

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY
COURT OF COMMON PLEAS

THE HONORABLE GORDON G. COOPER
CASE NO. 2015-CP-11-0319
APPELLANT CASE NO.: 2017-001459

RECEIVED

JUL 31 2017

SC Court of Appeals

Brenda Halsey, Bernay F. Halsey, Jr., Demont Halsey,
Fredericka Halsey and Brittany Halsey,

Appellants,

versus

Gwendollette Halsey Simmons, Kenneth Wayne Oglesby, Roderick Terrill
Oglesby, any heirs of the Rederick Gaffney Estate, known and unknown, who
may claim any interest in the subject property, and any unknown heirs or parties
who may claim title or ownership in the real estate which is the subject of this action,
Elijah Reddish, Jackie W. Williams, as Cherokee County Treasurer, or the Successor
in Office, Vernon L. Price, as Delinquent Tax Collector of Cherokee County, or the
Successor in Office,

Of Whom,

Gwendollette Halsey Simmons, Elijah Reddish, Jackie W. Williams, as Cherokee
County Treasurer, or the Successor in Office, Vernon L. Price, as Delinquent Tax
Collector of Cherokee County, or the Successor in Office, are the

Respondents.

APPELLANTS' INITIAL BRIEF

Richard H. Rhodes, Esquire
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Burts Turner & Rhodes
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Attorneys for Appellants

Date: July 28, 2017

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ISSUES ON APPEAL

- I. The trial court erred in holding that the Tax Sale was valid, the error being that the requirements of Code §12-51-40 were not followed because the notices sent by the Delinquent Tax Office were not sent to the best address available.
- II. The trial court erred in holding that the Tax Sale was valid, the error being that the requirements of Code §12-51-40 were not followed because the notices were not sent to Brenda Halsey.
- III. The trial court erred in granting a directed verdict, the error being that the Appellants were denied the opportunity to present evidence.
- IV. The trial court erred in granting a directed verdict, the error being that the testimony presented by the Delinquent Tax Office showed that the requirements of Code §12-51-40 were not followed.
- V. The trial court erred in granting a directed verdict, the error being that the ruling of the court was based on an incomplete Record.
- VI. The trial court erred in granting a directed verdict, the error being that despite the confusion surrounding ownership and description of the subject property, the Delinquent Tax Office had actual notice that Brenda Halsey was an owner.

STATEMENT OF THE CASE

The unoccupied house and lot which is the subject of this action fronts on Leadmine Road in Gaffney, South Carolina. It was sold at a Tax Sale on November 4, 2013. The delinquent taxes were for the years 2008-2013. The Respondent, Elijah Reddish, was the successful bidder. His deed was issued on November 12, 2014.

The Appellants are the owners of the subject property. They filed this action on April 15, 2015 asking the court:

- (a) To hold that the Tax Sale had been conducted improperly; and
- (b) To declare that they are the owners of the subject property.

The chain of title to the subject property is complicated. The legal descriptions in some of the deeds were not accurate, but the property was always identified as fronting on Leadmine Road.

In their Complaint, the Appellants attached the chain of title showing that Bernay Halsey (the person from whom the Appellants inherited the property) first owned the property in 1982. The Complaint also showed that the County records, on many occasions, incorrectly identified the property. Copies of documents from the Assessor's Office, Mapping Office, and Tax Office showed inconsistencies in the tax map numbers, addresses of property, and owners of record.

The matter was referred to the Master-In-Equity for Spartanburg County who acted as a Special Referee. A hearing was scheduled for March 22, 2017. Prior to commencing the trial, the court directed that testimony concerning the Tax Sale would take place first (Tr.5). Mr. Vernon L. Price, the Delinquent Tax Collector for Cherokee County, placed his entire file into evidence.

A summary of his testimony is as follows:

Execution of Tax Notice - This was sent to Gwendollette Dawkins (formerly Gwendolyn Simmons), the address was 135 Iris Lane (Ex. 2, Tr. ____). [The actual notice is mailed by QS-1. It was sent to them on March 19, 2013.]

