# STATE OF MICHIGAN

# COURT OF APPEALS

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| MATHEW STREATER,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>July 24, 2014 |
| v | No. 315534<br>Wayne Circuit Court |
| WAYNE COUNTRY TREASURER,<br><br>Defendant-Appellee. | LC No. 12-012919-CH |

Before: BOONSTRA, P.J., and METER and SERVITTO, JJ.

PER CURIAM.

In this tax foreclosure case, plaintiff appeals from the trial court's grant of summary disposition to defendant and dismissal of his complaint to set aside the judgment of foreclosure, and denial of his motion for reconsideration. We affirm.

## I. PERTINENT FACTS AND PROCEDURAL HISTORY

The property that is the subject of this appeal is a single family residence located at 16832 Patton in Detroit, Michigan, possessing the property tax identification number 22104037. Plaintiff owned the property in fee simple. Beginning in 2008, plaintiff began experiencing difficulties with paying the property taxes on the property.

In 2011, plaintiff entered into a Stipulated Payment Agreement with defendant regarding the payment of the delinquent 2008 taxes. The agreement provided that the property would be removed from defendant's petition for foreclosure filed with the circuit court if plaintiff complied with the payment schedule listed in the agreement. Plaintiff complied with the plan and paid the delinquent 2008 taxes. Plaintiff did not enter into a similar agreement for delinquent 2009 taxes.

According to plaintiff's complaint and affidavit, he visited defendant's office in September of 2011 and was told that he had until October 10, 2012 to pay the delinquent 2009 back taxes. Plaintiff further alleged before the trial court that he visited defendant's office prior to October 10, 2012 and attempted to pay the delinquent taxes, only to be informed that the property had been sold at auction. The judgment of foreclosure had been entered on March 30, 2012. The judgment indicates that hearings on objections to the foreclosure were held on February 15 and 16 and March 14, 15, and 30 of 2012.

Plaintiff filed suit, arguing that the foreclosure should be set aside because he did not receive notice of proceedings regarding the tax foreclosure of the property. Defendant, in moving for summary disposition, provided the trial court with evidence that the notices required by MCL 211.78i were sent by certified mail to all persons with recorded interests in the property. Additionally, defendant provided evidence, including a photograph, that a representative of defendant had visited the property, attempted to serve the occupant with the relevant notices, and posted the notice on the property. Finally, defendant provided evidence that the notice to the public was posted three times in the Detroit Legal News in November of 2011.

Both parties filed motions for summary disposition. At the hearing on December 19, 2012, the trial court denied plaintiff's motion and granted defendant's motion, stating:

> I am going to rule that your client [plaintiff] had adequate notice. Your client - - first I'm going to grant [defendant's] motion for summary judgment. You have made no argument before the Court which would raise a due process argument on lack of notice. Your client had notice, therefore, he did not pay the taxes in a timely fashion and he was foreclosed.

Plaintiff then moved the trial court for reconsideration, including for the first time a "sworn statement . . . pursuant to 28 USC § 1746."[1] In this statement, plaintiff elaborated on his visit to defendant's office in September 2011. Plaintiff alleged that he believed in 2011 that he had

> a written Payment Plan Agreement to Extend the Redemption Period to pay my 2009 Real Estate taxes based on the oral representations that were made to me by the Clerks at the office of the Wayne County Treasurer's that processed by [sic] written Payment plan to Extend the Redemption Period at that time.

Plaintiff further alleged that he was again misled in 2012 by oral representations from agents of defendant that led him to believe he could pay his 2009 delinquent taxes after the tax foreclosure auction was completed.

The trial court ruled on plaintiff's motion, holding that (1) due process does not require actual notice, (2) defendant complied with all statutory and constitutional requirements regarding the furnishing of notice to plaintiff, and (3) that plaintiff had not demonstrated any palpable error by which the court and the parties had been misled. This appeal followed.

