

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: LYCOMING COUNTY TAX : NO. 12 – 02,141

CLAIM BUREAU

:

: Petition to Set Aside Upset Tax Sale of

: September 12, 2012

OPINION AND ORDER

Before the court are the objections/exceptions and Petition to Set Aside Upset Tax Sale of September 12, 2012, filed by Patricia A. Napp on October 18, 2012.¹ A hearing thereon was held November 13, 2012.

At the Upset Tax Sale held on September 12, 2012, the Tax Claim Bureau sold the property located at 330 Poplar Street, Jersey Shore, Pennsylvania, otherwise known as parcel 21-0040-0917, the record owners of which are Patricia A. Napp and Bonny J. Dannelley. Ms. Napp contends the tax sale must be set aside for defective notice. The notice required, as it applies in this case, is set forth in the Real Estate Tax Sale Law, as follows:

§ 5860.602. Notice of sale

(a) At least thirty (30) days prior to any scheduled sale the bureau shall give notice thereof, not less than once in two (2) newspapers of general circulation in the county, if so many are published therein, and once in the legal journal, if any, designated by the court for the publication of legal notices. Such notice shall set forth (1) the purposes of such sale, (2) the time of such sale, (3) the place of such sale, (4) the terms of the sale including the approximate upset price, (5) the descriptions of the properties to be sold as stated in the claims entered and the name of the owner.

¹ Although at the hearing counsel for Ms. Napp indicated that the other owner of the property, Bonny Dannelley, who was present at the hearing, wished to join in the petition, as any objections/exceptions must be filed within thirty days of the confirmation of the sale by the court, 72 P.S. Section 5860.607(a.1)(1), and as the sale was confirmed by the court on October 12, 2012, the request to join is untimely and therefore will not be considered.

...

(e) In addition to such publications, similar notice of the sale shall also be given by the bureau as follows:

(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.

(3) Each property scheduled for sale shall be posted at least ten (10) days prior to the sale.

72 P.S. Section 5860.602. The Bureau offered evidence that the notice required by Subsection (a) was published in The Williamsport Sun-Gazette on August 13, 2012, and in the Lycoming Reporter on August 10, 2012, that the notice required by Subsection (e)(1) was sent certified mail, return receipt requested, restricted delivery, on or about June 1, 2012, received June 12, 2012, and that the posting of the property required by Subsection (e)(3) was accomplished on June 29, 2012. The Bureau also offered evidence that at the time of posting, Ms. Napp was personally served with notice and that since Ms. Napp had signed for the certified mail intended for Ms. Dannelley, notices were also sent by first class mail pursuant to Subsection (e)(2) on August 2, 2012. The court finds that such notice complies with the requirements of the Tax Sale Law.

In addition, the Bureau offered evidence that Ms. Napp had actual notice. Not only was there evidence that she was personally served by the person posting the property, there was also evidence that she called the Bureau on June 14, 2012, to inquire how to remove the property from the sale, and again on August 17 for the same purpose.

Ms. Napp offered the testimony of Ms. Dannelley that she did not receive notice of the sale, and through the testimony of Ms. Napp that she withheld the information from Ms. Dannelley, the court finds such may indeed have been the case. There is no question in the court's mind, however, that the notices were sent to Ms. Dannelley and therefore, such lack of receipt does not invalidate the sale. *See In re Upset Tax Sale Held 11/10/97*, 784 A.2d 834 (Pa. Commw. 2001)(where county tax claim bureau complied with all notice provisions, fact that notice was not actually received will not defeat the sale).

Ms. Napp argues that since the post office allowed her to sign for the notice intended for Ms. Dannelley and the Bureau did not take further steps to ensure that she was not allowed to do so, the sale must be set aside. This argument is without merit.² The statute provides for the situation where the notice is not signed for by the intended recipient by requiring the mailing of the notice by first class mail and such mailing was accomplished here. In addition, the evidence that Ms. Napp had actual notice is sufficient to overcome any deficiencies in the required notice. *See In re Tax Sale of Real Property Situate in Paint Township, Somerset County*, 865 A.2d 1009 (Commw. 2005). Therefore, the sale will not be set aside on this basis.

² The court also finds the argument curious as there is no question Ms. Napp signed for her own certified mail.

Ms. Napp also argues that the sale should be set aside based on her contention the Bureau misled her as to the sale. Ms. Napp testified that she paid \$1200 on July 9, 2012, and believed such payment to be sufficient to remove the property from the tax sale. This testimony is suspect, however, in light of the evidence that after making the payment, she received another notice of sale and again called to inquire how to remove the property from the sale. Further, it is clear that she understood the \$1200 payment to be for 2009 taxes but also knew that the sale was based on unpaid 2010 taxes as well. The court cannot find that Ms. Napp was misled by the Bureau.

The court is not unsympathetic to Ms. Napp's predicament. The law does not allow for setting aside the sale on the basis of that sympathy, however. Accordingly, the objections/exceptions and Petition to Set Aside Upset Tax Sale of September 12, 2012, will be overruled/denied.

ORDER

AND NOW, this 14th day of November 2012, for the foregoing reasons, the objections/exceptions filed by Patricia Napp are hereby overruled and the Petition to Set Aside Upset Tax Sale of September 12, 2012 is hereby denied. As to Parcel 21-0040-0917, otherwise known as 330 Poplar Street, Jersey Shore, Pennsylvania, the tax sale of September 12, 2012, is hereby confirmed absolutely.

cc: Peter Burchanowski, Esq.
Jennifer Heverly, Esq.
Olga Levi
196 Potters Lane, Port Matilda, PA 16870
Gary Weber, Esq.
Hon. Dudley Anderson

BY THE COURT,

Dudley N. Anderson, Judge