

DA 22-0209

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 233N

CLARKSTON FIRE SERVICE AREA #6,

Plaintiff and Appellee,

v.

DAWN DAVIS LEMIEUX,

Defendant and Appellant,

and

STEVEN LEMIEUX and TRACY ELLEN SHAW,
and MONTANA COMMUNITIES ASSOCIATION,

Defendants.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DV-20-1382A
Honorable Peter B. Ohman, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Dawn Davis Lemieux, Self-Represented, Bozeman, Montana

For Appellee:

Jennifer Wendt Bordy, Attorney at Law, Butte, Montana

Submitted on Briefs: October 19, 2022
Decided: November 15, 2022

Filed:



Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, we decide this case by memorandum opinion. It shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 The Eighteenth Judicial District Court, Gallatin County, granted summary judgment to Clarkston Fire Service Area #6 in its suit to quiet title in the real property Lot 1002C against Dawn Lemieux, Steven Lemieux, Tracy Shaw, and the Montana Communities Association (MCA). The court found undisputed that Defendants lost their interest in Lot 1002C due to unpaid taxes. It also found undisputed that, after attaching a tax lien to the property, the County issued an Assignment Certificate to a third party, who lawfully conveyed her interest to Clarkston Fire. The court determined that Clarkston Fire followed the proper methods to redeem the tax lien. Dawn Lemieux appeals, and we affirm.

¶3 Dawn signed her Notice of Appeal and Opening Brief as "President of Montana Communities Association." In a subsequent order, we advised Dawn that because she is not an attorney licensed to act on others' behalf, she cannot represent MCA. We amended the docket to reflect Dawn as self-represented, until such time, if any, that the MCA appeared through counsel. No counsel has appeared on behalf of the MCA, and we consider this appeal with Dawn as the only appellant.

¶4 In 2000, Ponderosa Pines Ranch Property Owners Association, Inc. was formed as a domestic nonprofit Montana corporation. Ponderosa Pines formed to “maintain, preserve and improve the common areas of certain Montana real property[;] . . . to enforce covenants filed of record regarding said real property; and to engage in all related acts allowed by law.” Later that year, Ponderosa Pines amended its covenants to specifically exempt “Tract 1002A-1 . . . from [its] provisions and designated [Tract 1002A-1] as the Fire Station for the benefit of [Ponderosa Pines].” In late 2007, the Gallatin County District Court ordered a partition of Tract 1002A-1 that divided it into Lot 1002C, a 2.0033-acre tract that contained the “Fire House” building, and Lot 1002D, the remainder of the original plot. The District Court granted Ponderosa Pines title to Lot 1002C.

¶5 On March 6, 2013, through quitclaim deed, Ponderosa Pines granted Lot 1002C to Posterity United Montana Assembly (Lemieux PUMA). Steven and Dawn Lemieux formed Lemieux PUMA as a domestic nonprofit corporation with Dawn as Lemieux PUMA’s registered agent. In 2014, the Montana Secretary of State involuntarily dissolved Lemieux PUMA for its failure to file an annual report.

¶6 Though requested, Lemieux PUMA never secured tax-exempt status from the IRS or the Montana Department of Revenue. Lemieux PUMA accordingly paid the real property taxes on Lot 1002C from 2013 through 2017. On August 1, 2019, Gallatin County attached a tax lien to Lot 1002C due to Lemieux PUMA’s unpaid real property tax. On September 23, 2019, LaNora Reyher paid the taxes due on Lot 1002C, and the Gallatin County Treasurer assigned her the County’s interest in Lot 1002C. On September 27,

2019, Reyher formed a public benefit corporation under the name Posterity United Montana Assembly (Reyher PUMA). Reyher could use this name due to its availability after Lemieux PUMA was involuntarily dissolved in 2014. Clarkston Fire maintains that Reyher transferred her interest in Lot 1002C to Reyher PUMA.

¶7 On January 16, 2020, Clarkston Fire formed as a public benefit corporation. The same month, Reyher notified the Montana Attorney General that she, as Reyher PUMA's agent, intended to dissolve Reyher PUMA and distribute its lone asset—the interest in Lot 1002C—to Clarkston Fire. Reyher PUMA's Articles of Incorporation stated that, upon dissolution, its assets were to be distributed to another nonprofit entity. As Reyher PUMA's agent, Reyher executed a quitclaim deed on February 10, 2020, that transferred Reyher PUMA's interest in Lot 1002C to Clarkston Fire. This deed was recorded with the Gallatin County Clerk and Recorder. Reyher then voluntarily dissolved Reyher PUMA.

