

IN RE: FRANKLIN COUNTY TAX CLAIM BUREAU - TAX SALE OF GOULDING PROPERTY, Franklin County Branch Miscellaneous Docket, Volume CC, Page 134

In re Franklin County Tax Claim Bureau

tax sale set aside despite compliance with notice provisions - because Tax Claim Bureau had notice of obvious comprehension difficulty of taxpayer, it had duty to ensure comprehension

1. Commonwealth Court has held that where the taxpayer's comprehension difficulty is obvious, the Tax Claim Bureau personnel can be held responsible to take further steps to ensure comprehension.
2. In this case, taxpayer was confused: he had very limited education; for years he had relied solely on the tax collector to tell him exactly what amount he owed; notices sent were confusing because in a short period of time in July 1997, he received a notice that his house would be sold in September 1997 without stating for which overdue taxes, and a notice that if he did not pay the taxes as stated on the notice, his house would be sold in September 1998.
3. Confusion was obvious to Tax Claim Bureau: for years, taxpayer had relied on tax collector to pay right amount of taxes; taxpayer had paid all his other previous and subsequent taxes, except for the small amount of \$8.57 for the 1995 taxes and \$8.80 for the 1996 taxes; it was clear to Tax Claim Bureau that there was no wilful failure to pay by taxpayer.
4. Purpose to tax sales is not to strip taxpayer of his property, but to insure collection of taxes; strict provisions of tax act were never meant to punish taxpayers who omitted through oversight or error to pay their taxes.
5. Under specific circumstances of this case, Tax Claim Bureau had duty to take extra steps to ensure taxpayer's comprehension; this could have been done with one phone call.

John McD. Sharpe, Jr., Esq., Counsel for Franklin County Tax Claim Bureau

Joseph A. Macaluso, Esq., Counsel for B. Dean Stake

Kenneth F. Lewis, Esq., Counsel for Mr. Goulding

OPINION AND ORDER

Walker, P.J., July 14, 1998:

Factual and Procedural Background

This case is before the court based on exceptions made to the tax sale of property by its owner, James W. Goulding. His property, which is located in Guilford Township and is known as tax parcel 10 D-5R-11, was sold at a tax sale on September 25, 1997, for a total price of \$1,000. The sale was confirmed on October 2, 1997. Subsequently, Mr. Goulding filed timely

exceptions to the confirmation of the sale. A hearing was held on February 23, 1998. At that hearing, the following facts were established.

Mr. Goulding is a 71 year old man who retired from his job as a fire apparatus driver. He never completed high school. He inherited the property in question from his mother upon her death in the late 1950s. Besides that property, he owns a house in the Borough of Chambersburg, where he resides. He has never owned any other real estate. He also has never invested in real estate, or attended a tax sale. For several years, Mr. Goulding had paid his county and school taxes directly to Mr. Paul Skelly, the tax collector. At the end of the year, Mr. Goulding would go to Mr. Skelly's house, where Mr. Skelly would tell him what amount he owed in taxes. Mr. Goulding would then write Mr. Skelly a check for the total amount owed. The check would not specifically state if it was for county or school taxes. This method was followed by Mr. Goulding because the tax notices were confusing to him. Subsequently, Chris Bender has taken over from Mr. Skelly as tax collector.

On July 25, 1996, Mr. Goulding received a notice from the Franklin county Tax Claim Bureau for overdue taxes form 1995. (Exhibit C-3). It stated that he owed an amount of \$8.12 for county taxes and \$0.45 for the county library, totaling \$8.57. In smaller letters on the left, it notified Mr. Goulding that if he would pay this claim before July 1, 1997, his property would not be sold. Shortly before that July 1 date, on June 16, 1997, Mr. Goulding received another notice from the Tax Claim Bureau. (Exhibit C-4). This notice stated that it applied to the 1996 taxes, and informed him that he owed a total of \$8.80 in overdue taxes. It furthermore notified Mr. Goulding that his property would not be sold if he paid the claim before July 1, 1998. The notice did not indicate that any taxes were still owed for 1995. Furthermore, both notices for 1995 and 1996 stated that if the taxes for that year had been paid, the notice could be disregarded. (Exhibits C-3 and C-4). On July 9, 1997, Mr. Goulding received a notice stating that his property was about to be sold. (Exhibit C-5). It furthermore indicated that the upset price was \$87.23, and in small letters at the bottom it stated that the sale would be

held on September 15, 1997. This notice did not state for which overdue taxes the property would be sold.

