



Fitzgerald (Fitzgerald) for the purchase amount of \$43,000.00. Hearing Transcript (H.T.), February 20, 2007, at 11; Reproduced Record (R.R.) at 44a. On October 13, 2006, Appellant filed a petition to set aside the tax sale (petition to set aside) of the real property. Fitzgerald filed a petition to intervene, which was granted on November 27, 2006.

At a hearing, Karen Duffy (Duffy), Upset Price Sale Coordinator, testified for the TCB. Duffy stated that the TCB mailed certified notice of return and claim for 2004 delinquent taxes to “Donnelly Alva, 414 Westmont Drive, Collingdale, PA 19023.” H.T. at 12; R.R. at 45a; See Mailed Notice, April 4, 2005; R.R. at 28a. The notice was received and signed for by Alva Wallace,<sup>1</sup> another daughter of Decedent. H.T. at 12; R.R. at 45a.

In July 2006, the TCB mailed certified, return receipt requested, a notice of the pending upset tax sale to “Donnelly Alva, 414 Westmont Drive, Collingdale, PA 19023” pursuant to Section 602(e)(1) of the Real Estate Tax Sale Law (RETSL), Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §5860.602(e)(1). H.T. at 12-13; R.R. 45a-46a. The certified mail was returned to the TCB marked as “unclaimed.” H.T. at 13; R.R. at 46a; See Mailed Notice, July 13, 2006, R.R. at 29a.

On July 22, 2006, at 8:10 P.M. Corporal Mitchell of the Delaware County Sheriff’s Office posted a notice of the pending upset sale at the Property on

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<sup>1</sup> Alva Wallace, “periodically” resided at the Property prior to and after Decedent’s death. H.T. at 61; R.R. at 94a.

September 13, 2006, in accordance with Section 602(e)(3) of the RETSL, 72 P.S. §5860.602(e)(3). H.T. at 13-14; R.R. at 46a-47a. Corporal Mitchell also attempted personal service at the Property on July 22 and July 25, 2006. H.T. at 24; R.R. at 57a. Duffy stated that Corporal Mitchell noted on the Affidavit of Posting: “Spoke to Veronica Shield [great-grand daughter] stated Great Grandmother died.” H.T. at 25; R.R. at 58a; See Affidavit of Posting, August 25, 2006; R.R. at 33a. The notation informed the TCB that Corporal Mitchell was notified that Alva Donnelly was deceased. The affidavit is part of the TCB’s record. H.T. at 25-26; R.R. at 58a-59a.

Next, the TCB published a notice of sale in two newspapers of general circulation in accordance with Section 602(a) of the RETSL, 72 P.S. §5860.602(a). “This is the advertising that was in the August 9, 2006 News of Delaware County” and “[t]his is the Daily Times, August 10th, the advertising for the sale.” H.T. at 16; R.R. at 49a. The notice of sale was also advertised in the Delaware County Legal Journal on August 11, 2006, in accordance with Section 602(a) of the RETSL, 72 P.S. §5860.602(a). H.T. at 17; R.R. at 50a.

On August 9, 2006, the TCB sent a second notice, referred to as a “ten day notice”, of the upset sale scheduled for September 13, 2006, to the Property by first class mail as required by Section 602(e)(2) of the RETSL, 72 P.S. §5860.602(e)(2). H.T. at 14; R.R. at 47a. The U.S. Postal Service did not return the mailing.

Duffy stated there was also a phone sheet, however, “[i]t looks like . . . [the TCB did not have any contact with Alva Donnelly] and it doesn’t look like a phone number was found in the phonebook or otherwise.” H.T. at 15; R.R. at 48; See Collingdale Borough Owner Phone Sheet; R.R. at 32a.

Appellant first became aware of the pending upset sale in August 2006, when Alva Wallace learned the Property was posted and contacted Appellant to tell “her about the property being subject to tax sale.” H.T. at 53; R.R. at 86a. Appellant stated that she neither received nor saw any notices from the TCB. H.T. at 56; R.R. at 89a. Appellant contacted the TCB “to confirm that the property was actually going to sale” and to get information “on how much was owed.” H.T. at 54; R.R. at 87a. The TCB confirmed that the Property was pending an upset tax sale and the amount of the delinquent taxes.

