

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MARY MILTON,

Plaintiff-Appellant,

V

COMERICA BANK,

Defendant-Appellee.

UNPUBLISHED

June 12, 2014

No. 313304

Oakland Circuit Court

LC No. 2012-127231-CK

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Before: O'CONNELL, P.J., and WILDER and METER, JJ.

PER CURIAM.

In this action to set aside a foreclosure sale, plaintiff appeals as of right from an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(5). We affirm.<sup>1</sup>

Donald and Jerrietta Milton obtained a mortgage loan from defendant on real property in West Bloomfield, Michigan. After Donald died in 2005, Jerrietta quitclaimed the property to herself and plaintiff, her daughter, as joint tenants with rights of survivorship. Jerrietta died in 2009. Plaintiff occupied the property, but the mortgage was in default. Defendant pursued foreclosure by advertisement and the property was sold at a sheriff's sale in December 2010. Plaintiff did not redeem the property during the requisite period.

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<sup>1</sup> We reject defendant's challenge to this Court's jurisdiction. This Court has jurisdiction of an appeal of right filed by an aggrieved party from a final judgment or order as defined in MCR 7.202(6). MCR 7.203(A)(1). Defendant argues that plaintiff's claim of appeal, filed on November 13, 2012, was prematurely filed because the October 24, 2012, order granting summary disposition to defendant was not a final order. Defendant argues that the order was not a final order because the trial court later awarded defendant attorney fees and costs in an order dated February 8, 2013, and entered additional orders on January 18, 2013 (denying a motion for escrow or bond on appeal) and December 19, 2012 (denying plaintiff's motion to dispense with transcript on appeal). There is no merit to this argument. The October 24, 2012, order granted defendant's motion for summary disposition and dismissed plaintiff's complaint in its entirety. As such, it was a final order under MCR 7.202(6)(a)(i) because it was the first order that "dispose[d] of all of the claims and adjudicate[d] the rights and liabilities of all the parties." The other orders identified by defendant are postjudgment orders. Defendant concedes that plaintiff's claim of appeal was timely filed from the October 24, 2012, order. Therefore, this Court has jurisdiction over this appeal.

After the redemption period expired, plaintiff filed this action in May 2012 challenging the foreclosure proceeding. The trial court agreed with defendant that plaintiff's interest was extinguished when she failed to redeem the property during the requisite redemption period. Accordingly, the court held that plaintiff lacked standing to pursue this action and granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(5). In *Flint Cold Storage v Dep't of Treasury*, 285 Mich App 483, 492; 776 NW2d 387 (2009), this Court stated:

We review de novo the circuit court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Rohde v Ann Arbor Pub Schools*, 265 Mich App 702, 705; 698 NW2d 402 (2005). Summary disposition is properly granted pursuant to MCR 2.116(C)(5) if "[t]he party asserting the claim lacks the legal capacity to sue." "In reviewing a grant of a motion for summary disposition pursuant to MCR 2.116(C)(5), we must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *Rohde*, 265 Mich App at 705. We also review de novo questions of statutory interpretation. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008), and all other questions of law, *Cowles v Bank West*, 476 Mich 1, 13; 719 NW2d 94 (2006).

Whether a party has legal standing to assert a claim also involves a question of law, which is reviewed de novo. *Mich Ed Ass'n v Superintendent of Pub Instruction*, 272 Mich App 1, 4; 724 NW2d 478 (2006).

Defendant foreclosed on the property in question pursuant to a power-of-sale clause in the mortgage with plaintiff's parents, and the property was sold at a sheriff's sale on December 21, 2010. This Court discussed this procedure in *Ruby & Assoc, PC v Shore Fin Servs*, 276 Mich App 110, 117-118; 741 NW2d 72 (2007), vacated in part on other grounds 480 Mich 1107 (2008), as follows:

Mortgages containing a power-of-sale clause may be foreclosed upon and sold at a sheriff's sale, in the event of a default under the mortgage. See MCL 600.3201 to 600.3224. Upon such a sale, the purchaser, including potentially the mortgagee, acquires a sheriff's deed. See MCL 600.3228 and 600.3232. Mortgagors enjoy a statutory right of redemption in the event a mortgage is foreclosed upon and property is sold. See MCL 600.3240. The legal operation and effect of the sheriff's deed ultimately depends on the mortgagor's exercise of this right of redemption. "A purchaser's deed is void if the mortgagor . . . redeems" the premises by tendering amounts owing within the applicable statutory window. MCL 600.3240(1). If not redeemed within this time frame, the deed becomes "operative," vesting in the grantee "all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage . . ." MCL 600.3236. The redemption period for the property in this dispute was six months. MCL 600.3240(8). In computing the redemption period, "the day from which the period begins to run is excluded and the day of performance included." *Perkins v Century Ins Co, Ltd*, 303 Mich 679, 682; 7 NW2d 106 (1942); see also MCR 1.108(1).

Like the plaintiff in *Ruby & Assoc*, 276 Mich App at 112, plaintiff acquired an interest in the subject property pursuant to a quitclaim deed. A quitclaim deed conveys any interest held by the grantor and no more. *Id.* at 118-119. After a foreclosure sale, upon the expiration of the redemption period, any rights acquired through a quitclaim deed are extinguished if the property is not redeemed. *Id.* at 119. See MCL 600.3236. Plaintiff's interest in the property pursuant to the quitclaim deed was therefore subordinate to defendant's mortgage lien. Because defendant foreclosed on the property and sold it at a sheriff's sale, plaintiff was required to redeem the property in order to avoid having the interest she acquired through the quitclaim deed extinguished.

We reject plaintiff's argument that she was not obligated to redeem the property because she was not the mortgagor. While plaintiff correctly asserts that she was not a party to the underlying mortgage, MCL 600.3240(1) provides that a mortgagor's heirs or any person lawfully claiming under the mortgagor must redeem the property in order to void a sheriff's deed. Thus, plaintiff was required to redeem the property within the requisite period to preserve her interest in the property. Because it is undisputed that she failed to do so, her interest was extinguished and defendant, as the purchaser at the sheriff's sale, became vested with "all the right, title, and interest" in the property. Accordingly, plaintiff lacked standing to bring this action. *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010).

We also reject plaintiff's argument that, notwithstanding the foreclosure sale, she was permitted to bring this action within the limitations period for an action to quiet title, MCL 600.5801(1). A different statutory scheme governs the rights and obligations of the parties after a foreclosure sale. Under MCL 600.3240, if the property is not redeemed within the requisite period, the purchaser of the sheriff's deed is vested with "all the right, title, and interest" in the property.

Plaintiff's reliance on *Mitan v Federal Home Loan Mort Corp*, 703 F3d 949, 952-953 (CA 6, 2012), to argue that failure to comply with statutory foreclosure requirements are structural defects that render foreclosure proceedings absolutely void is misplaced. Our Supreme Court has rejected the analysis in *Mitan*. See *Kim v JPMorgan Chase Bank, NA*, 493 Mich 98; 825 NW2d 329 (2012). In *Kim*, the Court explained that "defects or irregularities in a foreclosure proceeding result in a foreclosure that is voidable, not void *ab initio*." *Id.* at 115. The Court further held that

to set aside the foreclosure sale, plaintiffs must show that they were prejudiced by defendant's failure to comply with MCL 600.3204. To demonstrate such prejudice, they must show that they would have been in a better position to preserve their interest in the property absent defendant's noncompliance with the statute. [*Id.* at 116 (footnote omitted).]

In this case, plaintiff has not established that defendant failed to comply with MCL 600.3204(4) and the statutes implementing the loan-modification requirements, MCL 600.3205 and MCL 600.3205a through MCL 600.3205d. Although plaintiff asserts that defendant failed to comply with statutory provisions requiring a lender to first attempt to modify a loan with the mortgagor, the loan-modification provisions apply only to borrowers or mortgagors. Plaintiff has not shown

that defendant was required to assist her in modifying the original loan when she was not a party to that agreement.

Michigan has recognized that an equitable extension of the redemption period is available. In *Conlin v Mtg Electronic Registration Sys, Inc*, 714 F3d 355, 359-360 (CA 6, 2013), the court stated:

To effectuate this interest in finality, the ability for a court to set aside a sheriff's sale has been drastically circumscribed. See *Schulthies v. Barron*, 16 Mich.App. 246, 167 N.W.2d 784, 785 (1969); see also *Senters*, 503 N.W.2d at 643. Michigan courts have held that once the statutory redemption period lapses, they can only entertain the setting aside of a foreclosure sale where the mortgagor has made "a clear showing of fraud, or irregularity." *Schulthies*, 167 N.W.2d at 785; see also *Sweet Air Inv., Inc. v. Kenney*, 275 Mich.App. 492, 739 N.W.2d 656, 659 (2007) ("The Michigan Supreme Court has held that it would require a strong case of fraud or irregularity, or some peculiar exigency, to warrant setting a foreclosure sale aside." (internal quotation marks omitted)). Whether the failure to make this showing is best classified as [sic, a] standing issue or as a merits determination, one thing is clear: a plaintiff-mortgagor must meet this "high standard" in order to have a foreclosure set aside after the lapse of the statutory redemption period. See *El-Seblani v. IndyMac Mortg. Servs.*, 510 Fed.Appx. 425, 429-30, No. 12-1046, 2013 WL 69226, at \*4 (6th Cir. Jan. 7, 2013).

It is further clear that not just any type of fraud will suffice. Rather, "[t]he misconduct must relate to the foreclosure procedure itself." *Id.* (citing *Freeman v. Wozniak*, 241 Mich.App. 633, 617 N.W.2d 46, 49 (2000)); see also *Williams*, 508 Fed.Appx. at 468-69, 2012 WL 6200270, at \*3 (citing *Heimerdinger v. Heimerdinger*, 299 Mich. 149, 299 N.W. 844, 846 (1941), and *Sagmani v. Lending Assocs. LLC*, No. 302865, 2012 WL 3193940, at \*1 (Mich.Ct.App. Aug. 7, 2012)). [Footnotes omitted.]

Plaintiff appears to argue that there were irregularities throughout the foreclosure process that support setting it aside. Again, however, plaintiff relies solely on the fact that defendant did not offer her assistance with loan modification before foreclosing on the property. As explained previously, defendant was not obligated to offer that assistance to plaintiff because she was not the borrower or mortgagor on the loan. Plaintiff has not met the high standard for proving fraud or irregularity. Accordingly, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Peter D. O'Connell  
/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter