

STATE OF MICHIGAN
COURT OF APPEALS

RONALD JARVI,

Plaintiff-Appellant,

v

BRIAN F. MCCARTHY, GARY D. SUTELLA,
JAMES LABA and PAMELA LABA,

Defendants-Appellees.

UNPUBLISHED

November 22, 1996

No. 186188

LC No. 94-472318 CK

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition and to quiet title. We affirm.

This case involves the latest in a long series of cases involving the ownership of commercial property located at 304 East Street in Rochester, Michigan. On May 1, 1975, plaintiff, defendants Gary Sutella and Brian McCarthy, and three other individuals executed a land contract to purchase that property from Michael and Ann Noble. The land contract required the six co-vendees to make a monthly payment of \$135 for four years, with the unpaid balance due as a balloon payment on May 1, 1979.

When the Nobles did not receive the balloon payment, they filed a lien against the property and declared a default. On July 31, 1979, the Nobles' attorney sent a notice of Intent to Forfeit (dated July 27, 1979) to the address provided on the land contract via certified mail, return receipt requested. Plaintiff never notified the Nobles of a change of address and thus notice was sent to his last known address, which was the address listed on the land contract. No response was received from any of the co-vendees. The Nobles' attorney sent a Notice of Forfeiture dated August 22, 1979, to the co-vendees, repeating the same mailing process. Again, there was no response.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff contends that on July 31, 1979, he was in the Oakland County Jail. On August 16, 1979, the Oakland Probate Court dismissed a petition to commit plaintiff to a mental health institution, and released plaintiff to his father. Plaintiff contends that he was again in the Oakland County Jail from August 23, 1979, to August 30, 1979.

On November 17, 1979, the Nobles filed a complaint in 52nd District Court against the co-vendees to recover possession of the property after forfeiture of the land contract. Defendants McCarthy and Sutella were personally served with the complaint. Plaintiff and the other three co-vendees were never served with the complaint. Eventually, the district court entered a default judgment against all the co-vendees except McCarthy and summary judgment as to McCarthy.

Sutella and McCarthy appealed the judgment to the Oakland Circuit Court. Under a consent judgment entered on March 4, 1981, the circuit court ruled that McCarthy had redeemed the property by paying the sum of \$20,138.58 to the Nobles “subject only to . . . the rights of joint vendees under the subject contract.” Upon entry of this judgment, McCarthy paid the Nobles and received in exchange a warranty deed for the property. The deed was subject to the co-vendees’ rights in the property.

On June 24, 1983, the Internal Revenue Service posted a Notice of Seizure on the property for nonpayment of \$24,140.34 in taxes owed by McCarthy. The tenant at the time, defendants James and Pamela Laba, purchased the property for \$36,500 at the tax sale. Subsequently, the Labas obtained and recorded quit claim deeds from the Nobles to McCarthy and from McCarthy to them.

On December 27, 1989, Sutella executed a quit claim deed to plaintiff. The deed was recorded on February 5, 1990. Also on February 5, 1990, plaintiff filed a motion to dismiss and to vacate the consent judgment in Oakland Circuit Court on the grounds that he was neither properly served with process nor present when the consent judgment was entered. The circuit court denied the motion. This Court dismissed plaintiff’s appeal, and denied plaintiff’s motion for rehearing. After plaintiff filed a petition to remove the action to United States District Court, that Court dismissed his complaint with prejudice. The Sixth Circuit Court dismissed plaintiff’s appeal for lack of jurisdiction and denied his petition for rehearing. In three separate dispositions, the U.S. Supreme Court denied a writ of certiorari, rehearing, and a writ of mandamus and/or prohibition.

On March 14, 1994, plaintiff filed this complaint against the Labas alleging that he was the absolute owner of the property and asking the court to clear title. The Labas filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff filed a counter-motion for summary disposition pursuant to MCR 2.116(C)(9) and (10). The trial court granted the Labas’ motion, dismissed plaintiff’s complaint, and denied plaintiff’s counter-motion.

Plaintiff argues several reasons why the trial court erred in granting the Labas’ motion for summary disposition. We hold that summary disposition was proper although for different reasons than those stated by the trial court. An action to quiet title is an equitable action in which a party in

possession of property seeks to clear title against the whole world. *Tray v Whitney*, 35 Mich App 529, 533; 192 NW2d 628 (1971); MCL 600.2932(5); MSA 27A.2932(5).

