

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2007-CA 01540

BETTY REED

DEFENDANT/APPELLANT

V.

CHARLES RAY FLORIMONTE

PLAINTIFF/APPELLEE

BRIEF OF THE APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Charles Ray Florimonte, Appellee
2. Betty Reed, Appellant
3. Jimmy C. Havard, Chancery Clerk of Forrest County



PENNY JONES ALEXANDER
Attorney for Appellee

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STATEMENT OF THE ISSUES

The Chancery Court of Forrest County did not err when it found that notice to Florimonte of the tax sale of his property was deficient and set aside the tax deed to Reed..

STATEMENT OF THE FACTS

Facts as taken from the lower court opinion, Plaintiff's Record Excerpts pages 80 through 89:

Charles Florimonte (Florimonte) is the grandson of Charles P. Moody and Dorothy H. Moody. Florimonte testified that for many years his grandparents told him they wanted to give him a four acre piece of land they owned in Forrest County. On June 22, 2000, a deed was executed by the Moodys in the favor of Florimonte giving the grantor's address at 19 Kittrell Road in Beaumont. Florimonte's address, as grantee on the deed, was shown to be 1107 West Pine Street in Hattiesburg. The deed provided that the grantee, Florimonte, was to assume and be responsible for payment of the 2000 taxes which may be assessed on the property. The deed was not recorded in the office of the chancery clerk until October 2001, more than a year later. Florimonte testified that he had no idea who recorded the deed. He testified that the property was deeded to him as a gift. He said that he never got a copy, or the original, or the deed from the Clerk, nor has he ever received any correspondence, notice or any other document from the Forrest County Chancery Clerk. (RE p.80)

The taxes due for the year 2002 were not paid, and on August 25, 2003, Betty J. Reed bought the property at the Forrest County Tax sale for taxes due in the amount of \$21.80.

Florimonte testified that he was hit by a drunk driver in 2000 and was still on medication. He had also been robbed at gunpoint and had suffered from depression since that time.

On July 19, 2005, the Chancery Clerk, acting through his employees, caused a notice

of forfeiture to be prepared on May 2, 2006 which was then sent to Mr. Florimonte, the record owner of the property, by certified mail, return receipt requested.

The post office returned the mail to Florimonte with the notation on the envelope that the address, 1107 West Pine Street was "Vacant 5-5-05 DV005". Notice was provided to the clerk on the next day of non-delivery.

The same notice was posted on the building at 1007 West Pine on the 21st of July by a sheriff's deputy.

Florimonte testified that the property where the notices were sent at 1107 West Pine was family property and that he occupied it "off and on" at the sufferance of relatives. He stated that he lived at his grandparents address at that time and until the present being the address under their names on the deed which transferred title to him from them. (RE p. 83)

Florimonte testified he went to the clerk's office at some point and was told the property sold a day or two before for taxes. He was told to contact whoever bought the property for taxes. He testified he was just "waiting on a bill." The only land he ever owned is this parcel and he never paid taxes on anything but income.

Rhonda Styron, a deputy Chancery Clerk for Forrest County, signed an affidavit, which was introduced as evidence of her attempt to locate the correct mailing address of Florimonte. All lines after the name and parcel number were left blank. (RE p.84)

Appellant's Record Excerpts Lower Court Opinion pp. 80-89

SUMMARY OF THE ARGUMENT

A chancellor's findings of fact when supported by substantial evidence will not be disturbed on appeal unless there is a reasonable certainty that the chancellor was manifestly wrong, applied an erroneous legal standard, or abused his discretion. *Norwood v. Moore*, 932 So.2d 63 (¶5)(Miss.Ct.App. 2006).

In June 2000, a deed to four acres of land was executed by Pat and Charles Moody as a gift to their grandson, Charles R. Florimonte. The grantor's address was listed as 19 Kittrell Road, Beaumont, Mississippi, and Florimonte's address was shown to be 1107 West Pine Street in Hattiesburg. The deed was not recorded with the Chancery Clerk in Forrest County until October 2001. Florimonte testified that he had no idea who recorded the deed, that he never got a copy, or the original deed from the Clerk, nor has he ever received any correspondence, notice or any other document from the Forrest County Chancery Clerk.

The taxes due for the year 2002 were not paid, and on August 25, 2003, Betty J. Reed bought the property at the Forrest County Tax sale for taxes due in the amount of \$21.80. Following the tax sale, Florimonte had two years to redeem the property, or the tax sale would be final and title would vest in the purchaser at the tax sale.

On July 19, 2005, the Forrest County Chancery Clerk caused a notice of forfeiture to be prepared which was then sent to Florimonte by certified mail, but the post office returned the mail with the notation on the envelope that the address at 1107 West Pine Street was vacant. The same notice was posted on the building at 1007 West Pine on the 21st of July by a sheriff's deputy. Florimonte had lived at the 1007 West Pine Street address, but during the

period of time that notice was attempted, he was actually living in Beaumont with his grandparents. He also went to the clerk's office at some point and was told the property had been sold for taxes and he needed to contact whoever bought the property for taxes.

A deputy chancery clerk signed an affidavit indicating the steps she had taken to find the owner of the property or ascertain the correct mailing address of Florimonte. Lines on the affidavit form after the name of the owner and the parcel number were left blank.

Mississippi Code Ann. § 27-43-1 and § 27-43-3 provide the statutory method of notice and the additional steps that the clerk must follow is certified mail and personal service are ineffective.

The Mississippi Supreme Court has repeatedly ruled that the statutory notice requirements of § 27-43-3 must be strictly construed in favor of the landowners." *Norwood v. Moore*, 932 So.2d 63, 66 (¶¶ 7-8) (Miss. Ct. App. 2006); see also *Roach v. Goebel*, 856 So.2d 711, 716 (¶29) (Miss. Ct. App. 2003). . Mississippi's long-standing public policy is to protect landowners from loss by sale of their land for taxes. *Carmadelle v. Custin*, 208 So.2d 51, 55 (Miss. 1968). Section 27-43-3 reflects this policy by providing that "[s]hould the clerk inadvertently fail to send notice as prescribed in this section, then such sale shall be void"

In the case at bar, the statutory affidavit was left blank in areas concerning the clerk's attempt to ascertain Florimonte's current mailing address.

Appellant is correct in arguing that the failure of the landowner to actually receive the notice required shall not render the title void; but, that is only if the chancery clerk and the

sheriff strictly complied with the duties prescribed within § 27-43-3. “Statutes dealing with land forfeitures for delinquent taxes should be strictly construed in favor of the landowners.” *Viking Investments*, 931 So.2d 679, 682 (¶9)(Miss.Ct.App.2006); *Norwood v. Moore*, 932 So.2d at 66 (¶¶7-8); *Roach v. Goebel*, 856 So.2d 711, 716 (¶29) (Miss. Ct.App. 2003) “Any deviation from the statutorily mandated procedure renders the sale void. *Id* (citing *Hart v. Catoe*) 390 So.2d 1001, 1003 (Miss. 1980)

Appellant argues that to controvert an affidavit by the Clerk, Mississippi has required some sort of affirmative proof that a due and diligent search did not occur; but, the cases hold, instead, that strict compliance with the statute concerning notice and the affidavit of search and inquiry pursuant to Miss. Code Ann. § 27-43-3 must be strictly construed..

The chancellor’s findings of fact were supported by substantial evidence and he correctly applied the law. The chancellor’s decision to set aside the tax deed to Reed was correct and should be upheld.

ARGUMENT

A. STANDARD OF REVIEW:

A chancellor's findings of fact when supported by substantial evidence will not be disturbed on appeal unless there is a reasonable certainty that the chancellor was manifestly wrong, applied an erroneous legal standard, or abused his discretion. *Norwood v. Moore*, 932 So.2d 63 (¶5)(Miss.Ct.App. 2006), citing *Nosser v. B. P. Buford*, 857 So.2d 57, 60 (¶11)(Miss.Ct.App. 2002) When dealing with question of law, this Court applies a de novo standard and will only reverse for erroneous interpretation or application of law. *Morgan v. West*, 812 So.2d 987, 990 (¶8)(Miss. 2002) (citing *Bank of Mississippi v. Hollingsworth*, 609 So.2d 422, 424 (Miss. 1992))

B. THE NOTICE REQUIREMENTS OF § 27-43-1, -3

On June 22, 2000, a deed to four acres of land was executed by Pat and Charles Moody as a gift to their grandson, Charles R. Florimonte. The grantors' address was indicated as 19 Kittrell Road, Beaumont, Mississippi, and Florimonte's address, as grantee on the deed, was shown to be 1107 West Pine Street in Hattiesburg. The deed was not recorded with the Chancery Clerk in Forrest County until October 2001, more than a year later. Florimonte testified that he had no idea who recorded the deed, that he never got a copy, or the original deed from the Clerk, nor has he ever received any correspondence, notice or any other document from the Forrest County Chancery Clerk.

The taxes due for the year 2002 were not paid, and on August 25, 2003, Betty J. Reed bought the property at the Forrest County Tax sale for taxes due in the amount of \$21.80.

Following the tax sale, Florimonte had two years to redeem the property, or the tax sale would be final and title would vest in the purchaser at the tax sale.

On July 19, 2005, the Forrest County Chancery Clerk, acting through his employees, caused a notice of forfeiture to be prepared which was then sent to Mr. Florimonte, the record owner of the property, by certified mail, return receipt requested.

The post office returned the mail with the notation on the envelope that the address, 1107 West Pine Street was "Vacant 5-5-05 DV005". Notice was provided to the Clerk on the next day of non-delivery.

The same notice was posted on the building at 1007 West Pine on the 21st of July by a sheriff's deputy.

Florimonte testified that the property where the notices were sent at 1107 West Pine was family property and that he occupied it off and on at the sufferance of relatives. He stated that he lived at his grandparent's address at that time and until the present being the address under their names on the deed which transferred title to him from them

Florimonte also testified he went to the clerk's office at some point and was told the property sold a day or two before for taxes. He was told to contact whoever bought the property for taxes. He testified he was just "waiting on a bill." The only land he ever owned is this parcel and he never paid taxes on anything but income.

Rhonda Styron, a deputy chancery clerk for Forrest County, signed an affidavit indicating the steps she had taken to find the owner of the property or ascertain the correct mailing address of Florimonte. Lines on the affidavit form after the name of the owner and

the parcel number were left blank.

Mississippi Code Ann. § 27-43-1 provides that the chancery clerk must give notice of the pending expiration of the time for redemption to the owner of record as of 180 days prior to the expiration. The chancery clerk must give notice by certified mail, personal service via the sheriff, and publication in an appropriate newspaper. Miss. Code Ann. § 27-43-3. In applying § 27-43-3, the Mississippi Supreme Court has recently held that the statute requires the clerk to give notice to the landowner by each of these three methods. *Viking Invs., LLC v. Addison Body Shop, Inc.* 931 So.2d 679, 681 (¶5)(Miss. Ct. App. 2006).

If notice by certified mail and personal service are ineffective, § 27-43-3 list the following additional steps that the clerk must follow:

... In the event the notice by mail is returned undelivered and the personal notice as hereinabove required to be served by the sheriff is returned not found, then the clerk shall make further search and inquiry to ascertain the reputed owner's street and post office address. If the reputed owner's street or post office address is ascertained after the additional search and inquiry, the clerk shall again issue notice as hereinabove set out. If personal notice is again issued and it is again returned not found and if notice by mail is again returned undelivered, then the clerk shall file an affidavit to that effect and shall specify therein the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post office address and said affidavit shall be retained as a permanent record in the office of the clerk and such action shall be noted on the tax sales record. If the clerk is ... unable to ascertain the reputed owner's street or post office address after making ... search and inquiry for the second time, then it shall not be necessary to issue any additional notice but the clerk shall file an affidavit specifying therein the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post office address and said affidavit shall be retained as a permanent record in the office of the clerk and such action shall be noted on the tax sale record.

... The failure of the landowner to actually receive the notice herein required shall not render the title void, provided the clerk and sheriff have complied with the duties herein proscribed for them.

Miss. Code Ann. § 27-43-3 (Rev. 2002).

If the certified mail was returned unclaimed and the sheriff did not find the owner, the clerk is required to conduct additional search and inquiry and file affidavits detailing his or her efforts to locate the owner. *Moore v. Marathon Asset Management, LLC*, No. 2006 CA 010405 COA (¶15) (January 29, 2008) (citing *Lawrence*, 870 So.2d at 676 (¶¶13-14) and *Norwood*, 932 So.2d at 66 (¶8)). In the case at bar, the deputy clerk's affidavit was filed but it left blank critical portions pertaining to the search inquiry. There was no indication that an attempt was made to contact the attorney who prepared the deed, nor an attempt to contact the grantors who actually shared the same address with the grantee. See e.g., *Norwood*, 932 So.2d at ¶4.

Mississippi's long-standing public policy is to protect landowners from loss by sale of their land for taxes. *Carmadelle v. Custin*, 208 So.2d 51, 55 (Miss. 1968). Section 27-43-3 reflects this policy by providing that "[s]hould the clerk inadvertently fail to send notice as prescribed in this section, then such sale shall be void. . . ." "Under this guidance, we have held that the statutory notice requirements of section 27-43-3 must be strictly construed in favor of the landowners." *Norwood v. Moore*, 932 So.2d 63, 66 (¶¶ 7-8) (Miss. Ct. App. 2006). "Any deviation from the statutorily mandated procedure renders the sale void." *Roach v. Goebel*, 856 So.2d 711, 716 (¶29) (Miss. Ct. App. 2003).

As discussed in *Carmadelle v. Custin*, 208 So.2d 51 (Miss. 1968), the right to redeem from tax sales was regarded as of such vital importance that the people of Mississippi, through their delegate to the Constitutional Convention of 1890, inserted an express

safeguard against legislative impairment of the right to redeem in section 79, Mississippi Constitution 1890. *Id* at p. 54.

Appellant is correct in arguing that the failure of the landowner to actually receive the notice required shall not render the title void; but, that is only if the chancery clerk and the sheriff strictly complied with the duties prescribed within § 27-43-3. "Statutes dealing with land forfeitures for delinquent taxes should be strictly construed in favor of the landowners." *Viking Investments*, 831 So.2d at 682 (¶9); *Norwood v. Moore*, 932 So.2d at 66 (¶¶7-8); *Roach v. Goebel*, 856 So.2d 711, 716 (¶29) (Miss. Ct.App. 2003) "Any deviation from the statutorily mandated procedure renders the sale void. *Id* (citing *Hart v. Catoe*) 390 So.2d 1001, 1003 (Miss. 1980)

Appellant argues that to controvert an affidavit by the Clerk, Mississippi has required some sort of affirmative proof that a due and diligent search did not occur; but, the cases hold, instead, that strict compliance with the statute concerning notice and the affidavit of search and inquiry pursuant to Miss. Code Ann. § 27-43-3 must be strictly construed..

Appellant cites the *Viking Investments v. Addison Body Shop* case for authority in support of her argument that the Forrest County Chancellor erred as a matter of law in setting aside the tax deed to Reed. But, in the *Viking* case, the lower court declared the tax sale of Addison's property void after it found that Addison was not given adequate notice of the expiration of the redemption period because he never received personal service as mandated by MRCP 4.

In *Lawrence v. Rankin*, 870 So.2d 673 (Miss. Ct. App. 2004) the Jackson County

Chancery Court set aside the chancery clerk's conveyance to Lawrence and found that the chancery clerk of Jackson County failed to follow the notice requirements set forth in Miss. Code Ann. § 27-43-3 (§2 and §12-13)) (Rev. 2002) (the clerk attempted to follow the statutory search but failed to file the necessary affidavit)

In *Hart v. Catoe*, 390 So.2d 1001 (Miss. 1980), the Forrest County Chancery Court cancelled a tax deed executed to Hart holding that the appellant did not satisfy the notice provisions of Miss. Code Ann. § 27-43-3 (1972)(the Chancery clerk attempted compliance with the statute but failed to file the supporting affidavits required by the statute). *Id.* at 1002. Likewise in *Roach v. Goebel*, 856 So.2d 711 (Miss. Ct. App. 2003) (the clerk's diligent search and inquiry affidavit was repudiated.) *Id.* at 715 (§25).

CONCLUSION

The statutory notice requirements of § 27-43-3 are strictly construed in favor of the landowner. The chancellor's findings of fact were supported by substantial evidence and he correctly applied the law. The chancellor's decision to set aside the tax deed to Reed was correct and should be upheld.

Respectfully submitted,

CHARLES RAY FLORIMONTE

BY:


PENNY JONES ALEXANDER

CERTIFICATE OF SERVICE

I, PENNY JONES ALEXANDER, Attorney at Law, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Brief of the Appellee to the following:

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This, the 11 day of March 2008.


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