[1] 28 USC § 1746 allows unsworn statements subscribed by the writer as "true under the penalty of perjury" to be accepted by federal courts as evidence in place of sworn declarations under oath. See *US v Gomez-Vigil*, 929 F 2d 254, 258 (CA 6, 1991). It is unclear why plaintiff makes such reference to federal law in the instant case.

## II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Moser v Detroit*, 284 Mich App 536, 538; 772 NW2d 823 (2009). Summary disposition is proper under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). We consider the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 29; 772 NW2d 801 (2009). All reasonable inferences are to be drawn in favor of the nonmovant. *Dextrom v Wexford County*, 287 Mich App 406, 415; 789 NW2d 211 (2010). If it appears that the opposing party is entitled to judgment, the court may render judgment in favor of the opposing party. MCR 2.116(I)(2); *Bd of Trustees of Policemen & Firemen Retirement Sys v Detroit*, 270 Mich App 74, 77-78; 714 NW2d 658 (2006). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

The determination whether a party has been afforded due process is a question of lawsubject to de novo review on appeal. *Elba Twp v Gratiot County Drain Comm'r*, 493 Mich 265, 277; 831 NW2d 204 (2013).

We review a trial court's decision on a motion for reconsideration for abuse of discretion. *Woods v SLB Property Management, LLC*; 277 Mich App 622, 630; 750 NW2d 228 (2008).

## III. SUMMARY DISPOSITION

The General Property Tax Act (GPTA), MCL 211.1 *et seq*., allows a governmental unit to file with the circuit court a single petition listing all properties to be foreclosed for nonpayment of property taxes in a given year. See MCL 211.78h(1). Plaintiff's property was one such property on the petition filed by defendant on June 14, 2011 and supplemented several times—the listed properties were identified as forfeited for nonpayment of the 2009 or prior year's unpaid taxes.

MCL 211.78i provides for the provision of notice to owners of property interests prior to foreclosure on the property. The foreclosing governmental unit is required to initiate a search of land title records and tax records, MCL 211.78(1) and (6), determine "the address reasonably calculated to apprise those owners of a property interest of the show cause hearing . . . and the foreclosure hearing . . . ," MCL 211.78(2), and send those identified parties notice of those hearings by certified mail, return receipt requested, *id*. The foreclosing unit or an authorized agent or representative must also make a personal visit to each parcel of property subject to foreclosure, MCL 211.78i(3), attempt to personally serve a person occupying the property if it appears to be occupied, MCL 211.78i(3)(a)-(c), and, if personal service is not able to be accomplished, post "in a conspicuous manner on the property a notice that explains, in plain English, that the property will be foreclosed" unless delinquent taxes, interest, penalties, and fees are paid, MCL 211.78i(3)(d). Finally, if the governmental unit is unable to ascertain the address

reasonably calculated to apprise the owners of a property interest, or unable to notify the owner of a property interest by certified mail, notice must be made by publication, once each week for three weeks. MCL 211.789(5).

"Before the hearing on the petition, the foreclosing governmental unit must provide proof of service of the notices required under the statute, as well as proof of the personal visit to the property and publication." *In re Treasurer of Wayne County for Foreclosure*, 478 Mich 1, 6; 732 NW2d 458 (2007); MCL 211.78k(1). If the foreclosing governmental unit complies with the above requirements, it has satisfied its statutory duty to provide adequate notice. See *Republic Bank v Genesee County Treasurer*, 471 Mich 732, 742; 690 NW2d 917 (2005).

Here, the trial court was provided with evidence that defendant complied with the requirements of MCL 211.78i. Plaintiff does not dispute that defendant performed a search of the records enumerated in MCL 211.78i(6), mailed notices to those persons identified by certified mail return receipt requested, made a personal visit to the property, posted a notice, and additionally published notice as required by MCL 211.789(5). Unconverted record evidence supports that such notices were provided.

Nonetheless, plaintiff argues that he was denied due process of law by not receiving actual notice of the show cause hearing and foreclosure hearing. Thus, although defendant may have satisfied its statutory duty, plaintiff argues that the notice provided was constitutionally inadequate, based on *Jones v Flowers*, 547 US 220, 126 S Ct 1708, 164 L Ed 2d 415 (2006). Plaintiff's reliance on *Jones* is misplaced. Although plaintiff appears to argue that *Jones* indicates that due process requires actual notice of a tax sale to an owner, the United States Supreme Court clearly stated:

> Due process does not require that a property owner receive actual notice before the government may take his property. Rather we have stated 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. [*Jones*, 547 US at 226 (quotation marks and citations omitted).]

In *Jones*, the foreclosing unit sent two certified letters to the property owner, which were returned unclaimed, apparently because no one was home to sign for them. *Id*. at 223-224. No other efforts were made to provide notice other than notice by publication. The Court in *Jones* found these efforts under the circumstances to be constitutionally inadequate, concluding that "when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Id*. at 225. The Court specifically enumerated such additional steps that could have been taken, such as a repeated mailing, addressing mailing to "occupant" rather than the owner by name, and posting notice on the front door. *Id*. at 234-235. The Court declined to hold that the foreclosing unit must embark on an "open-ended search for a new address" for the owner. *Id*. at 236.

*Jones* does not compel the conclusion that defendant's efforts at notice were inadequate. In the first place, plaintiff provides no evidence that any certified letters were returned

unclaimed; the record evidence shows that at least one notice was signed for at an address listed for plaintiff, although it was apparently claimed by a "Randall P." More importantly, defendant took "additional reasonable steps" as required by *Jones*, including a personal visit and posted notice on the property. *Id*. at 236, 239.

Our own Supreme Court has concluded that "the minimal requirements of due process" are satisfied "when a person is given adequate notice and a meaningful opportunity to be heard pursuant to MCL 211.78i" and the deprivation of property is "preceded by notice and opportunity adequate to the nature of the case and within the limits of practicability." *Republic Bank*, 471 Mich at 742-743. Here, uncontroverted evidence at trial supported the trial court's conclusion that no genuine question of material fact existed as to defendant's provision of notice that complied with MCL 211.78i, and that defendant was entitled to judgment as a matter of law on the issue of adequate notice. MCR 2.116(C)(10).

Finally, plaintiff makes reference to his alleged "course of dealing" with defendant and claims that he was misled by defendant's employees into believing he had more time to pay his 2009 taxes. Plaintiff's support for this argument comes in the form of a self-serving affidavit, devoid of identifying information, presented to the trial court for the first time during a motion for reconsideration, and containing inadmissible hearsay. Our review of the trial court's grant of summary disposition is limited to the evidence that had been presented to the trial court at the time the motion was decided. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009). Further, although evidence need not be in admissible form, it must be substantively admissible to be considered at a summary disposition hearing; inadmissible hearsay is not substantively admissible. See *Pitch v ESE Michigan, Inc*, 233 Mich App 578, 597; 593 NW2d 565 (1999). We therefore decline to consider this statement in our review of the trial court's grant of summary disposition to defendant.

With regard to the trial court's denial of plaintiff's motion for reconsideration, we find no abuse of discretion. Even considering the self-serving sworn statement, plaintiff essentially presented the same issues ruled upon by the trial court in granting defendant summary disposition. Although plaintiff made reference to his "course of dealing" with defendant and "detrimental reliance," in his motion for reconsideration, he did not develop these arguments or support them with citations to authority. Instead, he reiterated his arguments that he had not received actual notice and that defendant's efforts to provide him with notice were constitutionally ineffective. Further, the trial court correctly addressed plaintiff's contention that *Jones* required reversal. We conclude that the trial court did not abuse its discretion in declining to grant plaintiff reconsideration. See MCR 2.119(F)(3) ("Generally, and without restricting the discretion of the trial court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted.").

Affirmed.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Deborah A. Servitto