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IN THE COURT OF APPEALS OF INDIANA

M. DOED, LLC,

Appellant-Petitioner,

vs.

MARLAN B. HARRIS and MARY ESTHER HARRIS,

Appellees-Respondents.

No. 18A02-0703-CV-212

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Joel D. Roberts, Special Judge
Cause Nos. 18C05-0510-MI-81 & 18C05-0409-MI-70

November 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Petitioner M. Doed, LLC, ("Doed") appeals the denial of its petition to issue a tax deed based on a tax sale of property owned by the Appellees-Respondents Marlan B. and Mary Esther Harris ("Harrises"). We affirm.

Issue

Doed raises the issue of whether the trial court's denial of his petition to issue a tax deed was clearly erroneous.

Facts and Procedural History

In 1971, the Harrises purchased the property located at 8505 West Riverview Court ("the Property") in Yorktown, Indiana. The Harrises also own other residential rental properties in Delaware County. The Harrises reside out-of-state and frequently travel due to Marlan Harris's occupation. To coordinate paying the property taxes on the parcels, the Harrises provided money to their daughter, Milana Sparks ("Sparks"), who received the property tax statements at her home address in Parker City, Indiana.

The Harrises had entered into a contract to sell the Property, which Sandy and Gary Barton ("Bartons") took over in 2002. The contract required the purchasers to pay the real estate taxes but the tax statement was still sent to Sparks. According to the Property Record Search obtained by the Harrises, there is no record of a contract to sell the property to the Bartons.

In 2002, the Delaware County Auditor's records indicated Sparks's address as the mailing address for the property tax statements. Within the following year, the address was changed to that of the Property, 8505 West Riverview Court. The Harrises had not requested

or authorized anyone to change the mailing address for the property tax statements. The Tax Sale Clerk for Delaware County later testified that she was not aware how the address was changed.

On July 1, 2004, the Property appeared on the Delaware County's delinquent tax list due to the previous four tax bills being unpaid. Pursuant to Indiana Code Section 6-1.1-24-4, the Delaware County Auditor sent by certified mail a notice of the tax sale addressed to the Harrises at the address of the Property. As indicated by her signature on the return receipt, Sandy Barton signed for the notice letter on August 24, 2004. Marlan Harris testified that the Bartons did not inform him of the tax sale notice and that he had no knowledge of the delivery of such notice. The Property was subsequently sold to Doed at a tax sale on October 12, 2004.

In accordance with Indiana Code Section 6-1.1-25-4.5, Doed mailed notices of the tax sale to the Harrises at the Property address, and the notices were returned unopened with the notation of "Addressee Unknown." Petitioner's Exhibits 1, 2. In October of 2005, Doed filed and mailed notices of his petition for issuance of tax deed to the Harrises at the same address, and the notices were returned as "Not Deliverable Unable to Forward." Petitioner's Exhibits 3, 4. On November 30, 2005, after receiving a notice of termination of insurance for the Property, the Harrises filed their Answer in General Denial and Objection to Petition for Deed.

A bench trial was held on June 26, 2006. In denying Doed's petition to issue a tax deed, the trial court concluded that the process of the impending tax sale was fundamentally flawed by virtue of the fact that the notices were not sent to the address last provided by the

Harrises to the Delaware County Auditor. This appeal ensued.

Discussion and Decision

I. Standard of Review

The trial court *sua sponte* entered findings of fact and conclusions of law. *Sua sponte* findings control only as to the issues they cover. Whalen v. M. Doed, LLC, 859 N.E.2d 368, 371 (Ind. Ct. App. 2006), trans. denied. When a trial court has made findings of fact, we review the sufficiency of the evidence using a two-step process. Id. at 372. First, we must determine whether the evidence supports the trial court's findings of fact. Id. Second, we must determine whether those findings of fact support the trial court's conclusions of law. Id. We will set aside findings only if they are clearly erroneous. Id. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. Id. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. Id.

In applying this standard, we neither reweigh the evidence nor judge the credibility of the witnesses. Id. Rather, we consider the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id. In order to determine that a finding or conclusion is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made. Yannof v. Muncy, 688 N.E.2d 1259, 1262 (Ind. 1997). Because Doed appeals from a negative judgment, it must demonstrate that the trial court's judgment is contrary to law. Bridgeforth v. Thornton, 847 N.E.2d 1015, 1028 (Ind. Ct. App. 2006). A judgment is contrary to law only if the evidence in the record, along with all reasonable inferences, is without conflict and leads unerringly to a conclusion

opposite that reached by the trial court. Id.

II. Analysis

On appeal, the findings of fact are not in dispute. Rather, Doed only challenges the trial court's conclusion that the lack of actual notice to Harris made the sale fundamentally flawed. If an owner of real estate fails to pay the property taxes, the property may be sold to satisfy the tax obligation. Ind. Code § 6-1.1-24-1.2; See Schaefer v. Kumar, 804 N.E.2d 184, 191 (Ind. Ct. App. 2004), trans. denied. The tax sale process is a purely statutory creation and requires material compliance with each step of the governing statutes, Ind. Code §§ 6-1.1-24-1 through -14 (sale) and 6-1.1-25-1 through -19 (redemption and tax deeds). Id. The procedural requirements include three notices to be sent to the owner(s) of the property. See Ind. Code §§ 6-1.1-24-4 (notice of tax sale), 6-1.1-25-4.5 (notice of the right of redemption), and 6-1.1-25-4.6 (notice of petition for tax deed). For a tax sale purchaser to be entitled to the tax deed, these notices required by statute must be in substantial compliance with the requirements prescribed in the three sections. Ind. Code § 6-1.1-25-4.5; See Schaefer, 804 N.E.2d at 191 (Title conveyed by a tax deed may be defeated if the notices were not in substantial compliance with the statute.).

On appeal, Doed argues that the statutory notice requirements were substantially complied with and therefore the trial court erred as a matter of law in denying its petition to issue a tax deed. Before a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner "notice and opportunity for hearing appropriate to the nature of the case." Jones v. Flowers, 547 U.S. 220, 223 (2006) (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S.

306, 313 (1950)). Due process does not require that a property owner receive actual notice before the government may take his property. Id. at 226. Rather, due process requires the government to provide notice reasonably calculated under the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Id. "Notice is constitutionally adequate when 'the practicalities and the peculiarities of the case . . . are reasonably met.'" Tax Certificate Inv., Inc. v. Smethers, 714 N.E.2d 131, 134 (Ind. 1999) (quoting Mullane, 339 U.S. at 314-315).

Indiana Code Section 6-1.1-24-4 requires:

> (a) Not less than twenty-one (21) days before the earliest date on which the application for judgment and order for sale of real property eligible for sale may be made, the county auditor shall send a notice of the sale by certified mail, return receipt requested, to:
>
> (1) the owner of record of real property with a single owner; or
> (2) at least one (1) of the owners, as of the date of certification, of real property with multiple owners;
>
> at the last address of the owner for the property as indicated in the records of the county auditor on the date that the tax sale list is certified.

The Delaware County Auditor did just that. A notice was sent to the Harrises by certified mail with a return receipt to the last address of the property owner as indicated by the auditor's records, which was the address of the Property. As demonstrated by the evidence, the peculiarity of this case is that this address was not provided or authorized by the Harrises to be the tax bill address. Norma Wheeldon, a Tax Sale Clerk in the Delaware County Auditor's Office, testified that the tax bill address was changed between the years 2002 and 2003, but that she did not have any knowledge as to how it was changed. Marlan

Harris testified that he did not request, authorize, or have knowledge of the change of the tax bill address. He also testified that he did not receive any notices regarding the delinquent tax status of the Property and did not learn of the issue until receiving notification that the insurance on the Property had been cancelled, which occurred after Doed filed its petition. Based on these circumstances, the notice of the tax sale was not reasonably calculated to apprise the Harrises of the pendency of the action. Therefore, we affirm the trial court's denial of Doed's petition to issue a tax deed.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.