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IN RE: 1999 RETURN OF SALE OF TAX BUREAU OF  
FRANKLIN COUNTY, PENNSYLVANIA, C. P. Franklin  
County Branch, Civil Action, Law, Miscellaneous Docket  
No. 1999-40172

*1999 Return Of Sale Of Tax Bureau*

*Tax Sales*

1. The real estate tax laws are not intended to punish taxpayers, but the laws are meant to protect local revenues against willful, persistent, and longstanding delinquents.
2. The purpose of the real estate tax laws is not to strip the taxpayer of his property but to insure the collection of taxes.
3. The presumption that the acts of the Tax Claim Bureau are proper exists until the taxpayer files exceptions to the tax sale. The Tax Claim Bureau has the burden of proving that the Bureau complied with the notice provisions.
4. A tax sale will not be set aside due to a taxpayer's disability unless that taxpayer has an obvious comprehension difficulty.
5. Where the Tax Claim Bureau did not know of the taxpayer's disability and was not asked for special accommodations, the taxpayer's disability was not obvious to the Tax Claim Bureau.
6. A tax sale will not be set aside where the notice of the tax sale was only for unpaid 1997 taxes but the tax sale was actually for unpaid 1996 and 1997 taxes.
7. If a statutorily satisfactory price has been obtained at a sale conducted in accord with the provisions of the statute, there is no basis for a finding of unjust enrichment which would warrant setting aside the sale.
8. A tax sale will not be set aside where the taxpayer attempts to pay his taxes with a personal check but has adequate notice that his taxes must be paid in cash or certified funds.
9. The Real Estate Tax Sale Law does not require a purchaser to pay with cash or certified funds because the purchasers would not know how much money was needed in advance of the tax sale.
10. One of the purchaser's affiliation with the Franklin County Assessment Office is not enough to set a tax sale aside because there is no evidence that the purchaser had any control over the Tax Claim Bureau's policy or that the purchaser had any information that was not also available to the general public.

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11. Where a taxpayer does not pay at least 25% of the taxes due, the Tax Claim Bureau does not have an affirmative duty to inquire whether the taxpayer desires to enter into an installment agreement to stay the sale before proceeding to sell the property.

12. The advertising description of the property does not need to be by metes and bounds, but must so identify the premises that the owner, the collector, and the public can determine what property is being assessed or sold.

13. Because taxpayer only owns one property in Franklin County, the description of his property is adequate even if it does not give the specific address and refers to the road by a local name. Furthermore, any owner, collector, or member of the public could get more information from the Tax Claim Bureau as to where the property is located.

14. No owner-occupied property may be sold unless the Tax Claim Bureau has given the owner occupant written notice of such sale at least ten (10) days prior to the date of actual sale by personal service by the sheriff or his deputy.

15. Where the taxpayer stays at his parents' house off and on, goes to his property every day to feed his cattle, a neighbor testified that the taxpayer has not lived on the property for three years, and the farmhouse is rented, the taxpayer does not reside on the property. Therefore, the Tax Claim Bureau did not need to personally serve the taxpayer with notice of the tax sale.

16. Even though the taxpayer has actual notice of the tax sale, the property still must be properly posted.

17. Posting must be sufficient to notify the owner of the pending sale and also provide sufficient notice to the public at large so that any interested parties will have an opportunity to participate in the auction process.

18. Posting is accomplished by posting the notices on the premises in such a manner as to attract attention so that everyone, including the public, can observe the notice.

19. Because the deputy placed the notice on the back door, the public would not have been able to observe the notice from the road. Therefore, the tax sale must be set aside.

*William C. Cramer, Esquire*, Counsel for Keith Clark  
*Stephen D. Kulla, Esquire*, Counsel for Martins  
*John McD. Sharpe, Jr., Esquire*, Counsel for Tax Claim Bureau

#### OPINION AND ORDER

WALKER, P. J., June 29, 2000:

#### Factual and Procedural History

In May 1986, Keith Clark bought a 180 acre farm located at 8897 Fort Loudon Road, Mercersburg, Pennsylvania, for \$211,000. Over the years, Keith has improved the property. For example, Keith spent approximately \$150,000 remodeling the house, \$100,000 on the barn, and \$20,000 building several calf hutches. Keith's father, Raymond Clark, estimated that Keith's farm is now worth over \$500,000.

Keith paid for this farm and the subsequent improvements with the money that he received from a settlement for his defective heart valve. When Keith was 17, he had a heart valve replaced. However, when he was 21, his mechanical heart valve came apart, and he had a stroke on the operating table. As a result of the stroke, Keith has short term memory problems as well as physical health problems. His sister, Sandy Repp, holds a power-of-attorney for Keith's medical care. Because Keith has seizures, he stays at his parents' house off and on. Keith goes to his farm everyday to feed his cattle. According to Shirley Johnson, a neighbor of Keith's who rents part of his farm, Keith has not lived on the farm since he moved to Clear Spring, Maryland, about three years ago.

Because of Keith's medical problems, including short term memory problems, Keith will lay his mail aside. His mother, Geneva Clark, and his sister handle Keith's business affairs because Keith is unable to do it. Geneva was responsible for paying Keith's taxes until she began a new job and did not have time to pay Keith's taxes anymore.

As a result, the taxes on Keith Clark's farm were not paid for 1996, 1997, and 1998. Over \$13,000 was owed for the outstanding tax years. Consequently, Keith's property was exposed for a tax sale on September 27, 1999.

The Tax Claim Bureau advertised the sale of Keith's property in the Public Opinion, Record Herald, and the Franklin County Legal Journal. It was advertised under parcel

number 17-0J07-013 which was designated as Keith's property. Additionally, the Tax Claim Bureau sent Keith a letter of sale to 8897 Fort Loudon Road, Mercersburg, PA, by certified restricted mail with a return receipt requested. The letter was unclaimed. Ten days before the sale, the Tax Claim Bureau sent a proof of mailing to Keith at the same address by ordinary mail. The last address of record at the Tax Claim Bureau was the Fort Loudon Road address. Keith was not personally served with notice of the tax sale.

Thomas Donahue was deputized by the Franklin County Sheriff's Department for the purpose of posting delinquent properties. On September 11, 1999, Mr. Donahue taped a notice to the back door of the farmhouse on Keith's property because everyone at the house primarily uses the back door. Patricia Rogers, a tenant who rents Keith's farmhouse, acknowledged that the front door is not used in the winter but stated that the front door is used quite frequently in the summer. The notice would not have been noticeable from the road because the farmhouse is approximately 1,200 feet from the road. A notice posted on the front door, however, also would not have been noticeable from the road.

The tax sale was subsequently continued until October 11, 1999, after a representative of The Priority Mortgage Group called to say they were working with Keith on getting a loan for him. On October 11, 1999, Raymond went into the Tax Claim Bureau with a personal check for \$2,000 to stop the sale of his son's property. He was told that the Tax Claim Bureau could not accept a personal check and that he would need close to \$5,000 to take the property off the sale list. Although Raymond claims to have offered to pay \$3,000 to stop the sale, there is no record of that at the Tax Claim Bureau. As a result, nobody paid at least 25% of the taxes due.

On October 11, 1999, Raymond advised Carole Scott, the interim Tax Claim Bureau director, that he was working with another bank which had a better interest rate than The Priority

Mortgage Group. Raymond did not advise anybody at the Tax Claim Bureau that Keith had a disability. He also did not ask for special accommodations for his son. Ms. Scott had heard rumors that Keith had a disability but did not know that for sure.

The sale was continued to October 18, 1999. Dani and Jodi Martin purchased the property at the tax sale with a personal check of \$26,000 plus \$100 cash. Jodi Martin is employed by the Franklin County Tax Assessment Office. She is not responsible for assessing the tax in the area in which Keith's farm is located. She has no influence over the Tax Claim Bureau's policy and did not have any information regarding the tax sale that was not available to the general public. Carole Scott verified that Jodi did not have any information that was not available to the general public.

