

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Petition of the Venango County :
Tax Claim Bureau for Judicial :
Sale of Lands Free and Clear :
of all Taxes and Municipal Claims, :
Mortgages, Liens, Charges and :
Estates Whatsoever :
v. :
John A. Henderson, : No. 1150 C.D. 2010
Appellant : Submitted: April 29, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: July 28, 2011

John A. Henderson (Henderson), appearing *pro se*, appeals from an order of the Court of Common Pleas of Venango County (trial court) that granted the Venango County Tax Claim Bureau's (Tax Bureau) petition for judicial sale.

On April 9, 2010, the Tax Bureau petitioned for judicial sale and alleged:

2. Petitioner [Tax Bureau] exposed certain parcels of land to Upset Sale on September 14, 2009. An upset price was set for each such parcel exposed to sale, in accordance with the Act, however, certain of the properties were not sold at the Upset Sale, because the said minimum bid, upset sale price was not obtained. Such parcels are more specifically set forth in Exhibit A, attached hereto and incorporated herein by reference.

3. Neither the assessed owner, or [sic] the reputed owner, or [sic] his, her, or [sic] its heirs, successors, legal

representatives or [sic] assigns, nor any lien creditor, its successors legal representatives or assigns; nor any other person, or [sic] persons interested in any of the said parcels have caused a stay of the sale, discharged the tax claim, or [sic] removed from the sale any of said parcels.

4. Petitioner [Tax Bureau] has caused a title examination to be conducted on the parcels; the searches and documents showing the state of the record, the ownership of the property, and all tax and municipal claims, liens, mortgages, ground rents (if any), charges and estates against the same are attached as exhibit A. Full abstracts of title are on file with the [Tax] Bureau and are available for review by any interested party, and by this Honorable Court at the hearing on the Rule to Show Cause

WHEREFORE, Petitioner [Tax Bureau] requests this Honorable Court to grant a Rule upon all parties shown herein to have an interest in said parcels and mobile homes to appear and Show Cause, if any they have, why a decree should not be entered ordering that the parcels and mobile homes be sold free and clear of all tax and municipal claims, mortgages, liens, ground rents, charges and estates

Petition for Judicial Sale, April 9, 2010, Paragraphs 1-4 at 1-2; Certified Record (C.R.) Item No. 10.

Henderson denied the Tax Bureau's allegations and asserted in new matter that:

1. In accordance with PA. Title 72 P.S. § 5860.602 . . . Notice of Sale, Petitioner [Tax Bureau] is required under such circumstances to appropriately notify interested parties of such legal actions, especially those with pecuniary and/or financial interests.

2. Upon information and belief a duly incorporated commercial entity identified as Bernie's Inc. d/b/a "Bernie's Tavern", has a financial, pecuniary, and fiduciary interest in some and/or all of the properties

identified by Petitioner [Tax Bureau] in this action and listed on the Petitioner's [Tax Bureau's] Real Estate Lien Report, 2010 Judicial Sale

3 Upon information and belief Petitioner [Tax Bureau] has not satisfied their required notice obligations

4. Upon information and belief those certain lien holders of record as identified within Petitioner's [Tax Bureau's] Exhibit "A" have not been properly notified by Petitioner [Tax Bureau] of this action in accordance with their notice requirements . . . including Commonwealth of Pennsylvania, District Attorney and Prothonotary, Franklin, PA; Citibank (South Dakota) NA, Sioux Falls, South Dakota; PNC Bank, NA, Pittsburgh, PA; Commonwealth Bank, Successor to Deposit Bank, Dubois, PA; and First Commonwealth Bank, Indiana, PA.

5. Upon information and belief Pro se Respondent, . . . Henderson, is entitled to be duly represented by legal counsel in these proceedings.

6. Pro se Respondent, . . . Henderson is presently incarcerated and does not have legal counsel at this time, nor the financial means with which to retain legal representation in this matter.

7. Pro se Respondent, . . . Henderson is actively seeking legal representation in this matter, and has submitted a formal written request with the Northwestern Legal Services

8. Upon information and belief, if this matter were to proceed without Pro se Respondent, . . . Henderson being properly represented by legal counsel, then that would constitute at the very minimum a violation of the Respondent's [Henderson's] Due Process Rights, a violation of his Constitutional Rights, and possibly result in an unlawful taking by the government.

9. The Pro se Respondent . . . Henderson will be severely prejudiced and suffer irreversible economic harm if this

matter is allowed to proceed at this particular time under these particular circumstances.

.....

11. If this Court denies Respondent's [Henderson's] Motion, and allows these proceedings to move forward, the Respondent [Henderson], requests that this Court allow him to participate at this Hearing to present his claims before the Court, via Video Conference

Answer of Respondent, John A. Henderson, to the Petition for Judicial Sale filed by the Venango County Tax Claim Bureau, May 17, 2010, Paragraphs 1-9 and 11 at 1-3; C.R. Item No. 31.

At hearing, Patricia Bajorek (Bajorek), Director of Tax Bureau, testified that she conducted a title search on the three properties, 1134 West First Street, Oil City, 100 Abbot Street, Oil City, and 557 Colbert Avenue, Oil City. Hearing Transcript (H.T.), May 24, 2010, at 9. Bajorek stated the search revealed that the owner of the properties was John A. Henderson. H.T. at 9. Bajorek also conducted lien searches on the properties:

Q: And who did the title search indicate hold liens on the parcels owned by Mr. Henderson?

A: I have a CitiBank, South Dakota, N.A., and I have a First Commonwealth Bank in Dubois, Pennsylvania, First Commonwealth Bank in Indiana, Pennsylvania, and P.N.C. Bank in Pittsburgh.

Q: And those would be liens against property at 1134 West First Street in Oil City; is that correct?

A: Yes.

Q: What about 100 Abbot Street in Oil City?

A: CitiBank, South Dakota, on that property.

Q: And lastly as to 557 Colbert Avenue, are there any lien holders of records on that property?

A: We have the Commonwealth of Pennsylvania, the District Attorney's office and the Prothonotary's office in Franklin, Pennsylvania, and CitiBank in South Dakota.

Q: Is it part of the standard procedure for the Tax Claim Bureau to send notices to those lien holders setting judicial sale that is being sought on the properties?

A: Yes.

Q: Was notice sent to CitiBank, First Commonwealth, P.N.C., again, the District Attorney, the Prothonotary, and CitiBank on the third property in this case?

A: Yes.

By the Court:

Q: We have the petition and as far as you are concerned and as far as you know you fully complied with all the notice requirements --- (emphasis added).

A: Yes, we have. (emphasis added).

Q: -- as the statute requires? (emphasis added).

A: Yes. (emphasis added).

Q: How long have you been doing this?

A: Twenty-six years.

Q: Have you ever been through this before?

A: I have.^[1]

¹ Mr. Richard Winkler (Winkler), attorney for the Tax Bureau, argued before the trial court that he did not see Henderson's lack of legal counsel "as a defense to the sale." Further, Winkler argued:

(Footnote continued on next page...)

H.T. at 10-11.

After hearing, the trial court made the following pertinent findings of fact:

. . . As to the New Matter, we do find the testimony of Miss Bajorek . . . to be credible and she has established appropriate notice to Mr. Henderson and the other interested parties, including the . . . creditors of record as they relate to the premises.

We do not find that Bernie's Tavern or Bernie's, Inc., is entitled to notice of the proceedings, nor should be a party [W]e agree that he [Henderson] is entitled to counsel in the proceeding, but we do not agree that he is necessarily entitled to free counsel or counsel appointed either by the county or the state to represent him I am aware that he [Henderson] is in the Bureau of Corrections for quite a while and would not be able to be present.

Trial Court's Findings of Fact, May 24, 2010, at 1-2. The trial court granted the Tax Bureau's Petition for Judicial Sale.

Henderson appealed to this Court, and the trial court directed him to

(continued...)

He [Henderson] is claiming that an unknown party called Bernie's Incorporated, somehow has an interest in this property. The record would show that the owner of the property and the only owner is John Henderson. I don't know what relation Bernie's Inc., or Bernie's Tavern would have to the property. So I would make the same argument that whatever Bernie's Inc. may be Mr. Henderson has no standing, showing of record, to raise an issue on his behalf that they should have had notice of the sale.

H.T. at 5-6.

file a statement of errors complained of on appeal.²

Henderson filed a statement and alleged the following errors:

A. The lower Court has failed to act upon Appellant's [Henderson's] Application for Stay . . . of the sale of listed properties by Appellee [Tax Bureau], scheduled for June 28, 2010 with Appellant's [Henderson's] Notice of Appeal, pursuant to the collateral order doctrine^[3]

B. Appellant [Henderson] was denied his right of presence and to be heard at the May 24, 2010 hearing on the Appellee's [Tax Bureau's] petition to confirm the sale of listed properties

C. Appellant was denied his entitlement to court appointed counsel at the May 24, 2010 hearing, due to his incarceration, indigence, and where significant and substantial property interests are involved in the underlying dispute

Statement of Matters Complained of on Appeal, July 6, 2010, at 1. C.R. at 49.

Before this Court⁴, Henderson raises the identical issues as alleged in

² Pa. R.A.P. 1925(b) provides that “[i]f the judge entering the order giving rise to the notice of appeal (“judge”) desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal (“Statement”).

³ Pa. R.A.P. 313(b) defines “collateral order” as “an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.”

⁴ This Court's review in tax sale cases is limited to a determination of whether the trial court abused its discretion, erred as a matter of law or rendered a decision with lack of supporting evidence. Michener v. Montgomery County Tax Claim Bureau, 671 A.2d 285 (Pa. Cmwlth. 1996). “In a tax sale case, the Bureau has the burden of proving compliance with the statutory provisions of the Law [“Real Estate Tax Sale Law”, Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §§ 5860.101-5860.803]. In re Tax Sale of Real Property Situated in Jefferson (Footnote continued on next page...)

his statement of errors complained of on appeal. Because these issues were raised and argued and ably disposed of in the opinion of the Honorable H. William White, this Court shall affirm on the basis of his opinion. In Re: Petition of the Venango Tax Claim Bureau for a Judicial Sale of Lands Free and Clear of All Tax and Municipal Claims, Mortgages, Liens, Charges and Estates Whatsoever, (Civil No. 506-2010), filed May 24, 2010, and In Re: Petition of the Venango Tax Claim Bureau for a Judicial Sale of Lands, (Civ. No. 506-2010), filed August 27, 2010.⁵

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(continued...)

Township, 828 A.2d 475, 479 (Pa. Cmwlth. 2003), citing Grier v. Tax Claim Bureau of Schuylkill County, 570 A.2d 134 (Pa. Cmwlth. 1990), affirmed, 527 Pa. 41, 588 A.2d 480 (1991).

⁵ The Tax Bureau also argues that “[a]s noted in Appellant’s [Henderson’s] Brief in this matter at page 8, the property [sic] in which Appellant [Henderson] holds an interest was withdrawn from the tax sale . . . [h]ence, there is no controversy between the parties at this time and the case is moot.” Brief for Appellee at 2.

Here the Tax Bureau has not filed a motion to dismiss with the necessary allegations why Henderson’s appeal is moot. Instead, the Tax Bureau and Henderson raise this factual allegation in the argument section of their briefs without directing the Court where in the certified record the properties were withdrawn from tax sale.

Pa. R.A.P. 1921 provides:

The original papers and exhibits filed with the lower court, hard copies of legal papers filed with the prothonotary by means of electronic filing, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court shall constitute the record on appeal in all cases.

“The fundamental tool for appellate review is the official record of what occurred at trial.” Commonwealth v. Young, 456 Pa. 102, 115, 317 A.2d 258, 264 (1974). “Only the facts that appear in this record may be considered by a court.” (emphasis added and footnote deleted). Id. at 115, 317 A.2d at 264.

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v. :
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John A. Henderson, : No. 1150 C.D. 2010
Appellant :

ORDER

AND NOW, this 28th day of July, 2011, the order of the Court of
Common Pleas of Venango County in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge