# STATE OF MICHIGAN

# COURT OF APPEALS

| | |
|---|---|
| ALTERNATIVE SOLUTIONS OF KALAMAZOO,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>October 21, 2003 |
| v | No. 240307<br>Kalamazoo Circuit Court |
| THOMAS L. AND SANDRA J. COOPER,<br><br>Defendants-Appellants. | LC No. 00-000468-CH |

Before: Owens, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Defendants appeal as of right from an order granting summary disposition to plaintiff under MCR 2.116(C)(10). The court ruled that defendants did not timely redeem a parcel of rental property that had been sold to plaintiff at a foreclosure sale. We reverse and remand. This appeal is being decided without oral argument under MCR 7.214(E).

The parties submitted a joint stipulation of facts to the court. The stipulation indicated, among other things, that (1) defendants defaulted on the rental property's mortgage; (2) the mortgage company sold the property to plaintiff at a foreclosure sale on June 17, 1999; and (3) plaintiff was granted a sheriff's deed, which was then recorded with the Kalamazoo County Register of Deeds Office on June 18, 1999. In a motion for summary disposition, defendants argued that they timely redeemed the property because (1) under the terms of the mortgage (and in accordance with MCL 600.3240[8]), they had six months to redeem the property; (2) the six-month period ended on December 18, 1999; (3) December 18, 1999, was a Saturday, and the Kalamazoo County Register of Deeds, as well as plaintiff's business, is not open for business on Saturdays; and (4) defendants mailed a certified check on the next business day – Monday, December 20, 1999 – to plaintiff.[1] In its corresponding motion for summary disposition, plaintiff argued that mailing a certified check two days after the redemption period ended was insufficient to redeem the property.

[1] Plaintiff does not dispute defendants' recitation of their actions involving the alleged redemption. Plaintiff simply disagrees that the actions sufficed to effect a proper redemption of the property.

In its ruling, the trial court looked to MCL 600.3240(1), which states that "[a] purchaser's deed is void if the mortgagor . . . redeems the entire premises sold by paying the [redemption] amount . . . to the purchaser . . . or to the register of deeds in whose office the deed is deposited for the benefit of the purchaser." The court found that, according to the stipulation of facts, no deed was ever deposited in the Kalamazoo County Register of Deeds Office.[2] The court ruled:

> In my view, the fact that the register of deeds office was not open on Saturday has nothing whatsoever to do with this case because the deed was not deposited at the register of deeds' [sic] office. The deed was recorded, but that means that everyone knew on December 18th payment has to be made.
>
> So this argument that the register of deeds' [sic] office wasn't open and, therefore, I obtain extra time is, in this Court's view, not a valid argument because the statute says, disjunctively, or to the register of deeds' [sic] in whose office the deed is deposited for the benefit of the purchaser.
>
> The deed had not been deposited in the register of deeds' [sic] office, so the factual predicate for the disjunctive or does not come into play; and, therefore, the fact that the register of deeds' [sic] office was not open on Saturday does not extend – which would, in effect, change the meaning of the statute by giving two more days.
>
> If the deed had been deposited in the register of deeds' [sic] office, I'd have a whole different situation. I don't have it. What I have is the first part of the statute which says by paying the amount . . . in the context of the factual setting in this case, that would mean – or could mean – putting the check in the mail. It's clear from the uncontradicted testimony that the check was not mailed [until] Monday – two days beyond the statutory period.
>
> Therefore, I will grant the plaintiff's (C)(10) motion; and the plaintiff is entitled to judgment.

On appeal, defendants argue that the trial court erred because (1) there was no evidence to support the trial court's finding that the deed was never deposited at the Kalamazoo County Register of Deeds Office; (2) even if the deed had indeed not been deposited at the register of deeds office, a purchaser cannot defeat a mortgagor's right to redeem by failing to deposit the deed; (3) various legal authorities indicate that a redemption period extends to Monday if the last day of the period falls on the weekend; and (4) in addition to the uncontroverted evidence that defendants mailed payment on Monday, December 20, 1999, defendants also represented that they tried to tender payment in person at the register of deeds office on that day but were turned away – the trial court's ruling failed to take this fact into account.

---

[2] Apparently, the court made this finding because the parties did not refer to such a deposit in their stipulation of facts. However, the stipulation of facts did state that the deed had been "recorded" by the Kalamazoo County Register of Deeds Office.

