

**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

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

So certified, this the 2nd day of January, 2019.

/s/ Michelle Lubber
MICHELLE LUBER

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STATEMENT OF ISSUES

Whether the Chancery Court erred in finding that publication in the instant case failed to meet statutory requirements of Miss. Code Ann. §§ 27-43-1 and 27-43-3.

Whether the Chancery Court erred in voiding the tax sale and setting aside the Chancery Clerk's Conveyance.

STATEMENT OF ASSIGNMENT

There is little to no Mississippi case law that is directly on point with the issue presented in this appeal, namely: what, if anything, is required in identifying the reputed owners when issuing the statutorily mandated notices regarding tax sales and their subsequent redemption periods. Under Rule 16(d), this case can be seen as one involving a major question of first impression. As such, the Supreme Court should retain this case to provide guidance on Miss. Code Ann. § 27-35-1(1) and the dated cases interpreting same.

STATEMENT OF THE CASE

On or about June 29, 2010, DDD Properties, LLC executed a Warranty Deed conveying the real property located at 116 Poplar Point, Pass Christian, Mississippi 39571 to Christopher B. Schultz (“Schultz”) and wife Megan A. Ciota (“Ciota”). CP.27. Per the Real Property Tax Rolls for the years 2011 through 2016, the reputed owners were “Schultz Christopher B & Megan A C.” CP.239, 242, 245, 248, 251, 254; R.E.28-33. Schultz and Ciota failed to pay ad valorem taxes on the property for the 2013 tax year, and the property was sold to Christiana Trust as Custodian GSRAN-Z LLC Deposit Account (“Christiana Trust”) at the tax sale held on August 25, 2014. The subject property was not redeemed within the statutory period. On October 21, 2016, a Chancery Clerk’s Conveyance was executed whereby the subject property was conveyed to its new owner, Christiana Trust. CP.30.

On November 18, 2016, Christiana Trust filed its Complaint to Quiet and Confirm Title to Real Property. CP.21. Defendant Ciota was served at her residence in the state of Louisiana by certified mail on December 12, 2016. CP.40. A Clerk’s Docket Entry of Default was entered against Ciota on January 12, 2017. CP.54. Christiana Trust filed its Motion for Default Judgment against Ciota on January 16, 2017. CP.57.

On April 21, 2017, Ciota filed her Defenses of Law, Affirmative Defenses, Answer and Counterclaim. CP.79. Ciota, in her Counterclaim, sought to set aside the tax sale. Christiana Trust moved to strike Ciota’s Answer and Counterclaim. CP.96. Ciota then filed a Motion to Set Aside the Clerk’s Entry of Default on May 22, 2017. CP.106.

Ciota filed a Motion for Declaratory Judgment on July 11, 2017. CP.121. Ciota sought a declaration from the Chancery Court that no statutory interest would accrue after June 9, 2016, the date that Ciota mailed a check to the Tax Collector “to redeem her property,” or, in the alternative,

that no statutory interest would accrue after June 12, 2017, the date that Ciota, through her attorney, “sent a letter to Plaintiff’s counsel providing payment in an amount sufficient to pay for statutory interest accrued as of June 2017.” *Id.* That same day, Ciota filed a Motion for Summary Judgment arguing that the Clerk failed to provide proper statutory notice, that Ciota made a good faith effort to redeem her property prior to the end of the redemption period and that the tax sale and subsequent conveyance should be set aside. CP.131.

The pending motions came on for hearing on June 24, 2017 and September 14, 2017. CP.350, CP.379, respectively. The Chancellor set aside the Clerk’s Entry of Default, rendering moot Christiana Trust’s Motion to Strike, and denied Ciota’s Motion for Summary Judgment. An Order was entered on October 16, 2017 finding that the published and mailed notices at issue in this case were valid, granting and denying the motions as stated above, and deferring final ruling on the validity of the tax sale until further hearing. CP.279.

