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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Circuit Court Judge Edgar W. Dickson

Case 2014-CP-18-1349

Appellate Case No. 2019-001255

Wendy Reed,

Appellant,

vs.

County of Dorchester and Thomas Limehouse,

Respondents.

APPELLANT'S PETITION FOR REHEARING

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LEGAL ARGUMENT

1. **The Court of Appeals erred when it overlooked the Lower Court's holding that Appellant was the person who failed to pay the taxes, as pursuant to S.C. Code Ann. § 12-51-90 (A), a defaulting taxpayer is one of the four (4) categories of persons entitled to redeem property at a tax sale.**

The Lower Court held “It was Plaintiff that failed to pay taxes... failed to probate her father’s estate...” (R. 25.) As stated in the Lower Court’s Order, this conclusion of law was based on facts found from the pleadings, trial testimony of witnesses, and Delinquent Tax Office documents. (R. 16-17, 25.) Appellant’s failure to pay the taxes made her, by definition, the defaulting taxpayer. As Appellant was the defaulting taxpayer, Respondent should have accepted Appellant’s money and allowed her to redeem the subject property pursuant to S.C. Code Ann. §12-51-90 (A).

The Court of Appeals erred by overlooking that the Lower Court’s designation of Appellant as the defaulting taxpayer was based in part on events preceding the redemption period which had nothing at all to do with Appellant identifying herself as the defaulting taxpayer to a clerk in the Delinquent Tax Office. (R. 16.) Specifically, the Lower Court relied on the following statements in the Amended Complaint in support of its conclusion that Appellant was the defaulting taxpayer: “Defendant Dorchester County sent Plaintiff all of the statutorily required notices regarding the delinquent tax sale”; “Defendant Dorchester County also sent all of requisite notices regarding the redemption period to Plaintiff”; and “Plaintiff had twelve months to redeem her property.” (R. 86.) As this Court overlooked the fact that Respondent identified Appellant as the defaulting taxpayer even before the tax sale and the Lower Court found facts and concluded

as a matter of law that Appellant was the defaulting taxpayer, it was error to hold Appellant had to prove she was the defaulting taxpayer in order to redeem her property.

2. The Court of Appeals misapprehended the significance of tenancy in common as it applies to heirs' property.

The Court of Appeals' decision faults Appellant for failing "to provide the County with the information necessary to identify [Appellant] as a person potentially eligible to redeem the property—such as a grantee of an owner of record or a defaulting taxpayer—during the twelve-month redemption period." (Opin. at 3.) In addition to the fact that the decision overlooked the Lower Court's legal conclusion that Appellant was the defaulting taxpayer, based in large part on Respondent's actions, this Court should reconsider its decision as by law, heirs' property owners are tenants in common and have concurrent ownership of property with the other heirs.¹

The Lower Court acknowledged Appellant was an heirs' property owner. In its Order, it noted Appellant was not the owner of record, the last owner of record was Elizabeth Perry. Her daughter, was Lucille B. Gregg who, per the Devise/Descent form in the Record, died in 1983, thirty years before the tax sale at issue. (R. 18, 338, 340.) When a property owner dies without a will thirty years previously, and there are subsequent heirs, that property becomes heirs' property. The Court overlooked the fact that Respondent's Delinquent Tax Office sent Appellant to the Probate Court to probate her grandmother's estate, where Appellant was told it was too late to probate her grandmother's estate and sent to the Center for Heirs' Property Preservation, which facts the Lower Court noted in its Order, referring to Appellant's trial testimony. (R. 18, 281-283.)

¹ "English common law provided three legal structures for the concurrent ownership of property that have survived into modern times: tenancy in common, joint tenancy, and tenancy by the entirety. The tenancy in common is now the most common form of concurrent ownership." United States v. Craft, 535 U.S. 274, 279-280 (2002).

The fact that the subject property is heirs' property was never in dispute in this case and this Court misapprehended the significance of the fact that the property sold at the tax sale was heirs' property.

Heirs' property owners, such as Appellant, are concurrent owners of property and as tenancy in common is a form of concurrent ownership, they are tenants in common. Under well-established law, tenants in common each own a separate fractional share in undivided property.

Tenants in common are such as hold by several and distinct titles, but by *unity of possession*; because none knoweth his own severalty, and therefore they all occupy promiscuously. In this State, and generally in the United States, this tenancy in common may arise by descent; but it may happen when there is unity of possession merely, and an entire disunion of interest, of title, and of time. Of two tenants in common of lands, one may hold his part in fee simple, the other in tail or for life; so that there is no necessary unity of interest; one may hold by descent, the other by purchase; or one by purchase from A., the other by purchase from B.; so that there is no unity of title: one's estate may have been vested fifty years, the others yesterday: so that there is no unity of time. The only *unity is of possession*.