Mr. Goulding did not contact the Tax Claim Bureau after having received the notices. It is clear that he made a payment, both in 1996 and 1997, to Tax Collector Chris Bender, but it is unclear for what taxes this payment was made. (Exhibit C-6). It was also established that Mr. Goulding's school taxes were current, since they were not reported as delinquent.

The parties have stipulated that the Tax Claim Bureau has complied with all the notice provisions of the Real Estate Tax Sale Law. 72 Pa.C.S.A. §5860.101, *et seq.* The only issue is whether the tax sale can nevertheless be set aside.

Discussion

Mr. Goulding argues that the Tax Claim Bureau needs to comply not only with the requirements of the Real Estate Tax Sale Law, but also must take further steps to prevent a taxpayer from losing his property when there is obvious confusion. In support of his argument, Mr. Goulding cites *Tax Sale by Northampton County*¹, 116 Pa. Cmwlth. 409, 542 A.2d 604 (1998). In that case, the property of Karel Dvorak was sold at a tax sale. Mr. Dvorak was an uneducated immigrant who did not understand English well. *Tax Sale by Northampton County*, 116 Pa. Cmwlth. at 411. The circumstances showed that Mr. Dvorak intended to pay his taxes and that he thought that the \$400 partial payment would stay the sale. *Id.* The trial court set aside the tax sale because it found that Mr. Dvorak was confused and uncertain about his rights and because he had objectively manifested his intent to pay the taxes. *Id.* at 412. The Commonwealth Court affirmed the trial court's decision, holding that "[t]he key point here resides in the trial judge's finding of fact that the property owner suffered from 'an obvious comprehension difficulty.'" *Id.* The Commonwealth Court noted that the validity of tax sales may, of course, not depend on the subjective capacity of an owner to understand information given, in good faith, by tax claim bureau personnel. *Id.* However, the Court stated that "when the comprehension difficulty is obvious, so that tax claim

¹ This case is cited by Mr. Goulding as *Appeal of Dvorak*.

bureau personnel can be held responsible to take further steps to insure comprehension, then judicial intervention to cure the situation is indicated when they have not done so." *Id.*, at 412-413.

In contrast, the Commonwealth Court upheld a tax sale where the owner claimed he failed to pay his taxes or stay the sale through "oversight or error." *Appeal of Marra*, 131 Pa. Cmwlth. 652, 571 A.2d 551 (1990). In that case, the taxpayer testified that he had assumed that all taxes had been paid when he bought the property, and that the notice of overdue taxes were simply an error made by the Tax Claim Bureau. The Commonwealth Court distinguished the case from *Tax Sale By Northampton County* because the taxpayer in *Marra* was a college professor who also speculated in real estate on the side. *Marra*, 131 Pa. Cmwlth. at 656. The court noted that the taxpayer was not illiterate nor did he assert that he was unable to comprehend what his rights and obligations were. *Id.*, at 656.

The buyer of the property in question in the underlying case, B. Dean Stake, appeared at the hearing and has argued that Mr. Goulding is more like the college professor in *Marra* than the uneducated immigrant Mr. Dvorak. The buyer points out that Mr. Goulding, even though he has not finished high school, is literate and can read and speak English. The buyer furthermore points out that the crucial point is whether the confusion of the taxpayer was obvious. The buyer argues that there was no evidence to show that the Tax Claim Bureau was aware of Mr. Goulding's confusion.

This court finds that Mr. Goulding clearly was very confused about the taxes he owed and the tax notices he was sent. While Mr. Goulding may speak and read English, it appeared to this court that he was as confused about his taxes as Mr. Dvorak, the uneducated immigrant. For several years, Mr. Goulding had to rely on the tax collector to make sure he paid the right amount in taxes because he did not understand the bills he received. Furthermore, Mr. Goulding indicated that he was confused by the receipt in a short time period of two notices regarding the overdue taxes and the tax sale. One of those notices stated that if he paid the amount due, his property would not be sold until July 1, 1998.

The notice of sale stated that his property would be sold on September 15, 1997, but did not inform him as to which taxes it applied. These notices were very confusing to Mr. Goulding.

This court furthermore finds that, as in *Tax Sale by Northampton County*, it was obvious to the Tax Claim Bureau that Mr. Goulding was very confused. For several years, Mr. Goulding took his tax bills directly to the tax collector, Paul Skelly, because he did not understand how much he owed in taxes. Mr. Skelly would then tell Mr. Goulding how much he owed and Mr. Goulding would write out a check for that amount. It was thus clear to the tax collector, who turns over the delinquent taxes to the Tax Claim Bureau, that Mr. Goulding was unable to comprehend what taxes he owed, and that he relied on the tax collector to tell him exactly what to pay. This practice continued for several years. Furthermore, it was established that Mr. Goulding paid all of his school taxes and almost all of his county taxes, except for the small amount of \$8.57 for the 1995 taxes. Mr. Goulding also paid all of his 1996 school and county taxes, except for the small amount of \$8.80. A quick check of the records should have established that Mr. Goulding had paid the bulk of the taxes owed for 1995, 1996, and all other years. This court took note of the fact that “[t]he purpose of tax sales is not to strip the taxpayer of his property but to insure collection of taxes.” *In re Ross*, 366 Pa. 100, 76 A.2d 749 (1950). The Pennsylvania Supreme Court furthermore noted that it did not understand why tax collecting agencies seem so prone to ignore ordinary common sense business practices. *Ross*, 76 A.2d at 753. The court pointed out that in *Ross*, the tax collection agency’s own records would have shown that all the taxes for the five years subsequent to the delinquent year had been paid. “This then ought to have suggested a delinquency not deliberate but due to some oversight or error.” *Ross*, at 753. Under such circumstances, the Court noted, a mere demand on the taxpayer would have no doubt resulted in the quick payment of the small amount of taxes owed without resort to court proceedings. *Id.* Furthermore, the court stated that it did not understand “why the local tax collectors after making a return of delinquent taxes for purposes of lien, calmly forget all about the delinquent taxes and do not follow the sensible practice of reminding the taxpayer,

when they send out bills for the current year, of the delinquent taxes still due for the previous year or years.” *Id.*

This court finds that under the circumstances of this case it was obvious to the Tax Claim Bureau that there was no wilful failure to pay the small amount owed, but clearly some confusion on the part of Mr. Goulding. Therefore, the Tax Claim Bureau had a duty to take further steps to insure that Mr. Goulding comprehended what amount he owed in overdue taxes. A mere telephone call to Mr. Goulding telling him exactly what amount of his taxes were overdue, would have no doubt resulted in the payment of the low amount of taxes owed. Similarly, a notification on the 1996 tax bill that an amount of \$8/57 was still owed on the 1995 taxes would have probably resulted in payment by Mr. Goulding. This court expresses its amazement at the fact that the Tax Claim Bureau argues it is too busy to make a phone call to the taxpayers, but that it apparently has the time to go through the long and tedious process of a tax sale over the amount of \$8.57. As the Pennsylvania Supreme Court has pointed out, “[c]ommon courtesy demands some recognition of the fact that those who hold public office in this land at least, are still the servants of the people, not their masters. The strict provisions of the Tax Sales Act were never meant to punish taxpayers who omitted through oversight or error (from which the best of us are never exempt) to pay their taxes. Tax acts were rather meant to protect the local government against wilful persistent, long standing delinquents...” *Ross*, 76 A.2d at 753.

Thus, this court finds that the tax sale must be set aside, despite the fact that the Tax Claim Bureau complied with all the notice requirements. Under the specific circumstances of this case, this court finds that it was obvious to the Tax Claim Bureau that Mr. Goulding was confused about what amount of taxes to pay, and that his failure to pay was not deliberate. Therefore, this court finds that the Tax Claim Bureau had a duty to take further steps to insure Mr. Goulding’s comprehension. This could have been accomplished with a simple telephone call. Thus, Mr. Goulding’s exceptions to the confirmation of the tax sale are granted.

ORDER OF COURT

July 14, 1998, upon consideration of Mr. Goulding's exceptions to the confirmation of the tax sale of his property known as tax parcel 1- D-5R-11, it is ordered that the sale of the property is set aside. Due to Mr. Goulding's confusion regarding the amount owed in overdue taxes, the Tax Claim Bureau is ordered to send a notice to Mr. Goulding and his attorney within fifteen (15) days, stating the amount of overdue taxes and interest owed. Mr. Goulding is ordered to pay overdue taxes with interest within forty five (45) days of receipt of the notice by the Tax Claim Bureau. The Tax Claim Bureau is further ordered to refund the total amount paid by the buyer, B. Dean Stake.

Lawyers Concerned For Lawyers

New Confidential Helpline

1-888-999-1941

*24 Hours * 7 Days * Holidays*

Help is now available for:

- * Depression
- * Bi-polar Illness
- * Stress and Anxiety
- * Alcoholism
- * Substance Abuse
- * Compulsive Gambling
- * Sleep disorders