

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

JUDY DARBY and VERONICA NASH,	)	
	)	
Plaintiffs,	)	TC-MD 030648E
	)	
v.	)	
	)	
COOS COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on Defendant's Answer and Motion to Dismiss filed May 13, 2003. The court discussed Defendant's motion with the parties during the case management conference held June 25, 2003. Judy Darby (Darby) appeared on behalf of Plaintiffs. David R. Koch, Assistant County Counsel, appeared on behalf of Defendant.

**I. STATEMENT OF FACTS**

In 1992, Veronica Nash (Nash), who is the daughter of Darby, purchased the subject property.<sup>1</sup> At that time, Darby was going through a divorce and claims Nash purchased the property on her behalf. Although Nash is the record owner of the property, Darby claims she has made all property tax payments since the date of purchase.

In 1998, Darby began moving back and forth to Utah to care for her ailing mother. Darby allowed a man to live in the house during this time because she was frequently absent. The man caused severe damage to the house and, according to Darby, fraudulently used Darby's identification to obtain credit cards in her name. Darby also lost her son during this period in a tragic automobile accident.

Darby made a partial property tax payment on the subject property for the 1998-1999 tax year. The partial payment left a balance due of approximately \$23.00. No

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<sup>1</sup> The subject property is identified in Defendant's records as Account 65558.00.

property tax payments were made for tax years 1999-2000, 2000-2001, and 2001-02.

Defendant, following statutory procedure, initiated foreclosure proceedings on the property because three years had elapsed since taxes first became delinquent.

Defendant sent notice of the foreclosure proceedings by certified mail to Nash, as the record owner of the property. The notice was sent to Nash at the address of the subject property. Darby received the letter but refused to accept its delivery because it was not addressed to her. On September 17, 2002, the Coos County Circuit Court entered a judgment and decree against the subject property in a property tax foreclosure proceeding. The court modified its judgment and decree on December 11, 2002.

Darby requests that the Tax Court allow her to pay the tax and interest owed for the 1998-1999 tax year and remove the property from foreclosure. Defendant claims the case should be dismissed because the subject matter is not within the jurisdiction of the Tax Court.

## II. ANALYSIS

ORS 305.410 sets forth the jurisdictional authority of the Oregon Tax Court.<sup>2</sup> It provides, in relevant part:

“(1) \* \* \* the tax court shall be the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact arising under the tax laws of this state. For the purposes of this section \* \* \* the following are **not** tax laws of this state:

“ \* \* \* \* \*

“(o) \* \* \* ORS chapter 312 relating to foreclosure of real and personal property tax liens.”

ORS 305.410 (emphasis added).

In *Multnomah County v. Finance America Corp.*, 120 Or App 30, 33, 852 P2d 262

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<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

(1993), the Oregon Court of Appeals observed that the Oregon Legislature has “expressly removed from tax court jurisdiction foreclosures of real property tax liens under ORS chapter 312.” In the present case, the matter before the court is the foreclosure of a real property tax lien conducted under the statutory procedures described in ORS chapter 312. There has been no challenge made to the tax that was imposed, but instead a challenge to the foreclosure action brought against the property. Darby claims that the property should be taken out of foreclosure because she never received proper notice of the foreclosure proceedings. Her claim relates to the foreclosure process, which as noted has been expressly removed from the jurisdiction of the Tax Court. See ORS 305.410(1)(o).

Furthermore, the Tax Court has noted that, when the legislature specifically grants another court jurisdiction to consider a matter, the Tax Court does not have jurisdiction in that instance. See *TVKO v. Howland*, 15 OTR 335, 339 (2001), *aff'd* \_\_ Or \_\_, \_\_ P3d \_\_ (July 24, 2003) (“Where a statute specifically locates jurisdiction in a particular court, all issues arising under that statute will be decided by that court.”) ORS 312.210 states that an appeal from any judgment and decree or any final order in a foreclosure proceeding may “be taken to the Court of Appeals.” Therefore, not only did the legislature expressly exclude from the Tax Court’s jurisdiction matters relating to the tax foreclosure process, it specifically granted authority of the matter to another court. The circuit court issued a judgment and decree in the foreclosure proceeding. Plaintiffs are apparently seeking to appeal the foreclosure decision on the basis that Darby did not receive proper notice of the proceeding. The Court of Appeals has been granted jurisdiction over such an appeal, thereby excluding it from the Tax Court’s jurisdiction.

### **III. CONCLUSION**

The court concludes that it lacks jurisdiction to consider whether the subject  
DECISION OF DISMISSAL TC-MD 030648E

property should be taken out of foreclosure because the subject matter has been expressly removed from the Tax Court's jurisdiction and granted to another court. As a result, the court finds Defendant's Motion to Dismiss should be granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this \_\_\_\_\_ day of August, 2003.

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COYREEN R. WEIDNER  
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON AUGUST 12, 2003. THE COURT FILED THIS DOCUMENT ON AUGUST 12, 2003.**