IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Consolidated Return of the Tax Claim Bureau of Bedford County from the Upset Tax Sale of September 14, 2009	: : : :	No. 2010 C.D. 2010 Submitted: April 5, 2011
Appeal of: Richard N. Fair	:	

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED:** August 4, 2011

Richard N. Fair (Appellant) appeals from an order of the Court of Common Pleas of Bedford County (trial court), which overruled Appellant's objections to an upset sale and confirmed absolutely the upset sale of a 6.694 acre parcel of land located in Juniata Township, Bedford County (the Property), by the Bedford County Tax Claim Bureau (the Bureau). We now affirm.

At issue in this case is whether Appellant was an "owner" entitled to notice of the upset sale of the Property under the Real Estate Tax Sale Law, Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. §§ 5860.101-.803 (Tax Sale Law). It is undisputed that prior to the subject upset sale, Mary Jane Restly and her father, John Lewis Beckner (the Owners), owned the Property. The Bureau sold the

Property at the upset sale to Rodney Bisbing (the Purchaser) on September 14, 2009. Thereafter, the Owners and Appellant filed objections to the upset sale.[1]

The trial court conducted a hearing on the objections, and Appellant appeared at the hearing. The Bureau appeared through its solicitor, Barry R. Scatton, Esquire. The Purchaser also appeared, unrepresented by counsel, although he was not a party to the proceeding and did not testify. Attorney Scatton recited a stipulation of facts for the record on behalf of the parties to the hearing.

According to the stipulation, at the time that the Property was sold to the Purchaser on September 14, 2009, Appellant and the Owners had a verbal agreement whereby Appellant would purchase the Property from the Owners. (Reproduced Record (R.R.) at 12a-14a). Settlement on the Property was scheduled for September 18, 2009, four days after the date of the upset sale. (*Id*.) As a result of the upset sale, the closing did not occur. (*Id*.) Mr. Scatton, as solicitor for the Bureau, handled the upset sale. (*Id*.) Mr. Scatton also was the individual who was to handle the closing on the sale of the Property for Appellant on September 18, 2009. (*Id*.)

Appellant testified that the Property was one of four tracts created by the subdivision of a seventeen (17) acre field owned by the Owners. (*Id*. at 22a.) Appellant previously purchased three of the four tracts from the Owners during the years 2006, 2007, and 2008, and he resides on one of those tracts. (*Id.*) The Property was the final tract to be purchased by Appellant from the Owners. (*Id.*) Attorney Scatton represented Appellant in the earlier purchases of the three tracts. (*Id*. at 24a.) Appellant testified that the verbal agreement of sale provided that

[1] Restly and Beckner are Appellant's former sister-in-law and father-in-law, respectively, and Restly handles the affairs for her father, who is bed-ridden. (R.R. at 23a.)

Appellant agreed to pay the Owners approximately $30,000 in the form of "a garage and a camper," legal fees, and cash toward their mortgage in exchange for the Property. (*Id*. at 24a.) In connection with the verbal agreement of sale, Appellant applied and was approved for a loan and paid surveying costs. (*Id.* at 24a-25a.)

Appellant further testified that he often went to the Property monthly and at times weekly with the Owners' permission. (*Id.* at 28.) Once a year he mowed the Property, and in the winter he plowed the driveway that ran across the Property. (*Id.* at 26.) He did not store anything on the Property. (*Id*. at 28.)

By order dated March 25, 2009, the trial court overruled Appellant's objections and confirmed the sale absolutely. This appeal followed.[2] The Owners did not appeal.

On appeal,[3] Appellant argues that the trial court abused its discretion by confirming absolutely the upset sale of the Property based on lack of standing to object to the sale as an "owner" or "reputed owner," as defined by statute, when the Bureau had actual notice that the Property was under contract of sale to Appellant and closing was scheduled to occur four days after the upset sale date, and when the irregularities of the upset sale create an equitable estoppel.

Section 602 of the Tax Sale Law, 72 P.S. § 5860.602, entitled "notice of tax sale," requires the Bureau to give notice of an upset sale to an "owner."

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[2] Appellant initially appealed to the Superior Court, and the Superior Court transferred the matter to the Commonwealth Court by order dated May 27, 2010.

[3] "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." *Wiles v. Washington Cnty. Tax Claim Bureau*, 972 A.2d 24, 28 n.2 (Pa. Cmwlth. 2009).

Section 102 of the Tax Sale Law, 72 P.S. § 5860.102, defines the term "owner" as follows:

> **"Owner,"** the person in whose name the property is last registered, if registered according to law, or, if not registered according to law, the person whose name last appears as an owner of record on any deed or instrument of conveyance recorded in the county office designated for recording *and 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*; as to property having been turned over to the bureau under Article VII by any county, "owner" shall mean the county.

(Emphasis added.)

First, Appellant essentially argues that the trial court misinterpreted the definition of "owner" contained in Section 102 of the Tax Sale Law and, therefore, erred in determining that he was not an "owner" entitled to notice. Appellant maintains that he was an "owner" pursuant to the portion of the definition of "owner," which provides "in all other cases [owner] means any person in open, peaceable and notorious possession of the property, as apparent owner . . . thereof, or the reputed owner . . . thereof, in the neighborhood of such property." Section 102 of the Tax Sale Law. Appellant argues that the trial court prematurely ended its analysis of the definition of "owner" before it reached the "in all other cases" portion of the definition. Appellant's interpretation of the definition of owner is unpersuasive.

When interpreting a statute, this Court is guided by the Statutory Construction Act of 1972, 1 Pa. C.S. §§ 1501-1991, which provides that "the object of all interpretation and construction of all statutes is to ascertain and

effectuate the intention of the General Assembly." 1 Pa. C.S. § 1921(a). "The clearest indication of legislative intent is generally the plain language of a statute." *Walker v. Eleby*, 577 Pa. 104, 123, 842 A.2d 389, 400 (2004). "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa. C.S. § 1921(b). Only "[w]hen the words of the statute are not explicit" may this Court resort to statutory construction. 1 Pa. C.S. § 1921(c). "A statute is ambiguous or unclear if its language is subject to two or more reasonable interpretations." *Bethenergy Mines, Inc. v. Dep't of Envtl. Prot.*, 676 A.2d 711, 715 (Pa. Cmwlth.), *appeal denied,* 546 Pa. 668, 685 A.2d 547 (1996). Moreover, "[e]very statute shall be construed, if possible, to give effect to all its provisions." 1 Pa. C.S. § 1921(a). It is presumed "[t]hat the General Assembly intends the entire statute to be effective and certain." 1 Pa. C.S. § 1922(2). Thus, no provision of a statute shall be "reduced to mere surplusage." *Walker*, 577 Pa. at 123, 842 A.2d at 400. Finally, it is presumed "[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable." 1 Pa. C.S. § 1922(1).

A review of the statutory language at issue here reveals that the definition of the term "owner" is unambiguous. Section 102 of the Tax Sale Law first defines "owner" as "the person in whose name the property is last registered." Thus, Section 102 begins by defining the term "owner" based upon the identity of the person to whom the property is registered for tax purposes. Thereafter, the statute provides "*or*, if not registered," the "owner" is "the person whose name last appears as an owner of record on any deed or instrument of conveyance recorded in the county office designated for recording." *Id.* (emphasis added.) The word "or" is commonly defined as "[a] disjunctive particle used to express an alternative

or to give a choice of one among two or more things . . . or to indicate an alternative between different or unlike things." BLACK'S LAW DICTIONARY at 1095 (6th ed. 1990). The statute, therefore, directs that "if not registered," meaning only if the owner cannot be identified though registration with the tax office, then, alternatively, the "owner" is the person whose name appears on the deed or other instrument of conveyance recorded in the county office, which person is often referred to as the "record owner." Next, the statute continues "in all other cases [the owner] means any person in open, peaceable and notorious possession of the property, as apparent owner . . . or reputed owner." *Id.* There is no support in case law or otherwise for an argument that the "in all other cases" language somehow applies regardless of whether an owner could be identified through the first two parts of the definition of owner. To conclude otherwise would yield an absurd result, particularly given the earlier progression of the statute—*i.e.*, from the registered owner to the record owner—and the earlier use of the word "or" in the statute, signifying an alternative or choice among several things.[4] Rather, the portion of the definition beginning with "and in all other cases" must be interpreted to apply only when there is no person to whom the property was last registered and no person whose name last appears as an owner of record on a recorded deed or instrument of conveyance. The trial court, therefore, properly concluded that it need not consider the language regarding an apparent or reputed owner in light of the existence of the actual registered or record owners.

[4] Even if we were to determine that trial court was required to consider the highlighted portion of the definition of "owner," Appellant offers no discussion of the requirements that must be established to be a "reputed" or "apparent" owner or "person in open, peaceable, and notorious possession" of the Property. *See* Section 102 of the Tax Sale Law.

Alternatively, Appellant argues that the trial court erred in overruling Appellant's objections because the Bureau failed to meet its burden to prove that the upset sale was conducted in conformity with the Tax Sale Law when it did not present any proof as to the identity of the registered or record owners of the Property.[5] Appellant contends that because there was no evidence that a registered or record owner of the Property existed, the trial court was required to apply the "in all other cases" portion of the definition of "owner" in Section 602 of the Tax Sale Law. As to lack of evidence of the identity of the owners of the Property, Appellant's argument is disingenuous. At the hearing, Attorney Scatton stipulated that "there was an agreement between … [Appellant] to purchase the property *from the property owners Mary Jane Restly and John Lewis Beckner*." (R.R. at 12a (emphasis added).) Appellant's argument, therefore, is without merit.

Appellant similarly argues that the trial court erred in overruling Appellant's objections because the Bureau failed to meet its burden to prove that the upset sale was conducted in conformity with the Tax Sale Law when it did not present any proof as to whether the Owners received notice. Appellant is correct that the stipulation does not address whether the Owners received notice. Appellant, however, did not object to the sale on the basis that the Owners did not receive notice, and an issue raised for the first time before this Court is waived. Pa. R.A.P. 302(a); *Fatzinger v. City of Allentown*, 591 A.2d 369 (Pa. Cmwlth. 1991), *appeal denied*, 529 Pa. 653, 602 A.2d 862 (1992). Moreover, we note that the Owners did not object on the basis that they did not receive notice.[6] Rather,

[5] In a tax sale case, the Bureau carries the burden of proving compliance with the statutory notice provisions. *Picknick v. Washington Cnty. Tax Claim Bureau*, 936 A.2d 1209 (Pa. Cmwlth. 2007.)

[6] We note that although the Owners are identified in the action as having filed the objections along with Appellant, they did not appear at the hearing.

Appellant, through counsel, represented to the trial court that he objected to the upset sale on the basis that *he* was an owner and had not received notice. As a non-owner, Appellant lacks standing to raise that issue. Section 607(a.1)(1) of the Tax Sale Law, added by the Act of July 10, 1980. P.L. 417, 72 P.S. § 5860.607(a.1)(1). Section 607(a.1)(1) provides that only "owners" may file objections or exceptions. For the reasons discussed above, Appellant's argument is both waived and without merit due to lack of standing.

Finally, Appellant contends that given the irregularities of the dual representation by Attorney Scatton, the principles of equitable estoppel should apply, particularly given that the taxes will still be paid if the upset sale is set aside and Appellant is permitted to purchase the Property. Appellant contends that due to the dual representation, the Bureau had constructive notice of the impending sale to Appellant, which somehow triggered an equitable requirement that the Bureau provide notice to Appellant. We disagree. First, Appellant failed to address the requirements for equitable estoppel in his brief to this Court. Second, Appellant does not point to any case law that supports his position that a prospective purchaser is entitled to notice, and we find no support in statutory language or case law, as discussed above. Third, the record is devoid of any evidence regarding Attorney Scatton's knowledge—*i.e.*, whether he realized that the Property was the subject of the tax sale and an upcoming closing. Even if we were inclined to impute knowledge to the Bureau, we could not do so in the absence of any evidence of Attorney Scatton's knowledge. Finally, for the reasons discussed above, Appellant lacks standing to file the subject objections. *See* Section 607(a.1)(1) of the Tax Sale Law.

For the reasons discussed above, we affirm the order of the trial court.

P. KEVIN BROBSON, Judge

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O R D E R

AND NOW, this 4th day of August, 2011, the order of the Court of Common Pleas of Bedford County is hereby AFFIRMED.

P. KEVIN BROBSON, Judge