

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-CA-00906

**CHRISTIANA TRUST, AS CUSTODIAN
GSRAN-Z LLC DEPOSIT ACCOUNT**

APPELLANT

v.

MEGAN A. CIOTA

APPELLEE

BRIEF OF APPELLEE

**ON APPEAL FROM THE CHANCERY COURT OF
HARRISON COUNTY, MISSISSIPPI**

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case:

Honorable Jennifer Schloegel
Chancellor, Harrison County Chancery Court

Appellant/Christian Trust as Custodian GSRAN-Z LLC Deposit Account
(Christiana Trust)

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Undersigned counsel knows of no other interested persons or parties.

So certified, this the 6th day of March 2019.

/s/ Lewie G. "Skip" Negrotto, IV
Lewie G. Negrotto, IV

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STATEMENT OF THE ISSUES

1. Whether the trial court correctly granted summary judgment in favor of Ciota finding the August 25, 2014 tax sale void because the Chancery Court Clerk failed to strictly follow the statutory requirements for tax sale notices.

STATEMENT OF ASSIGNMENT

Appellee finds no reason for this case to be retained by the Mississippi Supreme Court as the questions presented here are not ones statutorily required to remain with the Supreme Court and there is no issue of first impression.

STATEMENT OF THE CASE

A. Nature of the Case

On July 27, 2010 Megan A. Ciota (“Ciota”) and her husband were granted title as “Christopher B. Schultz and wife, Megan A. Ciota” to the subject property, filed of record by Warranty Deed as Instrument No. 20104989D-J1. In discordance with this, the Harrison County Tax Assessor assessed the property in the name of “Schultz Christopher B & Megan A C” rather than in the property same names as acquired by title.

When Ciota failed to pay her 2013 Harrison County, Mississippi ad valorem taxes Christiana Trust, a professional tax purchaser, bought the delinquent ad valorem taxes at the August 25, 2014 tax sale. The taxes remained unredeemed for two years and the property was forfeited to Christiana Trust. Subsequently, Christiana Trust obtained a Chancery Clerk’s Conveyance that was filed of record as Instrument No. 2016-8132D-J1 on October 26, 2016.

Rather than perform the required due diligence to obtain the name of the record owner to send notice, the Chancery Clerk simply copied the name as listed by the county tax assessor and used that information for all of his notices. Specifically, Ciota obtained title as “Megan A. Ciota” but the Clerk addressed all of the notices to her as either “Schultz Megan A C” or in combination with her husband as “Schultz Christopher B & Megan A C”. The Clerk’s failure to perform his initial due diligence to obtain the name of the record owner 180 days prior to the end of the redemption period resulted in a cascade of erroneous notices to Ciota.

The trial court found the notices to Ciota were not in strict compliance with Miss. Code Ann. § 27-43-3 and were thereby defective. Additionally, no personal service was attempted on Ciota at her Mississippi address. Accordingly, the trial court voided the August 25, 2014 tax sale and set aside the Chancery Clerk’s Conveyance to Christiana Trust.

B. Course of Proceedings

Appellant, Christiana Trust, filed its Complaint seeking to confirm its tax title interest. Ciota was allegedly served with a copy of the Summons and Complaint by certified mail sent to her house in New Orleans, LA. She did not timely file a responsive pleading. Thereafter, a Clerk's Entry of Default was entered against Ciota and a Motion for Default Judgment was filed by Christiana Trust. Prior to entry of a Judgment by Default against Ciota, she filed an Answer and Counterclaim. Ciota also filed a Motion to Set Aside the Clerk's Entry of Default and an Amended Motion to Set Aside the Clerk's Entry of Default which was eventually granted by the trial court.

The trial Court was then presented with competing Motions for Summary Judgment. Initially the trial court ruled that the notices to Ciota were proper because they were consistent with how the property was assessed. The trial court granted summary judgment in favor of Christiana Trust thus confirming the tax sale. Ciota timely filed her Motion to Alter or Amend Judgment which, after consideration by the trial court, was granted. The trial court found that the publication notice did not strictly comply with required statutory procedure. The trial court determined that the Chancery Clerk cannot simply rely on incorrect information used by the county tax assessor. He must perform his own diligent search and inquiry to determine the record owner 180 days prior to the end of the redemption period. By order dated May 24, 2018, the trial Court amended its prior order, granted summary judgment in favor of Ciota, voided the August 25, 2014 tax sale and set aside the Chancery Clerk's Conveyance to Christiana Trust. This appeal is from the trial court's May 24, 2018 Order.

SUMMMARY OF THE ARGUMENT

Ciota contends that the Chancery Clerk is the public official delegated with the duty of performing the due diligence necessary to determine the owner of record 180 days prior to the end of the redemption period. That basic first step is the foundation upon which the initial notice, and all successive notices to owner are sent. If that step is not done properly, and the notice to owner is given in any name other than the record owner, the first notice and all of those following are defective and invalid. Simply sending notices in the same name used on the tax rolls is not sufficient due diligence when considering that tax sale statutes are strictly construed in favor of the land owner.

In this case Ciota was provided with a certified mail notice and a publication notice using the names “Schultz Megan A C” and “Schultz Christopher B & Megan A C”, respectively. Had the Clerk performed his initial due diligence as required by statute, he would have found that the record owners of the property 180 days prior to the end of the redemption period were “Christopher B. Schultz and wife, Megan A. Ciota”. Apparently, the only due diligence done by the Clerk was to copy the incorrect name used by the tax assessor/collector on the tax rolls and perpetuate that error. Even though the name used by the county tax assessor/collector and the Chancery Clerk were consistent, it was not the name of the record owner as strictly required by statute. The trial court determined the Clerk did not strictly follow the notice to owner statute and voided the 2014 tax sale. Once the trial court declared the 2014 tax sale void, it is simply a matter of equity to set aside the Chancery Clerk’s Conveyance to Christiana Trust.

STANDARD OF REVIEW

“This Court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. Rush v. Wallace Rentals, 837 So. 2d 191, 194 (Miss. 2003) (citing, Bell v. Parker, 563 So. 2d 594, 596-97 (Miss. 1990) (collecting authorities). “Where there is substantial evidence to support the chancellor's findings, this Court is without the authority to disturb his conclusions, although this Court might have found otherwise as an original matter.” Goode v. Vill. of Woodgreen Homeowners Ass'n, 662 So. 2d 1064, 1070-71 (Miss. 1995) (citing, In re Estate of Harris, 539 So. 2d 1040, 1043 (Miss. 1989). “In addition, where the Chancellor has made no specific findings, this Court will proceed on the assumption that he resolved all such fact issues in favor of the appellee.” Id. (citing, Newsom v. Newsom, 557 So. 2d 511, 514 (Miss. 1990); PMZ Oil Co. v. Lucroy, 449 So. 2d 201, 205 (Miss. 1984).

On appeal to this court, on all questions of fact, the inquiry is not whether the chancellor's decision is right, or whether, on the facts, this court would have reached a different conclusion, but whether from all the facts, and the reasonable inferences to be drawn therefrom, the decree is manifestly wrong.

Aetna Ins. Co. v. Robertson, 131 Miss. 343, 411, 94 So. 7, 22 (1922) (citing, Dillard v. Wright, 11 S. & M. 455; Kelly v. Miller, 39 Miss. 17; Davis v. Richardson, 45 Miss. 499, 7 Am. Rep. 732; Heard v. Cottrell, 100 Miss. 42, 56 So. 277; Southern Plantations Co. v. Kennedy Heading Co., 104 Miss. 131, 61 So. 166; Lee v. Wilkinson, 105 Miss. 358, 62 So. 275; Evans v. Sharbrough, 106 Miss. 687, 64 So. 466; Humber v. Humber, 109 Miss. 216, 68 So. 161; Bank of Lauderdale, et al. v. Cole et al., 111 Miss. 39, 71 So. 260; Johnson v. Yazoo County, 113 Miss. 435, 74 So. 321).

ARGUMENT

I. **The trial court correctly granted summary judgment in favor of Ciota finding the August 25, 2014 tax sale void because the Chancery Court Clerk failed to strictly follow the statutory requirements for tax sale notices**

A. Christopher B. Schultz and Megan A. Ciota were record owners of the subject property 180 days before the end of the redemption period

DDD Properties, LLC conveyed the subject property to “Christopher B. Schultz and wife, Megan A. Ciota” by Warranty Deed on July 27, 2010. [CP 27-28]. Megan A. Ciota intentionally chose to keep her maiden name rather than take her husband’s surname of “Schultz”.

If taxes are not paid on time, and a balance exists as of August 1 the year after the taxes are due, the property will be sold on the last Monday of August for the unpaid balance. Miss. Code § 27-41-1. If the property is sold for taxes, the owner must redeem the property within “two (2) years after the day of sale.” Miss. Code § 27-45-3. If not redeemed, the taxes forfeit to the tax purchaser.

The clerk of the chancery court shall, within one hundred eighty (180) days and not less than sixty (60) days prior to the expiration of the time of redemption with respect to land sold, either to individuals or to the state, be required to issue notice to the record owner of the land sold as of one hundred eighty (180) days prior to the expiration of the time of redemption, in effect following, to wit:

Miss. Code Ann. § 27-43-1 (emphasis added). Black’s Law Dictionary 1215 (9th ed. 2009) defines a record owner as “[a] property owner in whose name the title appears in the public record.” The statute does not require notice to the person to whom the taxes are assessed or whose name is listed on the tax rolls because “Mississippi’s public policy is to protect landowners from losing property in tax sales”, not those who are assessed the taxes on property. Campbell Props., Inc. v. Cook, NO. 2017-CA-01340-SCT, at *7 (Miss. Dec. 6, 2018) Campbell

Props., Inc. v. Cook, NO. 2017-CA-01340-SCT, at *7 (Miss. Dec. 6, 2018) (Reed v. Florimonte , 987 So. 2d 967, 975. ¶13. (Miss. 2008) (emphasis added). It is not public policy in Mississippi to protect people who are simply “assessed” taxes on property because property can be properly assessed to someone other than the owner and still be a valid assessment. See, Miss. Code Ann. § 27-43-1. Accordingly, notice is required to be given to the record owner, not merely the name on the tax rolls.

The tax sale in this case took place on August 25, 2014 for the 2013 Harrison County ad valorem taxes. The end of the redemption period was August 25, 2016. One hundred and eighty (180) days prior to the end of the redemption period was February 28, 2016. As stated above, Ciota and her husband at the time obtained title to the subject property in 2010, long before February of 2016. So, the record owners of the subject property 180 days prior to end of the redemption period were Christopher B. Schultz and wife, Megan A. Ciota, not Schultz Christopher B & Megan A C as listed on the 2016 Harrison County tax rolls. [CP 254]; see also, Chancery Clerk’s Conveyance showing assessed to Schultz Christopher B & Megan A C [CP 143]. In fact, Megan A. Ciota is not listed anywhere in the tax rolls which is exactly why notice is required to be given to the record owner.

B. The Chancery Clerk failed to strictly comply with the tax notice statutes

The Clerk is required to perform a diligent search and inquiry of his own land deed records in order to obtain the name of the record owner. He is then required to provide notice to the owner via certified mail, and through publication in a local newspaper, in the event that the owner is a non-resident of MS. Here, the Clerk failed to perform his most primary duty, which is to ascertain the name of the record owner. Rather than complete this fundamental task, he relied on incorrect information provided by the tax assessor as found on the tax rolls. Had the Clerk

thoroughly and properly done his job and obtained the name of the record owner, all notices sent to Ciota would have been consistent with the property title and the issue nonexistent.

The Clerk shall also mail a copy of the notice to the reputed owner at his usual street address, if it can be ascertained after diligent search and inquiry, or to his post-office address if only that can be ascertained, and he shall note such action on the tax sales record. The clerk shall also be required to publish the name and address of the reputed owner of the property and the legal description of the property in a public newspaper of the county in which the land is located, or if no newspaper is published as such, then in a newspaper having a general circulation in the county. The publication shall be made at least forty-five (45) days prior to the expiration of the redemption period.

If the reputed owner is a nonresident of the State of Mississippi, then the clerk shall mail a copy of the notice to the reputed owner in the same manner as set out in this section for notice to a resident of the State of Mississippi, except that notice served by the sheriff shall not be required.

