

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000835-MR

WILLIAM MAYNARD

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 07-CI-01074

WILLIAM E. GROOME

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: NICKELL AND STUMBO, JUDGES; WHITE,¹ SENIOR JUDGE.

WHITE, SENIOR JUDGE: William Maynard appeals from a Pike Circuit Court summary judgment in favor of William Groome, the holder of the certificates of delinquency for Maynard's unpaid natural gas taxes. The sole issue presented by

¹ Senior Judge Edwin M. White sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

this appeal is whether KRS Chapter 134 permitted Groome to charge the delinquent taxpayers certain fees. KRS 134.420 allows holders of certificates of delinquency to charge fees in conjunction with collection. Therefore, we affirm the Pike Circuit Court's summary judgment.

In 2006, Groome purchased all the delinquent natural gas certificates sold at the Pike County Sheriff's tax sale. Groome recorded a real property lien against the taxpayers in the Pike County Clerk's Office. Then he mailed each delinquent tax payer a notice of sale of the certificate, which stated, "This Certificate of Delinquency will continue to bear interest at the rate of twelve percent (12%) per annum until paid. Furthermore, the amount set out above DOES NOT INCLUDE INTEREST, PENALTIES, COSTS, OR FEES." Among the expenses for which Groome sought reimbursement was a \$50 fee for recording the lien, a \$50 fee for release of certificate, and a \$100 processing fee.

On August 20, 2007, Maynard filed a class action complaint, on behalf of himself, Joyce Fields, Janet Strikeleather, and "similarly situated individuals," against Groome. In the complaint, Maynard claimed,

[Groome] by his actions has unlawfully, fraudulently, and willfully attempted to collect interest at a rate greater than 12% annum; attempted to collect a sum for filing a tax lien, attempted to collect processing fees; and filing of a release, none of which is permitted or provided by statute.

Claiming that no genuine issue of material fact existed, Groome filed a motion for summary judgment. On November 21, 2008, the trial court held a

hearing on Groome's motion. On February 17, 2009, the trial court granted summary judgment in favor of Groome. This appeal follows.

Under current Kentucky law, third-party purchases of certificates of delinquency and their enforcement are governed under KRS 134.452. Groome purchased the certificates, however, before this statute was enacted. As KRS 134.452 is not a retroactive law, our analysis shall focus on the portions of KRS Chapter 134 which were in effect at the time of purchase.

KRS 134.450 permits the purchase of delinquent tax certificates through county sheriff's sales. In 2006, KRS 134.490 allowed certificate holders to charge an interest rate of 12% per annum. Further, KRS 134.420(1) allows certificate holders to collect certain fees. The statute provides that all liens shall include:

. . . . all interest, penalties, fees, commissions, charges, costs, reasonable attorney fees, and other expenses as provided by this chapter that have been incurred by reason of delinquency in payment of the tax bill or certificate of delinquency or in the process of collecting either, and shall have priority over any other obligation of liability for which the property is liable.

In *Flag Drilling Co., Inc. v. Erco, Inc.*, 156 S.W.3d 762 (Ky. App. 2005), our Court questioned whether a certificate holder was entitled to reimbursement of attorney fees. We concluded that:

[G]iving a private purchaser of a delinquent tax claim a means to enforce the lien, KRS 134.490(2)(b) allows that purchaser to stand in the shoes of the state, county, city, or taxing district in whose name the lien has been imposed. By doing so, the statute gives the private

owner of a certificate of delinquency a feasible means of recovering its tax claims.

Id. at 767. KRS 134.420(1) clearly provides for the reimbursement of attorney fees and other fees that have been incurred as a result of the certificate enforcement. Therefore, Groome was entitled to assess fees as long as those fees were reasonable.

Maynard claims that only \$26 in filing fees were actually incurred by Groome as filing fees. Instead, he claims that Groome made a \$74 profit from the filing fees that he assessed the tax payers. Groome is entitled to be reimbursed for all expenses incurred during the enforcement of the delinquent certificate. Those expenses are not limited to reimbursement for filing fees themselves but also can include postage, supplies, transportation costs, preparation costs, personnel costs, and any other expense incurred as long as the cost was reasonable.

The processing fee was vaguely described by Groome as a reimbursement of pre-litigation attorney fees. Maynard argues that the fee was unreasonable because it was assessed prior to any court action. Attorneys certainly perform legal services and provide legal advice prior to litigation. The fee amounts were not exorbitant, and KRS Chapter 134 does not require a full accounting of expenses. Therefore, we find no error in the trial court's judgment.

Accordingly, the Pike Circuit Court's summary judgment is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Darrell E. Sammons
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BRIEF FOR APPELLEE:

Bradley A. Sears
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