

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Masuda Akhter	:	
	:	
v.	:	No. 435 C.D. 2009
	:	
Tax Claim Bureau of Delaware	:	Submitted: September 25, 2009
County and Glen Rosenwald	:	
	:	
Appeal of: Glen Rosenwald	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge<sup>1</sup>

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: January 5, 2010**

Glen Rosenwald (Purchaser) seeks review of an order of the Court of Common Pleas of Delaware County (trial court) setting aside a tax sale on the basis the Delaware County Tax Claim Bureau (Bureau) failed to make reasonable additional notification efforts required by the Real Estate Tax Sale Law (Law).<sup>2</sup> Purchaser, representing himself, contends the trial court erred in hearing and sustaining Masuda Akhter's (Owner) exceptions to the tax sale, which were filed almost a year after she had notice of the sale, because Owner did not petition to proceed nunc pro tunc. Alternatively, Purchaser contends the trial court, in setting aside the sale, erred by not ordering a full refund of the bid price he paid.

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<sup>1</sup> This case was decided before Judge McCloskey's retirement on December 31, 2009.

<sup>2</sup> Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §§5860.101-803.

Also before the Court for disposition with the merits is a motion to quash on behalf of Owner and the Bureau.<sup>3</sup> They contend that by accepting a refund from the Bureau of \$18,217.32, the bid price less the realty transfer tax paid when the tax deed was recorded, Purchaser is no longer aggrieved by the trial court's order and thus lacks standing to proceed with this appeal. Upon review, we deny the motion to quash and affirm as modified on the merits.

At all relevant times, Owner resided at 133 W. Albemarle Avenue, Lansdowne, PA, 19050. In January, 2004, Owner acquired title by virtue of a recorded deed to property located at 7265 Walnut Street, Upper Darby Township, PA, 19082 (the Property). On September 12, 2007, the Bureau sold the Property to Purchaser at an upset tax sale. In preparing for the sale, the Bureau properly posted the property and advertised the notice of sale.

However, the Bureau sent the initial certified mail notice required by Section 602(e) of the Law, 72 P.S. §5860.602(e), to Owner at 7265 Walnut Street, Upper Darby, PA, 19082. The post office returned this notice with the notation, "return to sender, vacant." Notes of Testimony (N.T.), 02/10/09, at 8. The Bureau also sent the "10-day" notice required by Section 602(e) to the Property's Upper Darby address. The post office returned this notice with the notation, "return to sender, not deliverable as addressed, unable to forward." N.T. at 9. The post office also returned the Bureau's "sold" notice required by Section 607(a.1) of the Law, 72 P.S. §5860.607(a.1), as "not deliverable as addressed, unable to forward." N.T. at 10. The Bureau also made an unsuccessful search of the Delaware County telephone directories.

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<sup>3</sup> Other than joining in Owner's motion to quash, the Bureau did not participate in this **(Footnote continued on next page...)**

In January, 2008, Owner first learned of the tax sale when Purchaser served her with a complaint to quiet title. In November, 2008, Owner filed exceptions and objections to the tax sale seeking to set it aside on the ground that the Bureau failed to provide Owner timely and proper notice of the sale. All mail notices of the tax sale were sent to the Property's Upper Darby address and returned as undeliverable. Owner alleged the Bureau failed to meet its obligation under Section 607.1(a) of the Law<sup>4</sup> to make additional notification efforts because it failed to make a proper search in the Delaware County Recorder of Deeds Office to determine Owner's correct mailing address.

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**(continued...)**

appeal.

<sup>4</sup> Added by the Act of July 3, 1986, 72 P.S. §5860.607a(a). Section 607.1(a) provides, with emphasis added:

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 dockets and indices of the county tax assessment offices, recorder of deeds office and prothonotary's office ....

Following the hearing at which Purchaser participated, the respected trial court determined the evidence established the Bureau failed to make reasonable additional notification efforts. Owner presented evidence that the Recorder of Deeds Office had information, by way of three recorded deeds, that Owner's current mailing address was 133 W. Albemarle Avenue, Lansdowne, PA, 19050. Noting at hearing that the Bureau is understaffed and subject to time constraints, especially around the time of tax sales, the trial court nonetheless held the Bureau failed to comply with the Law's mandatory notice requirements and set aside the sale.

