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**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas**

The Honorable Alison Renee Lee, Circuit Court Judge

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Appellate Case No. 2023-001425

Civil Action Case Nos. 2016-CP-28-00960 & 2016-CP-28-00961

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LYDIA V. HALL as Personal Representative for the Estate of Bessie M. Doby; ASTEN HALL a/k/a Aster Hall; HUBERT R. HALL; MARY HALL; DANA HALL.....Appellants,

v.

RONNIE FULMER; BETTY HORTON SLADE; JILL B. CATOE as Kershaw County Treasurer and Tax Collector ..... Respondents.

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**INITIAL BRIEF OF RESPONDENT JILL B. CATOE AS KERSHAW COUNTY  
TREASURER AND TAX COLLECTOR**

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**SMITH | ROBINSON**

Jonathan M. Robinson  
Austin T. Reed  
Rachel E. Lee  
SMITH | ROBINSON  
2530 Devine Street  
Columbia, SC 29205

*Counsel for Kershaw County Treasurer and  
Tax Collector Jill B. Catoe*

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## **COUNTER-STATEMENT OF ISSUES ON APPEAL**

- I. Did the circuit court properly grant summary judgment in favor of Respondents when there was no genuine issue of material fact that Respondent Treasurer made a diligent search of the public record to determine the identity of the defaulting taxpayer and grantee of record and, at all times, strictly complied with the laws governing tax sales in South Carolina?
  
- II. Do Appellants' own dilatory actions in this equitable case to set aside tax sales provide this Court with alternative sustaining grounds to affirm the circuit court's grant of summary judgment in favor of Respondents?

## **STATEMENT OF THE CASE**

This appeal arises out of two separately filed actions to set aside Kershaw County tax sales that were brought by Appellants 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; and Dana Hall (collectively, "Appellants"). On November 3, 2016, Appellants filed suit against Respondents Betty Horton Slade and Jill B. Catoe as Kershaw County Treasurer and Tax Collector ("the Treasurer"). (Complaint; C/A No. 2016-CP-28-00960). Also, on November 3, 2016, Appellants filed suit against Respondents Ronnie Fulmer and the Treasurer. (Complaint; C/A No. 2016-CP-28-00961). Pursuant to Rule 42 of the South Carolina Rules of Civil Procedure, the circuit court, with consent of the parties, consolidated these matters for resolution. (Consolidation Order dated February 23, 2023). The circuit court's consolidation order also noted that the case would be submitted on cross motions for summary judgment and set forth a briefing schedule to assist the parties in accomplishing the same. (*Id.*). Following the parties' briefing, the circuit court heard argument on March 1, 2023. (Transcript on MSJ). On July 28, 2023, the circuit court issued a written order granting summary judgment in favor of Respondents by refusing to set aside the tax sales in both of the underlying cases. (MSJ Order dated July 28, 2023). Thereafter, Appellants filed and served their Notice of Appeal.

## FACTUAL AND PROCEDURAL BACKGROUND

The relevant facts in this case remain undisputed. Bessie M. Doby, a lifetime resident of Kershaw County, passed away on July 8, 2006. (Treasurer MSJ Memo, Ex. E; Appellants MSJ Memo, Ex. E). Ms. Doby’s niece (Appellant Lydia Hall) and nephew (Christopher Smith) were her closest surviving relatives at the time of her death. (Treasurer MSJ Memo, Ex. E). During her time in Kershaw County, Ms. Doby acquired several different pieces of real property. These properties included, *inter alia*, (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”). (Treasurer MSJ Memo at 2). The Properties, located in Kershaw County, were owned by Ms. Doby at the time of her death and are now the focus of the underlying litigation and the instant appeal. (Complaints, Exs. B).

After Ms. Doby passed away in 2006, Appellant Lydia Hall paid the taxes on the Properties for several years. (Treasurer MSJ Memo, Ex. A at 2; L. Hall Transcript at 41). In April 2011, a quitclaim deed (“the deed”) was filed and recorded with the Kershaw County Register of Deeds. (Treasurer MSJ Memo, Ex. B). The deed—found in Book 2792 at Page 299 of the public record—declared:

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.

