

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

AMERICAN TAX FUNDING, LLC :	:	Appellate Case No. 23182
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CV-4447
v.	:	
	:	
CLARA D. WHITLOW, et al.	:	(Civil Appeal from
Defendant-Appellants	:	Common Pleas Court)
	:	
	:	

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OPINION

Rendered on the 16th day of July, 2010.

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Broadview Heights, Ohio 44147
Attorney for Plaintiff-Appellee

CLARA D. WHITLOW, 102 Lorenz Avenue, Dayton, Ohio 45406
Defendant-Appellant, *pro se*

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BROGAN, J.

{¶ 1} Clara Whitlow appeals *pro se* from the trial court’s entry of summary judgment in favor of appellee American Tax Funding, LLC (“ATF”) on its complaint to foreclose on tax liens against her real estate.

{¶ 2} ATF filed the present foreclosure action on May 12, 2008, to collect on delinquent-property-tax certificates it had purchased from Montgomery County in

2005, 2006, and 2007. Upon purchasing the certificates, AFT obtained a first lien on real estate owned by Whitlow at 53 North Decker Avenue in Dayton. Attached to ATF's compliant were, among other things, copies of its tax certificates, a copy of a deed showing Whitlow as the owner of 53 North Decker Avenue, records reflecting ATF's tax liens, and a copy of ATF's statutory notice of intent to foreclose.

{¶ 3} The trial court initially entered default judgment against Whitlow for failure to answer the complaint. It later vacated the judgment, however, after discovering that her answer had been filed under the wrong case number.¹ Thereafter, ATF moved for summary judgment on November 3, 2008, arguing that it was entitled to a decree of foreclosure as a matter of law. Attached to the motion were copies of ATF's tax certificates for Whitlow's property and a copy of its statutory notice of intent to foreclose. The trial court filed an entry setting a December 1, 2008, deadline for Whitlow to respond to the motion. The next document in the record is a December 16, 2008, entry by the trial court sustaining ATF's summary judgment motion. At the same time, the trial court separately filed a letter written by Whitlow and dated November 28, 2008. The letter asked the trial court to "postpone" its summary judgment ruling so she could pursue a request to have the county auditor review her case. Whitlow further asserted that the address on her county tax bill was incorrect through the second half of 2006 and that a tax lien had been placed on the property by the time she received a corrected bill. Whitlow claimed she was asking the auditor "for the opportunity to make payment for whatever amount that

¹Unfortunately, the misfiled answer never was made part of the record in this case. Nor did the trial court identify the case number under which it had been filed.

[she] owe[d] prior to the tax lien.” The trial court did not address this letter in its summary judgment ruling.

{¶ 4} On appeal, Whitlow has filed a one-page “Brief in Support” in which she states the following:

{¶ 5} “I, Clara Whitlow, [am] requesting [an] extension of time before a final ruling is made on Appellate Case No. 23182. This extension is being requested [so] as to allow the necessary relevant Ohio judicial entities/boards to respond to this case, including county treasurer and Auditor, at a minimum.

{¶ 6} “It appears that the tax lien was sold on this property without proper notification to the property owner. The law does require that all attempts to properly notify proper[ty] owners are executed before a tax lien certificate is issued. Ohio Revised Code 317.32 governs that the records to be kept by the county recorder are to be correct. The original deed was recorded with the correct address yet the tax bill[s] were being sent to the incorrect address.

{¶ 7} “Tax bill notices are advertised in the Dayton Daily News under the assumption that every tax payer read[s] the newspaper everyday, which is an invalid assumption in ma[n]y cases.

{¶ 8} “The Ohio Revised Code places sole responsibility for payment of real estate taxes on the property owner. The Ohio Revised Code also places responsibility of record keeping on the various county entities that administ[er] to the State of Ohio including Montgomery County, [w]hich burdens the county treasurers with providing accurate tax billing addresses when possible.

{¶ 9} “My ultimate goal is to have the foreclosure lifted from this property and

to pay all back taxes that [are] owed, utilizing the payment plan that is available and or applicable to all of the other property owners in Montgomery County.”

{¶ 10} As a means of analysis, we turn first to Whitlow’s request for an “extension of time” before we rule on her appeal. This request is denied. The record reflects that we previously dismissed her appeal for lack of prosecution, but later reconsidered and directed her to file a brief by July 22, 2009. Whitlow filed her “Brief in Support” on July 27, 2009. Therein, she asks us to delay ruling to allow the county auditor and treasurer “to respond to this case.” No response from those individuals is necessary, however, for us to determine whether ATF was entitled to summary judgment. We note too that the auditor and treasurer cannot respond in this case because they are not parties to it. Therefore, Whitlow has not demonstrated any reason for further delaying the disposition of her appeal.

{¶ 11} As for the other portions of Whitlow’s brief, she touches on a wide range of issues. For present purposes, we will focus on the issues that she raised below, as those are the only issues properly before us. *Rieger v. Montgomery County*, Montgomery App. Nos. 23145, 23162, 2009-Ohio-4125, ¶18 (“It is well settled that a party may not raise a new argument for the first time on appeal.”). Whitlow’s sole response to ATF’s summary judgment motion was the November 28, 2008 letter mentioned above. In that letter, which we will construe as her memorandum opposing summary judgment, she asked the trial court to delay ruling so the Montgomery County auditor could review her case. She also asserted that the address on her tax bills had been incorrect through the second half of 2006. She claimed that a lien had been placed on her property by the time she received the first

corrected bill. She stated that she was asking the auditor for an opportunity to make payments. Finally, she asserted: “If I had not gone down to the [sic] inquire about the tax bill when I did, the foreclosure would have been completed without my knowledge.”

{¶ 12} Upon review, we conclude that Whitlow’s letter did not preclude the trial court’s entry of summary judgment. The record reflects that she had unpaid and delinquent property taxes in 2005, 2006, and 2007. Her primary argument below was that her tax bills through the second half of 2006 erroneously had been sent to 53 Dakota Street rather than 53 North Decker, which was the actual address of the property at issue. Even if this is true, Ohio law unambiguously provides that “[f]ailure to receive any [property tax bill] does not excuse failure or delay to pay on such bill[.]” R.C. 323.13. If an error by the county auditor actually prevented Whitlow from making timely tax payments, that fact might negate the assessment of a late-payment penalty. See R.C. 5715.39(B) (discussing the remission of late-payment penalties under certain circumstances).² Under R.C. 323.13, however, it would not excuse her non-payment of property taxes for several years. Moreover, Whitow’s argument about her tax bills being incorrectly addressed through the second half of 2006 does nothing to explain the non-payment of her 2007 property

²Parenthetically, if Whitlow wished to challenge a late-payment penalty in her case, a procedure was available to her. We take judicial notice of Ohio Department of Taxation form “DTE 23A,” which is available on Montgomery County’s web site at www.mcoho.org/government/treasurer/realestate/docs/DTE_23A_Montco.pdf. This is a standardized, statewide form used by property owners and filed with county treasurers to apply for the remission of late-payment penalties on real estate taxes. Despite the fact that Whitlow became aware of her delinquent tax bills no later than 2007, nothing in the record before us indicates that she ever filed this form with the Montgomery County Treasurer.

taxes. Finally, we note that by the time Whitlow wrote her letter to the trial court, ATF already had paid her debt and obtained tax certificates under which she was obligated to repay the company, which became the first lien-holder, with interest. Therefore, it was too late for her to make periodic payments to Montgomery County. Having reviewed the record, we conclude that Whitlow’s letter to the trial court did not preclude the entry of summary judgment.

{¶ 13} As set forth above, accompanying ATF’s complaint for foreclosure were, among other things, copies of its tax certificates, a copy of a deed showing Whitlow as the owner of 53 North Decker Avenue, records reflecting ATF’s tax liens, and a copy of ATF’s statutory notice of intent to foreclose. ATF also included the tax certificates and its statutory notice of intent to foreclose with its motion for summary judgment. Based on the content of these documents, we conclude that ATF demonstrated its entitlement to summary judgment on its complaint for foreclosure.³

{¶ 14} The judgment of the Montgomery County Common Pleas Court is affirmed.

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GRADY and FROELICH, JJ., concur.

³To the extent that some of the documents may have required authentication, we note that Whitlow did not object below based on a lack of authentication, and she has not raised the issue on appeal. Therefore, no authentication question is before us. See, e.g., *In re Guardianship of Replogle*, 164 Ohio App.3d 54, 59, 2005-Ohio-5530 (noting that failure to preserve error regarding authentication waives the issue on appeal); *Passwaters v. Passwaters*, Carroll App. No. 02 AP 776, 2002-Ohio-6906, ¶24 (recognizing that a lack of authentication is waived if not raised in the trial court); *Robinson v. Springfield Local School Dist. Bd. of Educ.*, Summit App. No. 20606, 2002-Ohio-1382 (holding that an objection to the consideration of unauthenticated summary judgment evidence is waived if not raised in the trial court).

Copies mailed to:

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Hon. Mary Katherine Huffman