

STATE OF MICHIGAN
COURT OF APPEALS

WW MICHIGAN PROPERTIES,

Plaintiff/Counterdefendant-
Appellant,

v

DARYL A. REPOKIS,

Defendant/Counterplaintiff-
Appellee,

and

KAREN REPOKIS, ADC VENTURE 2011-2,
PRIVATE PLACEMENT CAPITAL NOTES II,
L.L.C., MACFARLANE PHEASANTS, INC., JAY
DEBUYER, and ST. CLAIR COUNTY
REGISTER OF DEEDS,

Defendants,

and

HARSENS ISLAND PROPERTIES, L.L.C.,

Intervenor/Counterplaintiff-
Appellee.

UNPUBLISHED
September 23, 2014

No. 316555
St. Clair Circuit Court
LC No. 13-000027-CZ

Before: RIORDAN, P.J., and CAVANAGH and TALBOT, JJ.

PER CURIAM.

Plaintiff/Counterdefendant WW Michigan Properties (Michigan Properties), appeals as of right an order granting summary disposition in favor of defendant/counterplaintiff Daryl A. Repokis and intervenor/counterplaintiff, Harsens Island Properties, LLC (Harsens Properties), in this property foreclosure redemption action. We affirm.

This case arises out of an action to quiet title to seven parcels of land located on Harsens Island, Michigan. Daryl and his ex-wife, Karen Repokis, owned the property and defaulted on the terms of a loan, which ultimately resulted in a sheriff's sale on December 15, 2011. Two sheriff's deeds were issued to Michigan Properties on that date. However, Michigan Properties did not record the two sheriff's deeds until January 5, 2012, which was 21 days after the date of their issuance. Daryl redeemed the subject property on January 4, 2013, and then quitclaimed his interest in six of the seven parcels to Harsens Properties the same day. Michigan Properties claimed the redemption was late, and filed a complaint to prevent Daryl's redemption. Michigan Properties alleged that the statutory redemption period had expired on December 15, 2012. The complaint further alleged that injunctive relief was necessary because the St. Clair County Register of Deeds would destroy the underlying sheriff's deeds upon its receipt of Daryl's redemption payment, and Michigan Properties would be irreparably harmed as a consequence.

Harsens Properties moved to intervene, asserting that it had an interest in the litigation because Daryl quitclaimed his interest in six of the seven parcels to it. Harsens Properties contended that, where a deed is not timely recorded, the redemption period runs from the recording of the deed and not from the date of the foreclosure sale; therefore, Daryl's redemption was timely and effective. Daryl also filed an answer to Michigan Properties' motion for injunctive relief, contending that he timely redeemed the property. The trial court determined that the redemption period ended on January 5, 2013. The parties later filed cross-motions for summary disposition, and the court concluded that, "the Property is redeemed and titled in the name of [Harsens Properties]. . . ." This appeal followed.

Michigan Properties argues that the trial court erred in holding that the redemption was timely after concluding that the statutory redemption period ended one year from the date of the recording of the sheriff's deed, and not one year from the date of the sheriff's sale. Under the circumstances presented in this case, we disagree.

The issue of when the redemption period ended requires statutory interpretation. Statutory interpretation is a question of law that is considered *de novo* on appeal. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 278; 831 NW2d 204 (2013).

At the hearing on Michigan Properties' motion for injunctive relief, the issue whether the redemption period expired was raised. The trial court agreed to decide that issue, and subsequently held:

The parties agree that the leading case on this point is *Mills v Jirasek*, 267 Mich 609, 255 NW 402 (1934), although they draw from differing passages to support their positions. While the case does hold that the twenty day filing requirement [MCL 600.3232] is directory rather than mandatory, and therefore does not render the deed invalid, it also holds, citing *Lilly v Gibbs*, 39 Mich 394 (1880) [sic], that "the time of redemption in such case does not begin to run until the deed is filed."

It is the opinion of this Court that the Sheriff's Deed in this case was subject to redemption through January 5, 2013.

The court then entered an order denying Michigan Properties' motion for injunctive relief.

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Mich Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 217; 801 NW2d 35 (2011). If the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted. *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 222; 821 NW2d 503 (2012). The Legislature is presumed to have intended the meaning it plainly expressed, *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012), and clear statutory language must be enforced as written, *Velez v Tuma*, 492 Mich 1, 16-17; 821 NW2d 432 (2012). The word “shall” is generally used to designate a mandatory provision. *Smitter v Thornapple Twp*, 494 Mich 121, 136; 833 NW2d 875 (2013).

MCL 600.3201, *et seq.*, governs the procedure and requirements for foreclosing a mortgage by advertisement. Post-foreclosure issues, including the manner of redemption and the time period for exercising redemption, are set forth in MCL 600.3232 and MCL 600.3240.

MCL 600.3232 provides, in pertinent part:

The officer or person making the sale shall forthwith execute, acknowledge, and deliver, to each purchaser a deed of the premises bid off by him; and if the lands are situated in several counties he shall make separate deeds of the lands in each county, and specify therein the precise amounts for which each parcel of land therein described was sold. And he shall endorse upon each deed the time when the same will become operative in case the premises are not redeemed according to law. *Such deed or deeds shall, as soon as practicable, and within 20 days after such sale, be deposited with the register of deeds of the county in which the land therein described is situated, and the register shall endorse thereon the time the same was received.* . . . [Emphasis added.]

The plain language of MCL 600.3232 provides that a sheriff’s deed must be filed as soon as practicable, and within 20 days after the foreclosure sale. “Shall” designates a mandatory provision, *Smitter*, 494 Mich at 136, and by not filing the sheriff’s deeds with the register of deeds within 20 days of the foreclosure sale, Michigan Properties failed to comply with MCL 600.3232. However, MCL 600.3232 does not provide the consequences for its violation. And, in *Mills v Jirasek*, 267 Mich 609, 614-615; 255 NW 402 (1934), our Supreme Court held that the recording provision in MCL 600.3232 is “directory,” as distinct from “mandatory,” and that an untimely recorded sheriff’s deed generally remains valid absent a showing of material harm or prejudice.

Michigan Properties argues that the redemption period is governed by MCL 600.3240(12), which provides that “the redemption period is 1 year from the date of the sale.” However, MCL 600.3232 and 600.3240(12) relate to the same subject and share a common purpose; thus, they are *in pari materia* and must be read together as one law. *Titan Ins Co v State Farm Mut Auto Ins*, 296 Mich App 75, 84; 817 NW2d 621 (2012); *CG Automation & Fixture, Inc, v Autoform, Inc*, 291 Mich App 333, 338; 804 NW2d 781 (2011). And reading the language of MCL 600.3232 to require a filing within 20 days but without consequences for its violation, on the ground that MCL 600.3240(12) governs the redemption period, renders the language of MCL 600.3232 nugatory. Statutes should not be read so as to render language nugatory. *Robinson v Lansing*, 486 Mich 1, 21; 782 NW2d 171 (2010).

The *Mills* court noted that statutes regulating foreclosure sales and subsequent recordings are “intended to prevent surprise or unfairness, and they should be enforced in everything substantial.” *Mills*, 267 Mich at 613-614 (quotation, citation omitted). Importantly, the *Mills* court held that the redemption period did not begin to run until the deed was recorded. *Id.* at 613. In reaching that decision, the *Mills* Court reaffirmed its earlier holding in *Lilly v Gibbs*, 39 Mich 394, 396 (1878), where it termed the failure to timely file the sheriff’s deed “an irregularity which was very apt to mislead and make trouble.” In *Lilly*, a difference of a few days between the sale and the recording misled the register of deeds and brought on the controversy by precluding the mortgagor from redeeming the property during the narrow time frame between one year from the date of sale and the anniversary of the recording. *Id.* at 396-397. Likewise, here, Daryl reasonably believed that he redeemed the property with his “timely” payment, i.e., payment made within one year of the date the sheriff’s deeds were recorded. The holdings in *Mills* and *Lilly* constitute binding authority on this Court. See *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551, 563; 741 NW2d 549 (2007) (citations omitted). Accordingly, the trial court properly concluded that the redemption period ended one year from the date of the recording of the deeds.

Affirmed.

/s/ Michael J. Riordan
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot