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SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM CLARENDON COUNTY
Master-in-Equity, Joseph K. Coffey

Case No.: 2019-CP-14-00263
Appellate Case No: 2020-001531

Alvetta L. Massenburg

Appellant,

vs.

**Clarendon County Treasurer, Clarendon
County Delinquent Tax Collector,
Blacktop Ventures, LLC,**

Respondents,

INITIAL BRIEF OF RESPONDENT BLACKTOP VENTURES, LLC

s/ Scott F. Talley

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March 31, 2021

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STATEMENT ON ISSUE OF APPEAL

1. DID THE MASTER CORRECTLY FIND THAT THE MANDATORY STATUTORY POSTING OF THE NOTICE OF LEVY FOR DELINQUENT TAXES ON THE SUBJECT PROPERTY WAS CONSPICUOUS?

STATEMENT OF THE CASE

Alvetta L. Massenburg is a delinquent tax payer who filed her Complaint on May 30, 2019 seeking to set aside a tax sale in Clarendon County. In denying the relief sought by the Appellant in her Complaint, Respondent Blacktop Ventures, LLC filed a counterclaim seeking to quiet title in the subject property, which it acquired by Tax Deed from Clarendon County on December 19, 2017.

Since 2012, Appellant Massenburg has resided in an apartment in Charlotte, NC. As indicated by the Appellant, the County sent all required statutory notices to her by U.S. certified mail to her apartment address in Charlotte, NC. Appellant Massenburg did sign for one of the letters at the address used by the County for all required notices. According to Appellant, she first learned that there were issues with the property on or about January 2, 2020 when she received a call from her uncle that trees were being cut from the subject property. Some five plus months later, the Appellant filed her initial Complaint in Clarendon County.

In carrying out its statutory duties regarding the sale of real property in South Carolina for delinquent taxes, the County posted a Notice of Levy on the property by and through its agent Palmetto Posting Inc., as required by law. The issue in this case is whether or not the posting of the property by Palmetto Posting, Inc., on behalf of Clarendon County was conspicuous. At the trial held October 1, 2020, the Master in Equity, by and through its Order dated November 3, 2020 found that the County fully complied with the requirements in S.C. Code § 12-51-40 in conducting the tax sale for the subject property. The Master found that the statutory requirements for posting

the Notice of Levy which was completed by Palmetto Posting, Inc., on July 26, 2017 met the requirements of South Carolina law. In addition, the Master quieted title to the property in Respondent Blacktop Ventures, LLC by virtue of it being the successful bidder at the tax sale and it having complied with all requirements of a tax sale bidder in South Carolina. Appellant filed her Notice of Appeal on November 19, 2020.

STANDARD OF REVIEW

The standard of review for a case heard by a Master permits this Court to determine facts in accordance with our own view of the preponderance of the evidence. Smith v. Barr, 375 S.C. 157, 650, S.E.2d 488 (Ct. App. 2007) (citing Tiger, Inc. v. Fisher Agro, Inc., 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989); Folk v. Thomas, 344 S.C. 77, 80, 543 S.E.2d 556, 557 (2001)). If this Court chooses to find facts, it must state such findings of fact and its reasoning for those findings. Smith v. Barr, 375 S.C. 157, 650, S.E.2d 488 (Ct. App. 2007) (citing Dearybury v. Dearybury, 351 S.C. 278, 283, 569 S.E.2d 367, 369 (2002)). This scope of review does not require the Court to disregard the Master's factual findings because the Master saw and heard witnesses and was in a better position to judge their credibility and demeanor. Smith v. Barr, 375 S.C. 157, 650, S.E.2d 488 (Ct. App. 2007) (citing Godfrey v. Heller, 311 S.C. 516, 518, 429 S.E.2d 859, 860 (Ct. App.1993)).

STATEMENT OF FACTS

Taxes for the subject property were due and owing for the year 2016. (Transcript P.7, L. 12). The first notice about taxes was sent to the Plaintiff in April, 2017 to her address 5724 Sloping Oaks Rd., Apt 204, Charlotte, NC, 28212 (R.11 L.4) (Appellant's Exhibit 9 and 10). Another notice was sent by certified mail to the same address (R.12 L.23) (Appellant's Exhibit "11"). Certified mail was returned. On July 26, 2017, a Notice of Levy was issued and placed on the

subject property (R.14 L.7) (Appellant's Exhibit "12") (Clarendon County Exhibit "3"). The posting was done by Palmetto Posting, Inc., which is contracted by Clarendon County for such purposes (R.16 L.16). All notices required to be sent by the County were sent to the address on file, which is the address that was on the Deed, whereby the Appellant took title to the subject property (R.19 L.21). After the tax sale, the County sent other required correspondence to the Appellant. The Appellant actually signed for an overage letter at the same address all other notices have been sent (R.21 L.10). The letter signed for by the Appellant is dated April 24, 2019. (Appellant's Exhibit "13"). The information provided to the Appellant during the tax sale as required by law was based on research of public records done by Clarendon County (Clarendon County Exhibit "1"). The County further testified that the Appellant while receiving notice of the overage at her apartment address in Charlotte did not make a claim to the overage despite notice (R.39 L.15). The County was not aware of any other claims to the property other than that of Respondent Blacktop Ventures, LLC (R.41 L.1-7). Pursuant to South Carolina law, Blacktop Ventures, LLC met the requirements as successful bidder and paid all taxes due on the property since acquiring its ownership (R.41 L.15).

Appellant testified on the date of the trial that she still resided at 5724 Sloping Oaks Rd., Apt 204, Charlotte, North Carolina, and that she received her mail at that location in a kiosk (R.43 L.25). Appellant further acknowledges signing for the overage letter on April 24, 2019 (R.46 L.11). Appellant lived at that address since 2012 (R.51 L.12) (Appellant's Exhibit "8"). While living at that address, Appellant paid property taxes for the years, 2013, 2014, and 2015. Appellant was aware of the requirement to notify the County when she moved of her present address (R.55 L.17). Appellant acknowledges that the address that the County used was the correct address (R.56, L.21). Appellant did nothing in regards to the subject property in 2017 and 2018 (Transcript P.59

L.4-10). Appellant previously had property sold for taxes in South Carolina for non-payment (R.61 L.8-10).

The Appellant relies upon the testimony of her uncle, Frank Frierson, in her attempt to establish that the posting of the subject property as required by law is not conspicuous. Yet, in reviewing County Exhibit "3", Frierson acknowledged that he did not see a posting, but that there could have been a posting (R.93 L.22-23 and R.94 L.1-2). Frierson also stated that if the coordinates shown on County Exhibit "3" led to a location on the subject property, he would agree that the property was posted (R.95 L.10-11). To Quiet Title, Clarendon County, by and through its Treasurer, Matt Evans indicated that Blacktop Ventures, LLC had done all things necessary as a successful bidder to acquire the property via Tax Sale (R.126 L. 2-5).

ARGUMENT

1. The evidence presented at trial supports the Master's finding that the statutory requirements of conspicuous posting was properly completed.

The tax sale for the subject property was to be conducted pursuant to S.C. Code § 12-51-40. Section 12-51-40 of the South Carolina Code (2014) lays out the statutory procedure for the sale of a defaulting taxpayer's property. The delinquent tax collector is required to mail a notice of delinquent property taxes to the defaulting taxpayer. S.C. Code § 12-51-40(a). If the taxes remain unpaid after thirty days, the delinquent tax collector is permitted to take exclusive possession of the property by mailing notice to the defaulting taxpayer by "certified mail, return receipt requested-restricted delivery." § 12-51-40(b). However, if the certified mail notice is returned, the delinquent tax collector must "take exclusive physical possession of the property against which the taxes ... were assessed by posting a notice at one or more conspicuous places on the premises,

... reading: 'Seized by person officially charged with the collection of delinquent taxes ... to be sold for delinquent taxes.'" § 12-51-40(c).

In his Order, the Master found based on all evidence and testimony presented that the Appellant and her witness did not see the posting on the property. However, as admitted by Frank Frierson and his testimony, that does not mean the property was not properly posted (Transcript P.93, L.22-23 and P. 94, L.1-2). The only evidence before the Court contained in County Exhibit "3" was that the property was posted as required by law on the property based on the coordinates in the evidence. The issue before the Court was whether or not the posting was conspicuous. County presented testimony that the road upon which the posting was placed was frequently traveled, such that it required more maintenance than any dirt road in Clarendon County. Appellant, in challenging the 2017 Tax Sale, never subpoenaed Palmetto Posting, never deposed Palmetto Posting or did anything other than present interested witnesses to testify on her behalf that they did not see a posting. That does not establish that the posting did not occur. In fact, it was Appellant that introduced evidence of the posting at the trial held in this matter in October, 2020.

The appellate courts of this state have long acknowledged that the trier of fact is in the best position to evaluate the credibility of the evidence and the witnesses. "The admission and rejection of testimony is largely within the trial judge's sound discretion and will not be disturbed on appeal absent a showing that the trial court abused its discretion or its decision was controlled by an error of law." Mishoe v. Qhg of Lake City, Inc., 621 S.E.2d 363, 366 S.C. 195 (S.C. 2005) (citing Ippolito v. Hospitality Mgt. Assocs., 352 S.C. 563, 569, 575 S.E.2d 562, 566 (Ct. App. 2003)).

The Master found compliance with all statutory requirements after Appellant had the opportunity to introduce any and all relevant evidence of the posting at the trial in this matter. Given the evidence of proper posting, as well as the fact that the witness testifying said posting

was not conspicuous was biased in favor of Appellant and/or otherwise interested, the Master properly found that notice was conspicuously posted in accordance with statutory requirements.

CONCLUSION

Respondent Blacktop Ventures, LLC respectfully submits to the Court that the preponderance of the evidence including that admitted into evidence by the Appellant at the trial, was that the property was posted conspicuously and that all of the requirements of the tax sale procedure were met. The Order of the Master should be affirmed in regards to the conduct at the tax sale as well as its Order Quieting Title in the subject property to Blacktop Ventures, LLC as the successful bidder at the tax sale having fully complied with all requirements placed thereon.

March 31, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Designation of Matter to be Included in Record on Appeal and Initial Brief of Respondent Blacktop Ventures, LLC has been served via U.S. Mail this 31st day of March, 2021 upon: **John M. Bleecker, Jr., Esquire**, PO Box 148, Charleston, SC 29402, **A. Peter Shahid, Jr., Esquire**, 89 Broad St., Charleston, SC 29401 and **William H. Johnson, Esquire**, P.O. Box 137, Manning, SC 29102.

/s/ Hannah L. Hinson
Hannah L. Hinson, Paralegal



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March 31, 2021

VIA U.S. MAIL

Jenny A. Kitchings, Clerk
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1220 Senate Street
Columbia, SC 29201

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Re: Alvetta L. Massenburg v. Clarendon County Treasurer et al.
Appellate Case No.: 2020-001531

Dear Clerk:

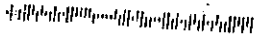
Please find enclosed a Designation of Matter to be Included in Record on Appeal and the Initial Brief of Respondent Blacktop Ventures, LLC, together with a Certificate of Service for same.

Sincerely,
TALLEY LAW FIRM, P.A.

12/1 Scott F. Talley
Scott F. Talley

/hh

Copy to: John M. Bleecker, Jr., Esq (U.S. Mail)
Albert Peter Shahid, Jr., Esq (U.S. Mail)
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