

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jennifer Paros and Christine J. Strihan :
 :
 v. : No. 1203 C.D. 2007
 : Submitted: February 11, 2008
 Cambria County Tax Claim Bureau :
 :
 Appeal of: Jennifer Paros :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
 HONORABLE DAN PELLEGRINI, Judge
 HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
 SENIOR JUDGE FLAHERTY

FILED: March 14, 2008

Jennifer Paros (Paros) appeals from an order of the Court of Common Pleas of Cambria County (trial court) which dismissed her petition to set aside real estate tax sale. We affirm.

Christine J. Strihan (Strihan) was the owner of land located at 1130 Virginia Avenue in Johnstown (property). In an attempt to satisfy delinquent taxes associated with the property, Strihan entered into an “Agreement to Stay Sale” (Agreement) with the Cambria County Tax Claim Bureau (Bureau). Strihan thereafter defaulted on the Agreement by failing to make required payments in a timely manner.

On September 11, 2006, the property was sold at a tax sale pursuant to the Real Estate Tax Sale Law (Law), Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §§ 5860.101-5860.803. At the tax sale, Raymond Jastrzab was the successful bidder and purchased the property for \$3,689.16. Thereafter, on October 1, 2006,

Strihan died intestate.¹ On October 23, 2006, the tax sale of the property was confirmed nisi.

Subsequently, Paros, the only child of Strihan, filed a petition to set aside tax sale. At the hearing, Paros stipulated that the Bureau properly notified Strihan of the tax sale. Nonetheless, Paros argued that the sale resulted in a deprivation of Strihan's property rights because, on the date of the tax sale, Strihan was in the hospital and then died approximately twelve days after her release therefrom. Although Strihan was notified of the tax sale, Paros argued that because of Strihan's medical condition, she was unable to take action regarding the sale.

The trial court dismissed Paros's challenge to the tax sale. The trial court determined that, in accordance with the Law, Paros lacked standing to file exception or objections to the tax sale. This appeal followed.²

In this case, the property at issue was sold at a tax sale on September 11, 2006 and a confirmation nisi issued on October 23, 2006. In accordance with Section 607(b) of the Law, 72 P.S. § 5860.607(b), after a property has been sold at a tax sale, "objections or exceptions thereto may be filed by any **owner** or **lien creditor** within thirty (30) days after the court has made a confirmation nisi of the consolidated return or that the return will be confirmed absolutely." (Emphasis added.) The term "owner" is defined in Section 102 of the Law, 72 P.S. § 5860.102, as "the person in whose name the property is last registered, if registered according to law, or, if not

¹ The record indicates that there is no Executor, Executrix or personal representative by way of Letters of Administration or a will ever being filed. (R.R. at 79a.)

² This court's review of a trial court's order regarding a tax sale is limited to determining whether the trial court abused its discretion, clearly erred as a matter of law or rendered a decision unsupported by the evidence. Parkton Enterprises, Inc. v. Krulac, 865 A.2d 295 (Pa. Cmwlth. 2005).

registered according to law, the person whose name last appears as an owner of record on any deed or instrument of conveyance recorded in the county office”

Here, Paros was neither a lien creditor nor an owner. Strihan, the only name which appeared on the property deed, was the owner. Paros nonetheless argues that she has standing because she is the sole daughter and sole heir to Strihan. We agree with the trial court, however, that an heir’s rights stem from the estate. In this case, the property was removed from Strihan’s potential estate prior to her death due to the tax sale. As stated in Plank v. Monroe County Tax Claim Bureau, 735 A.2d 178, 181 (Pa. Cmwlth. 1999), petition for allowance of appeal denied, 560 Pa. 753, 747 A.2d 373 (1999), in order to have standing to file objections or exceptions, in accordance with the Law, the party must either be an owner or creditor at the time of the sale. Here, because Paros was neither, she lacked standing.

Paros, nonetheless, argues that at the time of her death, Strihan still had time to challenge the tax sale inasmuch as the thirty day period set forth in Section 607 of the Law, 72 P.S. § 5860.607, had not expired. Thus, Paros claims the property had not been removed from Strihan’s estate. At the time of her death, however, Strihan did not hold legal title to the property. In accordance with Section 608 of the Law, 72 P.S. § 5860.608, once a property is sold at a tax sale, the Bureau is under a duty to deliver a deed to the purchaser “in the name of the bureau as trustee grantor.” In Commonwealth v. Sprock, 795 A.2d 1100, 1103 (Pa. Cmwlth. 2002), this court stated:

Section 608 and 615 of the Law instruct that the deed to a tax delinquent property sold at an upset sale shall be conveyed by the bureau as trustee, which is a person or entity holding legal title to property for the benefit of another. Thus, it is clear that a tax claim bureau must become trustee of a property at the moment it concludes the upset sale, that is, when the property is struck down, and

legal title to the tax delinquent property passes to the tax claim bureau, as trustee, at that time, which is the most appropriate time for that to happen because the owner's right of redemption at that time is extinguished.

(Emphasis deleted.)

Here, the tax sale occurred on September 11, 2006 and, at that time, legal title passed to the Bureau as trustee for Jastzrab, the successful bidder. Thus, the property could not be part of Strihan's potential estate, as she no longer maintained legal title to it.

Finally, we note that even if Paros did have standing to challenge the tax sale, which she does not, the nature of Paros's objections are outside of those which may be raised in accordance with Section 607(d) of the Law, 72 P.S. § 5860.607(d). Section 607(d) provides that "[a]ny objections or exceptions to such a sale may question the regularity or legality of the proceedings" Here, Paros stipulated that the Bureau followed the proper procedure in conducting the tax sale and timely provided the required notices, such that there is no dispute as to the regularity or legality of the sale. The claim by Paros that Strihan was ill at the time the sale notices were sent and hospitalized at the time of the sale, does not constitute an objection or exception to the regularity or legality of the sale as is required by Section 607(d) of the Law, 72 P.S. § 5860.607(d).

In accordance with the above, the decision of the trial court is affirmed.

JIM FLAHERTY, Senior Judge

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ORDER

Now, March 14, 2008, the Order of the Court of Common Pleas of Cambria County, in the above-captioned matter is affirmed.

JIM FLAHERTY, Senior Judge