

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Janet Ehlig,
Appellant
v.
Washington County Tax
Claim Bureau and
WHR Realty, LLC

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: No. 1239 C.D. 2009
:
: Argued: April 19, 2010
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BEFORE: HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: September 20, 2010

Janet Ehlig (Ehlig) appeals from an order of the Court of Common Pleas of Washington County (Trial Court) which denied Ehlig's Emergency Petition to Set Aside Tax Sale. In its order, in relevant part, the Trial Court concluded that the Washington County Tax Claim Bureau (Bureau) satisfied the 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. We affirm.

Ehlig is the owner of real property located in Hanover Township, Washington County, Pennsylvania (the Property), which she purchased in 2005. Ehlig resides in Louisville, Kentucky, and thus the Property is not owner

occupied.¹ Ehlig failed to pay Burgettstown Area School District taxes for the year 2007, and the Bureau subsequently obtained a lien against the Property for those unpaid taxes. Ehlig paid her School District taxes, her Hanover Township (Township) taxes, and her Hanover County (County) taxes in full for the year 2008 via the internet.

On May 8, 2008, the Bureau mailed a Return and Claim notice in regards to her unpaid taxes² to Ehlig at her address in Kentucky. On June 9, 2008, the Bureau mailed a Pre-Sale Warning Letter to Ehlig at her Kentucky address. The Bureau has no record of this letter being returned. On July 17, 2008, the Bureau sent a 2008 Upset Tax Sale Notice by certified mail to Ehlig's Kentucky address, which Notice was signed for by Stephen Davis. Stephen Davis is Ehlig's business partner in other unrelated business, and resides at the same address as Ehlig in Kentucky.

¹ Ehlig owns property, as part of her business interests, in California, Kentucky, and Pennsylvania.

² The Original Record (O.R.) to this matter contains two notices showing, respectively, that Ehlig owed 2006 County property taxes, and 2007 School and Township taxes, on the Property. O.R. at Ex. 1. The notice issued following the upset tax sale shows that the Property had been sold "for delinquent taxes incurred in the year 2006." *Id.* The Trial Court's Opinion, including its findings of fact, indicates that Ehlig paid her 2006 taxes, and failed to pay her 2007 County and School taxes. Trial Court Opinion (Tr. Ct. Op.) at 1-2. Neither party to this appeal has addressed this discrepancy. The Bureau's Finance and Operations Manager testified that the sale at issue herein was founded upon unpaid County taxes for 2006, and School and Township taxes for 2007. Reproduced Record (R.R.) at 247a-248a. To the extent that the Trial Court's Opinion contains findings on the dates and/or types of the unpaid taxes that are not supported by the record, we conclude that this error is not material to our disposition, and is harmless. See Davis v. Civil Service Commission of the City of Philadelphia, 820 A.2d 874 (Pa. Cmwlth. 2003) (an unsupported finding of fact which is not necessary to the adjudication constitutes harmless error).

The Property was posted for tax sale on August 6, 2008, and was advertised for tax sale in the two newspapers local to the Property's situs. On August 21, 2008 a second Notice of Tax Sale was sent via first class USPS mail to Ehlig's Kentucky address. The Bureau has no record of a return of this second notice. On September 15, 2008, the Property was sold at tax sale to WRH Realty, LLC (WRH).

On October 3, 2008, a Post-Sale Notice was sent via certified mail to Ehlig at her Kentucky address, which was returned to the Bureau as unclaimed. On October 10, 2008, the Trial Court confirmed *nisi* the sale of the Property. On December 12, 2008, the Trial Court confirmed absolute the sale.

On December 29, 2008, Ehlig filed with the Trial Court an Emergency Petition (Petition) seeking to set aside the tax sale. A hearing was thereafter held, resulting in the Trial Court's order denying Ehlig's Petition, and ordering the Bureau to deliver the deed for the Property to WRH. Ehlig now appeals from the Trial Court's order.

