STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE LEE HUNT and JORDAN JONES,

Plaintiffs-Appellants,

v

ERIC A. ADAMS,

Defendant-Appellee.

UNPUBLISHED
June 14, 2012

No. 304563
Oakland Circuit Court
LC No. 2009-101249-CD

Before: GLEICHER, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

Plaintiff Lawrence Lee Hunt owned a boat. He sold the boat to his cousin, Janis Jones, for $10,000 paid in full. After Janis's ex-boyfriend, defendant Eric A. Adams, secured a $318,345.06 judgment against her in connection with a land deal gone wrong, Adams directed a court officer to seize the boat in partial satisfaction of the judgment.[1] Adams then personally purchased the boat at the sheriff's sale.

In the meantime, however, Janis had sold the boat to her son, plaintiff Jordan Jones, for $12,000. Plaintiffs Hunt and Jordan filed this action seeking return of the boat, contending that Janis never really owned it in the first place because she had neglected to procure a certificate of title from the Secretary of State.

We must now reverse the trial court's order summarily dismissing plaintiffs' claims. While we agree with Adams that Janis likely failed to secure a certificate of title to hide this asset, we are bound by the watercraft transfer and certificate of title act (WTCTA), MCL 324.80301 *et seq.*, to determine that Janis did not own the boat. Therefore, Adams could not seize the boat to satisfy the judgment. Moreover, plaintiffs created a genuine issue of material fact regarding the propriety of the sheriff's sale, the invalidation of which would permit a remedy against Adams. Accordingly, we remand to the trial court for further proceedings.

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[1] A trial court ruled in Adams favor in *Adams v Wilbur D. Chard Trust*, Oakland Circuit Court No. 2005-069363-CK. Adams and Janis each filed several applications and claims of appeal during that proceeding, all of which were dismissed by stipulation or involuntarily. See Court of Appeals Docket Nos. 271005, 279967, 282384, 282386, 282884, 282905, 292390, and 298099.

I. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Coblentz v Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006).

> "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." In evaluating such a motion, a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004) (internal citations omitted).]

This Court also reviews de novo the interpretation and application of statutes. *Gilliam v Hi–Temp Prods, Inc*, 260 Mich App 98, 108; 677 NW2d 856 (2003). The goal of statutory interpretation is to discern the intent of the Legislature based on the language of the statute. "If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written." *Rose Hill Ctr, Inc v Holly Twp*, 224 Mich App 28, 32; 568 NW2d 332 (1997). If a statute is ambiguous, however, judicial construction is permitted. *Detroit City Council v Mayor of Detroit*, 283 Mich App 442, 449; 770 NW2d 117 (2009).

II. OWNERSHIP REMAINED WITH HUNT

The trial court's decision that Janis Jones owned the subject boat was premised on a misinterpretation of the law. Pursuant to the WTCTA, ownership of the boat did not vest in Janis when Hunt handed her the title and ceded possession of the boat. Rather, the circuit court was statutorily prohibited from recognizing Janis as the boat's owner because she failed to obtain a Secretary of State (SOS)-issued certificate of title and the parties did not stipulate to nor concede Janis's ownership interest. And as Janis did not take ownership of the boat, the ownership interest remained with the last known titled owner—plaintiff Hunt.

MCL 324.80304 of the WTCTA states:

> (1) A person, except as provided in section 80306, shall not sell or otherwise dispose of a watercraft *without delivering* to the purchaser or transferee of the watercraft a certificate of title with such assignment on the certificate of title as is necessary to show title in the purchaser.
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> (2) A person shall not purchase or otherwise acquire a watercraft *without obtaining* a certificate of title for it in the person's name pursuant to this part. [Emphasis added.]

The parties seem to agree that Hunt delivered a certificate of title by handing it to Janis and that Janis obtained title in this manner. Janis claimed that she then filed an application for a certificate of title in her name from the SOS as required by MCL 324.80307 and MCL

324.80308. Janis asserted that the SOS rejected her application because Hunt had not satisfied a lien on the boat.[2]

MCL 324.80305 states:

> (1) A person acquiring a watercraft from the owner of the watercraft, whether the owner is a manufacturer, importer, dealer, or otherwise, shall not acquire any right, title, claim, or interest in or to the watercraft *until that person has issued to him or her a certificate of title to the watercraft, or delivered a manufacturer's or importer's certificate for the watercraft.* A waiver or estoppel shall not operate in favor of that person against a person having possession of the certificate of title, or manufacturer's or importer's certificate for the watercraft, for a valuable consideration.
>
> (2) A court shall not recognize the right, title, claim, or interest of a person in or to a watercraft sold or disposed of, or mortgaged or encumbered, unless:
>
> (a) Evidenced by a certificate of title or a manufacturer's or importer's certificate issued pursuant to this part.
>
> (b) Evidenced by admission in the pleadings or stipulation of the parties. [Emphasis added.]

Although Janis complied with the statutes and requested that a certificate of title be issued by the SOS, her request was denied. Janis therefore did not "acquire any right, title, claim, or interest" in the boat by law. Adams reasonably suggested that Janis did not pursue the certificate of title because of his ongoing lawsuit against her. However, Janis's motivation is immaterial under the statute.

Contrary to Adams' position, Hunt's "delivery" of the certificate of title to Janis at the time of her payment is not equivalent to "issuing" Janis a certificate of title. Only the SOS can "issue" a certificate of title. Throughout the WTCTA, the term "issue" is always connected to an action on the part of the SOS. See MCL 324.80303 (giving the SOS the power to cancel an improperly issued certificate of title); MCL 324.80307 (providing that a purchaser must file an application with the SOS for a certificate of title and permitting the SOS to require a surety bond with an application); MCL 324.80309 (describing the contents of a certificate of title issued by the SOS); MCL 324.80312 (permitting the SOS to issue a certificate of title when title passes as a matter of law, such as on inheritance, "by sale to satisfy a storage or repair charge," or "by repossession upon default" of the payment contract); MCL 324.80314 (permitting an owner to petition the SOS to issue a replacement certificate of title when the original is lost or damaged).

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[2] We note that Hunt had no duty to ensure that Janis secured a certificate of title from the SOS or to apply to the SOS on Janis's behalf. See MCL 324.80307(3) (providing that only a "dealer" must obtain a certificate of title from the SOS on a purchaser's behalf).

Absent a certificate of title issued by the SOS in Janis's name, Janis did not "acquire any right, title, claim, or interest in or to the watercraft[.]"

Adams argues that the trial court should have recognized Janis's ownership interest pursuant to MCL 324.80305(2)(b) because it was "evidenced by admission" of Hunt in his deposition. However, the statute allows a court to recognize a party's ownership interest only when evidenced by an "admission in the pleadings." For purposes of the Michigan Court Rules, a "pleading" "includes only (1) a complaint, (2) a cross-claim, (3) a counterclaim, (4) a third-party complaint, (5) an answer to a complaint, cross-claim, counterclaim, or third-party complaint, and (6) a reply to an answer." MCR 2.110(A). A deposition is not "a pleading" and Hunt's testimony that he sold the boat and attempted to transfer his ownership interest to Janis is insufficient to allow judicial recognition of ownership contrary to the certificate of title. We are sympathetic to Adams' plight in this regard and we do not believe the Legislature intended to allow parties to hide their watercraft assets by using the statutory ownership requirements in such a deceitful manner. We are bound, however, by the plain mandatory language of MCL 324.80305(2) not to recognize Janis's ownership of this boat under the circumstances.

Adams also argues that

> [p]laintiffs are *estopped* from claiming any ownership interest in the boat where Mr. Hunt testified under oath that he sold the boat for full purchase price to Janis, he gave over title to her and her [sic] that she took possession of the boat. He cannot now claim any interest in the boat, simply because Ms. Jones never titled the boat in her name.

This is the entirety of Adams' estoppel argument; he cites no authority.

> "An estoppel arises where: (1) a party by representation, admissions, or silence, intentionally or negligently induces another party to believe facts; (2) the other party justifiably relies and acts on this belief; and (3) the other party will be prejudiced if the first party is permitted to deny the existence of the facts." [*Minerva Partners, Ltd v First Passage, LLC,* 274 Mich App 207, 218; 731 NW2d 472 (2007), quoting *Cook v Grand River Hydroelectric Power Co, Inc,* 131 Mich App 821, 828; 346 NW2d 881 (1984).]

We agree with Adams that the situation seems "unfair." Yet, Adams' estoppel argument must fail as he developed no evidence that anyone induced him to believe that Janis was the lawful owner of the boat at any time. There is no record evidence that Hunt told Adams that he transferred his interest to Janis. Rather, Hunt's deposition testimony is simply an historical accounting of his failed attempt to transfer his ownership interest and there is no record indication that Hunt or Janis informed Adams of the transactions.