Consequently, Keith filed timely exceptions and objections to the consolidated return of sale filed by the Franklin County Tax Claim Bureau. Keith argues that the tax sale should be overturned for the following reasons:

1. Keith Clark suffers a disability;
2. The tax sale was for unpaid 1996 and 1997 taxes, but the notice was only for 1997 taxes;
3. The sale price was substantially lower than the fair market value of Keith's property;
4. The Tax Claim Bureau did not accept Keith's father's personal check;
5. The purchasers at the tax sale paid with a personal check;
6. One of the purchasers was affiliated with the Franklin County Assessment Office.
7. The Tax Claim Bureau did not advise Keith of the possibility of entering an installment sales agreement;
8. The advertising description in the newspapers was insufficient;

9. Keith was not personally served with notice of the tax sale;
10. Keith did not have actual notice of the tax sale;
11. The notice of the tax sale was not posted properly;

Hearings on the exceptions and objections were held on February 28, 2000, and April 20, 2000. The purchasers of the property, Dani and Jodi Martin, were permitted to intervene in this matter.

### Discussion

The real estate tax laws are not intended to punish taxpayers, but the laws are meant to protect "local revenues against willful, persistent and longstanding delinquents." *Tax Sale by Northampton County*, 116 Pa. Cmwlth. 409, 412 (1988).

"[T]he purpose of the real estate tax sale laws is not to strip the taxpayer of his property but to insure the collection of taxes."

*Id.*

There is a presumption in tax sales that the acts of the Tax Claim Bureau are proper. *In re Upset Price Tax Sale*, 147 Pa. Cmwlth 52, 56 (1992). This presumption exists until the property owner files exceptions to the tax sale, alleging that the statutory notice provisions were not complied with. *Id.* "The Bureau, or a purchaser arguing that the tax sale was proper, has the burden of proving that the Bureau complied with the notice provisions." *Id.*

First, Keith argues that the tax sale should be set aside because of Keith's disability and lack of comprehension. In *Northampton County, supra*, the court set aside the tax sale because the taxpayer had an "obvious comprehension difficulty." The facts in *Northampton County*, however, are not analogous to the facts in the present case. In this case, the personnel of the Tax Claim Bureau did not know that Keith had a disability. Although Carole Scott, the interim director of the Tax Claim Bureau, had heard rumors about a disability, she

did not know about the disability for sure. It is not clear whether Ms. Scott heard these rumors before or after the tax sale. Furthermore, when Raymond Clark, Keith's father, went to the Tax Claim Bureau on October 11, 1999, he did not notify anyone there that Keith had a disability. Also, he did not ask for special accommodations for his son. Because Keith's disability was not obvious to the Tax Claim Bureau, *Northampton County* is inapplicable. Keith's disability is not enough to set the tax sale aside.

Second, Keith argues that the notice was only for the unpaid 1997 taxes but that the tax sale was for unpaid 1996 and 1997 taxes. Although Keith raised this issue in his exceptions and objections to the consolidated return of sale, he did not address it in his brief to the court. Therefore, the court deems this issue waived. In addition, this issue is meritless. "A number of years' taxes of different kinds may be included in one claim." 72 P.S. §5860.307(b). Keith was notified that he did not pay his 1997 taxes. The tax sale still would have occurred as a result of his failure to pay the 1997 taxes whether or not the 1996 taxes were included in the notice. This issue does not warrant setting aside the tax sale.

Third, Keith argues that the purchasers, Dani and Jodi Martin, were unjustly enriched because the fair market value of Keith's farm is higher than the sale price. If

"a statutorily satisfactory price has been obtained at a sale conducted in accord with the provisions of the statute, there is no basis for a finding of unjust enrichment which would warrant setting aside the sale."

*Lapp v. County of Chester*, 67 Pa. Cmwlth. 86, 91 (1982). As long as the provisions of the statute were followed, there is no reason to set aside the tax sale in the present case simply because the Martins bid \$26,000 on a property valued at approximately \$500,000.

Fourth, Keith argues that the tax sale should be set aside because the Tax Claim Bureau failed to accept Raymond's

personal check. In *McKean County Tax Claim Bureau*, 677 A.2d 1325, 1326 (1996), the taxpayer tried to pay his taxes in full with a personal check on the morning of the scheduled tax sale as he had in the past. The Tax Claim Bureau had instituted a new policy that required taxpayers to pay their delinquent taxes after June 30, 1994, with a certified check. *Id.* Taxpayer was unable to present a certified check to the Tax Claim Bureau before the sale took place. *Id.* The court set aside the tax sale. *Id.* at 1327. The court reasoned that if the taxpayer had

“been given adequate notice of the Bureau’s change in policy regarding personal checks, [the taxpayer] would have had an opportunity to comply with that policy.”

*Id.* In the present case, Keith argues that, as in *McKean*, the Tax Claim Bureau did not provide him with written notice that delinquent taxes must be paid with cash or certified funds. On October 11, 1999, Raymond, Keith’s father, went to the Tax Claim Bureau with a \$2,000 personal check to pay a portion of Keith’s overdue taxes in order to stop the tax sale. At that time, he was notified that he would have to pay with cash or certified funds. The Tax Claim Bureau has a sign posted on the wall of the office to this effect. This case is distinguishable from *McKean*. First, unlike the taxpayer in *McKean*, Raymond was not going to pay Keith’s taxes in full. Second, the tax sale was continued until the next week and did not occur immediately as was the case in *McKean*. Keith had another week to get cash or certified funds as well as pay an amount that would be enough to take the property off the tax sale list. Thus, the court concludes that Keith had adequate notice that his taxes must be paid with cash or certified funds. Furthermore, the court agrees with the Tax Claim Bureau that it has a right to require cash or certified funds from the delinquent taxpayers who could pay with a bad personal check in order to delay the sale.

Fifth, Keith argues that Dani and Jodi Martin should not have been permitted to pay for the property with a personal check. The Real Estate Tax Sale Law provides that:

The purchaser of any property at an upset sale shall pay to the bureau the entire purchase money on the date of the sale, no later than one (1) hour before the close of business or at such other time on said date as designated by the bureau. In case said amount is not so paid, the sale shall be voided and the property shall be put up again at the same sale, if possible, or at any adjournment, readjournment or continuation of the sale.

72 P.S. §5860.606

In his brief, Keith argues that the court in *Appeal of I & M Investments, Inc.*, 29 Pa. Cmwlth. 144, 146 (1977), found that the legislature intended that purchasers pay with cash or certified funds so that the property could be put up for sale again that same day as required by the statute if an uncertified check was dishonored. The court disagrees with Keith’s analysis of this case. In *I & M*, the court did not decide the case on that issue because the bureau presented the owner’s uncertified check in payment of the delinquent taxes, and the check was honored. *Id.* Therefore, the statute does not require a purchaser to pay with cash or certified funds. Although the sale notice states that personal checks will not be accepted, the court agrees with the Tax Claim Bureau that it would be difficult to require certified checks from the purchasers when the purchasers would not know in advance how much money would be needed. Therefore, the tax sale will not be set aside for this reason.

Sixth, Keith argues that Jodi Martin’s affiliation with the Franklin County Assessment Office should be enough to set aside the tax sale. Specifically, Keith alleges that Jodi Martin violated the Public Official and Employee Ethics Act. There is no evidence that there was any misconduct on the part of the employees of the Tax Claim Bureau. Although Jodi Martin is employed by the Franklin County Tax Assessment Office, she is not responsible for assessing the tax in the area in which

Keith's farm is located. Carole Scott confirmed that Jodi did not have any influence over the Tax Claim Bureau's policy. Furthermore, Ms. Scott verified that Jodi did not have any information about the sale that was not also available to the general public. Therefore, the Public Official and Employee Ethics Act has not been violated. The fact that Jodi Martin is employed by the Franklin County Tax Assessment Office does not warrant setting aside the tax sale.

Seventh, Keith argues that Tax Claim Bureau did not advise Keith that he could enter an installment sales agreement. The Real Estate Tax Sale Law provides:

Any owner or lien creditor of the owner may, at the option of the bureau, prior to the actual sale,...(2) enter into an agreement, in writing, with the bureau to stay the sale of the property upon the payment of twenty-five per centum (25%) of the amount due on all tax claims and tax judgments filed or entered against such property and the interest and costs on the taxes returned to date...

72 P.S. §5860.603.

If a taxpayer pays at least 25% of the taxes due, the Tax Claim Bureau has "an affirmative duty to inquire whether the property owner desire[s] to enter into an installment agreement to stay the sale before proceeding to sell the property. *Darden v. Montgomery County Tax Claim Bureau*, 157 Pa. Cmwlth. 357, 360 (1993).

In the present case, Raymond went to the Tax Claim Bureau on October 11, 1999. He had a \$2,000 personal check which he was told the Tax Claim Bureau could not accept. Keith owed over \$13,000 for the outstanding tax years. Carole Scott testified that if Keith had paid a little over \$8,000 to pay off the 1996 and 1997 taxes so that there was only one tax year delinquent, the property would have been taken of the tax sale list. There is no record at the Tax Claim Bureau that Raymond offered to pay \$3,000. As a result, nobody offered to pay 25% of the taxes due. Therefore, the Tax Claim Bureau did not have an affirmative duty to offer Keith an installment sales

contract, and the tax sale will not be overturned because of the Tax Claim Bureau's failure to do so.

Eighth, Keith argues that the advertising description of his property was insufficient. One of the circumstances in determining whether a property is adequately described is whether the taxpayer owns other property in the immediate vicinity of the property being sold at the tax sale. *In re Tax Sale of Real Estate of Clyde R. Bolen*, 393 Pa. 377, 379 (1958).

"The descriptions need not be by metes and bounds, but must so identify the premises that the owner, the collector, and the public can determine what property is being assessed or sold."

Id.

In the present case, Keith argues that the description of his property is inadequate for the following reasons: (1) his farm is merely described as Fort Loudon Road rather than by the specific street address, (2) his property is on route 75 which is not labeled as Fort Loudon Road, and (3) the description in the newspaper advertisement would not notify the public as to where the property is located. Because Keith owns only one property in Franklin County, the description of his property is adequate. There is only one property on Fort Loudon Road that Keith owns so the fact that the specific address was not given is not misleading. Although Keith's property is on Route 75, it is also referred to as Fort Loudon Road because he receives his mail at that address. With regard to the newspaper advertisement description, any owner, collector, or member of the public could get more information from the Tax Claim Bureau as to where the property is located. Therefore, the court finds that the description of Keith's property was sufficient. The tax sale does not need to be set aside for this reason.

Ninth, Keith argues that he resides on his farm so he should have been personally served with notice of the tax sale.

“No owner-occupied property may be sold unless the bureau has given the owner occupant written notice of such sale at least ten (10) days prior to the date of actual sale by personal service by the sheriff or his deputy...”

72 P.S. §5860.601(a)(3). Therefore, if Keith resided on his property, he should have been personally served with notice of the sale. The issue becomes whether Keith resided on the property.

Although Keith receives his mail at the Fort Loudon address, he stays with his parents when he has seizures. Even though Raymond testified that Keith stays at Raymond’s house off and on, he also testified that Keith goes to his farm every day to feed his cattle which makes it appear that Keith resides at his parents’ house on a regular basis. Shirley Johnson testified that Keith has not lived at his farm since he moved to Maryland three years ago. Furthermore, Patricia Rogers and her family rent the farmhouse from Keith. There is no other habitable place on the farm for Keith to live. Therefore, the court finds that Keith resides in Maryland, and the tax sale will not be set aside for failing to personally serve Keith with notice of the tax sale.

