

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Tax Claim Bureau of Berks :  
County, Upset Sale Held :  
September 24, 2008 :  
 : No. 872 C.D. 2010  
In the Matter of 1131 Franklin Street, :  
City of Reading, Berks County, :  
Tax Claim Purchaser –Victoria :  
Sovinski-Weiss : Submitted: August 20, 2010  
 :  
Appeal of: Victoria Sovinski-Weiss :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: November 23, 2010

Victoria Sovinski-Weiss (Purchaser) appeals from the April 22, 2010, order of the Court of Common Pleas of Berks County (trial court) granting the petition of Felipe Frias and Zoila Evangelista (Owners) to set aside the September 24, 2008, tax sale of property located at 1131 Franklin Street, Reading, Pennsylvania.<sup>1</sup> We affirm.

On September 27, 2005, Owners executed a long-term real estate sales agreement to purchase the property at issue from Dora Bosch and William Bosch.<sup>2</sup>

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<sup>1</sup> The trial court's order further vacated a May 27, 2009, decree of absolute confirmation entered by the trial court regarding this sale and declared any and all property transfers with respect to 1131 Franklin Street to be null and void.

<sup>2</sup> Owners reside in Brooklyn, New York, and use the property as a residential rental property. (Trial court op. at 1.)

(R.R. at 6a-10a.) Owners subsequently sought the services of Conestoga Title Insurance Company (Conestoga) to transfer title to the property by the recording of a deed. Conestoga prepared a deed, but incorrectly identified Owners as the sellers/grantors of the property and Dora Bosch and William Bosch as the purchasers/grantees. (R.R. at 13a.) The deed was recorded in the Berks County Recorder of Deeds Office on October 26, 2007. (R.R. at 14a.)

Owners never received invoices from the Berks County Tax Claim Bureau (Tax Claim Bureau). (Trial court op. at 2.) In fact, Owners did not owe any taxes on the property because they had just purchased the property and the taxes should have been paid up to date at the closing. Id. Nevertheless, the property subsequently was listed for an upset sale on September 24, 2008. (R.R. at 30a.) Owners never received any notices of the sale from the Tax Claim Bureau. (Trial court op. at 2.) The Tax Claim Bureau did send notices by registered mail to Dora Bosch and William Bosch, but the record indicates that neither received said notices.<sup>3</sup> (R.R. at 34a.) Approximately seven to ten days before the sale, Owners met with Adam Krafczek, solicitor for the Tax Claim Bureau, and advised him that they had just learned of the impending sale, that they owned the property, and that they never received any delinquent tax notices. (R.R. at 38a.) Krafczek advised Owners that he would conduct a search and if he found that Owners did in fact own the property, the property would be pulled from the upset sale. Id.

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<sup>3</sup> The record includes a registered letter notice signed by a William Bosch. (R.R. at 34a.) However, Rhonda Wolf, Conestoga's manager, testified before the trial court that a father and son were both named William Bosch, that the son owned the property with his mother, Dora Bosch, and that the father was the person who actually signed the registered letter notice. (R.R. at 50a.) Wolf also testified that notices sent to Dora Bosch were returned as undeliverable. Id.

Krafczek did not conduct a search and the sale proceeded as scheduled, with the property being sold to Purchaser. (R.R. at 31a, 38a.) After the sale, Krafczek obtained a copy of the deed and, in conjunction with documentation provided by Owners, discovered the error. (R.R. at 38a.) Krafczek informed Owners that he would attempt to correct the situation and he prepared a letter and stipulation which he sent to Purchaser. (R.R. at 38a-39a.) The October 21, 2008, letter and accompanying stipulation indicated that the property was incorrectly sold as the property of Dora Bosch and William Bosch, that Owners were the actual title holders and did not receive the required statutory notice, that the sale was void, and that Purchaser would receive a full refund. (R.R. at 30a-33a.) However, Purchaser refused to sign the stipulation. (R.R. at 39a.)

Conestoga filed a corrected deed on October 22, 2008. (R.R. at 49a.) Krafczek deleted the property at issue from the petition for confirmation relating to the September 24, 2008, upset sales. (R.R. at 56a.) Krafczek then retired in 2009, and the new solicitor was not aware that the tax sale needed to be voided. Upon a review of files, staff at the Tax Claim Bureau noticed that the sale of the property had never been confirmed and prepared the necessary paperwork. (R.R. at 17a, 50a.) The trial court issued a decree of absolute confirmation dated May 27, 2009. (R.R. at 17a.)

