

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|------------------------------------|---|-------------------------------|
| Patricia A. Saladigo and Florian | : | |
| Saladigo, | : | |
| Appellants | : | |
| | : | |
| v. | : | No. 1941 C.D. 2011 |
| | : | Submitted: September 11, 2012 |
| Schuylkill County Tax Claim | : | |
| Bureau and Blackstone Funding, LLC | : | |

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE LEADBETTER**

FILED: October 4, 2012

Patricia A. Saladigo and Florian Saladigo (Appellants) appeal from the order of the Court of Common Pleas of Schuylkill County which confirmed the tax sale of Appellants' property by the Schuylkill County Tax Claim Bureau (Bureau) and dismissed Appellants' petition to set aside the sale. After review, we affirm.

The record reveals the following relevant facts. Appellants were the owners of two properties located in Rush Township, Schuylkill County. The subject property, identified as Tax Parcel No. 25-03-0041.000, located at 88 East Main Street (subject property), consists of a greenhouse, a three-stall garage, and a currently occupied rental home. A second property, located at 94 Lafayette

Avenue, Tamaqua Borough, consists of the Saladigos' residence, another greenhouse, and a flower shop. Both properties were exposed for upset sale for delinquent 2008 property taxes. Only the subject property was sold on September 29, 2010, to Blackstone Funding, LLC, for \$10,699.¹ Appellants filed a timely petition to set aside the sale, alleging that the Bureau's notice of sale failed to comply with Section 602 of the Real Estate Tax Sale Law (Law), Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. § 5860.602.

The trial court held a hearing, at which Shelly Morrison, the Bureau's Assistant Director, testified and offered documentary evidence of the steps taken by the Bureau to comply with the upset sale notice requirements of the Law. Ms. Morrison testified that notice of the sale was sent by certified mail, restricted, to both Mr. and Mrs. Saladigo at the 94 Lafayette Avenue address, which was the mailing address on record for the subject property. Both notices were returned unclaimed. Notices were again sent by first class mail to both Appellants to the same 94 Lafayette Avenue address. Neither notice was returned as undeliverable. Ms. Morrison testified that the Bureau also published the notice of sale in *The Republican Herald*, the *South Schuylkill News*, and the *Schuylkill Legal Record* on August 26, 2010.² Finally, Ms. Morrison testified that Joseph Contrady, who was appointed by the County Commissioners to post properties, was supplied with a stake, tape, the posting notice and a form used by the Bureau to document proper

¹ Mrs. Saladigo paid the delinquent taxes due on the 94 Lafayette Avenue property, which is not part of this appeal. Hearing of April 6, 2011, Notes of Testimony (N.T.) at 26.

² The Bureau submitted signed and notarized documents of proof of publication. *See* County Exhibits 4 - 6. Appellants' attorney's objection to these exhibits on hearsay grounds was overruled by the trial court, and that issue is not before us.

posting of notice. She identified County Exhibit 3³ as the form used by the Bureau in its regular course of business in connection with posting properties. She testified that this document showed that Mr. Contrady placed the notice on a stake on the property at 88 East Main Street on August 2, 2010 at 8:46 a.m. Ms. Morrison admitted on cross-examination that she had no way of knowing whether Contrady actually posted the property, but testified that he told her he had posted the property as he described on County Exhibit 3.

Appellant Patricia Saladigo testified that after she received a notice in the mail for delinquent taxes on her residential property at 94 Lafayette Avenue, she went down to the tax office and paid the delinquent taxes. She further testified that she did not receive any notice of a tax sale for the 88 East Main Street property by either certified or first class mail and that she only found out that the property had been sold after ten people called and told her they saw the notice in the newspaper. Mrs. Saladigo testified that she never saw a posting on the subject property and that her tenant also did not see any “posting on her door.” N.T. at 27.

The parties filed post-hearing briefs limited to the issues of whether the Law requires the Bureau to prove an owner’s actual notice of the upset sale, and whether the Bureau’s proofs of posting and publication were properly authenticated and admissible or whether they were inadmissible hearsay. The trial court dismissed Appellants’ petition. The trial court found not credible Appellant Patricia Saladigo’s testimony that she did not receive notice of the tax sale and

³ Appellants’ attorney also objected to County Exhibit 3 on hearsay grounds, which objection was initially overruled by the trial court. The trial court later reversed its ruling with respect to County Exhibit 3 only, and requested the parties to brief the issue of its admissibility as a business record under Rule 803(6) of the Pennsylvania Rules of Evidence, Pa. R.E. 803 (hearsay exceptions).

held that the Bureau had complied with the notice requirements of the Law. The trial court also held that the Bureau's proof of posting, which was a signed and notarized acknowledgment of posting, authenticated by Bureau Assistant Director Shelly Morrison, was admissible as a business record.

Appellants raise a single issue on appeal, whether the Bureau met the notice requirements under Section 602 of the Law, 72 P.S. § 5860.602. They claim that they did not receive notice by mail of the tax sale and that the Bureau's proof of posting was by inadmissible hearsay.⁴ Appellants argue that they established through Mrs. Saladigo's testimony that neither she nor any of their employees received notice of the upset sale of the subject property by mail, and that they, therefore, had neither express nor implied actual notice. They attempt to distinguish this case from both *Sabbeth v. Tax Claim Bureau of Fulton County*, 714 A.2d 514 (Pa. Cmwlth. 1998), and *Cruder v. Westmoreland County Tax Claim Bureau*, 861 A.2d 411 (Pa. Cmwlth. 2004), in which, Appellants aver, employees of the property owner signed the receipt of the certified mail, which supports the implied notice of the sale by the owner.

The Bureau asserts existence of a *prima facie* presumption of the regularity of the acts of public officers in connection with tax sales until the contrary appears, citing *Dolphin Service Corp. v. Montgomery County Tax Claim Bureau*, 557 A.2d 38 (Pa. Cmwlth. 1989). The Bureau argues that it presented sufficient evidence to meet its initial burden of proving compliance with the notice provisions of the Law. Specifically, the Bureau's Assistant Director, Morrison,

⁴ It is well-established that, in tax sale cases, our review is limited to determining whether the trial court abused its discretion, clearly erred as a matter of law or rendered a decision without supporting evidence. *In the Matter of Tax Sale of 2003-Upset (Appeal of John L. Gerholt)*, 860 A.2d 1184 (Pa. Cmwlth. 2004).

testified that notices were sent by certified mail to both Mr. and Mrs. Saladigo to the Saladigos' residence at the 94 Lafayette Avenue address, which was the mailing address for the subject property, informing them of the tax sale. Morrison further testified that when these notices were returned as unclaimed, the Bureau sent out similar notices by first class mail, and these notices were not returned. The Bureau argues that it also submitted documentary proof of mailing, as evidenced by County Exhibit 1, a copy of the certified mail notices, and County Exhibit 2, the "Certificate of Mailing Post Office Report." Finally, the Bureau submits that the Law requires only that it make certain efforts to provide the owners with notice of the sale, and that the Law does not require it prove that the owners actually open, read, and understand the notice. The Bureau argues that once it met its burden, the burden shifted to Appellants to present contradictory evidence, which they did not do. We agree.

In tax sale cases, the Bureau has the burden of proving compliance with the notice provisions of the Law. *Pacella v. Washington County Tax Claim Bureau*, 10 A.3d 422 (Pa. Cmwlth. 2010); *Picknick v. Washington County Tax Claim Bureau*, 936 A.2d 1209 (Pa. Cmwlth. 2007). Section 602(e) of the Law provides:

In addition to such publications [of notice] 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 as defined 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 the first notice by United States first class mail, proof of mailing, at his last known post office address by virtue of the knowledge and information possessed by the bureau, by the tax collector for the taxing district making the return and by the county office responsible for assessments and revisions of taxes. It shall be the duty of the bureau to determine the last post office address known to said collector and county assessment office.

It is also well settled that a *prima facie* presumption of the regularity of the acts of public officers exists until the contrary appears. *Thomas v. Montgomery County Tax Claim Bureau*, 553 A.2d 1044 (Pa. Cmwlth. 1989). A property owner can overcome the presumption by filing a petition to set aside the sale and presenting contradictory evidence. *Id.*

Morrison's testimony and County Exhibits 1 and 2, which were admitted without objection, show that the notices were sent certified mail, restricted delivery, returned unclaimed, and that similar notices sent by first class mail were not returned. The Bureau's evidence also indicates that tax sale notices were sent to the Saladigos for their other delinquent property, the 94 Lafayette Avenue property, where they resided. The notices for both the subject property at 88 E. Main Street and the 94 Lafayette Avenue property were sent at the same time, to the same address. *See* County Exhibit 2; Hearing April 6, 2011, N.T. at 5-6.

Appellants attempted to rebut the presumption with Mrs. Saladigo's testimony that she never received anything in the mail regarding the impending tax sale of the subject property. The trial court, however, found her testimony not credible. She admitted receiving the delinquency notice for her residential property but she claimed she did not receive the notice for the subject property sent

to the same address. Matters of credibility and weight of the evidence are for the fact finder and as long as those findings are supported by substantial evidence we will not disturb them on appeal. *In re Dauphin County Tax Claim Bureau Tax Upset Sale*, 834 A.2d 1229, 1232 (Pa. Cmwlth. 2003). Accordingly, we conclude that the trial court did not err in finding that the Bureau established its compliance with the Law on the notice by mail.

