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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

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 REPLY BRIEF

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I. There was no artificial deadline in the Notice.

As discussed in Appellant's brief, the Notice in the instant case is in strict compliance with South Carolina law, and the Court should reverse the circuit court's order setting aside the tax sale. Respondent's reliance on *Brown v. Gantt*, No. 2015-CP-32-00817, 2016 WL 11983118 (S.C. Com. Pl. June 15, 2016) is misplaced. First, *Brown* is not precedential and should not be relied on by this Court. Second, *Brown*'s ruling is contrary to the statute. The circuit court in *Brown* ruled: "By refusing to take payment on the date of the sale, the Delinquent Tax Collector has shortened the payment period in violation of Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 577 S.E.2d 202 (2003)." *Brown*, 2016 WL 11983118, at *5. However, section 12-51-40(b) of the South Carolina Code clearly states the payment must be made *before* the tax sales date. The *Brown* court, like the circuit court in the instant case, ignored this clear statutory requirement. South Carolina law requires payment *before* the tax sale date, not on the tax sale date. As aptly analyzed by the South Carolina Attorney General's Office, the receipt of payment on the tax sale date, even if postmarked before the tax sale date, does not satisfy South Carolina law. *See* Opinion of the South Carolina Attorney General, 2025 WL 3101406, at *1 (Oct. 27, 2025). Here, the Notice specified the last date directly before the tax sale that payment could be made and was, therefore, in strict compliance with South Carolina law.

Respondent also incorrectly argues a portion of Appellant's argument is not preserved for review. This is not a new argument. Appellant has always maintained the Notice strictly complied with South Carolina law and did not set an artificial deadline. Citing to South Carolina rules and law in support of an argument does not make the argument a new issue. Further, this was raised before the circuit court, considered by the circuit court, and denied by the circuit court.

Accordingly, this Court should reverse the circuit court.

II. The redemption notice was mailed in strict compliance with the statute.

First, this argument is not proper for consideration by the Court because Respondent relies entirely on his Supplement to Return to Motions to Alter or Amend ("the Supplement"). On Wednesday, July 23, 2025, Respondent electronically filed the Supplement and circulated a courtesy copy to Judge Kimpson via email. (ROA p. 146). Judge Kimpson responded that he signed an order over the weekend denying Appellant's motion to reconsider and was filing it that day. (ROA p. 147.) He stated he would not read the Supplement "until after [he] file[d his] order." (*Id.*) An hour later, Judge Kimpson sent a clarifying email, stating: "Please let me clarify my last message. I filed a Form 4 Order denying reconsideration on July 18, 2025; its awaiting approval in the Clerk's Office." (ROA p. 148.) The Form 4 Order was not electronically filed in the case by the clerk's office until July 28, 2025. (ROA pp. 11–13.) However, it was electronically signed by Judge Kimpson on July 18, 2025. (*Id.*) It is clear from Judge Kimpson's communications and the Form 4 Order that the order was signed on July 18, 2025, four days before Respondent filed the Supplement and Judge Kimpson did not review or consider the Supplement. Further, Appellant did not have an opportunity to respond to the Supplement. Because the Supplement was filed *after* the circuit court issued the order on appeal, Respondent's arguments relying on the Supplement and attached exhibits are not proper for consideration by this Court.[1]

Even if the Court were to consider the Supplement and exhibits for the first time on appeal, Respondent's argument is incorrect. The Notice was mailed in strict compliance with the statute. Respondent cites to an incomplete copy of the mailing to erroneously argue the Notice was "mailed

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[1] Appellant is contemporaneously filing a Motion to Strike related to the designation of the Supplement for inclusion in the Record on Appeal and the argument relying on the Supplement. The Supplement and attached exhibits are not proper for the Record on Appeal because they were not presented to the circuit court or considered by the circuit court in connection with the order on appeal.

certified, but neither a return receipt nor restricted delivery was requested." (Resp. Br. at 11.) A review of the *entire* mailing shows this is not true. The mailed envelope shows that the Notice was mailed certified delivery, return receipt requested, restricted delivery. (ROA p. 73.) It is stamped "RETURN SERVICE REQUESTED" and "RESTRICTED DELIVERY." (*Id.*). Further, the delinquent tax collected testified she mailed the Notice "certified mail – return receipt requested – restricted delivery." (ROA p. 69.) Therefore, Respondent is incorrect, and the Notice, which was mailed certified mail, return receipt requested, restricted delivery, did strictly comply with the statute.

III. This matter is reviewable on appeal.

The orders on appeal are reviewable by this Court. Respondent incorrectly claims this matter is not appealable because orders denying motions for summary judgment are not appealable. The orders on appeal are not simply orders denying Appellant's motion for summary judgment. Instead, the June 16, 2025 Order *granted* Respondent's motion for summary judgment, denied Appellant's cross-motion for summary judgment, and set aside the tax sale. The July 2025 denied Appellant's motion to reconsider. These orders finally determined the case and are appealable. Appellant argues the circuit court erred in granting Respondent's motion for summary judgment, denying Appellant's motion for summary judgment, and setting aside the tax sale. Appellant and Respondent both moved for summary judgment on the same legal issue—whether the Notice strictly complied with the statute. The circuit court erred in finding the Notice did not comply with South Carolina law. The circuit court granted Respondent's motion while simultaneously denying Appellant's cross-motion and set aside the tax sale. Appellant appealed. That issue is properly before the Court and must be decided by the Court. Therefore, this appeal should not be dismissed.

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,

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Of whom Dixie, LLC is the Appellant,

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that this brief complies with the provisions of Rule 211(b), SCACR.

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