

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Estate of Doris Smith, Benjamin :
H. Mabie, III, Esq., Administrator, :
Appellants :
v. : No. 841 C.D. 2011
Argued: October 20, 2011
:
Pike County Tax Claim Bureau and :
Robert Todd Foy :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge (P)
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: December 19, 2011

The Estate of Doris Smith (Estate) appeals from an order of the Pike County Court of Common Pleas (trial court) denying its petition to set aside a sale under the Real Estate Tax Sale Law (Tax Sale Law).¹ The Estate argues that the Pike County Tax Claim Bureau (Bureau) did not provide adequate notice as required by the statute. The Bureau provided notice by mail to Norman and Doris Smith as the last owners of record. The trial court found the notice addressed to Doris Smith, deceased at the time, sufficient. For the reasons that follow, we reverse.

I. Background

Norman Smith and Doris Smith (Decedent), husband and wife, were record owners of Parcel No. 060041652 in Pike County (Property). Norman died

¹ Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §§5860.101-5860.803.

in March 2009, and Decedent died in March 2010. Prior to their deaths, Norman Smith and Decedent became wards of the State of New Jersey under guardianship by the Office of Public Guardian (Guardian). In March 2008, Guardian contacted the Bureau and provided Decedent's address as: Doris A. Smith, c/o Office of Public Guardian, PO Box 812, Trenton, NJ 08625 (Decedent's Address).

In April 2010, a month after Decedent's death, the Bureau sent notices to Decedent and her husband for delinquent taxes. Guardian did not give an alternate address for mail pertaining to Decedent after her death. Due to nonpayment of taxes, the Bureau set the upset tax sale for September 22, 2010.

The Bureau sent notices of the sale via certified mail, return receipt, to both Decedent and her husband to Decedent's Address on July 29, 2010. The Bureau received the receipt cards stamped as "Capitol Post Office, State of NJ." Reproduced Record (R.R.) at 23a, 24a. Neither receipt card contained any signature by the personal addressees or Guardian. The Bureau sent additional notice to Decedent's Address via first-class mail, restricted delivery with proof of mailing, on August 17, 2010. The first-class mailing was not returned to the Bureau.

The Bureau proceeded with the sale on September 22, 2010, and sold the Property to Robert Todd Foy (Purchaser). The Estate was the actual owner of the Property on the date of sale. Upon receiving notice of the sale, the Estate filed a Petition to Set Aside the Bureau's Upset Tax Sale (Petition) with the trial court. The Estate asserted it did not receive proper notice of the sale as required by Sections 602(e) and 607.1 of the Tax Sale Law, 72 P.S. §5860.602(e) and

§5860.607a.² The Tax Sale Law mandates notification via publication, posting of the property and certified notice by mail to each property owner. 72 P.S. §5860.602. The Estate challenged only the adequacy of the notice by mail.

The trial court held a hearing on March 21, 2011, at which a Guardian representative (Investigator) and the Director of the Bureau (Director) testified.

The Director testified about the sale and provision of notice. She testified the assessed owners on record with Pike County were Norman Smith and Decedent. Director testified that the Bureau mailed notices of delinquent taxes by certified mail to the last known address on file, Decedent's Address, on April 22, 2010. The Bureau obtained Decedent's Address from the assessment office, which received the change in address on March 3, 2008, from Guardian. The certified receipt cards for each notice of delinquent taxes were stamped as received by Capitol Post Office, State of NJ, and did not contain any signatures.

The Bureau sent a notice of tax sale on July 29, 2010, certified-restricted delivery to Norman Smith and separately to Decedent. Director testified both receipt cards were returned with a stamp from the New Jersey Capitol Post Office. None of the receipt cards for delinquent taxes or notices of sale contained signatures. By first-class mail on August 17, 2010, the Bureau sent a proof of mailing to Decedent. The mail was not returned. After the sale took place on September 22, 2010, the Bureau sent the post-sale notices via certified mail to both Norman Smith and Decedent at the same address, that is, Decedent's Address.

² This section was added by the Act of July 3, 1986, P.L. 351.

Director testified the Bureau first learned Decedent's Address was not correct on October 1, 2010, when it received a notice from the post office "Item B return to sender because state agencies do not accept certified registered insured pieces with restricted delivery." R.R. at 27a, 74a (routing slip).

Director did not telephone Guardian about the mail, and the only notation regarding Guardian in the file when Guardian contacted the assessment office with the address change in March 2008. Director testified the Bureau did not do any internet searches or follow-up with the location for Decedent or Norman Smith. R.R. at 32a. Aside from checking with the assessment office, the Bureau did not do any investigation on this file. Id. Director maintained the Bureau had no indication the address was incorrect before the sale because nothing was returned and because first-class mail was accepted. The Bureau believed the notices were received by the Guardian "as far as [it] can ascertain." R.R. at 42a.

