STATE OF MICHIGAN

COURT OF APPEALS

YOUNG & YOUNG, L.L.C., Plaintiff-Appellee,	UNPUBLISHED February 3, 2005
v NICHOLAS DENNANY, Defendant-Appellant, and TERESA L. DENNANY, Non-Participating Defendant.	No. 251359 Kalamazoo Circuit Court LC No. 02-000381-CH

Before: Smolenski, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's grant of summary disposition in favor of plaintiff quieting title in property obtained through a tax sale. We affirm.

Defendant argues that the trial court erred in granting summary disposition in favor of plaintiff, because a genuine issue of material fact existed regarding whether the state provided defendant adequate notice of the tax proceedings as required by statute. We disagree. We review de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). "An action to quiet title is an equitable action, and the findings of the trial court are reviewed for clear error while its holdings are reviewed de novo." *Fowler v Doan*, 261 Mich App 595, 598; 683 NW2d 682 (2004). "Also, the applicability of a statute is a question of law that this Court reviews de novo." *Id*. "Likewise, statutory interpretation is a question of law that is subject to de novo review." *Ross v Michigan*, 255 Mich App 51, 54; 662 NW2d 36 (2003).

"A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The trial court "may not resolve factual disputes or determine credibility in ruling on a summary disposition motion." *Burkhardt*

v Bailey, 260 Mich App 636, 647; 680 NW2d 453 (2004). But "[w]here the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden*, *supra* at 120.

"In an action to quiet title, the plaintiffs have the burden of proof and must make out a prima facie case of title." *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). "If the plaintiffs make out a prima facie case, the defendants then have the burden of proving superior right or title in themselves." *Id*. Here, plaintiff presented a state land purchase certificate with deed from the Michigan Department of Natural Resources and thus made out a prima facie case of title.

Defendant argues that the tax sale procedure by which the state took title to the property denied him due process. However, in *Smith v Cliffs on the Bay Condo Ass'n*, 463 Mich 420, 428-429; 617 NW2d 536 (2000), our Supreme Court noted that the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, "includes an extensive set of procedures for notice of the steps in the tax sale process," and that the fulfillment of these procedures satisfies due process requirements. See *Smith*, *supra* at 428-429 n 5, for a summary of these provisions.[1] Plaintiff's proof that these notice provisions were followed by the state included a proof of notice/hearing affidavit showing that notice pursuant to MCL 211.131e was sent to defendant at 701 Dwight Street, an affidavit from the Assistant Administrator for Local Property and Collections in the Property Tax Division of the Michigan Department of Treasury, Sivaswami Amarnath, in which he states that 701 Dwight Street was defendant's last known address of record, and proof of publication of notice in a local newspaper.

Concerning notice, defendant asserts that Amarnath's affidavit included inadmissible, conclusory statements of opinion. We disagree. An affidavit offered in support of a motion for summary disposition will be considered only to the extent that its content would be admissible as evidence at trial, MCR 2.116(G)(6), and, generally, a witness may not testify concerning a matter of which he has no personal knowledge, MRE 602. However, although Amarnath states that he has no personal memory of the sale of defendant's property, he does have personal knowledge and experience with the practices of the state concerning notice of tax proceedings. Because evidence of the routine practice of an organization is relevant to prove the conduct of the organization on a particular occasion, MRE 406, Amarnath would be allowed to testify as to the state's routine practice concerning notices under the GPTA and the trial court could consider his affidavit as evidence of the state's routine practice.

Defendant next asserts that a genuine issue of material fact exists regarding whether the state sent notice to his last known address as required by statute. We disagree. The GPTA "generally provides that mailed notice to the owner is to be at the owner's last known address," but that the return of this mailing "as undeliverable does not impose on the state the obligation to undertake an investigation to see if a new address" can be located. *Smith*, *supra* at 429. Here, as

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[1] Because *Smith* held that the procedures required by the statute are necessary to assure due process, we reject defendant's argument that the state's initial petition should have been filed consistent with the general court rules instead.

part of its proof regarding notice, plaintiff submitted a proof of notice/hearing affidavit showing that the state had sent notice pursuant to MCL 211.131e to defendant at 701 Dwight Street, but that this notice had been returned as undeliverable, and Amarnath's affidavit stating that this was defendant's last known address.

