

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Petition of the Sanilac County
Treasurer for Foreclosure of Certain Parcels of
Property Due to Unpaid 2010 and Prior Years'
Taxes, Interest, Penalties and Fees.

SANILAC COUNTY TREASURER,

Petitioner-Appellant,

v

JENNIFER MEGIE,

Respondent-Appellee.

UNPUBLISHED
February 11, 2014

No. 316814
Sanilac Circuit Court
LC No. 12-034524-CV

Before: JANSEN, P.J., and K. F. KELLY and SERVITTO, JJ.

PER CURIAM.

In this case involving the foreclosure of property for nonpayment of property taxes, petitioner, Sanilac County Treasurer, appeals as of right an order granting respondent, Jennifer Megie, relief from judgment. We reverse.

I. BASIC FACTS AND PROCEDURAL HISTORY

Respondent failed to pay the requisite property taxes on her property for tax years 2010, 2011, and 2012. Trudy Nicol, Treasurer of Salinac County, averred that a record search identified "13376 Eagle Nest Trail, Utica, MI. [the Utica address], . . . as an address reasonably calculated to reach" respondent. Notice of the delinquency was sent to the Utica address in April 2011, August 2011, and January 2012. In December 2012, pursuant to MCL 211.78i, petitioner sent respondent a notice for a show cause hearing to be held on January 14, 2013, as well as for a February 4, 2013, foreclosure hearing. The notice was sent by certified mail and was returned as unclaimed. Petitioner then re-sent the notice by first class mail, and respondent acknowledged receipt on January 18, 2013, four days after the date of the show cause hearing.

On February 4, 2013 a final judgment of foreclosure was entered vesting title of the parcel in question with petitioner, provided that the delinquent property taxes for tax-year 2010 were not redeemed by April 1, 2013. A notice of the judgment was sent to respondent by first

class mail. Respondent asserted that she did “not recall receiving this notice and if she did, she gave it to her husband to deal with.”

On March 31, 2013, respondent alleged that she was at the airport with her family when her husband realized that the delinquent taxes needed to be paid by April 1, 2013. Respondent asserted that she was not aware her husband had not paid the taxes. According to respondent, her husband then attempted to log onto the Internet,¹ allegedly paid the delinquent taxes using his credit card, and the family continued on to their overseas vacation. However, when respondent returned from vacation on April 7, 2013, and her husband checked to confirm the payment of the delinquent taxes, they discovered that the payment had not gone through. Respondent’s husband then attempted to make an untimely payment, which petitioner denied.

On May 31, 2013, respondent filed a motion for relief of judgment seeking to void the forfeiture. The circuit court granted respondent’s motion, finding that notice provided to respondent was defective under the Michigan Court Rules, and that the “extraordinary circumstances” requirement of MCR 2.612(c)(1)(f) was met due to the extreme disparity between the amount in delinquent taxes owed and the value of the parcel in question. Petitioner now appeals as of right.

II. JURISDICTION AND DUE PROCESS

Petitioner argues that the circuit court did not have jurisdiction to invalidate the forfeiture absent a denial of due process. We agree.

Whether a circuit court has jurisdiction is reviewed de novo, *Sierra Club Mackinac Chapter v Dep’t of Environmental Quality*, 277 Mich App 531, 544; 747 NW2d 321 (2008), as are issues of statutory interpretation, *Wexford Med Group v Cadillac*, 474 Mich 192, 202; 713 NW2d 734 (2006), which are implicated in the case at hand.

MCL 211.78k(6) deprives a circuit court of jurisdiction to alter a foreclosure for delinquent taxes if the owner does not redeem the property or appeal the judgment within 21 days. *In re Treasurer of Wayne County for Foreclosure*, 478 Mich 1, 8; 732 NW2d 458 (2007). The language vesting absolute title in the foreclosing governmental unit “reflects a clear effort to limit the jurisdiction of courts so that judgments of foreclosure may not be modified other than through the limited procedures . . .” *Id.* However, the foreclosing governmental unit must provide constitutionally adequate notice. *Id.*

Respondent asserts that the circuit court was within its right to set aside the forfeiture because petitioner failed to provide adequate notice of the January 14, 2013, show cause hearing. Respondent did not receive actual notice of the show cause hearing until three days after the hearing had taken place. MCL 211.78i(2) provides, in relevant part:

¹ Respondent acknowledged a “spotty” Internet connection.

After conducting the search of records under subsection (1), the foreclosing governmental unit or its authorized representative shall determine the address reasonably calculated to apprise those owners of a property interest of the show cause hearing under section 78j and the foreclosure hearing under section 78k and shall send notice of the show cause hearing under section 78j and the foreclosure hearing under section 78k to those owners, and to a person entitled to notice of the return of delinquent taxes under section 78a(4), by certified mail, return receipt requested, not less than 30 days before the show cause hearing. . . .

Respondent asserts that reference to the Michigan Court Rules, particularly MCR 2.105 (“Process; Manner of Service”), is necessary to resolve ambiguities in MCL 211.78i(2). However, the specific language in MCL 211.78i(2) is unambiguous, obviating the need to look to the Court Rules. *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 222; 821 NW2d 503 (2012) (“If statutory language is clear and unambiguous, then judicial construction is neither required nor permitted, and the statute must be applied as written.”). MCL 211.78i(2) only requires that the notice be *sent* by certified mail no less than 30 days before the date of the show cause hearing. Petitioner complied with this requirement. The fact that receipt of notice is not mentioned is not an ambiguity that needs clarifying. This is underscored by MCL 211.78i(12), which provides that “[t]he provisions of this section relating to notice of the show cause hearing under section 78j and the foreclosure hearing under section 78k are exclusive and exhaustive. Other requirements relating to notice or proof of service under other law, rule, or legal requirement are not applicable to notice and proof of service under this section.”

Moreover, respondent did not lose her title to the property in question due to her failure to attend the show cause hearing. Respondent lost title to the property after the *foreclosure* hearing, which respondent did not attend even though she had actual notice of it 17 days prior to the hearing date, and after she failed to pay the delinquent taxes, penalties, and fees before the expiration of the redemption period, of which she also had actual notice. Accordingly, respondent has failed to show how she was prejudiced by not having actual notice of the show cause hearing in this matter.

Given these facts, it is clear that respondent had notice, an opportunity to be heard, and an opportunity to redeem her title to the property in question in this matter. Therefore, respondent’s due process rights were not violated, and the circuit court erred by voiding the judgment of foreclosure on that basis.

III. RELIEF FROM JUDGMENT

Petitioner argues that the circuit court erred in granting respondent relief from judgment pursuant to MCR 2.612(C)(1)(f). The interpretation and application of a court rule is reviewed *de novo* as a matter of law. *Henry v Dow Chemical Co*, 484 Mich 483, 495; 772 NW2d 301 (2009).

Under MCR 2.612(C)(1)(f), a court may relieve a party from a final judgment, order, or proceeding for “[a]ny other reason justifying relief from the operation of the judgment.” The practical scope of this broad provision is outlined in *Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999), where this Court stated the following:

In order for relief to be granted under MCR 2.612(C)(1)(f), the following three requirements must be fulfilled: (1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. Generally, relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered. [Citations omitted.]

Here, the circuit court granted relief from judgment under MCR 2.612(C)(1)(f) due to the discrepancy between the approximately \$6,000 in delinquent taxes, fees, and penalties, and the approximately \$300,000 value of the property in question. On appeal, the parties agree that the first factor in the *Heugel* analysis is met in this case, but disagree with regard to the second and third factors.

Under the second factor of the *Heugel* analysis, relief is inappropriate if it detrimentally affects the rights of the opposing party. Respondent asserts that petitioner's rights were not affected by the circuit court's decision to void the judgment of foreclosure, as respondent was then prepared to pay petitioner the full amount of the delinquent taxes, fees and penalties. This argument, however, neglects to account for the fact that the circuit court's decision cost petitioner marketable title to the property in question, and that that marketable title had been lawfully acquired by petitioner through valid forfeiture proceedings. As respondent's argument for relief from judgment is based on the discrepancy between the value of the property and the amount of the delinquent taxes, penalties, and fees owed on that property, it is disingenuous for respondent to claim that petitioner was not prejudiced by being forced to exchange legally obtained title to that property in exchange for the sum of the delinquent taxes, penalties and fees. Accordingly, the second factor of the *Heugel* analysis is not met, and relief from judgment under MCR 2.612(C)(1)(f) was inappropriate.

Further, the "extraordinary circumstances" prong of the test has not been shown. The circuit court's basis for granting relief—that the discrepancy between the approximately \$6,000 in delinquent taxes, fees, and penalties, and the approximately \$300,000 value of the property in question was excessive—is faulty on its face, as due to the nature of property tax rates, any forfeiture due to non-payment of property tax is likely to involve a significant discrepancy between the value of the property and the amount of delinquent taxes, penalties, and fees that are owed on the property. Further, the record shows no improper conduct whatsoever on the part of petitioner.

Reversed and remanded for entry of an order in favor of petitioner. We do not retain jurisdiction. As the prevailing party, petitioner is entitled to tax costs. MCR 7.219.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Deborah A. Servitto