

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 0416

ADAIR ASSETS MANAGEMENT, LLC
D/B/A ADAIR ASSET MANAGEMENT, LLC

VERSUS

CLAUDE LEE PORTER, ET AL

C/W

2016 CA 0417

ERVIN & PAULETTE LABOSTRIE
AND CLAUDE PORTER

VERSUS

ADAIR ASSETS MANAGEMENT, LLC

DATE OF JUDGMENT: DEC 22 2016

ON APPEAL FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT
NUMBER 72375-A, PARISH OF IBERVILLE
STATE OF LOUISIANA

HONORABLE JAMES J. BEST, JUDGE

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Adair Assets Management, LLC
d/b/a Adair Asset Management, LLC

Paulette Porter LaBostrie
Geismar, Louisiana

Counsel for Defendants-Appellees
Claude Porter, Ervin LaBostrie, Jr.,
and Paulette Porter LaBostrie

BEFORE: HIGGINBOTHAM, THERIOT, AND CHUTZ, JJ.

Disposition: VACATED AND REMANDED.

TMH
AMT
J

CHUTZ, J.

Defendants-appellants, Claude Porter, Ervin LaBostrie, Jr., and Paulette Porter LaBostrie¹ (collectively defendants),² appeal the trial court's judgment rendering confirmation of a default judgment, which quieted the tax sale title of plaintiff-appellee, Adair Assets Management, LLC (Adair), free from any encumbrances against immovable property located in Iberville Parish. The judgment also assessed attorney fees and costs associated with earlier proceedings as well as that of the default judgment confirmation against defendants. We vacate and remand.

FACTUAL AND PROCEDURAL BACKGROUND

Adair instituted this litigation on February 27, 2013, by filing a petition to quiet tax sale title, averring entitlement to judgment recognizing Adair as the owner of a 100% interest in immovable property located in Iberville Parish.³ Adair attached to its petition a certified copy of the tax sale certificate, indicating it had acquired the tax sale title for the subject property on June 12, 2009, after the ad valorem taxes for 2008 were not paid. Alleging more than three years had elapsed from the date the tax deed was recorded and that no one had redeemed the tax sale, Adair sought a judgment decreeing that defendants had no further interests in the subject property. Adair also sought cancellation of all encumbrances, judgments, liens, and mortgages secured on or against the subject property relative to defendants.

¹ Mrs. LaBostrie, who is a Louisiana attorney, represented defendants throughout these proceedings.

² Ervin Alcee LaBostrie, III, who is the son of Mr. and Mrs. LaBostrie, and the City of St. Gabriel were named as additional defendants with interests in the property. These defendants are not parties to this appeal and we do not include them in our reference to defendants. Although Mrs. LaBostrie has subsequently undertaken representation of her son, she was not entered as counsel of record until after rendition of the appealed judgment.

³ The property is described in part as "One (1) certain lot or parcel of ground, together with all buildings and improvements thereon, situated in the Parish of Iberville, State of Louisiana, being designated as LOT SEVENTEEN (17), LANDS OF LEBLANC BROTHERS AND IBERVILLE SCHOOL BOARD AT ST. GABRIEL, LOUISIANA," and is located on land fronted by La. Highway 74.

On August 14, 2013, defendants filed a petition to annul the tax sale. In a subsequent amendment to their petition, defendants clearly alleged that they were not provided with notice of the tax sale as required by law. Thus, they maintained, they were entitled to have the tax sale annulled.

After the two matters were consolidated, Adair filed a motion to compel discovery. A hearing was held on April 1, 2015, on the motion for which defendants failed to appear. On April 21, 2015, the trial court issued an order, directing defendants to respond to outstanding discovery requests. Defendants filed a motion for new trial, urging that they had not been served notice of the April 1, 2015 hearing. After a hearing, held on June 30, 2015, the trial court denied the motion for new trial and imposed sanctions against defendants for their failure to comply with the April 21, 2015 court order. The trial court's sanctions included rendition of a judgment of default against defendants; holding Mrs. LaBostrie in contempt of court; and assessment of attorney fees and costs of \$3,080.00 for the motion to compel and the motion for new trial against Mrs. LaBostrie. The trial court also ordered entry of a preliminary default in favor of Adair and that the parties return on October 6, 2015 for Adair to present a prima facie case in support of the default judgment. A judgment in conformity with the trial court's rulings was signed on July 20, 2015.

Although defendants were served in open court at the June 20, 2015 hearing, they failed to appear at the October 6, 2016 confirmation hearing. The trial court granted a confirmation of the default judgment, quieting Adair's tax sale title and recognizing Adair as the owner of an undivided 100% interest in the subject property. The trial court's judgment also ordered the Clerk of Court for Iberville Parish to cancel and remove all inscriptions held by mortgages and judgment holders against the immovable property. Amounts owed to Adair as costs and attorney fees imposed against Mrs. LaBostrie in earlier proceedings as well as the costs associated

with the confirmation of the default judgment were assessed against all defendants. Defendants appeal.