In response, defendant submitted several tax receipts from the early 1980s, a decade prior to the contested tax sale, indicating that local taxing authorities knew his address was 728 Mabel Street, rather than 701 Dwight Street. Nonetheless, we do not conclude that this was sufficient to raise a genuine issue of fact that the state was wrong in considering 701 Dwight Street to be defendant's last known address. The Amarnath affidavit states that the title work used by the Department of Treasury to establish this as the last known address has been destroyed under the Department's routine record retention schedule. The record here clearly establishes that defendant sold the subject property on land contract in 1987. Under the land contract, the purchaser was required to make property tax payments thus protecting defendant's interest in the property. Defendant admitted that, from the start, the purchaser ignored payments that were due under the land contract and that defendant did nothing to ensure that property taxes were being paid. Defendant basically ignored the subject property and his interest in it for the next fifteen years, until plaintiff filed this quiet title action. Because of this long lapse of time, as the Amarnath affidavit shows, plaintiff is unable to conclusively establish the analysis by which the state considered 701 Dwight Street to be defendant's last address, the records having been reasonably purged from state files. It would be inequitable to allow defendant to profit from his long inaction in asserting the rights he now claims; the resulting passage of time has made it impossible for plaintiff to offer the proof it might otherwise have available, that the correct last known address was used. *Manheim v Urbani*, 318 Mich 552, 555; 28 NW2d 907 (1947); *Sedger v Kinnco, Inc*, 177 Mich App 69, 73; 441 NW2d 5 (1988).

Alternatively, defendant argues that the state had reason to know that he was incarcerated during the time of the tax proceedings against the property and that, therefore, the state was required to send him notice at that location. The trial court rejected "this somewhat novel argument" noting that defendant cites no authority holding that "one department of a governmental body [is] accountable for the knowledge of another." Having reviewed the inapposite precedents cited on appeal, we agree. Defendant notes statutes suggesting that the state treasurer and county treasurer may have received notice regarding fees and expenses associated with his incarceration. See e.g., MCL 600.2558(2)(f); MCL 800.449. However, the record below did not contain any specific bills or statements related to defendant and, even if it did, we see no reason to conclude that any information conveyed about defendant in this context would establish a new "last known address" known to the taxing authorities with respect to the forfeiture sale at issue here.

Defendant further argues that the trial court improperly took judicial notice that the *Portage Gazette* was an insert in the *Kalamazoo Gazette* and was thus appropriate for publication notice of the tax sale. A trial court has discretion to take judicial notice of a fact when it is "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." MRE 201(b). Defendant has not come forward with evidence establishing any reasonable dispute as to that conclusion, especially with regard to the time frame at issue here, when the notice was published.

Defendant also argues that the wording of the published notice was misleading in that it implied that an interested party could proceed to a hearing without first filing an objection with the county clerk, as required under MCL 211.66. However, even if defendant had seen the notice (which he claims he did not), he would have suffered no prejudice in this regard. MCL 211.66 allows the trial court to grant additional time to an interested party to file objections if that person was prevented from doing so through no fault of his own. Therefore, had defendant appeared at the hearing noticed in the newspaper without first filing objections because of confusion caused by the wording of the notice, the trial court would likely have offered him an adequate remedy pursuant to the statute.

Finally, defendant argues that use of the property's legal description alone in notices, mailed or published, violated his right to due process. He contends that the general person does not know his property by its legal description so that this kind of notice would fail to alert him about the tax proceedings. However, several documents submitted into evidence demonstrate that defendant had reason to know his property by this description alone, including the original deed to the property dated 1971, his wife's quitclaim deed to defendant, and the description of the property within his divorce judgment. Therefore, defendant has failed to demonstrate how the identification of his property by its legal description violated his due process rights under the circumstances of this case.

In sum, plaintiff presented a prima facie case of title to the subject parcel and defendant failed to come forward with sufficient evidence to create a genuine issue of material fact that the procedures surrounding the tax sale leading to that title were deficient. The trial court properly entered an order quieting title in favor of plaintiff. We affirm.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Richard A. Bandstra