In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-11-00024-CV

JAMES O. MEYERS, Appellant

V.

YANTIS INDEPENDENT SCHOOL DISTRICT
AND WOOD COUNTY, TEXAS, Appellees

On Appeal from the 402nd Judicial District Court
Wood County, Texas
Trial Court No. T-2856

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

At a tax foreclosure sale in early 2008, a tract of land belonging to James O. Meyers was sold on behalf of Yantis Independent School District (the District) and Wood County (the County). Almost thirty months after that sale, Meyers petitioned to be paid the excess funds obtained from that sale—that is, the proceeds of the sale, less the sums collected for the taxes.[1] From the trial court's denial of that petition, Meyers appeals, asserting that the two-year deadline for making his claim, as set out by Section 34.04 of the Texas Tax Code, was tolled by lack of notice to him and that his mental illness distinguishes this case from authority that would dictate denial of his claim.[2]

[1]On February 8, 2007, the District petitioned the trial court for foreclosure of Meyers' property due to failure to pay ad valorem taxes. Citation was made by posting at the courthouse door in accordance with Rule 117a of the Texas Rules of Civil Procedure, because the District alleged Meyers' address was unknown and could not be ascertained after diligent inquiry. TEX. R. CIV. P. 117a. On October 9, 2007, the County's tax collector included a "delinquent tax statement" containing Meyers's correct Garland, Texas, address. No notice of the proceedings was sent to this address contained within the court's records.

Nevertheless, a default judgment was entered almost a year later in favor of the District and the County—a judgment that is not challenged here. Because the default judgment is not challenged here, we do not address any possible direct attack on that judgment. *See Caldwell v. Barnes*, 154 S.W.3d 93, 97–98 (Tex. 2004). In the default judgment, the trial court appointed Sarah Doke "to represent all the defendants served by citation by publication, and as guardian ad litem for any Defendants who may be minors or non compos mentis," including Meyers. The judgment authorizing foreclosure of the property found that its market value was $117,380.00 and that the sum of delinquent taxes owed was $11,913.72. An order of sale was issued January 29, 2008; the property was sold by sheriff's sale March 4, 2008, for $58,800.00; and excess proceeds in the sum of $42,966.63 remained.

On March 25, 2008, notice of excess funds was sent to Doke by certified mail, return receipt requested. Notice of excess funds was also sent to Meyers, but it was addressed to the property that had been sold at foreclosure. A second notice of excess funds was sent to Meyers' correct address in Garland, Texas, August 12, 2010. It appears that Meyers did not receive the notice of excess funds until August 14, 2010. On September 1, 2010, a petition for release of excess funds was filed on Meyers' behalf. The County objected to Meyers' petition for release of funds, arguing that Meyers failed to meet the requirements in Section 34.04 of the Texas Tax Code.

[2]To this Court, Meyers argues that the clerk's failure to send the notice to his address in Garland "tolled the two year limit for recovery under Tax Code Sec. 34.04." Alleging he was mentally ill, Meyers also asks whether his disability "distinguished this case from *Bryan I.S.D. v. Cune*, [2010] WL 2541841 (Tex. App.—Houston [14th Dist.] [2010], [pet. denied] (mem. op.) which would uphold the taxing authorities' position here."

Because no tolling argument was presented to the trial court, the issue was not preserved for our review, and we must affirm the trial court.

> A person . . . may file a petition in the court that ordered the seizure or sale setting forth a claim to the excess proceeds. The petition must be filed before the second anniversary of the date of the sale of the property.

TEX. TAX CODE ANN. § 34.04 (West Supp. 2010).

> As a prerequisite to presenting a complaint for appellate review, the record must show that: (1) the complaint was made to the trial court by a timely request, objection, or motion that: (A) stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; and . . . (2) the trial court: (A) ruled on the request, objection, or motion, either expressly or implicitly; or (B) refused to rule on the request, objection, or motion, and the complaining party objected to the refusal.

TEX. R. APP. P. 33.1. Judicial economy requires that a trial court have the opportunity to correct an error before an appeal proceeds. *In re C.O.S.*, 988 S.W.2d 760, 765 (Tex. 1999). While Meyers petitioned the court for release of excess funds, the record presented to this Court demonstrates that his argument regarding "tolling the two year limit" was not made to the trial court. Likewise, even though Doke told the trial court that Meyers "has been diagnosed with dementia and Parkinson's and bipolar," the record before us does not establish that any argument was made to the trial court regarding tolling due to Meyers' condition. Further, no motion for new trial, motion to modify or limit judgment, or exception to the judgment was made. *See Gerdes v. Kennamer*, 155 S.W.3d 523, 532 (Tex. App.—Corpus Christi 2004, pet. denied). The trial court had no opportunity to address the issues Meyers raises on appeal.

Because Meyers failed to preserve the argument made on appeal, we affirm the trial court's judgment.

Josh R. Morriss, III
Chief Justice

Date Submitted: August 4, 2011
Date Decided: August 18, 2011