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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin V. Dukes III, Master in Equity

Appellate Case No. 2020-001148

Juan Antonio Adame Tapia
and Oscar Moreno

Appellants,

vs.

Maria Walls, in her capacity
As Treasurer for Beaufort
County, Berkeley Hall Club,
Inc., Colleton River Plantation
Club, Inc., Callawassie Island
Property Owners Association,
Inc., Belfair Property Owners
Association, Inc. et al

Defendants

Of which Maria Walls in her
capacity as Treasurer for
Beaufort County is

Respondent

INITIAL BRIEF OF THE RESPONDENT

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QUESTION PRESENTED

1. DID THE TRIAL COURT ERR IN FINDING THAT THE APPELLANTS HAD NO LEGAL OR EQUITABLE BASIS TO CHALLENGE THE VALIDITY OF THEIR PURCHASES AT TAX SALE?

STATEMENT OF THE CASE

1. Procedural history

The Appellants purchased multiple properties at the October 2014 Beaufort County Tax Sale. The Appellants filed this action to set aside the relevant tax sales. A motion for summary judgment was filed by Maria Walls, Treasurer of Beaufort County (hereinafter “Treasurer”). This motion was based on facts stipulated to by both parties for the purpose of the motion for summary judgment only. On July 10 2020, the trial court granted the summary judgment motion and dismissed the Appellants action to set aside the tax sales. The Appellants did not move to reconsider but directly filed this appeal by notice of appeal on August 7, 2020. This appeal follows.

2. Facts before the trial court

The parties have entered into stipulations of fact for the purpose of the motion for summary judgment only. **(See Stipulations of Fact)** The facts as agreed upon by the parties as it relates to this appeal are that the Appellants individually and/or together were the successful bidders on eight properties at the October 6, 2014 Beaufort

County Tax Sale. These properties were located in various developments and plantations that require the payment of yearly assessments or club memberships. The Appellants were unaware of the assessments at the time they bid on the relevant properties. After the relevant bids were accepted by the Treasurer, but before the end of the redemption period a year later in October 2015, the Appellants received notice from the various Homeowners associations and Clubs that they were going to be assessed thousands of dollars in assessments and membership dues as the owners of the relevant properties. For the purpose of the motion for summary judgment and this appeal only, it is stipulated that the Appellants communicated several times with the Treasurer's Office prior to the end of the redemption period seeking to cancel the sale and/or assign their bid, and on at least one occasion, they were advised by an unknown employee of the Treasurer that they were not allowed to do that. This statement was partially in error as it was made prior to October 2015. While bids are not allowed to be cancelled, bids may be assigned if such assignment is made prior to the end of the relevant redemption period.

The properties were not redeemed during the redemption period. The cost associated with recording the tax sale title set forth in S.C. Ann. §12-51-130 were collected from the Appellants as part of the bid payment at the tax sale according to the standard tax sale procedure of the Treasurer. The Treasurer recorded the tax sale deeds subsequent to the end of the redemption period over the objection of the Appellants.

STANDARD OF REVIEW

“An action to set aside a tax sale lies in equity.” King v. James, 388 S.C. 16, 24, 694 S.E.2d 35, 39 (Ct.App.2010). “[The] scope of review for a case heard by a[m]aster permits us to determine facts in accordance with our own view of the preponderance of the evidence.” Id.

ARGUMENT

THE TRIAL COURT CORRECTLY FOUND THE APPELLANTS HAD NO LEGAL OR EQUITABLE BASIS TO CHALLENGE THE VALIDITY OF THEIR PURCHASES AT TAX SALE.