Tenth, Keith argues that he did not have actual notice of the tax sale. There is a

“presumption that when actual notice is established, the formal requirements of section 602 need not be perfectly met.”

*Casady v. Clearfield County Tax Claim Bureau*, 156 Pa. Cmwlth. 317, 321 (1993). In *Tax Sale of 28.8525 Acres*, 688 A.2d 1239, 1240 (Pa. Cmwlth. 1997), the notices of public sale were signed for by the wife but not the husband. The parties also stipulated that the property had not been posted. *Id.* The court clarified its prior holding in *Casady*.

[T]his court in *Casady* did not hold that the mandatory requirement of section 602(e)(3), that the property be posted, is automatically excused if the record owner has actual knowledge of the pending sale. To the contrary, this court has held that the other

forms of required notice under the Law notwithstanding, the defect of failing to post the property is sufficient standing alone to render a sale void.

*Id.* at 1241.

Therefore, even though the taxpayer has actual notice of the tax sale, the property still must be properly posted.

Last, Keith argues that the property was not properly posted. In order to determine whether a property was properly posted,

“the Court must consider not only whether the posting is sufficient to notify the owner of the pending sale, but provides sufficient notice to the public at large so that any interested parties will have an opportunity to participate in the auction process.”

*Ban v. Tax Claim Bureau of Washington County*, 698 A.2d 1386, 1388 (Pa. Cmwlth. 1997). Thus, posting is accomplished by posting the notices on the premises in such a manner as to attract attention so that everyone, including the public, can observe the notice. *Id.* at 1389.

In *Ban*, the Tax Claim Bureau posted a notice of the tax sale on the “back door” of a side entrance which was not visible from the public street or sidewalk fronting the property. *Id.* at 1387. The Tax Claim Bureau representative believed that it was her duty to post the notice on the door that was used the most by the owner occupant. *Id.* at 1389. The court set aside the tax sale. *Id.* The court reasoned that

“while the choice to place the posting on a door which the Tax Bureau believed to be frequented by the occupant was well intentioned and probably the most likely location to notify the occupant of the impending sale, the statute requires that notice be posted so that it can be seen by the public as well as the occupant.”

*Id.*

In the present case, Thomas Donahue was deputized for the purpose of posting notices of tax sales. On September 11, 1999, Mr. Donahue taped the notice for Keith’s tax sale to the

back door of the farmhouse on Keith's property. Mr. Donahue testified that he placed the notice on the back door because it is the one that is primarily used by people at the house. Patricia Rogers testified that the front door is not used in the winter, but it is used frequently in the summer. Both Mr. Donahue and Ms. Rogers testified that a notice placed on either the front or back doors would not have been noticeable from the road which is approximately 1,200 feet from the house. The Tax Claim Bureau, in its brief, suggests that there was probably another notice posted close to the road so that the public could observe the notice. There is, however, no evidence of a second posting. Although the back door may arguably be the door used most frequently by the occupants of the farmhouse, the public could not observe the notice from the road. Because there is only one posting on the back door which could not be observed by the public, the tax sale must be set aside.

#### ORDER OF COURT

June 29, 2000, after consideration of the exceptions and objections to the consolidated return of sale, the testimony at the hearings, and the briefs submitted by the parties' counsel, the tax sale of Keith Clark's property is set aside upon the condition that Keith Clark pay all delinquent taxes, costs and interest to the Tax Claim Bureau with cash or certified funds within thirty (30) days of this order. Upon such payment, the Tax Claim Bureau shall return Dani and Jodi Martin's payment within ten (10) days of the payment of the delinquent taxes. If the delinquent taxes are not paid within thirty (30) days, the tax sale will be confirmed. Keith Clark shall have thirty (30) days from the date of this order to give the Tax Claim Bureau a proper address and person to serve in the future if the taxes again become delinquent.

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