

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas
The Honorable Gordon G. Cooper, Master-in-Equity

Case No: 2015-CP-11-0319
Appellate Case No.: 2017-001459

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SC Court of Appeals

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

Appellants,

v.

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 Redish,
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, Defendants

Of Whom,

Gwendollette Halsey Simmons, Elijah Redish, 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,

JOINT FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR 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?
2. DID THE TRIAL COURT ERR 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?
3. DID THE TRIAL COURT ERR IN GRANTING A DIRECTED VERDICT, THE ERROR BEING THAT THE APPELLANTS WERE DENIED THE OPPORTUNITY TO PRESENT EVIDENCE?
4. DID THE TRIAL COURT ERR 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?
5. DID THE TRIAL COURT ERR IN GRANTING A DIRECTED VERDICT, THE ERROR BEING THAT THE RULING WAS BASED UPON AN INCOMPLETE RECORD?
6. DID THE TRIAL COURT ERR 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

On April 15, 2015, the Appellants herein filed an action in the Cherokee County Court of Common Pleas seeking, *inter alia*, a rescission of a tax sale of real property located in Cherokee County, South Carolina. Respondent 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 (hereinafter "Respondents Williams and Price") filed a timely Answer to this action on May 12, 2015 at the Cherokee County Clerk of Court's Office. This matter was thereafter referred to the Honorable Gordon G. Cooper by Consent Order filed on December 21, 2016. On March 22, 2017, a trial was held at the Spartanburg County Master-in-Equity courtroom, and the Final Order from this hearing was filed on April 6, 2017. The Appellants filed and served a Motion to Alter or Amend Judgment this Order. An Order denying the Motion to Alter or Amend Judgment was filed on June 21, 2017 in the Cherokee County Clerk of Court's Office.

ARGUMENTS

1. THE TRIAL COURT DID NOT ERR IN HOLDING THAT THE TAX SALE WAS VALID, BECAUSE THE REQUIREMENTS OF CODE §12-51-40 WERE FOLLOWED, AND THE NOTICES SENT BY THE DELINQUENT TAX OFFICE WERE SENT TO THE BEST ADDRESS AVAILABLE.

By way of background, this matter centers around a parcel of property in Cherokee County, South Carolina better designated as Tax Map Number 100-08-00-055.003 (hereinafter "the Property"). The Property was sold at the Cherokee County Delinquent Tax sale on

November 4, 2013, for the past due *ad valorem* property taxes from the years 2008-2013 pursuant to S.C. Code Ann. §12-51-40 (Supp. 2016). The Respondent Elijah Reddish was the high bidder at the tax sale, and was issued a tax deed on November 12, 2014 (R. pp. 133-138). Prior to the issuance of the tax deed, the Respondents Williams and Price properly sent all the required notices pursuant to S.C. Code Ann. §12-51-40 (Supp. 2016). The majority of these notices went to Gwendolyn Dawkins, also known as the Respondent Gwendolyn Halsey Simmons (R. p. 57, line 20-p. 58, line 2). Specifically, the record clearly demonstrates that the Respondents Williams and Price underwent the following statutorily required procedures:

- 1) On or about March 24, 2013, an Execution Tax Notice was sent to:

Gaffney Rederick Est
% Gwendolyn Dawkins
135 Iris Lane, Gaffney, SC 29341
(R. p. 64, lines 3-24, R. p. 106)

S.C. Code Ann. §12-51-40 (a) (Supp. 2016) states:

(a) On April first or as soon after that as practicable, mail a notice of delinquent property taxes, penalties, assessments, and costs to the defaulting taxpayer and to a grantee of record of the property, whose value generated all or part of the tax. The notice must be mailed to the best address available, which is either the address shown on the deed conveying the property to him, the property address, or other corrected or forwarding address of which the officer authorized to collect delinquent taxes, penalties, and costs has actual knowledge. The notice must specify that if the taxes, penalties, assessments, and costs are not paid, the property must be advertised and sold to satisfy the delinquency. (emphasis added)

- 2) On or about June 8, 2013, a Final Tax Notice was sent to and signed by Gwendolyn Dawkins. This Notice stated that the property would be sold on November 4, 2013 if the taxes were not paid. This Notice was specifically sent to:

Gaffney Rederick Est
% Gwendolyn Dawkins
135 Iris Lane
Gaffney, SC 29341
(R. p. 65 lines 1-16, R. pp. 107-108)

S.C. Code Ann. §12-51-40 (b) (Supp. 2016) states in relevant part:

(b) If the taxes remain unpaid after thirty days from the date of mailing of the delinquent notice, or as soon thereafter as practicable, take exclusive possession of the property necessary to satisfy the payment of the taxes, assessments, penalties, and costs. In the case of real property, exclusive possession is taken by mailing a notice of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer and any grantee of record of the property at the address shown on the tax receipt or to an address of which the officer has actual knowledge, by "certified mail, return receipt requested-restricted delivery" pursuant to the United States Postal Service "Domestic Mail Manual Section S912". (emphasis added)

3) On September 13, 2013, the Delinquent Tax Collector of Cherokee County Vernon L. Price physically posted a Notice of Levy at the Property. This Notice stated that the property would be sold on November 4, 2013 if the taxes were not paid. (R. p. 65, line 23-p. 66, line 17, R. pp. 109-110) S.C. Code Ann. §12-51-40 (c) (Supp. 2016) states in relevant part:

(c) If the "certified mail" notice has been returned, take exclusive physical possession of the property against which the taxes, assessments, penalties, and costs were assessed by posting a notice at one or more conspicuous places on the premises, in the case of real estate, reading: "Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes", the posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession of it, or by taking exclusive possession of personalty.

4) On October 16, 2013 and October 30, 2013, the Property was advertised for sale in The Gaffney Ledger, a newspaper of general circulation in Cherokee County. Additionally, on October 22, 2013 and October 29, 2013, the Property was advertised for sale in The Cherokee Chronicle, a newspaper of general circulation in Cherokee County. These Notices stated that the Property would be sold on November 4, 2013 if the past due taxes were not paid. The Property was described by its address, tax map number, and Rederick Gaffney Estate. (R. p. 67 lines 1-14, R. pp. 115-118) S.C. Code Ann. §12-51-40 (d) (Supp. 2016) states in relevant part:

(d) The property must be advertised for sale at public auction. The advertisement must be in a newspaper of general circulation within the county or municipality, if applicable, and must be entitled "Delinquent Tax Sale". It must include the delinquent taxpayer's name and the description of the property, a reference to the county auditor's map-block-parcel number being sufficient for a description of realty. The advertising must be published once a week before the legal sales date for three consecutive weeks for the sale of real property, and two consecutive weeks for the sale of personal property.

- 5) On November 13, 2013, a notice was sent informing Gwendolyn Dawkins that the Property was sold on November 4, 2013 at the tax sale, and that they have until November 5, 2014 to redeem the Property, or it would be sold at the tax sale. (R. p. 67 line 24-p. 69 line 1, R. p. 112)

- 6) On October 14, 2014, delinquent tax notices were sent via certified mail to the following addresses:

Gwendolyn Dawkins
135 Iris Lane
Gaffney, SC 29341

Brenda Halsey
305 Leadmine Rd.
Gaffney, SC 29340
(R. p. 69 lines 2-21, R. pp. 113-114)

S.C. Code Ann. §12-51-120 (2014) states in relevant part:

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-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.

Despite all of the many steps listed above were completed by the Respondents Price and Williams, the Appellants, nor anyone else, paid the past due taxes on the Property, and the tax deed was issued to the Respondent Elijah Redish. In filing this action, the Appellants are claiming that they have a legal interest in the Property through the estate of Bernay Frederick Halsey (R. pp. 1-6). According to their Complaint, Bernay Frederick Halsey died on June 22, 2004, and his estate was filed ten (10) years later in Probate File #2014-ES-11-104 (R. p. 2). Notably, the Appellants also list "any heirs of the Rederick Gaffney Estate" as a party to their action. In the Complaint, the Appellant explains that "this estate has been joined as a Defendant because some abstractors of the subject property contend that the estate of Reddick (sic) Gaffney

was originally the owner of this land.” (R. p. 2) The Complaint also notes this estate was filed on August 13, 1955 (R. p. 4). Obviously, by adding the heirs of the Rederick Gaffney Estate as a party to the action, the Appellants are conceding that this estate, which predates the Halsey estate, has an interest in the Property. As noted several times in the above-referenced Defendant’s Exhibit #2, the tax bills in the property were sent to the Rederick Gaffney Estate at the best-known address available to the Respondents Williams and Price. The Plaintiff’s Exhibit 9 shows the 2004 and 2005 tax receipts that purportedly were paid by the Appellant, with the address being in the records:

Gaffney Rederick Est
% Gwendolyn Dawkins
135 Iris Lane
Gaffney, SC 29341
(R. p. 131)

This address is the same address that all of the statutorily required notices were sent in this matter in 2013 and 2014. The Delinquent Tax Collector of Cherokee County Vernon L. Price further testified that there was no change of address in the computer system. (R. p. 68, line 9)

In Koth v. Pallachucola Club, 79 S.C. 514, 61 S.E. 77 (1908), the Court held that it was permissible to send notice to the heirs of someone who held formerly title to real property. The Court stated “It would be unreasonable to require tax officers to unravel complicated inheritances and state on the tax list the Christian and family names of all the heirs of persons deceased.” Id., 61 S.E. at 78. The Court went on to say “Designating the owners on the tax books, in the execution and in the advertisement as heirs of a particular person deceased, is notice to all such heirs that land in which they are interested is assessed for taxes, and will be sold unless the taxes are paid.” Id. The Delinquent Tax Collector of Cherokee County Vernon L.