Also at the post-sale hearing, Investigator testified that Guardian specifically authorized the New Jersey Capitol Post Office to receive certified mailings on behalf of wards, like Decedent, during their lifetimes. R.R. at 37a. He testified that one of Guardian's duties is to maintain the property while the person is still alive. Investigator handles about 12 cases at a time, and he handled Decedent's case personally. He testified one of the first things Guardian does is to apply for a change of address and see whether there is old mail. Upon taking guardianship of persons and their property, Guardian would notify the tax assessment office of the new address.

Significantly, upon the death of a ward, Guardian's authority to act on a ward's behalf ends. He testified notices would be forwarded to the executor of any estate. Investigator advised he did not sign a single notice. He explained receipt of certified mail was the responsibility of the New Jersey mail office.

The trial court denied the Estate's petition, finding the notice to Guardian constituted sufficient notice under the Tax Sale Law. The trial court reasoned that no one advised the Bureau of an alternate address to use regarding the Property. The trial court noted that no evidence suggested any advertisement of appointing an administrator or probating of a will on August 24, 2010. Therefore, the trial court held the Guardian was the "proper address at which to send notice of the impending sale" to Decedent. Tr. Ct., Slip Op. at 3. In addition, the trial court stated, "Based on the testimony presented, this Court is convinced that the Bureau made reasonable efforts to serve Ms. Smith of the sale of the subject property." Id. The trial court did not recognize the Estate as the actual owner of the Property on the date of the sale.

The Estate appealed the trial court's order to this Court.³

³ 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. Rice v. Compro Distrib., Inc., 901 A.2d 570 (Pa. Cmwlth. 2006).

II. Discussion

A. Contentions

The Estate contends the Bureau did not provide adequate notice because it did not provide any notice to the actual property owner, the Estate. The Estate asserts the trial court erred in accepting notice mailed to Decedent as sufficient because Decedent had not been the actual owner since her death in March 2010. The Estate argues a “stamp” from the New Jersey Capitol Post Office does not signify notice or receipt. The Estate emphasizes this is particularly true when the owners died before the first notice of delinquency was sent.

In response, Purchaser counters that the notices to Decedent sufficed as a matter of law because she was the owner of record and no one provided the Bureau with another address. Purchaser contends the Bureau has no obligation beyond reviewing its records to discern the proper owner for notice purposes.

The Bureau argues it complied with Section 602(e) of the Tax Sale Law because it provided notice by certified mail to Decedent at the address of record in the county’s files. The Bureau contends the stamp on the certified receipt card by “Capitol Post Office, State of NJ” is sufficient to show receipt, noting Guardian authorized the postmaster to receive certified mailings on behalf of its wards. The Bureau argues it had no duty to make additional efforts to ensure actual notice.

B. Notice by Mail under Section 602(e)

Section 602(e)(1) of the Tax Sale Law provides the Bureau must give notice of the sale at least 30 days before the date of the sale by certified mail,

restricted delivery, return-receipt requested, to each property owner.⁴ Section 602(e) also provides:

if return receipt is not received from each owner ... 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.

72 P.S. §5860.602(e) (emphasis added).

To satisfy Section 602(e), the notice must be signed for on behalf of the personal addressee or someone with authorization. See Smith v. Pike Cnty. Tax Claim Bureau, 834 A.2d 1247 (Pa. Cmwlt. 2003) (sale voided because wife signed for out-of-state husband without authorization). The Tax Sale Law requires a bureau to identify the owner of the subject property as of the date of sale and provide notice to that owner before the sale. Id. The Bureau bears the burden of proving adequacy of the notice provided. McElvenny v. Bucks Cnty. Tax Claim Bureau, 804 A.2d 719 (Pa. Cmwlt. 2002).

Case law is clear that strict compliance with notice requirements is necessary to ensure citizens are not stripped of their property rights without due

⁴ “Owner” is defined by Section 102 of the Tax Sale Law in pertinent part as:

the person in whose name the property is last registered, if registered according to law, or, if not registered according to law, the person whose name last appears as an owner of record in any deed or instrument of conveyance recorded in the county office designated for recording.

72 P.S. §5860.102.

process.⁵ Geier v. Tax Claim Bureau of Schuylkill Cnty., 527 Pa. 41, 588 A.2d 480 (1991); Rivera v. Carbon Cnty. Tax Bureau, 857 A.2d 208 (Pa. Cmwlth. 2004). Accordingly, the notice requirements are strictly construed.

