STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM LIGON,

Plaintiff/Counter-Defendant-Appellee,

v

PAUL C. KALES, TRUSTEE, MICHAEL KELLY, and PEARL LEVIN,

Defendants,

and

GINA CHARISSE YOUNG,

Defendant/Counter-Plaintiff-Appellant,

and

CITY OF DETROIT,

Defendant-Appellee

UNPUBLISHED
June 6, 2013

No. 299145
Wayne Circuit Court
LC No. 08-017478-CH

WILLIAM LIGON,

Plaintiff/Counter-Defendant-Appellee,

v

PAUL C. KALES, TRUSTEE, MICHAEL KELLY, and PEARL LEVIN,

Defendants,

No. 300096
Wayne Circuit Court
LC No. 08-017478-CH

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and

GINA CHARISSE YOUNG,

Defendant/Counter-Plaintiff-
Appellee,

and

CITY OF DETROIT,

Defendant-Appellant.

Before: DONOFRIO, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

In Docket No. 299145, defendant/counter-plaintiff Gina Charisse Young appeals by right the order granting summary disposition in favor of plaintiff/counter-defendant William Ligon in this action to quiet title to real property. In Docket No. 300096, the city of Detroit (hereinafter "the City") appeals by right the order granting, in part, the motion for taxation of costs filed by Ligon. We reverse in part, vacate in part and remand.[1]

The current appeal arises from a dispute between Ligon and Young regarding title and ownership to platted lots 117, 118, and 119, referred to as Parcel 1, of the College Manor Subdivision in the city of Detroit.[2] A second parcel of property, referred to as Parcel 2, while not

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[1] The City contends that the order appealed from is not a final order. Assuming without deciding that the order is not final, for reasons of judicial economy, we exercise our discretion to consider the appeal as on leave granted. *Detroit v State of Mich*, 262 Mich App 542, 545-546; 686 NW2d 514 (2004).

[2] The legal description for this property is:

> [T]he South ½ of the Southwest ¼ of Section 8, Town 1 South, Range 11 East, as recorded in Liber 48, Page 18 of Plats, Wayne County Records, with a common street address of "13440-13444 West McNichols," and with a tax parcel number of 22/14106.

the subject of this appeal, is relevant to this matter. Parcel 2 is comprised of Lots 120, 121, 122, 123, and 124 of the College Manor Subdivision.[3] Ligon's ownership of Parcel 2 is undisputed.

In a prior appeal, Ligon filed an action for inverse condemnation involving the City, but the opinion did not designate the property as parcels. The underlying facts were summarized as follows:

> In 1980, Ligon and his partner, Fonzie Robinson, jointly executed a land contract to purchase from Paul Kales a certain parcel of real property located in the city. Ligon and Robinson each held a one-half interest in the property as cotenants and jointly operated a business in a building situated on the land. Although a deed was not recorded, Ligon claimed that he paid off the land contract in 1988.
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> In about 1990, Robinson filed for bankruptcy, and the bankruptcy estate acquired Robinson's one-half interest in the property. In 1991, Ligon entered into a land contract to purchase Robinson's former one-half interest from the bankruptcy estate. At the end of the land contract term in 1995, the bankruptcy trustee delivered a deed conveying Robinson's former one-half interest to Ligon. The bankruptcy trustee's deed was delivered in November 1995 and recorded in February 1996.
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> In January 1996, the city commenced tax foreclosure proceedings against the property, naming Ligon, Robinson, and other defendants. *Detroit v Kales*, Wayne Circuit Court Docket No. 96–601825–CH. Ligon argued that he had not personally received notice of the tax foreclosure proceedings. In July 1996, a default judgment was entered in the tax foreclosure proceedings. Then, in August 1996, an "Order Vacating Judgment as to William Ligon Only" was entered in the tax foreclosure proceedings. The city later agreed to voluntarily dismiss Ligon altogether as a party to the tax foreclosure proceedings. In October 1997, as a result of the tax foreclosure proceedings, the state of Michigan executed a deed reconveying the property to the city. In 2000, the city took possession of the property and building. The city demolished the building "in error" in 2002. Ligon then commenced this action. [*Ligon v Detroit*, 276 Mich App 120, 123-124; 739 NW2d 900 (2007).]

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[3] The legal description of Parcel 2 is as follows:

> [T]he South ½ of the southwest ¼ of Section 8, Town 1 South, Range 11 East, as recorded in Liber 48, Page 18 of Plats, Wayne County Records, with a common street address of "13148 West McNichols," and with a tax parcel number of 22/14107.

In *Ligon*, this Court addressed Ligon's claim of inverse condemnation and challenge of the trial court's refusal, in the earlier litigation, to amend its judgment to reflect that Ligon's recovery for the City's demolition of the building at issue should reflect his 100 percent ownership "of the total damages incurred." *Id.* at 133. This Court ruled:

> The trial court concluded that Ligon possessed only a half interest in the property at the time of the taking and that he was accordingly entitled to only 50 percent of the total damages incurred in this case. However, as previously noted, we have determined that Ligon possessed a valid interest in 100 percent of the property at the time the building was demolished. Thus, the trial court abused its discretion in declining to amend its judgment in this regard . . . . We vacate the judgment entered by the trial court and remand. On remand, the trial court shall enter an amended judgment indicating that (1) Ligon validly acquired Robinson's former one-half interest from the bankruptcy estate and (2) is entitled to recover 100 percent of the damages incurred in this case. We do not disturb the trial court's findings concerning the actual, specific amount of damages incurred in this matter. [*Id.* (citation omitted).]

As a result of this Court's ruling, the matter was remanded to the trial court for the entry of an amended judgment. *Id.* Subsequently, the trial judge entered a judgment, amending her earlier ruling, and awarded Ligon a total judgment of $1,110,559 representing 100 percent "of the damage to Plaintiff's building. . . ."

After the damages were resolved in the prior litigation, Ligon filed this suit to quiet title to the property. In the trial court, Ligon asserted that this Court's earlier ruling and his prior complaint for inverse condemnation in the lower court against the City resolved his ownership interest in both Parcel 2 and Parcel 1. Specifically, he contended that the 2003 litigation and the 2007 appeal established his ownership to parcel 1, citing (1) the complaint that referenced his ownership interest; (2) language in the City's motion for new trial addressing both parcels; (3) a verbal statement following the bench trial referencing 13418 through 44 West McNichols; and (4) Ligon's testimony regarding square feet and the trial court's calculation of damages premised on square footage.

In contrast, Young alleged she had superior title and ownership of Parcel 1 premised on her purchase of the property from the City following the issuance of a tax foreclosure judgment on this portion of the property and Ligon's failure to challenge the judgment or redeem the property. Specifically, on September 13, 1999, a tax foreclosure judgment was entered in favor of the City (Case No. 99-902532-CH) against Ligon regarding Parcel 1. While not clear precisely how, at some point following the 1999 tax foreclosure, defendant Michael Kelly obtained and then subsequently, on October 29, 2001, conveyed his interest in Parcel 1 to the City by quit claim deed, which was recorded with the Wayne County Register of Deeds. In August of 2005, Young purchased the City's "fee simple ownership interest in Parcel 1" for the sum of $51,000. The City conveyed a quit claim deed for this property to Young, which was recorded on October 18, 2005, with the Wayne County Register of Deeds. Young claimed that Ligon lost any ownership interest he maintained in Parcel 1 as of the entry of the 1999 judgment of tax foreclosure based on his failure to redeem the property or appeal the judgment. Young challenged Ligon's contention that this Court's prior opinion resolved Ligon's ownership interest

in Parcel 1, asserting that this Court's ruling addressed solely his interest in Parcel 2. The trial court denied Young's motion for summary disposition and granted summary disposition in favor of Ligon pursuant to MCR 2.116(I)(2).

In Docket No. 299145, Young contends, and the City concurs, that the trial court erred in granting summary disposition and quieting title to the property identified as Parcel 1 in favor of Ligon based on (a) her claim of superior title as a bona fide purchaser and (b) her purchase of Parcel 1 from the City following the entry of a valid judgment of foreclosure in 1999, which Ligon failed to appeal or redeem. In opposition, Ligon asserts that his claim of ownership to Parcel 1 was conclusively established in the earlier litigation and appeal involving the inverse condemnation of Parcel 2. A "trial court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law." *Bd of Trustees of the Policemen & Firemen Retirement Sys of Detroit v Detroit*, 270 Mich App 74, 77-78; 714 NW2d 658 (2006) (citation and quotation marks omitted).

It is useful to establish a chronology of events in analyzing the parties' respective claims of title to Parcel 1. Of particular relevance are the following dates and events:

1980s	Ligon and partner (Robinson) obtain ownership of Parcels 1 and 2 through a land contract. A deed was not recorded.
1990	Ligon's business partner (Robinson) files for bankruptcy and bankruptcy trustee acquires partner's one-half interest in Parcels 1 and 2.
November 1995	Ligon fully effectuates contract with bankruptcy trustee to purchase former partner's interest in Parcels 1 and 2. Bankruptcy trustee provides Ligon with quit claim deed for Parcels 1 and 2. Deed is recorded in 1996.
October 1996	Judgment of Tax Foreclosure on Parcel 2 (Lots 120-124).
September 1999	Judgment of Tax Foreclosure on Parcel 1 (Lots 117-119).
October 2001	Michael Kelly conveys his interest in Parcel 1, obtained after the 1999 foreclosure, to the City by quit claim deed.
January 2003	Ligon files litigation against the City for inverse condemnation (Wayne Circuit Court No. 03-302015-CK).
May 2005	Trial court enters a judgment in favor of Ligon in inverse condemnation case (Wayne Circuit Court No. 03-302015-CK) and Ligon files appeal with this Court.
August 2005	Young purchases the City's interest in Parcel 1 for $51,000. Quit claim deed is delivered to Young by the City in August 2005 and the deed is recorded on October 18, 2005.

June 2007	Court of Appeals issues decision in *Ligon v Detroit.*
February 2008	Trial court enters an amended judgment in the 2003 case following this Court's remand.
December 2008	Ligon initiates current litigation to quiet title.

In determining which party is entitled to quiet title of Parcel 1, we consider Young's claim of superior title resulting from her status as a good faith purchaser for value and without notice and Ligon's loss of any interest in Parcel 1 following the 1999 tax foreclosure.

The process leading to a judgment of foreclosure is delineated in the General Property Tax Act (GPTA), specifically MCL 211.78 *et seq*., and is also discussed in *In re Petition by Wayne Co Treasurer*, 478 Mich 1, 6-7; 732 NW2d 458 (2007). In accordance with MCL 211.78k(6), a judgment of foreclosure that is not appealed within 21 days is subject to a limited basis for attack. Specifically:

> If a property owner does not redeem the property or appeal the judgment of foreclosure within 21 days, then MCL 211.78k(6) deprives the circuit court of jurisdiction to alter the judgment of foreclosure. MCL 211.78k(6) vests *absolute title* in the foreclosing governmental unit, and if the taxpayer does not redeem the property or avail itself of the appeal process in subsection 7, then title " shall not be stayed or held invalid . . . ." This language reflects a clear effort to limit the jurisdiction of courts so that judgments of foreclosure may not be modified other than through the limited procedures provided in the GPTA. The only possible remedy for such a property owner would be an action for monetary damages [in the court of claims] based on a claim that the property owner did not receive any notice. [*In re Petition by Wayne Co Treasurer*, 478 Mich at 8 (emphasis in original; footnote omitted).]

In the circumstances of this case, there is no dispute that the City obtained a valid judgment of tax foreclosure on Parcel 1 in 1999, which Ligon did not redeem or appeal. Although Ligon had an interest in the property before 1999, once the tax foreclosure judgment was entered and he took no action to set it aside, absolute title to Parcel 1 vested in the City in accordance with MCL 211.78k(6). There is also no dispute that Young purchased Parcel 1 from the City in 2005 for the sum of $51,000.

In order to come within the protection of Michigan's recording statutes, an individual must demonstrate either having a prior conveyance that is first recorded or establish one's status as a bona fide purchaser. A bona fide purchaser has been defined as a purchaser in good faith, who remitted valuable consideration, without notice of a prior interest and who duly recorded the conveyance. See MCL 565.29; *Kastle v Clemons*, 330 Mich 28, 31; 46 NW2d 450 (1951). In turn, a "good faith purchaser" is defined as "one who purchases without notice of a defect in the vendor's title." *Oakland Hills Dev Corp v Lueders Drainage Dist*, 212 Mich App 284, 297; 537 NW2d 258 (1995), citing *Mich Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). The term "notice of defect" has been defined by this Court as:

> Notice is whatever is sufficient to direct attention of the purchaser of realty to prior rights or equities of a third party and to enable him to ascertain their nature by inquiry. Notice need only be of the possibility of the rights of another, not positive knowledge of those rights. Notice must be of such facts that would lead any honest man, using ordinary caution, to make further inquiries in the possible rights of another in the property. [*Royce v Duthler*, 209 Mich App 682, 690; 531 NW2d 817 (1995), quoting *Schepke v Dep't of Natural Resources*, 186 Mich App 532, 535; 464 NW2d 713 (1990).]

A notice of lis pendens has been deemed effective as constructive notice from the time of its recording. See *Attorney General v Ankersen*, 148 Mich App 524, 556-557; 385 NW2d 658 (1986). As acknowledged by the parties, a lis pendens was not filed in conjunction with or during the 2003 litigation or 2007 appeal. Based on the vesting of title in 1999 to the City following entry of the judgment of tax foreclosure of Parcel 1 and Young's subsequent status as a bona fide purchaser without notice of any dispute regarding title to Parcel 1, Young's title to the subject property was established and superior.

Ligon's attempt in the current litigation to bring into controversy the title of Parcel 1 constitutes an improper collateral attack on the 1999 tax foreclosure judgment on this property. The language of MCL 211.78k(6) within the GPTA is clear. When a judgment of tax foreclosure is not redeemed or appealed within the requisite period of time, the property owner's interest in the property is terminated with "absolute title [becoming vested] in the foreclosing governmental unit." *In re Petition by Wayne Co Treasurer*, 478 Mich at 8. As such, the jurisdiction of the trial court in Case No. 03-302015-CK with regard to Parcel 1 was extremely limited. Based on his failure to redeem or appeal the 1999 judgment of tax foreclosure on Parcel 1, Ligon's "only possible remedy . . . [was] an action for monetary damages . . . based on a claim that [Ligon] did not receive any notice." *Id.* In the circumstances of this case, even that limited option was not available because there is no evidence to suggest any procedural irregularities with the 1999 tax foreclosure on Parcel 1 given Ligon's retention of counsel and appearance in that matter.

Three different doctrines of preclusion have been raised by the parties as possibly pertaining to this matter: (a) res judicata, (b) collateral estoppel, and (c) law of the case. Res judicata serves to bar subsequent relitigation premised on the same transaction or events as a prior action. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999). Specifically:

> The doctrine of res judicata was judicially created in order to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. . . . As we have stated:
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> In Michigan, the doctrine of res judicata applies, except in special cases, in a subsequent action between the same parties and not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time. [*Id.* (citations and quotation marks omitted).]

In contrast, collateral estoppel precludes a subsequent, different cause of action when the ultimate issue to be resolved or concluded is the same or identical to that litigated in a prior action. *Ditmore v Michalik,* 244 Mich App 569, 577; 625 NW2d 462 (2001). To apply the doctrine of collateral estoppel:

> [T]he ultimate issue to be concluded in the second action must be the same as that involved in the first. The issues must be identical, and not merely similar, and the ultimate issues must have been both actually and necessarily litigated. To be necessarily determined in the first action, the issue must have been essential to the resulting judgment; a finding upon which the judgment did not depend cannot support collateral estoppel. [*Board of Co Road Comm'rs for Co of Eaton v Schultz*, 205 Mich App 371, 376-377; 521 NW2d 847 (1994) (citations omitted).]

The law of the case doctrine is applicable to an appellate court's ruling concerning a particular issue and binds courts of equivalent or subordinate jurisdiction in subsequent proceedings in the same case. *McNees v Cedar Springs Stamping Co (After Remand)*, 219 Mich App 217, 221-222; 555 NW2d 481 (1996). The law of the case doctrine is applicable "only to issues actually decided, either implicitly or explicitly, in the prior appeal." *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). "The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue. Thus, a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case." *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). The law of the case doctrine is used when the earlier appeal involved the same set of facts, parties, and question of law. *Manistee v Manistee Fire Fighters Ass'n, Local 645, IAFF*, 174 Mich App 118, 125; 435 NW2d 778 (1989). "[L]aw of the case offers the same parties a measure of certainty by according finality to the litigated issues until the cause of action is fully litigated, including retrials or appeals, and the superseding doctrines of res judicata and collateral estoppel become effective." *Topps-Toeller, Inc v Lansing*, 47 Mich App 720, 729; 209 NW2d 843 (1973).

In 1999, a valid judgment of tax foreclosure pertaining only to Parcel 1 was entered. The only parties to that proceeding were Ligon and the City. Subsequently, in 2003, Ligon brought a claim against the City that was primarily based on inverse condemnation following the City's demolition of a building situated on Parcel 2 and challenging the earlier 1996 tax foreclosure on Parcel 2 based on the failure to provide adequate notice. Young was not a party to that litigation or to the appeal of that decision in 2007. The 2003 litigation and 2007 appeal dealt exclusively with the propriety of the tax foreclosure proceedings in 1996 on Parcel 2 and Ligon's entitlement to damages for the demolition of a building on that property. While Ligon may have made averments in the 2003 litigation asserting a continuing interest in Parcel 1 and seeking a right to redemption, the true focus of the litigation was on Parcel 2.

In determining the applicability of any of the various preclusion doctrines, it is noted that the 1999 tax foreclosure proceeding, the 2003 litigation and the 2007 appeal of that decision, involved the same parties – the City and Ligon. The 1999 tax foreclosure and the 2003 litigation did not, however, deal with the same issue. The 1999 tax foreclosure was simply that, a proceeding to obtain possession of Parcel 1 for non-payment of taxes by Ligon. The 2003 litigation, in contrast, dealt primarily with another issue – the failure to provide proper notice and

the subsequent entitlement to damages for the 1996 foreclosure on Parcel 2 and the subsequent demolition of a building erected on that property. Any reference to Parcel 1 in the 2003 litigation was merely ancillary and part of the historical background relating to Parcel 2. To the extent Ligon implied in his pleadings in the 2003 litigation an issue pertaining to the ownership or redemption of Parcel 1, that issue was precluded by res judicata as having been resolved in the 1999 judgment of tax foreclosure. As has been recognized for many years, in the context of the law of the case doctrine:

> The policy of the law is that when a case has once been considered and disposed of by the courts before which it may lawfully be brought, it is disposed of for all time, and the conclusion cannot be attacked in any new proceeding except upon certain equitable grounds which are foreign to the present discussion. [*People ex rel Lyon v Ingham Co Circuit Judge*, 37 Mich 377, 378 (1877).]

Ligon's failure to redeem or appeal the 1999 tax foreclosure judgment rendered it a final judgment on the issue of ownership of Parcel 1. See *Watkins v Chrysler Corp*, 167 Mich App 122, 128; 421 NW2d 597 (1988). Specifically:

> While an attempt, in a suit to quiet title, to attack a judgment affecting the property may be regarded as a collateral attack upon the judgment, an attack raised by way of quiet title relative to proceedings subsequent to a judgment and brought against a previous purchaser may not be deemed to be a collateral judgment. A party may claim superior title in an action notwithstanding a judgment in another action affecting the property, but if the party cannot establish separate superior title that party may not collaterally attack the prior judgment. [47 Am Jur 2d Judgments § 749 (citations omitted).]

Ligon's averments pertaining to Parcel 1 in his 2003 litigation constituted a collateral attack on the decision of the court entering the 1999 judgment of tax foreclosure. Ligon never appealed or redeemed Parcel 1 following entry of the 1999 judgment of tax foreclosure. Hence, in 2003 and 2007 respectively, neither the trial court nor this Court had jurisdiction over any alleged issue pertaining to Parcel 1. Ligon was precluded from collaterally attacking the 1999 judgment in his appeal to this Court of the trial court's 2003 decision, which comprised a separate action. See *Life Ins Co of Detroit v Burton*, 306 Mich 81, 85; 10 NW2d 315 (1943); *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987). Accordingly, any claim by Ligon of superior or conclusive determination of the title to Parcel 1 in his favor is without merit as a matter of law.

Based on our holding that the trial court erred in granting summary disposition quieting title in favor of Ligon, it is unnecessary for this Court to address the City's contention regarding the propriety of the trial court's grant of Ligon's bill of costs as any such award is vacated because Ligon is no longer the prevailing party in the lower court. "An issue is moot if an event has occurred that renders it impossible for the court, if it should decide in favor of the party, to grant relief." *Mich Nat'l Bank v St Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997).

We reverse the grant of summary disposition and vacate the order awarding costs in favor of Ligon. We remand this matter to the trial court for entry of an order granting summary disposition in favor of Young. We do not retain jurisdiction. Young and the City, as the prevailing parties, may tax costs. MCR 7.219.

/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto