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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Circuit Court Judge Edgar W. Dickson

Case 2014-CP-18-1349

Appellate Case No. 2019-001255

Wendy Reed,

v.

County of Dorchester and Thomas Limehouse,

Appellant,

Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court err in holding Appellant had to prove that she was a grantee of the record owner after Respondent had refused to allow her to redeem her property because her name did not appear on a Deed or Probate Court Devise and Descent Form?
2. Did the Circuit Court err when it failed to find pursuant to S.C. Code Ann. § 12-51-90 (A) that Appellant was authorized to redeem her property because she was the defaulting taxpayer?

STATEMENT OF THE CASE

Appellant filed a Complaint on July 11, 2014 alleging multiple causes of action against Respondent Dorchester County arising from a tax sale of property located in Summerville, South Carolina. (hereafter "subject property.") (R. pp. 52-64.) Respondent Limehouse is named as a party as he was the purchaser of the subject property at the tax sale. (*Id.*) Respondents Dorchester County and Thomas Limehouse filed answers on September 22, 2014 and August 13, 2014, respectively. (R. pp. 65-83.) Appellant filed an Amended Complaint on January 6, 2015 (R. pp. 84-95) and Respondents Dorchester County and Thomas Limehouse filed answers to the Amended Complaint on January 28, 2015 and February 8, 2015, respectively. (R. pp. 96-113.) Respondent Dorchester County filed a Motion to Dismiss and the Court issued an Amended Order Denying that Motion on March 10, 2015. (R. pp. 4-6.) The case was transferred by consent to the Non-Jury Roster on January 4, 2016. (R. p. 7.) The parties filed Motions for Summary Judgment and filed Memoranda in support of their motions. (R. pp. 114-266.)

On May 5, 2017, Judge Dickson denied Plaintiff's Motion for Summary Judgment and denied in part and granted in part Defendant's Motion for Summary Judgment. (R. pp. 8-13.) Respondent Dorchester County filed a Motion to Alter or Amend the Judgment on May 17, 2017 (R. p. 267) which Plaintiff responded to on May 22, 2017. (R. pp. 273-276.) Judge Dickson

denied Respondent's Motion to Alter or Amend by Order dated June 5, 2017 and filed June 14, 2017. (R. p. 14.) This case was tried on March 9, 2018 and Judge Dickson signed and filed a Final Order on July 2, 2019. (R. pp. 15-27.) This appeal follows.

STANDARD OF REVIEW

Appellate courts determine questions of law de novo. Town of Summerville v. City of N. Charleston, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008). "In an action at law, on appeal of a case tried without a jury, the appellate court's standard of review extends only to the correction of errors of law." Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc., 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004). A trial judge's findings of fact will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. Townes Assocs. Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

STATEMENT OF FACTS

Genealogy

Appellant is the daughter of John L. Gregg. (R. p. 280.) Appellant's father, John L. Gregg, was a son of the late Walter L. Gregg, Sr. and Lucille B. Gregg. (R. pp. 336-340.) Lucille B. Gregg, Appellant's grandmother, inherited the subject property as sole heir of her mother, Elizabeth Perry, in 1983. (R. pp. 280-281, 336-340.) Lucille B. Gregg was the person whose name appears as owner on a 1983 Devise and Descent Form regarding the subject property. (R. pp. 336-340.)

Lucille B. Gregg died intestate 1983 shortly after her mother Elizabeth Perry, leaving the subject property to her husband Walter L. Gregg, Sr. and her ten (10) children, one of whom was

John L. Gregg, Appellant's father. (R. pp. 280, 336-340.) Appellant's father, John L. Gregg, died in 2004 and his estate was never probated. (R. pp. 297-298.)

Grantee of the Owner of Record

Bonita Daniels was the employee of Respondent who first told Appellant she could not redeem the subject property because her name was not on a deed. (R. pp. 281-282, 308.) Ms. Daniels had worked in Respondent's Delinquent Tax Office for more than 14 years and she knew who Appellant was. (R. pp. 305-306.) When Appellant tried to redeem her property, Ms. Daniels testified it was her understanding that only a person whose name was on the deed could redeem property. (R. p. 308.) Ms. Daniels read Appellant the names on a Devise and Descent Probate Court Form and told only her that one of those people could redeem the subject property because "If their names aren't on that list, they're not allowed to redeem the property." (R. pp. 295, 310, 312.) Ms. Daniels had a file for each delinquent property that contained a limited title search. (R. pp. 320-321.) Ms. Daniels told Appellant that Appellant needed to have her great grandmother's or grandmother's estate probated but when Appellant went to the Probate Court Office, Appellant was told it was too late to probate those estates. (R. pp. 283-285.)