Owners thereafter filed a petition with the trial court to set aside this decree as well as the tax sale of the property, citing Conestoga's incorrect deed and alleging a lack of notice of the taxes due or of the tax sale itself. (R.R. at 2a-5a.) Owners attached to this petition a copy of the incorrect deed and a copy of the long-term real estate sales agreement executed with Dora Bosch and William Bosch. In response, Purchaser filed an answer denying the allegations of Owners' petition and asserting in new matter that Owners had actual and implied knowledge of the upset

tax sale, that the owners of record at the time of the sale were Dora Bosch and William Bosch, and that the owners of record received proper notice of the sale, as evidenced by William Bosch's acknowledged receipt of the certified mail.

The trial court held a hearing on Owners' petition on March 1, 2010. Krafczek testified as to the facts described above, acknowledging that had he researched the situation before the upset sale, the sale would not have taken place. (R.R. at 40a.) Krafczek also testified that he felt an obligation to set aside the sale. (R.R. at 38a.)

Owners also presented the testimony of Wolf, manager of Conestoga, and Stacy Phile, a manager at the Tax Claim Bureau. Wolf acknowledged that Conestoga incorrectly identified the parties in the original deed and that a corrected deed was filed on October 22, 2008. (R.R. at 49a.) As noted above, Wolf also indicated that the William Bosch who signed for the certified mail containing the notice of upset sale was not the same William Bosch who was the former co-owner of the property. (R.R. at 50a.) Wolf noted that Krafczek had faxed her a list of the September upset sales on November 10, 2008, with the property in question circled and a note that he removed the property from the petition for confirmation. (R.R. at 51a-52a.) Phile merely testified that the property was sold at an upset tax sale in September 2008 and that Krafczek only approached her after the sale regarding a possible notice problem. (R.R. at 53a.)

By order dated April 22, 2010, the trial court granted Owners' petition to set aside the tax sale and vacated the decree of absolute confirmation. The trial court further declared any and all transfers of the property to be null and void.

On appeal to this Court,<sup>4</sup> Purchaser argues that the trial court erred as a matter of law in granting Owners' petition to set aside the tax sale and in vacating the decree of absolute confirmation. Purchaser alleges that the petition to set aside the decree and tax sale was untimely, that the Tax Claim Bureau had no duty to search beyond the face of a public record with respect to notice, and that Owners had actual and/or implied notice of the pending tax sale such that they waived any alleged defects concerning notice of the sale.<sup>5</sup> We disagree.

Purchaser first argues that the trial court was without subject matter jurisdiction to hear Owners' set aside petition because more than thirty days had passed since entry of the May 27, 2009, decree of absolute confirmation. In support of this argument, Purchaser relies on section 5505 of the Judicial Code, 42 Pa. C.S. §5505, which provides that a trial court may only modify or rescind an order within thirty days after its entry. However, Purchaser's reliance on this section is misplaced because section 5505 is not applicable to Owners' set aside petition. As the trial court noted in its opinion, Purchaser confuses the modification or rescission of a court

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<sup>4</sup> Our scope of review in tax sale cases is limited to determining whether the trial court abused its discretion, rendered a decision supported by the evidence, or erred as a matter of law. Murphy v. Monroe County Tax Claim Bureau, 784 A.2d 878 (Pa. Cmwlth. 2001).

<sup>5</sup> Purchaser also argues that the trial court lacked subject matter jurisdiction because Owners failed to join indispensable parties, namely Dora Bosch and William Bosch. A party is indispensable when his or her rights are so connected with the claims of the litigants that no relief can be granted without impairing or infringing upon those rights. Szoko v. Township of Wilkins, 974 A.2d 1216 (Pa. Cmwlth. 2009). However, Owners presented Krafczek with a copy of their long-term real estate sales agreement which identified Dora Bosch and William Bosch as the grantors/sellers of the property, and Conestoga filed a corrected deed on October 22, 2008. Thus, the evidence of record reveals that, at the time Owners filed their set aside petition, Dora Bosch and William Bosch were not interested parties and had no rights which could be infringed upon or impaired. Hence, Dora Bosch and William Bosch were not indispensable parties and Purchaser's argument is without merit.

order with the entry of a court order in response to a case or petition filed within the applicable statute of limitations. A cause of action to set aside a tax sale accrues, and the statute of limitations begins to run, on the date of the tax sale. Poffenberger v. Goldstein, 776 A.2d 1037 (Pa. Cmwlth. 2001). The statute of limitations applicable to a petition to set aside an upset tax sale is six years, 42 Pa. C.S. §5527(b), and Owners' petition was filed within that period.

Purchaser next argues that the Tax Claim Bureau had no duty to search beyond the face of the recorded deed, which identified Dora Bosch and William Bosch as the owners of the property, with respect to providing notice of the tax sale. Alternatively, Purchaser argues that Owners' actual notice of the impending tax sale waives any argument regarding deficient notice. For the reasons that follow, we reject Purchaser's arguments.

Owners met with Krafczek, the solicitor for the Tax Claim Bureau, at least seven to ten days before the scheduled September 24, 2008, upset sale and advised him regarding the incorrect deed, their ownership of the subject property, and their lack of notice regarding any tax deficiencies or the impending sale. Krafczek advised Owners that he would look into the situation and would pull the property from the tax sale if he were able to substantiate Owners' claims. (R.R. at 38a.) Owners reasonably relied on Krafczek's statement and took no action prior to the sale.<sup>6</sup> Following the sale, Krafczek advised Owners that the sale was in error and would be set aside, and he did, in fact, pull the property from the petition for confirmation relating to the September 24, 2008, upset sales. (R.R. at 38a, 56a.)

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<sup>6</sup> Krafczek testified that he should have done a search prior to the upset sale, which would have ended this matter. (R.R. at 40a.) Krafczek also testified that Owners provided him with a copy of the settlement sheet relating to their purchase of the property, but the record is not clear whether this document was provided before or after the upset sale. (R.R. at 38a.)

Additionally, Purchaser knew within one month of the sale that the same had to be voided because Owners had not received the requisite statutory notice. Indeed, Purchaser was made aware of the notice deficiencies in Krafczek's October 21, 2008, letter and accompanying stipulation and was offered a full refund of the purchase price and costs. Based upon Krafczek's representations, Owners and Conestoga operated under the presumption that everything had been corrected and the sale was only confirmed after a change in solicitors and Tax Claim Bureau managers.

Most importantly, the evidence of record reveals that the Tax Claim Bureau, through its solicitor, had knowledge of potential errors relating to the September 24, 2008, upset sale seven to ten days prior thereto and took no action to investigate the same or withdraw the property from the sale. Owners justifiably relied on Krafczek's statements, first that the property would be pulled from the upset sale and later that the sale would be set aside, in refraining from action. Hence, Owners' actual knowledge of the impending upset sale is irrelevant. By Krafczek's own admission, the sale should never have taken place.

Furthermore, we note that the purpose of a tax sale is not to strip an owner of his property, but rather to insure that the tax on the property is collected. Murphy v. Monroe County Tax Claim Bureau, 784 A.2d 878 (Pa. Cmwlth. 2001). At a minimum, due process requires that a municipality notify an owner before his property is sold at an upset tax sale. Id. If the trial court had not granted Owners' set aside petition, Owners would have been divested of their property without notice and for not paying taxes that they did not owe.

Finally, we address Owners' request for counsel fees, costs, interest, and delay damages to be assessed against Purchaser pursuant to Pa. R.A.P. 2744. Pa. R.A.P. 2744 permits an appellate court to award such costs if it determines that an appeal is frivolous or taken solely for delay, or that the conduct of the party against

whom costs are sought was dilatory, obdurate, or vexatious. A frivolous appeal is devoid of merit and lacks any basis in law or fact. Simmons v. Delaware County Tax Claim Bureau, 796 A.2d 400 (Pa. Cmwlth. 2002). However, the appellate court is afforded discretion in deciding if an award is appropriate under Pa. R.A.P. 2744. Id.

In her appeal to this Court, Purchaser raised issues relating to the trial court's jurisdiction and notice of the tax sale. With respect to the latter, Purchaser alleged that the Tax Claim Bureau had provided sufficient notice of the tax sale to the recorded owners of the property, that the Tax Claim Bureau had no duty to notify Owners, and that Owners' sole remedy was with Conestoga, their title insurance company. Although we ultimately determined that Purchaser's arguments on appeal were unpersuasive, we cannot say that said arguments were frivolous or that her appeal was taken solely for delay. Thus, we decline to award Owners counsel fees, costs, interest, and delay damages under Pa. R.A.P. 2744.

Accordingly, we affirm.

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PATRICIA A. McCULLOUGH, Judge



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**ORDER**

AND NOW, this 23<sup>rd</sup> day of November, 2010, the April 22, 2010, order of the Court of Common Pleas of Berks County is hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge