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IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2007-TS-02033


JAMES ALEXANDER, APPELLANT

V.

HILDRICH GROSS, DINETTE GROSS AND
ANY AND ALL PERSONS HAVING OR CLAIMING
ANY LEGAL OR EQUITABLE INTEREST IN THE
LAND DESCRIBED IN THIS COMPLAINT, APPELLEES

ON APPEAL FROM
THE CHANCERY COURT OF MADISON COUNTY, MISSISSIPPI

BRIEF OF APPELLEES
HILDRICH AND DINETTE GROSS
(ORAL ARGUMENT NOT REQUESTED)

RONALD M. KIRK
ATTORNEY AT LAW
4854 MAIN STREET
P. O. DRAWER N
FLORA, MS 39071
PHONE: 601-879-8264
FAX: 601-879-9411


ATTORNEY FOR APPELLEES

CERTIFICATE OF INTERESTED PERSONS
IN THE SUPREME COURT OF MISSISSIPPI COURT OF MISSISSIPPI

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UNDERSIGNED COUNSEL OF RECORD CERTIFIES THAT THE FOLLOWING
LISTED PERSONS HAVE AN INTEREST IN THE OUTCOME OF THIS CASE. THESE
REPRESENTATIONS ARE MADE SO THAT THE JUSTICES OF THE SUPREME
COURT OF MISSISSIPPI MAY EVALUATE POSSIBLE DISQUALIFICATION OR
RECUSAL.

1. JAMES ALEXANDER
2. HILDRICH GROSS
3. DINETTE GROSS
4. DON A. MCGRAW, JR.
5. KENNETH T. O'CAIN
6. RONALD M. KIRK
7. ARTHUR JOHNSTON, CLERK
8. HONORABLE JANICE M. GOREE, CHANCELLOR



RONALD M. KIRK
ATTORNEY AT LAW
P. O. DRAWER N
FLORA, MS 39071
PH. 601-879-8264/FAX: 601-879-9411
[REDACTED]

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STATEMENT REGARDING ORAL ARGUMENT

Appellees, Hildrich Gross and Dinette Gross, request that the Court decide this case on the briefs. The facts and legal arguments are adequately presented in the briefs and record. The decisional process would not be significantly aided by oral argument.

STATEMENT OF THE ISSUES

Whether the Chancery Court was manifestly wrong in deciding that the Chancery Clerk failed to make diligent search and inquiry to notify Hildrich Gross and Dinette Gross of the opportunity to redeem their land from tax sale.

STATEMENT OF THE CASE

February 13, 2006, James Alexander filed suit in the Madison County Chancery Court against Hildrich and Dinette Gross to confirm title to six parcels of property he bought at a tax sale in August, 2003. (Tr. 1-8) Mr. and Mrs. Gross answered the Complaint, denying that Mr. Alexander owned the property. (Tr. 51-55)

This suit to confirm title was tried before the Honorable Janace Harvey-Goree in the Madison County, Mississippi, Chancery Court on October 5, 2007. (Tr. 3) After hearing testimony from James Alexander, who had obtained tax sale deeds to Hildrich Gross's property, Arthur Johnson, who was and is the Chancery Clerk of Madison County, Mississippi, and Hildrich Gross, whose six parcels of property were sold to Mr. Alexander at a tax sale, (Tr. 3, 7, 18) the trial judge ruled from the bench that "the clerk has failed to give notice as described by statute." (Tr. 27) The Chancellor found that "diligent search would have shown the post office address." (Tr. 28)

STATEMENT OF THE FACTS

The first piece of property at issue in this litigation sold at the August, 2003, tax sale had belonged to Hildrich and Dinette Gross since 1977. (Tr. 15) The second piece at issue had belonged to Mr. and Mrs. Gross since 1994. (Tr. 22) The deed James Alexander attached to his complaint describing this second parcel shows the address of Hildrich and Dinette Gross to be P.O. Box 539, Flora, MS. (Tr. 22) The third piece of property belonging to Mr. and Mrs. Gross and sold to Mr. Alexander at the August, 2003, tax sale had belonged to Mr. and Mrs. Gross since 1995. (Tr. 26) The deed Mr. Alexander attached to his complaint for this piece of property reflects the Grosses' address as P.O. Box 539, Flora, MS. (Tr. 27) The fourth piece of property at issue had belonged to Mr. and Mrs. Gross since 1997. (Tr. 30) The fifth piece sold to Mr. Alexander at the tax sale had belonged to Mr. and Mrs. Gross since 1999. (Tr. 35) The deed attached to the complaint describing the fifth piece states that the address for Hildrich and Dinette Gross is P.O. Box 539, Flora, MS. (Tr. 35) The final property at issue was purchased by Mr. and Mrs. Gross in 2001 and the deed which describes it reflects their address is 171 Pugh Rd/P.O. Box 539, Flora, MS. (Tr. 41)

While there is record evidence the chancery clerk attempted to mail notices of the tax sale to a couple of different street addresses, (Tr. 8) Mr. Gross testified that he does not receive mail at any physical address but has received mail at the same post office box in Flora for many years. (Tr. 18-19) The chancery clerk admitted that no attempt was made to mail notice to the post office box of Hildrich and Dinette Gross. (Tr. 15)

Significantly, Mr. Gross testified that he went to the tax collector's office to pay his taxes and did in fact pay taxes on the property at issue for the years 2003 and 2004, not

realizing the 2002 taxes had never been paid. (Tr. 21) Nor did Mr. Gross realize the property had been sold at a tax sale until he was served with the complaint in this case. (Tr.21) It is undisputed that Madison County took Mr. Gross's money for taxes on the properties Mr. Alexander claims he owned at that point. (Exhibit D 1 to the Record)

SUMMARY OF THE ARGUMENT

The trial court correctly determined that the chancery clerk failed to make inquiry to determine the post office address for Mr. and Mrs. Gross. Miss. Code Ann. § 27-43-3 specifically requires that if a notice sent by registered or certified mail is returned and personal service cannot be made, the chancery clerk must determine the land owner's street address and **post office box**. Mr. and Mrs. Gross's post office box number was readily attainable as demonstrated by the attachments to Mr. Alexander's complaint in this matter. Their post office box address was on several deeds (Tr. 22, 27, 35, 41) and was the address to which the county tax collector sent the original tax bill. (Exhibit D1 to the Record) The chancellor's finding that the chancery clerk failed to make diligent inquiry was not manifestly wrong and is entitled to deference. *See, e.g., Miller v. Pannell*, 815 So.2d 1117, 1119 (¶9)(Miss. 2002).

ARGUMENT

It is well established precedent that statutes allowing the right of redemption from tax sales "are to be liberally and benignly construed in favor of the right to redeem." *Darrington v. Rose*, 128 Miss. 16, 25; 90 So. 632, 634 (1921). Mr. Gross went to the tax collector's office and paid what taxes he believed he owed. (Tr. 21) He was not informed at that time that his property had already been sold at a tax sale. (Tr. 21) Mr. and Mrs. Gross had received mail from the tax collector's office at the same post office box for years. (Tr. 21, Exhibit D1 to the Record) That post office box address was listed on some of the deeds, attached to Mr. Alexander's Complaint, filed in the office of the chancery clerk. (Tr. 22, 27, 35, 41) Notice was never sent to Mr. and/or Mrs. Gross at that post office box. The chancellor's decision was the only correct decision. The chancery clerk is required, under circumstances such as these, by Miss. Code Ann. §27-43-3 to ascertain the land owner's post office box. Miss. Code Ann. §27-43-3. Case law recognizes that deeds are a proper place to look for landowner addresses. *See, e.g., City of Jackson V. Nunn*, 178 Miss. 665, 174 So. 578 (1930). The post office box was readily available and the clerk's failure to give Hildrich and Dinette notice renders the deed void to Mr. Alexander. *See Kron v. Van Cleave*, 339 So.2d 559 (Miss. 1976).

Mississippi public policy protects landowners from the loss of their land by tax sale. *See Carmadelle v. Custin*, 208 So.2d 51, 55 (Miss. 1968). In keeping with that policy, Miss. Code Ann. § 27-43-3 provides that "[s]hould the clerk inadvertently fail to send notice as prescribed in this section, then such sale shall be void" The chancery clerk testified that his office never attempted to mail notice to the Grosses' post office box,

readily available in at least two county offices including his own, as required by statute. The notice requirements of Section 27-43-3 are strictly construed in favor of landowners. *See Norwood v. Moore*, 932 So.2d 63, 66 (¶¶7-8) (Miss. Ct. App. 2006); *Lawrence v. Rankin*, 870 So.2d 673, 676 (¶¶13-14) (Miss. Ct. App. 2004); *Roach v. Goebel*, 856 So.2d 711, 716 (¶29) (Miss. Ct. App. 2003); *Brown v. Riley*, 580 So.2d 1234, 1237 (Miss. 1991). "Any deviation from the statutorily mandated procedure renders the sale void." *Roach*, 856 So.2d at 716 (¶29) (citing *Hart v. Catoe*, 390 So.2d 1001, 1003 (¶15) (Miss. 1980)).

Though in this case the chancery clerk submitted affidavits setting out some efforts to locate the Grosses (Tr. 14, 20, 25, 29, 34, 39), and the chancery clerk testified regarding those efforts (Tr. 8-14), the chancery clerk's office failed to take a required step-searching for the readily available post office box. When it comes to taking someone's land, that mistake is not excusable. Because the chancery clerk did not fully comply with the statute, the tax sale was void.

The appellant's brief asserts that clerk's affidavits were filed in accordance with Miss. Code Ann. §27-43-4, but the only affidavits in the record are those attached to the complaint, signed in 2006. (Tr. 14, 20, 25, 34, 39) The statute requires that the clerk prepare and retain as a permanent record in the chancery court two affidavits, one after the first search and inquiry and one after the second, and states that action must be noted on the tax sale record each time. Miss. Code Ann. § 27-43-3. The Chancery Clerk did not testify that these actions were taken.

Mr. Gross admitted that his property had gone up for tax sale one other year. (Tr. 23) There is a notice addressed to Mr. Gross at P.O. Box 539, Flora, regarding that delinquency

and it is undisputed that he redeemed his property on that occasion. (8th page of Plaintiff's Exhibit 6 found in the Record) Mr. Gross testified that in July of 2005 he went to the Madison County Tax Collector's Office to pay his taxes on the properties at issue in this suit. (Tr. 21-22) He paid for 2003 and 2004 but was unaware 2002 was owed. (Tr. 21) This additional evidence demonstrates that had the chancery clerk looked up the P.O. Box for Mr. and Mrs. Gross which was of record, the taxes would have been paid. The tax collector took Mr. Gross's money for taxes on the property at issue for 03 and 04 but did not either apply that money to what was owed for 02 or even mention the tax sale to Mr. Gross. Clearly this was not a clean tax sale.

Mr. Alexander raises other issues in his brief, but the disposition of this threshold issue renders discussion of those additional points unnecessary.

Finally, Mr. Alexander asserts that the Grosses cannot raise the issue of defective notice since they did not assert it as an affirmative defense. At paragraphs 4, 8, 12, 16, 20, and 24 of the Complaint (Tr. 2-8), Mr. Alexander alleged that all notice required was given. At paragraph 4 of the answer the Grosses did not admit the allegation in paragraph 4 of the complaint that notice was properly given (Tr. 51-52) and therefore that allegation is denied. Defendants denied outright paragraphs 8 and 12 of the Complaint. (Tr. 52-53) At paragraph 16 of the answer the Grosses admitted a tax sale was on file but denied the remaining allegations of paragraph 16 of the complaint, including the allegation that proper notice was given. (Tr. 53) In paragraph 20 of the answer the Grosses admitted there had been a tax sale but denied the remaining allegations of paragraph 20 of the complaint including the allegation proper notice had been given. (Tr. 53-54) The same is true with respect to paragraph 24 of

the complaint--all matters except that there was a tax sale were denied by the defendants in their answer. (Tr. 54) Moreover, Mr. Gross testified that he did not receive notice of the tax sale, that he paid taxes on the property and that he did not know the 2002 taxes were not paid until he was served the Complaint in this suit. (R.21) The burden was on Mr. Alexander to prove that all required steps were taken for him to legally take the property at issue by tax sale. *See, e.g., Dixon v. Parker*, 831 So.2d 1202, 1204 (¶10) (Miss. 2002)(plaintiff in suit to establish title has burden to demonstrate he has clear title).

CONCLUSION

The chancellor properly concluded that the tax sale was void and that the property at issue belongs to Mr. and Mrs. Gross. The chancellor's decision must be affirmed.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Appellees, HILDRICH GROSS and DINETTE GROSS, has been served via regular U. S. Mail, postage prepaid, upon the following counsel of record, on this, the 26th day of June, 2008.

Don A. McGraw, Jr.
Kenneth T. O'Cain
Montgomery, McGraw,
Collins & O'Cain, PLLC
P. O. Box 1039
Canton, MS 39046

Honorable Janace Harvey-Goree
Chancery Court Judge
Madison County, Mississippi
P. O. Box 39
Lexington, MS 39095



RONALD M. KIRK