

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001039-MR

HAZEL ENTERPRISES, LLC

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE GEORGE W. DAVIS, III, JUDGE
ACTION NO. 15-CI-00904

ELBERT R. BALDRIDGE;
TERESA BALDRIDGE;
CITY OF ASHLAND, KENTUCKY;
COUNTY OF BOYD, KENTUCKY

APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** * ** * **

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND D. LAMBERT, JUDGES.

LAMBERT, D., JUDGE: Hazel Enterprises, LLC (“Hazel”) brings this appeal from a summary judgment entered by the Boyd Circuit Court, which limits Hazel’s recoverable damages. Hazel asks the Court to examine whether the trial court erred in failing to award it litigation attorney fees and interest. Having reviewed

the record, we must conclude that the trial court properly denied litigation attorney fees, but improperly denied the full measure of interest to which Hazel was entitled. Consequently, we affirm in part the judgment of the circuit court, and reverse in part, remanding the matter for further proceedings.

I. FACTUAL AND PROCEDURAL HISTORY

Hazel engages in the business of purchasing tax delinquency certificates and collecting the money owed by delinquent taxpayers. On September 26, 2012, Hazel purchased one such certificate representing a 2004 tax lien encumbering real property owned by the Appellees, Elbert Baldrige and his wife, Teresa Baldrige. Hazel mailed out the “45-day notice letter” required by KRS 134.490(2) on October 26, 2012. Hazel received no response from the Baldridges, and on December 17, 2015, filed a complaint to enforce the lien.

Hazel’s complaint sought to recover the following: the purchase price of the certificate (\$157.22), interest at 12% dating back to September 26, 2012, an administrative fee (\$115.00), and pre-litigation attorney fees (\$157.22). The record indicates the Baldridges were served with the complaint on December 21, 2015. That same day, the Baldridges mailed a payment to Hazel in the amount of \$429.42.¹ Hazel admitted in its responses to the Baldridges’ written discovery

¹ Though the Appellees argue as if this amount reflected a full satisfaction of the amounts sought in the complaint, simple arithmetic reveals that Hazel sought \$492.44 in the complaint. The tendered amount fell short by two cents.

requests that it had rejected this payment because it did not include any interest, litigation attorney fees, or court costs.

The parties proceeded to litigate the matter. The Baldridges moved for summary judgment on May 5, 2016, arguing that Hazel was entitled to recover only those amounts sought in the complaint, plus court costs. Hazel filed a written response to the motion, arguing its statutory entitlement to litigation attorney fees, yet curiously did not file any documentation reflecting attorney fees expended in litigation (nor had Hazel filed any such documentation at any prior point in the litigation).

The trial court granted the motion, awarding Hazel judgment in the amount of \$688.72, the amount sought in the complaint plus court costs. The trial court limited the amount of interest Hazel could recover to the amount that had already accrued at the time the Baldridges made their tender of payment. The trial court, however, cited no authority for doing so.

Hazel did not file a motion to alter, amend, or vacate, that judgment, and instead immediately filed its notice of appeal.

II. ANALYSIS

A. STANDARD OF REVIEW

Appellate review of a summary judgment involves purely issues of law, *i.e.*, whether the record presents unresolved issues of fact and whether it would be “impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor[.]” *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). The standard of review is *de novo*, in that a reviewing court owes no deference to the trial court’s legal conclusions. *Blevins v. Moran*, 12 S.W.3d 698 (Ky. App. 2000).

B. THE TRIAL COURT ERRED IN RESTRICTING HAZEL’S RECOVERY OF INTEREST

Though the trial court cited no authority for doing so, the Baldridges cite several cases they contend justify the trial court’s refusal to allow interest after the tender offer.² However, each of these cases were decided before the enactment of the provisions of KRS Chapter 134 relating to third-party purchasers of delinquency certificates, and before this Court’s decision in *Hazel Enterprises, LLC v. Mitchuson*, 524 S.W.3d 495 (Ky. App. 2017). The statute that describes calculation of interest on tax delinquency certificates provides:

(1) A certificate of delinquency or personal property certificate of delinquency shall bear simple interest at twelve percent (12%) per annum. Interest shall initially

² *Harrodsburg Water Co. v. City of Harrodsburg*, 89 S.W. 729 (Ky. 1905); *Mullins v. Nat’l Casualty Co.*, 117 S.W.2d 928 (Ky. 1938); *Greenwade v. Williams*, 281 S.W.2d 707 (Ky. 1955), *overruled on other grounds by Commonwealth, Dep’t of Highways v. Barker*, 379 S.W.2d 481 (Ky. 1964); *Jones v. New Indep. Tobacco Warehouse*, 305 S.W.2d 918 (Ky. 1957).

be calculated based on the base amount established by KRS 134.122(2)(d). Interest shall be calculated in subsequent months on the outstanding balance of the base amount until paid. A fraction of a month shall be counted as an entire month.

(2) If a certificate of delinquency is paid by a third-party purchaser, the amount paid by the third-party purchaser shall become the base amount upon which simple interest is initially calculated. Interest shall be calculated in subsequent months on the outstanding balance of the base amount until paid.

KRS 134.125. The provisions of KRS 134.452 specifically name “interest” as an amount the third-party purchaser of a delinquency certificate “shall be entitled to collect.” KRS 134.452(1)(b). It also notes that interest is accumulated from the date of purchase of the certificate and continues “until paid.” *Id.* As the *Mitchuson* Court reasoned:

In contrast to the post-judgment interest statute, no such discretionary language exists within KRS 134.452 which would permit a trial court to reduce or deny an award of interest accruing from a certificate of delinquency. The mandatory language of KRS 134.452 compelled the trial court in this case to award Hazel interest, at a rate of twelve percent per annum, accruing from the date Hazel purchased the certificate and through the trial court's May 8, 2015, order. Though the trial court apparently wished—perhaps rightfully—to affix interest based upon the facts and equities of this case, the statute simply did not permit such consideration. The plain language of KRS 134.452(1) demands an award of interest at the rate and for the duration prescribed therein and in KRS 134.125.

Mitchuson, 524 S.W.3d at 499.

Given the factual and legal circumstances here conform nearly identically to those present in *Mitchuson*, we must similarly conclude the trial court erred in awarding Hazel interest only up to December 21, 2015.

C. THE TRIAL COURT PROPERLY HELD THAT HAZEL WAS NOT ENTITLED TO LITIGATION ATTORNEY FEES

Hazel argues that the portion of the judgment which awards no litigation attorney fees improperly designated the fees awarded for the filing of the complaint as pre-litigation under KRS 134.452(1)(c) and (3)(a). For this reason, Hazel contends, the trial court improperly awarded summary judgment.

We again refer to *Mitchuson*, as its facts are so strikingly similar to ours. “KRS 134.452(3) does not automatically bestow upon a third-party purchaser whatever fees and costs it claims. The express language of the statute requires that fees asserted must be for actual work performed and that work must be documented to the court.” *Mitchuson*, 524 S.W.3d at 500 (citations and quotations omitted).

Hazel, in *Mitchuson*, presented a stronger argument than it did in this action. In *Mitchuson*, Hazel filed an affidavit, which the trial court described as lacking in clarity in documenting Hazel’s attorney fees. In this case, Hazel failed to provide even an unclear affidavit of the kind noted in *Mitchuson*. The record contains no documentation whatsoever relating to Hazel’s litigation attorney fees.

The failure to produce *any* documentation called for by KRS 134.452(3) doomed Hazel's efforts to recover litigation attorney fees, not the label the trial court applied to the attorney fees incurred in preparing and filing the complaint. Any alleged error stemming from that mislabeling is of no legal consequence in this appeal.

Considering the complete lack of evidence produced by Hazel on this issue, we cannot conclude that the trial erred in awarding Hazel no litigation attorney fees.

III. CONCLUSION

The trial court acted appropriately in denying Hazel's unsupported demand for litigation attorney fees. We accordingly affirm the trial court on this issue.

However, KRS 134.452(1)(b) unquestionably allows third party purchasers to recover pre-judgment interest from the time of the purchase of the certificate "until paid." Consequently, we reverse the trial court's judgment on this issue and remand to the Boyd Circuit Court for a recalculation of the interest to which Hazel is entitled.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert Alan Pritchard, Jr.
Memphis, Tennessee

BRIEF FOR APPELLEES:

Daniel Luke Vincent
Ashland, Kentucky

Andrew Wheeler
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