

STATE OF MICHIGAN
COURT OF APPEALS

In re Petition by Wayne County Treasurer for
Foreclosure of Certain Lands for Unpaid Property
Taxes.

WAYNE COUNTY TREASURER,

Petitioner-Appellee,

UNPUBLISHED
October 25, 2005

v

JAMAR L. SAXTON,

Respondent-Appellee

No. 255326
Wayne Circuit Court
LC No. 02-220192-PZ

and

F.I.S.T., L.L.P.,

Appellant.

In re Petition by Wayne County Treasurer for
Foreclosure of Certain Lands for Unpaid Property
Taxes.

WAYNE COUNTY TREASURER,

Petitioner/Counterdefendant-
Appellee,

v

ALEJANDRO SALCIDO, JUAN P. SALCIDO
and JOSE MARIO SALCIDO,

Respondents/Counterplaintiffs/
Third-Party Plaintiffs-Appellees,

No. 255412
Wayne Circuit Court
LC No. 02-220192-PZ

and

BEV WAY, L.L.C.,

Third-Party Defendant-Appellant.

In re Petition by Wayne County Treasurer for
Foreclosure of Certain Lands for Unpaid Property
Taxes.

WAYNE COUNTY TREASURER,

Petitioner-Appellant,

v

JUAQUIN BRYANT,

Respondent-Appellee,

and

MICHAEL KELLY,

Intervening Plaintiff.

No. 255469
Wayne Circuit Court
LC No. 02-220192-PZ

Before: Kelly, P.J., and Meter and Davis, JJ.

PER CURIAM.

In these consolidated cases, the Wayne County Treasurer, F.I.S.T., L.L.P. (F.I.S.T.), and Bev Way, L.L.C. (Bev Way), appeal separately by leave granted the circuit court's postjudgment orders vacating previous orders of foreclosure on three parcels of real property (tax parcel nos. 18-003711, 16014545, and 21061865) because, according to the court, the owners were not given proper notice of the foreclosure proceedings. We reverse and remand.

The first issue in these cases concerns whether the circuit court had jurisdiction over due process challenges concerning the previous judgments ordering foreclosure. The Wayne County Treasurer, F.I.S.T., and Bev Way argue that the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, divests the circuit court of jurisdiction over challenges to judgments of foreclosure. We disagree that the circuit court lacked jurisdiction in these cases.

. “Whether a court has subject-matter jurisdiction is a question of law subject to review de novo.” *In re Petition by Wayne County Treasurer for Foreclosure of Certain Lands for Unpaid*

Property Taxes, 265 Mich App 285, 290; 698 NW2d 879 (2005), quoting *Davis v Dep't of Corrections*, 251 Mich App 372, 374; 651 NW2d 486 (2002). “Also, the interpretation and application of a statute is a question of law reviewed de novo by an appellate court.” *In re Petition by Wayne County Treasurer*, *supra* at 290. In general, subject-matter jurisdiction is defined as a court’s power to hear and determine a cause or matter. *Bowie v Arder*, 441 Mich 23, 36; 490 NW2d 568 (1992); *In re Petition by Wayne County Treasurer*, *supra* at 291. “[C]ircuit courts are presumed to have subject-matter jurisdiction unless jurisdiction is expressly prohibited or given to another court by constitution or statute.” *In re Petition by Wayne County Treasurer*, *supra* at 291.

MCL 211.78l(1) specifies that after a judgment of foreclosure is entered under MCL 211.78k, owners of extinguished property interests who claim that they did not receive the notice required under the GPTA “shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.” MCL 211.78l(2) provides that the Court of Claims has exclusive and original jurisdiction in claims for monetary damages under this statute.

In *In re Petition by Wayne County Treasurer*, *supra* at 292-293, this Court stated that the GPTA’s notice provisions “are designed to ensure that those with an interest in the subject property are aware of the foreclosure proceedings so that they may take advantage of their redemption rights.” In addition, “any proceeding under the act conducted without due process is *invalid*.” *Id.* at 293 (emphasis in original). The Court reasoned that if the proceeding was invalid, any order based on the invalid proceeding is also invalid. *Id.* The Court held that the circuit court retains jurisdiction over a foreclosure matter to determine whether interested parties received due process. *Id.* The Court stated that the circuit court “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 affected by the judgment order was not afforded minimum due process.” *Id.* Therefore, the circuit court did retain some jurisdiction over the instant matters.

F.I.S.T. and Bev Way assert that, even if the circuit court had jurisdiction, the property owners were given constitutionally sound notice. Respondents, on the other hand, argue on appeal that the circuit court properly vacated the foreclosure judgments because petitioner did not strictly comply with the GPTA’s notice provisions. However, the GPTA states that failure to comply with certain notice provisions does not invalidate a proceeding under the act if the owner of a property interest was afforded minimum due process required by the Michigan and United States Constitutions. See former MCL 211.78i(2) and current MCL 211.78i(10); see also MCL 211.78(2).

Here, the circuit court did not address whether respondents were provided minimum due process, but, instead, focused on whether the Wayne County Treasurer complied with the GPTA’s notice provisions. In No. 255326, the trial court found that Saxton met his burden “of showing that the County has failed to strictly comply with the notice provision.” In No. 255412, the court found that the Wayne County Treasurer failed to meet its burden of demonstrating that a personal visit took place. Thus, as in *In re Petition by Wayne County Treasurer*, *supra* at 296, “the court erroneously believed that strict compliance with the statutory provisions was necessary to satisfy due process.” Because the circuit court used the wrong standard when it

decided whether respondents received due process, these cases must be remanded to determine whether respondents were afforded minimum due process.

Finally, in No. 255469, the Wayne County Treasurer argues that full appellate review is warranted. Because this Court granted leave to appeal in this case, this issue is moot.

Reversed and remanded. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly

/s/ Patrick M. Meter

/s/ Alton T. Davis