

STATE OF MICHIGAN
COURT OF APPEALS

EMMA PALMORE, on behalf of SARINA
PALMORE,

UNPUBLISHED
February 19, 2008

Plaintiff-Appellee,

v

No. 274971
Wayne Circuit Court
LC No. 06-607158-CH

VERONA BELVEDERE, INC., a/k/a
BELVEDERE, INC., f/k/a BELVEDERE
CONSTRUCTION, INC.,

Defendant,

and

SUNRISE PROPERTIES, INC.,

Defendant-Appellant.

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant Sunrise Properties, Inc. (“defendant”), appeals as of right from a circuit court order that extended the redemption period for real property. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The dispute arises from the foreclosure on real property purchased in 1989 by Sarina Palmore, a developmentally disabled person. In 1995, while plaintiff, Emma Palmore, was partial guardian for Sarina, plaintiff contracted with Verona Belvedere, Inc. (“Belvedere”), for repairs to the property.¹ Plaintiff executed a mortgage on the property, securing a debt of \$5,319.60, owing to Belvedere. The mortgage and the home improvement installment contract did not reference Sarina or plaintiff’s status as partial guardian. Plaintiff defaulted on the debt

¹ The order of partial guardianship, dated November 16, 1994, authorized plaintiff to “make all legal, contractual and financial decisions on behalf of [Sarina]”.

and on January 25, 2006, defendant purchased the property for \$9,674.48 at a foreclosure sale. The six-month statutory redemption period was set to expire on July 25, 2006.

On March 9, 2006, plaintiff, purporting to act on behalf of Sarina Palmore, brought this action to quiet title against Belvedere. She claimed that the mortgage was invalid because only she executed the mortgage and she did not have an interest in the land.

On May 3, 2006, the court entered a stipulated order that extended the redemption period to 45 days “after the conclusion of this matter.” Plaintiff and Belvedere also stipulated to the joinder of defendant as a necessary third party.

In an order dated August 28, 2006, the trial court denied plaintiff’s motion for summary disposition, granted Belvedere’s cross-motion for summary disposition, and dismissed the complaint with prejudice. When the complaint was dismissed, defendant had yet to be joined in the action, and from the record, appears to have had no knowledge of the action.

In September 2006, plaintiff contacted defendant to obtain a payoff figure, but defendant maintained that the redemption period had expired. On September 8, 2006, plaintiff filed a motion to reinstate this case for the purpose of enforcing the order extending the redemption period. At the same time, she filed a motion to add defendant as a necessary party and to amend the complaint.

In an order dated November 2, 2006, the trial court granted plaintiff’s motion to reinstate the case “for the sole purpose of enforcing the Stipulated Order entered on May 3, 2006, and not for the purpose of relitigating the issues of this action.” On November 10, 2006, plaintiff moved to enforce the order extending the redemption period and to order defendant to “issue a payoff.” The trial court, relying on its equitable powers, granted plaintiff’s motion in an order dated November 29, 2006 and further extended the statutory redemption period until January 1, 2007.

This Court reviews de novo equitable actions, including a suit to quiet title. *McFerren v B & B Investment Group*, 253 Mich App 517, 522; 655 NW2d 779 (2002). Findings of fact are reviewed for clear error. *Id.* The interpretation of a statute is a question of law that we review de novo. *People v Morey*, 461 Mich 325, 329; 603 NW2d 250 (1999).

On appeal, defendant argues that the trial court erred in granting plaintiff’s motion to enforce the stipulated order because it was not a party to the order, the agreement was invalid because Belvedere lacked authority to extend the period, and the redemption period, as extended in the order, had expired. We agree that reversal is necessary.

In general, MCL 600.3240 provides the requirements for redemption, and states that the right to redeem can “neither be enlarged nor abridged by the courts.” *Gordon Grossman Bldg Co v Elliott*, 382 Mich 596, 603; 171 NW2d 441 (1969) (citations omitted). “Absent some unusual circumstances or additional considerations not within the ambit of the statute, this Court must follow the clear and plain meaning of the statute.” *Id.* “Any deviation from the literal requirements of the statute ‘must be addressed to the conscience of the court.’” *Id.* Equitable considerations are permitted, on a limited basis, in cases of fraud, accident, or mistake. *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 54-55; 503 NW2d 639 (1993).

Here, while the trial court simply stated that it was relying on its equitable powers to enforce the prior stipulated order, plaintiff indicates that equitable relief was warranted because of mistake. According to plaintiff, she mistakenly believed that the statutory redemption period had been extended per the stipulated order signed by she and Belvedere and entered by the trial court, and that such a mistake warranted the trial court's exercise of its equity powers to enforce the stipulated extension of the redemption period and to enter its own order further extending the redemption period to January 1, 2007.

However, contemporaneously with its answer to plaintiff's complaint, Belvedere, on April 20, 2006, filed a "motion for joinder of necessary party and stay of redemption period." In that motion, Belvedere stated that it foreclosed its mortgage interest on plaintiff's property on January 25, 2006 and that as a result of the foreclosure sale, defendant was issued a sheriff's deed to the property that was recorded on February 13, 2006. Belvedere went on to state that because it no longer had an interest in the subject property, the joinder of defendant was necessary for a full and fair adjudication of the matter.

By virtue of Belvedere's motion, plaintiff was fully aware that Belvedere had no interest in the subject property and that defendant, as the grantee of the sheriff's deed, was the entity to which redemption must be made. Given Belvedere's express statement that it no longer had an interest in Sarina's property, plaintiff's contention that she believed that Belvedere's counsel had the authority to stipulate on May 3, 2006 to the extension of the redemption period is unfounded. There was no reasonable basis to believe that Belvedere had the authority to stipulate to anything that would affect defendant's interest in the property. The trial court's order enforcing the stipulated order and further extending the statutory redemption period was in error.

Moreover, despite the fact that she and Belvedere stipulated to joining defendant as a party to the lawsuit, no steps were taken to add defendant to the underlying lawsuit so that it could, perhaps, address the redemption period and its interest in the subject property. While plaintiff notes that Belvedere failed to add defendant as a party, this Court abstractly wonders on what basis Belvedere could add defendant. Belvedere did not assert that it had any claim against defendant, nor did it seek any type of relief from it. As Belvedere could not amend plaintiff's complaint for her to add defendant as a party, plaintiff was clearly remiss in failing to follow through with the stipulated order and amend her complaint to add defendant to the lawsuit.

Were we to find that the original stipulated order formed a basis for plaintiff's belief that the redemption period had been extended, the trial court's later order would still be in error. The stipulated order extending the redemption period provided that the redemption period would be extended "to forty-five (45) days after the conclusion of this matter." The matter was concluded in an August 28, 2006 order of the court, granting Belvedere's motion for summary disposition and concluding with, "[t]his order disposes of all claims and closes the case." The stipulated order would thus serve to extend the redemption period to October 12, 2006. Plaintiff did not redeem the property within that time.² Defendant was not served with a complaint in the

² Plaintiff did contact defendant requesting a redemption payoff amount in August, 2006, but was told by defendant that the redemption period had expired. Nevertheless, plaintiff did not attempt
(continued...)

underlying matter until November 10, 2006. Thus, even if the trial court were to enforce the original stipulated order, the enforcement would only serve to reassert that the redemption period expired on October 12, 2006. Plaintiff did not articulate to the trial court, nor did the trial court cite to any, fraud, accident, or mistake that would warrant an additional extension of the redemption period, such that the further extension was in error.

Reversed.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

/s/ Deborah A. Servitto

(...continued)

to tender any redemption monies to defendant prior to October 12, 2006, which may (assuming the stipulated order was valid) have protected Sabrina's rights even if defendant refused to accept the amount tendered. See, *Strempek v First Nat Bank-Detroit*, 293 Mich 435; 292 NW 358 (1940).