

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2020 CA 0409

VALERIE F. CARRIER

VERSUS

LARAMIE D. NYEKI

Judgment Rendered: **DEC 30 2020**

Appealed from the 21st Judicial District Court
In and for the Parish of Livingston
State of Louisiana
Docket No. 162877

The Honorable Robert H. Morrison, III, Judge Presiding

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Counsel for Plaintiff/Appellee
Valerie F. Carrier

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Counsel for Defendant/Appellant
Laramie D. Nyeki

BEFORE: GUIDRY, McCLENDON, AND LANIER, JJ.

WIL III
4/20/20
PMC 5/1/20
JMS

LANIER, J.

In this suit to quiet tax title, defendant, Laramie D. Nyeki, challenges the district court's dismissal of his motion to annul a prior judgment confirming and quieting the tax title of plaintiff, Valerie F. Carrier. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

In April 2019, Carrier filed a petition to quiet tax title to immovable property located at 27400 Fekete Road, Hammond, Louisiana ("the property"), for which she held a tax deed acquired during a 2009 tax sale in Livingston Parish.¹ Carrier noted that delinquent 2008 state taxes assessed in the name of Nyeki precipitated the tax sale. Carrier requested service on Nyeki at the Fekete Road address, but included specific service instructions, including a description of where the residence was located and service in an unmarked vehicle with a deputy not in uniform. The petition is stamped with the following: "Service as Requested 4/11/19 Trish Robbins."²

With regard to post-sale notice, attached to Carrier's petition were two notices of tax sale that Carrier attempted to send to Nyeki. Both notices were sent to Nyeki at the Fekete Road address via certified mail, return receipt requested. The July 5, 2009 notice came back marked "unclaimed" and "Return to Sender Not Deliverable as Addressed Unable to Forward." The June 11, 2013 notice came back marked "Return to Sender No Mail Receptacle Unable to Forward."

¹ The street address in the body of the petition is actually listed as "24700 Fekete Road." However, throughout the remainder of the record, the address is identified as "27400 Fekete Road."

² We note a discrepancy in the record with regard to the date of service. Although the petition reflects service on April 11, 2019, Carrier's motion and order for preliminary default contains the following statement: "[Nyeki] was served by Personal Service and citation of the Petition To Quiet Tax Title on April 15, 2019." Moreover, Nyeki stated in brief to this court that his first and only notice of the tax sale in this case was when he was served with the petition on April 15, 2019. Because the difference in the two dates does not change the outcome herein, we will use the April 15, 2019 date for service purposes.

After Nyeki failed to timely answer or file any responsive pleadings, preliminary default was entered on May 20, 2019, and, on May 24, 2019, Carrier filed for confirmation of said default judgment. The district court signed a judgment on July 1, 2019, confirming and quieting title on behalf of Carrier. According to the record, "Notice of Judgment" was sent to Carrier's counsel on July 2, 2019. No notice was issued or attempted to be issued to Nyeki.

On July 18, 2019, Nyeki filed a "Motion To Annul Judgment Or, Alternatively, For New Trial," arguing that the tax sale and subsequent tax deed issued to Carrier was the result of a clerical error by the Livingston Parish Tax Assessor ("the Assessor"). Thus, Nyeki argued, the tax sale was an absolute nullity and subject to cancellation.

In response, Carrier filed exceptions raising the objections of no right of action, peremption and/or prescription. Citing La. R.S. 47:2286 and the 2008 revision of Title 47, Carrier argued that an absolute nullity was no longer available as relief under Louisiana law and jurisprudence and that the redemption nullity was the only applicable grounds for nullity available to Nyeki. Carrier further argued that La. R.S. 47:2287 provided the time within which to file an action for redemption nullity and that because Nyeki's motion to annul was filed more than five years after the 2009 tax sale, it was prescribed.

Following a hearing on Carrier's exceptions, the district court rendered judgment on December 2, 2019, sustaining the prescription/peremption exceptions and dismissing, with prejudice, Nyeki's petition to annul the prior judgment confirming and quieting Carrier's title to the property. The district court offered the following written reasons for judgment:

This action was instituted by [Carrier] to quiet a tax title to property purchased at tax sale by [Carrier] in 2008. A default judgment was thereafter rendered on July 1, 2019. [Nyeki] has now filed the present action to annul the default judgment, contending that

the tax sale was due to a clerical error by the tax assessor, and should be set aside under the provisions of R.S. 47:1991.

