

STATE OF MICHIGAN
COURT OF APPEALS

In re Petition of WAYNE COUNTY TREASURER
for Foreclosure.

WAYNE COUNTY TREASURER, STATE OF
MICHIGAN, and AVENUE INVESTORS,

UNPUBLISHED
May 8, 2007

Petitioners-Appellees,

v

HENRY WATSON II,

No. 265426
Wayne Circuit Court
LC No. 03-318698-PZ

Respondent-Appellant.

Before: Smolenski, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's June 10, 2005, order vacating a foreclosure judgment entered on March 5, 2004. Because we conclude that the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, governs this case, and that the trial court did not have the authority to vacate the foreclosure judgment under that act, we reverse the trial court's decision.¹

I Basic Facts and Proceedings

This action involves a parcel of property located at 20630 Woodward Avenue in Detroit, referred to as Parcel No. 01009875. Petitioner State of Michigan (the State) owned the property,

¹ We reject Wayne County's claim that this Court lacks jurisdiction because respondent failed to timely file this appeal. The basis for this argument is that respondent mistakenly states that he filed this appeal from a May 20, 2005, order. Although a praecipe order was entered on that date, it only granted the State of Michigan's motion for relief and respondent filed objections to the order. As Wayne County concedes, the final order was entered on June 10, 2005. Respondent thereafter filed a motion for reconsideration on June 23, 2005, which was denied on September 6, 2005. Respondent filed this appeal on September 23, 2005. Because respondent filed this appeal within 21 days after entry of the order denying respondent's timely filed motion for reconsideration, this Court has jurisdiction over this appeal. MCR 7.204(A)(1)(b).

which was part of a 34-acre parcel adjacent to the state fairgrounds.² The property was taxed and on June 10, 2003, the Wayne County Treasurer filed a petition for foreclosure due to unpaid property taxes from tax year 2001 and before. On December 19, 2003, the State filed suit against Wayne County and the city of Detroit claiming that the property was exempt from forfeiture because the Wayne County Treasurer erroneously levied taxes on state-owned property. On March 5, 2004, a foreclosure judgment was entered vesting title to the property in the Wayne County Treasurer. In April 2004, the State settled its lawsuit against Wayne County and the city of Detroit. The defendants agreed to cancel all taxes and take whatever steps necessary to vest title to the property in the State. Despite this agreement, the Wayne County Treasurer sold the property to respondent at a public auction in the fall of 2004.

In January 2005, the Wayne County Treasurer sought to set aside the foreclosure judgment. The Wayne County Treasurer admitted that it erroneously subjected the property to taxes and foreclosure. The State filed a separate motion a few months later. Respondent argued that the trial court could not grant petitioners' requested relief because they failed to exercise their rights under the GPTA. On June 10, 2005, the trial court vacated the foreclosure judgment because of the Wayne County Treasurer's error. The trial court stated that had it known that the property was owned by the State, it would not have entered the foreclosure judgment.

II Decision To Set Aside Foreclosure Judgment

Respondent argues that the foreclosure judgment should not have been set aside. We agree. A trial court's decision on a motion to set aside a judgment is discretionary and will not be reversed on appeal absent an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

Initially, we agree with petitioners that the subject property was exempt from taxation, MCL 221.71, and that it should not have been subject to foreclosure proceedings. Petitioners particularly cite to a State Tax Commission bulletin,³ which provided, in pertinent part:

2) A property owned by the U.S. Government, the State of Michigan, a county, a city, a village or a township shall be withheld from forfeiture.

Procedure: If the property is forfeited in error, the County Treasurer removes all of the fees attached to the parcel, files a certificate of cancellation of forfeiture (form 3839) with the Register of Deeds. Notifies the State Treasurer

² The State obtained the property by warranty deed in 1989. It executed a purchase agreement with State Fair Development Group in 2000. However, litigation ensued and petitioner Avenue Investors, the successor in interest, did not receive and record the deed until 2004. Thus, there is no question that the State owned the property at all times pertinent to this case.

³ "A county treasurer shall withhold a parcel of property from forfeiture for any reason determined by the state tax commission. The procedure for withholding a parcel of property from forfeiture under this subsection shall be determined by the state tax commission." MCL 211.78g(1).

and the Contractor of the error. The State Treasurer will withhold the parcel from foreclosure and stop all title work on the parcel.

Here, the Wayne County Treasurer failed to follow the bulletin's procedure and, as a result, the subject property was forfeited.

However, simply because state-owned properties may be exempt from taxation under the GPTA and should be withheld from foreclosure does not entail that state-owned properties cannot be foreclosed upon under the GPTA. Indeed, under MCL 211.78l, if the state-owned property is not properly recorded within a certain time and there is improper notice, the property is not exempt. Thus, state-owned properties are subject to the GPTA. MCL 211.78l.

Once the foreclosure judgment was entered, it vested fee simple title, which was good and marketable, in the Wayne County Treasurer. MCL 211.78k(5)(b) and (d); MCL 211.78k(6). MCL 211.78k(6) provides, in pertinent part, that "[t]he foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and shall not be stayed or held invalid except as provided in subsection (7) or (9)." The only avenues for invalidating the judgment were through the appeal procedures in MCL 211.78k(7), before a sale to a non-governmental unit as provided in MCL 211.78k(9), and as the result of a successful due process claim. The State did not utilize the appeal procedures in MCL 211.78k(7), the property was sold to respondent, a non-governmental unit, before the judgment was sought to be invalidated, and the State acknowledges that it is not asserting a due process violation. Therefore, we conclude that the foreclosure judgment was final and the trial court was without authority to set it aside. The trial court abused its discretion in vacating the foreclosure judgment.

Moreover, we note that GPTA contains several procedures for remedying mistakes. A person may contest the validity of a forfeiture because no law authorized the tax, the person charged with deciding whether to levy a tax acted without jurisdiction, or the property was exempt from the tax, by filing written objections with the court clerk. MCL 211.78k(2) and (3). A person may also raise objections to the forfeiture at a show cause hearing or the foreclosure hearing. MCL 211.78j(2); MCL 211.78k(2). Additionally, even after a judgment is entered, the foreclosure can be cancelled for various reasons, including that the property was not subject to taxation, if the foreclosing governmental unit discovers the error before the property is sold to a non-governmental unit. MCL 211.78k(9). Here, the State's separate suit and its failure to raise a due process violation claim indicate that it was aware of the foreclosure proceedings. Instead of notifying the circuit judge presiding over the foreclosure proceedings of its objections, the State chose to file a separate lawsuit. The State simply failed to take advantage of its rights under the GPTA.

We also conclude that the trial court's reliance on *In re Petition by Wayne Co Treasurer*, 265 Mich App 285; 698 NW2d 879 (2005), as authority to set aside the foreclosure judgment under MCL 2.612(C) (relief from judgment), is misplaced. This Court's holding in that case is limited to foreclosure proceedings that are invalidated because of a due process violation. The Court held that where an interested party makes a due process claim,

the circuit court retains jurisdiction over the foreclosure matter and, under MCR 2.612(C), retains the ability to modify or vacate the judgment or order it issued pursuant to an invalid proceeding after finding that an interested party whose

rights were adversely affect by the judgment or order was not afforded minimum due process. [*In re Wayne Co Treasurer, supra* at 293.]

There was no due process challenge in this case, and the GPTA does not provide any other reason for invalidating foreclosure proceedings post-judgment. Therefore, we conclude that trial court was without authority to set aside the foreclosure.

In light of our decision, it is unnecessary to address respondent's remaining issue on appeal.

Reversed.

/s/ Michael R. Smolenski

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra