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2011 IL App (3d) 100963-U

Order filed November 8, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

IN THE MATTER OF THE)	Appeal from the Circuit Court
APPLICATION OF THE COUNTY)	of the 14th Judicial Circuit,
TREASURER AND EX OFFICIO)	Rock Island County, Illinois
COUNTY COLLECTOR OF ROCK)	
ISLAND COUNTY, ILLINOIS FOR)	
ORDER OF JUDGMENT AND SALE)	
AGAINST REAL ESTATE RETURNED)	
DELINQUENT FOR THE)	Appeal No. 3-10-0963
NONPAYMENT OF GENERAL TAXES)	Circuit No. 10-TX-13
FOR THE YEAR 2006)	
)	
(John W. Scott,)	
)	
Plaintiff-Appellee,)	
)	
v.)	
)	
Delinquent Lots & Lands, Toni Overton,)	
Ariel Dotson and Nevaeh Overton,)	
)	Honorable Alan G. Blackwood,
Defendants-Appellants).)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The take notices and notice by publication contained all the statutorily required information. The trial court's order directing issuance of a tax deed is affirmed.

¶ 2 Toni Overton, Ariel Dotson, and Nevaeh Overton appeal the trial court's order directing issuance of a tax deed to John Scott. Appellants argue that the notice given by appellee did not strictly comply with the requirements of sections 22-10 through 22-25 of the Property Tax Code. 35 ILCS 200/1-1 *et seq.* (West 2010). The notices sent by appellee complied with the relevant sections of the Property Tax Code. We affirm the trial court's order directing the issuance of a tax deed.

¶ 3 **FACTS**

¶ 4 Appellee purchased the property at issue during a tax sale in 2007. He gave notice of the expiration of the redemption period and his intent to obtain a tax deed by publication, personal service, and mail. No redemption was made. On August 19, 2010, a hearing was held on appellee's petition for a tax deed. Following the hearing, the trial court ordered a tax deed be issued to appellee. Appellants filed a motion to reconsider, which was denied. They then filed a timely notice of appeal.

¶ 5 **ANALYSIS**

¶ 6 Appellants argue that the notice sent by appellee failed to strictly comply with the requirements of the Property Tax Code (the Code). 35 ILCS 200/1-1 *et seq.* (West 2010). Specifically, they argue that the notice mailed pursuant to section 22-25 of the Code did not comply with the Code: it was not dated, it combined multiple paragraphs into one long paragraph, it was sent to Toni Dotson instead of Toni Overton, it contained a spelling error, and the zip code of the clerk was misplaced. They argue the notice served pursuant to section 22-15

contained all of the errors found in the mailed notice and, in addition, contained a signature block for the clerk of the court, which it was not supposed to contain. Finally, appellants argue that the published notice is required to conform to the requirements of sections 22-10 and 22-20, but it only conforms to the requirements of section 22-20.

¶ 7 Appellee argues that the missing date is not an essential statutory element of the notice, and that it is unclear what date the statute requires, so we should not consider the date an essential statutory element. He admits that certain paragraphs were combined into one paragraph, but argues that appellants provide no authority supporting their argument that the paragraph structure of the notice is an essential statutory element. Appellee also admits that some of the notices contained a spelling error. He claims this is excusable as a scrivener's error, and also that it is not an essential statutory element. He fails to address multiple issues: the notice being directed to Toni Dotson instead of Toni Overton, the inclusion of the signature block for the clerk of the court, and the misplaced zip code. Regarding the published notice, appellee argues that the requirements of section 22-10 do not apply to the published notice.

¶ 8 In connection with the issuance of a tax deed, we review a claim that the notice failed to comply with the statutory requirements *de novo*. *Dream Sites, L.L.C. v. Grace Apostolic Faith Church*, 356 Ill. App. 3d 668, 671 (2005).

¶ 9 Prior to obtaining a tax deed, a tax sale purchaser must provide notice as required by the Code. 35 ILCS 200/22-5 through 22-25 (West 2010). A court should only order a tax deed to issue upon compliance with the notice requirements of the Code. 35 ILCS 200/22-40 (West 2010). “[T]he primary purpose of the tax sales provisions of the Property Tax Code is to coerce tax delinquent property owners to pay their taxes, not to assist tax petitioners in depriving the

true owners of their property.” *Midwest Real Estate Investment Co. v. Anderson*, 295 Ill. App. 3d 703, 710 (1998). The notice given by the tax buyer “must strictly comply with the statutory notice requirements without regard to whether any owner, *inter alia*, was misled by the defective notice.” *Dream Sites*, 356 Ill. App. 3d at 670. If the notice omits an essential statutory element, a “deed issued pursuant to that notice will be void.” *Id.*

¶ 10

I. Notices Mailed and Served

¶ 11 The relevant question for us is, “What is an essential statutory element?” The court in *Arrowhead Development Corp. v. Gramlich*, 167 Ill. App. 3d 521 (1988), held that a sufficient legal description was an essential statutory element. *Id.* at 526. The appellant in *Arrowhead* claimed that the property description given by the tax buyer was insufficient. *Id.* at 524. The notice described the property as lying west of 4th Street, while the property actually was west of 11th Street. *Id.* at 526. The notice contained the index number assigned to that property. *Id.* The court held the notice was sufficient since the statute stated that the index number assigned to a property was a sufficient legal description. *Id.* at 526-27.

¶ 12 In *Mergili v. Midwest Concrete Products Co.*, 92 Ill. App. 3d 603 (1980), the court held that the tax buyer did not need to include a street address for the property, as no street address was available for the property. *Id.* at 606. The court also relied on the statutory language that the inclusion of the index number was a sufficient description. *Id.* The *Midwest Real Estate Investment Co. v. Anderson*, 295 Ill. App. 3d 703, 708-09 (1998), court held that including the complete tax certificate number in the take notice was an essential statutory element. The *Ohr v. Prairie Material Sales, Inc.*, 100 Ill. App. 3d 178, 180 (1981), court stated that a scrivener’s error is not necessarily a failure of an essential statutory element.

¶ 13 Appellants argue that the placement of the zip code in an address was incorrect, not that it was wrong or missing, just that its placement relative to the city and state was awkward. They argue that the notice used too few paragraphs, not that any of the information required by section 22-10 was missing, just improperly paragraphed. Appellants also complain that a signature block for the court clerk was mistakenly placed on a notice, that the appellee did not put the date after his name at the end of the letter, and that he misspelled a word. They make no argument that this was misleading, or that any information was omitted, other than the date the notice was prepared. Finally, appellants claim the notices were sent to “Toni Dotson,” instead of “Toni Overton,” and that this was a failure to comply with an essential statutory element. Section 22-10 does not require that the property owner’s name be placed anywhere on the notice. It merely requires that the notice be given to, among others, the property owner. Appellants have not argued that Toni Overton failed to receive the notice in question.

¶ 14 Appellants have not presented any case law holding that the errors they raise are essential statutory elements. We believe that the technical errors appellants point to in the notices are not a failure to comply with essential statutory elements. Appellants’ argument is one of form over substance. The notices served in person and by mail complied with the requirements of section 22-10.

¶ 15 **II. Published Notice**

¶ 16 Appellants claim that the notice published pursuant to section 22-20 of the Code did not strictly comply with the Code since it was not formatted pursuant to section 22-10. Section 22-15 states: “The purchaser or his or her assignee shall give the notice required by Section 22-10 by causing it to be published in a newspaper as set forth in Section 22-20.” 35 ILCS 200/22-15

(West 2010). In relevant part, section 22-20 states:

“The publication shall contain (a) notice of the filing of the petition for tax deed, (b) the date on which the petitioner intends to make application for an order on the petition that a tax deed issue, (c) a description of the property, (d) the date upon which the property was sold, (e) the taxes or special assessments for which it was sold and (f) the date on which the period of redemption will expire.”

35 ILCS 200/22-20 (West 2010).

¶ 17 Appellants argue that the language in section 22-15 requires that published notice must be in the form required in section 22-10. We disagree. First, appellants ignore the language in section 22-15 that states the notice is “to be published in a newspaper as set forth in Section 22-20.” 35 ILCS 200/22-15 (West 2010). “[W]here there exists a general statutory provision and a specific statutory provision *** both relating to the same subject, the specific provision controls and should be applied.” *Knolls Condominium Ass’n v. Harms*, 202 Ill. 2d 450, 459 (2002). Section 22-10 is a general provision that requires notice be given to various people concerning the redemption period, and it provides a form for the notice that is to be given to those parties. Sections 22-15 and 22-25 state that notice is to be given to interested parties by personal and mailed service of the notice detailed in section 22-10. Section 22-15 also states that “the notice required by Section 22-10” shall be published according to section 22-20. The discussion of the notice required by section 22-10 is a reference to general notice concerning the redemption period, not the specific form detailed in section 22-10. Section 22-10 does not address publication; section 22-20 is a statutory provision that specifically addresses notice by

publication, including the information required in the published notice. Therefore, section 22-20 controls the manner of notice by publication.

¶ 18 The second reason appellants' argument fails is that, "[w]here a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions.' [Citations.]" *Mattis v. State Universities Retirement System*, 212 Ill. 2d 58, 78 (2004). The plain language of section 22-20 lists six items that must be contained in the published notice. We must infer that items not listed in section 22-20 are not required in the published notice. The notice provided for in section 22-10 includes four things not required in the notice of publication pursuant to section 22-20: (1) an explanation that the cost of redemption is subject to increase every six months, (2) an explanation that redemption can be made by applying to the appropriate county clerk, (3) the contact information for the county clerk, and (4) where the hearing on the application for the tax deed will occur. If the legislature intended for the 22-10 notice to be published in a newspaper, the language in section 22-20 listing six specific requirements of published notice would be unneeded. Therefore, the published notice need not contain all of the information found in section 22-10, only the six items listed in section 22-20. The published notice complied with section 22-20.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 21 Affirmed.