(Treasurer MSJ Memo, Ex. B at 1). Importantly, the deed conveyed Mr. Smith’s interest in a number of properties, including the Properties subject to this case, **to Appellant Lydia Hall**. (Treasurer MSJ Memo, Ex. B). The deed listed Appellant Lydia Hall as the sole grantee of the

Properties and set forth her address as 2212 Williams Street, Camden, South Carolina 29020. (*Id.* at 3).

Thereafter, Appellant Lydia Hall continued paying the taxes on the Properties. (Treasurer MSJ Memo, Ex. A at 2; L. Hall Transcript at 41). It is undisputed the taxes on the Properties went unpaid for the tax year 2013. (*Id.*). The Treasurer initiated proceedings, adhering to South Carolina law, for the collection of these delinquent 2013 ad valorem taxes.<sup>1</sup> (*Id.*). The Treasurer, in performing her due diligence, reviewed (1) public records (including the above-mentioned April 2011 deed) and (2) the history of tax payments on each of the Properties to determine Appellant Lydia Hall was the defaulting taxpayer and grantee of record at the time of the tax sales. (Treasurer MSJ Memo, Ex. A at 3).

On March 17, 2014, the Treasurer issued a warrant for the Properties. (MSJ Memo, Ex. A). The Properties were levied by distress on June 10, 2014. (*Id.*). On June 3, 2014, the Treasurer sent notice of the delinquent taxes and the impending tax sale to Appellant Lydia Hall at her best-known address.<sup>2</sup> (*Id.*). Appellant Lydia Hall has never denied timely receiving the notices for the Properties. (L. Hall Dep. Transcript at 71 & 73). The Properties, subject to the pending tax sale, were also published in an appropriate newspaper. (Appellants MSJ Memo, Ex. K).

The Properties were sold in accordance with statute at the November 3, 2014 tax sale. (Treasurer MSJ Memo, Ex. A). Respondent Fulmer was the highest bidder for the three (3) Railroad Avenue properties, and Respondent Slade was the highest bidder for the Chappy Road property. (*Id.*). Following the tax sale, the Treasurer sent final notice of the opportunity to redeem

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<sup>1</sup> The circuit court included in its Order a helpful timeline to highlight the Treasurer's statutory compliance. (Order at 3-4).

<sup>2</sup> All notices were mailed by certified mail, return receipt requested with direction to deliver to addressee only. The notices were mailed to Appellant Lydia Hall's address 2212 Williams Street, Camden, South Carolina 29020. This is the same address set forth in the April 2011 deed.

324 Railroad Avenue and 326 Railroad Avenue to Appellant Lydia Hall on September 30, 2015. (*Id.*). Final notices were sent for 328 Railroad Avenue and 210 Chappy Road to Appellant Lydia Hall on October 1, 2015. (*Id.*). Similarly, Appellant Lydia Hall has never denied timely receiving the final redemption notices for the Properties. (L. Hall Dep. Transcript at 71 & 73). Because the Properties were not timely redeemed, the Treasurer issued tax deeds to Respondents Fulmer and Slade on January 14, 2016, and March 15, 2016, respectively. (MSJ Memo, Ex. A).

At some point in early 2016, Appellants contend that the Last Will and Testament of Ms. Doby, dated July 21, 2000, (“the will”) was located. (L. Hall Dep. Transcript at 83). Appellant Lydia Hall explained that she had known that the will existed for many years but that she had never seen it until it was recently located. (L. Hall Dep. Transcript at 84). The will bequeathed the properties to Appellants Asten Hall, Hubert Hall, Mary Hall, and Dana Hall. (Appellants’ MSJ Memo, Ex. E). Appellants did not attempt to probate the will until June 15, 2016—months after the issuance of the tax deeds to Respondents Fulmer and Slade and a few weeks shy of the ten-year-statutory deadline to probate a will. *See* C/A No. 2016-ES-28-00226.

On November 3, 2016, Appellants filed suit against Respondents to set aside the tax sales. (Complaint; C/A No. 2016-CP-28-00960); (Complaint; C/A No. 2016-CP-28-00961). Because the two separate suits involved the exact same questions of law and fact, the Court issued a consent order consolidating these matters and agreeing to resolve the consolidated case on cross motions for summary judgment. (Consolidation Order dated February 23, 2023). The consolidated action was ripe for summary judgment and the circuit court’s consideration, especially due to the parties’ agreement upon the underlying facts.

After briefing by the parties, the circuit court heard argument on the cross motions for summary judgment. (SJ Hearing Transcript). The competing arguments can be summarized

succinctly. Appellants argued that the circuit court must set aside the tax sales due to the Treasurer's failure to strictly comply with the applicable South Carolina statutory law concerning the sale of a defaulting taxpayer's property. (Appellants' MSJ Memo at 7-10). Appellants explained that it was error for the Treasurer to have issued the notices and publication in the name of Appellant Lydia Hall and that for the Treasurer to have strictly complied with the statutory authority, the Treasurer was required to issue the notices and publication in the name of Ms. Doby. (*Id.*).

Respondents disagreed and argued the Treasurer strictly adhered to the relevant statutory authority because the Treasurer relied on the public records that were available to determine that Appellant Lydia Hall was the defaulting taxpayer and grantee of record. (Treasurer's MSJ Memo at 5-9). Specifically, the last deed of record was to Appellant Lydia Hall from Ms. Doby's only other intestate heir, Chris Smith, subsequent to Ms. Doby's death. This (quitclaim) deed issued by Chris Smith and received by Appellant Lydia Hall purported that Bessie Doby died intestate leaving Chris Smith and Lydia Hall as her intestate heirs.<sup>3</sup> After the Properties were lost at tax sale, Appellant Lydia Hall petitioned to become the Personal Representative and now takes the position she is not the rightful heir of the property. The Treasurer argued that various additional equitable grounds existed that required the tax sales to be upheld. (*Id.* at 10). Even though Respondents Fulmer and Slade agreed the tax sales were proper, they contended that, if the tax sales were to be set aside by the circuit court, they would be entitled to reimbursement from Appellants for all the money that they had spent on the Properties, including taxes paid, improvements made, etc. (SJ Transcript at 24).

The circuit court agreed with Respondents, granted summary judgment in their favor, and

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<sup>3</sup> No other intestate heirs were identified by Appellants.

denied Appellants' request to set aside the tax sale. (MSJ Order dated July 28, 2023). This appeal followed.

### **STANDARD OF REVIEW**

“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.” *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 211, 826 S.E.2d 285, 290 (2019) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “When reviewing a circuit court’s order from a motion for summary judgment, appellate courts sit in the same position as the circuit court.” *S.C. Pub. Interest Found. v. Calhoun Cty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021). When the parties file cross-motions for summary judgment, the issue becomes a question of law for the appellate court to decide de novo. *Wiegand v. U.S. Auto. Ass’n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

### **ARGUMENT**

The circuit court did not err in granting summary judgment in favor of Respondents and refusing to set aside the tax sales. The undisputed facts of this case—when applied properly to the South Carolina law governing tax sales—yields one result: the Treasurer maintained strict compliance with the law. The Treasurer, in performing her due diligence, searched the public record and history of tax payments to determine that Appellant Lydia Hall was the delinquent taxpayer and grantee of record. Armed with this information, the Treasurer sent all notices and made all publications in accordance with South Carolina law.

