

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
No. 2018-CA-00906**

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

PLAINTIFF-APPELLANT

v.

MEGAN A. CIOTA

DEFENDANT-APPELLEE

On Appeal from the
Chancery Court of Harrison County, Mississippi, First Judicial District
Cause No. 24CH1:16-cv-02643-JS
Honorable Jennifer Schloegel, Presiding

REPLY BRIEF OF APPELLANT

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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. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

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Plaintiff/Appellant

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Megan A. Ciota
Defendant/Appellee

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Hon. Jennifer Schloegel
Chancery Court Judge, Harrison County, Mississippi

So certified, this the 24th day of April, 2019.

/s/ Michelle Lubber

MICHELLE LUBER

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ARGUMENT IN REPLY

Appellee cites to Section 27-43-1 of the Mississippi Code for the proposition that notice must be provided to the record owner and not “... to the person to whom the taxes are assessed or whose name is listed on the tax rolls ...” Appellee’s Brief, P.7. However, the second part of that very statute provides the language that the Chancery Clerk is to use in providing notice of the tax sale and states:

You will take notice that _____ (here describe lands) **lands assessed to you** or supposed to be owned by you, was, on the _____ day of _____ sold to _____ for the taxes of year _____, and that the title to said land will become absolute in _____ unless redemption from said tax sale be made on or before _____ day of _____.

Miss. Code Ann. §27-43-1 (emphasis added). In our case, the Clerk sent its notice via Certified Mail to “Schultz Megan A C,” as provided by the Tax Assessor’s office, at 6333 Annunciation Street, New Orleans, Louisiana 70118-5712. *See* Appellant’s Record Excerpts, CP.227; R.E.34. The Certified Mail was delivered and signed for on April 2, 2016. CP.228; R.E.35. The Clerk followed the statutory requirements, and Appellee received notice and had an opportunity to prepare herself and be heard. Prior notice is the “most important safeguard involving any person who stands to suffer from some official action,” and prior notice was achieved in this case, affording Appellee all of the due process considerations to which she was entitled. *Brown v. Riley*, 580 So.2d 1234, 1237 (Miss. 1991), citing *First Jackson Securities Corp. v. B.F. Goodrich Co.*, 176 So.2d 272 (Miss. 1965); *Mid-South Pipeline Contractors, Inc. v. Citizens Nat’l Bank of Meridian*, 124 So.2d 697 (Miss. 1960); see also *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983).

Appellee attempts to make a distinction between the record owner and the person to whom the taxes are assessed; however, Mississippi statute and caselaw provide that it is not necessary to the validity of any tax sale “that it shall be assessed to its true owner, but the taxes shall be a charge upon the land or personal property taxed and the sale shall be a proceeding against the thing sold and shall vest title in the purchaser without regard to who may own the land or other property when assessed, or when sold, or whether wrongfully assessed” *Rush v. Wallace Rentals*, 837 So.2d 191, 197 (Miss. 2003), *citing* Miss. Code Ann. § 27-35-1(1). Further, it is incumbent upon a landowner to be knowledgeable about the assessment on her property. *Kron v. Van Cleave*, 339 So.2d 559 (Miss. 1976); *Carmadelle v. Custin*, 208 So.2d 51 (Miss. 1968). The subject property was assessed as “Schultz Christopher B & Megan A C” from 2011 forward. CP.239, 242, 245, 248, 251, 254; R.E.28-33. Appellee knew that her property was assessed in that manner but raised no issue and made no effort to correct same, presumably because the address was correct and she received the notices just the same. The alleged error in the assessment of the subject property is of no consequence to the validity of the subject tax sale.

Appellee argues that the Chancery Clerk failed to strictly comply with the tax notice statutes. Caselaw, however, provides that what is to be examined is whether there has been “substantial compliance” with the statutory requirements. *DeWeese Nelson Realty, Inc. v. Equity Services Co. & Beeman Investment Co.*, 502 So.2d 310, 311 (Miss. 1986), *Brown v. Riley*, 580 So.2d 1234 (Miss. 1991). There is no error by the Clerk in obtaining the information from the Tax Assessor’s office, as is quite often the source of information for the Chancery Clerk. The information obtained had been on the tax rolls for over five (5) years and had been used successfully to provide notice to Appellee for each of those years. Appellee did not attempt to correct the way in which her property was assessed. Most importantly, the notice from the Clerk

that is the subject of this litigation successfully provided notice to Appellee. She received notice of the redemption period within the statutory time period, and the Clerk substantially complied with the tax notice statutes. Taxes are a charge upon the land, without regard to who may own it. “Due process” requires that the tax assessment describe the property with certainty or contain data clearly leading to identification. *Carr v. Barton*, 162 So. 172 (Miss. 1935). In our case, in all of the notices provided, the property was properly described. Defendant/Appellee received notice and the subject tax sale should be found valid because, just as in *Rush*, “the failure to advertise the land subject to tax sale in the record title holder’s name did not void the tax sale.” *Rush*, 837 So.2d at 198.

Appellee’s argument that the Clerk inadvertently failed to send notice as prescribed by the statute, rendering the tax sale void, is not supported by the evidence. The Clerk did not fail to send notice as prescribed in the statute. The Clerk sent notice using the information obtained in the Tax Assessor’s office. Any error in the way the property was assessed is not fatal to the validity of a sale of land for taxes. Miss. Code Ann. § 27-35-1(1). The certified mail notice and the publication both properly described the subject property, which is what vests in the purchaser and is the matter in interest. Additionally, Appellee personally received and signed for the Certified Mail notice. CP.228; R.E.35. There has been no deviation from the statutorily mandated procedures regarding tax sale notices, and the Chancery Court erred in finding the tax sale to be void.

That the notice requirements must be “strictly construed in favor of landowners” and that public policy favors and protects owners of land from loss by tax sale does not give owners a pass to be inattentive and neglectful of their responsibilities. Owners are protected by the statutory procedures to ensure that they are provided notice before their property is conveyed to a tax

purchaser. In our case, it cannot be said that the Clerk failed to follow the statutory requirements in this case and, more importantly, what is certain is that Appellee was personally given notice and an opportunity to prevent her property from being forfeited to Appellant. Appellee failed to ensure that her property was properly assessed, made no effort to ensure her taxes were paid and did nothing to heed the warnings that she was given regarding the forfeiture of her property. The Clerk complied with all statutory requirements, and the subject tax sale should not have been set aside.

CONCLUSION

For the reasons set forth in Appellant's Brief and in this Reply Brief, this Honorable Court should reverse the Judgment of the Chancery Court granting Ciota's Motion to Alter or Amend, granting Ciota's Motion for Summary Judgment, voiding the ad valorem tax sale and setting aside the Chancery Clerk's Conveyance to Christiana Trust. Further, this Court should remand this matter to the Chancery Court for further proceedings consistent with its ruling to reverse.

RESPECTFULLY SUBMITTED, this the 24th day of April, 2019.

CHRISTIANA TRUST AS CUSTODIAN
GSRAN-Z LLC DEPOSIT ACCOUNT

/s/ Michelle Luber

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2019, I electronically filed the foregoing Brief of Appellant using the MEC system which sent notification of such filing to the following:

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I further certify that I have this day forwarded a true and correct copy of same by U.S. Mail, postage prepaid, to the following:

Honorable Jennifer Schloegel
Chancellor for Harrison County, Mississippi
1801 23rd Avenue
Gulfport, Mississippi 39501

So certified, this the 24th day of April, 2019.

/s/ Michelle Luber
Michelle Luber