1. Signature

In this case, the Bureau sent notice by certified mail to Decedent more than 30 days in advance of the sale. However, the return receipt did not contain any signatures to indicate receipt by the personal addressees or Guardian. Moreover, the receipt card, while stamped by the New Jersey post office, did not indicate that the New Jersey post office had authorization to accept mail for Guardian. At the time the Bureau received the receipt cards, the Bureau had no reason to believe the stamp showed notice to Decedent. At argument, counsel for the Bureau conceded the situation— lack of signatures and an unfamiliar stamp— was a “red flag.”

When the certified-mail notice is not acknowledged, a second notice is sent by first-class mail. See 72 P.S. §5860.602(e)(2). Consistent with this provision, and in response to the stamped receipt cards, the Bureau sent a second notice by first-class mail to Norman Smith and Decedent in August. The Bureau received no acknowledgement from either notice.

⁵ Our Supreme Court reasoned that constitutional “due process [] requires at a minimum that an owner of land be actually notified by government, if reasonably possible, before his land is forfeited by the state.” Geier v. Tax Claim Bureau of Schuylkill Cnty., 527 Pa. 41, 46, 588 A.2d 480, 483 (1991) (quoting Tracy v. Chester Cnty. Tax Claim Bureau, 507 Pa. 288, 297, 489 A.2d 1334, 1339 (1985)).

The respected trial court erred in determining that the stamped receipt card from the New Jersey post office signified receipt by the owners. Even when a return receipt is signed, the signature must belong to someone authorized by the owner to accept certified mail. See Ali v. Montgomery Cnty. Tax Claim Bureau, 557 A.2d 35 (Pa. Cmwlth. 1989) (mailed notice insufficient absent showing owner or person authorized to accept mail signed receipt). Even focusing on the last owner of record, Decedent, the receipt cards were not signed by any person or entity to suggest receipt by Decedent. The absence of any signatures on the receipt cards should have signaled to the Bureau the inadequacy of the mailed notices.

2. Authorization

The absence of authorization to sign is also legally significant. In Smith v. Pike County Tax Claim Bureau, 834 A.2d 1247 (Pa. Cmwlth. 2003), this Court held that the signature by one spouse does not constitute sufficient notice to the other, and does not meet the statutory notice requirements. Separate notice to each owner is required. Smith; see also In re 1999 Upset Sale of Real Estate, 811 A.2d 85 (Pa. Cmwlth. 2002). We hold a bureau may not rely upon “implicit authorization” to meet the strict notice criteria in the law. Smith, 834 A.2d at 1251.

The Bureau argues that the stamp from the Capitol Post Office suffices to show receipt because Guardian authorized the post office to accept mail on behalf of its wards. However, the Bureau’s position is fundamentally flawed in two relevant respects. First, when the Bureau received the receipt cards, it was unaware of Guardian’s alleged authorization, and thus could not properly infer authorization from the stamp. Second, since Decedent and Norman Smith were

deceased at the time of the notices, they no longer had a relationship to Guardian from which any authorization could be inferred.

Signatures by persons who lack actual authorization to sign on behalf of another do not satisfy the signature requirement. Smith. Here, the Bureau accepted an unfamiliar stamp in lieu of a signature without any basis for believing that the stamp was authorized by Decedent. Lacking signatures or authorized acceptance of the notices by mail, the Bureau failed to provide notice compliant with Section 602(e) in order to proceed with the sale.

B. Additional Notification Efforts under Section 607.1

Since the Bureau did not secure notice of the sale by certified mail, the Tax Sale Law mandates additional notification efforts. Smith. Section 607.1 provides:

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.

72 P.S. §5860.607a (emphasis added). In essence, the Tax Sale Law requires additional notification efforts when circumstances raise significant doubt as to personal receipt by the owner. Smith; In re 1999 Upset Sale.

In its brief, the Bureau contended the circumstances here did not trigger any additional notification efforts under Section 607.1 of the Tax Sale Law, 72 P.S. §5860.607a, relying upon Tax Sale of Real Property Situated in Jefferson Township, 828 A.2d 475 (Pa. Cmwlth. 2003). In Jefferson Township, this Court held a tax bureau is not required to check directories outside the county where “there is nothing to indicate that there was an alternate address or phone number in the [b]ureau’s file.” Id. at 480 (emphasis added). This Court noted that while it may seem reasonable to suggest an internet search for an alternate address, such is not required “particularly where the [b]ureau is satisfied through other efforts that it has the owner’s correct address on file.” Id. (emphasis added).

