

at 915 Lloyd Street, Chester, PA 19013. Transcript of Proceedings, (N.T), April 24, 2007, at 15-16; Reproduced Record (R.R.) at 22a-23a.¹

In 2004, the real estate taxes became delinquent. The Tax Claim Bureau (TCB) sent notice of claim, certified mail, return receipt requested, to “Scott Marion and Rosalie, c/o Karen Stillis, 915 Lloyd Street, Chester PA 19013.” Stillis’ husband, LeRoy Stillis, Jr., signed the Return Receipt Card.

In order to avoid a tax sale in 2005, Stillis went to the TCB and signed an agreement to pay the past due taxes in monthly installments. N.T. at 41; R.R. at 48a. Despite the agreement, the taxes remained delinquent.

In July 2006, the TCB sent by certified mail, restricted delivery, return receipt requested, two separate Notices of Upset Tax Sale (“first” notice) pursuant to Section 602(e)(1) of the Real Estate Tax Sale Law (RETSL).² One mailing was

¹ Specifically, counsel stipulated:

...to the fact that Marian (sic) and Rosalie Scott were the registered owners of the Property and that Karen Stillis had given directions with regards to payment of certain taxes by sending them to her notice at that address on Lloyd Street.

N.T. at 15; R.R. at 22a.

The Court then reaffirmed its understanding and accepted the stipulation:

...that since 1999 the deed owners of 218 Pennell Street [Property] in the city of Chester through 9/13/06 have been Marian (sic) and Rosalie Scott and the taxes have been sent in the Scotts’ name in care of Karen Stillis[.]

N.T. at 28; R.R. at 35a.

² Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §5860.602(e)(1). This Section requires the TCB send a “first notice” “at least thirty (30) days before the date of the sale, by United States certified mail, restricted delivery, return receipt requested, postage prepaid, to each owner as defined by this act.”

addressed to “Scott Marion & Rosalie” and sent to Stillis’ address at 915 Lloyd Street, Chester, Pa. 19013. The other was addressed to Rosalie Scott and sent to the Lloyd Street address. There is no question that this “first” Notice was sent “at least 30 days before the date of the sale.” The Notice indicated that sale of the Property was scheduled for September 13, 2006. Both mailings were returned to TCB unopened and contained a *handwritten* notation that the addressees were “deceased.” Consequently, both mailings were stamped by the post office “unable to forward” and returned to the TCB. See TCB Exhibit Nos. 3b and 3c; R.R. at 80a-83a.

On August 4, 2006, the TCB attempted to send another “first notice” pursuant to Section **602(e)(1)**, by certified mail, restricted delivery, return receipt requested. This time the mailing was addressed to: “Scott Marion & Rosalie, c/o Karen Stillis, 915 Lloyd Street, Chester, PA 19013.” **The Return Receipt Card received back by the TCB indicated that the mailing was received by Karen Stillis.** See TCB Exhibit No. 3a; R.R. at 79a. Although the date on which Stillis received the notice is not evident from the Return Receipt Card, there is no question that the TCB’s second attempt to furnish the “first” Notice was made within the statutory 30-day period.

On August 5, 2006, the Sheriff posted the Property with a notice of public sale to be held on September 13, 2006. This was in accordance with Section 602(e)(3) of the RETSL, 72 P.S. §5860.602(e)(3).

On August 9, 10, and 11, 2006, the TCB published the Notice of Tax Sale in the Delaware County Legal Journal. This was in accordance with Section 602(a) of the RETSL, 72 P.S. §5860.602(a).

According to Karen Duffy (Duffy), TCB's Upset Price Sale Coordinator, the person responsible for sending notices, the TCB sent a ten-day Notice ("second" notice) to "Scott Marion & Rosalie, c/o Karen Stillis, 915 Lloyd Street, Chester, PA 19013" *via* first class mail. The "second" notice was sent pursuant to Section **602(e)(2)** of the RETSL, 72 P.S. §5860.**602(e)(2)**, which comes into play if the TCB does not receive a return receipt indicating that the owner received the "first" notice.

Section **602(e)(2)** provides:

If return receipt is not received from each owner pursuant to the provisions of clause (1), then, at least ten (10) days before the date of the sale, similar notice of the sale shall be given to each owner *who failed to acknowledge the first notice by United States first class mail, proof of mailing*, at his last known post office address by virtue of the knowledge and information possessed by the bureau, by the tax collector for the taxing district making the return and by the county office responsible for assessments and revisions of taxes. It shall be the duty of the bureau to determine the last post office address known to said collector and county assessment officer. (Emphasis added).

