

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Peter F. Smith	:	
	:	
v.	:	
	:	
Clearfield County Tax Claim Bureau	:	
	:	No. 843 C.D. 2009
Appeal of: Michael A. Rudella	:	Argued: December 8, 2009

BEFORE: HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge  
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: January 8, 2010

Michael Rudella (Rudella) appeals the April 3, 2009 order of the Court of Common Pleas of Clearfield County (trial court) granting Peter Smith's (Smith) motion for reconsideration, rescinding its January 12, 2009 order denying a petition to halt private sale, and granting Smith's October 12, 2008 petition to halt private sale of Tax Map No. 115-N05-000-00008MN. The issues in this case are: 1) whether the trial court erred in granting reconsideration and the petition to halt private sale when the matter of the private sale was on appeal to the Commonwealth Court, and 2) whether the court erred in granting the petition to halt private sale on the basis of failure to give proper notice. For the reasons that follow, we vacate and remand this matter to the trial court for further fact-finding.

Rudella submitted a private bid of \$200.00 on February 7, 2007 to purchase coal rights included on a property listed for tax sale, due to approximately

thirteen years of delinquent taxes. The property containing the coal rights, designated as Map No. 115-N05-000-00008MN, consisted of 100 acres of coal rights in Goshen Township, and was owned by Smith Coal Company. Despite several public sales, the rights remained unpurchased. On June 29, 2007, the Clearfield County Tax Claim Bureau (Tax Bureau) accepted Rudella's private bid, and, as required by statute, published an advertisement of the bid in the Clearfield Progress and the Clearfield County Legal Journal on two separate occasions. The advertisements correctly listed the property as Map No. 115-N05-000-00008MN. Notices were also mailed to the interested parties, including the Smith Coal Company, the Clearfield County Commissioners, the Clearfield Area School District, the Goshen Township Supervisors, and Rudella. The notices, however, designated the property as Map No. 115-N06-000-00008MN.

On November 14, 2007, Smith, who is a shareholder in the Smith Coal Company, filed a petition to disapprove the private sale. The trial court issued an order on November 13, 2007 disapproving the private sale to Rudella, and ordering the Tax Bureau to conduct an auction-style sale between Smith and Rudella. Rudella filed a motion to rescind the court order and a motion to disqualify bidder, requesting a hearing on the disapproval of the private sale, and asking the trial court to determine that Smith was not qualified to bid at the auction-style sale pursuant to Sections 618 and 619 of the Real Estate Tax Sale Law (Tax Sale Law)<sup>1</sup> because he was the owner of the property. Smith filed an answer to Rudella's motion wherein he admitted that he was ineligible to participate in the auction-style sale pursuant to Section 618 of the Tax Sale Law. On February 25, 2008, Rudella filed a motion for judgment on the

---

<sup>1</sup> Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. §§ 5860.101-5860.803. Section 618 was added by Act of July 3, 1986, P.L. 351, 72 P.S. § 5860.618. Section 619 was added by Act of January 29, 1998, P.L. 24, 72 P.S. § 5860.619.

pleadings relative to his motion to disqualify bidder. At argument before the trial court on March 3, 2008, Smith changed his position and claimed that he may have the right to bid at an auction-style sale.

Following the hearing and the submission of briefs, the trial court found in favor of Rudella, granting his motion to disqualify Smith as a bidder and identifying Rudella as the only remaining party qualified to buy the property for an amount equal to the upset value as of the date of purchase, plus costs. Smith appealed to this Court on May 22, 2008. On June 17, 2009, this Court affirmed the trial court's decision (1580 C.D. 2008), and Smith petitioned for allowance to appeal to the Supreme Court. The Supreme Court denied Smith's petition for allowance on December 2, 2009 (330 W.A.L. 2009).

Subsequent to his May 22, 2008 appeal to this Court, but prior to our June 17, 2009 order, Smith received a notice of delinquent taxes on the property with Map No. 115-N05-000-00008MN, which is apparently the normal course of action in situations where no final action has been taken on a property. On September 3, 2008, Smith attempted to pay the delinquent tax amount of \$2,201.11, but the Tax Bureau refused to accept the payment, claiming that the notice pertained to the property at issue in a Commonwealth Court appeal. Smith then filed a petition to halt private sale on October 10, 2008, claiming that he was trying to pay delinquent taxes on the property with Map No. 115-N05-000-00008MN, while the property at issue before this Court was Map No. 115-N06-000-00008MN. The trial court held a hearing on November 19, 2008, and subsequently denied Smith's petition to halt private sale on January 12, 2009. Smith timely filed a motion for reconsideration. On April 3, 2009, the trial court granted Smith's motion for reconsideration, rescinded its January 12,

2009 order, and granted Smith's petition to halt private sale. Rudella timely appealed to this Court.<sup>2</sup>

Rudella argues that the trial court did not have subject matter jurisdiction to hear the October 10, 2008 petition to halt private sale because an appeal had already been filed with the Commonwealth Court related to the same property. Rudella also argues that, even if the trial court had subject matter jurisdiction, there was no private sale pending. Finally, he contends that the property at issue in the present appeal is the same property at issue in the previous appeal, so Smith did receive notice.

The trial court, in the present case, made no findings as to: 1) whether the property in the present appeal was the same property at issue in the previous appeal, thereby establishing subject matter jurisdiction or lack thereof;<sup>3</sup> 2) whether Smith may have had actual notice despite the typographical error; and 3) how a finding of defective notice would affect its November 13, 2007 ruling disapproving the private sale and establishing an auction-style sale for which Rudella was the only eligible bidder. Without clarification of these issues, this Court cannot properly resolve this matter.<sup>4</sup>

---

<sup>2</sup> The appellate "standard of review in a tax sale case is limited to determining whether the trial court abused its discretion, rendered a decision lacking supporting evidence, or clearly erred as a matter of law." *Santarelli Real Estate, Inc. v. Tax Claim Bureau of Lackawanna County*, 867 A.2d 717, 721 (Pa. Cmwlth. 2005).

<sup>3</sup> In general, except as otherwise prescribed in the Rules of Appellate Procedure, "after an appeal is taken . . . the trial court . . . may no longer proceed further in the matter." Pa.R.A.P. 1701(a). *See also Corace v. Balint*, 418 Pa. 262, 210 A.2d 882 (1965); *Commonwealth v. Reading Group Two Props., Inc.*, 922 A.2d 1029 (Pa. Cmwlth. 2007).

<sup>4</sup> The trial court's April 3, 2009 order granting Smith's motion for reconsideration appears to be untimely. The trial court initially denied the motion to halt private sale on January 12, 2009. Smith filed a timely motion for reconsideration on which the trial court had 30 days to act. *See Pa.R.A.P. 1701(b)(3)(ii)*. Since the trial court failed to enter a timely order expressly granting reconsideration, the power to grant reconsideration was lost and the application for reconsideration

For these reasons, we vacate the trial court's April 3, 2009 order, and remand the matter to the trial court for further findings of fact and conclusions of law in accordance with this opinion.

---

JOHNNY J. BUTLER, Judge

---

was technically null. *See* G. Ronald Darlington et al., *Pennsylvania Appellate Practice* § 1701:23 (2008-2009 ed. 2008). However, since neither party raised this issue, and there exists a question of due process for which this matter is being remanded, we make no determination at this time concerning the apparent untimeliness of the April 3, 2009 order.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Peter F. Smith :  
 :  
 v. :  
 :  
 Clearfield County Tax Claim Bureau :  
 : No. 843 C.D. 2009  
 Appeal of: Michael A. Rudella :

ORDER

AND NOW, this 8<sup>th</sup> day of January, 2010, the April 3, 2009 order of the Court of Common Pleas of Clearfield County is vacated and remanded for further fact-finding in accordance with this opinion.

Jurisdiction relinquished.

---

JOHNNY J. BUTLER, Judge