

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT W. FITZSIMMONS,	§
	§
Defendant Below-	§ No. 78, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
NEW CASTLE COUNTY,	§ in and for New Castle County
a political subdivision of the State of	§ C.A. No. 02T-09-005 MON 353
Delaware,	§
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 6, 2003
Decided: July 7, 2003

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 7th day of July 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Robert W. Fitzsimmons, filed an appeal from the Superior Court's bench ruling on January 17, 2003 denying his motion to set aside a sheriff's sale. We find no merit to the appeal. Accordingly, we affirm.

(2) Fitzsimmons was the owner of property located at 3811 Old Capitol Trail, New Castle County, Delaware. During the years 1998 through 2002, Fitzsimmons failed to pay property and school taxes levied by New

Castle County and incurred a tax obligation of almost \$3,000. On September 12, 2002, the County filed a tax monition action against Fitzsimmons in the Superior Court.¹ After judgment was entered against Fitzsimmons, the County took action to execute on the judgment.² Fitzsimmons' property was scheduled to be sold at a sheriff's sale on December 10, 2002.

(3) On the morning of the sheriff's sale, Fitzsimmons handed to the County attorney a number of documents that purportedly assigned to the County an interest in U.C.C. financing statements in the amount of the tax obligation. The County attorney informed Fitzsimmons that the purported assignment did not satisfy his tax obligation and declined to stay the scheduled sheriff's sale. The sale proceeded and the property was sold to the highest bidder for \$10,000. On January 2, 2003, Fitzsimmons filed a motion to set aside the sheriff's sale,³ which the Superior Court denied following a hearing.

(4) In this appeal, Fitzsimmons claims that: a) the County should have accepted the assignment of the U.C.C. financing statements as payment of his outstanding tax obligation; b) his tax obligation to the County is unenforceable; and c) it was impossible for him to discharge his debt to the County through the payment of federal reserve notes (that is, currency). He requests that the sale of the property be set aside, the assignment of the U.C.C. financing statements

¹DEL. CODE ANN. tit. 9, §§ 8721-8733.

²DEL. CODE ANN. tit. 9, § 8725.

³SUPER. CT. CIV. R. 69(d).

be accepted as payment in full of his tax obligation or, in the alternative, that he receive restitution in the amount of the value of the house and all past taxes paid.⁴

(5) This Court applies a deferential standard of review to the Superior Court's determination to deny a motion to set aside a sheriff's sale and such a determination will be set aside only in a case of abuse of discretion.⁵ This Court reviews de novo the Superior Court's application of the law.⁶

(6) A defendant in a tax monition action may avoid a sheriff's sale of his property only upon a showing that "the judgment for the taxes . . . is paid" within 20 days after the posting of the monition.⁷ Fitzsimmons has failed to articulate any reasonable basis for his claims that the documents he provided to the County attorney on the morning of the sheriff's sale served as payment of his tax obligation, that his tax obligation to the County is unenforceable, or that federal reserve notes are not a valid means to pay his tax obligation. The record clearly supports the County's position that Fitzsimmons owed taxes to the County and that he failed to pay those taxes, rendering his property subject to the monition proceedings undertaken by the County. Under these

⁴Fitzsimmons also complains that, at the hearing on his motion, the Superior Court judge admitted to not having her glasses and not reviewing each and every page of the materials he had submitted.

⁵*Deibler v. Atlantic Properties, Inc.*, 652 A.2d 553, 558-59 (Del. 1995), cert. denied 516 U.S. 809 (1995).

⁶*Brooks v. Johnson*, 560 A.2d 1001, 1002-03 (Del. 1989).

⁷DEL. CODE ANN. tit. 9, § 8723.

circumstances, we find no error of law or abuse of discretion on the part of the Superior Court in refusing to set aside the sheriff's sale.⁸

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁸Nor, having reviewed the transcript of the hearing on his motion, do we find any abuse of discretion by the Superior Court in reviewing Fitzsimmons' claims prior to issuing its bench ruling.