MCL 600.5726; MSA 27A.5726 permits a land contract seller to recover the property following a forfeiture, but only if the express terms of the contract give the vendor the right to declare forfeiture as a result of a material breach of the contract. The contract at issue provided such a right. In addition, the contract provided: "In all cases where a notice of forfeiture is relied upon by the seller to terminate rights hereunder, service of notice shall be preceded by a notice of intent to forfeit the contract served at least ten days prior thereto." Similarly, MCL 600.5728; MSA 27A.5728 requires a written notice of forfeiture to be served on the vendees and an opportunity to pay the required money before possession of the property may be recovered under § 5726.

Service of the written notice of forfeiture is governed by MCL 600.5730; MSA 27A.5730, which provides:

The notice of forfeiture provided for in § 5728 may be served by delivering it personally to the vendee or person holding possession under him or by delivering it on the premises to a member of his family or household or an employee, of suitable age and discretion, with a request that it be delivered to the vendee or person holding possession under him, *or by sending it by first-class mail addressed to the last known address of the vendee or the person holding under him.*

The record indicates that the Nobles mailed the notice of intent to forfeit on July 31, 1979, to plaintiff's last known address by certified mail, return receipt requested. No response was received. On August 22, 1979, the Nobles mailed the notice of forfeiture to plaintiff's last known address by certified mail, return receipt requested. Again, no response was received. Unless notified of a change of address, the Nobles could rely upon the address given in the land contract. MCL 600.5730; MSA 27A.5730. Although plaintiff claims that he did not reside at that address, he does not dispute that he never informed the Nobles of his change of address or that he was actually residing in Oak Park at the time. The fact that plaintiff was incarcerated or hospitalized does not constitute "concealment" for purposes of MCL 554.301; MSA 26.1171. Furthermore, the record indicates that plaintiff was never judicially declared to be mentally incompetent. Accordingly, the trial court properly found that plaintiff was served with the notice of intent to forfeit the land contract, as well as the notice of forfeiture.

Assuming arguendo that the trial court erred by relying on *Rothenberg v Follman*, 19 Mich App 383, 387; 172 NW2d 845 (1969), the trial court's order granting the Labas' motion for summary disposition was proper. An appellate court will not reverse a trial court's decision if it reached the correct result even if it was for the wrong reason. *Paul v Bogle*, 193 Mich App 479, 492; 484 NW2d 728 (1992).

Pursuant to the consent judgment entered in Oakland Circuit Court on March 4, 1981, no writ of restitution was issued because McCarthy redeemed the property "subject only to . . . the rights of any joint vendees under the subject [land] contract." McCarthy's interest in the property was seized by

the IRS and sold to the Labas. In addition, the Labas recorded quit claim deeds from the Nobles to McCarthy and from McCarthy to them. Thus, the question here is what rights the other co-vendees retained under the land contract after McCarthy redeemed the property.

Any interest obtained by one cotenant in commonly owned property inures to the benefit of all. See *Scott v Baird*, 145 Mich 116, 131; 108 NW 737 (1906). Here, McCarthy's redemption of the commonly owned property inured to the benefit of all the co-vendees. Thus, following that redemption, plaintiff and the other co-vendees did not retain a statutory right of redemption since the property had already been redeemed on their behalf.

Cotenants who want to take advantage of the purchase of an outstanding mortgage by another cotenant must do equity by tendering or offering to contribute their proportionate shares of the amount paid in purchase within a reasonable time. *McArthur v Dumaw*, 328 Mich 453, 461; 43 NW2d 934 (1950). We believe that equity insists that the same principle apply to interest in property that is acquired as a result of a redemption by a cotenant under a land contract. Even though plaintiff and the other co-vendees had an interest in the property after it was redeemed by McCarthy pursuant to the consent judgment entered on March 4, 1981, they never tendered or offered to contribute their proportionate shares of the amount paid by McCarthy before (or even after) the property was seized by the IRS and sold to the Labas at a tax sale on July 29, 1983. Accordingly, any interest which the co-vendees retained at the time of the consent judgment had been extinguished by the time of the tax sale because of a failure to tender or offer to contribute proportionate shares within a reasonable time. *McArthur, supra*, pp 460-462; *Reed v Reed*, 122 Mich 77; 80 NW 996 (1899). The trial court properly quieted title against all claims in the property and granted the Labas' motion for summary disposition.

Affirmed.

/s/ Myron H. Wahls

/s/ E. Thomas Fitzgerald

/s/ Leopold P. Borrello