The Appellants contend that the court erred in granting summary judgment because the relevant tax sales should be set aside for two reasons:

- 1) The Treasurer erred in providing the Plaintiffs with incorrect information in that it advised that they could not cancel or assign their bids prior to the expiration of the redemption period when in fact S.C. Code Ann 12-51-90(A) appears to permit just such an action;
- 2) The Treasurer erred in recording the Tax Deeds for the relevant properties without first collecting from the bidder/purchaser recording fees and costs as required by S.C. Code Ann. §12-51-130;

Initially, it should be noted that these arguments do not address the ultimate determination that as purchasers at tax sale they had no legal or equitable basis to challenge the validity of the tax sale. Not only do they not specifically address the trial

court's ruling in the Appellants' brief, but they never filed a motion for reconsideration pursuant to Rule 59(e), SCRC, to raise any issue or error to the trial court's attention. Because the Appellants never raised any issue with the trial court's ruling to its attention, there is no issue with that ruling preserved for review by this court. On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) Similarly, the failure to provide argument or supporting authority for an issue renders it abandoned Joubert v. South Carolina Dep't of Soc. Servs., 341 S.C. 176, 192-93, 534 S.E.2d 1, 9-10 (Ct.App.2000). Since the Appellants have not preserved any argument challenging the order of the trial court, the ruling of the trial court should be affirmed.

Furthermore, even if the court does not find that the Appellants failed to preserve any basis for the appeal of the trial court's order, as a matter of law, the grounds for appeal raised by the Appellants do not support the voiding of the tax sale and as such the causes against her should be dismissed and she should be granted summary judgment in this matter.

- a) Even if Treasurer's employee erred, as stipulated, in providing the Appellants with incorrect information in that it advised that they could not cancel or assign their bids prior to the expiration of the redemption period this does not warrant the voiding of the tax sale.

The Appellants contend that the tax sale should be set aside since some Treasurer's employee provided them with incorrect information regarding the ability to cancel or assign a bid prior the end of the redemption period when in fact S.C. Code Ann 12-51-90(A) appears to permit just such an action. This is not the case, as the Appellants had an adequate means of knowledge to make them aware that assignment was an

available option prior to the end of the redemption period, and are not entitled to the relief requested

An action to set aside a tax sale lies in equity. See Godfrey v. Webb, 277 S.C. 246, 285 S.E.2d 883 (1982); Folk v. Thomas, 336 S.C. 466, 520 S.E.2d 327 (Ct.App.1999). Our Courts have previously held that a Plaintiff is not entitled to equitable relief when it is provided incorrect information by a County employee when he has “the means of knowledge” to determine the correct information. In Quail Hill, LLC v. County of Richland, the Plaintiff sought to estop the County from enforcing its zoning ordinance when an employee of the County had previously advised them of zoning for a property that was incorrect. The Court ruled that the Plaintiff had a “means of knowledge” of the correct zoning based on the County ordinance and zoning map and the Plaintiff was not entitled to equitable estoppel to obtain the erroneous zoning.

Similarly, here while it is stipulated for the purpose of this motion and appeal, that the Treasurer’s employee provided erroneous information to the Plaintiffs related to their ability to assign the property, the Appellants had access to at least two sources of information that would have informed them that assignment was an available option. Just as in Quail Hill, the Appellants have access to the controlling statute that provides, in relevant part, “that if prior to the expiration of the redemption period, the purchaser assigns his interest in any real property purchased at the delinquent tax sale, the grantee from the successful bidder shall furnish the person officially charged with the collection of delinquent taxes a conveyance...” S.C. Code Ann. §12-51-90(A). Additionally, the 2014 Bidder Cards provided and signed by the Appellants make specific reference to

assignees rights. (See **2014 Tax Sale Bidder Cards Attached as Exhibit A and B to Memo in Support of Motion for Summary Judgment**).

Moreover, the Treasurer knows of no jurisprudence in equity or in law that would allow the Purchaser at tax sale to challenge the validity of the sale. Importantly, the cases in this state which have allowed the setting aside of a tax sale, are those in which the delinquent taxpayer has challenged the notice requirements of the sale and the Court has found a procedural defect in the notice of and/or sale itself.

Specifically these actions are brought as actions under S.C. Code Ann. §12-51-160 and are expressly referenced as “an action for the recovery of land sold pursuant to this chapter or for the recovery of the possession.” While the Appellants claim that this action is one to quiet title, very clearly it is not. It is an action to void a tax sale. While it is true our courts have consistently held “the enforcing agencies of government to strict compliance with all the legal requirements surrounding tax sales.” Dibble v. Bryant, 274 S.C. 481, 483, 265 S.E.2d 673, 675 (1980); that is specifically in those actions to set a tax sale aside or where the delinquent taxpayer seeks to recover their property and defend against a purchaser looking to quiet title. It is important to note that “all requirements of the law leading up to tax sales [that] are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded [as] mandatory and are to be strictly enforced.” Donohue v. Ward, 298 S.C. 75, 83, 378 S.E.2d 261, 265 (Ct. App. 1989) (emphasis added)(citing Osborne v. Vallentine, 196 S.C. 90, 94, 12 S.E.2d 856, 858 (1941)). The equitable and public policy behind requiring strict construction of tax sale statutes is clearly for the benefit of the delinquent taxpayer seeking to recover the property, and not for a purchaser with buyer’s remorse.

Based on the foregoing, as a matter of law there is no legal or equitable principle upon which the Appellants may rely to void a tax sale based on erroneous information from a County employee, when they had a means of knowledge for that same information.

- b) The Treasurer did not err in recording the Tax Deeds for the relevant properties without first collecting from the bidder/purchaser recording fees and costs as required by S.C. Code Ann. §12-51-130.

The Appellants also assert that the Treasurer erred in recoding the Tax Deeds in question in this matter without first collecting from the bidder/purchaser recording fees and costs as required by S.C. Code Ann. §12-51-130. However, the Treasurer did collect from the bidder/purchaser recording fees and costs as required by S.C. Code Ann. §12-51-130 prior to recording.

The parties have stipulated that it is the testimony of Kimberly Chesney that it was the practice of the Treasurer at the October 2014 tax sale to collect the recording fees at the time the bid amount was received. The purchaser summary receipt shows fees collected above the sale price for each of the subject properties. (**See Purchaser Summary Sheet**) Section 12-51-130 simply requires that “the successful purchaser, or assignee, shall pay the amounts [of the costs and fees] to the person officially charged with the collection of delinquent taxes before delivery of the tax title to the clerk of court or register of deeds...” It does not say when this must occur. Therefore, collection of these funds at the time of payment of the bid is not prohibited, nor is it in violation of the statutory scheme, and the tax title was properly recorded. Furthermore, no court has ever found that an entire tax sale must be set aside because the purchaser regretted the purchase and sought to block the recording of the deed.

It is respectfully submitted that the Treasurer did not err in collecting the recording fees with the payment of the bid price and using those sums to record the tax title.

CONCLUSION

Based on all of the above, the Appellants have provided no basis for their challenge to the relevant tax sales and the trial court's order below, and this court should affirm the ruling of the trial court finding that summary judgment is appropriate and the Appellants' claim against Walls should be dismissed.

HOWELL, GIBSON & HUGHES, P.A.

By: 

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June 22, 2021

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APPEAL FROM BEAUFORT COUNTY
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Property Owners Association,
Inc., Belfair Property Owners
Association, Inc. et al

Defendants

Of which Maria Walls in her
capacity as Treasurer for
Beaufort County is

Respondent

Respondent's Certificate of Service

The undersigned counsel hereby certifies that he has served the foregoing Respondents Initial Brief and the Respondents Designation of Matter upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on 24 day of June, 2021 addressed to the following:

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SC Court of Appeals

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June 24, 2021

The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
1015 Sumpter Street
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Re: Juan Antonio Adame Tapia and Oscar Moreno vs. Maria
Walls in her capacity as Treasurer for the County
of Beaufort
Civil Action No.: 2020-001148
Our File No: 11861 MBL

Dear Ms. Kitchings:

Please find enclosed herewith for filing Respondent's Designation of Matter, the Respondent's Initial Brief and the corresponding Certificate of Service with regard to the above referenced matter. These documents have been efiled as well as placed in the mail, and I would appreciate your filing the same and returning a filed clocked copy to me electronically.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.



Mary Bass Lohr

MBL/bms
Enclosure