#### **I. Applicable law governing tax sales in South Carolina.**

“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). “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 the statutory procedure for the sale of a defaulting taxpayer’s property. *See* S.C. Code Ann. § 12-51-40. 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.” § 12-51-40(b). “The return receipt of the ‘certified mail’ notice is equivalent to ‘levying by distress.’” *Id.* Furthermore, the property “must be advertised for sale at public auction” in a newspaper of “general circulation” and include the name of the delinquent taxpayer. § 12-51-40(d). “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.” § 12-51-40(f).

After the tax sale, the property owner's rights are not immediately extinguished. In other words, the winning bidder does not instantaneously acquire title to the property. 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)). The defaulting taxpayer is given notice of the ability to redeem the property. *See* S.C. Code Ann. § 12-51-120. If the property remains unredeemed at the end of the redemption period, the Treasurer is charged with issuing a tax deed to the winning bidder. *See* S.C. Code Ann. § 12-51-130.

**II. The circuit court did not err in granting summary judgment in favor of Respondents because the Treasurer diligently searched the public record at the time of the tax sale and identified the defaulting taxpayer and grantee of record in strict compliance with the applicable South Carolina law governing tax sales.**

Again, the operative facts in which the circuit court relied upon to issue its summary judgment decision are not in dispute. (App. In. Br. at 1). To narrow the legal issue that is before the Court, it is important to highlight that Appellants do not challenge the timeliness of any of the notices or publications issued by the Treasurer leading up to the tax sale or following the tax sale. (App. In. Br. at 5-13). Rather, Appellants' challenge is to whom the notices were issued to and who was advertised in the requisite publication as the defaulting taxpayer and grantee in record. (*Id.* at 8). Appellants argue it was error for the Treasurer to have issued the notices and made publication in the name of **Appellant Lydia Hall** and that for the Treasurer to have strictly complied

with the statutory authority, the Treasurer was required to issue the notices and make publication in the name of Ms. Bessie M. Doby and Appellant Lydia Hall. (*Id.* at 5-13). Appellants' argument fails for the following reasons.

**A. The Treasurer, when conducting a tax sale, is entitled to rely on the public record and other available evidence to determine the identity of the defaulting taxpayer and grantee of record.**

The Treasurer does not dispute that Ms. Doby was the owner of the Properties when she passed away in 2006. Indeed, the public records available to the Treasurer in 2006 would have confirmed Ms. Doby's ownership and would have also confirmed Ms. Doby's ownership (or at least her estate's ownership) in 2007, 2008, 2009, and 2010, respectively. However, the public record in 2011 reflected an important change in ownership concerning the Properties. This information—available to the Treasurer at the time of the 2013 tax sale process—could not be ignored.

Pursuant to the April 2011 deed recorded by Ms. Doby's nephew, Ms. Doby died intestate on July 8, 2006, leaving intestate heirs Appellant Lydia Hall and Christopher Smith.<sup>4</sup> The deed made clear that Mr. Smith deeded his entire interest in the Properties to Appellant Lydia Hall. In fact, Appellant Lydia Hall paid the taxes on the Properties and maintained the Properties after the death of Ms. Doby until the triggering events that led to the Properties being sold at the 2013 tax sales. (Treasurer MSJ Memo, Ex. C at 37, 41). Appellant Lydia Hall testified she received the tax notices for the Properties at her house, but she forgot to pay the taxes. (*Id.* at 50, 71–73). Additionally, she testified that she knew of her brother's intent to transfer his interest in the

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<sup>4</sup> Ms. Doby's obituary verified that Appellant Lydia Hall and Mr. Smith were the statutory beneficiaries. (MSJ Memo, Ex. E).

Properties to herself in the deed and considered herself the owner of the Properties.<sup>5</sup> (*Id.* at 59–60, 66–67). At no point did Appellant Lydia Hall contact the Treasurer to inform her that the tax notices were being mistakenly sent to her address and were being mistakenly sent in her name. Instead, Appellant Lydia Hall acted accordingly as the owner of the Properties by consistently paying the taxes on the Properties since Ms. Doby’s death in 2006. Thus, in addition to the public records showing that the decedent died intestate, and that Appellant Lydia Hall owned all interests in the Properties, Lydia Hall’s actions corroborated the public records.

