

STATE OF MICHIGAN
COURT OF APPEALS

In re Petition of WAYNE COUNTY
TREASURER.

WAYNE COUNTY TREASURER,

Petitioner,

v

ROMEL CASAB and BAN CASAB,

Respondents-Appellants,

and

JEFFREY A. BOLYARD and DETROIT
WAREHOUSE COMPANY, INC.,

Respondents,

and

KASSEM BEYDOUN, GHADA BEYDOUN,
HOUSTON SERVICES, INC., H & T SERVICE,
INC., and HAYS ENTERPRISES, INC.,

Intervening Parties-Appellees.

Before: O’Connell, P.J., and Talbot and Stephens, JJ.

PER CURIAM.

Appellants Romel and Ban Casab appeal by delayed leave granted from a circuit court order canceling a quitclaim deed issued to them by the Wayne County Treasurer and quieting title to property located at 15111 Houston Whittier in Detroit (the “Whittier property”) in favor of appellees Kassem and Ghada Beydoun. We reverse and remand for further proceedings.

UNPUBLISHED
October 27, 2009

No. 285703
Wayne Circuit Court
LC No. 05-517048-PZ

This case involves one of several parcels of property that were subject to a mass foreclosure action filed by the Wayne County Treasurer under the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, for nonpayment of property taxes. Pursuant to a foreclosure judgment entered on March 30, 2006, title to the Whittier property vested in the Wayne County Treasurer. After the Wayne County Treasurer sold the Whittier property to appellants Romel and Ban Casab, the appellees, Kassem and Ghada Beydoun, and three entities claiming to be past and present lessees moved to set aside the foreclosure judgment with respect to the Whittier property, cancel appellants' deed, and quiet title to the property in favor of Kassem and Ghada Beydoun, claiming that they had not received notice of the foreclosure and, thus, were denied constitutional due process. The Wayne County Treasurer and appellants both opposed appellees' motion. The trial court granted the motion and, following payment of the taxes to the Wayne County Treasurer, entered a final order canceling the Casabs' deed and quieting title to the property in favor of Kassem and Ghada Beydoun.

The trial court set aside the foreclosure judgment with respect to the Whittier property pursuant to MCR 2.612(C) (relief from judgment), finding that appellees had not been afforded minimum due process. Appellants now challenge this ruling. We ordinarily review a trial court's decision whether to grant relief from a judgment for an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). We also review a trial court's decision whether to conduct an evidentiary hearing for an abuse of discretion. *Williams v Williams*, 214 Mich App 391, 399; 542 NW2d 892 (1995). "When a motion is based on facts not appearing of record, the court may hear the motion on affidavits presented by the parties, or may direct that the motion be heard wholly or partly on oral testimony or deposition." MCR 2.119(E)(2). However, we review *de novo* a challenge to a judgment on the ground that it deprived a party of constitutional due process. *Sidun v Wayne Co Treasurer*, 481 Mich 503, 508; 751 NW2d 453 (2008). In general, the validity of a judgment may be attacked at any time. *DAIIE v Maurizio*, 129 Mich App 166, 171; 341 NW2d 262 (1983). In addition, a judgment may be collaterally attacked on the ground that the issuing court lacked jurisdiction over the subject matter or the parties. See *Nash v Salter*, 280 Mich App 104, 119-120; 760 NW2d 612 (2008).

This case involves the Wayne County Treasurer's acquisition of property for nonpayment of property taxes. State proceedings to take property from its owner must comport with due process. *Sidun, supra* at 509. Statutory notice deficiencies in a foreclosure action that are significant enough to offend due process rights may nullify a deed. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 349; 745 NW2d 137 (2007). Although due process does not require actual notice, "[a] fundamental requirement of due process in such proceedings is 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Sidun, supra* at 509, quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950). "[T]he means employed to notify interested parties must be more than a mere gesture; they must be means that one who actually desires to inform the interested parties might reasonably employ to accomplish actual notice." *First Nat'l Bank of Chicago v Dep't of Treasury*, 280 Mich App 571, 584; 760 NW2d 775 (2008), *lv gtd* 483 Mich 1000 (2009), quoting *Sidun, supra* at 509.

The property rights protected by due process are personal rights. *Small Engine Shop, Inc v Cascio*, 878 F2d 883, 887 (CA 5, 1989); see also *Reed v Reed*, 265 Mich App 131, 159; 693 NW2d 825 (2005). Therefore, to properly determine if there existed a basis for setting aside the foreclosure judgment, the circumstances of each appellee must be considered separately.

We agree with appellants that the trial court erred in finding a denial of due process to justify relief from the foreclosure judgment without conducting an evidentiary hearing. At the time of foreclosure, Kassem Beydoun was the only legal titleholder of the property according to the deed executed by Atlas Oil Company in 1998. The record lacks factual development regarding the actual measures taken by the Wayne County Treasurer to ascertain appropriate addresses for providing Kassem with notice of the foreclosure action. Further, the trial court was presented with several affidavits that raised credibility issues regarding the Wayne County Treasurer's use of certified mailings to provide notice and its undertaking to have a representative personally visit the property to provide the occupant with notice of the foreclosure. A personal visit is relevant in assessing a titleholder's due process rights because notice to an occupant increases the likelihood that the occupant will alert the owner about the foreclosure, if only because a change in ownership could affect occupancy. *Jones v Flowers*, 547 US 220, 235; 126 S Ct 1708; 164 L Ed 2d 415 (2006). Because further factual development of the record is necessary to determine if Kassem Beydoun's due process rights were violated, we remand this case to the trial court for further proceedings consistent with MCR 2.119(E)(2) and the standards set forth in *Sidun, supra*, for evaluating the Wayne County Treasurer's efforts to provide notice.