Notice by mail shall be by registered or certified mail.

Miss. Code § 27-43-3.

In this case, notice was mailed to Schultz Megan A C [CP 227] and published in the newspaper as Schultz Christopher B & Megan A C [CP 231]. Megan A. Ciota is not mentioned in any notice provided by the Clerk.

The Clerk neglected to complete the fundamental task of verifying the record owner, which could have been secured by a simple search of his own land records. The ripple effect of illegitimate notices that ensued was a direct result of this initial misstep.

In addressing these issues, we keep in mind that "statutes dealing with land forfeitures for delinquent taxes should be strictly construed in favor of the landowners." Campbell Props. Inc. v. Cook, No. 2017-CA-01340-SCT, 2018 WL 6381141, at *4 (¶12) (Miss. Dec. 6, 2018) (quoting Reed v. Florimonte, 987 So. 2d 967, 973 (¶15) (Miss. 2008)). Therefore, "[a]ny deviation from the statutorily mandated procedure renders the sale void." Id.

Rebuild Am., Inc. v. Drew, NO. 2017-CA-01095-COA, at *8 (Miss. Ct. App. Jan. 22, 2019)

As our Supreme Court recently reiterated, Mississippi law takes "a hard-line approach" to this issue: "the redemption-notice statute must be followed strictly." Campbell

Props., 2018 WL 6381141, at *4 (¶15). When the statute is not followed strictly, the tax sale is void ab initio—it has no legal effect whatsoever, and it is as if the sale never happened.

City of Horn Lake, 2018 WL 2731592, at *3 (¶13). *Id.* at *15.

The law in Mississippi is clear, “[s]hould the clerk inadvertently fail to send notice as prescribed in this section, then such sale shall be void...” Miss. Code Ann. § 27-43-3. Under this guidance, Mississippi has consistently held that the statutory notice requirements of Section 27-43-3 must be strictly construed in favor of landowners. Brown v. Riley, 580 So. 2d 1234, 1237 (Miss. 1991); Norwood v. Moore, 932 So. 2d 63, 66 (¶¶7-8) (Miss. Ct. App. 2006); Lawrence v. Rankin, 870 So. 2d 673, 676 (¶¶13-14) (Miss. Ct. App. 2004); Roach v. Goebel, 856 So. 2d 711, 716 (¶29) (Miss. Ct. App. 2003). “Any deviation from the statutorily mandated procedure renders the sale void.” Roach, 856 So. 2d at 716 (p. 29) (citing Hart v. Catoe, 390 So. 2d 1001, 1003 (Miss. 1980)); see also, Reed v. Florimonte, 987 So. 2d 967, 973 (¶15)(Miss. 2008), Davis v. Tiblier, 107 So. 3d 181, 183 (Miss. Ct. App. 2013).

The public policy of this state favors and protects owners of land from loss by its sale for taxes. Carmadelle v. Custin, 208 So. 2d 51 (Miss. 1968). 72 Am.Jur.2d State and Local Taxation § 1019, at 293 (1974) states the general law with reference to requirements of a statute such as Section 27-43-3 as follows: "The requirements of the statute as to the service and proof of service of the notice required to terminate an owner's right to redeem from a tax sale are usually considered to be mandatory and required to be strictly followed. It has been held that no presumption that the requirements of such a statute have been complied with may be indulged.

Hart v. Catoe, 390 So. 2d 1001, 1003 (Miss. 1980).

CONCLUSION

The Clerk failed to perform his first, basic statutorily mandated duty – diligent search of his own land records to determine the record owner. That failure alone voids the sale *ab initio*. The subsequent defective notices whether mailed or published, provide no notice to the record owner because her name is not even listed in the notice. The Clerk’s failure to notice all record owners is a lack of compliance with the statutory notice statutes which this state will not tolerate as has been made abundantly clear even in its most recent decisions.

Respectfully submitted, this the 6th day of March 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the Mississippi Electronic Court filing system which sent notification of such filing to all counsel of record in this case registered with the MEC system as indicated below:

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So certified, this the 6th day of March 2019.

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