Price testified that there was no documentation telling him who the heirs were to the Property (R. p. 71, lines 20-21). The trial judge saw and heard the witness, and was in a good position to judge his credibility and demeanor. Smith v. Barr, 650 S.E.2d 486, 375 S.C. 157 (Ct. App. 2007) Based upon the foregoing, the Respondents Williams and Price would assert that the Appellants received notice of the tax sale in advance pursuant to S.C. Code Ann. §12-51-40 (Supp. 2016).

2. THE TRIAL COURT DID NOT ERR IN HOLDING THAT THE TAX SALE WAS VALID, BECAUSE THE REQUIREMENTS OF CODE §12-51-40 WERE FOLLOWED EVEN IF THE NOTICES WERE NOT SENT TO BRENDA HALSEY.

For the reasons set forth above, the Respondents Williams and Price assert that the notices in this matter were correctly mailed to the heirs of the Rederick Gaffney Estate. Notwithstanding, the Appellants submit that notices were also required to be sent to Brenda Halsey. The Delinquent Tax Collector of Cherokee County Vernon L. Price testified that “Brenda has never come in about the Rederick Gaffney house,” and that “I’ve mentioned it to her, but she has never come in to me about it,” and lastly, “I don’t know for a fact that they are heirs to this property.” (R. p. 75, lines 5-15) Mr. Price testified that he on his own volition sent Ms. Halsey a notice about the end of the redemption period for the Property. (R. p. 75) He further testified that he sent her notice as a courtesy due to her connection to an adjacent property. (R. p. 93, lines 18-24) At no time in Mr. Price’s testimony did he ever state that he knew that Ms. Halsey had any legal or ownership interest in the Property, nor did he testify about seeing any documentation or any other evidence of any legal interest that Ms. Halsey may have had in the Property. Under the aforementioned Koth case, the Respondents Williams and Price were only required to send notice to the best known address of the heirs of the Rederick Gaffney

estate, which they clearly completed. Based upon this, the Respondents Williams and Price would assert that the trial court did not err in validating the tax sale.

3. THE TRIAL COURT DID NOT ERR IN GRANTING A DIRECTED VERDICT, BECAUSE THE APPELLANTS WERE AFFORDED THE OPPORTUNITY TO PRESENT EVIDENCE.

The standard in a civil matter for directed verdict is found in Rule 50, SCRCP, which states in relevant part:

- (a) Motion for Directed Verdict: When Made: Effect. When upon a trial the case presents only questions of law the judge may direct a verdict. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made.

In the instant case, the central issue was whether the Respondents Williams and Price had complied with the provisions of S.C. Code Ann. §12-51-40 (Supp. 2016), and whether their actions validated the tax sale of the Property. Pursuant to Rule 16(e) SCRCP, the parties held a pre-trial conference, and the trial court required that the validity of the tax sale be at the forefront of the issues (R. p. 58, lines 9-24). Naturally, if the actions taken by the Respondents Williams and Price were proper under S.C. Code Ann. §12-51-40 (Supp. 2016), and thus the tax sale was valid, all other remaining issues would be moot. Accordingly, the trial court heard from the primary person in charge of executing the real property tax sales in Cherokee County, Vernon L. Price (R. pp. 59-99). The Appellants were afforded an opportunity to cross-examine Mr. Price (R. pp. 72-98). During the cross-examination, the Appellants introduced twelve (12) different exhibits

(R. pp. 38-53). At this stage of the trial, the Appellants had any and all opportunity to question the procedure, records, and sufficiency of the tax sale from the primary person in charge of administering those duties. At the conclusion of the testimony of Mr. Price, the Respondent Redish moved for the trial court to approve the tax sale, which was granted (R. p. 99). The Respondents Williams and Price would submit that the Appellants had ample opportunity to present evidence that the Cherokee County Delinquent Tax Office improperly sent notice in this matter, but the evidence clearly demonstrates that the Respondents Williams and Price adhered to the notices as required by S.C. Code Ann. §12-51-40 (Supp. 2016).

4. THE TRIAL COURT DID NOT ERR IN GRANTING A DIRECTED VERDICT, BECAUSE THE TESTIMONY PRESENTED BY THE DELINQUENT TAX OFFICE SHOWED THAT THE REQUIREMENTS OF CODE §12-51-40 WERE FOLLOWED.