Appellant contacted her brother Rick Wallace (Rick) and “told him that they [the TCB] said . . . [all delinquent taxes owed on the Property] had to be paid by the time the [upset] sale was to go on. I said let’s make sure it gets paid by the end of August so there is no problems.” H.T. at 66; R.R. at 99a. Rick subsequently contacted another brother, Kenneth Wallace (Kenneth) and said “we have to pay the taxes” on the Property. H.T. at 66-67, 78; R.R. 99a-100a, 111a. Kenneth inquired at the Collingdale Borough Municipal Building to ascertain and pay all taxes owed and asked “what are the taxes owed on the property I wanted to catch up with the taxes.” H.T. at 79, 82; R.R. at 112a, 115a. Kenneth was informed that the taxes owed were for 2006. He was not advised of any delinquent taxes or that the property was subject to a tax sale. H.T. at 78; R.R. at 111a. On

August 30, 2006, Kenneth paid Joseph A. Lacava, Tax Collector for the Borough of Collingdale, an amount which satisfied Borough and School District real estate taxes due on the Property for 2006. H.T. at 55; R.R. at 88a.

Afterwards, Appellant presumed that no further action was necessary to avoid the sale because she believed the delinquencies were paid. H.T. at 66-67, 69; R.R. at 99a-100a, 102a. However, neither Kenneth Wallace, nor the Appellant satisfied the delinquent taxes for 2004 or the tax liability left unpaid for 2005. The Property was sold at the tax upset sale on September 13, 2006. H.T. at 55; R.R. at 88a. Appellant first learned about the sale of the Property when Chad Newman, on behalf of Fitzgerald, left a note on the door of the Property shortly after the sale. H.T. at 66; R.R. at 99a.

The trial court denied Appellant's petition to set aside the upset sale and concluded:

This Court must conclude that the Bureau [TCB] did not ‘. . . exercise reasonable efforts to discover the whereabouts . . .’ of Alva Donnelly or her personal representative pursuant to 72 P.S. § 5860.607 A [sic] when the mailed notification of the pendency of the upset tax sale was returned as unclaimed. Likewise this Court must conclude that Linda Wallace, the executrix of the Estate of Alva Donnelly, had actual Notice of the pendency of the upset tax sale from two sources, her sister Alva Wallace and the Bureau [TCB] itself by the end of August 2006.

.....  
CONCLUSIONS OF LAW

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3. The actual notice possessed by Linda Wallace excused the . . . Tax Claim Bureau's compliance with 72 P.S. § 5860.607 A [sic].

Order of the Court of Common Pleas of Delaware County, April 9, 2007, at 9-11.

On appeal<sup>2</sup>, Appellant contends that the trial court erred when it held that actual notice of a pending tax sale cured any and all defects with the TCB's statutory obligation to provide official notice to the owner of property being exposed to the tax sale.

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, 828 A.2d 475 (Pa. Cmwlth. 2003). Under Section 602 of RETSL<sup>3</sup>, a TCB is obligated to provide

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<sup>2</sup> 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. Piper v. Tax Claim Bureau of Westmoreland County, 910 A.2d 162, 166 n.2 (Pa. Cmwlth. 2006). 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).

<sup>3</sup> Section 602 of the RETSL provides, in pertinent part:

(a) At least thirty (30) days prior to any scheduled sale the bureau shall give notice thereof, not less than once in two (2) newspapers of general circulation in the county, if so many are published therein, and once in the legal journal . . . . (Emphasis added).

....

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

**(Footnote continued on next page...)**

three methods of mandatory notice, including (1) published notice, (2) mailed notice, and (3) posted notice. Only where notice obviously did not effectively reach the owners of record must the TCB go beyond the formal act of notice by certified mail. Farro v. Tax Claim Bureau of Monroe County, 704 A.2d 1137, 1143 (Pa. Cmwlth. 1997), petition for allowance of appeal denied, 555 Pa. 722, 724 A.2d 936 (1998). Section 607.1<sup>4</sup> of the RETSL, 72 P.S. §5860.607(a)<sup>5</sup>

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(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. (Emphasis added).

(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 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 . . . . It shall be the duty of the bureau to determine the last post office address known to said collector and county assessment office.

(3) Each property scheduled for sale shall be posted at least ten (10) days prior to sale. (Emphasis added).

. . . .

<sup>4</sup> Section 607.1 was added by the Act of July 3, 1986, P.L. 35.

<sup>5</sup> Section 607.1 of the RETSL, 72 P.S. § 5860.607(a) provides

When any notification of a pending tax sale . . . is required to be mailed to any owner . . . 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 it 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 efforts shall include, but not

**(Footnote continued on next page...)**

provides additional notification requirements and obligates the TCB to “exercise reasonable efforts” to notify the property owner. Under Section 607.1 of the RETSL, the TCB’s duty to investigate such matters is confined to determining the owners of record. Thereafter, the TCB must use “ordinary common sense business practices to ascertain proper addresses where notice of the tax sale may be given.” Farro, 704 A.2d at 1142.

“In a tax sale case, the Bureau has the burden of proving compliance with the statutory provisions of the Law [RETSL].” Jefferson Township, 828 A.2d at 479, citing Geier v. Tax Claim Bureau of Schuylkill County, 570 A.2d 134 (Pa. Cmwlth. 1990), affirmed 527 Pa. 41, 588 A.2d 480 (1991). “It is well settled that the notice provisions of the Law [RETSL] are to be strictly construed and that strict compliance with the notice provisions is essential to prevent the deprivation of property without due process.” Jefferson Township, 828 A.2d at 479, citing Murphy v. Monroe County Tax Claim Bureau, 784 A.2d 878 (Pa. Cmwlth. 2001).

The TCB was made aware that attempts to provide notice to the registered property owner did not reach the intended recipient because: (1) notice

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**(continued...)**

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 . . . .  
(Emphasis added).



of the pending upset tax sale to “Donnelly Alva, 414 Westmont Drive, Collingdale, PA 19023” in July 2006, was returned to the TCB marked as “unclaimed”; (2) Corporal Mitchell noted on the Affidavit of Posting that the Property owner was deceased; and (3) the notice of delinquent taxes was received and signed by someone other than the Property owner. Here, the trial court concluded that the information in the TCB’s possession indicated the owner of the Property did not receive the official notice of the pending tax sale. This triggered the TCB’s statutory obligation to go beyond the notice requirements found in Section 602 of RETSL and conduct the additional notification efforts provided in Section 607.1 of RETSL.

The trial court concluded that the TCB did not meet its burden to establish that it complied with the statutory requirements of Section 607.1 of RETSL because the TCB did not “exercise reasonable efforts to discover the whereabouts . . .” of Alva Donnelly or her personal representative. H.T. at 13; R.R. at 46a; See Mailed Notice, July 13, 2006, R.R. at 29a. This Court must agree with the trial court’s conclusion that the TCB failed to exert reasonable efforts as demanded by Section 607.1 of RETSL to ascertain the identity of the Property owner to provide official notice.

In Krawec v. Carbon County Tax Claim Bureau, 842 A.2d 520 (Pa. Cmwlth. 2004), mailings to the deceased property owner’s residence were returned to the TCB with the notation “deceased.” This Court addressed whether “the Bureau’s failure to make inquiry of the Register of Wills . . . was reasonable in light of the Bureau’s knowledge that Taxpayer was deceased.” This Court

reasoned that the Bureau's receipt of information that the property owner was deceased required that it go beyond the statutory notice requirements provided in Section 602 of the RETSL and take the "additional notification efforts" delineated in Section 607.1 RETSL. This Court noted that, "ordinary common sense business practices' would dictate that the Bureau should inquire of the Register of Wills whether a will had been probated for Taxpayer." Krawec, 842 A.2d at 525 (once the TCB received notice that taxpayer was deceased the TCB was required to inquire of the county of register of wills whether estate papers had been probated for taxpayer in order to comply with the tax sale notice requirements of RETSL) .

Here, no such reasonable inquiry was made. The TCB actually failed to follow its own internal procedure which required the TCB to check with the Register of Wills when a mail notice came back with an indication that the property owner did not receive notice. H.T. at 28; R.R. at 61a; See TCB Investigative Checklist. A search of the record of the Register of Wills would have disclosed the notice address of Linda Wallace as 323 Bohemia Avenue, PO Box 441, Chesapeake City, Maryland, and the business address of counsel for Decedent's Estate. Duffy, the TCB's Upset Sale Coordinator, also conceded that the TCB "should have . . . go[ne] to the Register of Wills." H.T. at 26; R.R. at 59a.

Strict compliance with RETSL notice provisions is mandatory because the tax sale laws were enacted with the primary purpose of insuring the collection of taxes, and not to strip away citizens' property rights. Willard v. Delaware County Tax Claim Bureau, 921 A.2d 1273 (Pa. Cmwlth 2007); In re Sale of Real Estate by Montgomery Tax Claim Bureau for 1997 Delinquent Taxes, 836

A.2d 1037, 1042 (Pa. Cmwlth. 2003)(the provisions of RETSL “is to collect overdue taxes, not to punish taxpayers who omit through oversight or error to pay their taxes.”) In Fernandez v. Tax Claim Bureau of Northampton County, 925 A.2d 207, 214 (Pa. Cmwlth 2007), this Court reiterated that the TCB’s legislatively dictated obligation to make the additional notification efforts, as prescribed in Section 607.1 of RETSL, are mandatory and any failure to make additional efforts is cause, by itself, to set aside an upset tax sale.

The TCB contends, however, that the trial court correctly concluded that actual notice<sup>6</sup> of an impending upset tax sale cures any defects in statutory notice requirements; therefore, Appellant was not entitled to set aside the sale, even though the TCB failed to strictly comply with RESTL.

Again, a failure by the TCB to comply with the statutory notice and reasonable effort requirements of RETSL ordinarily invalidates an upset tax sale. However, this Court has “waived strict compliance with the statutory requirements where it has been demonstrated that the record owner has received actual notice of the impending sale.” Aldhelm, Inc. v. Schuylkill County Tax Claim Bureau, 879 A.2d 400, 403 (Pa. Cmwlth. 2005), citing Sabbeth v. Tax Claim Bureau of Fulton County, 714 A.2d 514, 517 (Pa. Cmwlth. 1998). The TCB argues that once a personal representative receives timely actual notice of a pending sale, any subsequent *technical failure* on the TCB’s part to make additional reasonable

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<sup>6</sup> The trial court found that Appellant had actual notice of the sale because she was aware that notice was posted on the Property and she contacted TCB to confirm the pending upset tax sale and was informed of the amount due to satisfy the delinquent taxes.

efforts of notification is cured by actual notice. Stanford-Gale v. Tax Claim Bureau of Susquehanna County, 816 A.2d 1214 (Pa. Cmwlth. 2003).

Although this Court has recognized there may be a waiver of the requirement of strict compliance with RESTL this Court has done so only in very narrow circumstances that involved technical defects. In Aldhelm, the technical defect included a one-letter error in the spelling of the taxpayer's name. In Donofrio v. Northampton County Tax Claim Bureau, 811 A.2d 1120 (Pa. Cmwlth. 2002), the technical defect was the TCB's failure to use the required ten point font in mailed and signed for notices to the property owner. This Court recognizes that technical deficiencies in notice requirements may not invalidate a tax sale. Here, there was a substantive deficiency. Where, as here, the Appellant never received official, statutorily required notice of the pending tax sale there was a substantive defect so far as the Appellant was denied the information necessary and the reasonable opportunity to avoid the pending tax sale.

Moreover, this Court does not agree that Appellant received actual notice. Arguably the Appellant received actual notice of the sale on two occasions: (1) when she was notified by her sister, Alva Wallace, from the notice posting of July 22, 2006; and (2) in early August 2006, when she called the TCB to confirm that the Property was being sold on September 13, 2006, for delinquent real estate taxes. The Property was eventually sold for unpaid delinquent taxes for 2004 and 2005.

The notice posting indicated that an Upset Sale was scheduled for September 13, 2006, for delinquent real estate taxes and it listed an approximate upset sale price. The notice posting *did not specify* for what year the delinquent real estate taxes were owed. TCB Exhibit No. 4.

Appellant then contacted the TCB to confirm that the Property was pending an Upset Sale and the amount of delinquent taxes. Again, it appears to this Court that the TCB did not inform the Appellant of the specific years in which the delinquent real estate taxes were owed.<sup>7</sup> The Appellant relayed the information to her brother Rick, who contacted Kenneth, but without a clear understanding that delinquent real estate taxes were due for 2004 and 2005, Kenneth satisfied Borough and School District real estate taxes due on the Property for 2006. H.T. at 55; R.R. at 88a.

When the Appellant received unofficial notice of the Upset Sale she took reasonable steps to satisfy all delinquent taxes, but ultimately failed to remove the Property from the pending Upset Sale because of incomplete knowledge garnered from the notice posting and the TCB. In Donofrio, James E. Donofrio “admitted to receiving a notice from the Bureau dated June 26, 2000, concerning unpaid 1999 real estate taxes on his property at 325 Vine Street in Bethlehem.” Id. at 1122. (Emphasis added). Unlike in Donofrio, Appellant was not made aware of the specific years for which real estate taxes were due. Had the Appellant had

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<sup>7</sup> The phone log maintained by the TCB fails to indicate that the Appellant called the TCB to confirm the pendency of an Upset Sale, therefore, it is of no value in ascertaining what Upset Sale information was given to Appellant. H.T. at 15; R.R. at 48a; TCB Exhibit No. 6.

official notice she would have been aware of the 2004 and 2005, tax delinquencies. Actual notice of mere fact that there is going to be an Upset Sale for delinquent taxes due for *unspecified years* does not equate to actual notice.

The order of the trial court, which upheld the upset tax sale of the Property, is reversed.<sup>8</sup>

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BERNARD L. McGINLEY, Judge

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<sup>8</sup> Appellant also argues that the trial court erred when it failed to set aside the upset sale because the record substantiated that members of the estate were, at all times relevant, ready, willing and able to pay all taxes due and owed. Because Appellant prevails on her first argument this Court need not address this second argument.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Linda Wallace, Executrix of the	:	
Estate of Alva Donnelly,	:	
Appellant	:	
	:	
v.	:	
	:	
Delaware County Tax Claim Bureau	:	No. 777 C.D. 2007
and Steve Fitzgerald	:	

**ORDER**

AND NOW, this 28th day of July, 2008, the order of the Court of Common Pleas of Delaware County is reversed.

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BERNARD L. McGINLEY, Judge