

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2016-CP-28-00961

Lydia V. Hall as Personal Representative)
for the Estate of Bessie M. Doby; Asten)
Hall a/k/a Aster Hall, Hubert R. Hall, III;)
Mary Hall; Dana Hall,)

Plaintiffs,)

vs.)

Ronnie Fulmer; Jill B. Catoe as)
Kershaw County Treasurer and Tax)
Collector,)

Defendants.)

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2016-CP-28-00960

Lydia V. Hall as Personal Representative)
for the Estate of Bessie M. Doby; Asten)
Hall a/k/a Aster Hall, Hubert R. Hall, III;)
Mary Hall; Dana Hall,)

Plaintiffs,)

vs.)

Betty Horton Slade; Jill B. Catoe as)
Kershaw County Treasurer and Tax)
Collector,)

Defendants.)

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF ALL DEFENDANTS BY DENYING PLAINTIFFS' REQUEST TO SET ASIDE TAX SALE

This matter comes before the Court upon cross-motions for summary judgment filed by the above-named parties. Because the parties filed cross-motions for summary judgment, all agree that the case is now before the Court for a ruling as a matter of law. *See, e.g., Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011) (“Whe[n] cross[-]motions for

summary judgment are filed, the parties concede the issue before us should be decided as a matter of law.”); *Alltel Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 399 S.C. 313, 319 n.2, 731 S.E.2d 869, 872 n.2 (2012) (explaining that “the parties filed cross[-]motions for summary judgment, thereby indicating the parties’ belief that further development of the facts was unnecessary”).

The parties submitted briefing to the Court concerning all outstanding issues, and the Court heard oral argument on the parties’ positions on Wednesday, March 1, 2023. After careful and thorough consideration of the briefing and the arguments made by Counsel, the Court hereby issues this Order denying Plaintiffs’ action to set aside the tax sale and granting summary judgment in favor of all Defendants.

FINDINGS OF FACT

Plaintiffs Lydia V. Hall as Personal Representative for the Estate of Bessie M. Doby, Asten Hall aka Aster Hall, Hubert R. Hall, III, Mary Hall, and Dana Hall (“Plaintiffs”) initiated an action against Defendants Ronnie Fulmer and Jill B. Catoe as Kershaw County Treasurer and Tax Collector (the “Treasurer”) on November 3, 2016. (C/A No.: 2016-CP-28-00961). Plaintiffs also initiated an action against Defendants Betty Horton Slade and the Treasurer on November 3, 2016. (C/A No.: 2016-CP-28-00960). By Order of the Court, dated February 23, 2023, these related matters were consolidated for resolution pursuant to Rule 42 of the South Carolina Rules of Civil Procedure.

In this consolidated action, Plaintiffs seek to set aside the tax sale of the following properties located in Kershaw County: (1) 210 Chappy Road (TMS #212-00-00-006), (2) 324 Railroad Avenue (TMS #C257-20-00-141), (3) 326 Railroad Avenue (TMS #C27-20-00-140), and (4) 328 Railroad Avenue (TMS #C257-20-00-139) (collectively, “the Properties”).¹ The Properties were sold at the Kershaw County tax sale for the non-payment of taxes owed for the tax year 2013. The Treasurer submitted her corresponding tax files for the Properties to this Court for review and provided an Affidavit referencing the same.

The following are the relevant factual events instructive for the Court’s analysis of the outstanding issues:

¹ Plaintiffs also sought to set aside the tax sale for 2300 Lyttleton Street (TMS #C257-20-00-138). However, Plaintiffs agreed to dismiss any requested relief related to this property, and this Court entered a Consent Order reflecting this dismissal on February 23, 2023.

- Bessie M. Doby passed away on July 8, 2006. Ms. Doby owned the Properties prior to her death.
- Following Ms. Doby's death, Plaintiff Lydia Hall paid the taxes on the Properties.
- A deed was recorded and filed with the Kershaw County Register of Deeds on April 27, 2011, after Ms. Doby's death. The deed, found in Book 2792 at page 299 of the public record, specifically noted:

That **BESSIE M. DOBY** died intestate, a resident of Kershaw County, South Carolina, on July 8, 2006. She never married nor had any children. Her sole heirs at law were her niece and nephew, **LYDIA V. HALL**, and myself, **CHRISTOPHER J. SMITH**. Her estate has not been administered.

- The deed conveyed Christopher Smith's interest in several properties, including the Properties, to Plaintiff Lydia Hall—Ms. Doby's only other intestate heir.
- Plaintiff Lydia Hall continued to pay taxes on the Properties.
- The taxes on the Properties went unpaid during the tax year 2013.
- The Treasurer issued a warrant on March 17, 2014, against Lydia Hall for the Properties because of the unpaid taxes.
- The Properties were levied by distress on June 10, 2014.
- Notice of the delinquent taxes on the Properties and the impending tax sale date was mailed to Plaintiff Lydia Hall on June 3, 2014. The Notice was sent by certified mail, return receipt requested, and deliver to addressee only. Plaintiff Lydia Hall does not deny receiving this Notice.
- The Properties were sold at the November 3, 2014 tax sale to Defendants Slade and Fulmer, respectively.
- Final Notice of the opportunity to redeem 324 Railroad Avenue and 326 Railroad Avenue following the tax sale was mailed to Plaintiff Lydia Hall on September 30, 2015. The Notice was sent by certified mail, return receipt requested, and deliver to addressee only. Plaintiff Lydia Hall does not deny receiving this Notice.
- Final Notice of the opportunity to redeem 328 Railroad Avenue and 210 Chappy Road after the sale was mailed to Plaintiff Lydia Hall on October 1, 2015. The Notice was

sent by certified mail, return receipt requested, and deliver to addressee only. Plaintiff Lydia Hall does not deny receiving this Notice.

- Defendant Fulmer was the highest bidder for the three (3) Railroad Avenue Properties, and the Treasurer issued and delivered tax deeds to Defendant Fulmer for these properties on January 14, 2016, and March 15, 2016.
- Defendant Slade was the highest bidder for the Chappy Road Property, and the Treasurer issued and delivered a tax deed to Defendant Slade on January 14, 2016.
- Sometime in early 2016, the Last Will and Testament of Ms. Doby was located by Plaintiffs, which bequeathed the Properties to her great-nephew Plaintiff Hubert R. Hall, III, her niece Plaintiff Lydia Hall, and her great-nieces Plaintiffs Mary Hall, Aster Hall a/k/a Asten Hall, and Dana Hall.
- The Will was submitted to the probate court on June 15, 2016.
- Plaintiff Lydia Hall was appointed as the Personal Representative for Ms. Doby's estate.
- Plaintiff Lydia Hall as the Personal Representative of the Estate of Bessie Doby and other Plaintiffs filed suit to set aside the tax sale on November 3, 2016.

APPLICABLE LAW

Actions to set aside a tax sale lie in equity. *King v. James*, 388 S.C. 16, 24, 694 S.E.2d 35, 39 (Ct. App. 2010). "Tax sales must be conducted in strict compliance with statutory requirements." *In re Ryan Inv. Co., Inc.*, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999). "[A]ll requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded [as] mandatory and are to be strictly enforced." *Donohue v. Ward*, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989). "The rationale behind posting [a tax sale] notice is to notify the defaulting taxpayer that delinquent property taxes are due." *Smith v. Barr*, 375 S.C. 157, 161, 650 S.E.2d 486, 488 (Ct. App. 2007).

Section 12-51-40 of the South Carolina Code sets forth in detail the statutory procedure for the sale of a defaulting taxpayer's property. First, the delinquent tax collector is required to mail a notice of delinquent property taxes "to the defaulting taxpayer and to a grantee of record of the property, whose value generated all or part of the tax," at "the best address available." S.C. Code Ann. § 12-51-40(a). The best address available is "either the address shown on the deed conveying the property to him, the property address, or other corrected or forwarding address of which the

officer authorized to collect delinquent taxes, penalties, and costs has actual knowledge.” *Id.* 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 and any grantee of record of the property at the address shown on the tax receipt or to an address of which the officer has actual knowledge,” by “certified mail, return receipt requested-restricted delivery.” S.C. Code Ann. § 12-51-40(b). “The return receipt of the ‘certified mail’ notice is equivalent to ‘levying by distress.’” *Id.* “For the purpose of enforcing payment and collection of property taxes when the true owner is unknown because of the death of the owner of record and the absence of probate administration of the decedent’s estate, the property must be advertised and sold in the name of the deceased owner of record.” S.C. Code Ann. §12-51-40(f).

After the tax sale, the property owner’s rights are not immediately extinguished. The sale of a tax delinquent property initiates a redemption period in which 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 . . . due on the whole amount of the delinquent tax sale.

S.C. Code Ann. § 12-51-90 (A)–(B) (emphasis added); *Von Elbrecht v. Jacobs*, 286 S.C. 240, 243-44, 332 S.E.2d 568, 570 (Ct. App. 1985) (“A defaulting taxpayer whose property has been sold for taxes has title, defeasible upon failure to redeem *within twelve months* after the tax sale.” (Emphasis added)). Notice of the approaching end of the redemption period must be given to the defaulting taxpayer. S.C. Code Ann. § 12-51-120.

The burden of proving that the title is defective is on the party attacking the tax sale and/or resulting tax deed. *See Leysath v. Leysath*, 209 S.C. 342, 348, 40 S.E.2d 233, 235 (1946).

SUMMARY OF THE ARGUMENTS

I. PLAINTIFFS

Plaintiffs allege the tax sale conducted on November 3, 2014, must be set aside due to the Treasurer’s failure to strictly comply with the applicable South Carolina law governing the sale of a defaulting taxpayer’s property.

Plaintiffs contend the Treasurer:

1. Violated Section 12-51-40 (a), (b), (c), and (f) by failing to:

- a. Mail a notice of delinquent property tax to the defaulting taxpayer of the Properties who was Bessie M. Doby;
 - b. Take exclusive possession of the Properties by mailing a notice of delinquent property taxes to the defaulting taxpayer who was Bessie M. Doby;
 - c. Take exclusive possession of the Properties by posting a notice of the delinquent property taxes on the Properties; and
 - d. Advertise and sell the Properties in the name of the deceased owner of record who was Bessie M. Doby.
2. Violated Section 12-51-120 by failing to mail a redemption notice to the defaulting taxpayer who was Bessie M. Doby.

In short, Plaintiffs contend the Treasurer should have treated *Ms. Doby* as the defaulting taxpayer for purposes of strict compliance with the governing statutory authority surrounding notice and advertisement. Plaintiffs contend it was error for the Treasurer to rely on the April 27, 2011 recorded deed. Plaintiffs assert that because no estate had been opened for Ms. Doby and because time remained under the ten-year statute to probate a will or open an estate, then the Treasurer's actions were erroneous. In essence, Plaintiffs contend that the Treasurer should have second-guessed the public record and assumed that the representations in the deed, found in Book 2792 at page 299 of the public record of the two intestate heirs, Christopher Smith and Plaintiff (and subsequent Personal Representative) Lydia Hall were erroneous.

II. THE TREASURER

The Treasurer argues the tax sale is valid because the Treasurer complied in full with the applicable law in selling the Properties at the tax sale and issuing the tax deeds. The Treasurer contends that she properly relied on the public records that were available to determine the identity of the defaulting taxpayer and grantee of record for the Properties. The Treasurer asserts that the public record shows that Plaintiff Lydia Hall was the defaulting taxpayer and grantee of record for the Properties and that the resultant notices and advertisements were duly issued in strict compliance with the law.

Furthermore, the Treasurer argues that the equitable relief requested by Plaintiffs should be denied for various other reasons, including the doctrines of estoppel, waiver, laches, and unclean hands. To support these additional arguments, the Treasurer contends that Plaintiffs knew Ms. Doby had a Will but failed to exercise due diligence by failing to timely search for the

decedent's Will and failing to properly submit the Will to the probate court. The Treasurer cites section 62-2-901² in support of this argument and notes that deposition testimony reveals that the Will was located in February 2016 but was not submitted to the probate court until June 2016—after the tax sale.

III. DEFENDANT FULMER

Defendant Fulmer argues the tax sale is valid and that he is the rightful owner of the three (3) Railroad Avenue properties. Alternatively, Defendant Fulmer argues that, should the tax sale be found invalid, he is entitled to immediate reimbursement from Plaintiffs of taxes he paid on the three (3) Railroad Avenue properties and immediate reimbursement for an old building demolition on one (1) of the Railroad Avenue properties. Defendant Fulmer submitted an Affidavit with a check stub reflecting he paid \$5,802.00 for the above-mentioned demolition.

IV. DEFENDANT SLADE

Defendant Slade argues the tax sale is valid and that she is the rightful owner of the Chappy Road property. Alternatively, Defendant Slade argues that, should the tax sale be found invalid, she is entitled to immediate reimbursement from Plaintiffs of taxes she paid on the Chappy Road property.

CONCLUSIONS OF LAW

The Court agrees this case is appropriate for summary judgment. There are no genuine disputes as to any material facts amongst the parties. Therefore, following a review of the aforementioned arguments and written submissions of the parties, the Court hereby grants summary judgment in favor of Defendants Treasurer, Slade, and Fulmer and denies Plaintiffs' request to set aside the tax sale. The Court finds that the tax sale and the issuance of the tax deeds complied with South Carolina law.

Plaintiffs' main contention is that the requisite notices and advertisements were not given by the Treasurer in the name of Ms. Doby. However, Plaintiffs acknowledge that Plaintiff Lydia Hall received the appropriate notices and advertisements in her name. Based on the facts of this case, the Court finds that the Treasurer acted appropriately in relying on the public record in her

² S.C. Code Ann. § 62-2-901 (“After the death of a testator, a person having custody of a will of the testator shall deliver such will, within thirty days of actual notice or knowledge of the testator’s death to the judge of the probate court having jurisdiction to admit the same or to a person named as personal representative in the will who shall deliver the will to the judge of the probate court.”).

strict compliance with the governing tax sale statutes. The tax sale was proper, and the respective tax deeds were properly issued to Defendants Slade and Fulmer.

Ms. Doby owned the Properties prior to her death in July 2006. Following Ms. Doby's death, Plaintiff Lydia Hall paid the taxes on the Properties. In April of 2011, a deed was publicly recorded with Kershaw County, declaring that Ms. Doby died intestate and left Mr. Smith and Plaintiff Lydia Hall as her only intestate heirs. That same publicly recorded deed transferred Mr. Smith's interest in the Properties to Plaintiff Lydia Hall. Subsequently, Plaintiff Lydia Hall, who acknowledged she was aware of the deed from Mr. Smith, continued to pay taxes on the Properties until the resultant events triggering the tax sale for the non-payment of taxes for tax year 2013.

To issue the necessary notices and publish the necessary advertisement, the Treasurer relied on the public records available. The public records showed Plaintiff Lydia Hall was the defaulting taxpayer and grantee of record for all of the Properties at the time of the tax sale. In accordance with section 12-51-40 and section 12-51-120 of the South Carolina Code, the Treasurer issued an execution against Plaintiff Lydia Hall, mailed the required notice of the delinquent taxes and impending sale to Plaintiff Lydia Hall, and mailed notice of the redemption period to Plaintiff Lydia Hall. Plaintiff Lydia Hall testified in her deposition that she had received and signed for all notices and confirmed that she was not contesting that she did not receive the notices. Plaintiff Lydia Hall was also later appointed as the Personal Representative of Ms. Doby's estate.

Again, Plaintiffs argue that all of the requisite notices should have been done in the name of Ms. Doby. However, Section 12-51-40(f) of the South Carolina Code only requires property to be advertised and sold in the name of the deceased owner of record "when the true owner is unknown because of the death of the owner of record and the absence of probate administration of the decedent's estate." (Emphasis added). Here, the Treasurer acted with due diligence and took the appropriate steps to discover the identity of the true owner of the Properties after Ms. Doby's death by reviewing the public records. Although there was not a probate proceeding opened for Ms. Doby's estate, the public record reflected that Ms. Doby died intestate, Plaintiff Lydia Hall was the only remaining intestate heir with an interest in the Properties, and Plaintiff Lydia Hall was the defaulting taxpayer and the grantee of record of the Properties as of April 2011. Statutory law did not require the Treasurer to advertise and sell the Properties in the name of Ms. Doby. *See* S.C. Code Ann. § 12-51-40(f); *Bell v. Knight*, 376 S.C. 380, 382, 656 S.E.2d 393, 394 (Ct. App. 2008) (finding notice given to a deceased husband who died intestate was unnecessary and

exceeded the statutorily required notice where the public record showed that the probate court divested his three children of interest in the property so the wife had the sole remaining interest in the property even where the deed conveying the property to the wife was not recorded until after the tax sale). Furthermore, for the Treasurer to have taken these actions in the name of Ms. Doby would have been in plain disregard to the only information that was available to the Treasurer.

This Court agrees with the Treasurer's argument that county officials are entitled to rely on the public record in fulfilling their statutory duties. This fact is well-established in our statutory and case law. *See* S.C. Code Ann. § 12-51-40(a) (requiring the delinquent tax collector to mail notice of delinquent property taxes to the defaulting taxpayer and “grantee of record” at the best address available (emphasis added)). In *Koth v. Pallachucola Club*, 79 S.C. 514, 61 S.E. 77, 78 (1908), our Supreme Court held “[i]t would be unreasonable to require tax officials to unravel complicated inheritances,” and these officials should be able to rely on the public record to identify the heirs of deceased persons.

In *Taylor v. Mill*, 310 S.C. 526, 528, 426 S.E.2d 311, 312-13 (1992), the South Carolina Supreme Court held that a county had no obligation to notify an individual of a tax sale when that individual failed to record his deed showing he owned the property. The plaintiff in *Taylor* bought the property at a federal tax sale and received a deed from the Internal Revenue Service on July 11, 1985. He did not record his deed until June 20, 1988. Prior to the plaintiff recording his deed, the county seized the property and sold it at a July 1986 tax sale. The county issued the successful bidder a deed on March 11, 1988, and the successful bidder recorded his deed on July 27, 1988. The Supreme Court refused to set aside the tax sale and found that the plaintiff—even though he had an unrecorded deed showing an ownership in the property—was not entitled to notice under the statute because it was his own “lack of diligence” in failing to discover the unpaid county taxes and “failing to either notify Lexington County that he was the grantee of the delinquent taxpayer Goldberg or to record his deed.”

Thus, according to the *Taylor* Court, the delinquent tax collector was entitled to rely on the public record—which did not show the plaintiff's ownership interest—in determining who was entitled to notice of the tax sale. For this Court to find otherwise and set aside the instant tax sale, it would have to mandate that tax officials disregard or second guess publicly available documents and delve into the middle of complicated inheritances.

Finally, this is not a case in which the information available in the public record and observed by the Treasurer were in conflict. Plaintiff Lydia Hall was aware that her brother, and only other surviving intestate heir, had deeded the Properties to her. She also received the statutorily required notices, and eventually became the Personal Representative of the Estate that was opened nearly ten (10) years after Ms. Doby's death. Plaintiff Lydia Hall consistently paid the taxes on the Properties since Ms. Doby's death in 2006. At no point did Plaintiff Lydia Hall or anyone else contact the Treasurer to inform her that the tax notices were being sent to her by mistake.

The Court acknowledges that the Treasurer makes other arguments as to why the Court should refuse to set aside the tax sale, including the lack of diligence amongst Plaintiffs, estoppel, waiver, laches, *in pari delicto*, and unclean hands. The Treasurer asserts *inter alia*: (1) Plaintiffs claimed that they knew Ms. Doby had a Will but failed to diligently search and locate the Will; (2) Plaintiffs would have been aware of their interests in the Properties in February 2016, yet waited over ninety (90) days to file the Will with the probate court; and (3) Plaintiffs failed to deliver the Will to the probate court in accordance with South Carolina law (S.C. Code Ann. § 62-2-901). However, the Court need not address these issues due to the dispositive nature of the above-mentioned conclusions of law. *See Futch v. McAlister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to rule on other issues in light of deciding an issue dispositive of the case).

ORDER

Therefore, based on the foregoing, Defendants' Motion for Summary Judgment is **GRANTED** and Plaintiffs' Motion for Summary Judgment and Request to Set Aside the Tax Sale is **DENIED**. Defendant Fulmer is the owner of the Railroad Avenue properties, and Defendant Slade is the owner of the Chappy Road property.

AND IT IS SO ORDERED.

(Electronic Signature Page to Follow)



Kershaw Common Pleas

Case Caption: Lydia V Hall Pr , plaintiff, et al VS Ronnie Fulmer , defendant, et al

Case Number: 2016CP2800961

Type: Order/Summary Judgment

IT IS SO ORDERED!

s/ Alison Renee Lee