000758-CH

Before: MARKEY, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Plaintiff, Regina Wolverton, appeals as of right the trial court's grant of summary disposition in favor of defendants, Cass County Treasurer Linda Irwin and Edward Clark Cobb in the action for title to real property. Because the trial court lacked jurisdiction in the matter, plaintiff's due process rights were not violated, and the trial court was not biased, we affirm.

I. Substantive Facts

This case concerns property located at 101 Grove Street, Dowagiac, Michigan ("the property"). Cass County foreclosed on the property for back taxes pursuant to MCL 211.78h and MCL 211.78k via a court order dated February 9, 2009. The owner of record at that time was Wells Fargo Bank and as a result, that is the entity to which Cass County sent notices regarding the foreclosure. A review of the Cass County recorder's records indicates that on February 24, 2009, Wells Fargo Bank transferred the property to Blue Spruce Entities and then, on the same day, Blue Spruce Entities transferred the property to Go Invest Wisely, LLC, ("GIW"). Both transactions were accomplished via quit claim deed and were recorded with the Cass County Register of Deeds. Thereafter, GIW attempted to transfer the property to plaintiff via quitclaim deed on March 25, 2009 after receiving plaintiff's payment in the amount of \$16,500. When plaintiff attempted to record the deed, the Cass County recorder's office would not accept the deed for recording as a result of the foreclosure. Plaintiff presents no evidence on what date she attempted to record the deed. However, March 31, 2009 was the date the fee simple title to the property vested absolutely in Cass County pursuant to the February 9, 2009 order and MCL 211.78k and any redemption period expired. The Cass County recorder's records indicate that the Judgment of Foreclosure was recorded on April 2, 2009 and therefore defendant Cass County Treasurer took title to the property. On August 28, 2009, defendant Cobb was the highest bidder

on the property during the annual tax foreclosure sale held in Cass County. As a result, defendant Cass County Treasurer transferred the property via quitclaim deed to defendant Cobb on September 14, 2009 and defendant Cobb recorded the deed on September 18, 2009.

II. Procedural History

On September 21, 2009, plaintiff filed a complaint in the Cass Circuit Court seeking a determination that she “owns absolutely and is entitled to quiet and personal possession of the property.” Plaintiff further sought a determination that “Defendant Edward Clark Cobb and all persons claiming under him have no estate, right, title, lien, or interest in or to said premises, and that title to the property be quieted in [plaintiff] against claims of Defendant Edward Clark Cobb and all persons claiming under him.”

Plaintiff alleges that she purchased the property from GIW, a Utah limited liability company registered to do business in Michigan. Plaintiff claimed that she provided GIW \$16,500 on March 19, 2009 and in return received via overnight courier, a quitclaim deed purporting to transfer the property from GIW to plaintiff on March 25, 2009. When plaintiff attempted, on April 20, 2009, to record the quitclaim deed, the Cass County recorder would not accept or record the deed because it was not in recordable form.¹ Plaintiff alleges that shortly thereafter Cass County notified her that she was trespassing on the property because “the property had been foreclosed upon for back taxes[.]”

In her complaint, plaintiff claims that she contacted GIW and informed it about the outstanding tax issues related to the property. In an affidavit attached to plaintiff’s complaint, Brad Hess, an owner and principal of GIW, averred that GIW acquired the property from Blue Spruce Entities by way of quitclaim deed and had no knowledge of back taxes due.² Hess averred that GIW contacted defendant Cass County Treasurer to determine the amount of the back taxes outstanding and to attempt to pay the tax balance due. Hess claimed that GIW was informed that back taxes could not be paid because a Judgment of Foreclosure had already been placed on the property. Hess also claimed that GIW told defendant Cass County Treasurer that GIW had never received any notices regarding back taxes. Hess stated that defendant Cass County Treasurer informed GIW that “all notices were sent to Wells Fargo before the property was conveyed to GIW and that Wells Fargo accepted the certified mail regarding the back taxes.”

¹ At oral argument on appeal, plaintiff’s counsel provided the date of the attempted recording as April 20, 2009. We note that her attempt to record the deed was subsequent to the county obtaining fee simple title on March 31, 2009.

² Hess averred that GIW has sought a refund for its purchase of the property from Blue Spruce Entities but Blue Spruce Entities denied fault or liability since it sold the property to GIW via a quitclaim deed.

Defendant Cass County Treasurer answered plaintiff's complaint on October 1, 2009. In her answer, defendant Cass County Treasurer stated that the property had been foreclosed for unpaid taxes and was properly sold at the annual tax foreclosure sale to defendant Cobb. Defendant Cass County Treasurer also filed affirmative defenses including: that the circuit court lacked jurisdiction to determine the issues raised in plaintiff's complaint; plaintiff failed to state a cause of action upon which relief may be granted; plaintiff did not hold any interest of record in the real property and as such was not entitled to notice of the foreclosure sale; and finally that plaintiff was not entitled to notice of the foreclosure sale pursuant to MCL 211.78i.

Defendant Cobb answered plaintiff's complaint on November 12, 2009 alleging that he was the sole owner and holder of sole title to the subject property. Defendant Cobb attached a copy of a quit claim deed transferring ownership of the subject property from defendant Cass County Treasurer to defendant Cobb for the sum of \$9,100 on September 14, 2009. It appears that the deed was recorded on September 18, 2009. Defendant Cobb also referenced and attached a copy of the actual order foreclosing on the subject property entitled "Judgment of Foreclosure - 2006 and Prior Years Real Property Taxes," dated February 9, 2009, and signed by Cass Circuit Court Presiding Judge Michael E. Dodge.

On October 19, 2009, defendant Cass County Treasurer filed a motion for summary disposition pursuant to MCR 2.116(C)(4) for the reason that the circuit court lacked jurisdiction over plaintiff's complaint because MCL 211.78l(2) vests exclusive and original jurisdiction in the Michigan Court of Claims for any action to recover money damages for lack of notice and pursuant to MCL 211.78l(1), the exclusive remedy for a failure to receive notice in a tax foreclosure action is an action to recover money damages. Plaintiff answered on November 9, 2009, arguing that the circuit court had jurisdiction in the matter because circuit courts have jurisdiction to decide constitutional issues surrounding tax forfeitures. Plaintiff also argued that her property rights to the subject property were taken without due process of law.

On November 12, 2009, defendant Cobb filed his motion for summary disposition making the same arguments that defendant Cass County Treasurer advanced. Plaintiff answered on November 30, 2009, arguing once again that the circuit court had jurisdiction in the matter because circuit courts have jurisdiction to decide constitutional issues surrounding tax forfeitures. Plaintiff also argued that her property rights to the subject property were taken without due process of law.

The circuit court granted defendant Cass County Treasurer's motion for summary disposition on November 25, 2009 stating as follows:

Well looking at plaintiff's pleadings and taking judicial notice of the judgment foreclosure file, 08-386 CH, which verifies that the judgment of foreclosure entered on the 9th February of 2009, and looking at the plaintiff's complaint where she indicates she acquired the property subsequent to that in March of '09, as sad as this case apparently is the Court finds that it does not have subject matter jurisdiction; therefore grants summary disposition under 2.116(C)(4). I agree with the defendant's position, the defendant, Linda Irwin, the Cass County Treasurer's position that there is no due process violation that

Regina Wolverton can advance here. Consequently, the motion for summary disposition is granted under (C)(4) for lack of subject matter jurisdiction.

The circuit court also granted defendant Cobb's motion for summary disposition on December 14, 2009 stating:

I do not need any further argument on the matter. The Court has patiently listened to the arguments on both sides; however this is the same issue the Court has previously ruled on with regard to Linda Irwin, the Cass County Treasurer's motion for summary disposition, which the Court granted.

This does present the same issues, that is, whether or not Mr. Cobb is entitled to summary disposition for the same reasons, I granted it with regard to the Cass County Treasurer, and whether he's entitled to an order quieting title in the property in his name since he purchased it as a result of a foreclosure.

First of all, the Court did rule previously that it lacked jurisdiction under 2.114(C)(4), and that's because the property had been properly foreclosed upon pursuant to Michigan statute. Mr. Cobb has cited that correctly, 211.78(A) says that if under 78k, that same statute, the Court had entered a judgment of foreclosure, then the only remedy was an action in the Court of Claims for money damages. They could not properly bring an action for possession.

Now, in doing so I did take judicial notice of the foreclosure file, which the Court is allowed to take judicial notice of its files and records in making a determination as to whether or not proper notice to the record owner at the time, the person with the ownership interest had been notified, and the Court could determine from that file there had been notice. Now when Ms. Wolverton challenges that notice, the problem with that is, as I ruled last time, she doesn't have standing to raise that because prior to February 9th she had no ownership interest. The county had no obligation to notify her with constitutional due process. Because she took a quit-claim deed after February 9th she has no standing to raise that issue.

Once again consistent with my earlier ruling I grant summary disposition under (C)(4). The Court no longer has jurisdiction to entertain this claim by Ms. Wolverton, and she has no standing to advance it herself for that reason, because of her after-acquired interest.

Further, the Court will grant the motion to quiet title. That's consistent with the summary disposition rulings both with regard to the county treasurer and with regard to Mr. Cobb. He now holds title to the property having validly purchased it at the foreclosure sale.

The circuit court denied plaintiff's motion for reconsideration of both summary disposition orders on December 23, 2009. Plaintiff now appeals as of right.

III. Standard of Review

This Court reviews de novo a trial court's grant of summary disposition. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). "This Court reviews a trial court's grant of summary disposition pursuant to MCR 2.116(C)(4) 'to determine if the moving party was entitled to judgment as a matter of law, or if affidavits or other proofs demonstrate there is an issue of material fact.'" *Genesis Center, PLC v Financial and Ins Services Com'r*, 246 Mich App 531, 540; 633 NW2d 834 (2001), quoting *Harris v Vernier*, 242 Mich App 306, 309; 617 NW2d 764 (2000).

IV. Analysis

Plaintiff first argues on appeal that the trial court committed reversible error when it took judicial notice of its own records and concluded that it did not have jurisdiction over the matter. The existence of jurisdiction is a question of law, which this Court reviews de novo on appeal. *Trostel, Ltd v Treas Dep't*, 269 Mich App 433, 440; 713 NW2d 279 (2006).

A. Judicial Notice

"[A] circuit judge may take judicial notice of the files and records of the court in which he sits." *Knowlton v City of Port Huron*, 355 Mich 448, 452; 94 NW2d 824 (1959); see also *People v Sinclair*, 387 Mich 91, 103; 194 NW2d 878 (1972). MRE 201 states as follows in pertinent part:

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts, and does not preclude judicial notice of legislative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not, and may require a party to supply necessary information.

(d) Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(e) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

It is undisputed that Judge Michael E. Dodge, Presiding Judge of the Cass Circuit Court presided over the foreclosure proceedings on the subject property that form the basis of this case and signed the judgment of foreclosure on February 9, 2009. Judge Dodge also presided over the instant case. Therefore, the trial court properly took judicial notice of its own records including the contents of the foreclosure file. *Knowlton*, 355 Mich at 452; *Sinclair*, 387 Mich at 103; MRE 201.