Final Notice - This was sent to Gwendollette Dawkins at 135 Iris Lane. She receipted for this on June 8, 2013 (Ex. 3, Tr. ____).

Notice of Levy - The notice was placed on the premises on September 18, 2013 (Ex. 4, Tr. ____).

Newspaper Notice - Notice of the Tax Sale was published in the Gaffney Ledger and in The Chronicle. The subject property was identified as Gaffney Redderick Est. at 305 Leadmine Street (Ex. 5 & 6, Tr. ____).

Notice of Sale - This notice advised that the property had been sold at the Tax Sale on November 4, 2013. It also advised that the time for redeeming the property would end on November 5, 2014. This notice was mailed to Gwendollette Dawkins at 135 Iris Lane on November 13, 2013 (Ex. 7, Tr. ____).

End of Redemption Period - On October 13, 2014, this was sent to and receipted for by Gwendollette Dawkins at 135 Iris Lane (Ex. 8, Tr. ____). This was also sent to and receipted for by Brenda Halsey at 305 Leadmine Road (Ex. 9, Tr. ____).

After the testimony presented by the Delinquent Tax Collector, counsel for Elijah Reddish moved for a directed verdict. The court granted the Motion, and the Tax Sale was declared to have been valid and the Plaintiffs' action was dismissed.

The Appellants filed a 59(e) Motion on April 13, 2017. This was dismissed by Order dated June 19, 2017.

Notice of Intent to Appeal was filed on June 29, 2017.

STANDARD OF REVIEW

This action was brought to set aside a tax sale. It is undisputed that such actions are in equity. Smith v. Barr, 375 S.C. 157 (Ct. App. 2007). Since this is a case in equity, this Court has the authority to review the testimony and records and make its own findings of fact.

ARGUMENTS

I. Notice Was Not Given To The Best Address Available (Exceptions I & II)

Code §12-51-40 provides the format for selling property for delinquent taxes. In the case at bar, the Delinquent Tax Office mailed the notices required, but did not give notice to the owner of the property.

The right of a government agency to enforce taxation is not disputed. However, the purpose of the tax sale is to protect the governing authority from entities or individuals who willfully and persistently refused to pay taxes. The Court has consistently held that the purpose of the statute is not to punish a taxpayer for non-payment if the delinquency is the result of a legitimate mistake or error.

The effect of a Tax Sale is drastic. Therefore, our courts have held that strict compliance is required in order to have a valid sale. In the case of King v. James, 388 S.C. 16 (Ct. App. 2010), the Court held that the failure to follow the notice requirements is a fundamental defect which renders the proceedings absolutely void.

The statute specifically states that the notice “must be mailed to the best address available”. Requiring this to be done is in keeping with the holding in Hawkins vs. Bruno Yacht Sales, Inc., 353 S.C. 31 (2003). In Hawkins, the Court held that the reason for the requirements is to protect the taxpayer from the needless sacrifice of his property.

In the case at bar, the best available address was not used. Brenda Halsey had been receiving her mail at this address for many years. And, there are numerous public records and documents (that are discussed below) which document that Brenda Halsey was using this address. This was documented by the fact that the one notice that was sent to Brenda Halsey was at this address and it was receipted for by Ms. Halsey (Ex. 9, Tr. ____).

The County Officials acknowledged that the chain of title to the subject property was complicated. The Delinquent Tax Collector described the title as a “mess” (Tr. 20). He contended that there was no documentation to identify who owned the real property or who the heirs were (Tr. 18, 19). However, Mr. Price testified that the only people that he associated the property with were Gwendolette Dawkins and Brenda Halsey (Tr. 20). In fact, Mr. Price had had on-going contact with them since 1997. He testified that he had had dealings with them in the Assessor’s Office and in the Tax Collector’s Office (Tr. 17). Thus, by his own testimony, Mr. Price acknowledged that he knew Brenda Halsey claimed an interest in the subject property.

Despite the involvement of Brenda Halsey with the property, she was not sent the Execution Tax Notice, the final tax notice, or the notice of sale. When Mr. Price was asked why she was not sent a copy, his response was “we only have room in the computer system for one address” (Tr. 12). That is not a valid reason for not giving notice to a property owner, and Mr. Price must have known this: He did ultimately send Brenda Halsey a notice of the end of the redemption period at her address (Ex. 9, Tr. ____).

Mr. Price was asked why he had sent Brenda Halsey a final notice but not the other notices. He was not responsive. He said that it was done that way “because those are generated by the computer” (Tr. 22). Mr. Price then testified that the reason Brenda Halsey received the final notice was through his own initiative (Tr. 21, 22). The fact is this: Mr. Price was aware that Brenda Halsey had an interest in the subject property and that he had dealt with her in the past about the property. Notwithstanding, he chose to give her no notification until the final notice which was just days away before the end of the redemption period.

The actions of Mr. Price are contrary to the spirit of and the requirements of Code §12-51-40. He did not send notices to the only two people that he felt had connection with the property. Instead, he chose to send it to only one. And, as will be shown below, the county documents only have limited references to Gwendolette Dawkins being involved with the property. So it is questionable as to why he would choose Ms. Dawkins. In addition to this error, Mr. Price did not advertise the property correctly: when the newspaper ads were run, neither the name of Gwendolette Dawkins nor Brenda Halsey was used. Instead, the ads were run in the name of Gaffney Reddick Estate (Ex. 5&6, Tr. _____).

When the trial court made its ruling, it took the position that since Brenda Halsey was sent a copy of the final notice before the end of the redemption period, the requirements of the statute were met. The court stated “regardless of whether there was a front end notice, at the other end, they were noticed and had a chance to redeem the property” (Tr. 47). The court’s ruling is contrary to the requirements and case law surrounding this statute.

It is respectfully submitted that the ruling of the trial court is erroneous. The Appellants ask this Court to hold that the tax sale was invalid.

II. The Court Erred In Directing A Verdict (Exceptions II, III, IV, V & VI)

Since the court directed a verdict, the Appellants were not able to present testimony and exhibits which related to the confusion and the mis-identification of the subject property. Also, the Appellants were denied the opportunity to show the efforts they made to have their names identified as the owners. However, by cross-examination of Mr. Price, the Appellants were able to show some of the continuing failure of the county to correctly identify the subject property.

Mr. Price was questioned about eight (8) of the documents that the Appellants were intending to use when presenting their case. For brevity, the testimony surrounding these documents is presented in outline form:

Mapping Card (Ex. 1, Tr. _____) - This shows that on August 3, 1982, Bernay Halsey went to the Mapping Office to list his name instead of the previous owner, Lula Oglesby. The document correctly shows the address of 305 Leadmine, but it lists the Tax Map Number as 056 instead of 055.003.

Mr. Price could offer no explanation for this. All he could say was that the Tax Map Number 056 faced on O'Neal Street -- not Leadmine (Tr. 23).

Assessor's Printout (Ex. 2, Tr. _____) - This showed that on July 16, 1996, the property was listed in the name of Lula Oglesby and Bernay Halsey. However, the document identified the Tax Map Number as 055 instead of 055.003.

Mr. Price could offer no explanation. He simply testified that he had never seen the document before (Tr. 25).

Assessor Addressing (Ex. 3, Tr. _____) - This showed that on August 16, 2000, Bernay Halsey was identified as the owner of the subject property, but the address was shown as 1005 Leadmine Road. The Tax Map Number was shown as 056.

Mr. Price could not explain this document. His response was only that there was no such address as 1005 Leadmine Road (Tr. 29).

Tax Notices (Ex. 4-8, Tr. _____) - These notices were for the years 1998-2002. All five (5) notices correctly showed Bernay Halsey as the owner and correctly showed that the property was located at 305 Leadmine Street. However, the Tax Map Number was shown as 056.

Mr. Price had no explanation. His testimony was that Tax Map Number 056 is for O'Neal Street. He also testified that information concerning the address is mainly a function of the Assessor's Office (Tr. 32).

2004-2005 Taxes (Ex. 9, Tr. _____) - These two (2) tax notices were sent in the name of Gwendollette Dawkins at 135 Iris Lane. The notices correctly show the Tax Map Number as 055.003. However, both of these tax notices were paid for by Brenda Halsey.

Mr. Price had no explanation other than to say the taxes had been "paid before they rolled into my department" (Tr. 320).

Assessor Addressing (Ex. VII to Complaint, Tr. _____) - This showed that on March 26, 1997, Bernay Halsey was listed as the owner of the house and lot at 305 Leadmine Road. However, the Tax Map Number was listed as 056.

Mr. Price had no explanation. His testimony was that he had "no clue" (Tr. 33) and that this document was prepared by the Assessor's Office before he started to work there (Tr. 34).

Delinquent Tax (Ex. 10, Tr. _____) - This document is dated May 31, 2011. It identified Brenda Halsey as the owner of 305 Leadmine Street, and it correctly showed that the Tax Map Number was 055.003.

Mr. Price had no explanation. He responded that addresses "could be changed at any time" (Tr. 35). He also said "I am at a loss because, like I say, it was not my department" (Tr. 35).

Cancelled Check (Ex. IV, Tr. _____) - This check shows that on October 19, 2012, Brenda Halsey paid \$10,002.15 for taxes. In the "for column" of the check, Ms. Halsey wrote "055 and 3". [Ms. Halsey was not given the opportunity to testify to explain the circumstances surrounding this payment, but the court should take judicial notice that this large payment of taxes was made during the time in which the delinquent taxes were allegedly due: the Tax Sale was for the years 2008-2013.]

Mr. Price remembered when Ms. Halsey came to pay these taxes. She had her son-in-law with her. They stayed until almost 6:00 p.m. that night (Tr. 36). Mr. Price's testimony is that those taxes were paid for another tract of land. Ms. Halsey, and her son-in-law, were not given the opportunity to relate the conversation that took place. However, Mr. Price's testimony does document that Ms. Halsey and her son-in-law were making efforts to pursue the payment of taxes and even stayed late in the evening to try to get matters worked out.

The purpose of introducing the above exhibits was to document the confusion surrounding this property. However, despite the inconsistencies on the documents, the owners were almost always shown to be Brenda Halsey (or her husband, Bernay). In light of this, Mr. Price was asked why Brenda Halsey was not given notice about the tax sale. His response was “like I say, sir, we’re not sure who owns the property” (Tr. 37).

As a result of the directed verdict, the Appellants were not allowed to present any evidence. A 59(e) Motion was filed and attached thereto were public records that would have been introduced into evidence. [The parties had agreed that county public records could be introduced (Tr. 26).] Most of the exhibits had been introduced at trial. A summary of the documents attached with the 59(e) Motion is as follows:

<u>DATE</u>	<u>ITEM</u>	<u>LAND</u>	<u>NAME</u>
8/3/82	County Mapping Card	100-08-00-056.00 Located at 305 Leadmine St. (1 lot)	Bernay Frederick Halsey
7/16/96	Assessor Print Out	100-08-00-055.00 Located at 305 Leadmine Rd. (1 lot & 1 bldg)	Lula Oglesby & Bernay Halsey
3/26/97	Assessor Letter	100-08-00-056.00 Located at 305 Leadmine (1 lot & 1 bldg)	Bernay Frederick Halsey
98,99&2000	Tax Notices	100-08-00-056.00 Located at 305 Leadmine St. (1 lot & 1 bldg)	Bernay Frederick Halsey
8/16/2000	Assessor Letter	100-08-00-056.00 Located at 305 Leadmine Rd (1 lot & 1 bldg)	Bernay Frederick Halsey
2001	Tax Notice	100-08-00-056.00 Located at 305 Leadmine St. (1 lot & 1 bldg)	Bernay Frederick Halsey
11/21/2001	Assessor Print Out	100-08-00-055.03 Located at 305 Leadmine St. (1 lot & 1 bldg) (Notation: Brenda W. Halsey goes to Assessor’s Office)	Gaffney Rederick Est.
2002	Tax Notice	100-08-00-056.00 Located at 305 Leadmine St. (1 lot & 1 bldg)	Bernay Frederick Halsey
5/31/2011	Delinquent Tax Office	100-08-00-055.03 Located at 305 Leadmine St.	Gaffney Rederick Est. c/o Brenda Halsey
10/19/2012	Cancelled Check for \$10,002.15	For 100-08-00-055.00 and 100-08-00-055.03 Note: The Tax Sale was for the years 2008-2013	

