RECEIVED
Nov 18 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas
Milton G. Kimpson, Circuit Court Judge

Civil Action No. 2024-CP-34-00380

Appellate Case No. 2025-001647

Bobby Dean Odom,

Respondent,

v.

Dixie, LLC, Natasha M. Carr, Marlboro County Delinquent Tax Collector, and Edwin Harold Odom, III, Defendants,

Of whom Dixie, LLC is the Appellant,

APPELLANT'S INITIAL BRIEF

G. Murrell Smith, Jr., SC Bar No. 66263
Jonathan M. Robinson, SC Bar No. 68285
Shanon N. Peake, SC Bar No. 102723
Benjamin E. Grimsley, SC Bar No. 70335
Ryan J. Patane, SC Bar No. 103116
Smith Robinson Holler DuBose
and Morgan, LLC
3200 Devine Street
Columbia, SC 29205
(803) 254-5445 – telephone

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

CASES

STATUTES

OTHER

STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court err in setting aside the tax sale where the Notice of Levy strictly complied with South Carolina law and did not set an artificial deadline?

2. Did the circuit court err in denying Appellant's motion for summary judgment where the tax sale strictly complied with South Carolina law?

STATEMENT OF THE CASE AND FACTS[1]

Respondent Bobby Dean Odom ("Respondent") and Defendant Edwin Harold Odom, III[2] (collectively, "the Defaulting Taxpayers") were the record owners of certain real property in Marlboro County known as 4217 Redbud Road, McColl, South Carolina 29570, bearing TMS Number 030-00-02-049 (the "Property"). (Carr Aff. at ¶ 6.) The Property was being taxed in the name of the Defaulting Taxpayers. (*Id.*) On September 9, 2022, Marlboro County mailed the Notice of Levy (the "Notice") to the Defaulting Taxpayers by certified mail, return receipt requested – restricted delivery. (Ex. to App. MSJ.) The Notice stated:

> Pursuant to Section 12-51-40, 1976 S.C. Code of Laws, this property is seized by person officially charged with the collection of delinquent taxes of Marlboro County to be sold for delinquent taxes. . . .
>
> Unless said taxes, penalties and costs are paid in full, all property described will be legally advertised and then sold to the highest bidder, on Monday, November 7, 2022. . . .
>
> Taxes must be paid by Cash, Cashier's Check, or Money Order by 5:00 PM, November 4, 2022

(*Id.*) Friday, November 4, 2022 at 5:00 p.m. was the last business day the tax collector's office was open immediately preceding the Monday tax sale. The Defaulting Taxpayers did not pay the taxes. (Carr Aff. at ¶ 13). The Property was subsequently sold for delinquent taxes at the Marlboro

[1] Appellant combines the statement of the case and statement of the facts to eliminate repetition due to considerable overlap between the procedural history and the facts in this case.
[2] Defendant Odom has not appeared in the action and is in default.

County Delinquent Tax Sale on Monday, November 7, 2022 (the "Tax Sale") to Appellant in the amount of $10,500.00. (Carr Aff. at ¶ 10). A tax deed was issued after the redemption period expired on July 18, 2024, and recorded on August 5, 2024, in the Office of the Clerk of Court for Marlboro County in Book 816 at Page 80 (the "Tax Deed").

On November 6, 2024, Respondent initiated this action to set aside the Tax Sale. (Compl.) On February 28, 2024, Appellant filed an answer, counterclaim, and crossclaim seeking to quiet title and confirm the tax sale, or, in the alternative, an action to recover amounts due if the tax sale was set aside. (Ans.; Am. Ans.) Respondent filed a motion for summary judgment on February 17, 2025, on the sole basis that the Notice set an artificial deadline for payment and therefore the tax sale deed is null and void. (Resp. MSJ.) Appellant filed a cross Motion for Summary Judgment on April 2, 2025, and filed a memorandum in support of its motion for summary judgment and in opposition to Respondent's motion (the "Memo") on April 11, 2025. (App. MSJ and Memo.) Defendant Natasha M. Carr, Marlboro County Delinquent Tax Collector ("the County") also filed a Motion for Summary Judgment. (Carr MSJ.)

The Honorable Milton G. Kimpson held a hearing on cross-motions for summary judgment on April 21, 2025. (Hrg. Tr.) At the hearing, Respondent argued the Notice set an artificial deadline of November 4 "when, in fact, [the Defaulting Taxpayers had] until November 7th to pay." (Hrg. Tr. p. 5, 15.) Respondent argued the "proper due by date" was November 7, the day of the tax sale. (Hrg. Tr. at p. 9.) Appellant argued the Notice complied with the statue because it properly specified that the taxes must be paid *before* the sale date as stated in section 12-51-40(b) of the South Carolina Code and November 4 was the last business day before the sales date. (Hrg. Tr. p. 9–10.) The County reiterated that the Notice was proper because it "gave the

delinquent tax payer to the last possible minute to pay on a day prior to a subsequent sales date," which is what the statute requires. (Hrg. Tr. p. 11.)

The circuit court issued a Form 4 Order on June 2, 2025 denying Appellant's and the County's motions and granting Respondent's motion. (June 2 Or.) The circuit court issued a formal order on June 16, 2025, setting aside the tax sale. (June 16 Or.) The circuit court found "November 4, 2022, which is not the tax sale date, is an artificial deadline that does not strictly comply with [section] 12-51-40(b)." (Or. p. 3.) The circuit court held Appellant's tax sale bid must be refunded in accordance with section 12-51-100 of the South Carolina Code and Respondent and Defendant Odom must pay the County delinquent taxes totaling $4,646.69. (*Id.*)

Appellant and the County filed timely motions pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. (Mtn. to Alter/Amend.) The circuit court did not hold a hearing and, instead, summarily denied the motions on July 18, 2025.[3] (Or.) Appellant filed a Notice of Appeal on August 18, 2025. (Notice of Appeal.)

STANDARD OF REVIEW

"An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action." *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). "When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c)[of the South Carolina Rules of Civil Procedure], which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). "When the

[3] The Order was signed on July 18, 2025, but was not electronically filed in the case until July 28, 2025. (Or.; Email Comm. from Judge Kimpson.)

parties file cross-motions for summary judgment, the issue becomes a question of law for the [c]ourt to decide de novo." *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021).

ARGUMENT

I. The circuit court erred in finding there was an artificial deadline in the Notice.

The circuit court erred in setting aside the tax sale because the Notice complied with section 12-51-40(b) and did not set an artificial deadline. The circuit court wrongfully concluded the Notice contained an artificial deadline because it specified a deadline "which is not the tax sale date." Order at ¶ 6. This holding directly contradicts the statutory language, and this Court should reverse.

Section 12-51-40(b) clearly and unequivocally states the deadline is not and cannot be the tax sale date. Specifically, section 12-51-40(b) states: "All delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid *before a subsequent sales date*, the property must be duly advertised and sold for delinquent property taxes, assessments, penalties, and costs." S.C. Code Ann. § 12-51-40(b) (emphasis added). Contrary to the circuit court's order, the deadline provided by the General Assembly in section 12-51-40(b) is not the actual sales date. The deadline must be before that date.

The General Assembly specifically amended the statutory language of section 12-51-40(b) in 1995 to prohibit payment on the date of the tax sale. The prior version of the statute allowed payment to occur "on or before" the sales date. However, the General Assembly removed the language "on or" from the statute in 1995.

The Notice in the instant case is in strict compliance with the statutory language. The Notice states the following regarding a deadline for payment: "unless said taxes, penalties and costs are paid in full, all property described will be legally advertised and then sold to the highest

bidder on Monday, November 7, 2022. [] Taxes must be paid by Cash, Cashier's Check, or Money Order by 5:00 PM, November 4, 2022." Thus, the Notice states the subsequent sales date—November 7, 2022—and indicates the payment must occur before that date—November 4, 2022.

The circuit court erred in holding an artificial deadline is any deadline before the tax sale date. The circuit court's order is directly contradictory to the statute. Because the Notice contained the last date available for payment immediately before the tax sale, it did not create an artificial deadline.

The circuit court relied entirely on *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 577 S.E.2d 202 (2003) in incorrectly holding the Notice set an artificial deadline that was not the tax sale date. *Hawkins* addressed a 1995 tax sale that occurred prior to the legislature amended section 12-51-40(b). *Hawkins* is entirely distinguishable from the instant case, and the circuit court failed to recognize the statutory amendment to section 12-51-40(b) after the *Hawkins* case mandates a different result in this case. Although the circuit court noted in a footnote that the language of section 12-51-40(b) had been amended following the 1995 tax sale at issue in *Hawkins*, the circuit court failed to recognize that the amended language renders the instant Notice in compliance with South Carolina law. Specifically, the circuit court noted the change in language was "immaterial to the holding in that case." *See* Order at n. 2. Respectfully, the issue is not whether the amended statutory language was material to the holding of *Hawkins*, but whether the amended language was material to the instant case. *Hawkins* is entirely distinguishable from this case.

Hawkins does not stand for the proposition that any date specified prior to the tax sale is an artificial deadline. Instead, it stands for the proposition that a date *weeks* before the sale date is artificial because, under the prior version of section 12-51-40(b), the delinquent taxpayer had up to and until the sale date to pay. In *Hawkins*, the Supreme Court noted:

> The Court of Appeals held that these two notices created artificial deadlines for payment before the sales date, and thereby contradicted the statutory language requiring that the notice inform the delinquent taxpayer that the taxes must be paid "before a subsequent sales date." Because the sales date in this instance was October 2, the Court of Appeals found that the August 31 and September 15 deadlines were artificial, and *gave the impression that Hawkins had to pay the taxes weeks before the date of sale*. We agree with the Court of Appeals' holding on this issue.

Hawkins, 353 S.C. at 37–38, 577 S.E.2d at 206 (emphasis added). What makes the date in *Hawkins* artificial is that it was not the date the payment was actually due because, under the prior version of the statute, the General Assembly allowed a defaulting taxpayer to redeem before or on the sales date itself.

As discussed above, in 1996, the General Assembly amended this statute to remove the words "on or", and the statute now reads: "all delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid **before** a subsequent sales date." (emphasis added, the phrase "on or" deleted by the amendment). The circuit court erred in relying on *Hawkins* and failing to recognize that the change in the statutory language renders the Notice in strict compliance with South Carolina law.

In the instant case, the payment was actually due on November 4, 2022—the date listed in the Notice—because it was the last business day before the date of the tax sale. There is no dispute that the tax sale occurred after the 1996 statutory change. Presently, and contrary to the circuit court's holding, to comply with the statute, the Notice **cannot** specify that the taxes may be paid "on" the sales date. That option is off the table; specifying a payment deadline "on" the sales datewould have been in violation of the present statutory language. Nor is November 4 an artificial deadline because it is not only a date "before a subsequent sales date" but it is the date *directly* before the sales date. Friday, November 4 was the closest possible business day leading up to the Monday, November 7 subsequent sales date—not "weeks before the date of sale" as was the

payment deadline in *Hawkins.* Respondent could not have made the payment on Saturday or Sunday because those days are statutory non-business days.

The circuit court's ruling contravenes the plain language of the statue as well as the intent of the legislature and would create an absurd result. "Statutes should not be construed so as to lead to an absurd result." *Fraternal Ord. of Police v. S.C. Dep't of Revenue*, 332 S.C. 496, 499, 506 S.E.2d 495, 496 (1998). By amending section 12-51-40 in 1995, the General Assembly clearly intended to have payments take place *before* the date of the tax sale. Generally, under Rule 6 of the South Carolina Rules of Civil Procedure, holidays and weekends are not counted for computation of timeframes under South Carolina law, and the deadline would fall on the next business day. However, here, the deadline could not fall on the next business day because that was the date of the sale. Because the deadline for payment had to fall "before" the date of the sale, payment was required by the last business day before the sale. The Court's holding creates an absurd result because it either means that tax sales could not occur on a Monday or that the office must be open for payment on the Sunday before the tax sale. This is contrary to the intent of the legislature, which was to require payment prior to the sales date. *See In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute).

The circuit court improperly based its decision on whether it believed a delinquent taxpayer should be able to pay taxes to redeem property on the day of the tax sale instead of the statutory language. Specifically, at the hearing on the motions for summary judgment, the circuit court asked: "[L]et's suppose I'm a taxpayer and I come in at 8:30 [a.m.] on November 7th, could I still save the property from being sold?" (Hrg. Tr. p. 12.) However, the proper question for the circuit court to consider was whether the Notice in this case complied with section 12-51-40(b), which

requires a county to notify the delinquent taxpayer that they must pay the delinquent taxes ***before*** the sales date. Here, the Notice did that. Thus, it complied with South Carolina law, and the circuit court erred in holding otherwise.

Recently, the South Carolina Attorney General's Office analyzed whether a county must void a tax sale if it receives a check by mail after the tax sale if the mailing is postmarked with a date prior to the tax sale. *See* Opinion of the South Carolina Attorney General, 2025 WL 3101406, at *1 (Oct. 27, 2025). In the opinion, the Attorney General's office discusses section 12-51-40(b) and the *Hawkins* case, explaining South Carolina law "requires payment of any taxes, assessments, penalties, and costs **prior to the sale date**." *Id.* (emphasis added). In considering "whether mailing payment prior to the sale date satisfies the statutory requirement, even if the payment is not received by the county until after the sale," the Attorney General opined: "The receipt of payment after a tax sale, even if postmarked prior to the sale likely does not constitute payment of the taxes, penalties, assessments, and costs sufficient to prevent or cancel the sale." *Id.* The Attorney General noted the tax sale would not need to be cancelled in that instance because it was not a proper redemption and does not render the sale invalid. *Id.* The Attorney General concluded: "Assuming all the legal requirements for a tax sale are met, if a county delinquent tax collector sells a piece of real property at auction and subsequently receives payment for the unpaid taxes, assessments, penalties, and costs, it is not proper for the county delinquent tax collector to void the tax sale, even if the payment was received with U.S. mail and was postmarked prior to the tax sale." *Id.*

This Attorney General opinion is instructive in the instant case. "While this Court is not bound by an opinion of our Attorney General, it should not be disregarded without cogent reason." *Price v. Watt*, 280 S.C. 510, 514 n.1, 313 S.E.2d 58, 60 n.1 (Ct. App. 1984); *see also S.C. Dep't of*

Soc. Servs. v. Johnson, 386 S.C. 426, 436, 688 S.E.2d 588, 593 (Ct. App. 2009) (finding Attorney General opinion's discussion of statute "instructive"). Here, the Notice specified the date and time immediately prior to the tax sale that the county office would be open to accept payment—the Friday immediately preceding the Monday tax sale. As explained by the Attorney General's Office, the payment must be received by the County prior to the tax sale under South Carolina law. Because the County's office would not be open on Saturday or Sunday to receive a payment, South Carolina law required the County to specify the Friday prior to the tax sale as the statutorily mandated last date for payment. The Notice contained the proper date required by South Carolina law, not an artificial date. Thus, the circuit court erred in finding the proper date for the Notice was the day of the tax sale.

Accordingly, the circuit court's order is contrary to South Carolina law and would create an absurd result. The Notice is in strict compliance with South Carolina law, and the Court should reverse the circuit court's order setting aside the tax sale. *See In re Ryan Inv. Co., Inc.*, 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999) ("Tax sales must be conducted in strict compliance with statutory requirements.")

II. The circuit court erred in denying Appellant's motion for summary judgment because the tax sale complied with South Carolina law.

Because the Notice complied with South Carolina law, the circuit court erred in not granting Appellant's motion for summary judgment. The evidence shows the County mailed delinquent tax notices to the "best address available." The County mailed the first notice on March 16, 2022; the second notice on September 9, 2022; posted the Property on September 28, 2022; advertised the sale in the newspaper; and mailed the redemption notice by return receipt – restricted delivery to the best address available. (Carr Aff. at ¶¶ 6–8). There is no evidence the County failed to strictly comply with the notice statutes. Respondent did not present any evidence rebutting the

presumption that Appellant's title is good, that the title is defective, or the County failed to give the required notices that would invalidate the tax sale proceeding. *See* Section 12-51-90(C). Accordingly, the circuit court erred in denying Appellant's motion for summary judgment, and the Court should direct the circuit court to enter judgment in favor of Appellant, the fee simple owner of the Property, terminating any and all interests of Respondent and Defendant Odom named herein, and barring any future claims Respondent and Defendant Odom, their spouses, heirs, devisees, successors, assigns, and anyone or anything in the whole world claiming under them, irrespective of the nature of such claim, has in and to the Property.

CONCLUSION

For the reasons discussed herein, Appellant respectfully requests the Court reverse and vacate the circuit court's orders setting aside the tax sale deed and direct the circuit court to grant Appellant's motion for summary judgment and confirm the tax sale.

RESPECTFULLY SUBMITTED,

SMITH | ROBINSON, LLC
Smith Robinson Holler DuBose and Morgan, LLC

s/Shanon N. Peake
Jonathan M. Robinson
Shanon N. Peake
Benjamin E. Grimsley
Ryan J. Patane
3200 Devine Street
Columbia, SC 29205
803-254-5445
Jon.robinson@smithrobinsonlaw.com
Shanon.peake@smithrobinsonlaw.com
Ben.grimsley@smithrobinsonlaw.com
Ryan.patane@smithrobinsonlaw.com

G. Murrell Smith, Jr. (SC Bar No. 66263)
PO Box 580
Sumter, SC 29151-0580
murrell@smithrobinsonlaw.com

Counsel for Appellant

Columbia, South Carolina
November 18, 2025.