

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE JAMES O. SPENCE
MASTER IN EQUITY

JAN 09 2023

SC Court of Appeals

CASE NO. 2022-00128

Grayson J. Dailey,

Appellant,

V.

SC Home Holdings, LLC, Lexington
County and Jim Eckstrom in his official
capacity as Treasurer of Lexington County,
and John Doe,

Respondents

**FINAL BRIEF OF SC HOME HOLDINGS, LLC,
LEXINGTON COUNTY AND JIM ECKSTROM
RESPONDENTS**

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STATEMENT OF ISSUES ON APPEAL

1. Is a Tax Sale Notice of Real Estate posted to the land considered "conspicuous" if it is not visible to the public?
2. Does the County (State) have to prove that a Tax Sale Notice is affixed to the such that it remains visible for a period of time after it is posted?
3. Does the publication notice to the homeowner in a tax sale have to be listed alphabetically in the name of the owner as well as the defaulting taxpayer in a newspaper publication?

STATEMENT OF THE CASE

FACTS

The Respondent adopts the Appellant's Statement of Facts with the following exceptions:

The Appellant knew or should have known the real estate and the mobile home were titled in the name of two different people and therefore two separate tax bills were required. Unless both the mobile home and the land are titled in the same exact name, the mobile home title cannot be retired.

There is no evidence that the Appellant did not receive the first Treasurer's Notice as it was mailed by first class mail.

There is no evidence that the posted notice was not visible by the public.

The published notice mentioned not only the defaulting taxpayer but also the Appellant.

PROCEDURAL HISTORY

The Respondent adopts the procedural history stated by the Appellant.

ARGUMENT

STANDARD OF REVIEW

An action to set aside a tax sale lies in equity. The Court of Appeals is permitted

to find facts in accordance with its view of the preponderance of the evidence. The Court does not necessarily disregard the findings of the Master because the Master was able to observe the witnesses and make determinations about their credibility.

Respondent concedes that a significant failure to comply with the statute renders the sale void. Respondent contends that there was no such failure to comply with the statutes and the Master's Order should be affirmed.

QUESTIONS

1. Is a Tax Sale Notice of Real Estate posted to the land considered "conspicuous" if it is not visible to the public?

There is no evidence that the notice was not conspicuous nor that it was not visible to the public. The notice was posted on a tree near the front of the property and was clearly visible from the street. There is a picture of the notice as posted in the record. picture

The purpose of posting the property is not primarily, however, to give notice to the public. It is intended to give notice to the defaulting taxpayer of the impending sale. Smith v. Barr, 375 S.C. 157, 650 S.E.2d 486 (Ct. App. 2007) (In this Brief, except where the context makes such a distinction or implies otherwise, Respondent intends the term "taxpayer" to collectively include both Ms. Quattlebaum and the Appellant) The cases cited from Pennsylvania, while interesting, deal with a different statute and statutory scheme. They should be disregarded by this Court.

Under the South Carolina statute, actual posting on the property occurs only after the taxpayer has been given notice of the delinquency by both first class mail and certified mail. The record shows that the Treasurer mailed each notice to Ms. Quattlebaum and to the Appellant (Record pp. 86-89). The address for the Appellant was the property address as set forth on his deed. There is no evidence that the Appellant ever gave the Treasurer an alternative address.

If there is evidence that the mailed notices have not reached their intended targets, then the Treasurer must actually post the notice on the property in a conspicuous place. §12-51-40(c). The return of the certified mail addressed to the Appellant marked "undelivered" is such evidence which requires posting.

The notice is required to be posted on the property. The Treasurer did not and would not know that the Appellant did not use his own driveway to access his property. Even if that fact had been known to the Treasurer, the notice could not have been posted on the driveway he used as that driveway was not on the property.

It is not an excuse that there was construction on the road. It is also not an excuse that the Appellant spent a lot of time in Hartsville tending to his parents and other family members.

After the sale, the Treasurer also sent notices to the Appellant advising him of the sale and his right to redeem the property. §12-51-120 (Record p. 89)

That the Appellant failed to respond to a notice by certified mail (twice) is his failure not that of the Treasurer.

Appellant raises for the first time a claim that the Appellant was denied constitutional due process. This issue was not raised in the Complaint nor tried by consent. It cannot now be raised for the first time on appeal.

The only appropriate conclusion is that the Treasurer fully complied with the requirements of the Statute.

2. Does the County (State) have to prove that a Tax Sale Notice is affixed to the such that it remains visible for a period of time after it is posted?

There is no requirement that the posted Notice remain visible to the taxpayer or public for any particular time. It is clear that the notice in this case was solidly affixed to the tree. (picture of posting)

Notices of Tax Sale are printed on heavy cardboard and, while they will not last for years, they are relatively weather resistant. There is no reason to suspect that the Treasurer did not use all means at his disposal to properly affix the Notice.

It would surprise no one that posting of a tax sale notice would not be welcomed by the taxpayer. Posted legal notices of all types are often removed in anger by those affected by the notice

That the Appellant might argue that the Treasurer could have selected a better place to affix the notice, is not the issue. The statute does not require the notice to be

posted in the best place or a place "most likely" to give notice to the taxpayer. It requires only that the notice be conspicuous.

The Appellant had the burden of proof to present evidence of an improper or deficient posting that there was a deficiency in the posting and failed to do so.

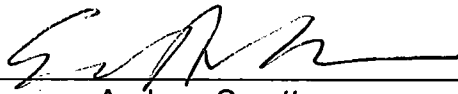
It is simply unreasonable to expect or require the Treasurer to return to each property posted with a notice after posting even once or several times to see whether or not the Notice remains on the posted property. The statute makes no such requirement, nor should it. The Court is not empowered to make such a requirement.

3. Does the publication notice to the in a tax sale have to be listed alphabetically in the name of the owner as well as the defaulting taxpayer in a newspaper publication?

The statute requires that the notice be published in the name of the defaulting taxpayer (Ms. Quattlebaum). §12-51-40(d) The notice actually published also contained the name of the Appellant. (copy of advertisement). Had he actually read the notices (and there is no evidence that he did), the Appellant would have seen Ms. Quattlebaum's name. He certainly knew who his seller was. All he had to do then was to notice the published property address and the fact that his name was printed immediately to the right. The Treasurer fully complied with the requirements of the statute.

CONCLUSION

The Appellant has not set forth any compelling argument that the tax sale should be set aside. The Order of the Master should be affirmed without modification.



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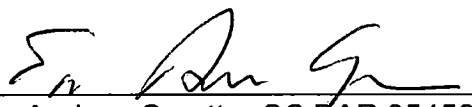
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with the requirements of Rule 211(b), South Carolina Appellate Court Rules.


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