Accordingly, the public records, history of tax payments, and other relevant information all indicated that Appellant Lydia Hall was in fact the defaulting taxpayer and grantee of record for all of the Properties at the time of the tax sales. In accordance with section 12-51-40 and section 12-51-120 of the South Carolina Code, the Treasurer issued an execution against Appellant Lydia Hall, mailed the required notice of the delinquent taxes and impending sale to Appellant Lydia Hall, advertised the sale of the Properties in the appropriate newspaper under the name of Appellant Lydia Hall, and mailed notice of the redemption period to Appellant Lydia Hall. (MSJ Memo, Ex. A).

**B. Statutory authority did not require the Treasurer to provide notice and make publication in both Ms. Doby’s and Appellant Lydia Hall’s names.**

Appellants cite various sections of the South Carolina Code in support of their argument that the Properties needed to be noticed, advertised, and sold in both Ms. Doby’s and Appellant Lydia Hall’s names. (App. In. Br. at 8-13). However, according to all of the information available to the Treasurer, including the public record, it was determined that Appellant Lydia Hall was the “defaulting taxpayer” and “grantee of record.” *See* S.C. Code Ann. §§ 12-51-40 (a) & (b); 12-51-

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<sup>5</sup> In fact, the same scenario occurred approximately ten years previously when Lydia Hall’s brother deeded her his interest in property from their mother’s estate. *Id.* at 16.

120 (requiring notice to be provided to “the defaulting taxpayer and to a grantee, mortgagee, or lessee of the property *of record in the appropriate public records of the county*”) (emphasis added); § 12-51-40(a) (requiring notice be mailed to “the best address available” which can be “the address shown on the deed conveying the property”).

Appellants also cite section 12-51-40(f) of the South Carolina Code in support of their argument. This subsection provides:

(f) 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). However, Appellants place more weight upon section 12-51-40(f) than it can stand. Section 12-51-40(f) **only** requires a property to be advertised and sold in the name of the deceased owner of record only “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.”

This is not the situation the Treasurer had at the time of the 2013 tax sale. In the instant case, the Treasurer acted with due diligence and took all necessary steps to discover the identity of the true owner of the Properties after Ms. Doby’s death by reviewing the public records of Kershaw County. Although there was not a probate proceeding opened for Ms. Doby’s estate, the public record established that Ms. Doby died intestate, and Lydia Hall was the defaulting taxpayer and the grantee of record of the Properties as of April 2011. Therefore, contrary to Plaintiffs’ assertions, statutory law did not require the Treasurer to advertise and sell the Properties in the name of Ms. Doby and Appellant Lydia Hall. This is only required if the Treasurer is unable to determine the owner of a property after reviewing the public records.

County officials are entitled to rely on the public record in fulfilling their duties. The 2011 deed was the latest filing of record as to the ownership status of the Properties. Appellants’

argument here is essentially that the Treasurer should have disregarded the public record and assumed Ms. Doby died testate. *But see Koth v. Pallachucola Club*, 79 S.C. 514, 61 S.E. 77, 78 (1908) (explaining “[i]t would be unreasonable to require tax officers to unravel complicated inheritances” and they should be able to rely on the public record as to the identity of the heirs of deceased persons). It would be entirely unreasonable to require the delinquent tax collector to second guess the public records and require notice to be sent to other unknown individuals who the public record does not identify as someone with an interest in the property. In fact, the General Assembly, in enacting section 12-51-40(f) did not require notice to always be given to the decedent’s estate—only when the true owner could not be determined by public records. *See, e.g., 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).

Accordingly, in order to set aside this tax sale, Appellants must show that their claimed ownership interest in the Properties was supported by an adequate public record that the Treasurer ignored or that the Treasurer had actual and direct knowledge of their ownership interest. *See Halsey v. Simmons*, 429 S.C. 385, 396–97, 837 S.E.2d 919, 926 (Ct. App. 2020) *rev'd on other grounds*, 432 S.C. 54, 849 S.E.2d 578 (2020); *see also* 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)). As discussed in great detail above, Appellants cannot make this showing.

**C. The fact that the April 2011 deed was a quitclaim deed is of no moment.**

Appellants are critical of the Treasurer's reliance on the April 2011 deed because of its nature as a "quitclaim deed." (App. In. Br. at 9-11). Appellants claim that this alone should have been a "warning" to the Treasurer that "more investigating should be done." (App. In. Br. at 10). This argument fails for several reasons.

First, as acknowledged by Appellants (albeit reluctantly), a quitclaim deed is a sufficient and lawful means of conveying the title to real property. *See Martin v. Ragsdale*, 71 S.C. 67, 77, 50 S.E. 671, 674 (1905). Although the quality of title is not guaranteed by the grantor, the issuance of a quitclaim deed is an effective way to transfer property and is done frequently, especially amongst family members. *See Mulherin-Howell v. Cobb*, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005) (explaining "a quitclaim deed does not convey the fee, but only the right, title[,] and interest of the grantor"). There was no reason for the Treasurer to have assumed that this was not an effective transfer of real property from Mr. Smith to Appellant Lydia Hall.

Second, assuming for the sake of argument that "more investigation" was needed, the Treasurer did just that. According to the public record, Ms. Doby owned the Properties at the time of her passing. When the April 2011 deed was executed by one of Ms. Doby's heirs at law, it stated plainly that Ms. Doby died intestate, and that Mr. Smith was transferring his entire interest in the Properties to Appellant Lydia Hall. Appellants contention that the Treasurer "should have searched the county's probate records to ascertain if an estate had been open for Ms. Doby" does nothing but support the validity of the assertion made in the April 2011 deed that Ms. Doby died intestate. None of the available evidence to the Treasurer at the time of the tax sales contradicted this. Again, Appellants make the plea that the Treasurer, with the absence of any valid reason, should have presumed that Ms. Doby died testate. But all of the available evidence pointed to the contrary.

**D. The existence of Ms. Doby's will does not alter the analysis or the result.**

The fact that Appellants found a will for Ms. Doby *after the tax sales* and *after the deeds were issued to Respondents Fulmer and Slade* is a red herring. Appellants attempt to weaponize the will's existence to neuter the effectiveness of the quitclaim deed and the Treasurer's reliance on the same in conducting the tax sales. However, a Treasurer is not and cannot be held to an all-knowing standard.

In *Taylor v. Mill*, the Supreme Court of South Carolina found 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. 310 S.C. 526, 528, 426 S.E.2d 311, 312–13 (1992). 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. *Id.* at 527, 426 S.E.2d at 312. He did not record this deed until June 20, 1988. *Id.* Before he recorded his deed, Lexington County seized the property due to failure to pay county taxes and sold it at a county tax sale in July 1986. *Id.* The County issued the successful bidder a deed on March 11, 1988, and the successful bidder recorded his deed on July 27, 1988. *Id.* 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.” *Id.* at 528, 426 S.E.2d at 312. 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.

In the instant case, Appellants exhibited a similar lack of diligence in failing to timely search for Ms. Doby's will and failing to properly submit the will to probate. In fact, Appellant

Lydia Hall testified that she knew Ms. Doby had a will but did not search for the will or contact Ms. Doby's attorney, Jeffrey Tzerman, to attempt to find the will. (Treasurer MSJ Memo, Ex. C at 83-86, 108-10). Appellant Lydia Hall further testified that she met with an attorney and considered opening an estate upon the death of Bessie Doby but did not follow through with it. (*Id.* at 129). Additionally, Appellant Asten Hall acknowledged that before she finally recorded Ms. Doby's will in 2016, she contacted Attorney Tzerman to determine if any other will existed. (Treasurer MSJ Memo, Ex. D at 14-15). *See generally In re Foreclosure of Liens for Delinquent Land Taxes by Action In Rem*, 190 S.W.3d 416 (Mo. Ct. App. 2006) (explaining duties imposed by due process on the tax collector must be considered in balance with the duty of a landowner to preserve his property, and at some point, a property owner's presumptive duty to preserve his property will outweigh the responsibility of a tax collector to provide more extensive forms of notice of tax sale). As the delinquent tax collector did in the *Taylor* case, here, the Treasurer searched the public record to determine who the defaulting taxpayer and grantee of record was for the Properties and issued the required notices in accordance with the law.

**E. Both the Estate of Ms. Doby and Appellant Lydia Hall effectively received notice of the tax sale.**

It is clear that Appellants' argument is that both Ms. Doby and Appellant Lydia Hall were required to receive the statutorily prescribed notices. However, it is important to note that Appellant Lydia Hall, the person who concedes to having received all of the notices, was also the Personal Representative of Ms. Doby's estate.

**III. Appellants' own dilatory actions in this equitable case to set aside tax sales provide this Court with alternative sustaining grounds to affirm the circuit court's grant of summary judgment in favor of Respondents.**

The Treasure maintains that the circuit court properly granted summary judgment in favor of the Respondents by refusing to set aside the tax sales. However, if the Court disagrees with the

circuit court's analysis, there are alternative sustaining grounds that allow the Court to affirm. *See* Rule 220(c), SCACR.

Appellants' claims were driven by the late finding of Ms. Doby's will. However, the claims against Respondents are barred by the doctrines of estoppel, waiver, laches, and unclean hands. Appellant Lydia Hall testified that she knew all along that Ms. Doby had a will. Appellant Asten Hall admitted that she became aware that she had an interest in the Properties in February 2016 when the will was finally located. (Treasurer MSJ Memo, Ex. D at 58-60). However, Appellants waited until June 15, 2016 (more than ninety days after locating the will) before filing the will with the probate court. Appellants knew of the existence of Ms. Doby's will but failed to deliver the will to the probate court in accordance with South Carolina law. 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." (emphasis added)). Because any damages Appellants allege in this case are a result of their own wrongdoing in not complying with South Carolina law, Appellants are barred from recovery under the doctrine of *in pari delicto*. *See Myatt v. RHBT Fin. Corp.*, 370 S.C. 391, 395, 635 S.E.2d 545, 547 (Ct. App. 2006) ("The doctrine of *in pari delicto* is '[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing.'" (quoting *Black's Law Dictionary* 794 (7<sup>th</sup> ed. 1999))).

### **CONCLUSION**

Appellants, by seeking to void these tax sales, are attempting to hold the Treasurer to an impossible, "all-knowing" standard. However, the law is clear that the Treasurer is not responsible

for delving into and unwinding complicated inheritances when conducting tax sales. Rather, the Treasurer must be diligent in her attempts to identify and provide notice to the defaulting taxpayer and grantee of record applicable to the delinquent tax period in question. This is exactly what the Treasurer did in searching the public records and the history of tax payments for the Properties. Appellants are otherwise suggesting that, for this case, the Treasurer should have plainly disregarded and acted in defiance of publicly available information and payment history that went uncontested for several years on the basis of the existence of an unknown-to-her will that was not located and was not filed with the probate court during the tax sale proceedings. This is not and cannot be the standard governing tax sales in South Carolina. Furthermore, equitable principles dictate that the circuit court's order should be affirmed due to Appellants' dilatory actions in searching for and filing the will.

Accordingly, based on the foregoing, the Treasurer respectfully requests that the Court affirm the circuit court's decision in full and uphold the challenged tax sales.

Respectfully submitted,

**SMITH | ROBINSON**

/s/ Jonathan M. Robinson

Jonathan M. Robinson, #68285

Austin T. Reed, #102808

Rachel E. Lee, #104184

2530 Devine Street, Third Floor

Columbia, SC 29205

(803) 254-5445

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Columbia, South Carolina