

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ANN MARIE MORIARTY and SCOTT  
KUGLER,

UNPUBLISHED  
March 30, 2006

Plaintiffs-Appellees,

v

GEORGE HYLAK,

No. 262629  
Hillsdale Circuit Court  
LC No. 04-000786-CH

Defendant-Appellant.

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Before: Bandstra, P.J., and White and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying his motion for summary disposition brought pursuant to MCR 2.116(C)(7) and (8). We affirm in part and reverse in part.

Plaintiffs own adjacent parcels of real property that overlook Bird Lake in Hillsdale County and that are the backlots to a parcel of real property fronting the lake. All but a small portion of the waterfront parcel is submerged under the waters of the lake. According to plaintiffs, since October 24, 1951, they and their respective predecessors-in-interest have been in possession of that portion of the waterfront parcel that extends from their respective northern lot lines to the low water mark of the water's edge. Plaintiffs represent that they used that portion of the waterfront parcel as a beach, for boat docking purposes, for storage purposes and for other purposes consistent with waterfront property.

Pursuant to MCL 211.78g, the lakefront property was forfeited to the Hillsdale County Treasurer on March 1, 2003 for nonpayment of property taxes. By judgment of foreclosure entered on February 24, 2004, fee simple title to the lakefront property vested "absolutely" in the county treasurer. The judgment passed to the treasurer "good and marketable fee simple title to the foreclosed property." Further, the judgment extinguished all "existing recorded and unrecorded interests in the foreclosed property."

On September 14, 2004, defendant purchased the lakefront lot at a tax sale for \$1,000. Thereafter, defendant began to construct a plywood fence along the southern boundary of the waterfront parcel. He also offered to sell the lakefront property to plaintiffs for \$70,000.

Plaintiffs commenced the instant quiet title action in circuit court in 2004, seeking to enjoin defendant from constructing the fence and from removing plaintiffs' docks or other

personal property from the lakefront parcel. Plaintiffs also sought a declaration that they owned that portion of the lakefront parcel not covered by water by adverse possession.

The circuit court issued an ex parte temporary restraining order (TRO) on December 3, 2004, which directed defendant to remove all the materials he placed or caused to be placed on the property. Additionally, the TRO enjoined defendant from erecting or maintaining a fence or any other barrier on the property, from placing any personal property on the property and from trespassing on any portion of the parcel not covered by the waters of Bird Lake.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (8). He argued that he was entitled to summary disposition under (C)(7) because the prior judgment of tax foreclosure extinguished any unrecorded interest plaintiffs had in the lakefront parcel and, therefore, barred their adverse possession claim. He also argued that he was entitled to summary disposition under (C)(7) because the instant action constituted an improper collateral attack on the tax foreclosure judgment.

Defendant argued that he was entitled to summary disposition pursuant to (C)(8) because plaintiffs asserted their adverse possession claim without any reference to a statute, case law, regulation or other controlling authority and without identifying any written evidence of title. He also asserted that summary disposition pursuant to (C)(8) was appropriate because plaintiffs could not develop factual support for their claim of adverse possession.

Plaintiffs responded that the circuit court had jurisdiction to set aside the foreclosure sale and declare the deed to defendant null and void on the ground that plaintiffs' due process rights were violated due to a lack of notice of the foreclosure sale. Further, according to plaintiffs, their complaint stated a cause of action because the county treasurer only passed to defendant the interest the treasurer acquired, which was not the right to possession.

The circuit court denied defendant's motion under MCR 2.116(C)(7) for the reason that the tax foreclosure judgment did not guarantee defendant full and complete interest in the property acquired under the judgment; defendant acquired the same interest in the property as the original nonpaying taxpayer held. Accordingly, if a third party had a claim of adverse possession or other possessory interest in the property, defendant was left to resolve such outstanding ownership claims by lawsuit. The court concluded that factual questions existed in this case with regard to whether plaintiffs had any possessory interest in the subject property.

The circuit court also denied defendant summary disposition under MCR 2.116(C)(8), finding that the complaint stated a claim for adverse possession. The circuit court also denied plaintiffs' motion to set aside the judgment of foreclosure. Plaintiffs have not cross-appealed this denial.

Defendant contends that plaintiffs' adverse possession claims are barred by the judgment of foreclosure previously entered by the circuit court and, therefore, the trial court erred in denying his motion for summary disposition.

Summary disposition may be granted because a claim is barred by a prior judgment. MCR 2.116(C)(7). This Court reviews de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7). *Ousley v McLaren*, 264 Mich App 486, 490; 691 NW2d

817 (2004). The motion should be granted only if no factual development could provide a basis for recovery. *Xu v Gay*, 257 Mich App 263, 266; 668 NW2d 166 (2003).

Under MCL 211.78h, a county treasurer may file a petition for the foreclosure of property for unpaid delinquent taxes, interest, penalties, and fees. Under MCL 211.78k, the circuit court shall enter a final judgment on the petition that specifies the following:

(b) That fee simple title to property foreclosed by the judgment will vest absolutely in the foreclosing governmental unit, except as otherwise provided in subdivisions (c) and (e), without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

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(d) That, except as otherwise provided in subdivisions (c) and (e), the foreclosing governmental unit has good and marketable fee simple title to the property . . . .

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(e) That all existing recorded and unrecorded interests in that property are extinguished, except a visible or recorded easement or right-of-way, private deed restrictions, or restrictions or other governmental interests imposed pursuant to the natural resources and environmental protection act. . . .

Thus, under the plain language of MCL 211.78k(5) and (6), when fee simple title vested in the treasurer, the treasurer's interest was subject only to the interests set forth in MCL 211.78k(5)(c) and (e). All other existing recorded or unrecorded interests in the parcel were extinguished by the judgment of foreclosure. MCL 211.78k(5)(e).

“The primary goal of statutory interpretation is to give effect to the intent of the Legislature.” *Title Office, Inc v Van Buren County Treasurer*, 469 Mich 516, 519; 676 NW2d 207 (2004), quoting *In re MCI*, 460 Mich 396, 411; 596 NW2d 164 (1999). If a statute is unambiguous, the statute must be enforced as written. *Id.* The Legislature clearly intended for certain interests to survive a judgment of foreclosure. However, the Legislature did not create an exception for the assertion of title by way of adverse possession. This Court addressed the meaning of the phrase “all existing recorded and unrecorded interests in that property” as found in MCL 211.78k(5)(e), concluding that the phrase “seem[ed] to embrace every conceivable property interest”, with the exception of those property interests specifically excluded in the provision itself. *Antrim County Treasurer v Dep't of Treasury*, 263 Mich App 474, 480-481; 688 NW2d 840 (2004), lv gtd 474 Mich 893; 705 NW2d 109 (2005). Thus, the judgment of foreclosure did, in fact, extinguish plaintiff's rights in the property not specifically excepted by statute and the circuit court erred in ruling otherwise. To the extent, however, that plaintiff's possessory rights before foreclosure constituted a visible easement or right-of-way, such rights were not extinguished.

Defendant also contends that plaintiffs' complaint was insufficient to state a claim upon which relief can be granted. We disagree. This Court reviews de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(8). *Badiee v Brighton Area Schools*, 265 Mich App 343, 351; 695 NW2d 521 (2005). In reviewing a motion under MCR 2.116(C)(8), "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant" and the motion should be granted only where the claim is "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Generally, a complaint must contain a statement of the facts and the specific allegations necessary to inform the adverse party of the nature of the plaintiff's claims. MCR 2.111(B). Thus, contrary to defendant's position, the failure to provide citations to statutes, regulations, or case law does not automatically render plaintiffs' complaint legally insufficient.

Defendant also contends that plaintiffs' action was frivolous and that this Court should recommend the circuit court award sanctions to defendant under MCR 2.114. "Not every error in legal analysis constitutes a frivolous position." *Jerico Construction, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003), quoting *Kitchen v Kitchen*, 465 Mich 654, 663; 641 NW2d 245 (2002). We conclude that plaintiffs' claims were not devoid of arguable legal merit and that the imposition of sanctions is not warranted in this case.

Affirmed in part and reversed in part.

/s/ Richard A. Bandstra  
/s/ Helene N. White  
/s/ Karen M. Fort Hood