STATE OF MICHIGAN

COURT OF APPEALS

FRANKEN SUB-1, INC.,

Plaintiff-Appellant,

v

THOMAS F. EHMAN,

Defendant-Appellee.

UNPUBLISHED
February 10, 2005

No. 250726
Washtenaw Circuit Court
LC No. 02-001270-CZ

Before: Markey, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

In this real property action, plaintiff Franken Sub-1, Inc. appeals by right from the judgment granting defendant Thomas Ehman's motion for summary disposition. We affirm.

This case concerns a piece of property on Portage Lake in Dexter. Defendant, the owner of the property, had not paid taxes on it for the year 1996. Plaintiff, a tax buyer, sought to perfect title to the property by paying the back taxes and then following the steps required to obtain a tax deed for the property. One step required the sheriff to serve defendant with notice of plaintiff's tax deed interest and file a proof of service with the county treasurer. MCL 211.140.[1] This notice must specify whether the property is "vacant" or "improved residential." MCL 211.140a(2).[2]

Defendant argues plaintiff's notice was defective because it mistakenly described the property as "vacant" not "improved residential." MCL 211.140a(2) provides (emphasis added): "When a proof of notice on an improved residential parcel is filed with the county treasurer, the proof shall contain the statement: "*this parcel is an improved residential parcel.*" The "[f]ailure by the holder of a tax deed to include this statement and to provide a copy shall invalidate the filing and render it null and void." *Id.*

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[1] This statute has been repealed effective December 31, 2003 by 2001 PA 94. Other statutes at issue in this case have been repealed, effective either December 31, 2003, or December 31, 2006. 1999 PA 123; *Burkhart v Bailey*, 260 Mich App 636, 647 n 5; 680 NW2d 453 (2004).

[2] This statute has been repealed by 1999 PA 123 effective December 31, 2006. See n 1, *supra.*

MCL 211.140a(1) defines an "improved residential parcel" as "a parcel of land which contains a dwelling suitable for occupancy." This notice requirement is significant because once satisfied, the interested party (defendant) has six months to redeem the property by paying the taxes owed and a statutory penalty. MCL 211.141; *Burkhart v Bailey*, 260 Mich App 636, 647; 680 NW2d 453 (2004).

In this case, although plaintiff's proof of notice was not available to the lower court and is not in the file provided to this Court, both parties stipulated to the lower court that it incorrectly described the property as "vacant residential" and did not contain the phrase "this parcel is an improved residential parcel" as required by MCL 211.140a(2).

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). When deciding a motion under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). "The motion should be granted if the affidavits or other documentary show that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000). The issue then is whether plaintiff raised a question of fact that the property was not an "improved residential parcel." In other words, did plaintiff raise a question of fact whether the parcel lacked "a dwelling suitable for occupancy." If not, then plaintiff's notice, which described the property as "vacant," is defective. MCL 211.140a(2).

The evidence submitted by the parties shows beyond dispute that the property was "an improved residential parcel." Defendant attached his own affidavit that stated, "During all times relevant to this action, a dwelling equipped with heat and plumbing and suitable for occupancy has existed on the subject property, being occupied on a seasonal basis." Defendant also attached a copy of the "Dexter Township Assessor's records related to the subject property," which contained a photograph of the cottage and described it as one-story, with base heat and standard plumbing. The records also state the cottage had pine floors, a shingled roof, and aluminum siding. Therefore, the trial court correctly concluded that there was no genuine issue of material fact; consequently defendant was entitled to judgment of law because plaintiff's proof of notice was deficient, thus, invalid.

Next, plaintiff argues defendant should be estopped from claiming the property is "improved-residential" because years earlier he appealed its assessed value by arguing that because the property had only a space heater, no pump, and could not be winterized, it could only be seasonally rented, and therefore, "should be assessed as income-producing." Judicial estoppel is an "extraordinary remedy to be invoked when a party's inconsistent behavior will otherwise result in a miscarriage of justice. It is not a technical defense for litigants seeking to derail potentially meritorious claims." *Opland v Kiesgan*, 234 Mich App 352, 364; 594 NW2d 505 (1999)(citations omitted). Furthermore, the doctrine applies only where the claims are wholly inconsistent. *Paschke v Retool Industries,* 445 Mich 502, 510; 519 NW2d 441 (1994).

Defendant admits that in 1994, he appealed the assessed value for the property. Although records of the tax appeal have not been provided to this Court, the parties stipulated that the documents show that defendant convinced the township board of review to change the property's status from "residential property" to "income-producing property." Defendant did this by first

arguing that the cottage was not residential because no one lived there year-round. It lacked its own water pump, was not winterized, and was heated solely by a space heater; he argued it was "income-producing" because he rented it out only during the summer.

Judicial estoppel does not apply because defendant's arguments in the tax appeal are not wholly inconsistent with his position in the instant case. *Paschke, supra* at 510. In the tax appeal, defendant simply asked that the board of review to lower the property's assessed value because the property contained a summer cottage, not a year-round home. Defendant did not assert the property lacked a dwelling suitable for occupancy. Indeed, defendant's argument in the instant case is substantially similar: the dwelling is suitable for occupancy and has been occupied on a seasonal basis.

Last, plaintiff argues that the trial court's characterization of a lakefront summer rental as a "summer residence" did not advance the statutory purpose of this required notice. Plaintiff's argument is cursory at best. Plaintiff correctly assesses the policy behind the statute but fails to explain how the lower court's ruling defeats this policy. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), nor may he give issues cursory treatment with little or no citation of supporting authority, *Goolsby v Detroit*, 419 Mich 651, 655; 358 NW2d 856 (1984). Therefore, plaintiff has abandoned this issue.

We affirm.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Peter D. O'Connell