

STATE OF MICHIGAN
COURT OF APPEALS

DUANE MONTGOMERY,

Plaintiff-Appellant,

v

CITIBANK N.A., and CHASE MANHATTAN
MORTGAGE CORPORATION,

Defendants-Appellees.

UNPUBLISHED

August 9, 2005

No. 260713

Oakland Circuit Court

LC No. 2004-061940-CZ

Before: Zahra, P.J., and Gage and Murray, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's opinion and order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that the practice of holding a sheriff's sale in conjunction with foreclosure by advertisement violates due process because the practice does not provide an opportunity for the property owner to challenge or object to the sale. Because plaintiff did not raise this issue below, it is not preserved for appellate review. *Adam v Sylan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). Plaintiff's brief states that he "preserved this issue at trial during the Plaintiff's Motion for Stay of Sheriff's Deed on Mortgage Sale." The circuit court docket listings do not indicate that a motion for stay was filed in this case. In any event, the argument is without merit. Foreclosure by advertisement does not implicate state action, and a due process question is not presented. *Cramer v Metropolitan Savings & Loan Ass'n*, 401 Mich 252, 259-260; 258 NW2d 20 (1977).

Next, plaintiff argues that sheriff departments do not have authority to conduct a sheriff's sale and issue a deed. Because plaintiff did not raise this issue below, it is not preserved and this Court need not address it. In any event, it is without merit. The Legislature has authorized the participation of a sheriff or deputy sheriff in a foreclosure pursuant to MCL 600.3216. Contrary to what plaintiff argues, there is no basis for concluding that the Legislature limited a sheriff's powers to those conferred in MCL 51.221. This statute was created to enlarge the powers and duties of sheriffs by bestowing on them the powers and duties of constables, with regards to service of process. This statute was not created as a limitation on a sheriff's power.

Plaintiff also raises arguments concerning the qualifications and authority of a particular individual whose name appears on the sheriff's deed, which plaintiff has attached to his brief. We decline to address these arguments because they were not raised below, are not presented in the statement of questions presented, MCR 7.212(C)(5); *Preston v Dep't of Treasury*, 190 Mich App 491, 498; 476 NW2d 455 (1991), and would require consideration of documentation attached to plaintiff's brief that is not part of the lower court record, MCR 7.210(A).

Affirmed.

/s/ Brian K. Zahra

/s/ Hilda R. Gage

/s/ Christopher M. Murray