

STATE OF MICHIGAN
COURT OF APPEALS

LEE TANIS,

Plaintiff-Appellee,

v

RICHARD A. PETERSON and GWENDOLYN
PETERSON,

Defendants-Appellants.

UNPUBLISHED

March 25, 2003

No. 233886

Kent Circuit Court

LC No. 00-010926-CH

Before: Meter, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendants appeal by leave granted from the trial court's order granting summary disposition to plaintiff.¹ We reverse and remand.

This case arises from the foreclosure of a tax lien on defendants' home. Plaintiff claims absolute title in fee to premises located in Kentwood. Plaintiff obtained title pursuant to an assignment of all rights by the party who purchased delinquent taxes or assessments on the property at a tax sale. Plaintiff alleged that he served defendants with a "Notice By Persons Claiming Title Under Tax Deed" and that defendants failed to redeem the premises as provided by law.

Defendants claimed that the "Notice By Persons Claiming Title Under Tax Deed" was served upon their incompetent son and that service was therefore invalid. Defendant Gwendolyn Peterson filed an affidavit in which she stated that her twenty-one-year-old son, John Peterson, suffered brain damage at a young age and "has the mental capabilities approximately equivalent to an 8-year-old, and has extremely limited short-term memory." Gwendolyn Peterson further averred that her son is "completely incapable of understanding the legal significance of a legal document," that the only member of her household who could have been served with the legal document in question was her son, and that he never provided defendant or her husband with the document.

¹ Although the trial court stated that it was granting plaintiff summary disposition under MCR 2.116(C)(10) and (C)(8), it is evident from the record that the court meant to cite MCR 2.116(C)(10) and (C)(9).

Plaintiff responded to this argument by stating that MCL 211.140(6) requires only that the notice of the right to redeem be served upon the homeowner or a member of their family who is of “mature age” and that plaintiff met the requirements of the statute because John Peterson had reached the chronological age of adulthood at the time of service. Plaintiff moved for summary disposition, and the trial court granted the motion, finding (1) that the statute required more than just physical maturity and (2) that John Peterson nonetheless met the definition of someone of “mature age.” The court stated, in part:

Even if we assume that he has mental functioning at approximately half his chronological age, he seems to be able to operate without direct intervention or supervision; witness the fact that he was apparently in a position to receive this process without anybody else being around to superintend his conduct or activities. And it might even be asserted that a person with an eight or nine-year old mental functioning level would normally, upon being presented with documents by somebody coming to the door, turn around and hand them to his or her parent at the first opportunity.

Under the circumstances, it seems to me that, number one, the young man in question is clearly chronologically of mature age; number two, he clearly would have appeared, to a neutral observer, to be competent to receive process and was not obviously afflicted with any kind of malady; and, number three, there is not a showing, it seems to me, in the affidavit of the defendant Gwendolyn Peterson, even if accepted uncritically by the Court, which would indicate that this individual was incapable of transmitting important legal documents up the family chain of command to his parents or that he would not be expected to do so in the normal course.

On appeal, defendants argue that “[t]he trial court erred in determining that service upon an individual with the mental capacity of an eight year old meets the statutory requirement that service be performed upon someone of ‘mature age.’” We review a trial court’s grant of summary disposition de novo. *Smith v Edwards*, 249 Mich App 199, 204; 645 NW2d 304 (2002). Similarly, we review questions of statutory interpretation de novo. *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998).

MCL 211.140 addresses the process for possession of property under title obtained by a tax sale. MCL 211.140(6) states:

Service may be made on a resident of this state by leaving the notice at that person’s usual place of residence with a member of that person’s family of mature age. Service may be made on a nonresident of this state by serving the notice on the nonresident personally while in this state, and the return shall be made by the sheriff of the county in which service was made.

The Michigan Supreme Court explained the rules of statutory construction as follows in *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999):

The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature. This task begins by examining the

language of the statute itself. . . . If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. [Citations omitted.]

Moreover, “[u]ndefined words contained in statutes are given meaning as understood in common language, considering the text and subject matter in which they are used.” *Lakeland Neurocare Centers v State Farm Mutual Automobile Ins Co*, 250 Mich App 35, 40; 645 NW2d 59 (2002). In addition, it is appropriate for a court to consult a dictionary in ascertaining the ordinary meaning of words in a statute. *Smith, supra* at 206.

As noted, MCL 211.140(6) states that service may be made by leaving the notice at the “person’s usual place of residence with a member of that person’s family of mature age.” We conclude that reasonable minds could differ with regard to the plain meaning of “mature age.” Indeed, while “mature age” could mean simply an age at which one has reached physical maturity, the phrase could also denote an age at which one has reached physical *and* mental maturity. Indeed, the first definition of “mature” given by *Random House Webster’s College Dictionary* (2000) is “fully developed in body or mind.”

Given this dictionary definition, and considering the context in which the phrase is used, *Lakeland, supra* at 40, we conclude that the Legislature intended for the phrase “mature age” in MCL 211.140(6) to denote a person who has reached a level of physical and mental maturity such that the person is able reasonably to accept service of notice under the statute.

Here, Gwendolyn Peterson alleged that her son “is completely incapable of understanding the significance of a legal document” and that he has “extremely limited short-term memory.” Accordingly, she sufficiently raised the issue of her son’s competency to receive service of notice. The trial court simply *assumed* that John Peterson was of “mature age” under MCL 211.140(6) because he was not being supervised by a competent adult at the time he received the notice and because he apparently functioned at the level of an eight-year-old. The court failed to address Gwendolyn Peterson’s allegations that John Peterson had memory problems and could not understand the significance of legal documents. Given those allegations, we conclude that there was a genuine and material factual dispute regarding whether John Peterson was of “mature age” for purposes of MCL 211.140(6), and thus the trial court erred in granting summary disposition to plaintiff. We must remand this case for further proceedings.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Pat M. Donofrio