

STATE OF MICHIGAN
COURT OF APPEALS

MATTHEW JOSEPH CREHAN,

Plaintiff/Counter Defendant-
Appellant,

v

DAVID E. BANCROFT and ROGER NEILSEN,

Defendants/Counter Plaintiffs/Third
Party Plaintiffs-Appellees,

and

OCEANA SHORES PROPERTY OWNERS
ASSOCIATION,

Third Party Defendant-Not
Participating.

UNPUBLISHED
September 6, 2007

No. 268027
Oceana Circuit Court
LC No. 03-004157-CH

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

PER CURIAM.

Plaintiff appeals as of right an order quieting title to disputed property in defendant Roger Neilsen. We affirm.

Defendant Neilsen purchased the tax liens to Outlots A and D of the Plat of Oceana Shores in Grant Township, Oceana County, at tax sales held from 1995 through 1999. Tax deeds to the Outlots were issued to him by the State Treasurer. The record owner of the Outlots was Oceana Shores Property Owners Association, Inc. (the Association), but it had been dissolved by the state in 1988, after failing to file its 1987 annual report. Its status was never reinstated.

On April 18, 2002, plaintiff recorded a quitclaim deed that purported to convey the Association's interest in Outlots A and D to himself. The deed was signed by Larry Dykstra and Joyce Pennock, who were listed as the Association's vice-president and secretary respectively in the last annual report filed by the Association. Neilsen then served a Notice of Intention to Claim Title under Tax Deed, which stated that the owners of interests in the Outlots had six months to redeem the property from the tax sale. Neilsen's notice was directed both to the Association and to plaintiff, who was described as a "grantee in invalid deed."

Within the six-month period provided by the notice, plaintiff tendered the money necessary to redeem Outlots A and D from the tax sale, as documented by an “Affidavit of Fact” executed by the Oceana County Treasurer and recorded at the Register of Deeds. The affidavit recited that plaintiff had a redeemable interest in the property and that he had timely redeemed it from the tax sale. The affidavit also demanded that Neilsen deliver a quitclaim deed in favor of plaintiff. Neilsen, through his agent defendant David Bancroft, responded to the affidavit by recording a competing “Affidavit of Fact,” stating that the quitclaim deed from the Association to plaintiff was a nullity because Dykstra and Pennock had no authority to make the conveyance to plaintiff on behalf of the dissolved Association.

Plaintiff filed this lawsuit to remove the cloud on his title to the Outlots created by Neilsen’s affidavit, naming Neilsen and Bancroft as codefendants. Bancroft filed a response to plaintiff’s complaint, but Neilsen was dismissed from the suit for failure to be timely served with process. Regardless, an attorney entered an appearance on behalf of both Bancroft and Neilsen and filed Neilsen’s answer to plaintiff’s complaint. Plaintiff thereafter filed an amended complaint, which again listed Bancroft and Neilsen as codefendants in the caption.

Later, Neilsen and Bancroft filed a counterclaim and third-party complaint listing plaintiff as counter-defendant and the Association as third-party defendant, and requesting that the court quiet title to the disputed property in Neilsen. Plaintiff responded to the counter-complaint asserting his right to the Outlots, and a default judgment was entered against the Association. As a result of the default, the court ordered that the Association’s interest in the disputed property was lost in favor of Neilsen.

Subsequently, plaintiff and defendants filed cross-motions for summary disposition pursuant to MCR 2.116(C)(10). Summary disposition was initially granted in favor of plaintiff. On reconsideration, the court vacated the judgment and, by stipulation, a non-jury trial based solely on certain exhibits was conducted. The court ultimately dismissed plaintiff’s claim to the disputed property and ordered that title to Outlots A and D be quieted in Neilsen. Plaintiff filed a motion to set aside the court’s order, which the court deemed a motion for reconsideration. The motion was denied for failure to comply with MCR 2.119(F). This appeal followed.

Plaintiff first argues that, because defendant Neilsen was dismissed from the action for failure to be timely served with process, Neilsen could not be granted judgment in his favor. This issue was not raised and decided in the trial court therefore we need not review this claimed error. See *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005). But, we note that plaintiff continued to pursue his claim against Neilsen, who submitted to the court’s jurisdiction, thus this issue is without merit. See MCR 2.102(E)(1).

Next, plaintiff argues that title could not be quieted in defendant Neilsen because his tax deeds to Outlots A and D were unperfected and expired. Plaintiff failed to properly raise this issue in the trial court and it was not decided; therefore, the issue is not preserved for appellate review. See *Detroit Leasing Co, supra*. The failure to properly raise this issue below has prevented the development of a sufficient record from which a thorough review can be conducted; accordingly, we decline to waive preservation requirements.

Plaintiff also claims that the trial court erred in awarding taxable costs to defendants because they did not prevail on the whole record. Plaintiff properly raised this issue in the trial

court. A trial court's ruling on a motion for costs under MCR 2.625 is reviewed for an abuse of discretion, but the interpretation and application of the court rule is reviewed de novo. *Marketos v American Employers Ins Co*, 465 Mich 407, 412; 633 NW2d 371 (2001); *Klinke v Mitsubishi Motors Corp*, 219 Mich App 500, 518; 556 NW2d 528 (1996).

MCR 2.625 governs the taxation of costs and states, in relevant part:

(A) Right to Costs.

(1) *In General*. Costs will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action.

* * * *

(B) Rules for Determining Prevailing Party.

(1) *Actions with Several Judgments*. If separate judgments are entered under MCR 2.116 or 2.505(A) and the plaintiff prevails in one judgment in an amount and under circumstances which would entitle the plaintiff to costs, he or she is deemed the prevailing party. Costs common to more than one judgment may be allowed only once.

In this case, the trial court granted plaintiff's motion for summary disposition as to Outlot B, the ownership of which was not disputed by defendants. As the trial court noted, defendants never contested plaintiff's right to Outlot B; they readily conceded that they had no interest in that property. Under these circumstances, as the trial court noted, plaintiff was not entitled to costs associated with securing that judgment because there was no contest. However, defendants as counter-plaintiffs did prevail in the litigation with regard to title to Outlots A and D; therefore, the trial court did not abuse its discretion in awarding taxable costs to defendants.

Finally, plaintiff argues that the trial court's refusal to consider his post-trial motion filed "pursuant to MCR 2.517/MCR 2.610 MCR 2.611/MCR 2.612" was impermissible. We disagree. Plaintiff titled his post-trial document a "Motion to set aside opinion and order." But, plaintiff's post-verdict "motion" failed to comply with MCR 2.119(A)(1) in that it did not reference a court rule or otherwise state the authority on which it was based and did not state the relief or order sought. However, we agree with plaintiff that the trial court's consideration of plaintiff's post-trial "motion" as having been brought under MCR 2.119(F) was erroneous because plaintiff was challenging the final opinion and order, not a decision on a contested motion. Nevertheless, a trial court's ruling that reached the right result, albeit for the wrong reason, will be upheld on appeal. *Gleason v Dep't of Transportation*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

Affirmed.

/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen