



## I. Background

The Bureau scheduled Owner's property, located at 965 Upper Buck Ridge Road, in Toboyne Township, Perry County (Property), for an upset sale under the Tax Sale Law based on nonpayment of delinquent 2011 taxes.

The Bureau mailed notice of the impending sale to Owner by certified mail in accordance with Section 602 of the Tax Sale Law, 72 P.S. §5860.602. However, the certified mail was returned "unclaimed." Reproduced Record (R.R.) at 10a. The Bureau then sent notice by regular mail to the same address at least 10 days prior to the sale. The regular mail was not returned to the Bureau. The Bureau also posted the Property and advertised the sale. Id. The Bureau's compliance with Section 602 of the Tax Sale Law is undisputed.

Pursuant to Section 602, when certified mail notices are returned unclaimed, the Bureau has the duty to undertake "additional notification efforts" under Section 607.1 of the Tax Sale Law, 72 P.S. §5860.607a. These efforts must be "reasonable," and are designed "to discover the whereabouts of [the property owner] and notify him" prior to the sale. Id. Specifically,

[these notification] 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.

Id. (emphasis added).

In accordance with Section 607.1 of the Tax Sale Law, the Bureau searched the current telephone directories for the county electronically. Also electronically, the Bureau checked the dockets and indices of the tax assessment offices. The Bureau also searched the Recorder of Deeds office. However, the Bureau did not check the Prothonotary's office prior to the upset sale. Rather, a representative for the Bureau checked it *after* receiving Owner's objections to the sale. The post-sale search of the Prothonotary's office yielded no new information.

Additionally, a bureau is required to place "a notation in the property file describing the efforts made and the results thereof." Id. This requirement to document the efforts in the file applies "regardless of whether or not the notification efforts have been successful." Id. Significantly, the Bureau did not document any of its additional notification efforts in the property file.

The Property was sold at an upset sale in the fall of 2013. After learning of the sale, in February 2014, Owner filed his objection to the sale of the Property. Owner argued the Bureau's noncompliance with the documentation requirement and its failure to contact the Prothonotary's office as specified in Section 607.1 of the Tax Sale Law precluded confirmation of the sale.

The trial court held a hearing, where the Bureau made an offer of proof as to the testimony of Michelle Thebes (Thebes), a Bureau representative. Owner did not attend the hearing. Owner's counsel explained that "all my client would say is he never opens the mail, if he were here." R.R. at 6a.

Owner's counsel conceded that all of the notices were sent to the proper address, 1990 Alcott Road, York, Pennsylvania. R.R. at 8a. However, Owner did not learn of the sale until he returned to the Property for hunting season. There is no indication on this record that Owner had actual notice of the sale.

The Bureau represented Thebes would testify that she confirmed the Bureau's address for Owner was correct, so she did not check the Prothonotary's office. Also, the Bureau's counsel explained it was the Bureau's practice not to document additional efforts in the property file unless it had any additional or alternate address information to include.

Concluding that the Bureau undertook sufficient reasonable efforts to notify Owner, the trial court declined to set aside the sale. The trial court determined the Bureau's failure to document the efforts it made to contact Owner was "not significant." Tr. Ct. Order, 4/2/14 at ¶1. Further, the trial court noted the notice sent by regular mail, not opened by Owner, is "presumed ... delivered unless returned to sender." *Id.* at ¶2. Owner appealed the order to this Court.<sup>3</sup>

After Owner filed a concise statement of the errors complained of on appeal, the trial court issued an opinion supporting its order. See Pa. R.A.P. 1925. It concluded, "[b]ased on the testimony offered, review of the facts surrounding the case and the case law cited, ... reasonable efforts were exercised by the Bureau in order to locate [Owner]." Tr. Ct., Slip Op., 6/30/14, at 4.

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<sup>3</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 without supporting evidence. Husak v. Fayette Cnty. Tax Claim Bureau, 61 A.3d 302 (Pa. Cmwlth. 2013).

## II. Discussion

Owner argues that the Bureau's failure to comply with all the requirements of Section 607.1 of the Tax Sale Law requires the sale to be set aside. The Bureau counters that because the Prothonotary's office had no additional information, and checking it would not have assisted in providing notice to Owner, the failure to check Prothonotary records before the sale was of no consequence.

We are mindful that the purpose of a tax sale is not to strip an owner of his property; rather, it is to ensure the collection of taxes. Fernandez v. Tax Claim Bureau of Northampton Cnty., 925 A.2d 207 (Pa. Cmwlth. 2007). This Court consistently holds, “[t]he statute must be strictly construed so that the collection of taxes, which can cause the loss of property, conforms to the due process guarantees of our Pennsylvania and federal constitutions.” Smith v. Tax Claim Bureau of Pike Cnty., 834 A.2d 1247, 1253 (Pa. Cmwlth. 2003) (citing Tracy v. Chester Cnty. Tax Claim Bureau, 489 A.2d 1334, 1339 (Pa. 1985)).

“[D]ue process requires a taxing bureau to conduct a reasonable investigation to ascertain the identity and whereabouts of the latest owners of record of property that is subject to an upset sale in order to provide notice.” Popple v. Luzerne Cnty. Tax Claim Bureau, 960 A.2d 517, 523 (Pa. Cmwlth. 2008). A reasonable investigation is one that “use[s] ordinary common sense business practices to ascertain proper addresses ....” In re Tax Sale of Real Property Situated in Jefferson Twp. (Appeal of Ruffner), 828 A.2d 475, 479 (Pa. Cmwlth. 2003), aff'd, 859 A.2d 471 (Pa. 2004).

To assess the reasonableness of an investigation, a trial court considers the circumstances of a case, which guide the type of inquiry to be conducted. Ultimately, “it is the reasonableness of the effort that is important, not whether it would have led to discovery of the address.” Rice v. Compro Distrib., Inc., 901 A.2d 570, 577 (Pa. Cmwlth. 2006).

The taxing bureau bears the burden of proving that it made reasonable efforts to discover the whereabouts of an owner and notify him. Maya v. Cnty. of Erie Tax Claim Bureau, 59 A.3d 50, 55 (Pa. Cmwlth. 2013). The taxing bureau also bears the burden of proving its compliance with the Tax Sale Law. Rice.

The salient facts are not in dispute. The Bureau conceded that it did not perform two tasks prescribed by Section 607.1 of the Tax Sale Law. Namely, the Bureau did not search the Prothonotary’s office for address information. The Bureau also did not make a notation of the additional efforts in the property file. The issue before this Court is whether the Bureau’s admitted noncompliance with these mandates nullifies the sale here.

Section 607.1 of the Tax Sale Law specifies the additional notification efforts a taxing bureau is required to undertake when it does not secure notice of a sale by certified mail. This duty, when triggered, is mandatory. Rice. Likewise, the statute mandates documentation of any additional notification efforts. Specifically, Section 607.1 provides: “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 ....” 72 P.S. §5860.607a (emphasis added).

Here, the Bureau undertook a number of additional notification efforts, including checking the Recorder of Deeds office, and the dockets and indices of the tax assessment offices. The evidence is clear and undisputed that, despite undertaking additional efforts in accordance with Section 607.1, the Bureau documented none of them. This is contrary to the explicit mandate in the statute.

Under Section 1921(a) of the Statutory Construction Act of 1972, 1 Pa. C.S. §1921(a), “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intent of the General Assembly.” Additionally, “[w]hen the words of a statute are free and clear from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa. C.S. §1921(b). Section 607.1 of the Tax Sale Law is unambiguous, requiring the recording of notification efforts, and the results of such efforts. Grove v. Franklin Cnty. Tax Claim Bureau, 705 A.2d 162 (Pa. Cmwlth. 1997).

The Bureau freely admitted that it did not make any effort to comply with the documentation requirement. R.R. at 12a. Rather, the Bureau described its consistent failure to document its efforts in the property file as its practice when the efforts are not successful or when its investigation did not reveal any new or additional address information. Id. The statute is clear, imposing a non-discretionary duty to document any efforts regarding additional notification, *regardless* of their success. Thus, the Bureau’s policy not to make notations unless it gleans new information does not comport with the statute.

Moreover, the importance of documenting efforts in the property file is evident from this case. When Owner’s counsel appeared at the Bureau’s office to assess its efforts to comply with the statutory requirements, the property file did not reflect any of the notification efforts the Bureau undertook. That inaccuracy spurred the objection to the sale. Accurate documentation is essential to inform anyone reviewing the file about the Bureau’s compliance, or lack thereof. The public is entitled to rely on the correctness and completeness of the Bureau’s property files.

The Bureau’s failure to document its additional notification efforts in the property file, regardless of their success, constitutes grounds to set aside the sale of the Property. Our precedent requires strict construction of Section 607.1, compelling a taxing bureau’s adherence. Steinbacher v. Northumberland Cnty. Tax Claim Bureau, 996 A.2d 1095 (Pa. Cmwlth. 2010) (en banc); Rice; Smith. The trial court thus erred in holding that strict compliance with Section 607.1 of the Tax Sale Law was unnecessary.

Because the Bureau did not establish compliance Section 607.1 of the Tax Sale Law, and the sale is set aside on that basis, we need not address whether the Bureau made reasonable efforts to notify Owner of the tax sale.<sup>4</sup>

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<sup>4</sup> Although the Bureau’s neglect to contact the Prothonotary’s office prior to the sale of the Property may offer alternate grounds for setting aside the sale, we do not address that issue here. However, we note that this Court, sitting en banc, previously described the efforts enumerated in Section 607.1 as “the mandatory minimum search required” by the Tax Sale Law. See Steinbacher v. Northumberland Cnty. Tax Claim Bureau, 996 A.2d 1095, 1099 (Pa. Cmwlth. 2010) (en banc) (quoting Rice v. Compro Distrib., Inc., 901 A.2d 570, 573 (Pa. Cmwlth. 2006)).



### **III. Conclusion**

Because the documentation requirement contained in Section 607.1 of the Tax Sale Law is mandatory, the trial court erred in holding the Bureau's failure to note its additional efforts in the property file was insignificant. For the foregoing reasons, the trial court's order is reversed and the tax sale of the Property is set aside.

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ROBERT SIMPSON, Judge