¶8 After being informed that the County assigned its interest in Lot 1002C, Dawn Lemieux and Tracy Shaw formed the MCA on January 6, 2020. On January 31, 2020, the dissolved Lemieux PUMA executed a quitclaim deed conveying Lemieux PUMA's interest in Lot 1002C to MCA. On June 18, 2021, Clarkston Fire redeemed the tax lien on Lot 1002C by paying the delinquent tax assessments attached to the property, and the County issued it a certificate of redemption.

¶9 Clarkston Fire sought to quiet title to Lot 1002C on the grounds that Reyher PUMA properly transferred its interest to Clarkston Fire and that Lemieux PUMA's transfer of Lot 1002C to MCA was illegal. The Defendants counterclaimed that neither Reyher nor

Reyher PUMA could legally transfer title to Lot 1002C. Tracy Shaw did not appear in this action. The District Court granted summary judgment to Clarkston Fire.

¶10 “We review a district court’s grant of summary judgment *de novo*” *Collier v. Kincheloe*, 2008 MT 100, ¶ 8, 342 Mont. 314, 180 P.3d 1157. “Summary judgment is appropriate when the moving party demonstrates both the absence of any genuine issues of material fact and entitlement to judgment as a matter of law.” *RN & DB, LLC v. Stewart*, 2015 MT 327, ¶ 13, 381 Mont. 429, 362 P.3d 61 (citing M. R. Civ. P. 56(c)(3)) (other citations omitted). “If there are no genuine issues of material fact, we review for correctness the district court’s conclusion that the moving party is entitled to judgment as a matter of law.” *RN & DB, LLC*, ¶ 13.

¶11 We have held that “the statutory procedures for the issuance of a tax deed require strict technical compliance.” *RN & DB, LLC*, ¶ 22 (citation omitted). This Court requires strict compliance because tax deed proceedings implicate “an owner’s fundamental interests.” *Hansen Trust v. Ward*, 2015 MT 131, ¶ 26, 379 Mont. 161, 349 P.3d 500.

¶12 When Montana real property owners become delinquent on their taxes, the county treasurer may attach a tax lien to their property. Section 15-17-125, MCA. A property tax lien is “a lien attached by the county for nonpayment of property taxes, including penalties, interests, and costs.” Section 15-17-121(6), MCA. Once a tax lien attaches, the county possesses the tax lien unless it is assigned to another party. Section 15-17-125(1)(a), MCA. The county treasurer must assign the tax lien sale certificate to any person or business entity who, upon proof of notice to the person to whom the property was assessed, “pays to the

county the amount of delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency.” Section 15-17-323, MCA. If the property owner or other interested party does not redeem the tax lien in the time allowed by law, “the county treasurer shall grant the assignee a tax deed for the property.” Section 15-18-211(1), MCA. “[T]he assignee shall notify the parties . . . that a tax deed will be issued to the assignee unless the property tax lien is redeemed” Section 15-18-212(1)(b), MCA. If the statutory requirements are satisfied, a tax deed “extinguishes title in the original owner and creates a brand new title with the purchaser now holding fee simple to the property.” *RN & DB, LLC*, ¶ 18.

¶13 The District Court found undisputed that Lemieux PUMA was not granted tax-exempt status and failed to pay taxes on Lot 1002C. It also found undisputed that on August 1, 2019, Gallatin County attached a tax lien to Lot 1002C. Upon review of the parties’ submissions, the court determined that Defendants did not provide any argument or legal authority to effectively challenge the procedures taken by Reyher and Reyher PUMA to obtain interest in Lot 1002C and transfer that interest to Clarkston Fire.

¶14 The District Court concluded that, after Lemieux PUMA failed to pay the real property taxes, Gallatin County lawfully attached a lien and assigned its interest in Lot 1002C to Reyher when she paid the delinquent tax assessment. The court determined that the quitclaim deed from Reyher PUMA to Clarkston Fire sufficiently identified Clarkston Fire as the grantee of Reyher’s interest. *See Hodgkiss v. Northland Petroleum Consol.*, 104 Mont. 328, 333, 67 P.2d 811, 814 (1937) (holding a deed not void when extrinsic

evidence sufficiently identified the grantee). It also concluded that this quitclaim deed was properly recorded with the Gallatin County Clerk and Recorder. The record reflects that Reyher provided proper notice that a tax deed may issue pursuant to § 15-18-212(1)(b), MCA, and that, as a nonprofit corporation, Clarkston Fire was an “appropriate entity for the Reyher PUMA to distribute its asset to upon its dissolution as provided in the Reyher PUMA Articles of Incorporation.” The court concluded that this transfer made Clarkston Fire an “interested party” authorized to redeem the tax lien. Section 15-18-111(3), MCA. The court found that Clarkston Fire then redeemed the tax lien by paying the delinquent tax assessments pursuant to § 15-18-111, MCA.

¶15 Dawn challenges the District Court’s decision because “there is no record that [Clarkston Fire] holds a valid title” Dawn argues that the MCA has a stronger claim to the title of Lot 1002C because there were “no breaks between the titles that MCA relied upon . . . however, there is a break in [Clarkston Fire’s] title chain.” Dawn maintains that “[t]here was no record that . . . Reyher or Reyher PUMA held a title to the property” She also argues that nothing in the record supports that Reyher ever transferred her individual assigned interest in the tax lien to Reyher PUMA. Dawn contends that if Reyher did not make this transfer to Reyher PUMA, then Reyher PUMA could not make a valid transfer of interest to Clarkston Fire. Dawn argues further that summary judgment was improper because she was not aware that Reyher had paid the delinquent taxes on Lot 1002C. She maintains that the record does not reflect proper notice to her from Reyher of

Reyher's intent to pay the delinquent taxes prior to actually paying the delinquent taxes on Lot 1002C.

¶16 “In a quiet title action, a tax deed purchaser may obtain an order from the court directed to the ‘true owner’—the person who owns the property; has an interest in or lien upon the property; has a right to redeem the property; or has rights hostile to the tax title.” *RN & DB, LLC*, ¶ 26 (quoting § 15-18-411(1), MCA). Dawn's contentions—even if they could result in disputed facts or improper legal conclusions—do not afford her relief on appeal because a party who could make any such claims is not before the Court. Dawn appears as a self-represented litigant on her own individual behalf. She has not demonstrated that she is a “true owner” or an “interested party” with a right of redemption. An “interested party,” for the purposes of redeeming a tax lien, includes “a mortgagee, vendor of a contract for deed or the vendor's successor in interest, lienholder, or other person who has a properly recorded interest in the property.” Section 15-18-111(3), MCA. “A person who has an interest in property on which there is a property tax lien but which interest is not properly recorded is not an interested party” Section 15-18-111(3), MCA. Dawn has not demonstrated that she, as an individual, is an owner or interested party to this dispute because she has provided no evidence, and the District Court record does not reflect, that she ever held ownership of or individually possessed a properly recorded interest in Lot 1002C. Dawn's only interest was as the registered agent of Lemieux PUMA or the President of MCA. To the extent the now-dissolved Lemieux PUMA or its purported successor MCA holds, or at one time held, a recorded interest in

the property, neither has properly appeared in this appeal, and Dawn cannot represent their interests. “An LLC generally may not appear in court pro se through one of its members.” *Sagorin v. Sunrise Heating & Cooling, LLC*, 2022 MT 58, ¶ 11, 408 Mont. 119, 506 P.3d 1028 (citing *Weaver v. Graybill, Ostrem, Warner & Crotty*, 246 Mont. 175, 178, 803 P.2d 1089, 1091) (1990)) (other citations omitted). Dawn’s arguments regarding the validity of Reyher’s notice and Reyher PUMA’s capacity to transfer Lot 1002C to Clarkston Fire are not properly before this Court on appeal.

¶17 We conclude that Dawn has not met her burden on appeal to demonstrate error in the District Court’s grant of summary judgment to Clarkston Fire. We decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. The District Court’s judgment to Clarkston Fire quieting title in Lot 1002C is affirmed.

/S/ LAURIE McKINNON

We Concur:

/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR
/S/ INGRID GUSTAFSON