



Cannizzaro v. Tax Claim Bureau of Pike County

2005 | Cited 0 times | Supreme Court of Pennsylvania | January 3, 2005

Submitted: December 6, 2004

OPINION NOT REPORTED

MEMORANDUM OPINION

Michelle Cannizzaro (Appellant) appeals the order of the Court of Common Pleas of Pike County (trial court) that denied Appellant's objections/exceptions to the tax sale of her property in Pike County (Property) and confirmed the tax sale.

Appellant is sole owner of the Property recorded as Lot 38, Section 26 in the Saw Creek Estates development located in Lehman Township, Pike County. Appellant and her husband, John Cannizzaro (Cannizzaro) resided in Holmdel, New Jersey.

On April 27, 2002, the Tax Claim Bureau of Pike County (Bureau) mailed a notice of delinquent taxes to her New Jersey address. The Bureau sent this notice by certified mail. The receipt was returned bearing the signature of Appellant. On August 2, 2002, the Bureau mailed a written thirty day notice of sale to her New Jersey address, restricted delivery, return receipt requested. Cannizzaro signed Appellant's name on the receipt but did not inform her the Property was scheduled for tax sale. Cannizzaro arranged an agreement to stay the tax sale but did not comply with the agreement when he failed to make the first payment of \$1,439.99 by September 5, 2002.

The Bureau hired Constable John P. Frawley (Constable Frawley) to post the Property. The Property was posted on August 17, 2002, and Constable Frawley completed an affidavit of posting that same day. The affidavit was not notarized until October 18, 2002.

On September 25, 2002, the Property was sold at the tax sale to Gerard Bellarmino (Appellee). On October 8, 2002, the trial court confirmed nisi the sale of the Property. On October 9, 2002, the Bureau mailed a post-sale notice to Appellant that the Property was sold.

On October 24, 2002, Appellant challenged the sale and alleged that the Bureau failed to comply with the notice provisions of the Real Estate Tax Sale Law (Law)¹, and, as a result, Appellant did not receive notice of the tax sale.

At hearing on June 23, 2003, before the trial court, Appellee, the intervenor before the trial court,



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testified that after he successfully bid on the Property, he went to the Property and removed a notice of public sale which was posted on a tree. Notes of Testimony, June 23, 2003, (N.T.) at 5, 7; Reproduced Record (R.R.) at 87a, 89a.

Nancy Williams (Williams), director of the Bureau, identified the April 27, 2002, notice of delinquent taxes and noted that the certified mail receipt bore Appellant's signature. Williams also identified the notice that scheduled the Property for sale and that the restricted delivery receipt also bore the signature of Appellant. N.T. at 12-13; R.R. at 94a-95a. On cross-examination, Williams admitted that although the signatures on the receipts for the two notices both were signed "Michelle Cannizzaro", the signatures appeared to be different. N.T. at 17; R.R. at 99a. Williams also explained that the Bureau arranges payment agreements on properties with people other than the record owner. N.T. at 18; R.R. at 100.²

Appellant explained that she and Cannizzarro were having personal and financial difficulties and were barely speaking when the sale took place. N.T. at 47-49; R.R. at 129a-131a. Appellant admitted that on April 27, 2002, she received notice that the Property was scheduled for sale in the fall, but she never received additional notice as to the specific date of the tax sale. N.T. at 48; R.R. at 130a. She stated that she did not sign the August 2, 2002, restricted delivery documentation.³ N.T. at 50-51; R.R. at 132a-133a.

Constable Frawley did not specifically recall posting a notice on the Property because he posts more than one property in a particular community on the same night. He stated that he was not a trained surveyor but was very familiar with the development where the Property was located. N.T. at 58, 60; R.R. at 140a, 142a. He identified his signature on the affidavit which stated the date of posting as August 17, 2002. N.T. at 59; R.R. at 141a.

Cannizzaro testified that he signed his wife's name on the return receipt card for the August 2, 2002, notice. N.T. at 62; R.R. at 144a. Cannizzaro told Appellant that someone in the Bureau told him that the Property would not be sold on the scheduled date when he telephoned the Bureau. N.T. at 63; R.R. at 145a. He was never asked whether he was the record owner of the Property or whether he had the authority to negotiate an agreement on behalf of Appellant. N.T. at 64; R.R. at 146a. He did not see a posting on the Property when he visited it on the date of the sale. N.T. at 65; R.R. at 147a.⁴

On August 22, 2003, the trial court denied Appellant's objections/exceptions and confirmed the tax sale:

[T]he Pike County Tax Claim Bureau still satisfied its burden of proving strict compliance with the statutory notice provisions of the Real Estate Tax Sale Law. Petitioner [Appellant] asserts that notice by mail and by posting were insufficient. In short, the Petitioner [Appellant] and her husband [Cannizzaro] were not credible witnesses, and the constable John Fraily [sic] provided credible testimony that the property was properly posted. As for the mailed notices, the Tax Claim Bureau did



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all that it was required to do under the notice statutes (Citation omitted).

Trial Court Order & Opinion, August 22, 2003, at 1-2.

Appellant contends that the tax sale should have been set aside by the trial court because the Bureau failed to satisfy its burden of proof that the Property had been properly posted, and that the Bureau failed to satisfy additional notice requirements contained in the Law.⁵

I. Posting

Appellant asserts that there was no showing before the trial court that the Property was posted because Cannizzaro testified that he was at the Property on the day of the sale and the only posting on the Property was from a previously noticed tax sale scheduled approximately two years earlier. Although Appellee testified that he removed a posting from the Property and brought it to the hearing, Appellant asserts that the purported posting does not prove that it was posted on the Property. Appellant further asserts that Constable Frawley's affidavit of posting was suspect because he had no specific recollection of posting the Property, the affidavit of posting was not signed in front of a notary, and Constable Frawley relied on surveys and maps when posting properties in the area of the Property without any training as a surveyor and the Property did not have a house number.

Section 602(e)(3) of the Law, 72 P.S. §5860.602(e), provides: "Each property scheduled for sale shall be posted at least ten (10) days prior to the sale."

In tax sale cases, the tax bureau bears the burden of proving compliance with the statutory notice provisions of the Law. *Rinier v. Tax Claim Bureau of Delaware County*, 606 A.2d 635 (Pa. Cmwlth. 1992). When a trial court determines whether a property is properly posted, it is to consider not only whether the posting alerts not only the owner of the property to the impending sale but also whether the posting adequately notifies members of the general public who may wish to participate in the sale. *Ban v. Tax Claim Bureau of Washington County*, 698 A.2d 1386 (Pa. Cmwlth. 1997).

It is well established that notice provisions are to be strictly construed, and that strict compliance with such provisions is necessary to guard against deprivation of property without due process, and if any one is defective, the sale is void. . . . Nevertheless, we have previously held that the formal requirements of Section 602 [of the Law] need not be met when a taxpayer has actual notice of a tax delinquency and scheduled sale. (Citations omitted).

Donofrio, 811 A.2d at 1122.

The trial court specifically found Constable Frawley credible and did not find Cannizzaro credible. The trial court is the finder of fact and it is within the trial court's authority to make credibility determinations and to make findings of fact based on the findings. If the findings are supported by



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substantial evidence, they will not be disturbed on appeal. Consolidated Return by McKean County Tax Claim Bureau of 9/12/2000, 820 A.2d 900 (Pa. Cmwlth. 2003). The trial court determined based on Constable Frawley's testimony that the Property was properly posted. Constable Frawley testified that while he did not specifically recall posting on the Property, he signed the affidavit which stated that he did post the Property.⁶ The trial court accepted this testimony and did not accept the testimony of Cannizzaro. This Court shall not reweigh the trial court's credibility determinations. This Court determines that the trial court's determination that the Property was properly posted is supported by substantial evidence.

II. Additional Notification Requirements

Appellant next contends that the trial court erred when it did not set aside the tax sale because of the Bureau's failure to make additional notification efforts pursuant to Section 607.1 of the Law, 72 P.S. §5860.607a.⁷ Appellant asserts that because Cannizzaro, who was not the record owner, telephoned the Bureau with respect to the Property, the telephone call raised a significant doubt as to whether Appellant, the record owner, received notice, thereby triggering the provisions of Section 607.1.

In *In re Upset Tax Sale Held 11/10/97*, 784 A.2d 834 (Pa. Cmwlth. 2001), petition for allowance of appeal denied, 569 Pa. 688, 800 A.2d 936 (2002), this Court noted that a tax bureau is required to determine whether there is a significant doubt whether a record owner of a property to be sold received the required notice under the Law. Gerald Baklycki (Mr. Baklycki) and Orysia Baklycki (Mrs. Baklycki) owned property in Bucks County and had failed to pay real estate taxes in 1995. The Bucks County Tax Claim Bureau (Bucks) sent notice of an impending sale to each owner by certified mail, restricted delivery, return receipt requested. Mrs. Baklycki signed her name and received her certified letter. She also signed her husband's name and received his certified letter. After Bucks received the return receipts, Bucks posted the property and ultimately sold the property at tax sale. Mr. and Mrs. Baklycki filed objections/exceptions to the sale in the Court of Common Pleas of Bucks County. *In re Upset Tax Sale*, 784 A.2d at 835. The Court of Common Pleas of Bucks County set aside the sale on the basis that Mr. Baklycki did not receive express or implied notice of the sale. *In re Upset Tax Sale*, 784 A.2d at 836.

Bucks appealed to this Court which reversed. This Court reasoned that the signed receipt that Bucks received bore Mr. Baklycki's signature. Once Bucks received a receipt with Mr. Baklycki's signature, it did not have to do anything more. This Court determined: "The statute itself provides that 'no sale shall be invalidated because of proof that mail notice as herein required was not received by the owner, provided such notice was given as prescribed by this statute.' Section 602 of the Law, 72 P.S. §5860.602." *In re Upset Tax Sale*, 784 A.2d at 837.

Here, the Bureau received the signed receipt that bore Appellant's signature. Based on *In re Upset Tax Sale*, it is not relevant whether the mailed notice was received by the owner. The inquiry is whether the notice was given as prescribed by the Law. Appellant points to no section of the Law or



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any case law that indicates that the Bureau must undertake additional notification efforts if someone other than the record owner telephones a tax bureau concerning a property that is scheduled for sale. Cannizzaro's phone call and attempt to negotiate an agreement to stay the sale did not create significant doubt as to whether Appellant received notice under Section 607.1 of the Law. The trial court did not err when it determined that the Bureau complied with the Law.

Accordingly, we affirm.

AND NOW, this 3rd day of January, 2005, the order of the Court of Common Pleas of Pike County in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge

1. Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §§5860.101-5860.803.
2. Cynthia Gehris, an employee of the Bureau, instructed an individual who called regarding the Property in the summer of 2002 that an agreement of sale had to be returned and signed prior to the date of the tax sale. N.T. at 40-41; R.R. at 122a-123a.
3. The notice was dated August 2, 2002. The return receipt was dated August 8, 2002.
4. William R. Vojarski, a neighbor, testified that he never saw a posting on the Property but admitted that he could not see the front of the house from his residence. N.T. at 79, 81; R.R. at 161a, 163a.
5. Our review in tax sale cases is limited to determining whether the trial court abused its discretion, erred as a matter of law or rendered a decision with a lack of supporting evidence. *Donofrio v. Northampton County Tax Claim Bureau*, 811 A.2d 1120 (Pa. Cmwlth. 2002).
6. The affidavit was not notarized on the date Constable Frawley signed it.
7. This section was added by the Act of July 3, 1986, P.L. 351. Section 607.1 of the Law, 72 P.S. §5860.607a, provides: (a) When any notification of a pending tax sale or a tax sale subject to court confirmation is required to be mailed to any owner, mortgagee, lienholder or other person or entity whose property interests are likely to be significantly affected by such tax sale, and such mailed notification is either returned without the required receipted personal signature of the addressee or under other circumstances raising a significant doubt as to the actual receipt of such notification by the named addressee or is not returned or acknowledged at all, then, before the tax sale can be conducted or confirmed, the bureau must exercise reasonable efforts to discover the whereabouts of such person or entity and notify him. The bureau's efforts shall include, but not necessarily be restricted to, a search of current telephone directories for the county and of the dockets and indices of the county tax assessment offices, recorder of deeds office and prothonotary's office, as well as contacts made to any apparent alternate address or telephone number which may have been written on or in the file pertinent to such property. When such reasonable efforts have been exhausted, regardless of whether or not the



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notification efforts have been successful, a notation shall be placed in the property file describing the efforts made and the results thereof, and the property may be rescheduled for sale or the sale may be confirmed as provided in this act.

