

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lackawanna County Tax Claim :
Bureau :
 :
 v. : No. 1205 C.D. 2007
 : Submitted: December 21, 2007
Jane Heilig, :
 Appellant :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE FLAHERTY FILED: March 20, 2008

Jane Heilig (Heilig) appeals from a decision of the Court of Common Pleas of Lackawanna County (trial court) which denied Heilig’s petition to set aside the Lackawanna County Tax Claim Bureau’s (Bureau) public sale of commercial property located at 1541 Albright Avenue in Scranton (Property). We affirm.

On September 25, 2006, the Bureau sold the Property to Anthony Bukowski (Intervenor) at a tax sale. On November 22, 2006, Heilig filed a petition to set aside the Bureau’s public sale of the Property.

On April 10, 2007, a hearing was held. The record reflects that the only issue before the trial court was whether the required notices were received.¹

¹ Counsel for Heilig stated at the hearing that “the primary argument is that my understanding of the rules requires notice – actual notice on the assessed owners. Two of these three notices that were filed by the county, were not served on any of the assessed owners.” Notes of Testimony (N.T.) April 10, 2007, at 8-9; Reproduced Record (R.R.) at 10-11.

The issue of proper advertisement in the newspaper and legal reporter were not at issue before the trial court. Counsel for Intervenor asked, and the trial court approved, keeping the record open for the testimony of the Constable who posted the Property.

Heilig presented the testimony of Thomas Harrison, the director of the Bureau. Mr. Harrison testified as to the County's procedure relating to delinquent taxes on properties. Mr. Harrison stated that an initial notice, which is called a "Notice of Return and Claim", is sent out by certified mail, notifying the party that their property taxes are delinquent. Mr. Harrison stated that only one owner needs to sign for that notice. A second notice, the "Notice of Public Tax Sale," is sent out by restricted mail wherein both of the owners are required to sign for the notice. A third notice is posted on the property. Lastly, Mr. Harrison stated that a letter is sent out after the sale, indicating that the property has been sold.

Mr. Harrison testified that the first notice of delinquent taxes was mailed out by certified mail on April 27, 2005 to the assessed owners of the Property, Francis R. Heilig and Jane Heilig. Harrison further stated that an Angela Fisher, the Heiligs' daughter, signed for the notice.² Mr. Harrison further testified that the second notice, the "Notice of Public Tax Sale", was mailed out on July 29, 2006 to both owners, individually, by restricted mail. The notice sent to Francis R. Heilig was returned to sender due to Francis' death on August 15, 2005. The notice sent to Jane Heilig was signed for by Jane Heilig.³ Mr. Harrison then testified that notice was posted on the Property. Thereafter, a third notice, that the

² It has been accepted by all parties that Angela Fisher, who is the Heiligs' daughter, signed for the notice.

³ Heilig admitted to signing for the letter.

Property had been sold, was sent out by certified mail to both Francis R. and Jane Heilig and was signed for by Angela Fisher, their daughter. Ms. Fisher admitted to signing for this notice as well. Mr. Harrison stated that all of the notices were mailed to 1738 Wyoming Avenue in Scranton, the mailing address and actual residence of the Heiligs.

The deposition testimony of Constable Theodore Rosencrans (Constable) regarding the posting of the Property, was presented. Constable testified that he posted the Property on September 11, 2006, by taping the notice onto the front door of the Property.

On March 29, 2007, the trial court denied Heilig's petition to set aside the tax sale. Heilig now appeals to our court.⁴

Heilig contends that the trial court erred in denying her petition to set aside the tax sale of the Property where the Bureau failed to establish that it had complied with the statutory notice requirements of the Real Estate Tax Sale Law (Law), Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §§5860.101-5860.803, and that the trial court abused its discretion in not finding Heilig's testimony credible that she was not aware that her property was to be sold as a result of a tax sale.

Section 602(e)(1) and (2) of the Law, 72 P.S. §5860.602(e)(1) and (2), provides in pertinent part as follows:

(e) In addition to such publications, similar notice of the sale shall also be given by the bureau as follows:

⁴ Our review in a tax sale case is limited to determining whether the trial court abused its discretion, erred as a matter of law or rendered a decision with a lack of supporting evidence. Simmons v. Delaware County Tax Claim Bureau, 796 A.2d 400 (Pa. Cmwlth. 2002).

(1) 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.

(2) 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 office.

There must be strict compliance with the notice provisions of the Law to guard against the deprivation of property without due process of law. Grace Building Co. Inc. v. Chester County Land Corp., 339 A.2d 161 (Pa. Cmwlth. 1975). The Bureau has the burden of proving compliance with all applicable notice provisions. In re Upset Tax Sale of September 25, 1989, 615 A.2d 870 (Pa. Cmwlth. 1992). The Bureau is under no duty to conduct a search for a taxpayer. Where the Bureau mails a properly addressed notification to the last known address of the person liable for paying the taxes, the sale will be confirmed. Id. The fact that the notice was not actually received will not defeat the sale. Shoemaker v. Tax Claim Bureau of Montgomery County, 365 A.2d 1320 (Pa. Cmwlth. 1976).

Here, Heilig brings before our court the issue of whether the tax sale was properly advertised pursuant to Section 602(a) of the Law. As this issue was not argued or even presented on the record at the hearing before the trial court, it

has been waived.⁵ See Klein v. Council of the City of Pittsburgh, 643 A.2d 407 (Pa. Cmwlth. 1994).

Next, Heilig contends that the first notice was sent in a single notice to Francis and Jane Heilig and not in separate notices addressed to each individual owner, as required by Section 602(e) of the Law.

The record reflects that the second notice is the notice that is required under Section 602(e) of the Law, not the first notice. Section 602(e) of the Law requires a notice of sale to be sent out at least thirty days before the date of the sale. The first notice was not a notice of sale, but a “notice of return and claim.” This first notice was mailed out to Francis and Jane Heilig by certified mail on April 27, 2005, over one year before the actual sale. The second notice, the actual notice of public tax sale, was sent out to both Francis Heilig and Jane Heilig, individually, on July 29, 2006, restricted mail. The second notice to Francis Heilig was returned to sender, as Francis had passed away on August 15, 2005. However, on July 29, 2006, Jane Heilig signed for her second notice. The tax sale was scheduled for September 25, 2006. Thus, the second notice, the notice of the tax sale, was sent over thirty days prior to the date of the sale. Therefore, the trial court was correct in determining that the Bureau had complied with Section 602(e) of the Law.

Third, Heilig contends that the Bureau failed to comply with Section 602(e)(3) of the Law, in not properly posting the Property. The record reflects that

⁵ We further note that the record reflects that various stipulations were agreed to before the trial court. Intervenor contends that the parties stipulated that the tax sale was properly advertised and that the only issue before the trial court was whether the three notices were properly mailed and received by the parties. The record reflects that all parties agreed before the trial court that the only issues before the trial court were whether the three notices were properly mailed and received and whether the Constable had properly posted the Property.

the front door of the Property was posted on September 11, 2006, by Constable. Heilig argues that posting on the front door of the business was not sufficient to notify both the owner and the public at large of the pending sale. Heilig bases this on the testimony of her daughter that her daughter did not see the posting, and was not informed by anyone that the Property had been posted. The trial court found the posting to be sufficient and, based upon a review of the record, we must agree. A posting on the front door of a business is and should be quite sufficient to notify both the owner and the public at large of a pending tax sale.

Finally, Heilig contends that the trial court abused its discretion in not finding her testimony credible, that Heilig was not aware that her property was to be sold as a result of a tax sale. A trial court, of course, is the ultimate finder of fact, and its credibility determinations may not be overturned on appeal. Department of Transportation, Bureau of Traffic Safety v. Dourte, 445 A.2d 264 (Pa. Cmwlth. 1982).

Accordingly, we must affirm the decision of the trial court.

JIM FLAHERTY, Senior Judge

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	:	
Appellant	:	

ORDER

AND NOW, this 20th day of March, 2008 the Order of the Court of Common Pleas of Lackawanna County in the above-captioned matter is affirmed.

JIM FLAHERTY, Senior Judge