

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

IN RE: :
: NO: 08-02759
:
LYCOMING COUNTY TAX CLAIM :
BUREAU :
: CIVIL ACTION

OPINION AND ORDER

This matter comes before the Court as a result of a judicial tax sale on June 3, 2009. The Petitioner, Alice Waltman, was the owner of property located at 2863 Leona Lane, Williamsport, Parcel Number 26-0210-0906. Petitioner failed to pay taxes owed in 2006, 2007 and 2008. As a result, the property was sold at a judicial tax sale on June 3, 2009 to Steven L. Blair for \$7,000.00.

On June 10, 2009, Petitioner filed a Petition to Set Aside and Vacate Judicial Tax Sale asserting that the sale of the property to Mr. Blair was in violation of Pennsylvania's Real Estate Tax Sale Law. Petitioner claims that she did not receive required statutory notice of the tax sale, and secondly, argues that the Tax Claim Bureau failed to accept money to stop the sale in accordance with 72 P.S. § 5860.603.

Following an evidentiary hearing on this matter, the Petition to Set Aside and Vacate Judicial Tax Sale is DENIED.

At the time of hearing, the Petitioner submitted that the only issue remaining before the Court related to the failure of the Tax Office to accept money to stop the sale in accordance with 72 P.S. § 5860.603. In support of her claim, the Petitioner offered testimony that her husband, Greg Waltman, contacted Representative Rick

Mirabito's office and that a legislative assistant of Mr. Mirabito's office, Christie Herr, advised Mr. Waltman that the Tax Office agreed to stop the sale if he arrived at the Tax Claim Bureau Office on June 3, 2009 with payment of his taxes. Although the Petitioner's agent, Greg Waltman, arrived at the office with the money, sometime after 10:00 a.m. on June 3, 2009, he was allegedly advised after waiting for approximately one hour, that the sale had already taken place and that there was nothing further he could do. Petitioner asserts that the Bureau failed to accept money to stop the sale in accordance with 72 P.S. § 5860.603.

72 P.S. § 5860.603 provides:

Any owner or lien creditor of the owner may, at the option of the bureau, prior to the actual sale, (1) cause the property to be removed from the sale by payment in full of taxes which have become absolute and of all charges and interest due on these taxes to the time of payment, or (2) **enter into an agreement, in writing, with the bureau to stay the sale of the property** upon the payment of twenty-five per centum (25%) of the amount due on all tax claims and tax judgments filed or entered against such property and the interest and costs on the taxes returned to date, as provided by this act, and agreeing therein to pay the balance of said claims and judgments and the interest and costs thereon in not more than three (3) instalments [sic] all within one (1) year of the date of said agreement, the agreement to specify the dates on or before which each installment shall be paid, and the amount of each instalment [sic]. (Emphasis added).

Despite the clear language of 72 P.S. § 5860.603, the Petitioner failed to produce any evidence of a written agreement as statutorily required to stay the sale. Although the Petitioner relies upon In Re Sale of Real Estate by Venango County Tax Claim Bureau, 449 A.2d 879 (Pa.Comm. 1982), this Court does not find this case to be dispositive of the issue presented.¹

¹ It should be noted that Mr. Waltman had previously failed to make payments pursuant to an installment agreement for prior years.

In In RE Sale of Real Estate by Venango County Tax Claim Bureau, *supra*, the Appellant, Mr. Hite, was the owner of two parcels of property in Venango County, one in Mineral Township and one in Rockland Township. In 1975 Mr. Hite conveyed the Rockland Township parcel to Mr. Jack Parker, but continued to use the property pursuant to an informal agreement with Mr. Parker, and paid the 1976 real estate taxes on this property with funds supplied by Mr. Parker. In 1979, the tax bureau informed Mr. Hite that it intended to sell the Mineral Township property for past due taxes. In its letter to Mr. Hite, the tax bureau also informed Mr. Hite that the Rockland Township property was on the list of proposed tax sales. Upon receiving the letter, Mr. Hite contacted the Bureau, and was informed that \$91.12 was due on the Mineral Township property for unpaid 1977 taxes, and \$227.63 was due on the Rockland Township property for unpaid 1977 and 1978 taxes. Mr. Hite notified Mr. Parker, received \$227.63 from Mr. Parker, and paid \$227.63 to the Bureau on August 31, 1979. The Bureau sent two (2) more letters to Mr. Hite reminding him that the Mineral Township property would be sold, but Mr. Hite failed to pick up his mail. Mr. Hite subsequently attempted to tender payment of his taxes on September 10, 1979, immediately following the tax sale of his property, but the tendered payment was rejected for being too late. Mr. Hite argued that he thought his August 31, 1979 payment of funds would be credited against the tax liabilities of his Mineral Township property, and argued that the tax sale should be vacated as he made a “good faith” effort to pay his taxes. In upholding the lower court’s order refusing to vacate the sale, the Commonwealth Court held:

It is clear that the only acceptable basis for setting aside a tax sale on exceptions is a finding by a court that the proceedings of the bureau involved

in the sale were irregular or illegal. Section 607(d) of the Law, 72 P.S. § 5860.607(d). To hold otherwise, as Appellant would apparently have us do, would be contrary to the “dominant purposes of the Real Estate Tax Sale Law [which are] to provide speedier and more efficient procedures for enforcing tax liens and to improve the quality of titles obtained at a tax sale...Here, the record clearly shows that the Bureau fully complied with the provisions of the Law, and was in no way responsible for Appellant’s mistaken belief that he had paid the outstanding taxes on his property.” Id. at 881.

Although the Petitioner suggests that the sale should be set aside because the tax office in this action **was** responsible for Petitioner’s belief that if she showed up with money anytime on June 3, 2009 the sale could be stopped, this Court does not accept the facts as presented by Petitioner. Any mistaken belief was not caused by the tax claim office.

In reaching its decision, this Court finds credible and relies upon the testimony of Thomas Heap, the Director of the Lycoming County Tax Claim Bureau. Mr. Heap testified that he personally spoke with Greg Waltman on April 20, 2009. Pursuant to assurances by Mr. Waltman that an IRS tax refund would be arriving prior to the June 3, 2009 sale, Mr. Heap agreed to accept the amount due for the 2006 taxes, or approximately \$1,800.00, to stop the sale. Mr. Heap testified that he specifically advised Mr. Waltman to arrive by 9:00 a.m. on June 3, 2009. Although Petitioner asserts that she relied upon information received from Christie Herr on June 2, 2009 that the sale would be stopped if the money was received by the tax bureau anytime on the day of June 3, 2009, Ms. Herr admitted on cross-examination that it was possible that Mr. Heap told her that payment had to be made by a certain time, and that she failed to record that information in her notes from that day.²

² This Court notes that although Ms. Herr testified on direct examination that she would have communicated and recorded a time for payment if a time had been indicated, Ms. Herr failed to record

Following a review of the evidence presented, this Court does not find any evidence to suggest that the tax sale was irregular or illegal. Notice was appropriately given regarding the sale. Although Mr. Heap made an oral agreement with Mr. Waltman to accept the 2006 taxes prior to 9:00 a.m. on June 3, 2009 to stop the sale, Mr. Waltman failed to arrive prior to 9:00 a.m. As it was the practice and procedure of tax office employees to notify Mr. Heap via cell phone when individuals appear at the tax office to pay past due tax amounts owed during sales, this Court finds that Mr. Waltman did not arrive at the tax office with his money prior to the time required, and prior to the property's sale. Moreover, any alleged miscommunication by representatives of Mr. Mirabito's office cannot be attributed to the Tax Claim Bureau when clear instructions were previously given by Mr. Heap.

ORDER

AND NOW, this 27th day of October, 2009, the Petition to Set Aside and Vacate Judicial Tax Sale is DENIED.

BY THE COURT,

Richard A. Gray, J.

cc: Marc F. Lovecchio, Esquire

Peter Burchanowski, Esquire

Steven Blair
122 Ridge Road
Montgomery, PA 17752

Gary Weber, Esquire

even the amount of the payment that was to be made, and testified that she was not given the background or specifics of the situation.