As stated in Arguments 1, 2, and 3 above, the Respondents Williams and Price submit that all required procedures under S.C. Code Ann. §12-51-40 (Supp. 2016) were followed. Under Rule 50, SCRPC, the court has the authority to grant a directed verdict upon motion of any party. The trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt. Law v. South Carolina Dept. of Corrections, 629 S.E.2d 642, 368 S.C. 424 (2006) In the instant case, the trial judge heard the testimony of the party with the most knowledge about the procedures of the delinquent tax sales in Cherokee County, and based upon the evidence presented, ruled in favor of Respondents Williams and Price. Based upon all the foregoing

arguments, the Respondents Williams and Price would submit that the trial court properly issued a directed verdict.

5. THE TRIAL COURT DID NOT ERR IN GRANTING A DIRECTED VERDICT, BECAUSE THE RULING WAS BASED UPON THE RECORD NECESSARY TO ADJUDICATE THE ISSUES

As already discussed *infra*, the Appellants were offered an opportunity to cross-examine the primary witness Vernon L. Price, and were able to submit exhibits to support their position. The trial judge correctly asserted that if the tax sale was rendered valid, there would be no need to hear any other evidence or testimony concerning any other issues that the Appellants were alleging. Because the trial judge was in a good position to judge the witness' testimony, the Respondents Williams and Price would submit that the trial court properly issued a directed verdict.

6. THE TRIAL COURT DID NOT ERR IN GRANTING A DIRECTED VERDICT BECAUSE THE DELINQUENT TAX OFFICE DID NOT HAVE ACTUAL NOTICE THAT BRENDA HALSEY WAS AN OWNER.

The Appellants assert that the Cherokee County Delinquent Tax Office had actual notice that Brenda Halsey was an owner of the Property, however, this is a misstatement of the facts. Mr. Price testified that "there was no documentation telling me who heirs were to any of this property." (R. p. 71, lines 20-21). Mr. Price went on to state that "I don't know for a fact that they are heirs to this property." (R. p. 75, lines 5-6) The Appellant Brenda Halsey had discussion with Mr. Price about a mobile home park that surrounded the Property. (R. p. 70 lines

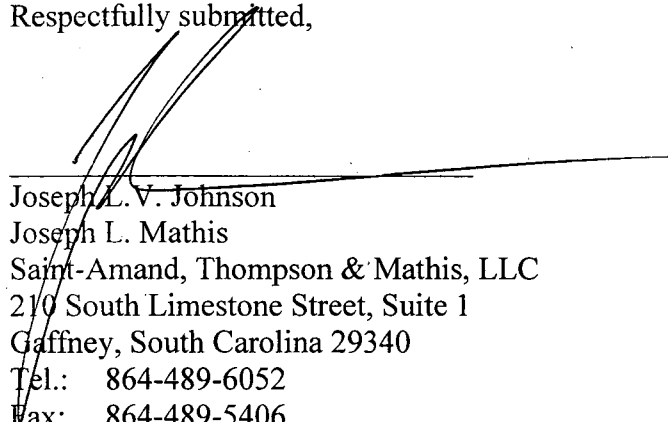
7-23) Mr. Price also testified that “Brenda has never come in about the Roderick Gaffney house (the Property). She has always come in about the Oglesby mobile home park.” (R. pp. 75, lines 10-11)

As already stated, the heirs of Roderick Gaffney are in question, and the true owners of the property have not been determined; this is not disputed. The Appellants added any heirs of the estate of Roderick Gaffney as a party to their action in order to find any potential owners. Regardless, Brenda Halsey never asserted, nor showed any proof, that she was an owner of the Property. Even if she were to make mere inquiries to the Delinquent Tax Office about the status of the taxes on the Property, this in no way would equate a legal or ownership interest. The Appellants, in their Complaint with nine (9) exhibits, or the twelve (12) exhibits submitted at trial, failed to show that Brenda Halsey had any ownership interest in the Property, and thus the Delinquent Tax Office would have no way of knowing to mail her notice of the impending tax sale. Accordingly, the Respondents Williams and Price would submit that they had no actual knowledge that Brenda Halsey would be a potential owner of the Property, and thus the tax sale was correctly validated by the trial judge.

CONCLUSION


For the reasons stated above, the Respondents Williams and Price would submit that they complied with the provisions of S.C. Code Ann. §12-51-40 (Supp. 2016), and the directed verdict of the trial judge should be upheld.

Respectfully submitted,

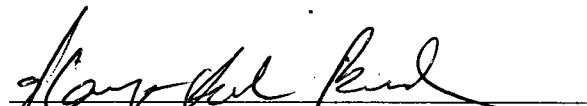


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November 2, 2017
Gaffney, South Carolina

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Gwendolette 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 Redish,
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Gwendolette Halsey Simmons, Elijah Redish, Jackie W. Williams,
as Cherokee County Treasurer, or the Successor in Office, Vernon
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Respondents,

CERTIFICATE OF COUNSEL

We certify that the Joint Final Brief of Respondents complies with South Carolina
Appellate Rule 211(b).

Respectfully submitted,



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