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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**

**Appellate Case No. 2025-001647
Marlboro County Case No. 2024-CP-34-00380**

Bobby Dean Odom, Respondent,

v.

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

of which Dixie, LLC, is the Appellant.

INITIAL BRIEF OF RESPONDENT

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COUNTER-STATEMENT OF ISSUES ON APPEAL

I

Did the Circuit Court err in voiding a tax sale where the Notice of Levy set an artificial deadline and where the Redemption Notice was not mailed in strict compliance with the statute?

II

Is the denial of Appellant's motion for summary judgment properly before this Court?

COUNTER-STATEMENT OF THE CASE

This is the appeal of an order setting aside a tax sale deed. Around 2005, Respondent Bobby Dean Odom and Defendant Edwin Harold Odom, III, inherited vested remainder interests in property located at 4217 Redbud Road, McColl, South Carolina from their parents (the “Property”). (Order p.2; ¶ MSJ pp. 1-2). Their father, Edwin Harold Odom, Jr., inherited a life estate in the property until he remarried. (Order p.2; ¶ MSJ p.2). When Edwin Harold Odom, Jr., remarried in 2008, Bobby Dean Odom and Edwin Harold Odom, III, became owners of the Property. (Order p.2; ¶ MSJ p.2). On September 12, 2012, the Odom brothers’ ownership was memorialized by deed. (Order pp. 1-2; ¶ MSJ pp.1-2).

The property taxes eventually fell into arrearage, and the Marlboro County Delinquent Tax Collector began the levy process under South Carolina’s tax sale statute. Of note to this appeal, the relevant Notice of Levy for this process stated the following: “Taxes must be paid...by 5:00 PM, November 04, 2022”. (Ex A to ¶ MSJ).

The Delinquent Tax Collector held a tax sale on November 7, 2022, where Appellant Dixie, LLC, was the successful bidder. (Tax Sale Deed). Of note to this appeal, on September 26, 2023, she issued a Redemption Notice, which was mailed certified mail (but not return receipt requested, restricted delivery) to the address of the defaulting taxpayer. (Ex to 07/23/25 Supp.Ret.).

Respondent Bobby Dean Odom brought this action on November 6, 2024, seeking to have the tax sale deed set aside and to impose a constructive trust upon the interest of Edwin Harold Odom, III. (Complaint). Dixie, LLC, and the Marlboro

County Delinquent Tax Collector duly answered the Complaint. (Answers). Edwin Harold Odom, III, did not answer the Complaint and Judge Brian Gibbons entered default as to him on January 27, 2025. (Entry of Default).

On February 17, 2025, Respondent Bobby Dean Odom moved for summary judgment on his cause of action to set aside the tax sale deed, alleging the relevant Notice of Levy created an artificial deadline. (11 MSJ). Dixie, LLC, and the Marlboro County Delinquent Tax Collector filed responses and cross-motions for summary judgment requesting the court confirm the tax sale. Judge Milton Kimpson heard the motions and cross-motions for summary judgment on April 21, 2025. (transcript). On June 2, 2025, Judge Kimpson issued a Form 4 Order granting Bobby Dean Odom's motion for summary judgment and denying the remaining motions for summary judgment. (Form 4). This order also requested Bobby Dean Odom's attorney prepare a formal order awarding summary judgment. (Form 4). On June 12, 2025, Dixie, LLC, moved to alter or amend the June 2, 2025, Form 4 Order. (06/12/25 MTAA). Bobby Dean Odom filed a return to this motion on June 16, 2025. (06/16/25 11 Return).

On June 16, 2025, Judge Kimpson entered a formal order granting Bobby Dean Odom's motion for summary judgment and setting aside the tax sale deed for noncompliance with S.C. Code § 12-51-40(b) and specifically for the Notice of Levy's artificial deadline. (Order). On June 25 & 26, 2025, the Marlboro County Delinquent Tax Collector and Dixie, LLC, moved to alter or amend the June 16, 2025, order. (06/25-26/25 MTAA's). On June 27, 2025, Bobby Dean Odom filed a return to these

motions, specifically noting the motions contained new arguments not presented to the trial court. (06/27/25 π Return).

On the morning of July 23, 2025, Bobby Dean Odom filed a supplemental return, noting an additional defect in the Delinquent Tax Collector's file. (07/23/25 Return). His attorney also emailed this return to Judge Kimpson, copying all counsel. (07/23/25 Luck email). Judge Kimpson replied to the email, noting he had granted the motion and an order was in his queue for filing. (07/23/25 Kimpson emails). On July 28, 2025, Kimpson's order (dated July 13, 2025), was filed with the Marlboro County Clerk of Court. (07/28/25 Order). This appeal followed.

STANDARD OF REVIEW

“In reviewing an order for summary judgment, the appellate court applies the same standard which governs the trial court under Rule 56 of the South Carolina Rules of Civil Procedure.” *M & M Grp., Inc. v. Holmes*, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (Ct. App. 2008). “Summary judgment is appropriate when ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Id.* (quoting Rule 56(c), SCRCP); *see also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023) (affirming that only a genuine issue of material fact will defeat a motion for summary judgment). A material issue is one that constitutes a legal defense or that affects the result of the action. *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr.*, 297 S.C. 176, 375 S.E.2d 331 (Ct. App. 1988).

ARGUMENT

South Carolina’s property tax laws bend over backwards to give taxpayers every conceivable opportunity to regain their property after tax sale. These protections exist to, *inter alia*, protect family property like that in this appeal from out-of-state land speculators like Respondent Dixie, LLC. *Accord Leysath v. Leysath*, 40 S.E.2d 233, 235, 209 S.C. 342, 348 (1946) (The statutory requirements governing tax sales are intended for the protection of the taxpayer against surprise or the sacrifice of his property.).

Dixie asks this Court to ignore over a century of precedent mandating strict construction of tax statutes and create a judicial exception to payment deadlines under these statutes. Such an exception subordinates the rights of taxpayers to the convenience of delinquent tax collectors, which is neither the law nor the public policy of this state. The trial court must be affirmed.

I. The Marlboro County Delinquent Tax Collector did not strictly comply with the relevant statute, and the tax sale deed was therefore properly voided.

It is well-settled that South Carolina tax sales must be conducted in strict compliance with statutory requirements. *E.g. Massenberg v. Clarendon Treasurer*, 443 S.C. 546, 552-553, 905 S.E.2d 399 (2024). The record reflects two separate errors that independently demand the avoidance of the tax sale deed at issue in this action:

A. The Notice of Levy created an illegal artificial deadline.

The first error in the tax sale process is contained within the Notice of Levy, which stated: “Taxes must be paid...by 5:00 PM, November 04, 2022”. (Notice of Levy). This notice created a deadline for payment of November 4, 2022, and the

Marlboro County Delinquent Tax Collector admits this fact. (Ex B ¶ MSJ). The sale for the Property took place on November 7, 2022. (Tax Sale Deed; Ex B ¶ MSJ). South Carolina law provides in relevant part: “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 § 12-51-40(b). It has been the well-settled law of this state for decades that this provision, and its prior version, prohibits a delinquent notice from setting a payment deadline different than that mandated by statute. *See, e.g., Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 577 S.E.2d 202 (2003);¹ Op. S.C. Atty. Gen., 2004 WL 439327 (Feb. 18, 2004); *Terry v. Brown*, Op. No. 2008-UP-413, 2008 WL 9844380 (S.C. Ct. App. July 21, 2008) (Ex C ¶ MSJ); *see also Brown v. Gantt*, No. 2015-CP-32-00817, 2016 WL 11983118 (S.C.Com.Pl. Order dated June 15, 2016) (Master-in-Equity provides analysis regarding artificial deadlines, but refuses to set aside sale on other grounds); *Barfield v. The Corner Store*, Op. No. 2024-UP-208, 2024 WL 2839996 (S.C. Ct. App. June 5, 2024) (example of a notice deadline compliant with Section 12-51-40(b)).

While it is true that the two intervening days between November 4 and November 7, 2022, were a weekend, that fact is irrelevant to this case. Section 12-51-40(b) does not allow the Delinquent Tax Collector to set an earlier date for payment, nor does it allow for exceptions because the statutory deadline would be inconvenient

¹ While the remaining citations here are unreported and/or non-precedential, Respondent cites them both for the soundness of their reasoning and as reminder that *Hawkins* remains good law.

for the Delinquent Tax Collector. The plain language of the statute is clear and unambiguous, and the trial court did not err applying the law as it was written. *See 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.”). **It is the responsibility of the Delinquent Tax Collector to follow the law, not vice versa.**

The Master-in-Equity in *Brown* also took a very dim view of artificial deadlines:

This court takes notice of the tremendous administrative effort required to conduct a tax sale. Requiring payment by [the Friday before a Monday tax sale] would seem to be a great assistance to the County’s ability to conduct the tax sale without having to pull cases where payment has been tendered the day of the sale. While sympathetic this challenge, if the County can set an arbitrary date the Friday before the sale, why not a week or two or three weeks before the sale? Further, while not apples to apples, because of the volume and the defaulting taxpayer’s ability to redeem, the court does note that in foreclosure sales, cases are pulled up to and in some cases, during the sale, and a property owner has the right to tender full payment until the gavel falls. It would seem that a property owner would have at least the same rights in a government seizure of his property as he would in a contract based foreclosure of land or the repossession of a personal property.

These statutes contain no prohibition on the Tax Collector accepting delinquent tax payments up until the moment before the tax sale starts. Further, there appears to be court recognition that requires the greatest level of protection before the government takes property. *See Dickson v. Burckmyer*, 67 S.C. 526, 46 S.E. 343, 345 (1903) (“[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.”); *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 256, 715 S.E.2d 348, 356 (Ct. App. 2011) “A court of equity abhors forfeitures, and will not lend its aid to enforce them... [e]quity does not favor forfeitures or penalties and will relieve against them when practicable in the interest of justice.”).

While not making a specific ruling that a tax authority would have to take correct payment from a taxpayer or mortgage holder up to the final moment before sale, the Court finds this language in the notice especially worrisome when comparing this situation with a private taking pursuant to a contract or a mortgage foreclosure, in which a debtor has a right to pay off or satisfy the debt up to the moment of sale. *See also* S.C. Code Ann. § 36-9-623(c) ("A redemption may occur at any time before a secured party ...has disposed of collateral ...") (emphasis added). **Such action, merely for purposes of administrative convenience, would appear to afford a defaulting taxpayer less protection than a debtor would have in a claim and delivery for a couch or a mortgage foreclosure action.**

Brown, 2016 WL 11983118 at *5 (emphasis added).

1. The 2025 Attorney General Opinion cited by Dixie supports the Appellant's position.

The 2025 Attorney General Opinion cited by Dixie concerned whether a letter postmarked before a tax sale (and its enclosed payment) could be deemed received before the tax sale. Op. S.C. Atty. Gen. 2025 WL 3101406 (Oct. 27, 2025). This opinion did not find, or even imply, S.C. Code § 12-51-40(b) allowed a delinquent tax collector to set an artificial deadline for convenience. On the contrary, the Attorney General's citation of *Hawkins* as good law, applicable to the current version of Section 12-51-40(b), undercuts Dixie's argument that *Hawkins* is somehow limited or distinguishable. (App. Brief pp. 7-9).

2. Dixie's absurdity argument is not preserved.

Dixie's absurdity argument (App. Brief p. 9) is not preserved. Dixie's June 26, 2025, motion to alter or amend argued, for the first time, Odom's assertion of an artificial deadline is "absurd". (06/26/25 Motion pp. 4-5). This argument was not previously before the trial court. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392

S.E.2d 481, 482 (Ct.App.1990) (“A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.”).

To the extent Dixie’s absurdity argument is preserved, it is misplaced. Grafting the Rules of Civil Procedure’s deadline provisions to Section 12-51-40(b) is not only inappropriate according to the rules, it is also a violation of the separation of powers in this state, which give the General Assembly sole power to legislate. *See* Rule 1, SCRCP (“These rules govern the procedure in all South Carolina courts...”) (emphasis added); S.C. Const. Art. I § 8 (separation of powers); S.C. Const. Art. III § 1 (legislative power vested in General Assembly). The true error in this matter lies with the Delinquent Tax Collector, who prepared a Notice of Levy that violated South Carolina law on its face, despite decades of jurisprudence prohibiting the use of artificial deadlines.

B. The redemption notice was not mailed in strict compliance with the statute.

As a second ground to set aside the Tax Sale Deed, the record² also reflects that the Redemption Notice for the Property was not mailed properly. South Carolina law states:

Neither more than forty-five days nor less than twenty days before the end of the redemption period for real estate sold for taxes, the person officially charged with the collection of delinquent taxes shall mail a notice by "certified mail, **return receipt requested-**

² This Court is empowered to “affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.” Rule 220(c), SCACR; *see also* Rule 208(b)(2), SCACR (Respondent may include additional sustaining grounds in brief.). The Redemption Notice was made part of the record by the filing of Bobby Dean Odom’s Supplemental Return to Defendants’ June 25, 2025, and June 26, 2025, Motions to Alter or Amend. (07/23/25 Supp. Ret).

restricted delivery" as provided in Section 12-51-40(b) to the defaulting taxpayer and to a grantee, mortgagee, or lessee of the property of record in the appropriate public records of the county. The notice must be mailed to the best address of the owner available to the person officially charged with the collection of delinquent taxes that the real property described on the notice has been sold for taxes and if not redeemed by paying taxes, assessments, penalties, costs, and interest at the applicable rate on the bid price in the total amount of ___ dollars on or before ___ (twelve months from date of sale) (date) _____, a tax title must be delivered to the successful purchaser at the tax sale. Pursuant to this chapter, the return of the certified mail "undelivered" is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record.

S.C. Code § 12-51-120 (emphasis added).

Relevant to this appeal, the Delinquent Tax Collector's file on this property shows that the Section 12-15-120 redemption notice was mailed certified, but neither a return receipt nor restricted delivery was requested. (Ex to 07/23/25 Supp.Ret.). This error serves as an additional sustaining ground to affirm.

II. The denial of Appellant's motion for summary judgment is not appealable.

Both Dixie, LLC, and the Delinquent Tax Collector moved for summary judgment on Bobby Dean Odom's first cause of action, effectively requesting the tax sale be declared valid. (Dixie MSJ & memo; 04/13/25 DTC MSJ). Dixie has appealed the denial of its motion for summary judgment (App. Brief Arg. II), however, such an order is not appealable. In South Carolina, "it is well-settled that an order denying summary judgment is never reviewable on appeal." *Bank of N.Y. v. Sumter County*, 387 S.C. 147, 154, 691 S.E.2d 473, 477 (2010); *see also Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) ("A denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should

proceed to trial."); *Holloman v. McAllister*, 289 S.C. 183, 185-86, 345 S.E.2d 728, 729 (1986) ("Appellate review of orders denying motions for summary judgment could lead to an absurd result: one who has sustained his position after a full trial and a more complete presentation of the evidence might nevertheless find himself losing on appeal because he failed to prove his case fully at the time of the motion."). Accordingly, the Circuit Court's denial of Dixie, LLC's motion for summary judgment must be affirmed or its appeal should be dismissed.

CONCLUSION

The Circuit Court should be affirmed.

Dated: 12/18/2025

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