

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

GRETCHEN M. BOGER-O'BRYAN, :  
EXECUTRIX OF THE ESTATE OF :  
KENNETH BOGER :

Objector/Appellant :

vs. :

No. 24-CV-0087

CARBON COUNTY TAX CLAIM :  
BUREAU, :

Respondent/Appellee :

and :

David Keller :

Intervenor/Appellee :

William E. Vinsko Jr., Esquire

Counsel for  
Objector/Appellant

Robert S. Frycklund, Esquire

Counsel for  
Respondent/Appellee,  
Carbon County Tax Claim  
Bureau

David Keller

Intervenor/Appellee

MEMORANDUM OPINION

Matika, J. - February 27, 2025

This Opinion is provided to the Commonwealth Court in response to the Appeal filed on December 18, 2024 by the Plaintiff/Appellant, Gretchen M. Boger-O'Bryan, Executrix of the Estate of Kenneth Boger (hereinafter "Appellant"). For the reasons stated herein, this Court respectfully requests the Appellate Court to grant the Appeal and reverse our decision.

## FACTUAL AND PROCEDURAL BACKGROUND

Kenneth Boger (hereinafter "Boger")<sup>1</sup> was the owner of real property located at 119 Hunt Trail, Penn Forest Township, Carbon County, Pennsylvania. The subject property was listed and sold for delinquent 2021 real estate taxes at the Carbon County Tax Sale which occurred on Friday, November 3, 2023. David Keller (hereinafter "Keller") purchased the property at the tax sale. The sale was originally scheduled to take place on September 22, 2023, but was rescheduled due to external factors beyond the Tax Claim Bureau's (hereinafter "the Bureau") control which prevented the Bureau from verifying owners' current mailing addresses. The Plaintiff filed objections to the Tax Sale on January 8, 2024 stating the Bureau failed to follow laws regarding proper notice under the Pennsylvania Real Estate Tax Law at 72 P.S. §5860.101 et seq. (hereinafter "RETSL") and requested the sale be reversed. David Keller filed a Petition to Intervene on January 17, 2024 which was granted.

A hearing on the tax sale objections took place on August 26, 2024. Renee Roberts (hereinafter "Roberts"), Director of the Carbon County Tax Claim Bureau, testified at the August 26, 2024 hearing on behalf of the Bureau. Roberts testified that the Bureau

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<sup>1</sup> Kenneth Boger was the original objector in this case, but he passed away on May 2, 2024. Gretchen M. Boger-O'Bryan was appointed as the Executrix on May 29, 2024 and has substituted her appearance in this case.

properly posted the subject property on July 25, 2023 in anticipation of the September 22, 2023 sale and properly advertised the sale in both the Times-News and Carbon County Law Journal on August 11, 2023. She also stated that notice was sent to Boger via certified mail for the September 22, 2023 sale date, but the notice was returned as "unclaimed." Pursuant to §5860.602(e)(2) of the RETSL, the Bureau was then obligated to send, by first class mail, the same notice at least ten (10) days prior to the September 22, 2023 sale date. At the hearing, Roberts testified that when the certified mailing of the Notice of Public Sale was returned as "unclaimed" the Bureau was obligated but did not send a ten (10) day notice<sup>2</sup> due to external factors beyond the Bureau's control. She testified that the Bureau made additional efforts to determine the owner's current address and found no additional addresses. She also testified that David Keller was the purchaser of the property at the upset sale.

Keller also testified at the August 26, 2024 hearing. His testimony consisted of the following:

"On or about October 27<sup>th</sup>, being a week prior to the actual tax sale that was held, I called the phone number registered to Kenneth Boger. The phone number was 908-654-6793. I

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<sup>2</sup> Under 72 P.S. § 5860.602(e)(2), "if return receipt is not received from each owner...then, at least ten (10) days before the date of the sale, similar notice of the sale shall be given to each owner who failed to acknowledge the first notice by United States first class mail, proof of mailing, at his last known post office address."

expressed to the individual that this property was going to sale on November 3<sup>rd</sup>, that I could possibly give them options, that I could buy the property, loan them money for a mortgage" and "I just testified that I did call the phone number registered to Kenneth Boger and that I expressed the sale was scheduled for November 3<sup>rd</sup>,"<sup>3</sup>

Thereafter tax sale objections were denied in an order dated November 20, 2024. An appeal to the Commonwealth Court was filed December 18, 2024. On December 19, 2024, we directed the Appellant to file a Concise Statement of Errors Complained of on Appeal. On January 10, 2025, Appellant filed her Concise Statement. In this statement, the Appellant alleged that the Court erred as follows:

1. By not sustaining the objections of the Appellant when the Bureau failed to:
  - a. Provide notice to the Appellant of the rescheduled November 3, 2023 sale when notice of the original sale scheduled for September 22, 2023 was not complete;
  - b. Properly deliver the 2021 Tax Year Notice of Return and Claim to Boger where the signature on the green receipt card read "C-19" referencing Covid-19;
  - c. Send the ten-day notice to Boger in accordance with 72 P.S. §5860.602(e)(2); and

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<sup>3</sup> Notes of testimony, August 26, 2024 hearing page 26 lines 13-19, and page 27 lines 9-12, respectively.

d. Conduct reasonable notification efforts pursuant 72

P.S. §5860.607(a); and

2. By permitting the testimony of David Keller over the hearsay objection of Appellant's counsel insofar as Keller testified that prior to the sale he called the phone number associated with Boger and informed that individual of the pending sale.

### **LEGAL DISCUSSION**

#### **I. Tax Claim Bureau's Failures**

##### **a. Notice Requirements**

Notice requirements, as mandated by the RETSL, were created with the intention to "protect fundamental rights of due process by insuring that persons with an interest in real estate would receive adequate notice before being deprived of their property." *First Eastern Bank, N.A. v. Campstead, Inc.*, 637 A.2d 1364, 1366 (Pa. Super. Ct. 1994). Due process can be satisfied when the Bureau "provide[s] 'notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re Consolidated Reports and Return by Tax Claims Bureau of Northumberland County*, 132 A.3d 637, 644 (Pa. Cmwlth. Ct. 2016) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). 72 P.S.

\$5860.602 requires the Bureau to provide certain notices in anticipation of the sale as follows:

(1) by publication not less than one time in two (2) newspapers of general circulation in the county and once in the legal journal at least thirty (30) days prior to the scheduled sale [\$5860.602(a)]; (2) by certified mail, restricted delivery, return receipt requested to each owner at least thirty (30) days before the date of the sale [\$5860.602(e)(1)] but if green receipt card is not received, the Bureau is required to send similar notice to the owner(s) that failed to acknowledge the first notice, at least ten (10) days before the scheduled sale by first class mail, with proof of mailing [\$5860.602(e)(2)]; and (3) by posting the property at least ten (10) days prior to the sale [\$5860.602(e)(3)].

See 72 P.S. \$5860.602. If the sale is rescheduled, no additional notice is required when all statutory requirements for the original sale are satisfied. See *In re Upset Sale Tax Claim Bureau of Luzerne County Pennsylvania Held December 11, 2008*, 990 A.2d 136, 140 (Pa. Cmwlth. 2010). See also 72 P.S. \$5860.601. If the original sale notice requirements were not satisfied, then the Bureau must still comply with the notice requirements for the rescheduled sale which include providing notice by publication, certified mail and posting as required by RETSL. *Citimortgage, Inc. v. KDR Investments, LLP*, 954 A.2d 755, 758 (Pa. Commw. Ct. 2008).

Here, the evidence shows that the Bureau properly advertised the September 22, 2023 sale in the Times-News and Carbon County

Law Journal on August 11, 2023. Similarly, the property was posted on July 25, 2023. Prior to the originally scheduled sale on September 22, 2023, the Bureau encountered "external factors beyond its control" which prevented them from verifying some owners' mailing addresses. Notice was sent to Boger for the September 22, 2023 sale date via certified mail, but notice was returned as "unclaimed," and no green receipt card was received. As a result, the Bureau was then obligated to send, via first class mail, the same notice at least ten days prior to the September 22, 2023 sale date. The Bureau however, did not send a ten-day notice for the September 22, 2023 as required and therefore, the Bureau did not comply with all notice requirements set forth in the RETSL. When the Bureau rescheduled the sale to November 3, 2023, they were required to comply with the notice requirements for the rescheduled sale. However, Roberts testified that the Bureau did not reissue certified mail to Mr. Boger they did not repost the property, and they did not readvertise in the Times News or Carbon County Law Journal with the rescheduled date. Therefore, the Bureau did not satisfy all of the notice requirements that are statutorily required under RETSL.

**b. Signature**

Pursuant to §308(a) of RERSL, the Bureau shall give notice to the property owner of the Return of Taxes and Entry of Claim by U.S. registered or certified mail, return receipt requested.



Inherent in this is the obligation on behalf of the Bureau to ascertain receipt by the property owner. Boger argues that the Bureau failed in this respect because the notation of the receipt card returned by the Bureau simply said "C-19".

A Bureau is not required to inquire into whether a signature is genuine, however, that only applies where a signature is actually present. *Williams v. County of Monroe*, 303 A.3d 1098, 1101 (Pa. Cmwlth. 2023) (citing *FS Partners v. York County Tax Claim Bureau*, 132 A.3d 577, 581 (Pa. Cmwlth. 2016)); 72 P.S. §5860.607a. In *Williams*, the Court found a printed name and "Covid 19 RT 41" notation of the certified return receipt insufficient. The Court concluded that "the Bureau should have undertaken...a common sense effort of contacting the appropriate postal employee to determine whether the notation on the return receipt constituted sufficient proof of notice." *Williams* 303 A.3d at 1103. Similarly, courts have found that horizontal lines on a return receipt of notice of an upset tax sale do not constitute a signature that requires no further action by the bureau to notify the property owner. *In re Tax Claim Bureau of Columbia County 2023 Real Estate Tax Sale*, A.3d (2025). In the Columbia County case, the signature box for the notice of claim consisted of three horizontal lines. As a result, the Bureau believed it did not need to perform any additional notification efforts and admitted so. The Court determined this cannot "constitute a signature and do[es] not



deserve a presumption that they were made by the addressee, as opposed to a postal worker". *Id.* Thus, the Court found this signature defective and that the Bureau did not sustain its burden of showing proper notice was given. *Id.*

Here, the Notice of Return and Claim, dated April 1, 2022 was sent certified mail. Under the "signature of recipient" line, "C-19" is written twice. Roberts agreed on cross-examination that that was not a legible signature for Kenneth Boger. While the tracking indicates that the notice was delivered, "C-19" was likely insufficient as no signature was present on the page. The Bureau should have noted that the return receipt lacked a signature and therefore there was inadequate notice of the Return and Claim.

#### **c. Ten Day Notice Letter**

The Bureau is required to send a ten-day notice letter if they do not receive proof that the taxpayer has received the initial certified mail sent at least thirty (30) days before the sale. The ten-day notice must be sent via first class mail at least ten (10) days before the sale. 72 P.S. §5860.02(e)(2).

At the hearing on August 26, 2024, Roberts testified that no ten-day letter was sent to Kenneth Boger prior to the September 22, 2023 sale. A ten-day notice letter, dated October 2, 2023 was sent out on October 3, 2023 and was for the November 3, 2023 sale.

#### **d. Reasonable Notification Efforts**

72 P.S. §5860.607(a), requires additional notification efforts to be taken when any notification of a pending tax sale is required to be mailed and such mailed notification is either returned without the required receipted personal signature of the addressee or under other circumstances which raise significant doubt as to the actual receipt before the tax sale can be conducted or confirmed. Efforts shall include, but are not limited to, a search of current telephone directories, recorder of deeds office and prothonotary's office. When these efforts have been exhausted, a notation shall be placed in the property file describing the efforts and the results of the search. 72 P.S. §5860.607a.

Roberts testified at the August 26, 2024 hearing that the Bureau undertook additional efforts to determine the owner's current address after not receiving confirmation that the notices of public sale were successfully delivered. She stated that the Bureau checked with the tax assessment records, looked at the property record information, looked at Tax Claim Bureau records, they reviewed all the records of their files and came up with the same address for both owners. The Bureau also did additional research which included reviewing local telephone directories, reviewing prothonotary records, recorder of deeds, and the register of wills. The Bureau was unable to locate any other addresses. Appellant's counsel argues that the Bureau failed to conduct reasonable

notification efforts and place them in the tax sale file. Roberts testified to the reasonable notification efforts the Bureau took. Bureau's exhibits eight and nine show the research the Bureau did to see if they could find any additional addresses. Similarly, it is clear from the testimony that the Bureau undertook additional notification efforts to try and locate other possible addresses of the parties.

However, the Bureau failed to comply with the statutory requirements of RETSL. While the Bureau properly posted the subject property and properly advertised the sale in the Times-News and Carbon County Law Journal in anticipation of the September 22, 2023 sale, the Bureau failed to fully comply with the notice requirements under 72 P.S. §5860.602. The Bureau was obligated to send Boger a ten-day notice letter via first class mail after the original notice, for the September 22, 2023 sale, was returned as "unclaimed." The Bureau however, failed to do so. The sale was rescheduled for November 3, 2023 and the Bureau was again required to comply with all notice requirements. The Bureau did not reissue certified mail, repost the property, or readvertise the property with the rescheduled date. Therefore, the Bureau did not satisfy all of the notice requirements that are statutorily required under RETSL. Notwithstanding, strict compliance with Section 602's notice requirements is "not required when the Bureau proves that a property owner received actual notice of a pending tax sale." In

re Consolidated 132 A.3d at 645 (citing *Sabbeth v. Tax Claim Bureau of Fulton County*, 714 A.2d 514, 517 (Pa.Commw. Ct. 1998)). Express actual notice and implied actual notice are both encompassed within the definition of actual notice. See *Sabbeth*, 714 A.2d at 517. When the owner of the subject property has actual notice of the impending upset tax sale, including express or implied notice, they have a duty to undertake further inquiry. See *Id.* In such a case, strict compliance on the Bureau's part is excused.

## **II. Testimony of Mr. Keller**

Appellant next argues that the Court erred in allowing Keller's testimony despite an objection from Boger's counsel. We first note that when Keller began his testimony, he was explaining his actions and what he said to the individual who answered his phone call. This was not objected to. What was objected to was when Keller began to say, "they expressed that...". The Court sustained that hearsay objection. When Keller began to testify again, the Court reiterated that the objection was to Keller testifying about what the response was from the individual who answered the call from Keller. He stated and we found that objection timely and proper and sustained accordingly. We initially found that based upon testimony provided, strict compliance was excused believing that the testimony was that Boger had actual knowledge of the sale.

However, in reviewing the transcript which was not available at the time of the Court's decision rendered on November 20, 2024, we

now see that the Court erred and believed Mr. Keller testified that he actually spoke to Mr. Boger on the phone to let him know of the impending tax sale. We note this erroneous finding in preparation of this appeal and we now note that Keller only stated that he called the phone number registered to Boger and expressed to "the individual"<sup>4</sup> the date of the sale. Keller does not explicitly mention that he spoke to Boger. There was no testimony as to who Keller actually spoke to, so therefore it cannot be said that Boger had actual notice of the impending tax sale.

#### **CONCLUSION**

Thus, since we now find that Boger did not have actual notice of the sale which would negate the deficiencies in the sale notification process, the errors in the Bureau's failure to fully comply with the notice requirements of the RETSL, requires this court to acknowledge that we erred in overruling Boger's objections. Therefore, for the reasons stated herein, this Court requests the Appellate Court to grant the Appeal and reverse our trial decision.

**BY THE COURT:**

  
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Joseph J. Matika, J.

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<sup>4</sup> Notes of testimony, August 26, 2024 hearing pages 26-27.