[Carrier] has responded by filing exceptions of no right of action, prescription and peremption, contending that, under R.S. 47:2286, a tax sale may only be set aside for payment nullity, redemption nullity or any nullity provided under R.S. 47:2162, all of which are relative nullities. [Carrier] therefore contends that [Nyeki] does not have any grounds to challenge the sale as an absolute nullity, and that the applicable time periods for challenging a relative nullity under a tax sale have expired under the provisions of R.S. 47:2286 and 2287[.]

[Nyeki] claims that R.S. 47:2286 is not applicable to his claim that the sale occurred as a result of an assessment error, under R.S. 47:1991, and that the assessment error should be deemed an absolute nullity. The present case therefore would seem to involve a battle between seemingly competing, inconsistent statutes.

This Court determines that the issue presented is essentially dealt with in the case of Van Norden v. Martin, 149 So. 2d 684 (La.App. 1st Cir. 1963) writ refused, 244 La. 206, 151 So. 2d 494 (1963). In that decision, the Court ruled that under the provisions of the Constitution, incorporated in the present Constitution at Article VII, Sect. 25, the provisions of R.S. 47:1991, were preempted after five years, such not being an absolute nullity.

This Court has neither been provided nor found any authority to the contrary, and therefore will rule that the exceptions of prescription/peremption apply, such that the petition to annul the prior judgment will be dismissed, with prejudice.

This appeal by Nyeki followed, wherein he assigned the following specifications of error:

1. Appellant avers that the trial court erred in finding that Appellant is not entitled to annul the Tax Sale and Tax Deed, as there are competing statutory authorities relating to a party's ability to annul a tax sale, either by application of those remedies set forth in [La. R.S.] 47:2286, or utilization of those remedies set forth in [La. R.S.] 47:1991 and [La. R.S.] 35:351.

2. Appellant avers that the trial court erred in finding that Appellant is not entitled to annul the Tax Sale and Tax Deed because Appellant, even if the remedies set forth in [La. R.S.] 47:1991 and [La. R.S.] 35:351 are subject to the preemptive periods set forth in Article VII, Section 25 of the Louisiana Constitution of 1974, sought to set aside the Tax Sale and Tax Deed within six (6) months of Appellant receiving notice of the Tax Sale.

DISCUSSION

In support of his annulment proceeding, Nyeki submitted the affidavit of Wayne Mack, Chief Deputy for the Livingston Parish Tax Assessor's Office ("the Deputy Assessor"), who attested to the following. Based on his review of the 2007, 2008, and 2009 assessments of the property, the Deputy Assessor stated that the property was erroneously assessed in 2007 and 2008. According to the Deputy Assessor, the actual acreage of the property is 10.30 acres, yet in 2007 and 2008, the assessments erroneously listed the assessed acreage for the property at 20 acres.

The Deputy Assessor's review of the records further revealed that for the years preceding 2008, despite the erroneous utilization of 20 acres, the total assessed yearly taxes for the property never exceeded the homestead exemption, and no taxes were due by Nyeki. However, following a reassessment of the property for the 2008 tax year, and based on the property being erroneously assessed at 20 acres, the 2008 assessment exceeded the homestead exemption, and taxes were due in the amount of \$25.76. The property was sold at tax sale in 2009 for unpaid taxes. The Deputy Assessor further indicated that subsequent to the tax sale, the 2009 assessment was corrected to reflect the actual acreage of the property, 10.30 acres. The Deputy Assessor stated that if the property had been correctly assessed in 2008, the assessed amount of taxes would have been below the homestead exemption, no taxes would have been owed by Nyeki, and the property would not have gone to tax sale in 2009.

The cancellation of erroneous assessments is specifically provided for in Louisiana law. Pertinent hereto, La. R.S. 47:1991 provides as follows:

A. (1) Upon a statement of the facts made under oath, verified and approved by the assessor of the parish or district in which the property is situated, that the assessment is a clerical error, or an erroneous or double assessment, or that the property is exempt by the Louisiana Constitution from taxation, the affidavit being accompanied by the rendition made by the taxpayer on such property for the current year, where the affidavit explains the clerical error; shows in detail the

erroneous assessment; and shows the assessment number in the double assessment; the Tax Commission shall authorize and direct the collector to correct the assessment on the roll on file in his office. Additionally when such notification is issued, the Tax Commission shall authorize and direct the recorder of mortgages to change the inscription of the tax mortgage.

....

C. In case property erroneously assessed has been sold for taxes and adjudicated to a third party, the Tax Commission auditor shall authorize and direct the recorder of mortgages to cancel the sale.

Furthermore, La. R.S. 39:351 provides, in pertinent part:

The Tax Commission, upon determination and notification to the parish or district collector of taxes that an assessment has been corrected, shall authorize and direct the recorder of mortgages of the appropriate parish or parishes to change the inscription of the tax mortgage. If property erroneously assessed has been sold for taxes and adjudicated to a third party, the Tax Commission shall authorize and direct the recorder of mortgages to cancel the sale.

In sustaining Carrier's exceptions and dismissing Nyeki's motion to annul, the district court relied on the case of **Van Norden v. Martin**, 149 So.2d 684 (La. App. 1 Cir.), writ refused, 244 La. 206, 151 So.2d 494 (La. 1963). In **Van Norden**, the defendants argued that there was no remedy available to plaintiffs under La. R.S. 47:1991 because any defects that would have been subject to correction by that procedure were cured by the mandatory peremption provided by the Constitution. Citing the provisions of the 1921 Louisiana Constitution (which is now provided for in La. Const. art. 7, sec. 25(C) of the 1974 Constitution), this court concluded that any attack on the tax adjudication, on the grounds enumerated in La. R.S. 47:1991, was barred. **Van Norden**, 149 So.2d at 690.

Louisiana Constitution article 7, section 25(C) provides, in pertinent part:

Annulment. No sale of property for taxes shall be set aside for any cause, except on proof of payment of the taxes prior to the date of the sale, unless the proceeding to annul is instituted within six months after service of notice of sale. A notice of sale shall not be served until the final day for redemption has ended. It must be served within five years after the date of the recordation of the tax deed if no notice is given.

This court has held that under La. Const. art. 7, sec. 25(C), tax sales are subject to a five-year preemptive period after which certain irregularities of the sale can no longer be asserted. **Cressionnie v. Intrepid, Inc.**, 2003-1714 (La. App. 1 Cir. 5/14/04), 879 So.2d 736, 740. The **Cressionnie** ruling was based on the following holding by this court in **Catania v. Stuart**, 512 So.2d 1189, 1191 (La. App. 1 Cir.), writ denied, 508 So.2d 71 (La. 1987):

Under LSA-Const. art. 7, § 25, the only defense to a tax sale after the deed has been of record for a period of more than five years is proof of prior payment of the taxes for the year in which the property was adjudicated. **Gulf States Corp. v. Barberate**, 486 So.2d 843 (La. App. 1st Cir. 1986); **Jackson Title Corporation v. Swayne**, 411 So.2d 690 (La. App. 4th Cir. 1982). In a valid tax sale, irregularities, like want of notice to the record owner and failure of the tax collector to sell only a portion of the assessed property to pay the delinquent taxes, are cured by the five-year preemptive period. See **Thompson v. Walker**, 235 La. 132, 103 So.2d 65 (1958).

All redemptive periods provided in the Louisiana Constitution are preemptive. La. R.S. 47:2241. See also **Harris v. Estate of Fuller**, 532 So.2d 1367, 1371 (La. 1988). Preemption is a period of time fixed by law for the existence of a right. Unless timely exercised, the right is extinguished upon the expiration of the preemptive period. La. Civ. Code art. 3458. Preemption may not be renounced, interrupted, or suspended. La. Civ. Code art. 3461. Preemption differs from prescriptive periods in two respects: (1) the expiration of the preemptive time period destroys the cause of action itself; and (2) nothing may interfere with the running of a preemptive time period. **Naghi v. Brener**, 2008-2527 (La. 6/26/09), 17 So.3d 919, 926.

In the instant case, the record is clear that following the tax sale, the tax deed was recorded on June 17, 2009. Nyeki did not file the motion to annul the tax sale until July 18, 2019, well over five years after the recordation of the tax deed. Thus, under the plain language of La. Const. art. 7, sec. 25(C), Nyeki's action is barred. The district court was correct in sustaining the prescription/preemption

exceptions and dismissing Nyeki's motion to annul the prior judgment confirming the tax title of Carrier. Nyeki's arguments on appeal are without merit.

CONCLUSION

For the above and foregoing reasons, we affirm the district court's July 1, 2019 judgment, quieting Valerie F. Carrier's title, and the December 2, 2019 judgment, sustaining the exceptions and dismissing, with prejudice, Laramie D. Nyeki's motion to annul the July 1, 2019 judgment. We assess all costs associated with this appeal against appellant, Laramie D. Nyeki.

AFFIRMED.