B. Jurisdiction

“Jurisdiction is a court’s power to act and its authority to hear and decide a case.” *Riverview v Sibley Limestone*, 270 Mich App 627, 636; 716 NW2d 615 (2006). “The circuit court possesses ‘broad original jurisdiction over all matters, particularly civil, so long as jurisdiction is not expressly prohibited by law.’” *Derderian v Genesys Health Sys*, 263 Mich App 364, 375; 689 NW2d 145 (2004), quoting *Campbell v St John Hosp*, 434 Mich 608, 613; 455 NW2d 695 (1990). However, circuit courts do not have jurisdiction to hear civil claims or remedies over which the constitution or a statute confers exclusive jurisdiction on another court. *Ammex, Inc v Treasury Dep’t*, 272 Mich App 486, 494; 726 NW2d 755 (2006), citing MCL 600.601 and MCL 600.605. MCL 211.78l provides as follows in pertinent part:

(1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.

(2) The court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section.

It is undisputed that Cass County foreclosed on the subject property for unpaid taxes pursuant to MCL 211.78k. MCL 211.78l(1) and (2) are plain that in foreclosure cases under MCL 211.78k, where a plaintiff brings suit claiming he or she did not have notice of the foreclosure, such as here, the “court of claims has original and exclusive jurisdiction[.]” Thus, clearly, the Cass County Circuit Court did not have jurisdiction to hear and decide the instant case because the court of claims had exclusive jurisdiction over this action. MCL 211.78l(1) and (2). The trial court did not err when it granted summary disposition to both defendants for want of jurisdiction.

C. Notice

Next, plaintiff argues that she received insufficient notice of the foreclosure proceedings and thus her due process rights were violated. Plaintiff failed to raise this issue in her statement of questions presented in her brief on appeal, thus the issue is waived. *English v Blue Cross*, 263 Mich App 449, 459; 688 NW2d 523 (2004). Nevertheless, were we to review this issue, we would not find error. Pursuant to MCL 211.78i, Cass County was required to identify the *owner* of the property and notify the *owner* of the foreclosure proceedings by certified mail. MCL 211.78i(2). Cass County was also required to personally visit the property and notify the occupant of the foreclosure proceedings. MCL 211.78i(3)(b). Finally, if an owner is not identified, notice by publication is required. MCL 211.78i(5). Here, during the course of the foreclosure proceedings on this property, Wells Fargo Bank was the owner of record of the subject property, not plaintiff. Wells Fargo Bank was entitled to notice of the proceedings, not plaintiff. Further, foreclosure proceedings had already concluded and the judgment of foreclosure signed on February 9, 2009, over a month before plaintiff claims she purchased the property from GIW. Plaintiff was not the record owner of the subject property and in fact had no

interest in the property during the foreclosure proceedings. In other words, she was not an identifiable owner and was not entitled to notice under MCL 211.78i. Plaintiff's due process rights were not violated.

D. Redemption

Plaintiff next argues that her due process rights were violated when she was prevented from paying all delinquent property taxes in order for her to record the deed to the subject property and obtain clear title to the property. Plaintiff specifically states in her brief on appeal that defendant Cass County Treasurer rejected her attempt to pay the back taxes "for no legitimate reason." This assertion is belied by the record. MCL 211.78k(5) states as follows in pertinent part:

The circuit court shall enter final judgment on a petition for foreclosure filed under section 78h at any time after the hearing under this section but not later than the March 30 immediately succeeding the hearing with the judgment effective on the March 31 immediately succeeding the hearing for uncontested cases or 10 days after the conclusion of the hearing for contested cases. *All redemption rights to the property expire on the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section* [Emphasis added.]

Plaintiff presents no evidence regarding exactly when she attempted to pay the delinquent property taxes or when she attempted to record the quitclaim deed she received from GIW. Pursuant to MCL 211.78k(5), any redemption rights to the property expired on March 31, 2009. This was also clearly set out in the February 9, 2009 Judgment of Foreclosure order. In any event, plaintiff or GIW had the opportunity to pay the outstanding taxes due before March 31, 2009, but did not do so. March 31, 2009 was the date the redemption period expired and the fee simple title to the property vested absolutely in Cass County pursuant to the February 9, 2009 order and MCL 211.78k.

The Cass County recorder's records indicate that the Judgment of Foreclosure was recorded on April 2, 2009 and therefore defendant Cass County Treasurer took title to the property. These being the record facts of the case, there is no evidence that defendant Cass County Treasurer unlawfully prevented plaintiff from paying the outstanding taxes and fees in violation of her due process rights. Plaintiff had an opportunity to pay the outstanding taxes and take advantage of the redemption period, but did not do so before the statutorily imposed deadline of March 31, 2009. MCL 211.78k(5). In other words, defendant Cass County Treasurer indeed had a legitimate reason for rejecting plaintiff's attempts to pay the outstanding taxes—it was without statutory authority to accept payment of delinquent property taxes after the expiration of the redemption period. Plaintiff has not shown error.

E. Judicial Disqualification

Finally, plaintiff argues that the judge should have been disqualified because the judge was biased against her. Plaintiff specifically asserts that Judge Dodge was biased because he is a circuit court judge in Cass County and defendant Irwin is the Cass County Treasurer and defendant Cobb is a Cass County Commissioner, and therefore Judge Dodge "failed to adhere to

the appearance of impropriety standard as set forth in Canon 2 of the Code of Judicial Conduct.” Plaintiff did not preserve this issue by moving to disqualify the trial judge in the lower court. Therefore, our review is limited to plain error affecting plaintiff’s substantial rights. *Wolford v Duncan*, 279 Mich App 631, 637; 760 NW2d 253 (2008).

MCR 2.003 was recently amended, effective November 25, 2009, to incorporate an “appearance of impropriety” standard as a ground for disqualification. MCR 2.003(C)(1)(b) now provides that disqualification is warranted if a judge, “based on objective and reasonable perceptions . . . has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.” MCR 2.003(C)(1)(b) provides:

(1) Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:

(b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, ___ US ___; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

When we apply the “appearance of impropriety” standard in reviewing plaintiff’s claim, no basis for relief is apparent. Plaintiff admits in her brief that she has “no direct evidence that there is any impropriety between the trial court and either [defendant].” Plaintiff instead contends that the manner in which she was treated supports the appearance of impropriety as a result of the trial court’s rulings against her. As explained in *In re Contempt of Henry*, 282 Mich App 656, 679; 765 NW2d 44 (2009):

The mere fact that a judge ruled against a litigant, even if the rulings are later determined to be erroneous, is not sufficient to require disqualification or reassignment. *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 554; 730 NW2d 481 (2007). “[J]udicial rulings, in and of themselves, almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays a “deep-seated favoritism or antagonism that would make fair judgment impossible” and overcomes a heavy presumption of judicial impartiality.” *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001) (citations omitted).

Although these statements were made in the context of discussing the “actual bias” standard in former MCR 2.003(B)(1), adverse rulings, standing alone, likewise do not serve as “objective and reasonable perceptions” that a judge “has “failed to adhere to the appearance of impropriety

standards set forth in Canon 2³ of the Michigan Code of Judicial Conduct.” Plaintiff has not shown plain error.

V. Conclusion

Because the trial court lacked jurisdiction in the matter, plaintiff’s due process rights were not violated, and the trial court was not biased, we affirm. Because defendants prevail, they may tax costs pursuant to MCR 7.219.

Affirmed. As the prevailing parties, defendants may tax costs. MCR 7.219(A).

/s/ Jane E. Markey

/s/ Brian K. Zahra

/s/ Pat M. Donofrio

³ Canon 2 of the Code of Judicial Conduct requires a judge to “accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.” Canon 2 also requires a judge to “promote public confidence in the integrity and impartiality of the judiciary,” to avoid family, social, and other personal relationships to influence judicial conduct or judgment, and to avoid allowing organizational memberships “to cast doubt on the judge’s ability to perform the function of the office in a manner consistent with the Michigan Code of Judicial Conduct, the laws of this state, and the Michigan and United States Constitutions.”