IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: LYCOMING COUNTY TAX CLAIM BUREAU UPSET TAX SALE	:	NO. 07 – 02,332
APPEAL OF SUSAN TROTTA	:	Parcel 63-20-414

OPINION IN SUPPORT OF ORDER OF DECEMBER 9, 2008,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Appellant appeals from this Court's Order of December 9, 2008, which overruled her exceptions to the Decree Nisi entered by this Court on October 23, 2007, thereby denying her request to set aside the tax sale of a property formerly owned by her and her daughter, Foxfire Trotta. The Court found that notice of the sale was properly given to both owners as, with respect to Susan Trotta, the notice had actually been received, and with respect to Foxfire Trotta, the notice had been mailed both by certified and regular mail to her last known address on file with the tax assessment office, and while the certified mail was returned unclaimed, the regular mail was not returned and there was thus nothing to raise with the Tax Claim Bureau a significant doubt that the notice had not been received. In her Statement of Matters Complained of on Appeal, Appellant challenges the Court's ruling on two grounds.

First, Appellant claims the Court erred in finding proper notice inasmuch as the evidence showed that the Tax Claim Bureau mailed the notice by certified mail and first class mail simultaneously, arguing that the statute provides for the mailing of the notice by first class mail only after the certified mailing results in no return receipt. The Court believes Appellant misreads the statute. The Real Estate Tax Sale Law provides, in pertinent part, as follows:

> (e) In addition to such publications, similar notice of the sale shall also be given by the bureau as follows:
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> (1) At least thirty (30) days before the date of the sale, by United States certified mail, restricted delivery, return receipt requested, postage prepaid, to each owner as defined by this act.
>
> (2) If return receipt is not received from each owner pursuant to the

> provisions of clause (1), then, at least ten (10) days before the date of the sale, similar notice of the sale shall be given to each owner who failed to acknowledge the first notice by United States first class mail, proof of mailing, at his last known post office address by virtue of the knowledge and information possessed by the bureau, by the tax collector for the taxing district making the return and by the county office responsible for assessments and revisions of taxes. It shall be the duty of the bureau to determine the last post office address known to said collector and county assessment office.

72 P.S. Section 5860.602(e). The Court reads this section only to require a first class mailing when the certified mail is not returned as having been received. It does *not* provide that a notice *cannot* be mailed by first class when the certified mail *is* received, nor does it prohibit the mailing of the notice by first class at the same time as the mailing by certified mail. The Court can understand the Tax Claim Bureau's sending of both notices at the same time as a way to avoid having to check for return of the certified mail in a majority of the cases,[1] but cannot understand how sending both notices at once violates Appellant's right to notice. The Court therefore does not believe this issue to provide a basis for setting aside the tax sale.

Second, Appellant contends that since the deed to the property set forth Foxfire Trotta's correct address and the County caused an incorrect address to be recorded in the Assessment Office, the tax sale should have been set aside. This contention is based on the assumption that the County indeed caused an incorrect address to be recorded in the assessment office. The record does not support such a finding, however. The record shows only the following: (1) The property was titled in the names of "Susan Trotta and Foxfire Trotta, as Joint Tenants with the Right of Survivorship", and that the residence of the "grantees" was noted on the deed as "128 South Front Street, Lewisburg, PA 17837". (2) Susan Trotta and Foxfire Trotta both resided at that address at the time of the purchase of the property in December 2003. (3) Susan Trotta moved to 1024 First Avenue, Williamsport, PA 17701 in 2004.[2] (4) Foxfire Trotta did not pay the taxes in 2004, but presumed that Susan Trotta did so.[3] (5) The name and address on file with the Tax Assessment Office at the time of the mailing of the notices in question was "Susan

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1 The Director of the Tax Claim Bureau testified that although four thousand tax notices were mailed out, only about one hundred properties actually went to sale. N.T., December 9, 2009, at p. 12.

2 Foxfire Trotta remained at the Lewisburg address at that time.

3 The taxes were not paid after 2004.

and Foxfire Trotta, 1024 First Avenue, Williamsport, PA." There is nothing to even suggest, let alone support a finding, that the County caused an incorrect address to be recorded in the assessment office. More likely, were it relevant, the Court would find that either a tax bill mailed to the Lewisburg address resulted in a forwarding notice from the post office to the assessment office showing the Williamsport address, or Susan Trotta herself notified them to send the tax bills to her new address. How the address came to be in the tax assessment records is not relevant, however, in light of the fact that there is nothing to suggest it was due to an error of the County.[4]

The Court's decision in this matter was based on the requirement of the law that the assessment office use ordinary common sense business practices in determining where to send notices, *See* Krawec v. Carbon County Tax Claim Bureau, 842 A.2d 520 (Pa. Commw. 2004), and the statute's requirement that further investigation is necessary only where the circumstances raise a "significant doubt" as to the receipt of the notice. 72 P.S. Section 5860.607a(a). In the instant case, the Tax Claim Bureau had the following information at the time of the sale: (1) A Notice of Return and Claim sent by certified mail to "Trotta Susan and Foxfire" at "1024 First Avenue, Williamsport, PA 17701" in May 2006 was returned as delivered with a signature appearing to be someone with the last name of Trotta, signing as "Agent".[5] (2) A Notice of Sale sent by certified mail to "Trotta Susan" at "1024 First Avenue, Williamsport, PA 17701" in June 2007 was returned as delivered with Susan Trotta's signature.[6] (3) A Notice of Sale sent by certified mail to "Trotta Foxfire" at "1024 First Avenue, Williamsport, PA 17701" in June 2007 was returned as unclaimed after three attempted deliveries.[7] (4) A Notice of Sale sent by certified mail to "Trotta Susan" at "1024 First Avenue, Williamsport, PA 17701" in October 2007 was returned unclaimed.[8] (5) A Notice of Sale sent by certified mail to "Trotta Foxfire" at "1024 First Avenue, Williamsport, PA 17701" in October 2007 was returned unclaimed.[9] (6) A Notice of Sale mailed by first

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4 This is not to imply, however, that had the County indeed made an error, such would support upsetting the tax sale. The Court notes that that issue is not before it.
5 Defendant's Exhibit #8.
6 Defendant's Exhibit #1.
7 Defendant's Exhibit #2.
8 Defendant's Exhibit #4.
9 Defendant's Exhibit #5.

class mail to "Trotta Foxfire" at "1024 First Avenue, Williamsport, PA 17701" in October 2007 was not returned.[10] The Court therefore found that since the Tax Claim Bureau had documents which purported to show successful delivery of notices to 1024 First Avenue, and as those notices which were returned were marked "unclaimed" rather than "not deliverable as addressed" or "no forwarding address" or "forwarding address expired", the Bureau did *not* have anything which would raise a "significant doubt" that the address in their records was incorrect. Accordingly, the Court found proper compliance with the notice requirements and upheld the tax sale.

Dated: February 17, 2009

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: Peter Burchanowski, Esquire
Christopher Williams, Esquire
Garth Everett, Esquire
Gary Weber, Esq.
Hon. Dudley Anderson

10 N.T. December 9, 2009, at p. 38.