

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

VONNIE BEAMER,	:	CV- 13-02407
F/K/A VONNIE FAUGHNAN	:	
	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION
	:	
LYCOMING TAX CLAIM BUREAU,	:	
Defendant	:	

ORDER

Before the court is Plaintiff's Complaint to Set Aside a Tax Sale of her property, identified as tax parcel 01-3280-022701-000 with an address of 4335 Daughtertys Run Road, that was sold at an upset tax sale on September 12, 2013. A hearing was held on February 13, 2014. Upon consideration of the testimony and exhibits, the Court finds in favor of the defendant and against the plaintiff.

Plaintiff contends that the tax sale should be set aside for two reasons. First she asserts that the Tax Claim Bureau failed to comply with notice requirements mandated by 72 P.S. § 5860.602, specifically with regard to certified mail and posting. Second, plaintiff asserts that the Tax Claim Bureau sold the property in violation of its own specific language in a Notice of Return and Claim. This Court disagrees with both these contentions as follows.

As to the first contention, the Court finds that the Tax Claim Bureau fully complied with the notice requirements mandated by 72 P.S. § 5860.602. The notice requirements at issue in this case are set forth below.

§ 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 ...

(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. § 5860.602 (emphasis added.)

"In a tax sale case, the Bureau has the burden of proving compliance with the statutory provisions of the Law [RETSL]." (emphasis added). *Piper v. Tax Claim Bureau of Westmoreland County*, 910 A.2d 162, 164 (Pa. Cmwlth. 2006), quoting, *In re Tax Sale of Real Property Situated in Jefferson Township*, 828 A.2d 475, 479 (Pa. Cmwlth. 2003)(further citations omitted.) Where evidence establishes that the Tax Claim Bureau complied with the notice requirements of 72 P.S. § 5860.602, the trial court lacks authority to set aside the sale and vacate the tax deed to the purchasers. *See, e.g., Pitts v. Del. County Tax Claim Bureau*, 967 A.2d 1047 (Pa. Cmwlth. 2009). Furthermore, "[n]o sale shall be defeated and no title to property sold 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 section. Section 602(h) of the RETSL, 72 P.S. §5860.602(h). *Pitts*, 967 A.2d at 1053-1054.

In the instant case, plaintiff specifically alleged that notice was defective for failing to comply with the provisions of 72 P.S. § 5860.602 related to certified mail and posting of the property. In support of such defects, plaintiff testified that she did not recall ever receiving any

notice in the mail about the sale until after the sale occurred. Plaintiff further testified that she did not recall receiving certified mail about the sale and did not claim any certified mail. Plaintiff further denied seeing notices posted on her property but acknowledged that she did not regularly use the front of the property.

Thomas Heap, the Director of the Lycoming County Tax Claim Bureau, testified that he oversaw the sending of notices in this matter and that all three methods of notice required by 72 P.S. § 5860.602 were properly completed. Mr. Heap provided testimony and exhibits which established that the required notice was mailed by certified mail and followed by regular mail at least ten days prior to the sale. Mr. Heap further testified that the property was posted and submitted an exhibit which pictured the residence prominently displaying neon green notices on the front of the property. The Court finds the testimony of Thomas Heap credible and finds that defendants complied with all three methods of notice required by 72 P.S. § 5860.602.¹

This Court notes that plaintiff's failure to claim the certified mail does not render the notice defective. The statute specifically provides for that contingency. It provides that if the return receipt is not received from the owner, then a similar notice must be sent by first class mail. The Court finds that this contingency applied here and that defendant complied with its requirements. Plaintiff acknowledged that she periodically failed to claim certified mail because of her work schedule. Plaintiff also acknowledged that she received other notices from the defendant which were addressed identically to those which she claimed she never received. These acknowledgments further support this Court's finding that the notices were sent as required.

¹ 72 P.S. § 5860.602 requires notice by publication. Plaintiff did not assert a failure to provide notice by publication. Nonetheless, evidence established that the Tax Claim Bureau provided notice by publication.

As to plaintiff's second contention, this Court finds that the Tax Claim Bureau did not violate the language of its Notice of Return and Claim when it sold the property for 2011 delinquent taxes. Plaintiff received a Notice of Return and Claim dated June 24, 2013 which stated plaintiff had until December 31, 2013 to pay her 2012 unpaid real estate taxes. While plaintiff testified that she mistook the Notice of Return Claim to mean she had until the end of 2013 before she had to make any payment, the notice itself only referenced the 2012 tax delinquency. The Notice of Return Claim states: "THIS NOTICE IS FOR 2012 UNPAID REAL ESTATE TAXES." (emphasis in original) Plaintiff testified that she was aware that she had more than one year of delinquent property taxes outstanding. Given that the notice specified that it was for 2012 unpaid real estate taxes, and the upset sale was for delinquent taxes for year 2011, not 2012, this Court cannot conclude that the Tax Claim Bureau violated its own language in its Notice of Return Claim. The Court further notes that there was no specific authority cited for setting aside a tax sale on that basis or upon a unilateral mistake by the homeowner. The Court cannot upset the tax sale based upon a mistaken belief held by the homeowner. *See, e.g., In re Upset Sale*, 571 A.2d 551, 554 (Pa. Cmwlth. 1990)("This Court has never before held and refuses to hold now that a taxpayer's mere assertions of mistaken beliefs are sufficient to overturn a tax sale and deny the rights of valid purchasers who followed proper procedure.")

Upon review of the testimony and exhibits in this matter, the court finds that the Tax Claim Bureau complied with the notice requirements of 72 P.S. § 5860.602. Accordingly, the Court enters the following Order.

ORDER

AND NOW, this **24th** day of **February**, 2014, for the reasons stated, Plaintiff's complaint to set aside the tax sale is DENIED. The tax sale is CONFIRMED.

BY THE COURT,

February 24, 2014

Date

Richard A. Gray, J.

cc: Jan Rumsey, Esq.
Peter Burchanowski, Esq.
Olga Levi
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