The Bureau’s reliance on Jefferson Township is misplaced, as those facts are readily distinguishable from this case. The Jefferson Township court emphasized that the bureau had no reason to question the address or actual receipt. Here, the Bureau ignored a number of circumstances indicating non-receipt:

- the lack of any signatures on the receipt cards;
- the receipt cards contained an unfamiliar stamp from a New Jersey post office without any indication it was authorized by Guardian;
- at the time, the Bureau did not have any reason to believe the stamp indicated notice to or receipt by Guardian or Decedent; and
- the Bureau knew the owners were elderly out-of-state residents who were wards of the State of New Jersey.

These circumstances triggered the Bureau's duty to investigate.

During appellate argument, the Bureau recognized the stamped receipt cards constituted an unusual circumstance that raised a "red flag." The situation caused the Bureau to send additional notices by first-class mail. Given these admissions, it is apparent that the Bureau harbored doubt as to receipt by the addressees.

Despite the red flag, the Bureau undertook no efforts to search local phone directories, records or indices to locate the property owner. Specifically, Director testified that other than contacting the assessment office about the address, the Bureau made no efforts to investigate this file. Notably, the Bureau did not review the tax assessment file to see whether it contained any contact information for Guardian.

In Steinbacher v. Northumberland County Tax Claim Bureau, 996 A.2d 1095 (Pa. Cmwlth. 2010) (en banc), this Court held that a tax bureau must undertake mandatory minimum efforts to investigate a property owner's

whereabouts to accomplish proper notice as per Section 607.1. We held these minimum efforts require a search of current telephone directories for the county or the dockets of the tax assessment offices, recorder of deeds office or prothonotary's office. Id. Such efforts are required regardless of their potential futility. Smith; Fernandez v. Tax Claim Bureau of Northampton Cnty., 925 A.2d 207, 213 (Pa. Cmwlt. 2007) (reversing trial court and setting aside sale due to bureau's failure to make "reasonable efforts" based on "the facts of the [] case").

This Court holds that the mandatory minimum efforts outlined in the statute are by no means exhaustive, thus setting a floor. Steinbacher. A tax bureau must also use common sense business practices in ascertaining owners' locations and proper addressees. Fernandez; Kleinberger v. Tax Claim Bureau of Lehigh Cnty., 438 A.2d 1045 (Pa. Cmwlt. 1982); In re Upset Sale Tax Claim Bureau of Bucks Cnty., 410 A.2d 37 (Pa. Cmwlt. 1980). "This ordinary common sense must go beyond the mere ceremonial act of notice by certified mail" and depends upon the circumstances. Fernandez, 925 A.2d at 213 (finding bureau's "Google" computer-based search and dialing of telephone number found as result of search insufficient under the circumstances).

The record reflects the Bureau did not undertake the minimal efforts outlined in Steinbacher. The file indicates the Bureau made no efforts aside from checking the address in the assessment office file. See 72 P.S. §5860.607a (any efforts undertaken shall be described in the property file). The Bureau also failed to use common sense to search for a record of Guardian's call or for a telephone number to contact Guardian. There is no reason to believe extensive resources

would be required for this task as a notation of the call was in the assessment office's file. Because the Bureau did not use common sense to attempt actual notice to the property owner, it failed to satisfy its duties under Section 607.1 of the Tax Sale Law, 72 P.S. §5860.607a.

Both Purchaser and the Bureau contend the Estate or Guardian had the burden to notify the Bureau of any change of address. Inadequate notice is not excused by the Estate or Guardian's failure to provide an alternate address to the Bureau. The duty to notify does not lie with the property owner but with the tax bureau. See Steinbacher; Rivera, 857 A.2d 208 (tax bureau's failure to undertake additional efforts is not excused by owners' failure to provide change of address); Smith. "The proper focus is not on the alleged neglect of the owner, which is often present in some degree, but on whether the activities of the Bureau comply with the requirements of the statute." Steinbacher, 996 A.2d at 1099 (quoting Smith, 834 A.2d at 1251). The trial court thus erred in holding the burden lay with the Estate to provide an alternate address to ensure proper notice of the sale.

Because the Bureau did not strictly comply with statutory notification requirements, this Court must reverse the trial court and set aside the sale.

ROBERT SIMPSON, Judge

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Robert Todd Foy :

ORDER

AND NOW, this 19th day of December, 2011, the Order of the Court of Common Pleas of Pike County is hereby **REVERSED**.

ROBERT SIMPSON, Judge