These documents show the confusion surrounding the identity of the subject lot. The tax map number was frequently incorrect. However, the address of the property was always 305 Leadmine Road (the address used by Brenda Halsey to receive her mail). And, all but one of the documents showed Bernay Halsey or Brenda Halsey as the owner. As a result, it is unreasonable for the county to take the position that the tax sale could be correctly conducted without giving notice to Brenda Halsey, or at least to provide notice to the address of 305 Leadmine Road.

Also, in the 59(e) Motion, records from DHEC, as far back as 1983, identified the property as being owned by Bernay Halsey. And, the records correctly identified the property as being located at 305 Leadmine Road. These records were presented to show that there was never any confusion on the part of the Appellants: the Appellants were shown as the owners and the address of the property was shown as 305 Leadmine. This substantiates the Appellants argument that there was no legitimate reason for the County Taxing Officials not to show the Appellants as the owners of the subject property.

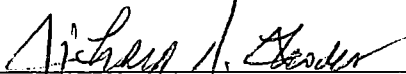
The Appellants respectfully submit that the tax sale was invalid. They ask this Court to invalidate the sale.

CONCLUSION

The Appellants contend that the tax sale should be declared invalid. There were sufficient documents to show that Brenda Halsey was an owner and that she should have been notified of the pending tax sale. The Delinquent Tax Collector acknowledged that Brenda Halsey was believed to be an heir of the property. And, since the 1980's, county documents used her or her husband's name on the property. It was error for the Delinquent Tax Office not to send notice of the delinquent taxes to Brenda Halsey. In Donahue v. Ward, 298 S.C. 75 (Ct. App. 1989), the Court held that the county official is required to make a good faith effort to locate the address of the taxpayer. Here, the Delinquent Tax Office had documentation to show Brenda Halsey was an owner, but he elected not to give her notification until right before the end of the redemption period.

The Appellant also contends that they should be given the opportunity on remand to prove ownership of the property to prevent any further confusion with the identity and ownership of the subject property.

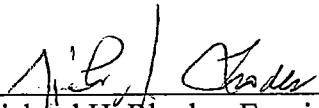
Respectfully submitted,


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July 28, 2017

CERTIFICATE OF COUNSEL

This is to certify that the Designation of Matter for the Appellants., contains no matter which is irrelevant to the appeal as required by Rule 209(c).



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Appellants,

versus

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Cherokee County, or the Successor in Office,

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Collector of Cherokee County, or the Successor in Office, are the

Respondents.

PROOF OF DELIVERY

This is to certify that on the 28th day of July, 2017, the undersigned, secretary to Richard H. Rhodes,
Esq., served a copy of the APPELLANTS' INITIAL BRIEF by depositing a copy of the same into the
United States Mail, postage pre-paid and in the correct amount to the following:

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JO ANN CHAMPION

SWORN to before me this 28th
day of July, 2017.

 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 12-10-2025

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July 28, 2017

The Honorable Jenny Abbott Kitchings
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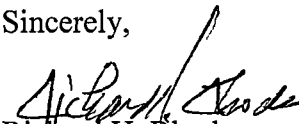
Re: Brenda Halsey, et al vs. Gwendollette Halsey Simmons, et al
Appellate Case No. 2017-001459

Dear Ms. Kitchings:

I have enclosed the original Appellants' Initial Brief and Appellants' Designation of Matter, together with Affidavits of Service on opposing counsel. I have also enclosed a Certificate of Counsel acknowledging that the Designation of Matters contains no irrelevant matter pursuant to Rule 209(c).

Please do not hesitate to contact me if you should have any questions or require any further information.

Sincerely,



Richard H. Rhodes

RHR/jc
Enc.

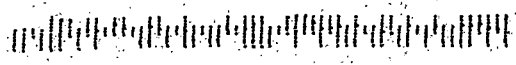
cc:

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