

STATE OF MICHIGAN
COURT OF APPEALS

BARRY COUNTY TREASURER,

Plaintiff-Appellee,

UNPUBLISHED
January 8, 2013

v

ROBERT KLINGE, d/b/a, BOB'S ENGINE
HOSPITAL,

No. 308783
Barry Circuit Court
LC No. 11-000268-CZ

Defendant-Appellant.

Before: HOEKSTRA, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting plaintiff's motion for foreclosure. For the reasons set forth in this opinion, we affirm.

Defendant owned real property in Barry County, on which he did not pay property taxes for the 2009 tax year. On March 1, 2011, multiple parcels of property, including the property in question, were forfeited to plaintiff under MCL 211.78g of the General Property Tax Act (GPTA) for nonpayment of taxes during the 2009 tax year. On May 24, 2011, plaintiff filed a petition seeking a judgment of foreclosure on the forfeited properties pursuant to the GPTA, for unpaid taxes. Shortly thereafter, the trial court scheduled a hearing on plaintiff's petition for February 2, 2012. Defendant attended the hearing and objected to foreclosure of his property. On February 3, 2012, the trial court entered an order granting plaintiff's petition for foreclosure as to the properties listed in the petition, including defendant's property. The order extinguished all liens and interests on each parcel of property, except those liens and interests specifically enumerated in MCL 211.78k(5). The trial court thereafter denied defendant's motion for reconsideration. Defendant appealed the trial court's order of foreclosure and its order denying his motion for reconsideration.¹

Defendant first argues that the property was exempt from taxation by virtue of a federally granted land patent and, thus, the trial court erred by ordering foreclosure for unpaid taxes. This

¹ Defendant's brief on appeal does not raise issues related to the trial court's denial of his motion for reconsideration.

issue presents a question of law, which we review de novo. *Pine Bluffs Ass'n v DeWitt Landing Ass'n*, 287 Mich App 690, 711; 792 NW2d 18 (2010).

“[A]ll property, real and personal, within the jurisdiction of this state . . . shall be subject to taxation.” MCL 211.1. “For the purpose of taxation, real property includes . . . [a]ll land within this state, all buildings and fixtures on the land, and all appurtenances to the land . . .” MCL 211.2(1)(a). In this case, it is uncontroverted that defendant did not pay taxes on the property during the 2009 tax year. Defendant claims that President Martin Van Buren issued a land patent on the property on September 10, 1864, and that such a land patent exempted the property from taxation.² In 1992, defendant prepared and filed a declaration of land patent with the Barry County Register of Deeds. “A land patent is ‘[a]n instrument by which the government conveys a grant of public land to a private person.’” *Glass v Goeckel*, 473 Mich 667, 683 n 11; 703 NW2d 58 (2005), citing Black’s Law Dictionary (7th ed). Defendant fails to recognize, however, that “[w]here federal land is sold to a private person, it becomes part of the general mass of property in the state and is subject to ad valorem property taxation.” *Bay Mills Indian Community v State*, 244 Mich App 739, 744; 626 NW2d 169 (2001). We need not decide whether defendant actually possessed a federal land patent on the property, because even if we accept defendant’s contention, the property, upon transfer to defendant, a private party, would have become “part of the general mass of property in the state” and would be subject to property taxation. *Id.* Accordingly, we find that the trial court did not err in finding that the property was not exempt from taxation.

Defendant next argues that he had a common law lien on the property, which superseded plaintiff’s lien on the property for unpaid taxes and precluded a judgment of foreclosure, and that the trial court’s actions constituted trespass on defendant’s title and common law lien. “[T]he interpretation and application of a statute is a question of law reviewed de novo by an appellate court.” *In re Wayne Co Treasurer*, 265 Mich App 285, 290; 698 NW2d 879 (2005).

The goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. If the statutory language is unambiguous, the Legislature is presumed to have intended the meaning clearly expressed, and a court must enforce the statute as written. Words and phrases in a statute shall be construed and understood according to the common and approved usage of the language. [*In re Conservatorship of Townsend*, 293 Mich App 182, 187; 809 NW2d 424 (2011) (citations omitted).]

The GPTA, MCL 211.1 *et seq.*, “reflect[s] a legislative effort to provide finality to foreclosure judgments and to quickly return property to the tax rolls.” *In re Treasurer of Wayne Co for Foreclosure*, 478 Mich 1, 4; 732 NW2d 458 (2007); MCL 211.78(1). MCL 211.78g(1) provides that “on March 1 in each tax year, . . . property that is delinquent for taxes, interest, penalties, and fees for the immediately preceding 12 months or more is forfeited to the county

² It is not necessary for us to make any finding as to the authenticity of defendant’s land patent, although it would have been difficult for Van Buren to have issued such a land patent on the date proclaimed as he died on July 24, 1862.

treasurer for the total amount of those unpaid delinquent taxes, interest, penalties, and fees.” The GPTA requires the foreclosing government unit, such as plaintiff in the present case, to file a single petition with the circuit court listing all the property forfeited and not redeemed³ “to be foreclosed under [MCL 211.78k] for the total of the forfeited unpaid delinquent taxes, interest, penalties, and fees.” MCL 211.78h(1). Under MCL 211.78k(5), the trial court shall enter a final judgment on the petition for foreclosure, specifying, among other things:

(c) That *all liens against the property*, including any lien for unpaid taxes or special assessments, except future installments of special assessments and liens recorded by this state or the foreclosing governmental unit pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, *are extinguished, if all forfeited delinquent taxes, interest, penalties, and fees are not paid* on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

* * *

(e) That *all existing recorded and unrecorded interests in that property are extinguished*, except a visible or recorded easement or right-of-way, private deed restrictions, interests of a lessee or an assignee of an interest of a lessee under a recorded oil or gas lease, interests in oil or gas in that property that are owned by a person other than the owner of the surface that have been preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291, or restrictions or other governmental interests imposed pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, *if all forfeited delinquent taxes, interest, penalties, and fees are not paid* on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section. [Emphasis added.]

In this case, defendant does not argue that plaintiff or the trial court failed to provide him with notice of the proceedings or otherwise failed to comply with any requirement of the GPTA. Rather, defendant claims that he held a common law lien on the property that superseded plaintiff’s lien on the property for unpaid taxes and, thus, the trial court erred by granting plaintiff’s petition for foreclosure. The statute unambiguously states that all liens against the property are extinguished if all delinquent taxes are not paid. MCL 211.78k(5)(c). Thus,

³ A property owner may redeem his property and avoid foreclosure by paying the county treasurer the unpaid delinquent taxes, interest, penalties, and fees for which the property was forfeited, as well as recording and service fees, “at any time on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under” MCL 211.78k. MCL 211.78g(3); see also MCL 211.78h(2); MCL 211.78k(5).

because it is uncontested that defendant did not pay taxes on the property during the 2009 tax year, this argument is without merit.

Further, defendant's argument fails because one cannot have a lien on his own property. A lien is defined as "[a] legal right or interest that a creditor has in another's property." Black's Law Dictionary (9th ed), p 1006. A common law lien is "the right of detention, in persons who have bestowed labor upon an article, or done some act in reference to it, and who have the right of detention till reimbursed for their expenditures and labor." *Aldine Mfg Co v Phillips*, 118 Mich 162, 164; 76 NW 371 (1898). Here, in 1992, defendant prepared and filed with the Barry County Register of Deeds two separate notices of a common law lien on the property, both of which claimed that defendant had performed services and expended materials on the property from 1986 to 1992. As far back as 1929, this state's jurisprudence has recognized that ". . . [o]ne cannot have a lien on his own property." *Rogers v Goldman*, 249 Mich 31, 34, 227 NW 672 (1929).

Moreover, defendant's argument fails because the GPTA provides that a trial court's judgment of foreclosure extinguishes all liens against and interests in the subject property, except for those specifically enumerated in the statute. MCL 211.78k(5)(c) and (e). A common law lien is not listed among the specifically enumerated liens or interests that may not be extinguished under the GPTA. MCL 211.78k(5)(c) and (e). Defendant does not provide any authority supporting that a judgment of foreclosure under the GPTA may not extinguish a common law lien; and his argument does not analyze his alleged common law lien in the context of the GPTA. The GPTA's statutory language unambiguously provides that the trial court's judgment of foreclosure shall extinguish all liens or interests on the property, save those specifically enumerated in the statute. MCL 211.78k(5)(c) and (e). Given that the Legislature did not list common law liens among the specifically enumerated liens or interests that may not be extinguished, we find that the trial court's judgment of foreclosure properly extinguished any possible common law lien that defendant had on the property. MCL 211.78k(5); *In re Conservatorship of Townsend*, 293 Mich App at 187. Accordingly, the trial court did not err by granting plaintiff's petition for foreclosure.

Defendant's statement of questions presented also asserts that "the actions of the circuit court constitute[d] a trespass on petitioner's title and common law lien." However, defendant does not discuss this claim in his brief or cite any supporting authority. A party abandons an issue where he merely raises it in his statement of questions presented section but fails to argue the merits in his brief. *Walgreen Co v Macomb Twp*, 280 Mich App 58, 67 n 3; 760 NW2d 594 (2008); *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003). Accordingly, defendant has abandoned this issue. *Walgreen Co*, 280 Mich App at 67 n 3; *Houghton*, 256 Mich App at 339-340. Moreover, upon review of the record, we find no support for defendant's contentions.

Finally, defendant argues the trial court violated his constitutionally secured right of due process and the trial judge's oath of office, thereby disqualifying the trial judge and rendering the trial court's order of foreclosure void. Specifically, defendant claims that the trial judge acted in concert with plaintiff's attorney, denied defendant his right to cross-examine plaintiff, continually interrupted defendant, and failed to make findings of fact or conclusions of law to support the trial court's ruling at the February 2, 2012 hearing on plaintiff's petition. The issues

are not preserved because defendant did not raise any due process violation or move to disqualify the trial court judge or raise any objection based on judicial misconduct. *People v Sardy*, 216 Mich App 111, 117-118; 549 NW2d 23 (1996); *Evans & Luptak v Obolensky*, 194 Mich App 708, 715; 487 NW2d 521 (1992). We would review for plain error defendant's unpreserved claims of error. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004). However, defendant's brief on appeal merely provides conclusory statements, without any citation to the record or meaningful legal authority. A claim of error fails where the party asserting the claim "presents it as a mere conclusory statement without citation to the record, legal authority, or any meaningful argument." *Ewald v Ewald*, 292 Mich App 706, 726; 810 NW2d 396 (2011); see also *DeGeorge v Warheit*, 276 Mich App 587, 596; 741 NW2d 384 (2007) ("The appellant may not merely announce his or her position and leave it to this Court to discover and rationalize the basis for those claims."). In the present case, the trial court scheduled a hearing on plaintiff's petition seeking a judgment of foreclosure for February 2, 2012. Defendant attended the hearing and objected to foreclosure of his property. The trial court never precluded defendant from presenting his arguments or cross-examining plaintiff during the February 2, 2012 hearing. Thus, following our review of the record, we find no support for any of defendant's contentions.

Affirmed. Plaintiff, being the prevailing party, is entitled to costs. MCR 7.219(A).

/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra