

[J-25-2013]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

GERALD W. HORTON AND SUSAN M. HORTON, HUSBAND AND WIFE	: No. 33 WAP 2012 : : Appeal from the Order of the : Commonwealth Court entered May 21, : 2012 at No. 75 CD 2011, affirming the : Order of the Court of Common Pleas of : Washington County dated December 29, : 2010 at No. 2009-10264. : : ARGUED: April 9, 2013 : :
v.	
WASHINGTON COUNTY TAX CLAIM BUREAU AND E.D. LEWIS	: : :
APPEAL OF: E.D. LEWIS	: : :

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: DECEMBER 16, 2013

Prospectively, I believe “proof of mailing” is limited to documents (receipts, certificates, etc.) issued by the post office, showing mailing of the notice to the property owner by first class mail, to his/her address, on a specific date. Given the difficulties in defining “proof of mailing,” and the somewhat unique facts of this case, however, I would not apply this stricter definition of the term retroactively. Thus, I join the reasoning of the dissent, but the result of the majority.

I cannot join the majority’s broad interpretation of “proof of mailing,” which, in my opinion, does not comport with established practice and opens the door to unwarranted results. An envelope alone is not what the statute calls for. I agree with Justice Baer, that “proof of mailing” refers to postal service acknowledgement the matter was placed in the mail. I agree this proof is not limited to a denominated USPS Form, but encompasses whatever document the postal service provides to document the mailing.

These services record the pertinent information and provide documentary evidence the statutory requirements were met. What form the postal service uses as a receipt seems immaterial and is not denominated by the statute as a required element. A review of the relevant provisions also suggests the legislature, in connection with the second notice under § 602(e)(2), did not require any specific mailing service, but instead, any of the services that provide documentation of the information outlined above. Compare 72 P.S. § 5860.602(e)(1) (delineating specific mailing services), with id., § 602(e)(2) (requiring only “proof of mailing”).

Therefore, I do not believe the rules permit “proof of mailing” to be established by an envelope, which purportedly contained the required § 602(e)(2) notice, returned to the sender as undeliverable. The pertinent phrase in the statute is not talking about burden of proof — indeed, there must be proof of all the prerequisites to sale, not just this one — and does not say any means of proof that mailing occurred is sufficient. It requires “first class mail, proof of mailing,” and while this language does not quite rise to a clear term of art, the statute is manifestly referring to evidence from the postal service. Putting the “proof of mailing” directly adjacent to the means of service (the postal service) certainly contemplates a document from the postal service, by whatever form number or title it chooses to designate it, which vouches for the mailing. Proof by non-postal service evidence is statutorily insufficient.