

STATE OF SOUTH CAROLINA
IN THE SUPREME

APPEAL FROM CHEROKEE COUNTY
COURT OF COMMON PLEAS

THE HONORABLE GORDON G. COOPER
CASE NO. 2015-CP-11-0319

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

Appellants,

versus

Gwendolette Halsey Simmons, Kenneth Wayne Oglesby,
Roderick Terrill Oglesby, any heirs of the Roderick 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,

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MAR 04 2020

SC Court of Appeals

Of Whom,

Gwendolette 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.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

We, Richard H. Rhodes, Esquire and William H. Rhodes, Esquire are the attorneys for the Petitioners. We hereby certify that we did file a Petition for Rehearing and that the Court of Appeals did issue a ruling on our Petition. This has been included within the Appendix.

Richard H. Rhodes

William H. Rhodes

QUESTIONS PRESENTED

1. Did the Trial Court err in finding that the Tax Sale complied with Code §12-51-40 and was valid?
2. Did the Trial Court err in directing a verdict?

STATEMENT OF THE CASE

The real estate which is the subject of this appeal is an unoccupied home built by Brenda Halsey (Brenda) and her late husband, Bernay Halsey. The address of the property is 305 Leadmine Road. The subject property adjoins the home of Brenda; they never moved into the subject home because of Bernay's untimely death.

The subject property was sold at a Tax Sale on November 4, 2013. Brenda did not receive notice of delinquent taxes and did not receive notice of the ending of the redemption period as required by statute. She was sent a notice of the ending of the redemption period just 18 days before the redemption period ended (Tr. 113).

Brenda is an owner of three (3) tracts of land, all of which are contiguous. The three (3) tracts are: The subject vacant home – Tax ID #100-08-00-055.003; the home of Brenda – Tax ID #100-08-00-056.000; and a 6.5 acre tract known as the Mobile Home Park – Tax ID #100-08-00-055.000 (Tr. 105). [The 6.5 acre tract is owned by Gwendolette Halsey Simmons (Gwendolette) and her late brother, Bernay Halsey. Bernay died intestate in June 2004; his heirs are his wife, Brenda, and his four children, Bernay F. Halsey, Jr., Demont Halsey, Fredericka Halsey, and Brittney Halsey.] Gwendolette does not have any ownership of Brenda's home on the subject property. She was joined as a party only because she had been served with the notices surrounding the Tax Sale.

Since there were three adjoining tracts of land and since the county offices did not always use the correct addresses and tax map numbers, Brenda thought her taxes were paid. This is discussed in detail below.]

All of this land was formerly owned by family members of the parties. Like many old tracts of land, the chain of title and the legal descriptions are somewhat confusing. However, the family of Bernay Halsey has occupied this land since the 1960's (Tr. 37).

The Tax Deed for the subject property was issued to Elijah Reddish on November 12, 2014. On April 3, 2015, the Appellants brought this action to set aside the Tax Deed.

At the trial of the case, the court required the county to testify first and present evidence relating to the validity of the Tax Sale (Tr. 58). At the conclusion of the testimony of the Delinquent Tax Collector, the Respondents moved for a directed verdict (Tr. 99). This Motion was granted even though the Appellants did not have the opportunity to present any evidence. The Appellants timely filed an appeal.

By Opinion filed January 22, 2020, the Court of Appeals affirmed the trial court. A Petition for Rehearing was presented on February 4, 2020. By Order dated February 20, 2020, the Court of Appeals denied a rehearing.

I. **NOTICE WAS NOT PROPERLY GIVEN**

Code §12-51-40 specifies the procedures for selling property for delinquent taxes. The statute mandates that every reasonable effort is to be used to notify the taxpayer. The Delinquent Tax Collector is required to use the “best address” available, and the Code gives three (3) alternatives:

- The address shown on the deed,
- The property address, or
- Other corrected address which the Delinquent Tax Office might have actual knowledge.

The Code uses the word “shall” when the procedures are outlined. When “shall” is used in a statute, it is generally interpreted as being imperative or mandatory. Black’s Law Dictionary, revised 4th Edition. Thus, the notice requirements of the statute must be followed.

In the case at bar, notices were not sent to the property address. Instead, notices were sent to Gwendollette. The notices used the address of 135 Iris Lane. When a notice was finally sent to Brenda Halsey, it was 18 days before the end of the redemption period. This notice was sent to Brenda at 305 Leadmine Road. This was the address of the subject property and was the mailing address used by Brenda. [Reference is made to Exhibits Tr.38, 39, 40, 46, 48, 49, 123, and Tr.132.]

The most significant part of about this case is that the Delinquent Tax Office knew Brenda Halsey. The Court’s attention is invited to the following:

- Mr. Price testified that he had known Brenda was an owner of the property since 1997 (Tr. 70). Mr. Price also testified that the only two (2) people that he knew who would be owners of the property were Gwendollette and Brenda (Tr. 73). [Gwendollette does not claim any interest in the subject property. She was joined to the subject action only because she had been served by the Delinquent Tax Office; she was in default.]
- Brenda went into the Delinquent Tax Office in January 2006 and paid for the 2004-2005 taxes on the subject property Tr. 131);

- Mr. Price ultimately mailed an untimely notice to Brenda just days before the redemption period ended. He testified that his reason for sending her this notice was because the computer did not send one to her (Tr. 75).

When Mr. Price was asked why Brenda was not sent all of the notices, his response was not clear. He testified that the computer could only notify one person and that the Assessor's Office determined who that was (Tr. 74). When he was asked if he worked with the Assessor's Office about names to be used, he replied "no". Mr. Price also testified that he did not communicate with the Mapping Office as it might relate to owners of the property (Tr. 73).

It is apparent that the Delinquent Tax Office did not work with other county offices in determining ownership and taxation. These records show a history of the Halsey Family paying taxes and claiming ownership of the subject property. The Court's attention is invited to the following:

- Assessor's Statement dated November 21, 2001 (Tr. 46) – This document shows that Brenda went to the Assessor's Office on December 3, 2001 requesting that Bernay's name be shown as the owner.
- Delinquent Tax Office Statement dated March 31, 2011 (Tr. 48) – This document shows that Brenda was an owner of the property at 305 Leadmine Street.
- Payment of Taxes January 2006 (Tr. 131) – Brenda goes to the County Treasurer's Office and pays the 2004 and 2005 taxes on the subject property.
- S.C. DHEC Form dated February 1983 (Tr. 51) – This form shows Bernay Halsey and Lula Oglesby owned the property at 305 Leadmine Street.[This statement did not use tax map numbers.]
- Board of Public Works for Cherokee County Statement dated July 2002 (Tr. 52) – This shows Bernay Halsey owned the property at 305 Leadmine Street.[This document did not use tax map numbers.]

If the Appellants had had the opportunity to present their case, they would have introduced records from the county offices to show that the addresses and tax map numbers were not always consistent and the tax map numbers of the three (3) tracts were sometimes interchanged. Mr. Price admitted that "the whole parcel is uncertain" (Tr. 74). There is still

confusion: despite the fact that Brenda has lived in her home for over 50 years, she still is being taxed at a commercial rate and is not receiving her homestead exemption. This was pointed out to the Court of Appeals in the Petition for Rehearing.

The most unsettling part of this case is that Mr. Price knew that Brenda was an owner. However, he chose to allow the Assessor's Office to decide who got notices surrounding the Tax Sale. Shortly before the end of the redemption period, Mr. Price apparently realized that Brenda had not been given any notices and so he did send her that one letter just 18 days before the redemption period ended. The actions of the Delinquent Tax Office did not comply with Code §12-51-40.

Actions which are brought to set aside a Tax Sale are in equity. Smith v. Barr, 375 S.C. 157 (Ct. App. 2007). The Appellants respectfully request this Court to exercise its equity powers and to hold that the subject Tax Sale was invalid.

II. THE TRIAL COURT ERRED IN DIRECTING A VERDICT

The trial court directed that the proceedings would begin with testimony from the county relating to the validity of the Tax Sale. After the Delinquent Tax Collector had testified, the Respondents moved for a directed verdict. The court granted this Motion. As a result, the Appellants had no opportunity to present any evidence.

The only testimony presented by the county was from the Delinquent Tax Collector. No one testified from the Tax Office, the Assessor's Office, or the Mapping Office. [Part of the Appellants' case was to show the inconsistent records of the county offices – the addresses and tax map numbers were inconsistent and often incorrect. Prior to trial, counsel had agreed for the Appellants to introduce any county documents (Tr. 79).]

When the trial court granted the directed verdict, counsel for the Appellants pointed out that the Record was incomplete and that the Appellants had been denied the opportunity to present any evidence. The court's response was "well Mr. Rhodes, that's my ruling" (Tr. 103).

Circuit Court Rule 50 governs Motions for a directed verdict. The Rule offers a party the opportunity to move for a directed verdict at the close of evidence of the party opponent. In the case at bar, the Motion for directed verdict was made by the Respondents after they had presented their case in chief.

It is respectfully submitted that procedurally this was incorrect. The Respondents were given the opportunity to present their case, and then they moved for a directed verdict without giving the Appellants any opportunity to present evidence. This, in effect, is the "rule of one" and undermines the entire concept of due process.

In the case of LaSalle Bank National Association v. Davidson, 386 S.C. 276 (2009), our Court held that "due process of law requires that a person shall have a reasonable opportunity to be heard...." *id* at p. 279. In the case at bar, the Appellants did not have an opportunity to be heard. They were denied the opportunity to present any evidence and their case was dismissed.

After the trial court directed a verdict, the Appellants filed a 59(e) Motion and attached some of the exhibits which would have been used if they had been allowed to put up testimony. One of these was a summary of the chain of title of the subject property (Tr. 37). The abstract of the chain of title includes the Deed of Distribution filed in Deed Book 71, page 1331. This titled the subject property in the names of the Appellants.

The abstract also shows the estate file of Bernay Halsey which was probated in Estate File Number 2014-ES-11-0104. The Inventory and Appraisement of that estate file identifies the subject property at 305 Leadmine Road.

The significance of the Deed of Distribution and the Probate Estate File is that there is record notice in the Probate Court of Cherokee County and in the Register of Deeds of Cherokee County that the subject property was owned by the Appellants.

A Tax Sale is considered to be a "harsh remedy", and the effects of such a sale are drastic. Because of that, our Courts have protected the rights of homeowners so that they do not lose their property unjustly. The protection afforded a property owner would certainly include the opportunity to be heard.

In the case at bar, the Appellants were owners of three (3) tracts of land. They had a history of going to county offices to assert their ownership and could show payments of taxes, to include the subject tract. In light of this, they had the right to believe that they were paying their taxes. For them to lose their property, particularly without having the chance to be heard is an injustice.

The Appellants believe that the records that they were able to put into the Record, and the testimony that they were able to present through cross examination, documents that the Tax Sale was not done properly. If this Court should find that the Tax Sale was valid, then the Appellants respectfully submit that the case should be remanded so that they have the opportunity to present their evidence.

CONCLUSION

The Record contains sufficient documents to show that the Tax Sale was not done properly. The Appellants have a history of coming forward and claiming ownership of the property. This was required because of the confusion of the county offices surrounding the subject property.

Since the Appellants owned three (3) tracts of land, all of which were contiguous, and since they made numerous efforts to document their ownership, to include paying taxes, they had a right to believe that their taxes were being paid.

The Delinquent Tax Office knew that Brenda was an owner. Notwithstanding, she was not given notices pursuant to Code §12-51-40. The Delinquent Tax Office admittedly deferred this to the Assessor's Office and did not work with them to insure that the proper owner was being notified. [And, the Delinquent Tax Office just 18 days before the redemption period ended did send a notice to Brenda.] The failure of the Delinquent Tax Office to comply with Code §12-51-40 is made more egregious by the fact that Mr. Price knew that Brenda was an owner.


The loss of land is a tragic event, but it is made worse when a person loses his land and is not allowed to present evidence at his own trial.

Actions to set aside a Tax Sale are equitable. The Appellants respectfully request this Court to exercise its equity powers and make a finding that the Tax Sale was improper.

Respectfully submitted,

Burts, Turner & Rhodes
Attorneys for the Appellants
260 North Church Street
Spartanburg, SC 29306
(864) 585-8166

By: _____


Richard H. Rhodes
William H. Rhodes

February 27, 2020

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY
COURT OF COMMON PLEAS

THE HONORABLE GORDON G. COOPER
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versus

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Roderick Terrill Oglesby, any heirs of the Roderick Gaffney Estate,
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Successor in Office, Vernon L. Price, as Delinquent Tax Collector of
Cherokee County, or the Successor in Office,

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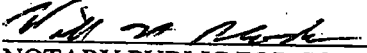
PROOF OF DELIVERY

This is to certify that on the 2nd day of March, 2020, the undersigned, secretary to Richard H.
Rhodes, Esq., served a copy of the PETITION FOR WRIT OF CERTIORARI by depositing a copy of
the same into the United States Mail, postage pre-paid and in the correct amount to the following:

The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211


JO ANN CHAMPION

SWORN to before me this 2nd
day of March, 2020.

 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3/23/27

BURTS TURNER & RHODES
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SAM BURTS (1907 - 1982)
NOEL TURNER (1928 - 2011)
RICHARD H. RHODES
M. NOEL TURNER, III
WILLIAM H. RHODES

March 2, 2020

The Honorable Daniel E. Shearouse
Clerk, The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

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SC Court of Appeals

Re: Brenda Halsey, et al vs. Gwendollette Halsey Simmons, et al
2015-CP-11-0319

Dear Mr. Shearouse:

Pursuant to Rule 242, I have enclosed the following:

1. An original and six (6) copies of a Petition for Writ of Certorari;
2. Two (2) copies of an Appendix (one of which is unbound);
3. A filing fee in the amount of \$250.00;
4. An Affidavit of Mailing showing proof of service on counsel for the Respondent and the Clerk of The Court of Appeals.

Sincerely,

Richard H. Rhodes

RHR/jc
Enc.

cc: Joseph L.V. Johnson, Esquire
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The Honorable Jenny Abbott Kitchings
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