As proof that it sent the "second" ten-day Notice to Stillis pursuant to Section 602(e)(2), TCB produced a computer generated exhibit (Exhibit TCB-4) that identified all properties, including the Property at issue, which received the "second" and final 10-day notice by regular first class mail. Duffy did not have "proof of mailing" of the Section **602(e)(2)** "second" notice from the post office.

But she did testify that the mailing was not returned by the post office as undelivered.³

The Property was eventually sold to Purchaser at an Upset Tax Sale on September 13, 2006, for \$7,361. On October 10, 2006, the TCB sent two Notices of Sale to “Marion Scott c/o Karen Stillis” and “Rosalie Scott c/o Karen Stillis” at 915 Lloyd Street, Chester, PA 19013. According to the Return Receipt Card, Stillis received the Notices of Sale. See TCB Exhibit No. 8; R.R. at 92a-95a.

Mark Morris (Morris), Rosalie Scott’s heir who lived in Maryland, raised timely objections and exceptions to the Tax Sale. A hearing was held. Morris asserted that the TCB failed to comply with Section **602(e)(2)**’s “second” notice requirements and prove that the notice was sent to Rosalie Scott, the last registered owner at her address at 218 Pennell Street, Chester, PA 19013.

Morris argued that the “second” notice had to be sent to the registered owner, i.e., Rosalie Scott (deceased), at the Property’s address, not to Stillis’ address at Lloyd Street.

The TCB responded that it sent the “second” notice to the right person, i.e., the person with whom it corresponded about the Property and who was responsible for paying the taxes since 1999. The TCB also argued that a Section **602(e)(2)** “second” notice was unnecessary because the Return Receipt Card from

³ According to the United States Postal Service’s website and the “Customer’s Guide to Mailing” a “Certificate of Mailing” from the US Post Office provides evidence of a first class mailing. It costs \$1.10.

the “first” notice was signed by Stillis and returned to the TCB, although it was undated.

Again, as proof that it sent the “second” notice to Stillis pursuant to Section **602(e)(2)**, TCB produced a computer generated exhibit that identified all properties, including the Property at issue, which received the “second” notice by regular first class mail.

The trial court set aside the sale and concluded that, based on the only evidence that the TCB complied with “second” notice requirements of Section **602(e)(2)**, i.e. the computer generated printout of the first class mailings and Ms. Duffy’s testimony, the TCB failed to sustain its burden of proving it complied with Section **602(e)(2)**. The trial court did not address whether the TCB met the requirements of Section **602(e)(1)**’s “first” notice.

On appeal, Purchaser contends that the trial court erred when it invalidated the Tax Sale. He argues that the uncontroverted evidence demonstrated that Stillis, the designated agent with respect to the Property, was served with the “first” notice by certified mail, restricted delivery, return receipt requested, pursuant to Section **602(e)(1)**. He contends that the trial court’s order was based solely on its conclusion of law that the TCB failed to comply with the requirement of sending the “second” notice pursuant to the requirements of Section **602(e)(2)**, which does not come into play unless the Return Receipt Card from Section **602(e)(1)**’s “first” notice was not received back by TCB. Here, the record established that TCB sent the “first” notice within the statutory 30-day period and the Return Receipt Card, which indicated that Stillis had received the “first” notice was returned to the TCB.

In tax sale cases, this Court's review is limited to determining whether the trial court abused its discretion, clearly erred as a matter of law or rendered a decision with a lack of supporting evidence. In re Tax Sale of Real Prop. Situated in Jefferson Twp. (Appeal of Ruffner), 828 A.2d 475, 478, n. 6 (Pa. Cmwlth. 2003), aff'd, 580 Pa. 63, 859 A.2d 471 (2004). The trial court, as the finder of fact, has exclusive authority to weigh the evidence, make credibility determinations, and draw reasonable inferences from the evidence presented. Smith v. Tax Claim Bureau of Pike County, 834 A.2d 1247, 1251 (Pa. Cmwlth. 2003).

Under Section 602 of RETSL, there are different methods of mandatory notice, including (1) published notice, (2) mailed notice, and (3) posted notice. This case involves the legality of the mailed notices, not the published or posted notices.

Because the trial court did not make any findings of fact or address TCB's compliance with Section **602(e)(1)**'s "first" mailed notice requirements, the reason for the trial court's reliance on TCB's noncompliance with Section **602(e)(2)** to invalidate the tax sale requires pure speculation.

Under the RETSL, the "first" mailed notice pursuant to Section **602(e)(1)** must be given at least 30 days before the date of the sale. Unquestionably, the TCB complied with this provision when it sent the August 4, 2006, Notice. There is also no dispute that Stillis *received* that notice as evidenced by the signed Return Receipt Card.⁴

⁴ If the trial court relied on the fact that the Return Receipt Card was *undated* to invalidate the "first" notice, this Court does not agree. Assuming it was undated or the post office stamp was illegible, this was not critical. Section **601(e)(1)** requires the TCB to give first

Because TCB received the Return Receipt Card which indicated that Stillis received the first notice, the “second” notice was not even required. Section 602(e)(2) provides “**if return receipt is not received** from each owner pursuant to the provision of clause (1), then, at least 10 days before the date of the sale, similar notice of the sale shall be given to each owner who failed to acknowledge the first notice....” (Emphasis added). The trial court’s focus on the lack of proof of mailing of the second notice was, therefore, misguided and did not provide a legitimate basis to invalidate the sale.

In any event, this Court must agree that the TCB was not required to send the Section **602(e)(2)** “second” notice to Marion and Rosalie Scott, deceased, at their last known address on Pennell Street, as opposed to sending the notice to Stillis at her address on Lloyd Street.

It is the duty of the TCB to conduct a reasonable investigation to ascertain the identity and whereabouts of the latest owners of record of the property subject to the upset sale for the purpose of providing notice to that party. In re Tax Sale of Real Property Situated in Jefferson Township. The TCB’s duty to investigate such matters is confined to determining the owners of record **and then to use ordinary “common sense business practices to ascertain proper addresses” where notice of the tax sale may be given.** Farro v. Tax Claim Bureau of Monroe County, 704 A.2d 1137, 1142 (Pa. Cmwlth. 1997), petition for

notice by certified, restricted delivery, return receipt requested, within 30 days of the sale, which the TCB did. The RETSL does not require the TCB to prove that the recipient *received* the notice on any date certain, and a recipient’s failure or neglect to fill in the date on a Return Receipt Card does not negate the presumption that a notice was received if it was signed by the addressee and returned to the TCB. The requirements of Section 602(e)(1) are met so long as the

allowance of appeal denied, 555 Pa. 722, 724 A.2d 936 (1998). Only where notice obviously did not effectively reach the owners of record must the taxing bureau go beyond the formal act of notice by certified mail. Id. at 1143.

Here, Stillis specifically informed the TCB that Marion and Rosalie Scott were deceased and that she was the person responsible to pay the taxes. Stillis informed the TCB where she lived and that she was the designated agent of the family with respect to the Property for its tax liabilities. Stills was also appointed as the Administratrix of the Estate of Marion Scott, her deceased second cousin who remained a record owner of the Property. The TCB and Stillis had previously corresponded regarding the Property at the Lloyd Street address and Stillis actually prevented a previous upset tax sale when she entered into an agreement with the TCB to pay delinquent taxes on the Property. The parties stipulated that the Board of Assessment's records since at least 1999 listed a registered address for the Scotts as "c/o Karen Stills" at her place of residence at 915 Lloyd Street, Chester, PA 19013, the same address where the tax sale notices were mailed and received. It would not have constituted ordinary sound business practices for the TCB to send notices to a person who was deceased at 211 Pennell Street, an address where it knew Stillis, i.e., the designated agent and person responsible for paying the taxes, did not reside.

Because the Section 602(e)(1) "first" notice was sent to and received by Stills, no additional notice or efforts to ascertain the identity and whereabouts of the owner of record were required by the TCB. In re Delinquent Tax Sale by Elk County Tax Claim Bureau, 793 A.2d 1025 (Pa. Cmwlth. 2002).

TCB proves that it gave the requisite notice and there is evidence that the addressee received it.

Accordingly, the order of the trial court which invalidated the upset tax sale of the Property is reversed.

BERNARD L. McGINLEY, Judge

Again, those requisites were met here.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Upset Price Tax Sale of :
 September 13, 2006 :
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Folio No 49-08-01184-00 :
 :
Appeal of: Allen Brandon : No. 1102 C.D. 2007
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ORDER

AND NOW, this 22nd day of October, 2008, the order of the Court of
Common Pleas of Delaware County is reversed.

BERNARD L. McGINLEY, Judge