Although appellants do not separately address Ghada Beydoun's due process rights, we shall consider this issue in the interest of justice. *Paschke v Retool Industries (On Rehearing)*, 198 Mich App 702, 705; 499 NW2d 453 (1993), rev'd on other grounds 445 Mich 502 (1994). We disagree with appellees' argument that the undisputed evidence that the Wayne County Treasurer did not attempt to serve Ghada Beydoun establishes a denial of due process. Due process protects significant property interests, *Dow v Michigan*, 396 Mich 192, 204; 240 NW2d 450 (1976), in particular, "vested property rights or entitlements," *Michigan Ed Ass'n v State Bd of Ed*, 163 Mich App 92, 98; 414 NW2d 153 (1987). The mere fact that Ghada Beydoun is referred to as a mortgagor, owner, and borrower in mortgage documents does not establish that she had a vested interest in the Whittier property. Further, a question of fact remains regarding whether Ghada was entitled to notice pursuant to MCL 211.78i(2), which requires the foreclosing governmental unit to send notice to property owners and to persons entitled to notice of the return of delinquent taxes under MCL 211.78a(4).¹ Ownership is a question of fact,

¹ MCL 211.78i(2) states, in pertinent part,

After conducting the search of records under [MCL 211.78i(1)], the foreclosing governmental unit or its authorized representative shall determine the address reasonably calculated to apprise those owners of a property interest of the show cause hearing under [MCL 211.78j] and the foreclosure hearing under [MCL 211.78k] and shall send notice of the show cause hearing under [MCL 211.78j] and the foreclosure hearing under [MCL 211.78k] to those owners, and to a person entitled to notice of the return of delinquent taxes under [MCL

(continued...)

Ghaffari v Turner Constr Co (On Remand), 268 Mich App 460, 463; 708 NW2d 448 (2005), and the parties have presented conflicting evidence regarding whether Ghada has an ownership interest in the Whittier property.² Because a question of fact exists regarding whether Ghada has an ownership interest in the property or is otherwise entitled to notice pursuant to MCL 211.78i, we remand for further factfinding regarding this matter.

Next, appellees Houston Services, Inc., and Hays Enterprises, Inc., were both alleged to be former lessees of the Whittier property under leases that preceded the date of foreclosure. There is no evidence that either entity had an interest in the property at the time of foreclosure such that they would have standing to challenge the foreclosure judgment. A party's standing is jurisdictional in nature and may be raised at any time, even sua sponte by an appellate court. *Kallman v Sunseekers Prop Owners Ass'n, LLC*, 480 Mich 1099; 745 NW2d 122 (2008); *Michigan Chiropractic Council v Comm'r of the Office of Financial & Ins Services*, 475 Mich 363, 370-374; 716 NW2d 561 (2006) (opinion by Young, J.). Standing requires that a litigant suffer a concrete and particularized injury caused by the conduct complained of. *Manuel v Gill*, 481 Mich 637, 643-644; 753 NW2d 48 (2008).

There being no evidence of the past lessees' standing, we shall limit our review to H & T Service, Inc., the alleged present lessee of the property. In this regard, H & T Service failed to show that it had the necessary relationship with the foreclosure to entitle it to notice. Under the GPTA, the owners of property interests entitled to notice are determined before the forfeiture is certified and recorded with the county register of deeds. See MCL 211.78g; MCL 211.78i(6). Given the disputed evidence concerning the personal visit made to the property during H & T Service's alleged tenancy, we cannot conclude as a matter of law that H & T Service was denied

(...continued)

211.7878a(4)], by certified mail, return receipt requested, not less than 30 days before the show cause hearing. . . .

MCL 211.78a(4) states:

Any person with an unrecorded property interest or any other person who wishes at any time to receive notice of the return of delinquent taxes on a parcel of property may pay an annual fee not to exceed \$5.00 by February 1 to the county treasurer and specify the parcel identification number, the address of the property, and the address to which the notice shall be sent. Holders of any undischarged mortgages wishing to receive notice of the return of delinquent taxes on a parcel or parcels of property may provide a list of such parcels in a form prescribed by the county treasurer and pay an annual fee not to exceed \$1.00 per parcel to the county treasurer and specify for each parcel the parcel identification number, the address of the property, and the address to which the notice should be sent. The county treasurer shall notify the person or holders of undischarged mortgages if delinquent taxes on the property or properties are returned within that year.

² In particular, the parties have presented evidence indicating that Ghada's name was included on mortgages and lease agreements for the property, but her name was not on the warranty deed for the property issued to her husband in 1998.

due process. Therefore, on remand, the trial court shall also conduct further evidentiary proceedings to determine whether H & T Service was denied due process.

In light of our decision, it is unnecessary to consider appellants' argument that the trial court erred by going beyond MCR 2.612(C) to cancel their quitclaim deed and quiet title in Kassem Beydoun and Ghada Beydoun. We reverse the trial court's final order canceling the deed and quieting title.

Reversed and remanded for further proceedings consistent with this opinion. On remand, the trial court shall set forth adequate findings of fact and conclusions of law sufficient for appellate review. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Michael J. Talbot

/s/ Cynthia Diane Stephens