DISCUSSION

If a party or an officer fails to obey an order to provide discovery, the court may make such orders in regard to the failure as are just, including rendition of a judgment of default against the disobedient party. La. C.C.P. art. 1471A(3). Nevertheless, relying on La. C.C.P. arts. 1701-1703, setting forth the procedure for a default judgment, this court has held that proof of a prima facie case must be made before a judgment by default can be rendered and signed by a judge under La. C.C.P. art. 1471. See *Clark v. Clark*, 358 So. 2d 658, 659 (La. App. 1st Cir. 1978).

Defendants appealed the July 20, 2015 judgment which denied their motion for new trial, imposed sanctions, assessed attorney fees and costs against Mrs. LaBostrie, and entered a preliminary default in favor of Adair. In an unpublished opinion, also rendered this day, we vacated the July 20, 2015 judgment as an absolute nullity due to the lack of service on defendants of the order setting the motion to compel for a hearing. See *Adair Assets Management, LLC v. Porter*, 2016-0414 (La. App. 1st Cir. --/--/2016). Thus, the entry of the preliminary default under the circumstances of this case was an absolute nullity.

A final default judgment obtained without a valid preliminary default is an absolute nullity. See *Smith v. Drake Enterprises, Inc.*, 2012-0240 (La. App. 1st Cir. 11/2/12), 111 So.3d 366, 370 (citing *Livingston Parish Police Jury v. Patterson*, 589 So. 2d 9, 10 (La. App. 1st Cir. 1991)). Lacking a valid preliminary default, the October 27, 2015 judgment confirming a default judgment in favor of Adair is an absolute nullity.

Moreover, Adair failed to make a prima facie case of entitlement to have its tax sale title quieted against all defendants. While a certified copy of the tax sale certificate is prima facie evidence of the regularity of all matters regarding the tax

sale and the validity of the tax sale, see La. R.S. 47:2155B, the certified copy admitted into evidence fails to identify Mr. Porter's interest in the subject property.⁴ Therefore, Adair failed to establish a prima facie case of entitlement to quiet its tax sale title against defendants.

We also note that Adair relied solely on the allegations of its petition to establish the subject property was not redeemed within the three-year redemption period. See La. R.S. 47:2121C. The record is devoid that Mr. Porter was duly notified and that both the redemptive period and any right he held to assert a payment or redemption nullity under La. R.S. 47:2286 had terminated. See La. R.S. 47:2121B.

Lastly, the record establishes that the petition to annul the tax sale was filed by defendants well before the confirmation hearing. Thus, Adair was clearly on notice that defendants claimed proper pre-sale notice was not given. Defendants would have had the burden of proving defects in the tax adjudication proceeding. *Cressionnie v. Intrepid, Inc.*, 2003-1714 (La. App. 1st Cir. 5/14/04), 879 So.2d 736, 739. Although defendants did not offer any evidence at the confirmation hearing because they failed to appear, at the June 30, 2015 hearing, the trial court indicated that defendants would be precluded from offering any defense. But as a practical matter, a judgment quieting tax sale title in favor of Adair will not dispense with defendants' rights to pursue their petition to annul the tax sale based on a claim of a lack of pre-sale notice. See *Smitko v. Gulf South Shrimp, Inc.*, 2011-2566 (La. 7/2/12), 94 So.3d 750, 759. Thus, to obtain a default judgment sufficient to conclude

⁴ The certified copy of tax sale certificate Adair attached to its petition and offered as prima facie evidence identifies only the interest of "LABOSTRIE, ERVIN A JR &." Subsequent to rendition of the appealed judgment, Mr. and Mrs. LaBostrie filed an exception of no cause of action suggesting that as a matter of law they had no interest in the subject property and, therefore, were not entitled to pre-sale notice. Since the entry of the preliminary default was an absolute nullity for lack of service thereby rendering the confirmation of the default judgment an absolute nullity, we do not reach the issues of whether Adair has stated a claim to quiet title against Mr. and Mrs. LaBostrie and whether they have a right of action to annul the tax sale.

these consolidated lawsuits, it was incumbent on Adair to make a prima facie showing that those defendants entitled to pre-sale notice actually received that notice. While Adair offered interrogatory responses from the Iberville Sheriff indicating that proper notice had been provided to Mr. Porter, the address to which notice was sent was not made a part of the record.⁵ Therefore, Adair failed to establish the address to which notice of the tax sale was delivered such that we can review whether that notice was reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. See *Smitko*, 94 So.3d at 756 (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)).

DECREE

For these reasons, the October 6, 2015 judgment confirming a judgment of default and quieting a tax sale title in favor of Adair is vacated. The matter is remanded for further proceedings. Appeal costs are assessed against plaintiff-appellee, Adair Assets Management, LLC.

VACATED AND REMANDED.

⁵ The Sheriff's responses stated that proper notice had been sent to Mr. Porter and that Mr. and Mrs. LaBostrie were not entitled to notice. Another response indicated "See documents produced in response to Requests for Production served contemporaneously herewith," to the interrogatory, "Please state whether [Mr.] Porter's address was easily discernible from the record available to Iberville Sheriff department."