This Court's scope of review in tax sale cases 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. Ban v. Tax Claim Bureau of Washington County, 698 A.2d 1386 (Pa. Cmwlth. 1997).

Ehlig first argues that the Bureau did not fulfill the notice requirements of Section 607.1 of the Law, 72 P.S. §5860.607a,³ prior to the sale of

³ Added by Act of July 3, 1986, P.L. 351.

the Property. Ehlig asserts that the certified mail receipt for the notice of sale shows that the notice was addressed to Ehlig, marked “restricted delivery,” and signed for by Stephen Davis (Davis). R.R. at 261a. Davis’ testimony confirms that he signed for the notice. R.R. at 123a-124a. Ehlig argues that when the receipt was returned to the Bureau without Ehlig’s signature, the Bureau was required to make additional notification efforts under Section 607.1.

Section 607.1 of the Law reads:

Additional notification efforts

(a) When any notification of a pending tax sale or a tax sale subject to court confirmation is required to be mailed to any owner, mortgagee, lienholder or other person or entity whose property interests are likely to be significantly affected by such tax sale, and such mailed notification is either returned without the required receipted personal signature of the addressee or under other circumstances raising a significant doubt as to the actual receipt of such notification by the named addressee or is not returned or acknowledged at all, then, before the tax sale can be conducted or confirmed, the bureau must exercise reasonable efforts to discover the whereabouts of such person or entity and notify him. The bureau's efforts shall include, but not necessarily be restricted to, a search of current telephone directories for the county and of the dockets and indices of the county tax assessment offices, recorder of deeds office and prothonotary's office, as well as contacts made to any apparent alternate address or telephone number which may have been written on or in the file pertinent to such property. When such reasonable efforts have been exhausted, regardless of whether or not the notification efforts have been successful, a notation shall be placed in the property file describing the efforts made and the results thereof, and the property may be rescheduled for sale or the sale may be confirmed as provided in this act.

(b) The notification efforts required by subsection (a) shall be in addition to any other notice requirements imposed by this act.

72 P.S. §5860.607a. We find no merit in Ehlig's scant argument on this issue.

Section 602(e) of the Law, 72 P.S. §5860.602(e), states that if return receipt of a sale notice is not received from each owner, then at least ten days before the date of sale similar notice shall be given to each owner who failed to acknowledge the first notice by USPS first class mail, with proof of mailing, at the owner's last known address by virtue of the knowledge and information known by the bureau, by the tax collector, and by the county office responsible for the assessment and revisions of taxes. As noted, the record to the matter *sub judice* shows that a second notice was sent to Ehlig's address, which address was the registered address for tax purposes related to the Property, via USPS first class mail, and that this second notice was unreturned, and was mailed more than ten days before the date of sale at issue. R.R. at 159a-160a.

Additionally, this Court has stated that when actual notice, including implied actual notice, is established, the formal requirements of notice need not be strictly met. Sabbeth v. Tax Claim Bureau of Fulton County, 714 A.2d 514 (Pa. Cmwlth. 1998). In Sabbeth, implied actual notice was found where notice was sent via certified mail, was signed for by an employee of Sabbeth's husband's company, and then sat on Sabbeth's desk unopened for 53 days until the day of the sale. Actual notice was found because the owner, Sabbeth, had been previously employed by her husband's company, and regularly visited her office where the unopened notice sat on her desk. Following the bureau's certified mailing, and

after posting and publishing numerous notices of sale, the bureau also sent a final notice to Sabbeth via regular USPS mail.

Sabbeth had argued technical difficulties in the notice sent to her by regular mail, and the trial court found as fact that the bureau had failed to strictly comply with the Law's notice requirements. The bureau argued that actual notice requires only that the notice had been received, and did not require proof that the notice had actually been read. In our review, we first noted that where a bureau did not comply with all statutory notice requirements, a subsequent tax sale is valid only if the owner received actual notice of the sale. We held that actual notice encompasses both express actual notice, and implied actual notice.

The facts in Sabbeth upon which we based our conclusion that the owner had implied actual notice also included the owner's duty to undertake further inquiry into the tax matter due to prior payment of taxes coupled with subsequent failure to pay taxes, and knowledge by the owner that taxes were assessed on the property combined with the rational conclusion that failure to pay taxes would result in consequences of some sort. Because those circumstances served to comprise implied actual notice of the sale on the owners' part, we held that strict compliance with the Law's statutory notice requirements had been waived, and the sale was valid. Accord Popple v. Luzerne County Tax Claim Bureau, 960 A.2d 517 (Pa. Cmwlth. 2008), petition for allowance of appeal denied, 602 Pa. 671, 980 A.2d 610 (2009); Cruder v. Westmoreland County Tax Claim Bureau, 861 A.2d 411 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 582 Pa. 703, 871 A.2d 193 (2005).

In the instant case, the record indicates, under Sabbeth's standard, that the Bureau established implied actual notice on Ehlig's part. As in Sabbeth, the Bureau in this matter sent a certified letter of the impending sale, as well as a subsequent first class USPS notice, to the property's registered tax address at which Ehlig maintained a business interest and business partner, as well as where she checked in regularly. R.R. 157a-159a; 190a; 240a-241a. Following the Bureau's certified mailing, it also posted and published notices of sale. R.R. at 159a; 190a. Additionally, Ehlig had a duty to undertake further inquiry into these tax matters due to her prior payment of taxes, and due to her knowledge that taxes were assessed on the property combined with the rational conclusion that failure to pay taxes would result in consequences of some sort. R.R. at 173a-178a; 193a; 197a. The record further shows that Ehlig was experienced in matters of real estate dealing, and ownership and taxation, for a significant period of years in several states including Pennsylvania. R.R. at 173a-178a; 202a-203a; 205a-206a; 208a-212a; 235a. By Ehlig's own admission, the address to which all notices were sent was her legal address. R.R. at 183a-190a; 201a-206a; 214a-218a. Ehlig also testified that she agreed that she did indeed check her mail at the relevant address to which the notices were sent "every couple days or maybe once a week." R.R. at 185a-188a. It is undisputed that the certified notice was received and signed for by Ehlig's close business associate, Davis, and that the subsequent notice sent via regular USPS mail was received and not returned to the Bureau. R.R. at 122a-124a; 126a; 156a-168a. The Trial Court did not find that any reasonable or plausible explanation was offered by Ehlig to explain why she did not look at her

mail which was inarguably signed for by her business associate. Given the existence of all of the foregoing elements, Sabbeth controls, and Ehlig received implied actual notice at her legal address. Accord Cruder (where employee of property owner's company signed certified mail receipt for notice, owner had implied actual notice of tax sale, rendering strict compliance with statutory notice requirements waived).

Ehlig next argues that the Trial Court erred in failing to find, or conclude, that the Bureau made or was required to make additional notification efforts under Section 607.1. In conjunction with this issue, Ehlig argues that substantial evidence does not support the Trial Court's conclusion that the notice requirements of Section 607.1 were fulfilled prior to the sale at issue.

Ehlig's arguments on these final two issues are without merit, given our disposition of her first issue. As noted in our foregoing analysis, where the factual circumstances serve to comprise implied actual notice of the sale on the owners' part, strict compliance with the Law's statutory notice requirements have been waived, and the sale was valid. Sabbeth; Popple; Cruder.

Accordingly, we affirm.⁴

JAMES R. KELLEY, Senior Judge

⁴ It is axiomatic that this Court may affirm the decision of a trial court on any basis without regard to the basis upon which the trial court relied, where the result reached by the trial court is correct, and our basis for affirming is apparent from the record. Boro Const., Inc. v. Ridley School District, 992 A.2d 208 (Pa. Cmwlth. 2010).

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Claim Bureau and	:	
WHR Realty, LLC	:	

ORDER

AND NOW, this 20th day of September, 2010, the order of the Court of Common Pleas of Washington County dated May 22, 2009, at No. 2008-7944, is affirmed.

JAMES R. KELLEY, Senior Judge