

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000396-MR

IRONWOOD ACCEPTANCE COMPANY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
ACTION NO. 03-CI-003056

SANDRA M. WALTERS; UNKNOWN SPOUSE
OF SANDRA M. WALTER; COMMONWEALTH
OF KENTUCKY, LOUISVILLE/JEFFERSON
COUNTY METRO GOVERNMENT; SECURITY
NATIONAL BANK, TRUSTEE; FIFTH THIRD
BANK OF KENTUCKY; NEIGHBORHOOD
BUILDERS GROUP, LLC; AND HAROLD
STORMENT

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: TAYLOR AND WINE, JUDGES; PAISLEY,¹ SENIOR JUDGE.

WINE, JUDGE: Appellant, Ironwood Acceptance Company (Ironwood), a private purchaser of tax liens, appeals the Jefferson Circuit Court's denial of its motion to award attorney fees, costs and other expenses pursuant to KRS 134.420(1). For the following

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

reasons, we reverse the trial court's order and remand this matter for findings and an additional award as set forth in this opinion.

On August 27, 1999, and June 30, 2000, Ironwood purchased certificates of delinquency from Jefferson County, arising from unpaid ad valorem taxes for the years 1994-1999 on property located at 9807 Anita Boulevard in Louisville, Jefferson County, Kentucky. Thereafter, ATF, the successor-in-interest to Ironwood, brought an action to enforce the tax liens against Sandra Walters, who owned the property at the time litigation commenced. The trial court granted a judgment and order of sale in favor of Ironwood in the proceedings below.

ATF subsequently sought to recover reasonable attorney fees, costs and other expenses, totaling \$2,035.52, incurred between August 5, 2004, and August 31, 2005. The master commissioner's order of October 11, 2005, provided for attorney fees of only \$1,000.00. The deputy master commissioner did not challenge the appellant's right to recover attorney fees. Rather, she questioned the reasonableness of a \$2,035.52 fee compared to an underlying obligation of \$3,656.26. Subsequently, the appellant filed exceptions to the recommendations of the deputy master commissioner. In an order entered December 29, 2005, the trial court denied all of ATF's requests for attorney fees. The trial court concluded ATF was

not entitled to attorney fees pursuant to KRS 134.420 because the language of the statute awarding attorney fees did not apply retroactively before July 2004, when the statute was amended to include attorney fees. On January 5, 2006, ATF sought an additional \$410.00 in attorney fees in its motion to alter or amend the trial court's order, which the trial court also denied. This appeal followed.

Ironwood relies on *Flag Drilling Company, Inc. v. Erco, Inc.*, 156 S.W.3d 762 (Ky.App. 2005), in which this Court interpreted KRS 134.420(1) as including reasonable attorney fees to holders of certificates of delinquency for unpaid property taxes. But in so doing, the Court in *Flag Drilling* cited the amended version of KRS 134.420, which became effective as of July 14, 2004. All of the relevant proceedings in *Flag Drilling* took place prior to that date. Here, the appellant seeks to recover attorney fees for services rendered after the effective date of the statute.

In this case, the trial court considered the statute and the holding in *Flag Drilling*, but denied ATF's request for attorney fees because KRS 134.420(1), as amended, did not specifically include language that the statute would be applied retroactively. The trial court noted that KRS 134.420(1) was amended to include attorney fees "ten months after the trial court's judgment and six months after the appeal was filed" in

Flag Drilling. (Trial court's Memorandum Order 1/23/06). The trial court further noted the general rule that, when a statute is silent as to whether it will be applied retroactively, it will then be applied only prospectively. *University of Louisville v. O'Bannon*, 770 S.W.2d 215, 216 (Ky. 1989). Thus, the trial court concluded that since ATF purchased the certificates of delinquency prior to the statute being amended and the statute was not to be applied retroactively, ATF is not entitled to attorney fees.

The Court in *Flag Drilling* did not specifically address the issue of whether KRS 134.420(1) applies retroactively. And we would also agree with the trial court that the prior panel of this Court in *Flag Drilling* failed to note the effective date of the amendment to the statute. But while KRS 446.080(3) reads that no statute shall be construed to be retroactive unless expressly so declared, an exception is made for remedial legislation. *Kentucky Insurance Guaranty Association, ex rel v. Jeffers*, 13 S.W.3d 606 (Ky. 2000). The Kentucky Supreme Court has described remedial statutes as those relating "to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of such rights" *Id.* at 609, *citing* 73 AM. JUR. 2D STATUTES § 354 (1974).

Prior to its amendment in July 2004, KRS 134.420(1) provided "[t]he lien shall include all interest, penalties, fees, commissions, charges, and other expenses incurred by reason of delinquency in payment of the tax bill or in the process of collecting it, and shall have priority over any other obligation or liability for which the property is liable." The legislature amended the statute so that the lien specifically includes "costs and attorney fees." We believe the General Assembly inserted this language to clarify the phrase "other expenses incurred."

Furthermore, this interpretation of the statute does not create new or take away vested rights, but operates only in furtherance of the remedy or confirmation of the lien holder's rights set out in the prior version of KRS 134.420(1). Consequently, the amendment does not fall within the legal conception of a retrospective law, nor does it implicate the general rule against the retrospective operation of statutes. *Id.* at 608. Rather, KRS 134.420(1), as amended, is merely a clarification of an existing right to the "other expenses" called for in KRS 134.420(1) prior to its amendment in July 2004. Finally, ATF only seeks to recover for services rendered between August 5, 2004, and August 31, 2005. Therefore, ATF was entitled to an award of its attorney fees and costs even though

it purchased the certificates of delinquency prior to the effective date of the amendment.

Accordingly, the order of the Jefferson Circuit Court denying attorney fees is hereby reversed and this matter is remanded for additional findings and an award of reasonable attorney fees, costs and expenses as set forth in this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEFS FILED FOR APPELLEES

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