We review de novo a trial court's ruling with respect to a motion for summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In ruling on such a motion, the trial court must consider not only the pleadings, but also the depositions, affidavits, admissions, and other documentary evidence, and it must give the benefit of any reasonable doubt to the nonmoving party. See *id.* and MCR 2.116(G)(5). Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith, supra* at 454-455.

Additionally, we review issues of statutory interpretation de novo. *Roberts v Mecosta Co General Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002). The rules of statutory construction require the courts to give effect to the Legislature's intent. *Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand)*, 217 Mich App 7, 12; 551 NW2d 199 (1996). "This Court should first look to the specific statutory language to determine the intent of the Legislature," which is "presumed to intend the meaning that the statute plainly expresses." *Id.* If the language is clear and unambiguous, "the plain meaning of the statute reflects the legislative intent, and judicial construction is not permitted." *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). If reasonable minds could differ regarding the meaning of a statute, judicial construction is warranted. *Yaldo v North Pointe Ins Co*, 457 Mich 341, 346; 578 NW2d 274 (1998). A court must not read into a statute anything "that is not within the manifest intent of the Legislature as gathered from the act itself." *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998). We interpret court rules using the same rules of construction applicable to statues. *Jerico Const, Inc v Quadrants, Inc*, 257 Mich App 22, 28; 666 NW2d 310 (2003).

The statute at issue here, MCL 600.3240, is silent regarding whether the six-month statutory redemption period can be extended if the last day falls on a Saturday. The statute merely refers to "6 months." See MCL 600.3240(8). However, MCR 1.108 states:

> In computing a period of time prescribed or allowed by these rules, by court order, *or by statute*, the following rules apply:
>
> (1) The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or holiday on which the court is closed pursuant to court order; in that event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or holiday on which the court is closed pursuant to court order.
>
> (2) If a period is measured by a number of weeks, the last day of the period is the same day of the week as the day on which the period began.
>
> (3) If a period is measured by months or years, the last day of the period is the same day of the month as the day on which the period began. If what would otherwise be the final month does not include that day, the last day of the period is the last day of that month. For example, "2 months" after January 31 is March 31, and "3 months" after January 31 is April 30. [Emphasis added.]

Defendants argue that this court rule served to extend the redemption period in the instant case, and we agree.

In *People v Sinclair*, 247 Mich App 685, 687-690; 638 NW2d 120 (2001), this Court applied MCR 1.108(1) in determining that a prosecutor had not violated the 180-day rule set forth in the Interstate Agreement on Detainers, MCL 780.601 *et seq.* *Sinclair, supra* at 687-690. The *Sinclair* panel noted that "MCR 1.108 clearly applies to computing the period prescribed in a statute." *Id.* at 688. Here, the six-month redemption period is prescribed in a statute – MCL 600.3240(8) – and we therefore conclude that MCR 1.108(1) applies to it. *Sinclair, supra* at 688. Although MCR 1.108(1), by equating the effect of a weekend day with a "holiday on which the court is closed pursuant to court order," appears directed at least in part toward activities that are dependant on a *court* being open for business, nothing in the rule limits its application solely to such activities. In other words, nothing in the court rule serves to exempt a situation such as the instant one, in which the relevant entities are the land purchaser or the register of deeds office as opposed to the court.

Plaintiff in the instant case concedes on appeal that the redemption period expired on Saturday, December 18, 1999. Therefore, giving effect to the clear language of MCR 1.108(1), see *Tryc, supra* at 135-136, the redemption period at issue did not expire until Monday, December 20, 1999.

Plaintiff contends that an extension of time based on a period's weekend ending date applies only to a period of days and not to a period of months. It contends that because the instant case involved a period of months, no extension was warranted. However, MCR 1.108(1) does not distinguish between a period of days and a period of months. It merely states that "the last day *of the period* is included, unless it is a Saturday" and that "in that event, *the period* runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or holiday on which the court is closed pursuant to court order" (emphasis added). Moreover, although the Supreme Court in *Dunlap v Sheffield*, 442 Mich 195, 200; 500 NW2d 739 (1993), noted the existence of nonbinding commentary suggesting that MCR 1.108(1) applied solely to the calculation of periods of days as opposed to weeks or months, the Supreme Court went on to state explicitly that "[s]ection one indicates that, *in all cases*, if the last day falls on a day in which the court is closed, the period will extend to the next day in [sic] which the court is open." *Sheffield, supra* at 200, n 6 (emphasis added). We conclude that under the plain language of the statute and under relevant case law, the redemption period at issue in the instant case did indeed extend until Monday, December 20, 1999.[3]

The next question is whether defendants properly redeemed the property by mailing their payment on December 20, 1999. As noted, MCL 600.3240(1) states that "[a] purchaser's deed is

---

[3] We reject plaintiff's reliance on decisions (two from the nineteenth century) that were issued before the promulgation of MCR 1.108. Moreover, contrary to plaintiff's suggestion on appeal, our decision today does not improperly "enlarge" the redemption period but merely uses the applicable rules to determine when the redemption period actually ended.

void if the mortgagor . . . redeems the entire premises sold by paying the [redemption] amount . . . to the purchaser . . . or to the register of deeds in whose office the deed is deposited for the benefit of the purchaser." Plaintiff contends that simply mailing payment on the last day of the redemption period did not constitute "paying . . . to the purchaser" under the statute.

In *Birznieks v Cooper*, 405 Mich 319, 324; 275 NW2d 221 (1979), the defendant, Thomas Cooper, fell behind on land contract payments to the plaintiffs. The plaintiffs initiated summary proceedings to recover possession, and Cooper was given a certain amount of days to redeem the property under MCL 600.5744(6). *Birznieks, supra* at 324-327. Cooper mailed a personal check to the plaintiffs on the last day of the redemption period. *Id.* at 325. The Court held that this action was sufficient to satisfy the statutory requirement that the amount owed be "paid to the plaintiff" by the end of the redemption period. *Id.* at 331-335.

Given the similar language between MCL 600.5744(6) (the money shall be "paid to the plaintiff") and MCL 600.3240 (the mortgagor shall redeem by "paying the amount required . . . to the purchaser"), we conclude that defendants' actions in this case were sufficient to redeem the property under *Birznieks*. Plaintiff argues that *Birznieks* is distinguishable from the instant case because it involved a land contract purchase and because the Court stated that "[p]ayments on land contracts and rental payments are routine transactions which are ordinarily accomplished by sending personal checks through the mails." See *Birznieks, supra* at 334. Plaintiff argues that the situation in the instant case differs from that in *Birznieks* because the parties in the instant case had no contractual relationship or prior course of dealing with one another.

We cannot construe the *Birznieks* holding in the limited fashion advocated by plaintiff. First, the *Birznieks* Court specifically noted that it was *not* basing its decision on a prior course of dealing between the parties. *Id.* at 329-330. Moreover, the Court did not explicitly limit its holding solely to contractual relationships. Instead, the Court emphasized that "[a] customary means of payment is by personal check" and that "[t]he means of transmittal customarily employed, whatever the form of payment, is the mails." *Id.* at 332. It stated that it perceived no clear indication "requiring actual receipt in hand by the end of the last day" and that it was seeking to implement the meaning "which vendees and tenants would understand." *Id.* at 333-334.

Similarly, we find no clear indication in the instant case "requiring actual receipt in hand by the end of the last day." *Id.* at 333-334. Given the customary means of paying by check and using the mail to send payments, *id.* at 332, we conclude that the appropriate meaning understood by parties to redemption proceedings is that payment by mail is sufficient. See also *Tenney v Springer*, 121 Mich App 47, 53-54; 328 NW2d 566 (1982) (discussing *Birznieks*), and *Flynn v Korneffel*, 451 Mich 186, 203; 533 NW2d 580 (1996) (noting that *Birznieks* "merely recognized the means by which the modern debtor renders payment"). We acknowledge that the instant case does not involve a traditional vendor/vendee relationship, but we nonetheless believe that the basics tenets discussed in *Birznieks* are applicable, especially given the remedial nature of redemption proceedings, see *Birznieks, supra* at 330 n 10, and given that traditional mortgage payments are often made using the mail.

Because the redemption period extended to December 20, 1999, and because defendants mailed their payment to plaintiff on that day, the trial court erred in granting summary

disposition to plaintiff. Given our disposition, we need not address the other arguments raised by the parties on appeal.

Reversed and remanded for further proceedings.[4] We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter

[4] It appears that the trial court, given its decision with regard to the timing issue, failed to address certain other issues raised by the parties. These issues are not before this Court.