Ms. Daniels did not recall discussing the heirs of the subject property with Appellant. (R. p. 311.) No one at Respondent's Delinquent Tax Office explained to Appellant why her name had to be on a deed or why she had to probate an estate. (R. p. 287.) No one at Respondent's Delinquent Tax Office ever asked to see Appellant's driver's license, birth certificate, or what her mother or father's names were, or for copies of their death certificates. (R. pp. 286-287, 289, 298.) Respondent's County Attorney John Frampton testified that individuals named on the Deed or Devise and Descent Form could redeem property. (R. pp. 330-331, 333.) He had previously emailed this same opinion to Appellant's attorney. (R. pp. 336-341.)

Defaulting Taxpayer

Appellant has lived all of her life at 817 West Richardson Avenue in Summerville, South Carolina (hereafter referred to as "subject property".) (R. p. 280.) Appellant paid taxes on the subject property in cash in person for at least eight (8) years. (R. p. 281.) Appellant did not pay the property taxes in 2011 so the property was sold at a delinquent tax sale in December 2012 to Respondent Thomas Limehouse. (R. pp. 289-290.) Appellant called and went to Respondent's Delinquent Tax Office after the tax sale to redeem her property. (R. p. 285.) Appellant had cash to redeem the property but she was told she could not redeem her property because her name was not on the deed or the Devise and Descent Form. (R. pp. 286, 313.) The Delinquent Tax Collector during the time Appellant was trying to redeem the subject property was Suzanna Davis. Ms. Davis testified that her office considered the last person whose name was on a deed or a probate form to be the defaulting tax payer, in this case Elizabeth Perry, Appellant's great grandmother. (R. p. 325.) The current Delinquent Tax Collector also testified that Appellant was not the defaulting taxpayer because her name was not on a deed, and even though Elizabeth Perry had been dead since 1983, he identified Elizabeth Perry as the defaulting taxpayer in 2011 because her name was on a deed in a probate form regarding the subject property. (R. pp. 323-324.)

ARGUMENT

- 1. The Circuit Court erred as a matter of law in holding Appellant failed to prove she was a grantee of an owner of record.**

The Circuit Court erred in holding it was Appellant's responsibility to find a person named on the Devise and Descent to agree to redeem her property. (R. p. 22.) There is no such requirement in the law. S.C. Code Ann. § 12-51-90 (A) permits "any grantee of the owner" to redeem property sold at a tax sale within twelve (12) months of the sale. The statute states:

The defaulting taxpayer, any grantee from the owner, or any mortgage or judgment creditor may within twelve months from the date of the delinquent tax sale redeem each item of real estate by paying to the person officially charged with the collection of delinquent taxes, assessments, penalties, and costs, together with interest as provided in subsection (B) of this section.
S.C. Code Ann. § 12-51-90 (A) (emphasis added.)

Heirs' property is property belonging to those persons designated by law to succeed to real property ownership in case of intestacy. Heirs' property owners are "grantees from the owner" so they must be permitted by S.C. Code § 12-51-90 (A) to law to redeem their property.¹ In fact, Respondent's County Attorney testified that if Appellant's father's name was on the Devise and Descent Form and he had died intestate, Appellant, as his daughter, would be his heir. (R. pp. 331-332.)

a. The Circuit Court misapplied S.C. Code Ann. § 12-51-90 (A).

Respondent's position, as repeatedly communicated to Appellant, was that if Appellant's name was not on a deed, or a Will or a Devise and Descent Form, she could not redeem her property. Lucille B. Gregg died intestate later that same year, leaving her goods and estate to her husband (1/3) and to her ten (10) children. (Def. Ex.3, Devise and Descent Form) Therefore, Respondent's Probate Court records clearly indicate that after 1983, the owners of record for the subject property included Appellant's father, John L. Gregg as he was listed as one of Lucille B. Gregg's ten (10) children. John L. Gregg was an owner of record in 1983 (and in 2011), not

¹ Tenancy in common is a form of concurrent ownership. Tenants in common each own a separate fractional share in undivided property. "Tenants in common may each unilaterally alienate their shares through sale or gift or place encumbrances upon these shares. They also have the ... right to use the property, to exclude from third parties from it, and to receive a portion of any income produced from it." United States v. Craft, 535 U.S. 274, 279-280 (2002) (internal citations omitted.) Possession of one tenant in common is the possession of all. See, e.g., Watson v. Little, 224 S.C. 359, 368, 79 S.E.2d 384, 387 (1953). Therefore, one tenant in common possesses property on behalf of all the tenants.

Elizabeth Perry.² As a grantee of an owner of record, Appellant was authorized by law to redeem this property.

b. The facts show Respondent never asked Appellant for proof that she was a grantee of an owner of record.