On October 25, 2017, Ciota filed a Motion to Alter or Amend Judgment. CP.290. That Motion came on for hearing on May 2, 2018. CP.424. That day, the Chancellor issued a letter opinion granting the Motion to Alter or Amend, finding that the tax sale was void and amending its October 16 Order to grant Ciota’s Motion for Summary Judgment. CP.317. The Judgment Granting Defendant’s Motion to Alter or Amend Judgment was filed on May 24, 2018. CP.321; R.E.21-27. Christiana Trust timely filed its Notice of Appeal.

SUMMARY OF ARGUMENT

The Chancery Clerk strictly complied with the statutory notice requirements pertaining to tax sales and redemption periods. The reputed owners of the subject property, per the Real Property Tax Rolls for the years 2011 through 2016, were “Schultz Christopher B & Megan A C.” CP.239, 242, 245, 248, 251, 254; R.E.28-33. The chancery clerk mailed notice via certified mail to Schultz Megan A C within the statutory time period, and same was delivered and signed for on April 2, 2016. CP.227; R.E.34-36. The chancery clerk caused notice to be published to “Schultz Christopher B & Megan A C” in the Sun Herald on July 11, 2016, within the statutory time period. CP.231; R.E.37-38. Based upon the assessment of the property, the Chancery Clerk provided statutory notice of the redemption period. Any error in the way the property was assessed is not fatal to the validity of a sale of land for taxes. 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.

ARGUMENT

I. STANDARD OF REVIEW

When reviewing the grant or denial of a motion for summary judgment, the same standard is utilized on appeal as is used at the trial court under Rule 56(c) of the Mississippi Rules of Civil Procedure. *Johnson v. Burns-Tutor*, 925 So.2d 155, 157 (Miss. Ct. App. 2006) (citing *McMillan v. Rodriguez*, 823 So.2d 1173, 1176 (Miss. 2002)). All evidence is examined in the light most favorable to the party against whom the motion was made. *Partin v. N. Miss. Med. Ctr. Inc.*, 929 So.2d 924, 928 (Miss. Ct. App. 2005) (citing *Williamson ex rel. Williamson v. Keith*, 786 So.2d 390, 393 (Miss. 2001)). A party is entitled to summary judgment if "there is no genuine issue of material fact, and the moving party is entitled to [a] judgment as a matter of law." *McMillan*, 823 So. 2d at 1177. Plaintiff/Appellant submits that Defendant/Appellee was not entitled to judgment as a matter of law. Upon undertaking a *de novo* review of this case, Plaintiff/Appellant respectfully requests that this Court reverse the Chancery Court's grant of summary judgment, including its voiding of the subject tax sale and its setting aside of the subject Chancery Clerk's Conveyance.

II. NOTICE WAS PROPER

Notice requirements for tax sales are motivated by due process considerations. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983). "It goes without saying that the most important safeguard involving any person who stands to suffer from some official action is prior notice. This gives the recipient an opportunity to prepare himself and be heard. Notice, therefore, by far is the paramount factor and purpose of all process." *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).

In Mississippi, the parameters for noticing owners of the impending expiration of the redemption period for real property that has been sold for delinquent taxes are provided via statute.

Miss. Code Ann. §27-43-1 and Miss. Code Ann. §27-43-3. Those statutes state, in pertinent part:

§27-43-1. Notice to owners.

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 ...

§ 27-43-3. Notice to owners; service of notice; fees.

The clerk shall issue the notice to the sheriff of the county of the reputed owner's residence, if he is a resident of the State of Mississippi, and the sheriff shall be required to serve notice as follows:

...