The trial court's order also directed: that the Bureau immediately reimburse Purchaser's bid price, less disbursements; that Owner pay the delinquent taxes within 30 days of the order; and that the Recorder of Deeds strike Purchaser's February, 2008 deed from the records. Trial Ct. Order, 02/18/09. The trial court further added, "ALL TAXING AUTHORITIES/MUNICIPAL BODIES SHALL, UPON APPLICATION, RETURN ALL COST/TAXES PAID BY [PURCHASER] UPON APPLICATION."<sup>5</sup> Id. Purchaser appeals.<sup>6</sup>

### **A. Motion to Quash**

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<sup>5</sup> According to Owner, in March, 2009, the Bureau mailed Purchaser a check for \$18,217.32 for reimbursement of the bid price, less the realty transfer tax paid when the tax deed was recorded.

<sup>6</sup> In tax sale cases, our review is limited to determining whether the trial court abused its discretion, rendered a decision without supporting evidence, or clearly erred as a matter of law. In re 2005 Sale of Real Estate by Clinton County Tax Claim Bureau Delinquent Taxes, 915 A.2d 719 (Pa. Cmwlth. 2007).

We first address the motion to quash filed by Owner and joined by the Bureau. They assert that as a result of Purchaser's retention of the refunded amount, less the realty transfer tax paid, he no longer has a direct and substantial interest in the litigation as to give him standing to appeal. See Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975) (for standing to appeal, a party must have a direct, immediate and substantial interest in the particular question litigated).

We disagree. Although the trial court set aside the tax sale, it did not refund Purchaser's entire bid price. See In re Judicial Sale, Tax Claim Bureau of Northampton County, Easton, PA, 720 A.2d 818 (Pa. Cmwlth. 1998) (disappointed purchaser entitled to a full refund of \$10,000 bid price despite disbursements made from that amount by tax claim bureau). Pecuniary interests, even if minimal, may be sufficient to confer standing. Wm. Penn Parking Garage, Inc. We therefore deny the motion to quash and address the merits of Purchaser's appeal.

## **B. Timeliness of Exceptions**

### **Argument**

Purchaser first contends the trial court erred in hearing Owner's exceptions to the tax sale absent Owner's request for leave to proceed nunc pro tunc. Owner, Purchaser asserts, received notice of the tax sale on December 7, 2007, via Purchaser's action to quiet title. However, Owner did not file exceptions until November 19, 2008, more than a year after confirmation nisi and almost a year after absolute confirmation.

Moreover, Purchaser stresses, Owner did not petition to proceed nunc pro tunc or present evidence of good cause for her 11-month delay in filing her

exceptions following service of the action to quiet title. In arguing Owner needed leave of court to proceed with her exceptions, Purchaser relies on Section 607(b.1) of the Law, which provides:

If notice is given under subsection (a.1)(2), proof that notice under subsection (a.1)(1) was not received by the owner shall not defeat a sale nor invalidate title to property. If the mailed or published notice required under this section is defective or was served in an untimely manner, the court shall enter an order *nunc pro tunc* for cause and, upon proof of prejudice, shall grant the owner leave to file exceptions and objections.

72 P.S. §5860.607(b.1).

Owner counters Section 607(b.1), which must be read in conjunction with Section 607(a.1) (notice that property was sold at tax sale), presumes the Bureau sent the required pre-sale notices to the proper mailing address. Owner asserts that Section 607(b.1), is the “sold” notice equivalent of the “sale” notice proscription in Section 602(h) of the Law, 72 P.S. §5860.602(h), which reads in part:

No sale shall be defeated and no title to property sold shall be invalidated because of proof that mail notice as herein required was not received by the owner, provided such notice was given as prescribed by this section.

Owner further maintains it is only where the Bureau can prove the Section 607(a.1) “sold” notice went to the delinquent owner’s correct address, and exceptions were not filed within 30 days that the owner must seek a rule nunc pro tunc under 607(b.1) and demonstrate prejudice before filing her exceptions.

Owner additionally asserts the trial court correctly determined Section 607(g) of the Law permits, even after the sale is confirmed absolutely, the filing of exceptions or objections to the tax sale “with respect to the giving of notice under the act ....” 72 P.S. §5860.607(g). This notice exception applies to both the “sale” notices required by Section 602(e)(2) and “sold” notices required by Section 607(a.1). See In re Cont’l Motels, Inc., 379 A.2d 897, 899 (Pa. Cmwlth. 1977) (although Section 607(g) of the Law establishes generally the invulnerability of sales confirmed absolutely, that subsection expressly excepts allegations as to the giving of notice as required by the Law and permits them to be heard after confirmation).

### **Analysis**

In Pennsylvania, a valid tax sale depends on strict compliance with the three notice requirements in Section 602 of the Law, 72 P.S. §5860.602: publication, certified mail and posting. Fernandez v. Tax Claim Bureau of Northampton County, 925 A.2d 207 (Pa. Cmwlth. 2007). The Bureau bears the burden of proving it complied with those notice requirements and the reasonable efforts requirements in Section 607.1. Fernandez.

Here, Karen Duffy, the Bureau’s upset price sale coordinator (Coordinator), testified at hearing that the post office returned the Bureau’s certified and first class mail notices to Owner as undeliverable. Notes of Testimony (N.T.), 02/10/09, at 19. Coordinator further testified that the only additional effort the Bureau made to locate Owner’s address was an attempt to look up a telephone number. Id. at 18. The Bureau did not attempt to search the indices in the Recorder of Deeds Office for Owner’s whereabouts or residential mailing

address as required by Section 607.1 of the Law. As noted above, three deeds contained Owner's place of residence and complete post office address.

Section 607(g) of the Law authorizes Owner to raise lack of notice as a basis to challenge the validity of a tax sale even after confirmation. Cont'1 Motels. See also Tax Claim Bureau of Northampton County, 720 A.2d 818 (under Section 607(g), common pleas court may set aside tax sale, even after confirmation, for lack of notice). Because the Bureau acknowledges its certified mail notices to Owner, including the two "pre-sale" notices required by Section 602(e), and the "sold" notice required by Section 607(a.1), were returned as undeliverable, Section 607(b.1)'s requirement that Owner demonstrate cause to file exceptions nunc pro tunc, is inapplicable. Consequently, we discern no error in the trial court's decision that Section 607(g) expressly authorizes Owner's exceptions. Tax Claim Bureau of Northampton County; Cont'1 Motels.

### **C. Return of Full Bid Price**

In this alternative argument, Purchaser assigns error in the trial court's failure to order refund of the full bid price. See Tax Claim Bureau of Northampton County, 720 A.2d 818 (disappointed purchaser entitled to a full refund of purchase price with interest). Here, Purchaser does not seek interest. Rather, he seeks a full refund from the Bureau. He contends the trial court's order requires him to go to various municipal taxing authorities.

Owner counters that Purchaser sought and received from the Bureau a refund of \$18, 217.32 of his bid amount. To obtain a refund of the realty transfer tax as per the trial court's order, Purchaser must file a one page form (REV-1651) with the Department of Revenue. See Motion to Quash, Ex. C (Application for



Refund of Pennsylvania Realty Transfer Tax). Because Purchaser may easily obtain a refund of the realty transfer tax paid to the Department of Revenue by filling out a short form and mailing it to the Department, the trial court did not err in ordering that Purchaser apply to the taxing authorities for a refund.

It is clear from a review of the transcript that Purchaser does not consider a refund application to the Department of Revenue for transfer taxes to be burdensome; rather, he is concerned about the multiple applications for refunds of real estate taxes to taxing authorities. Notes of Testimony of 2/10/09 at 44-46. The trial court was also concerned about that issue. Id. Unfortunately, Owner offers no cogent argument about why amounts disbursed for real estate taxes should not be returned directly to Purchaser.

The trial court's February 18, 2009, order requires all delinquent taxes on the property to be paid by Owner within 30 days. We understand the order to include payment by Owner of delinquent taxes satisfied out of Purchaser's bid price. In the absence of any reason why the real estate taxes paid by Purchaser should not be refunded immediately, the trial court's order shall be modified. See 42 Pa. C.S. §706 (appellate court may modify any order before it for review). We will require that reimbursement to Purchaser shall include amounts disbursed for real estate taxes. Tax Claim Bureau of Northampton County. Owner shall make the Bureau whole, and she may seek refunds from taxing authorities to the extent duplicate payments were made.

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ROBERT SIMPSON, Judge

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**ORDER**

**AND NOW**, this 5<sup>th</sup> day of January, 2010, the order of the Court of Common Pleas of Delaware County is **AFFIRMED as MODIFIED**. In particular, Paragraph 3 of the Order of February 18, 2009 is **MODIFIED** to read as follows: “That the Delaware County Tax Claim Bureau immediately reimburse bid price, less transfer taxes only, to Glenn Rosenwald; that Glenn Rosenwald is entitled to apply for and receive a refund of transfer taxes paid; and that Masuda Akhter shall make the Delaware County Tax Claim Bureau whole.” All other provisions of the Order are **AFFIRMED** without modification.

Appellees’ Motion to Quash Appeal is **DENIED**.

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ROBERT SIMPSON, Judge