

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Regina A. Abramovitch and :
Joseph Abramovitch :
 :
v. :
 :
Lackawanna County Tax Claim Bureau :
 : No. 142 C.D. 2010
Appeal of: Michael C. Ericson : Submitted: June 21, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: October 4, 2010

Michael C. Ericson (Appellant) appeals the order of the Court of Common Pleas of Lackawanna County (trial court) which granted the Petition to File Objections and Exceptions Nunc Pro Tunc to the Lackawanna County Upset Sale of September 25, 2006, of Regina and Joseph Abramovitch (Abramovitches).

Procedural History and Facts

On or about November 21, 1909, George L. Timlin and James F. Timlin (Timlins) acquired the subject parcel of land (Property),¹ located in the Borough of Taylor, from J.P. Law. George L. Timlin died on April 2, 1932, and by Will gave, devised, and bequeathed his estate to sixteen individuals. James F. Timlin died on March 12, 1931, and Letters of Administration were issued to his wife, Ida M. Timlin.

¹ Parcel Number 16615FN0001, R of 106 North Main Street, Taylor, Lackawanna County, Pennsylvania, 18517.

The Abramovitches reside in Lackawanna County and are the owners of the adjacent property at 106 N. Main Street in Taylor and claimed to have used the Property for over thirty years.

On September 25, 2006, the Lackawanna County Tax Claim Bureau (Bureau) conducted an upset tax sale of the Property and the Property failed to sell. The Property was eventually sold to Appellant for five hundred dollars at a private sale on August 22, 2008. George L. Timlin and James F. Timlin were the owners of record at the time of the tax sale. However, the Abramovitches asserted they had a possessory interest in the Property and were “owners” under the Real Estate Tax Sale Law (Act)².

The Abramovitches alleged the Bureau had failed to comply with the notice requirements of the Act specifically, Section 607(a).³ Had they received proper notice under the Act, or had the Property been properly posted as required

² Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. §§5860.101-5860.803.

³ Section 607(a) of the Act, 72 P.S. §5860.607(a), provides:

The Bureau’s efforts shall include, but not necessarily be restricted to, a search of current telephone directories for the county and of the docket and indices of the county tax assessment offices, recorder of deeds office and prothonotary’s office, as well as contacts made to any apparent alternate address or telephone number which may have been written on or in the file pertinent to such property. When such reasonable efforts have been exhausted, regardless of whether or not the notification efforts have been successful, a notation shall be placed in the property file describing the efforts made and the results thereof, and the property may be rescheduled for sale or the sale may be confirmed....

under 72 P.S. §5860.602(3),⁴ the Abramovitches alleged they would have taken the necessary steps to protect their rights in the Property. They were not aware of either the public or the private sale until late October of 2008. The Abramovitches sought the Court's permission to file their Objections and Exceptions Nunc Pro Tunc (beyond the statutorily required period of time) because of the Bureau's noncompliance with the notice requirements.

⁴ Section 602 of the Act, 72 P.S. §5860.602, provides, in pertinent part:

(a) At least thirty (30) days prior to any scheduled sale the bureau shall give notice thereof, not less than once in two (2) newspapers of general circulation in the county, if so many are published therein, and once in the legal journal, if any, designated by the court for the publication of legal notices. Such notice shall set forth (1) the purposes of such a sale, (2) the time of such sale, (3) the place of such sale, (4) the terms of the sale including the approximate upset price, (5) the descriptions of the properties to be sold as stated in the claims entered and the name of the owner.

* * * *

(e) In addition to such publications, similar notice of the sale shall also be given by the bureau as follows:

(1) At least thirty (30) days before the date of the sale, by United States certified mail, restricted delivery, return receipt requested, postage prepaid, to each owner identified by this act.

(2) If return receipt is not received from each owner pursuant to the provisions of clause (1), then, at least ten (10) days before the date of the sale, similar notice of the sale shall be given to each owner who failed to acknowledge by United States first class mail, proof of mailing, at his last known post office address....

(3) Each property scheduled for sale shall be posted at least ten (10) days prior to the sale.

Appellant preliminarily objected on the basis that the Abramovitches lacked standing. The trial court overruled the preliminary objection. Appellant raised the same challenge in *New Matter*.

At hearing, the Bureau conceded that the notice did not comply with statutory requirements.⁵ However, Appellant maintained that while the notice may have been defective, the Abramovitches were not entitled to notice since they were not statutory “owners” of the Property and lacked standing under the Act.

The Bureau and Appellant argued that since Lackawanna County has a recorder of deeds and since the prior owners, the Timlins, were considered the owners of record, the Abramovitches were not qualified to be considered statutory “owners.” Appellant stipulated that that Abramovitches had never recorded a statement of adverse possession, had not filed an action to quiet title and, obviously, never paid real estate taxes on the Property. The Appellant further asserted that the trial court could *sua sponte*, at any point in time, determine that the Abramovitches did not have standing to object to the sale.

Six months later, the trial court determined:

On September 25, 2006 the Lackawanna County Tax Claim Bureau conducted an upset tax sale for the disputed property, and the property failed to sell. Eventually, the property was sold to Michael Ericson at a private sale in 2008, with Mr. Ericson paying five

⁵ The Solicitor for the Bureau concedes “...the Bureau agrees, should this matter proceed so far as to be relevant, the upset tax sale notices are deficient.” Notes of Testimony (N.T.), August 14, 2009, at 4; Reproduced Record (R.R.) at 5.

hundred dollars for the property. However, the Petitioners, who claim to have maintained, fenced, and used that property for over thirty years, believe they had established a possessory interest in it, and term themselves the land's owners. This claim is supported by the fact that the purchaser of the land in 2008 not only knew of the Abramovitches' interest in it, but requested they sell it to him.

....

At the hearing on this matter, the Tax Claim Bureau agreed that the notice was imperfect. However, Mr. Ericson took the position that, while the notice may have been problematic, the Abramovitches were not entitled to notice at all, since they were not, in his opinion, to be considered owners of the property. The notice, he claimed, was immaterial, and should not stand in the way of his purchase of the property. While Mr. Ericson's argument has a certain plausibility, and was set forth rather persuasively, we disagree with his claim. In an earlier proceeding in this same case, the undersigned denied his preliminary objections which stated the same argument, as we believed that the Abramovitches' ownership claim rang true. Testimony at the recent hearing did not change this belief, and, for the reasons we denied the preliminary objections, we reject Mr. Ericson's argument regarding the Petition, and rule in favor of the Petitioners.

Trial Court's Decision and Decree, December 29, 2009, at 2.

The Abramovitches were entitled to notice of the tax sale if they were owners of the Property, as defined in Section 102 of the Act, 72 P.S. §5860.102.

Section 102 defines the term "owner" as following:

[1] [T]he person in whose name the property is last registered, if registered according to law or, [2] if not registered according to law, the person in whose name last appears as owner of record on any deed or instrument of conveyance recorded in the county office designated for recording and [3] in all other cases means any person

in open, peaceable and notorious possession of the property, as apparent owner or owners thereof, or the reputed owner or owners thereof, in the neighborhood of such property....

72 P.S. §5860.102.

Appellant contends: (1) the trial court erred when it overruled his standing challenge because the Abramovitches were not statutorily entitled to be considered an “owner” under the Act with the necessary standing to file objections to the initial tax sale because they had neither a legal nor equitable interest in the Property and were not in line to fall within the definition of “owner” as provided in Section 102 of the Act, 72 P.S. §5860.102; and (2) the trial court erred in failing to conclude that individuals who are not owners have standing to challenge the sale of property for delinquent taxes based upon their open possession of the Property.⁶

In Farro v. Tax Claim Bureau of Monroe County, 704 A.2d 1137 (Pa. Cmwlth. 1997), the Court of Common Pleas of Monroe County held that the “owner” entitled to notice is the latest owner of record prior to the tax sale.

[The Farros’] contention, however, dramatizes the difference between two concepts of ownership, the feudal concept of ownership derived from seisen and the later concept of ownership derived from official recordation, and ignores the concept of ownership as defined in the Act. Nevertheless, the fact remains that Lavigne was the last owner of record because he properly recorded his ownership interest in the subject property when he acquired the property at the first tax sale. The Act

⁶ This Court’s scope of review in tax sale cases is limited to determining whether the trial court abused its discretion, rendered a decision unsupported by the evidence, or clearly erred as a matter of law. Hunter v. Washington County Tax Bureau, 729 A.2d 142 (Pa. Cmwlth. 1999).

expressly states, as does this court's opinion in *Grace*, [*Grace v. Building Company Incorporated*, 328 A.2d 919 (Pa. Cmwlth. 1974)] that the latest owner of record prior to the tax sale is the owner for purposes of receiving notice under Section 602, 72 P.S. §5860.602. Under the plain meaning of the relevant statutory provisions, the Farros were not the record owners under the Act and, therefore, they were not entitled to notice of the second tax sale.

Farro, 704 A.2d at 1141.

At the hearing, the Abramovitches' attorney argued that the Abramovitches met the requirements of ownership because they maintained the Property for thirty years. However, the Act expressly states, as does this court's opinion in Grace, that the latest owner of record prior to the tax sale is the owner for purposes of the Act and, therefore, for purposes of receiving notice under Section 602 of the Act, 72 P.S. §5860.602. Here, the Timlins were the owners of record at the time of the tax sale.

The trial court's belief that the "Abramovitches' ownership claim rang true" is not supported by the Act or case law. The trial court erred when it determined that the Abramovitches were "owners" under Section 102 of the Act.⁷

⁷ Although the Bureau admitted that notice was defective, the Abramovitches may not attack the Bureau's failure to comply with statutory notice requirements because they were not "owners" under the Act.

Accordingly, the order of the trial court is reversed.

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 4th day of October, the Order of the Court of Common Pleas of Lackawanna County in the above captioned matter is reversed and the case is remanded to the Court of Common Pleas of Lackawanna County to confirm the private sale to Michael C. Ericson.

BERNARD L. McGINLEY, Judge