The sheriff shall make his return to the chancery clerk issuing the notice. 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. In the event the notice by mail is returned undelivered and the notice as required in this section to be served by the sheriff is returned not found, then the clerk shall make further search and inquiry to ascertain the reputed owner's street and post-office address. If the reputed owner's street or post-office address is ascertained after the additional search and inquiry, the clerk shall again issue notice as set out in this section. If notice is again issued and it is again returned not found and if notice by mail is again returned undelivered, then the clerk shall file an affidavit to that effect and shall specify in

the affidavit the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post-office address and the affidavit shall be retained as a permanent record in the office of the clerk and that action shall be noted on the tax sales record. If the clerk is still unable to ascertain the reputed owner's street or post-office address after making search and inquiry for the second time, then it shall not be necessary to issue any additional notice but the clerk shall file an affidavit specifying the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post-office address and the affidavit shall be retained as a permanent record in the office of the clerk and that action shall be noted on the tax sale record.

...

Should the clerk inadvertently fail to send notice as prescribed in this section, then the sale shall be void and the clerk shall not be liable to the purchaser or owner upon refund of all purchase money paid.

Miss. Code Ann. §27-43-1 and Miss. Code Ann. §27-43-3.

Although strict construction with the statutory requirements is the general rule in Mississippi, Mississippi Supreme Court precedent illustrates that perfection is not required. In *DeWeese Nelson Realty, Inc. v. Equity Services Co. & Beeman Investment Co.*, DeWeese failed to pay ad valorem taxes and its property was sold at a city and a county tax sale. 502 So.2d 310, 311 (Miss. 1986). The county mailed notice to the corporation's registered agent's address in Philadelphia, Mississippi, and the city provided notice to a residential address in Jackson, Mississippi. *Id.* at 312. The city's notice was directed to "DeWeese Realty, Inc." and was provided to an officer's address at which he had not resided in over a decade. *Id.* The Jackson address was also one at which the corporate officer had previously resided. *Id.* at 313. Neither notice was returned as undeliverable, resulting in the clerks having no reason to question whether notice had been delivered. *Id.* In that case, the Court held that the municipal clerk complied with the diligence requirement of Miss. Code Ann. §27-43-3. *Id.* The Court's finding in *DeWeese* is in line with the findings of *Brown v. Riley*, 580 So.2d 1234 (Miss. 1991) in that, aside from notice, courts examine whether there has been "substantial compliance" with the statutory requirements.

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, the Mississippi Supreme Court has held that “when property is properly described ... it may be assessed to an unknown person, or to any person though not the owner, and the assessment will nevertheless be legal...” *Id.*, *quoting Rains v. Teague*, 377 So.2d 924 (Miss. 1979) (*citing Wilkinson v. Steele*, 207 Miss. 701, 43 So.2d 110 (1949); *Carr v. Barton*, 173 Miss. 662, 162 So. 172 (1935)). In the *Rush* case, Rush conveyed property in Lauderdale County to Moffite. *Rush*, 837 So.2d at 192. When that year’s taxes became due, the Tax Collector issued notice to Rush, as his name appeared on the tax bill for the property, including publication in the local newspaper. *Id.* Notice was also attempted to be given to Moffite by certified mail and via process served by the Sheriff’s Department at the address provided on the quitclaim deed from Rush to Moffite. *Id.* Notice by publication was given to Moffite in the local newspaper. *Id.* The property was not redeemed, and a tax deed was issued to the tax purchaser. *Id.* In the *Rush* case, the Chancellor in the trial court “found the tax sale valid because the failure to advertise the land subject to tax sale in the record title holder’s name did not void the tax sale.” *Id.* at 198. On appeal, the Mississippi Supreme Court affirmed and found that “the record supports the findings of the chancellor ...” *Id.* at 200.

In our case, the reputed owners of the subject property per their Warranty Deed were Christopher B. Schultz and wife, Megan A. Ciota; however, per the Real Property Tax Rolls for the years 2011 through 2016, the reputed owners were “Schultz Christopher B & Megan A C.”