Dorn v. Beasley, 28 S.C. Eq. 84, 88 (S.C. App. Eq. 1854) (internal citations omitted) (emphasis added).

It is the unity of possession that is relevant to the issue of redemption, because a fractional owner retains rights to the entire property. "Tenants in common may each unilaterally alienate their shares through sale or gift or place encumbrances upon these shares. *They also have the ... right to use the property, to exclude from third parties from it, and to receive a portion of any income produced from it.*" United States v. Craft, 535 U.S. at 279-280 (2002) (internal citations omitted) (emphasis added). "A cotenant has the right, in common with his cotenants, to the possession of the property owned in common, so ordinarily the possession by one cotenant is the possession of all." Watson v. Little, 224 S.C. 359, 364, 79 S.E.2d 384, 387 (1953). In other words, one tenant in common possesses property on behalf of all the tenants and cannot be treated as

distinct from the other co-tenants, whose names were known to Respondent. Therefore, any co-tenant can act on behalf of the other co-tenants, whether it is paying taxes, not paying taxes, or redeeming property after a tax sale.

As tenants in common, heirs' property owners are "grantees from the owner" so they must each be permitted, in accordance with the clear language of S.C. Code § 12-51-90, to redeem their property. "(A) The defaulting taxpayer, *any grantee from the owner*, or any mortgage or judgment creditor may within twelve months from the date of the delinquent tax sale redeem each item of real estate by paying to the person officially charged with the collection of delinquent taxes, assessments, penalties, and costs, together with interest as provided in subsection (B) of this section." S.C. Code Ann. § 12-51-90 (emphasis added.)

State laws regarding the payment of property taxes and tax sales are not concerned with how a property owner obtained his or her property; property can be obtained through purchase, devise, will, or intestacy. Nor do State laws regarding the payment of property taxes and tax sales differentiate between the various types of ownership. Whether a property owner owns property individually, jointly, as a life estate, with a right of survivorship, or as a tenant in common is irrelevant when it comes to paying property taxes and tax sales, although there are notice requirements for tax sales that must be adhered to, which notice requirements are not at issue in this case.

This Court misapprehended the law regarding tenancy in common when it placed the burden on an heirs' property owner to prove ownership. Respondent had performed a title search on the subject property before the tax sale and knew that the last person's name on the deed was the mother of a daughter who died intestate in 1983 and that the property was heirs' property. As an heirs' property owner, Appellant had no obligation to prove anything further when she tried to

redeem her property especially as Respondent had sent Plaintiff all of the statutorily required notices regarding the delinquent tax sale and the redemption period. (R. 86.) The redemption of property at a tax sale merely restores the status of the ownership of the property to what it was before the sale. If property was heirs' property prior to a tax sale, it remains heirs' property after redemption. See e.g., Cummings v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992) (no deed can convey an interest which the grantor does not have in the land described in the deed); Harrington v. Blackston, 311 S.C. 459, 429 S.E.2d 826 (Ct.App.1993) (a judicial sale secures the same title and rights in the property as the person whose interest was sold.).

Finally, this Court overlooked the fact that the Lower Court's Order contradicts itself. The Lower Court held Appellant failed to "any information about ownership or her relation to the property." (R. 17.) Yet, to support this fact, the Lower Court referred to the trial testimony of Bonita Daniels, a clerk with the Delinquent Tax Office, who testified she knew Appellant as someone who had previously paid the taxes. (R. 306.) This fact, coupled with the fact that the property is heirs' property and the Lower Court's factual finding that all tax notices were sent to Appellant by Respondent, is sufficient to show Appellant was a grantee of the owner and eligible to redeem the subject property.

CONCLUSION

Appellant respectfully requests this Court reconsider its decision as it overlooked the fact the Lower Court made findings of fact and concluded as a matter of law that Appellant was the person who failed to pay the taxes and was, thus, the defaulting taxpayer. Further, the Court misapprehended the fact that at the time Appellant tried to redeem her property, Respondent knew Appellant was an heirs' property owner and, as such, a concurrent owner of the property and grantee of the owner. Either as a defaulting taxpayer or as a grantee of the owner, Appellant was

entitled to redeem her property.

Respectfully submitted,

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I hereby certify that on July 14, 2022 I served a copy of Appellant's Petition for Rehearing on the following by email:

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