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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
Joseph K Coffey, Master-in-Equity

Case No. 2019-CP-14-00263

On Writ of Certiorari to the Court of Appeals

Appellate Case No. 2023-000098

Alvetta L. Massenberg, ... Petitioner,

v.

Clarendon County Treasurer, Clarendon County Delinquent Tax Collector, and Blacktop Ventures, LLC,..... Respondents.

BRIEF OF RESPONDENT BLACKTOP VENTURES, LLC

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QUESTION PRESENTED

Did the Court of Appeals err by affirming the Master-in-Equity's ruling that the notice of levy and tax sale posted on Petitioner's real property due to delinquent property taxes satisfied the requirement that such notice be "conspicuous" under section 12-51-40(c) of the South Carolina Code?

STATEMENT OF THE CASE

Petitioner is the former owner of a 2.54-acre parcel of undeveloped real property in Clarendon County, South Carolina ("The Property"). (App'x 2).[1] The Property is roughly triangle shaped and abuts Plowden Mill Road, a paved highway, on its western side, and Robert Rees Durant Road, a dirt road, on its eastern side. (App'x 2, 32, 53-54). Plaintiff acquired the Property in 1997 and paid all related property taxes through tax year 2015; however, she failed to pay the property tax for 2016. (App'x 2, 90, 93). As a result, Clarendon County ("the County") followed statutorily mandated procedure and mailed a delinquent tax notice to Petitioner in April 2017. (App'x 11, 65). This notice (and all others) was sent to Petitioner at 5724 Sloping Oak Road, Apt. 204, Charlotte, North Carolina, where she has lived since 2012. (App'x 2, 26, 55, 65). Because the taxes remained unpaid, the County then sent another notice to Petitioner via certified mail, which was returned undelivered on May 19, 2017. (App'x 12, 66-69).[2] Accordingly, the County then posted a tax levy notice ("the Notice") on the Property through its contracted agent, Palmetto Posting, Inc. (App'x 45).

[1] References to the Appendix use the page numbers as designated in the Record on Appeal filed with the Court of Appeals, which Petitioner refiled with this Court.

[2] According to the Master-in-Equity's order, Petitioner testified "that at one point her mail was stopped because her mailbox was too full." (App'x 2).

The Notice was conspicuously posted on a tree near to, facing, and visible from Robert Rees Durant Road on July 26, 2017. (App'x 70-71). On November 6, 2017, the Property was sold at public auction to Respondent Blacktop Ventures, LLC ("Respondent"). (App'x 4, 75). Notices of the sale, including instructions for redeeming the property withing twelve months, were sent to Petitioner at her residence in Charlotte on January 18, 2018 and September 21, 2018. (App'x 75-81). Following the sale, Respondent paid all taxes then due, and the Property was conveyed to Respondent via tax deed on December 19, 2018. (App'x 82-86). On April 24, 2019, the County sent an overage letter to Petitioner at her residence in Charlotte. (App'x 16, 18, 72). Petitioner received and signed for this letter. (App'x 18, 21, 73).

At the final hearing before the Master-in-Equity ("the Hearing"), Petitioner testified she first became aware that the Property had been sold in January 2019, when her uncle, Frank Frierson, informed her that trees on the Property were being removed. (App'x 29). Frierson was later asked, "You would agree that if you had ridden down Robert Rees Durant Road and looked towards this property and seen that sign, you would've been able to see it, correct?" (App'x 40). Frierson answered, "Yes, I would." (App'x 40). The Clarendon County Administrator also testified at the Hearing that Robert Rees Durant Road was graded ten times in 2017, which is "above average for a dirt road" and "is very indicative that the road is used quite a bit." (App'x 3, 47). He further testified that Robert Rees Durant Road acted as a shortcut between Plowden Mill Road and nearby Tearcoat Road, and it was used by private family vehicles. (App'x 49).

On May 30, 2019, Petitioner commenced this action to set aside the tax sale to Respondent. (App'x 7-9). Following the Hearing, the Master-in-Equity entered an order wherein it noted,

> There is no dispute, based on Plaintiff's testimony, that she did not pay the 2016 property taxes for the subject property; further, based on her testimony, there is no dispute that Clarendon County used the correct mailing address in sending Plaintiff all required notices for her failure to pay the 2016 property taxes, both before and

> after the sale. . . . The sole dispute before this court is whether or not the property was conspicuously posted as required by law for tax sale of real property in South Carolina.

(App'x 1).

The Master found Petitioner's testimony at the Hearing was "inconsistent and not credible," and she failed to present any evidence that the tax levy notice was not posted on the Property "as indicated by Palmetto Posting, Inc." (App'x 3-4). The Master further found "that the posting on July 26, 2017 as evidenced by Exhibit 12 meets the requirements of South Caroina law for posting property that is being sold for taxes." (App'x 5). Accordingly, the Master declined to set aside the tax sale of the Property to Respondent and ordered that Respondent "is the lawful owner of the subject property and is entitled to quite enjoyment of same with no adverse claims from [Petitioner] or anyone claiming under her." (App'x 5).

Petitioner appealed the Master-in-Equity's order to the Court of Appeals. In an unpublished opinion, the court affirmed, finding "[a] preponderance of the evidence supports the master's finding that the notice [of levy] was posted on a relatively well-traveled road." *Massenberg v. Clarendon County Treasurer et al.*, Op. No. 2022-UP-410 (S.C. Ct. App. filed Nov. 16, 2022). Petitioner sought rehearing, which the Court of Appeals denied on December 22, 2022. Petitioner then petitioned this Court for a writ of certiorari to review the Court of Appeals' decision, which this Court granted on May 23, 2023.

STANDARD OF REVIEW

"An action to set aside a tax sale lies in equity." *King v. James*, 388 S.C. 16, 24, 694 S.E.2d 35, 39 (Ct. App. 2010). "[The] scope of review for a case heard by a Master permits [an appellate court] to determine facts in accordance with [its] own view of the preponderance of the evidence." *Id.* "However, this scope of review does not require [the] court to disregard the Master's factual

findings because the Master saw and heard the witnesses and was, therefore, in a better position to judge the witnesses' credibility and demeanor." *Id.* "If [this court] choose[s] to find facts in accordance with [its] view of the evidence, [it] must state such findings of fact and [its] reasoning for those findings." *Smith v. Barr*, 375 S.C. 157, 160, 650 S.E.2d 486, 488 (Ct. App. 2007).

"Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo." *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.*

ARGUMENT

1. The Notice was conspicuously posted on the Property.

Section 12-51-40 of the South Carolina Code "lays out the statutory procedure for the sale of a defaulting taxpayer's property." *Forfeited Land Comm'n of Bamberg Cnty. v. Beard*, 424 S.C. 137, 145, 817 S.E.2d 801, 804-05 (Ct. App. 2018). First, "[t]he delinquent tax collector is required to mail a notice of delinquent property taxes to the defaulting taxpayer." *Id.* at 145, 817 S.E.2d at 805; *see also* § 12-51-40(a). "If the taxes remain unpaid after thirty days, the delinquent tax collector is permitted to take exclusive possession of the property by mailing notice to the defaulting taxpayer by 'certified mail, return receipt requested-restricted delivery.'" *Id.* (quoting § 12-51-40(b)).

> However, if the certified mail notice is returned, the delinquent tax collector must "take exclusive physical possession of the property against which the taxes . . . were assessed by posting a notice at one or more conspicuous places on the premises, . . .

> reading: 'Seized by person officially charged with the collection of delinquent taxes . . . to be sold for delinquent taxes.'"

Id. (quoting § 12-51-40(c)).

Here, Petitioner does not allege that the County failed to send her the notices required by subsections (a) or (b) of section 12-51-40. Nor does she argue that the County entirely failed to post the Notice on the Property. Instead, as the Master-in-Equity and Petitioner both recognized, "The sole dispute before this court is whether or not the property was conspicuously posted as required by law for tax sale of real property in South Carolina." (App'x 1; Pet. Br. 5).