CP.239, 242, 245, 248, 251, 254; R.E.28-33. Schultz and Ciota were non-residents of the state of Mississippi. As such, per Mississippi Code Annotated § 27-43-3, the clerk was required to mail a copy of the redemption notice to them at their usual street address by registered or certified mail and to publish the name and address of the reputed owners of the property and the legal description of the property in a public newspaper of the county in which the land is located at least forty-five (45) days prior to the expiration of the redemption period. The Harrison County Chancery Clerk issued notice via certified mail and publication within the applicable timeframe set by statute. Notices via certified mail were received and signed for more than four (4) months prior to the expiration of the redemption period, and notice by publication was published more than forty-five (45) days prior to the expiration of the redemption period. The Clerk sent notice as prescribed in Mississippi Code Annotated § 27-43-3 for non-residents, and the Chancery Court properly found that Defendant/Appellee received actual notice of the redemption period within the requisite time period. Publication was made in the Sun Herald on July 11, 2017, within the statutory time period to “Schultz Christopher B & Megan A C.” This identification of the reputed owners is consistent with the assessment rolls maintained by the Harrison County Tax Assessor and reflects a common practice of writing names where joint owners are married. Further, the Harrison County Tax Assessor and Tax Collector would have forwarded routine tax notices addressed to Defendant/Appellee in the same manner that was provided in the publication.

Ciota received sufficient notice such that due process considerations have not been violated. She received actual notice, personally signing for the certified mail notice, and she was sufficiently noticed in the publication in the Sun Herald. She had sufficient time to prepare herself and, if she intended to protect her property, to undertake the proper procedures to redeem it. The statutory requirements for notice to a non-resident were strictly complied with by the chancery

clerk; particularly, notice was given by certified mail and by publication to the reputed owners, as they are identified by the Harrison County Tax Rolls. As the above-cited caselaw illustrates, perfection is not required. Further, per the teachings in *Rush*, 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. This Court should reverse the Chancery Court’s finding that publication failed to meet statutory requirements and that the resulting tax sale is void, reverse the grant of summary judgment, and remand this case to the Chancery Court for further proceedings.

III. THE CLERK DID NOT DEVIATE FROM THE STATUTORILY MANDATED PROCEDURES

Ad valorem taxes are due, payable and collectible by the tax collector and shall be paid on or before February 1st of each year. Miss. Code Ann. §27-41-1. If any unpaid balance exists on August 1st, then the lands shall be sold at the land sale on the last Monday in August for the unpaid balance. *Id.* As stated above, the procedures for providing notice to owners that their property was sold for unpaid taxes is outlined in Sections 27-43-1 and 27-43-3 of the Mississippi Code Annotated. The first section provides the time frame, and the second section provides the procedures. Both sections reference the redemption period, which is the time period that the owner may redeem the land sold for taxes, which runs for two (2) years from the date of the sale. Miss. Code Ann. §27-45-3. The applicable time for the clerk to provide notice is within one hundred eighty (180) days and not less than sixty (60) days prior to the expiration of the time of redemption.

Miss. Code Ann. §27-43-1. The procedures that apply to our case are those pertaining to non-residents, which require notice to the reputed owner by certified mail and publication of the name and address of the reputed owner of the property and the legal description of the property in a local newspaper at least forty-five (45) days prior to the expiration of the redemption period. *Id.* “Any deviation from the statutorily mandated procedure renders the sale void.” *Roach v. Goebel*, 856 So.2d 711, 716 (Miss. Ct. App. 2003) (citing *Hart v. Catoe*, 390 So.2d 1001, 1003 (Miss. 1980)); see also, *Reed v. Florimonte*, 987 So.2d 967, 973 (Miss. 2008).

There is no shortage of cases wherein the chancery clerk was found to have deviated from statutory procedures:

In *Norwood v. Moore*, the chancery clerk failed to file a second affidavit that detailed the steps she took to advise the owner of the expiration of his rights of redemption. 932 So.2d 63 (Miss. Ct. App. 2006).

