STATE OF MICHIGAN

COURT OF APPEALS

PAMULA SHARP,

Plaintiff-Appellant,

v

ROBERT HILLERY, also known as ROBERT HILLARY,

Defendant/Cross-Defendant-Appellee,

and

STACY HILLERY,

Defendant-Appellee,

and

DETROIT LAND BANK AUTHORITY, also known as DETROIT LAND BANK COMMUNITY DEVELOPMENT CORPORATION,

Defendant/Cross-Plaintiff-Appellee,

and

REGINALD B. SCOTT II,

Defendant-Appellee,

and

MICHIGAN HOMEOWNER ASSISTANCE NONPROFIT HOUSING CORPORATION,

Defendant.

UNPUBLISHED
April 22, 2021

No. 354432
Wayne Circuit Court
LC No. 17-015844-CH

Before: MURRAY, C.J., and MARKEY and LETICA, JJ.

PER CURIAM.

In this action concerning the sale of a vacant lot, plaintiff appeals as of right the trial court's order denying plaintiff's request for a jury trial and to permit discovery, quieting title to 2524 N. LaSalle Gardens in Detroit, Michigan ("the property"), to defendants/cross-defendants ("the Hillerys"), and reinstating the quitclaim deed of the property to the Hillerys. On appeal, plaintiff argues that the trial court exceeded the scope of this Court's remand order by preventing plaintiff from pursuing a jury trial and closing the case, and that the trial court's sua sponte order closing the case denied plaintiff her due process rights to notice and a meaningful opportunity to be heard. We affirm.

I. PROCEDURAL HISTORY

This is the fourth time this case has been before this Court. The first appeal was denied; the second, dismissed. *Sharp v Hillery*, unpublished order of the Court of Appeals, entered February 21, 2019 (Docket No. 345298); *Sharp v Hillery*, unpublished order of the Court of Appeals, entered February 1, 2019 (Docket No. 347060). In the third appeal, this Court presented the factual background that gave rise to the dispute over title to the property:

> Plaintiff lives at 2530 North LaSalle Gardens in Detroit, Michigan, and a vacant lot is located adjacent to plaintiff's property at 2524 North LaSalle Gardens. The Hillerys live on the same block at 2510 North LaSalle Gardens, a couple lots from the subject vacant lot. Following a tax foreclosure, the Wayne County Treasurer deeded the vacant lot to the Michigan Land Bank Fast Track Authority (MLBFTA) which later quitclaim deeded the vacant lot to defendant Detroit Land Bank Authority (DLBA), a public corporation created by the MLBFTA and Detroit under the land bank fast track act, MCL 124.751 *et seq*. Among other things, the DLBA acquires, disposes, and quiets title to vacant, abandoned, and derelict properties located in Detroit. The Hillerys became aware of the opportunity to purchase the subject lot from advertisements posted locally by the DLBA informing the public of a side lot fair hosted by the DLBA for the sale of vacant lots. The Hillerys applied to the DLBA to purchase the subject lot and the DLBA approved them and entered a purchase agreement with the Hillerys for their purchase of the subject lot on January 24, 2015. Under the terms of the purchase agreement, the DLBA promised to convey its interest in the property via a quitclaim deed at the closing. When the DLBA and defendants executed the purchase agreement, the subject lot lacked any recorded liens encumbering it. Seven months later, on August 20, 2015, the DLBA granted a future advance mortgage on the subject lot to defendant Michigan Homeowner Assistance Nonprofit Housing Corporation acting through the Michigan State Housing Development Authority (MSHDA) to secure a debt in the amount of $21,662.00. This lien related to demolition of the derelict house on the subject lot during 2014 following the tax foreclosure. MSHDA discharged the mortgage on April 18, 2016, and the discharge was recorded in the record title on November 28, 2017.

> At the time of this transaction, the DLBA conducted vacant side lot sales under its Side Lot Policy that it adopted in 2014 which gave owners of contiguous property first priority to purchase adjacent side lots but also gave owner occupants on the same block second priority. Persons interested were required to apply to participate in the program. If a physically contiguous property owner did not bid on a vacant side lot property for sale, then any owner occupant located on the same block would be the winning bidder. Defendants applied to the program and purchased the subject side lot before the DLBA changed its policy on March 15, 2016. After that date, the DLBA's policy restricted its sales of vacant side lots to adjacent property owners only. Neither the DLBA's 2014 policy nor its 2016 amended policy required the DLBA to give notice to property owners regarding the sale of vacant side lots.
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> On June 1, 2017, the DLBA's director executed a quitclaim deed conveying the subject lot to Robert. The deed was recorded in the Wayne County Register of Deeds on June 2, 2017.
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> On November 2, 2017, plaintiff sued Robert, the DLBA, its director, and the Michigan Homeowner Assistance Nonprofit Housing Corporation, alleging that defendants were not proper purchasers of the vacant lot under the DLBA's amended policy. Plaintiff later moved for summary disposition, and the trial court granted her motion on the grounds that (1) the DLBA could not sell the property to the Hillerys because a MSHDA lien existed at the time of sale that the DLBA mistakenly did not discover which prevented the DLBA from selling the property, and (2) the DLBA admitted that it failed to provide notice of the sale to adjacent property owners. The trial court's ruling voided the sale to the Hillerys, and the lot then sold to plaintiff, and the trial court entered an order confirming that sale. [*Sharp v Hillery*, unpublished opinion of the Court of Appeals, issued February 25, 2020 (Docket No. 347893), pp 2-3.]

On appeal, the Hillerys argued that the trial court erred by granting summary disposition in favor of plaintiff because they validly purchased the property. *Id*. at 3. This Court found that the 2014 policy applied because it was in effect when the Hillerys signed the purchase agreement with the DLBA, and therefore, the Hillerys, who lived on the same block as the property, were eligible purchasers of the property. *Id*. at 3-4. Further, "[t]he DLBA has authority under MCL 124.757 and MCL 124.773 to sell the property to the Hillerys and transfer it via quitclaim deed." *Id*. at 4.

Regarding the issue of whether plaintiff had notice of the sale of the property, we note there was record evidence that the DLBA notified the adjacent lot owners of the availability of the property before the public sale and that local media outlets had advertised the upcoming sale and reported that postcards had been mailed to eligible buyers. *Id*. at 4-5. Moreover, "[p]laintiff fail[ed] to cite any provision in either the 2014 policy or the 2016 amended policy indicating that the DLBA had any obligation to provide actual personal notice to adjacent lot owners" before holding the sale. *Id*. at 5. This Court further rejected plaintiff's attempt to introduce evidence of minutes from the DLBA Board of Directors' meetings, which purportedly indicated that adjacent property owners would receive notices of the sales by postcards, because the evidence was not

presented in the trial court. *Id.* This Court also rejected plaintiff's argument that a construction lien prevented the sale of the property. *Id.*

In sum, this Court concluded:

> The trial court erred by granting plaintiff summary disposition because the DLBA validly contracted with the Hillerys and their 2015 transaction was not void. Further, that transaction could not be rescinded because the DLBA's 2016 amended policy did not apply to that transaction and did not prohibit the DLBA from selling to nonadjacent property owners vacant side lots. The trial court also erred by ruling that the transaction was void for the DLBA's failure to provide plaintiff notice because the record before the court failed to establish that the DLBA had an obligation, statutory or otherwise, to provide such notice. [*Id.*]

Accordingly, this Court reversed the order of summary disposition and remanded for further proceedings consistent with the opinion. *Id.* This Court instructed that "[o]n remand, the trial court shall quiet title to the subject property in the Hillerys, reinstate the valid quitclaim deed of the subject property to them, and enter an order in recordable form for recording in the county register of deeds consistent with this opinion." *Id.*

On remand, the Hillerys filed a motion to confirm this Court's order. Plaintiff then filed a motion to set a jury trial date and to permit discovery. Plaintiff asserted that this Court's opinion reversed the order of summary disposition, which "put the parties back in the position they were in before [the trial court] granted summary disposition." This Court could have granted summary disposition in favor of the Hillerys, but it declined to do so. Instead, this Court remanded for further proceedings, meaning a trial. The Hillerys opposed plaintiff's motion, arguing that this Court's remand order was limited to quieting title to the property and reinstating the quitclaim deed to the Hillerys. The trial court agreed, entered an order denying plaintiff's motion for a trial and discovery, quieted title to the property to the Hillerys, and reinstated the valid quitclaim deed of the property to the Hillerys. This appeal followed.

II. DISCUSSION

On appeal, plaintiff argues that the trial court exceeded the scope of this Court's remand order and denied her due process rights to notice and an opportunity to be heard. We disagree.

A. SCOPE OF REMAND ORDER

Plaintiff argues that the trial court exceeded the scope of this Court's remand order by denying her motion for a trial and discovery, despite this Court's directive for further proceedings. We disagree.

"Whether a trial court followed an appellate court's ruling on remand is a question of law that this Court reviews de novo." *Schumacher v Dep't of Natural Resources (After Remand)*, 275

Mich App 121, 127; 737 NW2d 782 (2007). "[W]hen an appellate court gives clear instructions in its remand order, it is improper for a lower court to exceed the scope of the order." *K&K Constr, Inc v Dep't of Environmental Quality*, 267 Mich App 523, 544; 705 NW2d 365 (2005). "It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court." *Rodriguez v Gen Motors Corp*, 204 Mich App 509, 514; 516 NW2d 105 (1994).

As an initial matter, plaintiff's brief on appeal spends a great deal of time complaining about this Court's factual findings in the prior appeal. For example, plaintiff states multiple times that this Court construed the evidence in the light most favorable to the Hillerys, despite plaintiff moving for summary disposition.[1] Although plaintiff asserts that she is merely challenging the trial court's interpretation of this Court's opinion, there is the distinct impression that plaintiff's continued citations to facts that she alleges were construed in favor of the Hillerys is an attempt to revisit factual issues. By moving for a trial, it appears that plaintiff was attempting to litigate what she perceives as issues of fact concerning the DLBA's notice of the upcoming sale of the property and the corresponding evidence that this Court disregarded, namely, whether plaintiff received actual notice of the sale and whether the construction lien prevented the sale. The Hillerys allege that plaintiff is attempting to relitigate these issues, but plaintiff contends that she is merely challenging the trial court's interpretation of this Court's prior opinion.

To the extent that plaintiff is attempting to relitigate or revisit these issues, either in this Court or in the trial court, the law-of-the-case doctrine applies. "Under the law of the case doctrine, if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined" in subsequent proceedings in the same case "where the facts remain materially the same." *Grievance Administrator v Lopatin*, 462 Mich 235, 259; 612 NW2d 120 (2000) (quotation marks and citation omitted). "Thus, as a general rule, an appellate court's determination of an issue in a case binds lower tribunals on remand and the appellate court in subsequent appeals." *Id*. at 260. The law of the case applies to questions already presented in the same case with the same parties. *Manistee v Manistee Fire Fighters Ass'n*, 174 Mich App 118, 125; 435 NW2d 778 (1989). The law-of-the-case doctrine applies only to issues that were actually decided, either implicitly or explicitly, on appeal. *Kasben v Hoffman*, 278 Mich App 466, 470; 751 NW2d 520 (2008).

In the prior opinion, this Court determined that the DLBA's 2014 policy applied and, under that policy, the Hillerys were the valid purchasers of the property:

> The record reflects that the DLBA entered the purchase agreement with the Hillerys pursuant to its policy then in force. The DLBA promised to convey the subject lot

[1] Plaintiff states multiple times that this Court erred by considering the evidence in the light most favorable to the Hillerys, who were the nonmoving party relating to plaintiff's motion for summary disposition. Additionally, plaintiff asserts that "the trial court would have been required to consider the documentary evidence disregarded by the Court of Appeals, in the light most favorable to Plaintiff." Although not relevant to the issues on appeal, we feel compelled to correct plaintiff's assertions and state that "affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties" are construed in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

by quitclaim deed and ultimately did so. The record reflects that the DLBA admitted that it executed purchase agreements when deeds were unavailable. No provision in the DLBA's policy prohibited the sale of the property to the Hillerys or prohibited the DLBA from conveying the property. Moreover, regardless whether the property was encumbered in any manner, the purchase agreement required the DLBA to convey the property by quitclaim deed and the Hillerys agreed to take the property as is and waived all warranties pertaining to the property's condition. The purchase agreement specifically represented that the Hillerys were not in violation of the " 'Rules for Purchasing a Side Lot' set forth on the BuildingDetroit.org website as of the date of the purchase of this Property" and the record reflects that the Hillerys complied with the DLBA's policy requirements for their purchase of the subject lot. The DLBA had authority under MCL 124.757 and MCL 124.773 to sell the property to the Hillerys and transfer it via quitclaim deed. [*Sharp*, unpub op at 4.]

This Court also addressed plaintiff's arguments concerning notice and the construction lien:

> The Hillerys argue that the trial court also erred by granting plaintiff summary disposition on the ground that plaintiff lacked notice regarding the sale of the subject lot based on plaintiff's denial of receiving any notice and the DLBA's interrogatory response in which it stated that it did not give plaintiff notice. The record reflects that the Hillerys presented to the trial court the DLBA's responses to discovery in which it stated that it attempted to notify adjacent lot owners of the availability of side lots before the January 24, 2015 sale. The Hillerys also presented the trial court evidence that local media outlets advertised the upcoming side lot fair for the sale of vacant lots and reported that postcards were mailed to eligible buyers. The Hillerys also indicated to the trial court that the DLBA had no obligation to give notice under either its 2014 policy or its 2016 amended policy.
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> Plaintiff fails to cite any provision in either the 2014 policy or the 2016 amended policy indicating that the DLBA had any obligation to provide actual personal notice to adjacent lot owners like herself before conducting side lot fairs and sales of vacant side lots. Plaintiff attempts to rely on minutes from meetings of the DLBA Board of Directors that indicated adjacent property owners were to receive notices via postcard. These meeting minutes were not introduced in the trial court, and thus, cannot be considered on appeal. "This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal." *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). Accordingly, plaintiff's reliance on such evidence is not supported by the record below.
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> Plaintiff also asserts that a lien existed on the property before it was sold to the Hillerys that precluded the sale of the property to them. Plaintiff attempts to rely on a construction contract to establish the existence of this lien. However, this construction contract was not introduced in the trial court, and thus, cannot be considered on appeal. *Id*. Regardless, plaintiff has failed to establish her contention

> that such a lien precluded the sale of the subject lot to the Hillerys. Neither the DLBA's 2014 policy nor its 2016 amended policy prohibited the conveyance of a side lot because of the existence of a lien. Further, the purchase agreement lacked such a provision. No provision of the land bank fast track act, MCL 124.751 *et seq*., prohibits a land bank authority from conveying a property subject to a lien. Accordingly, we find no merit to plaintiff's assertion. [*Id*. at 4-5.]

What plaintiff views as issues of fact that warrant a trial were actually addressed in the course of this Court's legal determinations. Regarding notice, this Court implicitly found that plaintiff was given notice of the upcoming sale, and, in any event, the 2014 policy did not require the DLBA to provide notice. *Id*. Additionally, this Court found no legal merit to plaintiff's arguments concerning the construction lien. *Id*. at 5. Because this Court came to a legal determination on the issues of notice and the lien, these issues will not be decided differently on remand. *Grievance Administrator*, 462 Mich at 259; *Kasben*, 278 Mich App at 470. If plaintiff disagreed with this Court's legal analysis or its interpretation of the underlying facts, the proper procedure was for her to file a motion for reconsideration with this Court or to appeal to the Michigan Supreme Court. Because plaintiff failed to take either action, her assertion that issues of fact remain to warrant a trial is without merit, and the trial court properly denied plaintiff's motion for a trial.

Plaintiff argues that the trial court exceeded the scope of this Court's remand order by interpreting "reversed and remanded for further proceedings consistent with this opinion," to mean that judgment was to be entered in favor of the Hillerys. Plaintiff asserts that when this Court remands for entry of judgment against a party, clear and express language to that effect is included in the remand order. Because the remand order in this case directed the trial court to hold "further proceedings," as opposed to explicitly ordering judgment in favor of the Hillerys, plaintiff asserts that this Court remanded for a trial.

Again, this Court's remand order provides:

> Reversed and remanded for further proceedings consistent with this opinion. On remand, the trial court shall quiet title to the subject property in the Hillerys, reinstate the valid quitclaim deed of the subject property to them, and enter an order in recordable form for recording in the county register of deeds consistent with this opinion. We do not retain jurisdiction. [*Sharp*, unpub op at 5.]

This Court's remand order provided clear instructions for the trial court to follow: quiet title the property to the Hillerys, reinstate the Hillerys' quitclaim deed to the property, and enter a recordable order. That is the scope of the remand, and the trial court could not take any actions inconsistent with those directives. *K&K Constr*, 267 Mich App at 544. By requiring the trial court to enter such an order, this Court plainly ordered that judgment was to be entered in favor of the Hillerys—there were no issues of fact or law to further litigate because this Court determined that the purchase agreement between the DLBA and the Hillerys was valid. The trial court complied with this Court's directives by entering an order that is a near verbatim recitation of this Court's opinion. Accordingly, the trial court did not exceed the scope of the remand order by entering an order consistent with the prior opinion and denying plaintiff's motion for a trial and discovery.

B. DUE PROCESS

Plaintiff argues that the trial court's sua sponte order to close the case was entered "[w]ithout notice, without an opportunity to produce discovery documents, without an opportunity to file a brief, and without an opportunity for oral argument . . . ." We disagree.

To preserve an issue on appeal, the issue must be raised in the trial court and pursued on appeal. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). Plaintiff did not allege that she was not afforded due process by failing to receive notice or that she was not given an opportunity to be heard in the trial court. Thus, this issue is unpreserved.

Normally, "[w]hether due process has been afforded is a constitutional issue that is reviewed de novo." *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 277; 831 NW2d 204 (2013). However, an unpreserved claim of constitutional error is reviewed for plain error that was outcome determinative. *In re Application of Consumers Energy Co*, 278 Mich App 547, 568; 753 NW2d 287 (2008).

The United States Constitution and the Michigan Constitution both provide that no person shall be deprived of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17; *Elba Twp*, 493 Mich at 288. A person's property interest includes title to the property. *People v McKendrick*, 188 Mich App 128, 136; 468 NW2d 903 (1992). Due process of law fundamentally requires notice, *Michigan Electric Coop Ass'n v Pub Serv Comm*, 267 Mich App 608, 622; 705 NW2d 709 (2005), and an opportunity to be heard, *Bullington v Corbell*, 293 Mich App 549, 556; 809 NW2d 657 (2011). However, the due process right to an opportunity to be heard does not require the trial court to hold oral argument. *York v Civil Serv Comm*, 263 Mich App 694, 702; 689 NW2d 533 (2004) (citation omitted).

Plaintiff first asserts that the trial court, sua sponte, entered a final order closing the case. The record does not support this contention. On remand, the Hillerys filed a motion for the trial court to enter an order consistent with this Court's opinion, and plaintiff filed a motion for a trial and discovery. The trial court denied plaintiff's motion and the next day, the Hillerys filed a proposed order under MCR 2.602(B)(3). The trial court then entered the proposed order. Thus, it is evident that the trial court did not enter the order sua sponte.

Plaintiff also argues that she did not receive notice of the order or an opportunity to be heard in opposition of entry of the order. As stated above, the lower court file contains a proof of service for the proposed final order. Plaintiff's counsel's name and e-mail address are listed on the proof of service, establishing that counsel was served on July 14, 2020 at 5:12 p.m. The order entered by the court also notes that the proposed order was submitted by counsel for the Hillerys on July 14. Therefore, the record indicates that plaintiff had notice of the order.

Relatedly, plaintiff argues that the Hillerys' proposed order did not comply with MCR 2.602(B)(3) because it did not contain a notice that "it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice." MCR 2.602(B)(3). While plaintiff is correct that the proposed order does not contain a notice provision in accordance with MCR 2.602(B)(3), a violation of a court rule does not automatically require reversal unless the violation resulted in prejudice or the violation "is so offensive to the maintenance of a sound judicial process that it can never be regarded as harmless . . . ." *Longworth v Mich Dep't of Hwys & Transp*, 110 Mich App 771, 778-779; 315 NW2d 135 (1981) (quotation marks and citation omitted), superseded by statute on other grounds *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 148-150, 158-159; 615 NW2d 702 (2000). Here, plaintiff was not prejudiced by the entry of an order that strictly complied with this Court's remand order. Nor was the lack of a proper notice provision offensive to the judicial process because the proof of service stated that the proposed order was a seven-day order. Thus, despite the technical deficiency, plaintiff at least was on notice that the order was submitted under the seven-day provision of the court rules. Therefore, the Hillerys' technical deficiencies do not warrant reversal.

Concerning plaintiff's argument about her lack of opportunity to be heard, plaintiff only argues that the trial court did not hold oral argument before entry of the final order. Under MCR 2.119(E)(3), the trial court may, in its discretion, dispense with oral argument. The trial court e-mailed the parties to inform them that due to the COVID-19 pandemic, the court had been shut down. Further, the trial court would not be conducting virtual hearings; motions would be decided on the pleadings alone. Plaintiff even filed a praecipe for her motion that contained the warning, in bold text: "**Motions, although scheduled for hearing, will be decided without oral argument unless Court instructs otherwise**." The trial court's decision to suspend oral arguments on the basis of the COVID-19 pandemic was not an abuse of discretion. See *Fast Air, Inc v Knight*, 235 Mich App 541, 550; 599 NW2d 489 (1999). Moreover, plaintiff filed a brief supporting her motion for a trial and discovery, and a reply brief to the Hillerys' response brief. Accordingly, plaintiff had a meaningful opportunity to be heard, and she was not denied her due process rights.

Finally, we take a moment to address plaintiff's contention repeated throughout her brief on appeal that the final order entered by the trial court was a grant of summary disposition in favor of the Hillerys. That is clearly not true. The final order was an order quieting title and reinstating the quit claim deed for the property to the Hillerys. Merely because this case was disposed of without a trial does not mean that summary disposition was the procedural mechanism employed by the trial court.

Affirmed. The Hillerys, having prevailed in full, may tax costs under MCR 7.219.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Anica Letica