IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Upset Tax Sale of September 11, 2009, Country Acres,	:	
Appellant	:	
v.	:	No. 5 C.D. 2011
Wayne County Tax Claim Bureau, and Clinton Dennis, a/k/a Clinton P. Dennis, a/k/a Dennis P. Clinton, Sr.	:	Argued: October 20, 2011

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: January 5, 2012**

Country Acres appeals from the Order of the Court of Common Pleas of Wayne County (trial court), which denied Country Acres' Petition *Nunc Pro Tunc* to Set Aside Tax Deed (Petition) for 12.3 acres located in Manchester Township, Wayne County (Property), that was sold at a tax sale to Clinton Dennis, a/k/a Clinton P. Dennis, a/k/a Dennis P. Clinton, Sr. (Purchaser). Country Acres argues that the trial court erred in denying the Petition because: (1) Purchaser did not have standing to bid on the Property and challenge the Petition because he did not timely pay certain delinquent taxes on his other properties; and (2) Country Acres' actual knowledge of the sale did not cure the Wayne County Tax Claim Bureau's

(Bureau) failure to properly post notice of the sale on the Property as required by the Real Estate Tax Sale Law (Law).[1] For the following reasons, we affirm.

Country Acres, a limited liability corporation, owned the Property, which is improved by a single-family dwelling. (Trial Ct. Op., Findings of Fact (FOF) ¶¶ 1-2.) On September 11, 2009, the Bureau exposed the Property for public sale based on Country Acres' failure to pay its 2007 real estate taxes. (FOF ¶ 3.) On August 10, 2009,[2] the Bureau posted the Property "by affixing the tax notice to a tree sapling located at the end of the driveway next to the mailbox for the subject property." (FOF ¶ 4.) When the Bureau posted the Property, the dwelling was unoccupied. (FOF ¶ 5.) A tax upset sale was held on September 14, 2009, at which Purchaser bought the Property. (FOF ¶ 6.) Pursuant to Section 619.1 of the Law, 72 P.S. § 5860.619a,[3] Purchaser certified to the Bureau that he was not delinquent in paying his real estate taxes. (FOF ¶ 7.) However, Purchaser was delinquent in the payment of real estate taxes for three of his properties located in Manchester Township. (FOF ¶ 8.) Although delinquent in their own real estate taxes, such owners are permitted by the Law to bid at a tax sale so long as the owner cures the delinquency within twenty days after the tax sale has passed. (FOF ¶ 9.) Purchaser testified that his delinquency and failure to report said delinquency were inadvertent mistakes and that he immediately cured the delinquencies when the Bureau contacted him; the trial court credited Purchaser's

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

[2] The trial court's findings of fact references 2010 as the year the Bureau posted the Property, but this appears to be a typographical error.

[3] Added by Section 3 of the Act of December 21, 1998, P.L. 1008.

testimony. (FOF ¶ 10.) Country Acres did not file exceptions after the tax sale, and the Bureau issued a deed to Purchaser, which Purchaser recorded. (FOF ¶ 11.) Thereafter, Country Acres filed the Petition. (FOF ¶ 12.) The trial court found that at no time had Country Acres provided adequate justification for failing to timely file the Petition. (FOF ¶ 13.) John Siragusa, Country Acres' owner, testified that he received two certified mailings from the Bureau in July 2009 and that Country Acres was aware that he was delinquent in his taxes. (FOF ¶¶ 14-16.) Additionally, Mr. Siragusa acknowledged that, in January 2010, Country Acres received a check for $50,000 from the Bureau, but that he tore up the check. (FOF ¶ 17; Hr'g Tr. at 29, 32, 35, R.R. at 158a, 161a, 164a.)

The trial court considered whether: (1) Purchaser had standing to object to the Petition based on Country Acres' assertion that he was precluded from purchasing the Property because of his delinquent taxes; and (2) the Property was properly posted. On the first issue, the trial court concluded that Purchaser did have standing because it credited Purchaser's testimony that both the delinquency and improper certification were the result of a mistake. (Trial Ct. Op. at 3.) The trial court explained that, pursuant to In Re: The Upset Sale of Properties, 777 A.2d 532 (Pa. Cmwlth. 2001) (A&X Investment Company), Section 619.1 does not provide a remedy for *previous owners* and, "although during the period when [Purchaser's] certification was incorrect because of the delinquencies his title may have been voidable . . . upon paying . . . the delinquencies, as no other consequence is provided by the statute, at that point [Purchaser] had good title." (Trial Ct. Op. at 4.) Thus, the trial court concluded that Purchaser had standing to challenge Country Acres' untimely Petition. (Trial Ct. Op. at 4; FOF ¶ 12.) As to the second

issue, the trial court held that "the posting was irrelevant because of the actual knowledge of the sale by Mr. Siragusa. Actual notice of a pending tax sale wa[i]ves strict compliance of the notice requirements. Michener v. Montgomery County Tax Claim Bureau, 671 A.2d 285 (Pa. Cmwlth. 1996)." (Trial Ct. Op. at 4.) The trial court compared this matter with Sabbeth v. Tax Claim Bureau of Fulton County, 714 A.2d 514, 517 (Pa. Cmwlth. 1998), wherein a tax sale notice sat unopened on the taxpayer's desk for fifty-three days, but the taxpayer had actual notice of the tax sale and, therefore, the sale was upheld. According to the trial court, this was Country Acres' only property in Pennsylvania and it knew that it was delinquent on its taxes. (Trial Ct. Op. at 5.) Indeed, the trial court noted that Country Acres still did not act after receiving the $50,000 check from the Bureau in January 2010 and provided no adequate justification to explain why it did not take action until April 15, 2010, when it filed the Petition. (Trial Ct. Op. at 5.) Thus, the trial court denied the Petition. Country Acres now appeals to this Court.[4]

On appeal, Country Acres argues that the trial court erred in finding that Purchaser had standing to purchase the Property, that the Property was properly posted, and that Country Acres had actual notice of the tax sale. Country Acres first asserts that Purchaser lacks standing to either purchase the Property at tax sale or challenge the Petition because Purchaser did not resolve his own tax delinquencies within the twenty day period set forth in Section 619.1 of the Law. According to Country Acres, pursuant to In re Rowan, 763 A.2d 958 (Pa. Cmwlth.

[4] "Our standard of review in tax sale cases is limited to determining whether the trial court abused its discretion, rendered a decision with a lack of supporting evidence, or clearly erred as a matter of law." Sabbeth, 714 A.2d at 516 n.3.

2000), Purchaser was precluded from obtaining legal title to the Property and from challenging Country Acres' Petition.

In relevant part, Section 619.1 of the Law provides:

> (a) Within twenty (20) days following any sale under this [Law], a successful bidder shall be required to provide certification to the bureau that the person is not delinquent in paying real estate taxes to any of the taxing districts where the property is located and that the person has no municipal utility bills that are more than one year outstanding.
>
> (b) As used in this section, the following terms shall have the following meanings:
>
> **"Certification,"** shall mean proof via receipts of paid real estate taxes and municipal utility bills within the jurisdiction[5] or a notarized affidavit by the bidder evidencing payment of such real estate taxes and municipal utility bills.

72 P.S. § 5860.619a (emphasis in the original).

In Rowan, this Court upheld a trial court's decision denying intervenor status under the Pennsylvania Rules of Civil Procedure in a petition to set aside tax sale to successful bidders where the bidders failed to submit a certification pursuant to Section 619.1 by the time of the hearing on the petition. Rowan, 763 A.2d at 959-61. We held in Rowan that the certification requirement in Section 619.1 was mandatory, although the section did "not specify the consequences of failing to provide the required certification." Id. at 961. Because the bidders had

[5] We note that, pursuant to Section 619.1 of the Law, the question is whether the purchaser had delinquency in the taxing districts in which the property is located. Thus, Country Acres' assertions in its brief regarding Purchaser's alleged delinquencies in any other county or taxing district are not relevant.

not filed a certification at the time their petition to intervene was presented to the trial court, the bidders "failed to satisfy the statutory prerequisites to obtain an enforceable interest in the property." Id. Indeed, the bidders still were delinquent at the time of the hearing and, therefore, could not provide the certification. Id. Moreover, the tax claim bureau had yet to issue a deed to the bidders. Id. This Court, in Rowan, did not address the question of "[w]hether submission of the certification after the statutory twenty day period, if accepted by the taxing authority, may cure the failure to comply with Section 619.1." Id.

In A&X Investment Company, relied upon by the trial court in this case, the purchaser owed delinquent taxes on other properties at the time of the tax sale, was not required to file any certification by the tax claim bureau, and paid the delinquency as soon as he learned of the delinquency, which was beyond the twenty day period. A&X Investment Company, 777 A.2d at 535. The prior owner argued that the tax sale should have been rendered null and void based on the purchaser's failure to comply with the requirements of Section 619.1; however, both the trial court and this Court rejected that argument. Id. at 535, 537-38. This Court acknowledged that the certification requirements of Section 619.1 are mandatory, it was undisputed that the purchaser did not provide a certification, and the purchaser was delinquent in taxes at the time of the sale. Id. at 537. However, citing Rowan, we held that:

> Section 619.1 does not specify the consequence for failing to provide the certification. Because the Legislature failed to provide for [a] consequence [for] fail[ing] to comply with Section 619.1, we are reluctant to create one. See Department of Public Welfare v. Portnoy, . . . 566 A.2d 336 (Pa. Cmwlth. 1989), aff'd 531 Pa. 320, 612 A.2d 1349 (1992). This is in keeping with the well-settled principle that tax

> statutes must be strictly construed against the government and any reasonable doubts as to its application to a particular case must be resolved in favor of the taxpayer. 1 Pa. C.S. § 1928(b)(3).
>
> The failure of [the purchaser] to provide the certification required by Section 619.1 does not affect the validity of the sale of the subject property to him.

Id. at 538.

We agree with Purchaser that he had standing both to purchase the Property and to challenge the Petition. With regard to Purchaser's standing to participate in the proceedings on the Petition, Country Acres named Purchaser *as a respondent* in the Petition. Rowan is distinguishable from the present matter because: (1) that matter involved a petition to intervene, requiring the petitioner to establish a legally enforceable interest in the matter; (2) at no time in the proceedings did the bidders in Rowan obtain a deed or otherwise satisfy, in any manner, the requirements of Section 619.1; and (3) this Court, in Rowan, clearly stated that it was not addressing the issue that is currently before the Court.

A&X Investment Company is slightly different factually from the present matter because the purchaser in that case did not file a certification. In this case, Purchaser did provide a certification to the Bureau that he was not delinquent in his real estate taxes in any of the taxing districts in which the Property was located. (Hr'g Tr. at 18, R.R. at 147a.) Purchaser credibly testified that his completion of the certification was founded on his reasonable belief, based on representations made by the Bureau's office the morning of the tax sale, that he was not delinquent in any of his taxes. (Hr'g Tr. at 40, 42-44, R.R. at 169a, 171a-73a.) Thereafter, the Bureau notified Purchaser more than twenty days after the tax sale that he, in

fact, was delinquent and that he had to resolve those delinquencies before the Bureau would issue him a deed for the Property. (Hr'g Tr. at 19-20, 22, R.R. at 148a-49a, 151a.) However, like the purchaser in A&X Investment Company, Purchaser paid the outstanding taxes on his properties as soon as he learned of the delinquencies, (Hr'g Tr. at 41, 44, R.R. at 170a, 173a), and the Bureau issued him the deed, (Hr'g Tr. at 20, R.R. at 149a). Thus, we conclude that Purchaser had standing and the tax sale should not be set aside based on Section 619.1 because: (1) the Legislature has not provided a remedy for a violation of Section 619.1 and, as we stated in A&X Investment Company, this Court will not create one; (2) Section 619.1 is a taxing statute and should be strictly construed against the government; and (3) Purchaser provided a timely certification based on his reasonable belief that he was not delinquent and cured the delinquency as soon as he learned of it.

Second, Country Acres argues that the tax sale should be set aside because the Bureau did not properly post the Property where the Bureau did not affix the notice to the door of the dwelling structure on the Property. Country Acres relies on Ban v. Tax Claim Bureau of Washington County, 698 A.2d 1386, 1389 (Pa. Cmwlth. 1997), for the proposition that, whenever there is a dwelling located on a property subject to tax sale, the notice must always be posted on the dwelling's front door. Country Acres contends that the Bureau's posting the Property at the end of the driveway, in proximity to the Property's mailbox rather than the dwelling's entrance, was insufficient to give Country Acres and the public at large notice of the impending tax sale. Country Acres cites Mr. Siragusa's testimony

that he visited the Property and did not see any posting on the dwelling to support Country Acres' contention that the Property was not properly posted.

Section 602 of the Law governs the type and manner of notice that is required when a property is exposed to a tax sale. 72 P.S. §§ 5860.602(a), (e). Of these notice requirements, only the third, whether the Property was properly posted, is at issue here. There is no dispute that the Bureau sent notices of the tax sale by certified mail, Mr. Siragusa signed the receipt for those notices, and Mr. Siragusa did not open or read the notices. The taxing authority bears the burden of proving that it complied with the Law's notice provisions. In the Matter of Tax Sale of 2003 Upset, 860 A.2d 1184, 1187 (Pa. Cmwlth. 2004) (2003 Upset Tax Sale). The taxing authority must strictly comply with the notice requirements of the Law "to guard against the deprivation of property without due process of law." Id. This Court has interpreted Section 602 to require that "the method of posting must be reasonable and likely to inform the [o]wner[,] as well as the public at large of an intended real property sale." Wiles v. Washington County Tax Claim Bureau, 972 A.2d 24, 28 (Pa. Cmwlth. 2009). To be reasonable, the posting should be "conspicuous to the owner and public and securely attached." Id.[6] "Conspicuous means posting such that it will be seen by the property owner and public generally." Id. (quotation omitted). In determining whether a posting is valid, this Court will take a practical, common sense approach by considering the

[6] The posting requirement serves two purposes: (1) it provides the owner with notice of the upcoming tax sale; and (2) it provides notice to the public at large, including third parties that may be affected by the tax sale. 2003 Upset Tax Sale, 860 A.2d at 1188-89. Additionally, in providing notice to the public at large, the taxing authorities advance the goal of encouraging more bidders to attend the sale, resulting in a higher sale price that will ultimately benefit the delinquent taxpayer. Id.

nature and location of the property and the placement of the notice. Wiles, 972 A.2d at 28.

In Ban, this Court reversed a trial court's determination that the posting of a property sold at tax sale complied with Section 602(e) because we concluded that the posting was invalid where it was posted in a place where the public at large would be unable to view it. Ban, 698 A.2d at 1389. Believing that its only obligation was to provide notice to the occupant/owner, the tax claim bureau in Ban posted the notice of the sale on the back door to the home. Id. Noting that there was a door on the side of the home that faced the public street and that the back door did not face the public road and was accessible only by driving down the private driveway and walking up a private sidewalk, this Court held that the posting "was not conspicuous, did not attract attention, was not placed there for all to see" and, therefore, did not comply with Section 602(e). Id.

After reviewing the totality of the circumstances in this case, we agree with Purchaser that there is no statutory requirement that a tax sale notice be posted on a building if it is located on the property, Cruder v. Westmoreland County Tax Claim Bureau, 861 A.2d 411, 417 (Pa. Cmwlth. 2004) and, more importantly, that the posting here was sufficient to satisfy the objectives of Section 602(e) of the Law. Here, the trial court's findings, which are supported by substantial evidence in the record, support the conclusion that the notice was posted in a place where both notice objectives could be met. The record reveals that: the Property is located in a rural location, (Hr'g Tr. at 12, R.R. at 141a); the dwelling structure was not permanently occupied and was used for storage, (Hr'g Tr. at 36, R.R. at

165a); the structure is located down a long driveway, is about 200 or 300 feet from the public road, and is not visible from the public road, (Hr'g Tr. at 8, 12, 28, R.R. at 137a, 141a, 157a); the notice was posted at the end of the driveway, near the existing mail box and sign that had the Property's address on it, (Hr'g Tr. at 9, 11-12, 15, R.R. at 138a, 140a-41a, 144a); and the notice was securely stapled to a tree and was visible from the public road, (Hr'g Tr. at 8, 13, R.R. at 137a, 142a.) Although Mr. Siragusa testified he did not observe the posted notice when he visited the Property, he also stated that he "couldn't tell you" when that visit occurred. (Hr'g Tr. at 27-28, R.R. at 156a-57a.) Moreover, as in Ban, the evidence reveals that a person would have to travel down a private driveway some distance before coming to the dwelling structure, which Mr. Siragusa admitted was not visible from the public road. (Hr'g Tr. at 28, R.R. at 157a.) Country Acres argues that the building should have been posted; however, the public would have been unable to see such a notice for the reasons listed above. The posting of the notice at the end of the Property's driveway, and next to the mail box on which the Property's address was clearly visible, was reasonable and conspicuous to the owner and the public and, therefore, satisfied the posting requirement set forth in Section 602(e) of the Law. Wiles, 972 A.2d at 28.

Lastly, Country Acres argues that the record is devoid of any evidence that it had actual notice of the tax sale and that the trial court's reliance on Sabbeth was misplaced. According to Country Acres, this matter should be determined in accordance with In re Dauphin County Tax Claim Bureau, 834 A.2d 1229 (Pa. Cmwlth. 2003) (Dauphin County), in which we held that, where the trial court credited the taxpayer's testimony that he did not receive the certified letter

informing him of the tax sale and did not observe any notice posted on the property subject to tax sale, the taxpayer's mere knowledge of the tax delinquency was insufficient to support the conclusion that he had actual or implied actual notice of the impending tax sale.

A taxpayer's actual notice of an impending tax sale can cure certain, but not all, defects in the posting and notice requirements of the Law. 2003 Upset Tax Sale, 860 A.2d at 1190 (stating that an owner's actual notice will not cure a defect in posting that prevents the public at large from receiving notice of a tax claim sale). In Dauphin County, we rejected the tax claim bureau's argument that the taxpayer had actual notice of the tax sale solely because he knew that he was delinquent in paying his real estate taxes. Dauphin County, 834 A.2d at 1234. The trial court, in Dauphin County, credited the taxpayer's testimony that he did not receive the certified letter notifying him of the tax sale and that neither he nor his employees, who worked in the building every day, observed any notice posted on the property and rejected the tax claim bureau's evidence of posting because the person who posted the property could not recall posting that specific property. Id. at 1232.

In Sabbeth, this Court upheld the tax sale even though the notice requirements in that case were not strictly complied with. In Sabbeth, the taxpayer had received many notices that her taxes were in arrears, and she had received a certified letter from the tax claim bureau notifying her of the sale. Sabbeth, 714 A.2d at 515-16. That certified letter remained on the taxpayer's office desk, unattended, for fifty-three days *after* she received the notice. Id. Upon

consideration of the taxpayer's assertion that she did not have actual notice of the tax sale, this Court concluded that such claim was "incredible" and that "implied actual notice" is encompassed within the definition of actual notice in these matters. Id. at 517. We concluded that we should examine the *totality of the circumstances* to determine whether the owner received actual notice of the tax sale, that the totality of the circumstances in Sabbeth supported the conclusion of actual notice, and that strict compliance with the statutory notice requirements had been waived. In so holding, this Court declined to reward the taxpayer's efforts to avoid the consequences of her inaction, i.e., refusing to open the certified letter from the tax claim bureau until long after the tax sale. Id.

The case currently before this Court is more like Sabbeth than Dauphin County. Here, as in Sabbeth, the totality of the circumstances establishes that Country Acres had such implied actual notice. We have already determined that the Property was properly posted. Unlike in Dauphin County, there is no dispute that Country Acres, through Mr. Siragusa, received and signed for the certified letters from the Bureau in July 2009. (Hr'g Tr. at 33-35, R.R. at 162a-64a.) As in Sabbeth, Country Acres was aware that it was delinquent in taxes on the only property it owned in Pennsylvania and received certified letters from the Bureau prior to the tax sale. Although in Sabbeth an employee signed for the letters and placed them on the taxpayer's desk, here Mr. Siragusa himself signed for the certified letters and personally set them aside. (Hr'g Tr. at 33-35, R.R. at 162a-64a.) We acknowledge the fact that, in Sabbeth, the taxpayer's office was located across the street from the property that was posted for sale, whereas Mr. Siragusa did not reside near the Property. However, given the totality of the circumstances

in this matter, particularly Country Acres' admitted disregard for the certified letters pertaining to the Property and Country Acres' knowledge that it was delinquent in paying the Property's real estate taxes, we conclude that Country Acres had implied actual notice of the tax sale such that it "had a duty to undertake further inquiry" into the status of the Property. Sabbeth, 714 A.2d at 517. To hold otherwise would, in effect, reward Country Acres' attempts to "avoid the consequences of [its] inaction by claiming complete ignorance." Id. at 518.

Accordingly, we affirm the trial court's Order.[7]

RENÉE COHN JUBELIRER, Judge

[7] We note that we requested the parties to address whether this Court had jurisdiction during oral argument given the trial court's statement that Country Acres provided no adequate justification for why it took no action after learning of the tax sale in January 2010 until it filed the Petition on April 15, 2010. Upon further review, this Court has jurisdiction over Country Acres' appeal because it was from a final order of the trial court and was filed within thirty days of that order. See Pa. R.A.P. 341(a) (stating that "an appeal may be taken as of right from any final order of a[] . . . lower court") and 903(a) (providing that, generally, a party's appeal from a trial court's final order "shall be filed within 30 days after the entry of the order from which the appeal is taken"). Moreover, although it appears that the trial court may have determined that *nunc pro tunc* relief was not available because of the unexplained lapse of time between Country Acres' knowledge of the tax sale in January 2010 and the filing of the Petition, the trial court did not dismiss the Petition on that basis; rather, it addressed the merits of the Petition. Accordingly, we will not address this issue further.

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O R D E R

NOW, January 5, 2012, the Order of the Court of Common Pleas of Wayne County in the above-captioned matter is hereby **AFFIRMED**.

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RENÉE COHN JUBELIRER, Judge