In *Brown v. Riley*, the chancery clerk did not mail a copy of the summons served by the sheriff, gave notice only 43 days prior to the expiration of the redemption period, and the notice was fatally defective in attempting to serve both owners with a single notice. 580 So.2d 1234 (Miss. 1991).

In *Davis v. Tiblier*, the clerk neglected to produce affidavits documenting subsequent efforts to locate the owner after an unclaimed notice was sent to the property owner. 107 So.3d 181 (Miss. Ct. App. 2013).

In *Rebuild Am., Inc. v. Milner*, the chancery clerk failed to give notice to the wife individually. 7 So.3d 972 (Miss. Ct. App. 2009).

These cases illustrate deviations from procedures.

The alleged error in the reputed owner’s name is not a deviation from the statutorily mandated procedures. The government entities add properties to their assessment roll and assess same for taxes each year. *Kron v. Van Cleave*, 339 So.2d 559 (Miss. 1976). The names to which the properties are assessed are then utilized by the tax collector to provide notice that ad valorem taxes are due and payable on or before February 1st of each year. Miss. Code Ann. §27-41-1. The

names to which the properties are assessed are used by the chancery clerk at the land sale in August and to provide notice of the expiration of the redemption period within the time period previously stated. As stated above:

It shall not be necessary to the validity of any assessment or of a sale of land for taxes 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

...

Miss. Code Ann. § 27-35-1(1). The subject property, what vests in the purchaser, is the matter in interest. “The assessment of ad valorem taxes is an in rem proceeding rather than an in personam proceeding.” *Rains v. Teague*, 377 So.2d 924, 926 (Miss. 1979).

In a 1949 case, *Wilkinson v. Steele*, the appellant contended that the tax sale was void because the incorrect name of the owner of the land appeared in the advertisement of sale. The Supreme Court agreed that the advertisement erroneously gave Wilkinson’s initials; however, the Court found that it was not necessary “to the validity of an assessment or sale of land for taxes that it be assessed to the true owner. And if there be a legal description it may be assessed to an unknown owner or to any person not the owner. *Wilkinson v. Steele*, 207 Miss. 701, 705 (Miss. 1949), citing *Carr v. Barton*, 162 So. 172 (Miss. 1935). In *Rains v. Teague*, the former landowner sought to redeem property sold at a tax sale. 377 So.2d 924 (Miss. 1979). The trial court improperly set aside the tax sale on the ground that the property was assessed to persons not the titleholders. Under Miss. Code Ann. § 27-35-1, property that is properly described may be legally assessed to an unknown person, or to any person though not the owner, since the assessment of ad valorem taxes is an in rem proceeding. *Id.*

In our case, ad valorem taxes on the subject property were to be paid on or before February 1, 2014. Said taxes were not paid, and an unpaid balance existed on August 1, 2014. As such, the subject property was sold at the land sale on or about Monday, August 25, 2014 and the redemption period would run until August 25, 2016. Therefore, the chancery clerk was to provide certified mail notice within one hundred eighty (180) days and not less than sixty (60) days of August 25, 2016, or, more specifically, between February 27, 2016 and June 26, 2016, and was to provide notice by publication on or before July 11, 2016. There is no doubt that the chancery clerk mailed notice via certified mail within the statutory time period, as same was delivered and signed for on April 2, 2016. CP.227; R.E.34-36. Additionally, there is no doubt that the chancery clerk caused notice to be published in the Sun Herald on July 11, 2016, within the statutory time period. CP.231; R.E.37-38. The subject property was assessed to “Schultz Christopher B & Megan A C.” CP.239, 242, 245, 248, 251, 254; R.E.28-33. From that assessment, the chancery clerk provided statutory notice of the redemption period. 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). In our case, 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. 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.

CONCLUSION

For the reasons set forth above, 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 2nd day of January, 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 2nd day of January, 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 2nd day of January, 2019.

/s/ Michelle Lubber
Michelle Lubber