Ultimately, the undisputed evidence revealed that Janis never legally took title to the boat. Rather, the evidence positively established that the boat's title remained with Hunt. As such, the boat could not properly be seized to satisfy the judgment owed by Janis to Adams. We therefore reverse the trial court's conclusion to the contrary.

III. QUESTIONS OF FACT REMAIN REGARDING VALIDITY OF SHERIFF'S SALE

Hunt's ownership of the boat is an insufficient ground, standing alone, to set aside the sheriff's sale and take the boat from Adams. "[T]itle [wrongfully] acquired at [a sheriff's] sale by the party whose bid was accepted" can be voidable but is not automatically void. *Jones v Hicks*, 358 Mich 474, 482; 100 NW2d 243 (1960). To succeed on their claims to recover the boat, or even its value, plaintiffs must establish that the sheriff's sale in execution of the court's judgment was somehow improper. And plaintiffs certainly created a genuine issue of material fact regarding the propriety of the sheriff's sale to avoid summary disposition on this ground.

Pursuant to MCL 600.6031:

> No sale of any goods or chattels may be made by virtue of any execution, unless at least 10 days' previous notice of such sale is given, by fastening up written or printed notices thereof, in 3 public places in the city or township where such sale is to be had, and specifying the time and place where the sale is to be had.

A sale may be void if it is held prematurely. See *Wienskawski v Wisner*, 114 Mich 271, 275; 72 NW 177 (1897). Here, the record indicates that the boat was seized on Thursday, April 17, 2008, and the sale was held on Saturday, April 26, 2008. Even if notice was posted immediately after the boat was seized, 10 days' prior notice was not supplied. See MCL 8.6 ("In computing a period of days, the first day is excluded . . . ."). Adams asserts that the court officer "affectively [sic] posted" the notice before April 17, 2008; however, Adams does not explain or support this assertion with any evidence.

Plaintiffs also challenge the placement of the notice, contending that the sites of posting were not "in the city or township where such sale is to be had," i.e., Burt Township in Cheboygan County. Adams does not contend that the sheriff posted the notice within Burt Township. Rather, Adams notes that the only courthouse and post office in the county is in the city of Cheboygan. The statute clearly requires posting in the same city or township where the sale will occur and does not require posting in a courthouse or post office. Accordingly, the notice was not posted in the correct location or for the statutorily mandated period of time.

We agree with plaintiffs that the evidence showing the defects in the posting of the sale notice precluded granting summary disposition in favor of Adams, whose claim to entitlement to the boat relied on the validity of the sheriff's sale.[3] However, we decline to decide this issue as a matter of law. The trial court should consider this issue in the first instance after giving both parties adequate opportunity to present their arguments. On remand, the trial court must consider whether the sheriff's sale should be voided and the boat returned.

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[3] Plaintiffs also assert that the sale was invalid because Adams' judgment against Janis had already been satisfied with other assets. The factual basis for this assertion is unclear and the record is too undeveloped to allow this Court's review.

We need not address plaintiffs' argument that the trial court's order quieting title in Adams' favor was improper because the court lacked personal jurisdiction over Janis. The order quieting title was based on the trial court's determination that Adams was entitled to summary disposition because he validly acquired the boat at the sheriff's sale. Having concluded that the trial court erred in granting summary disposition to Adams, the order quieting title in Adams' favor is likewise reversed.

IV. CONVERSION

Plaintiffs further argue that the trial court erred by not finding as a matter of law that Adams converted the watercraft. Plaintiffs cite MCL 600.2919a, which addresses statutory conversion:

> (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:
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> (a) Another person's stealing or embezzling property or converting property to the other person's own use.
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> (b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.
>
> (2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise.

Common-law conversion "consists of any 'distinct act of domain wrongfully exerted over another's property in denial of or inconsistent with the rights therein.'" *Dep't of Agriculture v Appletree Mktg, LLC*, 485 Mich 1, 13-14; 779 NW2d 237 (2010). "[R]efusal to deliver possession pursuant to a lawful demand is not conversion but only evidence of a conversion." *Id*. at 15.

Neither plaintiffs nor Adams established entitlement to summary disposition of the conversion claim. The record establishes that questions of fact exist concerning Adams' knowledge of the boat's true ownership and his involvement in the sheriff's sale, which are significant to any liability for conversion. The parties failed to establish that this claim should be decided as a matter of law.

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

/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly
/s/ Mark T. Boonstra