Next, Appellants challenge the upset sale on the ground that the Bureau failed to comply with the posting requirement of the Law,⁵ asserting that the only evidence of posting was County Exhibit 3, a notarized proof of service by Mr. Contrady that he posted the property, which was inadmissible hearsay, and was not admissible as a business record under Rule 803(6) of the Rules of Evidence, Pa. R.E. 803(6). Rule 803(6) of the Pennsylvania Rules of Evidence provides that:

Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the sources of information or other circumstances indicate lack of trustworthiness. The term

⁵ Section 602(e)(3) provides only that, “Each property scheduled for sale shall be posted at least ten (10) days prior to the sale.” 72 P.S. § 5860.602(e)(3). We have interpreted Section 602(e)(3) to mean that the method of posting must be reasonable and likely to inform the taxpayer as well as the public at large of an intended real property sale. *Picknick v. Washington Cty. Tax Claim Bureau*, 936 A.2d 1209, 1212 (Pa. Cmwlth. 2007).

“business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Appellants argue that the Bureau’s evidence regarding the alleged posting lacks trustworthiness. Appellants assert that the document itself “does not list a printed name, address or other vital information on how to contact Mr. Contrady” and that they were unable to cross-examine him as to whether or not he “was actually appointed by the commissioners, [or] what his training [was] and even if any training [was] needed.” Appellants’ Brief at 8.⁶ Finally, they submit that Mr. Contrady, “the only person who can testify as to whether the property was posted” was not present to testify. *Id.* at 9-10.

The Bureau contends that the trial court properly admitted the document as a business record and that it supports a finding that the subject property was properly posted, citing *Appeal of John L. Gerholt*, 860 A.2d 1184 (Pa. Cmwlth. 2004), in which this court recognized the admissibility of documentary evidence of posting that was authenticated as a business record by the tax bureau’s director. While acknowledging that it had the burden of proving strict compliance with the notice requirements of the Law, the Bureau submits that it did so herein, and asserts that Appellants produced no evidence to prove that the document was untrustworthy, nor did they offer any proof nor suggest that the

⁶ Appellants attached as “Appellant’s ‘A’” a document purportedly showing that the subject property had previously been posted on October 21, 2009, and argue that they were unable to cross-examine Mr. Contrady about this document either. However, as this document is *de hors* the record, we will not consider it on appeal. See *McCaffrey v. Pittsburgh Athletic Association*, 448 Pa. 151, 293 A.2d 51 (1972) (appellate court cannot consider anything which is not part of the record).

notarized signatures on the document were not genuine.⁷ Therefore, the Bureau argues, the trial court properly overruled Appellants' hearsay objection. We agree.

In the matter sub judice, the trial court admitted County Exhibit 3, the proof of posting, as a business record. As the comments to Rule 803(6) of the Pennsylvania Rules of Evidence make clear, the court may "exclude business records that would otherwise qualify for exception to the hearsay rule if the 'sources of information or *other circumstances* indicate lack of trustworthiness.'" (Emphasis in original). Business records may be authenticated by certification, which the comment notes was "designed to save the expense and time consumption caused by calling needless foundation witnesses." Comment to Pa. R. E. 803(6).

Morrison, the Bureau's witness, identified County Exhibit 3 as the form used and maintained by the Bureau in its regular course of business and testified that it reflects that the upset sale notice was posted on a stake on the subject property at 8:46 a.m. on August 2, 2010. Morrison further testified that County 3 contains a signed, sworn acknowledgment of the posting by Joseph M. Contrady, which was notarized on August 6, 2010. Morrison's testimony clearly established that the proof of posting form was created at or near the time of the posting event by the actual person, Contrady, who posted the property. In addition, as a "person with knowledge" of the practices of the Bureau, she further testified that the form was created as part of the regular practice of the Bureau and kept in the regular course of the Bureau's business activities. We agree that the document

⁷ The Bureau cites *Williamson v. Barrett*, 24 A.2d 546 (Pa. Super. 1942), in which certification of a signature by a notary public was deemed *prima facie* evidence of the due execution of a written document, which an opponent can rebut only by clear and satisfactory proof that the signature is a fraud or forgery.

was properly authenticated by Morrison, and as such, qualified as a business record under the hearsay exception in Rule 803(6), and that Appellants failed to prove the sources of information or other circumstances surrounding the creation of the proof of posting were lacking in trustworthiness.

Because the Bureau proved compliance with the statutory mandates of notice by mail to Appellants and notice by posting on the subject property, we conclude that the trial court did not err in dismissing Appellants' objection to the upset sale. Accordingly, we affirm the trial court's order.

BONNIE BRIGANCE LEADBETTER,
Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Patricia A. Saladigo and Florian :
Saladigo, :
Appellants :
v. : No. 1941 C.D. 2011
Schuylkill County Tax Claim :
Bureau and Blackstone Funding, LLC :

ORDER

AND NOW, this 4th day of October, 2012, the order of the Court of Common Pleas of Schuylkill County in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
Judge