

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

CECILIA R. KOERBLER,
Plaintiff/Appellant

vs.

No. 24-CV-0898

CARBON COUNTY TAX CLAIM
BUREAU and BLAKE EDGAR,
Defendants/Appellees

William E. Vinsko, Jr., Esquire

Counsel for
Plaintiff/Appellant

Robert S. Frycklund, Esquire

Counsel for
Defendant/Appellee
Carbon County Tax Claim
Bureau

Michael Gazza, Esquire

Counsel for
Defendant/Appellee
Blake Edgar

MEMORANDUM OPINION

Matika, J. - February 26, 2025

This Opinion is provided to the Commonwealth Court in response to the Appeal filed on December 18, 2024 by the Plaintiff/Appellant, Cecilia R. Koerbler (hereinafter "Appellant" or "Koerbler"). For the reasons stated herein, this Court respectfully requests the Appellate Court to deny the Appeal and affirm our decision.

FACTUAL AND PROCEDURAL BACKGROUND

Cecilia R. Koerbler was the owner of real property located at 570 Interchange Road, Franklin 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. Blake Edgar 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 a Petition to Set Aside the Tax Sale on May 3, 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.

A hearing on the petition to set aside was held on July 10, 2024. Renee Roberts (hereinafter "Roberts"), Director of the Carbon County Tax Claim Bureau, testified at the July 10, 2024 hearing on behalf of the Bureau. Roberts testified that the Bureau properly posted the property on July 21, 2023 and properly advertised the sale in the Carbon County Law Journal and the Times-News on August 11, 2023. She also stated that the notice was sent to Koerbler via certified mail for the September 22, 2023 sale date, but the notice was returned as "unclaimed." Pursuant to §5860.602(e)(2)¹ of the RETSL, the Bureau was then obligated to

¹ 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

send, by first class mail, the same notice at least ten (10) days prior to the September 22, 2023 sale date, however they did not do so.

Koerbler also testified at the July 10, 2023 hearing. During her testimony, Koerbler claims to not remember receiving any notices in the mail, delinquent taxes notices or the impending tax sale notices, however, Koerbler did claim to have known that the taxes were overdue. However, Koerbler gave inconsistent testimony explaining how she was without notice and what she did know about the sale. During her testimony, Koerbler stated that the posting of the subject property for the tax sale was found in the parking lot by one of her employees, Sarah Reph. Ms. Reph, according to Koerbler, found the notice "months later" and she told Koerbler of the notice found in the parking lot².

first notice by United States first class mail, proof of mailing, at his last known post office address."

² The following colloquy took place between counsel for Edgar and Koerbler:

Q: There's also been a lot of different notices that have been discussed today. Your attorney has made an argument that you never received one particular notice. Did you receive any of these other notices that were talked about in part of the record today?

A: I am not aware. I do not know.

Q: You are not aware. Did you not receive the courtesy notices?

A: No.

Q: Did you not receive the notice of sale when it came by certified mail?

A: I don't believe I did, no.

Q: You have not received any of these other notices that were sent to you?

A: No. I did not know that any of this was happening in this particular time period.

(Notes of testimony, July 10, 2024 hearing, page 32, lines 6-21).

Additional examination between counsel and Koerbler occurred as follows:

Thereafter the petition was denied in an order dated November 19, 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 in not setting aside the sale claiming that:

1. The Bureau failed to provide notice to the Appellant of the rescheduled November 3, 2023 sale when the statutory notices required for the original sale scheduled for September 22, 2023 were not complete;
2. The Bureau failed to send the ten-day notice to Koerbler

Q: So your position is that none of these notices that are under discussion today were received by you?

A: No.

Q: None of them?

A: No.

Q: There is an allegation that your property was posted with a notice.

A: The property at 570 was posted, but it was found - and I forgot the date that they said - but it was found in the parking lot of -- in my parking lot.

Q: You found the notice in your parking lot?

A: Yeah. Well, I didn't. My employee did.

Q: How did you know they found the notice?

A: She told me.

Q: She told you that she found a notice? Did she give it to you?

A: She said it was there. Then I went into work and I knew that the taxes were due. That I did know.

Q: You knew the taxes were due?

A: I knew the taxes were overdue. I did not know that anything was happening at that point in September or whenever they posted that bright yellow marker.

Q: But you did receive the notice that was posted on the property?

A: The one that was taped on the property, it was there at some point, but we didn't find it until months later. I think we even had the first little snowfall.

(Notes of testimony, July 10, 2024 hearing, page 32-33, lines 3-25, lines 1-4).

in accordance with 72 P.S. §5860.602(e)(2);

3. The Bureau failed to conduct reasonable notification efforts pursuant 72 P.S. §5860.607(a); and

4. By stating Appellant had actual notice of the sale which allowed the Bureau to overcome the statutory defects of the tax 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 21, 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 Koerbler for the September 22, 2023 sale date, but notice was returned as "unclaimed," and thus no green receipt card was ever returned to the Bureau evidencing receipt by Koerbler. 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 sale 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 unless the party received actual notice of the sale. Roberts testified that the Bureau did not re-notify Koerbler of the November 3, 2023 sale via certified mail, posting, hand delivery or any type of notice of return and claim.

b. Ten-Day 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 July 10, 2024, Roberts testified that no ten-day letter was sent to Koerbler prior to the September 22, 2023

sale. The ten-day notice letter that was sent out was dated October 2, 2023.

c. 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 July 10, 2024 hearing that the Bureau undertook additional efforts to determine Koerbler's current address for notification purposes. She stated that the Bureau checked with the tax assessment records, occupational records, tax claim records and they checked for additional parcels. The Bureau also checked with the tax collector, the telephone directory, the prothonotary's record, the recorder of deeds, register of wills and they checked a web-based program called Accurate. The Bureau was unable to locate any other addresses. Appellant's counsel argues that the Bureau failed to conduct reasonable notification

efforts as there were no notices or services upon the subject property at 570 Interchange Road. Roberts testified that they would use the 570 Interchange Road address since they were posting that notice on the property, but they had no indication that Koerbler was receiving mail at that address. Roberts testified to the reasonable notification efforts the Bureau took. The Bureau's exhibit nine shows the research the Bureau did to see if they could find any additional addresses. It is clear from the testimony that the Bureau undertook additional notification efforts to try and locate other possible address of the parties.

Here, the Bureau failed to comply with the statutory requirements of RETSL. While the Bureau properly posted the subject property and properly advertised the 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 Koerbler 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. But for the actual notice knowledge possessed by Koerbler and analyzed infra, we would have otherwise granted her petition and overturned the sale on the basis that the Bureau did not satisfy its obligations to her under RETSL.

II. Actual Notice

However, strict compliance with the statutory requirements for notice can be waived by actual notice of the sale. See *Sabbeth v. Tax Claim Bureau of Fulton County*, 714 A.2d 514 (Pa. Cmwlth. 1998). "[W]hen actual notice is established, formal requirements of notice need not be strictly met." See *Citimortgage, Inc. v. KDR Investments, LLP.*, 954 A.2d 755, 760 (Pa. Cmwlth. 2008) (quoting *In the Matter of Tax Sales*, 651 A.2d 1157, 1160 (Pa. Cmwlth. 1994)). 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 then have a duty to undertake a further inquiry. See *Id.*

In the *Sabbeth* case, the court held that the taxpayer can be found to have implied actual notice of a tax sale such that an otherwise invalid sale can be validated by virtue of that implied notice. See *Id.* In *Sabbeth*, the Petitioner allowed her taxes to go delinquent and ignored a notice letter on her office desk for just short of two (2) months. The letter was placed there by an

employee of her husband's company. Petitioner visited the office frequently and ignored several other notices sent by the Bureau via regular mail. Petitioner was found to have implied, actual notice of the tax sale for a variety of reasons including the fact that she regularly went to her office to review the mail and she worked across the street from the property where the notices were posted.

During her testimony, Koerbler claims to not remember receiving any notices in the mail, delinquent tax notices or the impending tax sale notices, however, she did claim to have known the taxes were overdue. She confirmed this when, during her testimony, she stated that the posting of the subject property for the tax sale was found in the parking lot by one of her employees, Sarah Reph. Ms. Reph, according to Koerbler, found the notice "months later" and told Appellant. Since the posting was referencing a sale and Koerbler was aware that the taxes were overdue based on what was told to her, she was actually noticed of that sale that the intent of the Bureau was to sell her property for delinquent taxes. Further, when Koerbler testified, she made mention of the fact that after Ms. Reph told her of the notice, she went into work and "knew that the taxes were overdue", signifying a present sense of unpaid taxes. Again, since she was advised of the notice by an employee and realized that the taxes were at that point "due", it can also be implied, from purely a timeframe standpoint that this

actual knowledge occurred at a time prior to the actual original sale date, notwithstanding that Koerbler testified that there was snow on the ground when the notice was found in the parking lot by Ms. Reph. It is questionable that Ms. Reph, who visits the subject property regularly, would not have seen this notice within a few days of its posting as opposed to months later. Conceivably, Ms. Reph would have alerted Appellant to its existence as soon as the notice was posted and found, which would have been in July of 2023. It is fair and reasonable to assume that Ms. Reph would have immediately alerted Petitioner to the notice posted on the subject property on or shortly after July 23, 2023.

CONCLUSION

Notwithstanding the statutory defects in the sale by the Bureau, these defects are overcome by Koerbler's actual knowledge of the overdue taxes and pending sale. Thus, for all the reasons stated herein, this Court seeks affirmance from the Appellate Court and a denial of Koerbler's appeal.

BY THE COURT:



Joseph J. Matika, J.