There is no South Carolina case law interpreting "conspicuous" in the context of section 12-51-40. Accordingly, this Court must rely upon the plain and ordinary meaning of the word in construing section 12-51-40(c) and its application to the circumstances presented here. *See City of Camden v. Brassell*, 326 S.C. 556, 561, 486 S.E.2d 492 (Ct. App. 1997) ("In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation."). As Petitioner acknowledges in her brief, Black's Law Dictionary provides the following definition for "conspicuous place": "For purposes of posting notices, a location that is reasonably likely to be seen." *Conspicuous Place*, Black's Law Dictionary (9th ed. 2009). Here, the Notice easily satisfies this definition—it was attached to a tree near to, facing, and visible from Robert Rees Durant Road. Additionally, the Notice was clearly contrasted and stood out from the tree and the woods behind it. (App'x 70-71). The Notice was easily visible by any passers-by and satisfies the requirement that such a posting be "reasonably likely to be seen," or "conspicuous." Frank Frierson, Petitioner's uncle, even admitted at the Hearing that the Notice would have been visible from Robert Rees Durant Road. (App'x 40). Petitioner's contention that the placement of the Notice "is the very opposite of conspicuous"

is simply not true. An inconspicuously placed notice would, for example, not be visible from any abutting roadway.

Moreover, the fact that any specific person (such as those who testified at the Hearing) failed to see the Notice does not render its placement inconspicuous. Nor does posting the Notice by Robert Rees Durant Road instead of Plowden Mill Road. Section 12-51-40(c) does not require that a notice of levy be posted in the *most* conspicuous place, as Petitioner would have this court find. Instead, the statute merely requires that the notice be posted in *a* conspicuous place. Adopting Petitioner's interpretation of section 12-51-40(c) would impose a highly subjective standard that would require South Carolina courts to determine the most conspicuous place on any given parcel of real property, which would be nearly impossible to carry out. Aggrieved delinquent taxpayers would almost always be able to argue that a notice of levy could have been posted in a more conspicuous manner.[3] The legislature most assuredly did not intended to impose this onerous and unworkable standard when it enacted section 12-51-40. *See Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Def.*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) ("In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature."). Such an interpretation of section 12-51-40(c) would also add a requirement to the statute that is simply not present in its language. *See Byrd v. Irmo High Sch.*, 321 S.C. 426, 433, 468 S.E.2d 861, 865 (1996) ("Where a statute expressly enumerates the requirements on which it is to operate, additional requirements are not to be implied.").

[3] For example, were a property to abut multiple paved roads, would the person charged with posting the notice be required to determine which road carried the most traffic before doing so?

Additionally, Respondent rejects the foundational presumption of Petitioner's position that posting the Notice by Robert Rees Durant Road was less conspicuous than posting it by Plowden Mill Road. When considering the purpose of section 12-51-40—providing reasonable notice to a delinquent taxpayer prior to seizing and selling property to satisfy outstanding taxes—posting the Notice by Robert Rees Durant Road in fact likely provided more opportunity for local residents, who would be more able and willing to notify Petitioner of the levy,[4] to see the Notice than if it had been placed by Plowden Mill Road. *See Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature."); *City of Camden*, 326 S.C. at 561, 486 S.E.2d 492 ("In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with Its general purpose."). In its order, the Master-in-Equity noted that Petitioner "presented several witnesses that live in the vicinity of the [P]roperty to testify that they were frequently on Robert Rees Durant Road, either walking or by vehicle," and Petitioner acknowledged in her brief filed with the Court of Appeals that three "nearby residents of the area" testified at the Hearing that they "often walked together for exercise in the neighborhood and on the unpaved Robert Rees Durant Road." (App'x 3, 108). The Master-in-Equity also found "that Robert Rees Durant Road . . . is a well traveled dirt road," (App'x 3), and the Court of Appeals similarly found the road was "relatively well-traveled." *Massenberg*, Op. No. 2022-UP-410. Evidence in the record supports both of these findings.

Additionally, vehicles traveling on Robert Rees Durant Road, a dirt road, would likely be moving at a slower speed than cars on Plowden Mill Road, a paved highway, which further

[4] For example, Gertrude McFadden, who lives on a parcel of land that abuts the Property, testified at the Hearing that she would have notified Petitioner's uncle if she had seen the levy notice posted on the Property. (App'x 43-44).

increases the chance that those traveling on Robert Rees Durant Road would see the Notice. Petitioner's assertion that "[p]osting the notice of levy in this case on a less used one-vehicle-wide back country road is clearly not posting it in a conspicuous place" and "more hidden from public view" is speculative and unsupported by any evidence. (Pet. Br. 6). However, regardless of the relative merits of posting the Notice on Robert Rees Durant Road versus Plowden Mill Road—and as stated above—section 12-51-40(c)'s requirement is not that the Notice be posted in the *most* conspicuous place. Accordingly, a posting visible from either Robert Rees Durant Road or Plowden Mill Road clearly satisfies the statute.

Finally, although there is no South Carolina case law on point, other courts that have considered similar questions have ruled in Respondent's favor.[5] In fact, even in *In re Somerset Cnty. Tax Sale of Real Estate Assessed in the Name of Tub Mill Farms, Inc.*, which Petitioner cites in her brief, the court observed that a notice "visible from the road fronting the property" satisfied the statutory notice requirement there. 14 A.3d 180, 184 (Pa. Commw. Ct. 2010); *see also id.* ("Even if we assume, *arguendo*, that posting the property in the vicinity of the driveway would have been more likely to inform interested parties of the tax sale, it does not follow that the notice,

[5] *See, e.g.*, *Berry v. Joseph E. Seagram & Sons, Inc.*, 744 F. Supp. 214, 217 (C.D. Cal. 1990) ("Plaintiff argues there were other more conspicuous places the notice could have been posted. Plaintiff also states that he never saw the notice as posted, and submits the affidavits of two other employees who testify that they never saw the notice. However, the fact that other places exist where the notice could have been prominently displayed does not mean the place it was in fact displayed was not proper."); *cf. Westfield Ins. Co. v. Birkey's Farm Store, Inc.*, 924 N.E.2d 1231, 1245 (2010) ("The question before the court is not whether the disclaimer at issue could have been made more conspicuous but, rather, whether the disclaimer at issue was presented in a manner reasonably sufficient to draw attention to it."); *Jones v. GMAC*, No. CV: 07-J-1398-NE, 2007 U.S. Dist. LEXIS 97955, at *14 (N.D. Ala. Sep. 28, 2007) ("The next issue is whether the GAP Schedule conspicuously disclosed to Mr. Jones that he was not required to purchase GAP insurance. Mr. Jones argues that the voluntariness disclosure is not conspicuous because other non-TILA disclosures, such as arbitration, are more conspicuous. However, the TILA does not require the GAP disclosures to be the most conspicuous disclosures -- just that they be conspicuous.").

as posted, was not reasonable and conspicuous. The critical question . . . is not whether there was a better manner to post notice, but rather whether the manner of posting actually utilized was 'reasonable and likely to inform the taxpayer as well as the public at large of an intended real property sale.'" (quoting *Wiles v. Wash. Cnty. Tax Claim Bureau*, 972 A.2d 24, 28 (Pa. Commw. Ct. 2009))).

Because the Notice was conspicuously posted, the County followed all statutorily mandated procedures in selling the Property to Respondent, and there is no basis for setting aside the sale.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court affirm the rulings of the Master-in-Equity and Court of Appeals that the tax levy notice was conspicuously posted on the Property and that all statutory requirements related to the tax sale of the Property to Respondent were satisfied such that the sale should not be set aside.

Respectfully submitted,

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