

STATE OF MICHIGAN
COURT OF APPEALS

SIX STAR INVESTMENTS, L.L.C.,

Plaintiff-Appellant,

v

STAN'S TRUCKING, INC., THOMAS
KASZUBSKI, Personal Representative of the
Estate of Stanley Kaszubski, TAHOE LAND
COMPANY, and TRI-S COMPANY,

Defendants,

and

B & B GROUP, L.L.P.,

Defendant-Appellee.

UNPUBLISHED
December 17, 2002

No. 229612
Oakland Circuit Court
LC No. 99-016540-CK

Before: Murray, P.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Plaintiff commenced this action to quiet title to land pursuant to a tax deed it held under the General Property Tax Act, MCL 211.1 *et seq.* Defendant B & B Group, L.L.P. also claimed an interest in the property pursuant to a tax deed. The parties filed cross-motions for summary disposition. The trial court granted B & B Group's motion for summary disposition pursuant to MCR 2.116(C)(10), finding that plaintiff failed to provide B & B Group with notice of its statutory redemption rights. Plaintiff thereafter sought reconsideration under MCR 2.119(F), which the trial court denied. Plaintiff now appeals by leave granted. We reverse and remand.

I

Plaintiff first argues that it was at least entitled to partial summary disposition against defendant Stan's Trucking, Inc. We agree. We review a trial court's decision regarding a motion for summary disposition *de novo*. *Schuster Construction Services, Inc v Painia Development Corp*, 251 Mich App 227, 230; 651 NW2d 749 (2002).

As an initial matter we note that B & B Group challenges, for the first time on appeal, the sufficiency of service of the notice of the right to redeem upon Stan's Trucking. While B & B Group has standing to raise this issue because it was allowed to substitute for all other defendants below, B & B Group took a contrary position on this issue in the trial court. B & B Group conceded in its motion for summary disposition that Stan's Trucking was properly served with notice. As a result, B & B Group may not now argue that service of notice to Stan's Trucking was defective. A party is barred from taking a position in the trial court and then seeking redress in this Court based on a position contrary to that assumed in the lower court. *Living Alternatives for the Developmentally Disabled, Inc v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994).

Although the trial court accepted that Stan's Trucking was properly served with notice, the court concluded that B & B Group was not properly served under MCL 211.140. The trial court, in effect, ruled that because plaintiff did not properly serve B & B Group with notice of its right to redeem, plaintiff could not perfect title to the property against any of the parties. Even when plaintiff moved for reconsideration, the court agreed that Stan's Trucking was properly served, but continued to hold that plaintiff's failure to serve B & B Group barred plaintiff from quieting title against any of the parties. We hold that the trial court erred to the extent it failed to consider whether plaintiff could perfect its title to the property in a "piecemeal" manner.

There is no question that plaintiff served Stan's Trucking with notice of its right to redeem, or that plaintiff established its superior title to the property over Stan's Trucking. Therefore, plaintiff asks this Court to decide whether the right of redemption for those individuals or entities having an interest in the subject property must run simultaneously, or whether their rights can be eliminated separately. We agree with plaintiff that a party may eliminate the rights of interested parties piecemeal.

Pursuant to MCL 211.140(1), an individual who obtains an interest in property through a tax sale, and claims title under a tax deed, is obligated to provide notice to all individuals or entities that have some ownership interest in the property. Those claiming an interest in the property, and who are served with notice, have six months to redeem the property. MCL 211.141. After that time period passes, those individuals are forever barred from challenging the title of the tax-sale purchaser. See MCL 211.143; see also *Ottaco, Inc v Gauze*, 226 Mich App 646, 652-653; 574 NW2d 393 (1997).

Further, MCL 211.73a provides, in relevant part:

A person who has himself been properly served with notice and failed to redeem from a sale in accordance with this act, within the period herein specified, shall not thereafter be entitled to question or deny in any manner the sufficiency of notice upon the ground that some other person or persons entitled to notice was not also served. Nothing in this section contained shall be deemed or construed, by implication or otherwise, to revive or give effect to a tax deed or certificate of purchase heretofore or hereafter barred or voided by operations of law or otherwise.

Citing the foregoing language of MCL 211.73a, plaintiff asserts that because proper service of notice was accomplished against Stan's Trucking, Stan's Trucking may not rely upon any deficiency of notice with respect to B & B Group to extend the redemption period. Therefore, plaintiff argues, it was at least entitled to quiet its title against Stan's Trucking because Stan's Trucking did not redeem the property within six-month period provided for under MCL 211.141.

The trial court disagreed with plaintiff's position, presumably relying on a line of Supreme Court decisions beginning with *White v Shaw*, 150 Mich 270, 273; 114 NW 210 (1907), wherein the Court held that, under the predecessor versions of MCL 211.140 and MCL 211.141, the redemption period must run simultaneously as to all interested parties and that, therefore, one holding a tax title cannot cut off each owner's rights in a piecemeal fashion. See also *McVannel v Pure Oil Co*, 262 Mich 518, 522; 247 NW 735 (1933) and *Geraldine v Miller*, 322 Mich 85, 93-94; 33 NW2d 672 (1948), citing *White, supra*. These decisions, however, are no longer applicable because the Legislature has since adopted MCL 211.73a, which prohibits a party who has received notice from extending the redemption period for failure to serve notice on another party.

As this Court recently explained in *Halabu v Behnke*, 213 Mich App 598, 605; 541 NW2d 285 (1995), the plain language of MCL 211.73a makes it clear that a party who has been served with notice must redeem the property within the six-month period provided for under MCL 211.141, or that individual's rights to the property are forever barred. Cf. *United States v Varani*, 780 F2d 1296, 1303-1304 (CA 6, 1986) (construing MCL 211.73a as permitting one not properly served with notice to attack title on the ground that another party had also not been properly served with notice). While the trial court noted this Court's decision in *Halabu*, it did not apply *Halabu* to the facts of this case. In this regard, the trial court erred. Under MCL 211.73a, and this Court's decision in *Halabu*, plaintiff established that it held superior title to the property over Stan's Trucking.¹ Accordingly, the trial court should have granted plaintiff partial summary disposition with respect to Stan's Trucking.

II

Plaintiff next argues that the effect of any defect in its failure to serve notice of the right to redeem upon B & B Group is now moot. Again, we agree. An issue is moot if an event has occurred to make it impossible for a court to grant relief for the prevailing party. *Michigan National Bank v St Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997).

The trial court held that plaintiff failed to provide notice of its interest in the property to B & B Group, presumably because there was still an outstanding tax deed held by B & B Group for the 1991 tax year. Plaintiff paid the taxes for 1991, entitling it to a quitclaim deed under MCL 211.141. However, B & B Group apparently refused to execute a quitclaim deed for that tax year

¹ B & B Group argues that the decision in *Halabu* is inapplicable here because it only addressed the issue of standing. However, the question of standing is directly related to whether a party can rely upon a defect involving another party to extend the redemption period. See *id.* at 606. Therefore, *Halabu* is clearly applicable to this case.

before the court ruled on the motions for summary disposition. Accordingly, at the time the court ruled on the motions, B & B Group still appeared to have an interest in the property because it refused to accept plaintiff's payment on the tax deed held by B & B Group for the 1991 tax year.

In its motion for reconsideration, plaintiff informed the trial court that, on May 2, 2000, B & B Group executed a quitclaim deed conveying its interest in the 1991 tax deed to plaintiff, thereby acknowledging that it no longer had an interest in the subject property relative to that tax year. We believe that the trial court should have reconsidered its decision based upon these new facts. As explained below, because B & B Group conveyed to plaintiff any interest it had to the property under the 1991 tax deed, the trial court's decision that plaintiff could not quiet title to the property because of the defect in the notice provided to B & B Group for the 1991 tax deed was no longer valid.

To the extent that B & B Group was entitled to notice in these proceedings, its right to notice was premised on its interest in the property at issue. Only individuals having an interest in property may redeem it. See MCL 211.74(1), 211.140, and 211.141. B & B Group accepted that plaintiff had redeemed the tax deed and eventually executed a quitclaim deed, as required by MCL 211.141. In doing so, B & B Group voluntarily relinquished its right to claim any interest in the property relative to the 1991 tax deed. As a result, B & B Group lacks standing as an interested party to redeem the property. Accordingly, even if plaintiff was required to serve notice on B & B Group to quiet title, service of notice on B & B Group at this point would be a futile act that this Court will not require in order for plaintiff to quiet title to the property. *Michigan National Bank, supra*.

In reaching this conclusion, we agree with plaintiff that B & B Group no longer has an interest in the property based upon the tax deed it acquired for the 1990 tax year. In the trial court, the parties' arguments focused on whether B & B Group had an interest in the property under the tax deed for the 1991 tax year. At that time, plaintiff argued that the deed held by B & B Group for the 1990 tax year was already void under MCL 211.73a, which provides that, where a party claiming title to property under a tax deed fails to make a bona fide effort to give the required notice of reconveyance to all parties entitled to receive such notice within five years after obtaining the deed, the party claiming title is forever barred from asserting that title. Because B & B Group does not argue that this interest is still valid, and because the 1990 tax deed was not the last preceding tax deed under MCL 211.140(1)(c), we do not believe that B & B Group, as the holder of such a lien or deed, was entitled to notice under MCL 211.140(1). Accordingly, B & B Group may not rely upon this void interest to claim it was entitled to notice from plaintiff. See *Bonninghausen v Roma*, 291 Mich 603, 619-620; 289 NW 921 (1939) (notice of redemption rights need not be sent to holders of void interests).²

² In reaching this conclusion we reject B & B Group's reliance on *Andre v Fink*, 180 Mich App 403, 408; 447 NW2d 808 (1989), wherein a panel of this Court held that "[t]he fact that an unserved interest is void or has been extinguished . . . is irrelevant to the necessity of serving them notice." We are not bound to follow *Andre*, which was decided before November 1, 1990. See MCR 7.215(I)(1), and we find it unpersuasive. The precedent relied on by the *Andre* panel
(continued...)

Instead of relying upon the tax deed from 1990, B & B Group now argues that it has yet another interest in the property from another tax year. It appears B & B Group is claiming it was entitled to notice because it held a lien or deed for the property for the 1987 tax year. While this issue was not properly developed in the trial court, we conclude that any such interest is likewise now void by operation of law under MCL 211.73a. Accordingly, because B & B Group has failed to show that it held a valid interest in the subject property for the 1990 or 1987 tax years, B & B Group was not entitled to notice under MCL 211.140(1). As such, the trial court erred in relying on these interests to deny plaintiff summary disposition.

III

In its final two issues, plaintiff argues that the trial court erred by not granting its motion for reconsideration after it showed that the 1991 tax deed held by B & B Group was no longer valid, and in refusing to consider whether the 1990 tax deed held by B & B Group was void. For the reasons discussed earlier in this opinion, we agree with plaintiff that the trial court abused its discretion in not reconsidering both rulings. See MCR 2.119(F)(3); see also *Sutton v City of Oak Park*, 251 Mich App 345, 349; 650 NW2d 404 (2002). Accordingly, we reverse and remand for proceedings not inconsistent with this opinion. On remand, the trial court should determine if it can now quiet title to the property because plaintiff has established its superior title to the property over both Stan's Trucking and B & B Group. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Mark J. Cavanagh

/s/ Richard A. Bandstra

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failed to consider the effect of MCL 211.73a. See *Watters v Kieruj*, 242 Mich 537, 540-541; 219 NW 673 (1928).