The Circuit Court erred in finding in Paragraph 10 of its Order that the Delinquent Tax Collector requested Plaintiff show she had an ownership interest in the property. (R. p. 25.) That is not a fact supported by the record. Rather, the Record indicates that when Appellant tried to redeem her property, she was told that if her name was not on a Deed, Will, or a Devise and Descent Form that she could not redeem her property. (R. pp. 282, 286, 308.) The Circuit Court erred by failing to acknowledge that unnamed heirs have an ownership in property.

The Court also erred in holding Appellant was responsible for proving her status as a grantee of an owner when the facts and evidence show Respondent would not have recognized such status, even if she had. (R. pp. 19-20) Appellant testified no one in the Delinquent Tax Office asked her who her parents or grandparents were or asked her for a driver's license or birth certificate. In fact, Bonita Daniels already knew who Appellant was as Ms. Daniels had worked in the Delinquent Tax Office for 14 years; Appellant had gone to that Office before to pay her taxes; Ms. Daniels identified Ms. Reed in the courtroom; Ms. Daniels was the person who had posted Appellant's property; and Ms. Daniels recalled talking to Appellant. (R. pp. 281, 285, 290-291, 305-306.)

When Appellant went to the Probate Court Office and responded to the question as to what year her grandmother died, she was only told it was too late to probate her grandmother's

² The Circuit Court erred in finding in Paragraph 2 of its Final Order that in 2011 the sole owner of record of Appellant's property was Elizabeth Perry as her daughter Lucille B. Gregg's estate had been administered and ownership transferred to Lucille B. Gregg's husband and ten (10) children in 1983. (R. p. 16.)

estate. (R. p. 283.) No one told her to probate her father's estate and no one asked her if she was related to Elizabeth Perry or Lucille B. Gregg; rather, she was directed outside of the County to a non-profit called the Center for Heirs Property Preservation. (R. p. 284.)

The fact that at a lower court hearing Appellant was asked by the Court to provide a long copy of her birth certificate is irrelevant as Appellant was never asked by Respondent for this information during the redemption period. There is no evidence in the record indicating Respondent would have allowed Appellant to redeem her property if she had proved she was related to a named devisee.

c. The Circuit Court's holding was not harmless error as Appellant could easily have proven she was a grantee of an owner of record.

The Circuit Court's holding was not harmless error as Appellant could easily have proven she was a grantee of an owner of record as she did when subsequently asked by a court to obtain and provide a long copy of her birth certificate. (R. pp. 4-6.) Respondent's County Attorney testified he agreed that if Appellant's father's name was on the Devise and Descent Form and her father had died intestate, Appellant, as his daughter, would be his heir. (R. pp. 331-332.)

2. The Circuit erred as a matter of law when it failed to hold Appellant was the defaulting taxpayer as that term is used in S.C. Code Ann. § 12-51-90 (A).

S.C. Code Ann. § 12-51-90 (A) not only allows "any grantee from the owner" to redeem property it also allows a "defaulting taxpayer" to redeem property. ("The defaulting taxpayer, any grantee from the owner, or any mortgage or judgment creditor may within twelve months from the date of the delinquent tax sale redeem..." S.C. Code Ann. § 12-51-90 (A) (emphasis added).)

Chapter 49 of the South Carolina Code is the alternate remedy for the enforcement and collection of delinquent taxes but it contains no definition of the term "taxpayer." However, S.C.

Code Ann. § 12-55-30 (B) states that the definitions in S.C. Code Ann. § 12-60-30 apply to the State's "Overdue Tax Debt Collection Act." Therefore, deference should be given to the definition of a taxpayer found in S.C. Code Ann. § 12-60-30 (29) which defines a "taxpayer" as a person "who is responsible for collecting and remitting a tax." Therefore, it follows that a defaulting taxpayer is the person responsible for collecting and remitting the tax who failed to remit the tax. The Circuit Court erred by not addressing Respondent's mistake of relying on a statute in Chapter 37 of Title 12, which Chapter addresses the assessment of taxes, instead of requiring Respondent to rely on the statutes in Chapters 49 and 51 which address the collection of taxes.

a. As the defaulting taxpayer, Appellant was authorized to redeem her property.

Any person responsible for remitting a tax to the Treasurer's Office or the Delinquent Tax Office is a "taxpayer," including an heirs' property owner whose interest in the property is as tenant in common. It is undisputed Appellant was the taxpayer and also that she failed to pay the taxes in 2011.³ As the defaulting taxpayer, Appellant was authorized by to redeem her property during the twelve months following a tax sale. In fact, the Circuit Court found that "It was Plaintiff that failed to pay taxes..." (R. p. 25, Par. O.) The Circuit Court erred by failing to acknowledge Appellant, as the defaulting tax payer, was eligible to redeem the subject property and, instead erroneously accepted Respondent's position that the term defaulting taxpayer relates to the person whose name appears on a deed. This was an error of law.

b. The Circuit Court misapplied S.C. Code Ann. § 12-37-610 to the facts in this case.

³ Appellant testified she paid the taxes on the subject property for eight years but failed to pay the 2011 taxes, so she is the defaulting taxpayer. Respondent produced no witnesses or evidence to rebut Appellant's testimony that she was the person responsible for paying the taxes on the subject property.

Respondent's County Attorney testified that the basis for his opinion that Elizabeth Perry (Appellant's great grandmother who had died in 1983) was the defaulting taxpayer was based on S.C. Code Ann. § 12-37-610. (Trans., p. 76.) S.C. Code Ann. § 12-37-610 which states:

Each person is liable to pay taxes and assessments on the real property that, as of December 31st of the year preceding the tax year he owns in fee, for life, or as a trustee, as recorded in the public records for deeds of the county in which the property is located or on the real property he has care of as guardian, executor, or committee or may have the care of as guardian, executor, trustee, or committee. (emphasis added.)

First, the Court should take judicial notice that someone who has been deceased since 1983 is not a "person" intended by the Legislature to be liable for taxes under this statute. Deceased persons do not "own" property, whether their name remains on a deed or not.

Second, a deceased person cannot "care for property" as this statute presumes. S.C. Code Ann. § 12-37-610 is intended to identify who among the living are responsible for taxes each year, not to be used to define the term "defaulting tax payer." S.C. Code Ann. § 12-60-30 (29) provides better authority for the definition of "defaulting taxpayer," especially as this statute is referenced in the Chapters of the Code pertaining to the collection of taxes.

The Circuit Court's failure to correct Respondent's misapplication of S.C. Code Ann. § 12-37-610 to the facts of this case results in the identification of a deceased person as the defaulting taxpayer in 2011 solely because her name appears on a deed regarding the subject property. (R. pp. 323-324.) However, not only did Elizabeth Perry stop having the opportunity to be a taxpayer, much less a defaulting taxpayer, at her death in 1983, but S.C. Code Ann. § 12-37-610 does not contain the word "defaulting" and it is error to read that word into a statute pertaining to the assessment of taxes. There is no evidence indicating the Legislature intended "defaulting taxpayer" to include deceased persons or that the term is limited to persons' whose

names appear on County records. The Circuit Court erred in finding Respondents were entitled to rely on S.C. Code Ann. § 12-37-610 to define the term “defaulting taxpayer.”

CONCLUSION

The Circuit Court erred in holding that Appellant had the responsibility of proving she was a grantee of an owner of record when she was never asked to do so by Respondent. Appellant was never asked by Respondent to provide such proof because Respondent’s position at the time was Appellant’s name had to be on a deed or Devise and Descent Form- not that she be a grantee of a person whose name was on a deed or Devise and Descent Form. In other words, the fact that Appellant was a grantee of an owner of record was not considered sufficient by Respondent, even though that is what S.C. Code Ann. § 12-51-90 (A) permits. Had Appellant been asked to prove John L. Gregg was her father, she could have, and she did so when asked, but she was never asked by Respondent to do so and never asked by anyone until after the redemption period had ended.

The Circuit Court also erred by not holding Appellant was the defaulting taxpayer. S.C. Code § 12-37-610 addresses assessment of taxes, not collection of taxes and does not contain the term “defaulting.” does not state that dead people can be defaulting taxpayers or that only persons whose names are on a deed are defaulting taxpayers. As the Circuit Court misinterpreted both S.C. Code Ann. § 12-51-90 (A) and S.C. Code Ann. §12-37-610, Appellant respectfully requests she be permitted to redeem her property; that the tax sale to Respondent Thomas Limehouse be voided; and Appellant be awarded attorney fees and costs awarded per S.C. Code Ann. § 57-15-300 as she has prevailed against the County.

Respectfully submitted,

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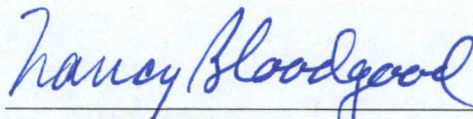
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CERTIFICATE OF COUNSEL

CERTIFICATE OF APPELLANT

The undersigned hereby certifies, in accordance with Rule 211 (b), SCACR, that Appellant's Final Brief is identical to Appellant's Initial Brief previously served under Rule 208 except for references to the Record on Appeal and corrections of typographical errors or misspellings.



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