



In the Missouri Court of Appeals
Eastern District
DIVISION ONE

SNEIL, LLC.,	)	No. ED96828
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	
TYBE LEARNING CENTER INC., et al.,	)	Hon. Ellen Hannigan Ribaud
	)	
Defendants.	)	FILED: February 28, 2012

Sneil LLC (“Sneil”) appeals from the judgment of the trial court in favor of defendants Tybe Learning Center, Inc.(“Tybe”) and Regions Bank (“Regions”) on counts I and II of its petition to quiet title and ejectment. We would affirm. However, due to the general interest and importance of the issues presented, we transfer the case to the Supreme Court, under Rule 83.02.

The evidence is as follows. On August 28, 2006, Sneil was the successful bidder for the real property located at 3645 Marietta Drive, St. Louis County, Missouri (“Property”) at a tax sale held by the St. Louis County Collector of Revenue (“Collector”) for delinquent real estate taxes. At the date of the sale, Tybe was the owner of the Property, and Regions, as successor to Union Planters Bank, N.S. (“Union Planters”), had a recorded deed of trust on the Property. The tax sale was a first offering pursuant to the Jones-Munger Act.

On August 27, 2007, Sneil's attorney sent a notice in a letter dated August 9, 2007, to Tybe and to Regions by certified mail, return receipt requested, that they both received on the following day. The notice letter stated in part that:

On Monday, August 28, 2006, the [Collector] offered the tax lien certificate on the [Property] for sale in a delinquent tax sale. This offering was the first or second offering of such property by the [Collector]. At such sale, our firm's client, [Sneil], purchased the tax lien certificate on the [Property] for the sum of \$41,700.00. A copy of the Tax Sale Certificate of Purchase evidencing this purchase is enclosed herein for your perusal and incorporated herein, as if set fully set forth.

Pursuant to § 140.405 of the Revised Statutes of Missouri (RSMo), this letter is to give you notice of the intention of our firms client [Sneil] to acquire a collector's deed to the [Property]. A copy of § 140.405 RSMo, is enclosed herein for your perusal.

If you wish to redeem your interest in the [Property], you should contact the Collection Division of the St. Louis County Department of Revenue at 41 South Central Avenue (Street Level), Clayton, Missouri 63105, Telephone (314) 615-42-7, Fax (314) 615-5428.

The notice did not include the duration of the redemption period.

On December 6, 2007, the Collector delivered a deed to the Property to Sneil. Sneil had this deed recorded on December 18, 2007. On February 27, 2008, Sneil filed a petition to quiet title and ejectment. The trial court held an evidentiary hearing on February 14, 2011. A number of exhibits were entered into evidence. Sneil requested that the trial court make findings of fact and conclusions of law.

The trial court found that the Collector offered the Property for sale as a "first offering" under the Jones-Munger Act, and that the Property was owned by Tybe at that time, and Regions held a recorded deed of trust on the Property. It also found that Tybe and Regions could claim an interest, or appeared to have an interest of record in the

Property. It further found that Sneil was the high bidder on the Property at the Collector's tax sale.

The trial court found that Sneil sent a notice to Tybe and to Union Planters on August 27, 2007, and that they received this notice via certified mail on August 28, 2007. In addition, it found that Sneil made no attempt to contact Tybe or Regions at any time prior to August 27, 2007. It further found that Sneil's notice did not inform Tybe or Regions how long they had to exercise the right to redemption, or else be barred forever from so doing. The trial court found that the notice failed to provide either a specific redemption period expiration date or a number of days indicating the length of time that Tybe and Regions had to redeem the Property. The notice simply stated that they should contact the Collection Division of the St. Louis County Department of Revenue about redemption.

The trial court found that Sneil filed an affidavit in support of its application for a Collector's deed on September 6, 2007. It further found that Sneil received a Collector's deed on December 7, 2007, and recorded it on December 18, 2007. It also found that none of the defendants in the case redeemed their interests in the Property prior to the issuance of the Collector's deed. The trial court additionally found that Tybe offered to pay Sneil in accordance with § 140.600. RSMo. (Cum. Supp. 2006).¹

The trial court concluded that the notice sent by Sneil to Tybe and Regions did not inform them of how long they had to exercise the right of redemption. It concluded that the notice failed to comply with the requirements of § 140.405. The trial court also concluded that the notice was insufficient because it was mailed on August 27, 2007, one day after the redemption period expired on August 26, 2007. It determined that Sneil lost

¹ Unless noted otherwise, all further statutory citations are to RSMo (Cum. Supp. 2006).

any interest in the Property due to the insufficiencies of the notice provided to Tybe and Regions. The trial court denied the relief requested by Sneil in Count I of its petition, and denied the relief requested in Count II as moot. It ordered Tybe to contact the Collector to get the cost of redemption, and to pay Sneil in accordance with § 140.600 within thirty days. The trial court expressly determined that there was no just cause for delay in entering judgment as to Count I of Sneil's petition.

Sneil now appeals from this judgment.

In a bench-tried case, this Court will affirm the trial court's judgment unless no substantial evidence supports it, it is against the weight of the evidence, or it erroneously states or applies the law. Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. Banc 1976); CedarBridge, LLC v. Eason, 293 S.W.3d 462, 466 (Mo. App. E.D. 2009). We defer to the trial court on factual issues; as the finder of fact in a bench trial, the trial court is free to believe or disbelieve the testimony of any witness, and it can believe all, none, or some of a witness's testimony. Reyner v. Crawford, 334 S.W.3d 168, 172 (Mo. App. E.D. 2011). We view the evidence and inferences therefrom in the light most favorable to the judgment, and we disregard all contrary evidence. CedarBridge, 293 S.W.3d at 466. Where the trial court has not made findings of fact on a disputed issue, this Court assumes that it resolved the factual dispute in accordance with its judgment. Rule 73.01(c); Reyner, 334 S.W.3d at 172.

We will address Sneil's first and second points relied on together. In its first point, Sneil contends that the trial court erred in denying it relief under Count I on the basis that notice sent to Tybe and Regions was defective under § 140.405 because their right to redeem the Property was not limited to one year, but rather may last up to two

years under § 140.410. Sneil also argues that the “purported defects” in the notice were not grounds to invalidate the Collector’s deed under § 140.520. In its second point relied on, Sneil asserts that the trial court erred in denying it relief under Count I of its petition on the basis that the notice letters did not inform Tybe and Regions of how long they had to exercise the right of redemption, and “purportedly failed to comply” with the requirements of § 140.405. Sneil alleges that § 140.405 “was drafted to integrate with relevant case law establishing the *Hobson* redemption period[,]” and that “there is no universally applicable redemption period allowing tax sale purchasers to provide advance notice of the expiration of the redemption rights of delinquent taxpayers and other interested parties[.]” Sneil also avers that tax sale purchasers cannot give advance notice when they might be authorized to acquire a Collector’s deed because they cannot know in advance when all of the lawful requirements to get such a deed will be met. Sneil further claims that neither § 140.405 nor “constitutional principles of due process” require that a tax sale purchaser provide advance notice of the time limits applicable for redemption, or any other details related to the right of redemption. Sneil additionally posits that “any purported defects” in the notice were not grounds to invalidate the Collector’s deed and that the notice letters sent on August 27, 2007, “informed the delinquent taxpayer and other interested parties of their right to redeem, which is all that is required by § 140.405.”

Chapter 140 RSMo provides for the county collector to conduct an annual sale each August of real property on which tax payments have been delinquent. Keylien Corp. v Johnson, 284 S.W.3d 606, 610 (Mo. App. E.D. 2009). The statute provides for several successive tax offerings. Id. If no one bids a sum equal to the delinquent taxes

on a property, with interest, penalties, and costs at the first offering, the county collector holds a second offering the following August. § 140.250.1; Keylien, 284 S.W.3d at 610. If there are no adequate bids submitted at the second offering, a third offering is made the following August, and at the third offering, the property is sold to the highest bidder. Id.

First and second offering tax sales are followed by a one-year redemption period during which the owner, occupant, or any other persons having an interest in the land or lot sold for taxes may redeem the real property by paying the purchase price plus the cost of the sale and interest to the county collector. § 140.340.1; Keylien, 284 S.W.3d at 610. The purchaser at a first or second offering tax sale gets a certificate of purchase, and does not acquire legal title until the redemption period has lapsed and he or she exercises the right to have legal title transferred. § 140.290.1; State v. Marburger, 182 S.W.2d 163, 165 (Mo. 1944); Keylien, 284 S.W.3d at 610. If the property is not redeemed during the one-year statutory redemption period, “at the expiration thereof, and on production of certificate of purchase,” the county collector is required to execute to the purchaser a deed to the property that vests in the grantee an estate in fee simple absolute. § 140.420; Keylien, 284 S.W.3d at 610.²

This Court has held that the redemption period for first and second offering tax sales is one year, which begins to run on the date of the tax sale. § 140.340.1; CedarBridge, 293 S.W.3d at 465; Keylien, 284 S.W.3d at 613. § 140.405 addresses the notice requirement of the purchaser of real property at a first or second offering tax sale. We have also held that the purchaser must send a sufficient notice at least ninety days before the purchaser is authorized to acquire a Collector’s deed to the property. §

² The legislature has treated third offering tax sales differently from first and second offering tax sales, but we need not discuss these differences here.

140.405; CedarBridge, 293 S.W.3d at 465. We have further held that the notice must inform the recipient that he has one year to redeem the real property from the date of the tax sale, or be forever barred from doing so, and it must be sent at least ninety days before the expiration of the one-year redemption period. § 140.405; CedarBridge, 293 S.W.3d at 465.³ The failure to comply with any of the notice requirements by the purchaser at a delinquent tax sale will result in the loss of all interest in the real property as a matter of law. § 140.405; CedarBridge, 293 S.W.3d at 466.

Sneil relies upon a line of cases from the Western District of the Court of Appeals that are at odds with precedent from this District. See United Asset Managemetn Trust Co. v. Clark, 332 S.W.3d 159 (Mo. App. W.D. 2010); Boston v. Williamson, 807 S.W.2d 216 (Mo. App. W.D. 1991). See also Harpagon MO, LLC v. Bosch, 2011 WL 3802141.⁴ In United Asset Management, 332 S.W.3d at 172-73, the Western District concluded that due process required only a minimal, bare-bones notice that the property owner had a right to redeem. We disagree with this conclusion.

In Ndegwa v. KSSO, LLC, 2011 WL 4790633, this Court analyzed the requirements of due process and tax sale foreclosures.⁵ We held that “under reasonable notice requirements of due process, fundamental principles of public policy and certainty in the law, and basic canons of statutory construction, that the required Section 140.405 notice by a tax sale purchaser must contain the time component of the landowner’s right

³ The Southern District of the Missouri Court of Appeals is in accord with this Court regarding what is required in the notice sent by the purchaser at a first or second tax sale, namely that “a redemption notice must inform persons of the time frame in which they must act to redeem their property or be forever barred from doing so.” Drake Development & Construction, LLC v. Jacob Holdings, Inc., 306 S.W.3d 171, 173-74 (Mo. App. S.D. 2010).

⁴ Sneil also relies on Harpagon MO, LLC v. Bosch, 2011 WL 3802141, an opinion that has no legal force as the matter was transferred to the Missouri Supreme Court, and is currently pending there as SC92074

⁵ The Missouri Supreme Court took transfer of Ndegwa, and the matter is pending currently as SC92169. Accordingly this Court’s opinion in that case has no binding legal force, but we find our analysis in that case is sound, and apply the same reasoning here.

of redemption as defined and set forth in Section 140.340.” Id. at 8. We found that the cases relied on in United Asset Management regarding notice were distinguishable on a fundamental basis, as none of them involved the permanent taking of real property “for a fraction of its worth or the time-sensitive right” to redeem the property or forever lose it. Id. at 9. We noted that the dissimilarities between the loss of real property from a delinquent tax sale and the situations in the cases relied on in United Asset Management were not only based on subject matter, but also “in the seriousness, scope and permanency of the taking; the parties involved; the background of the taking; and the differences in procedure, whether criminal, administrative, or civil.” Id.

This Court also took issue with the public policy implications of essentially permitting the tax sale purchaser to set the date for redemption by when he or she chose to pursue a Collector’s deed. We held that:

Such an allowance would undermine our need for certainty in the law and place too much control in the hands of those who are not unbiased with regard to whether or not the landowner successfully redeems his property. We have grave reservations about the implications of vesting a tax sale purchaser with the authority to set the deadline for a landowner to act to save his own property by something as subjective and uncertain as the date the purchaser decides to put on his letter. Not only is such a date completely arbitrary, but there is great potential for error, uncertainty, and deception in allowing such a practice.

Id. We further noted that public policy favors redemption, and disfavors forfeiture, and that the policy of the law is to give taxpayers every chance to redeem their property, compatible with the rights of the state. Id. at 10 (citing 85 C.J.S. Taxation § 1354 (2011)).

This Court also engaged in statutory construction, and construed §§ 140.340 and 140.405 in *pari materia*, and concluded that the proper meaningful and harmonious

interpretation of the right to redeem in § 140.405 is to give it the meaning consistent with that set forth in § 140.340, that the landowner has one year from the date of the tax sale to redeem the real property. Id. at 10-11.

In Ndegwa, the first offering tax sale at issue was held on August 27, 2007, and the notice sent was dated September 15, 2008, more than a year after the tax sale. Id. at 1-2. It did not inform the property owners that they had one year from August 27, 2007, to redeem the property or be forever barred from doing so. Id. The notice stated that the chance to redeem “...will be available for a period of not less than 90 days from the date of this letter.... [and] [t]he right of redemption continues to be available until that deed is recorded.” Id. at 2. We held that this notice was deficient as to its content under § 140.405, as it incorrectly stated the redemption period, and that as a matter of law, a Collector’s deed becomes void if the purchaser fails to comply with the notice requirements of § 140.405, and accordingly the tax sale purchaser forfeited the property. Id. at 12-13.

In the present case, Sneil did not even bother with giving a date, but rather stated its intent to acquire a collector’s deed, and referred Tybe and Regions to a copy of § 140.405 “for your perusal.” Sneil advised the recipients of the notice to contact the Collection Division of the St. Louis County Department of Revenue, giving the contact information. This is wholly inadequate under § 140.405. Further, while Sneil dated the notice August 9, 2007, it was not actually sent until August 27, 2007, and received on August 28, 2007.

Sneil is wrong in its assertion that the trial court incorrectly found that the redemption period was one year, and its reliance on § 140.410 is misplaced. § 140.410

places a time limit on the purchaser to acquire a Collector's deed within two years of the date of the tax sale, and places the burden on the purchaser to acquire the deed in a timely manner, or have the certificate of purchase cancelled. It does not address the rights of the landowner or other interested party in the real property at issue to redeem that property, but rather the ability of a purchaser at a tax sale to attempt to acquire a collector's deed. Further, the ability of the landowner to redeem after the one-year period from the date of the tax sale due to the failure of the purchaser to acquire a collector's deed is not the same as the absolute right to redeem that exists under § 140.340 during the year following the tax sale.

Regarding Sneil's second point relied on, this Court repeatedly has held that the notice required under § 140.405 must inform the recipient that he has one year to redeem the real property from the date of the tax sale, or be forever barred from doing so. See Ndegwa, 2011 WL 4790633 6; CedarBridge, 293 S.W.3d at 465; Keylien, 284 S.W.3d at 612-13. Sneil's argument that it is impossible for a tax sale purchaser to give a specific time frame in the § 140.405 notice because it is possible for the redemption period to be other than the one-year span in § 140.340 due to special redemption statutes is specious, as is its argument that it cannot know when all of the lawful requirements to acquiring a collector's deed will be completed. This Court also observes that Sneil is not contending that it would be particularly difficult in this case to know whether any statutes would modify the normal redemption period. Regarding Sneil's inability to know when the lawful requirements for acquiring a collector's deed have been met, this is a matter almost wholly within the control of the purchaser of a property at a tax sale. As noted above, in Ndegwa, this Court addressed the pitfalls of permitting a tax sale purchaser to

control the date by which a party may redeem his or her property, and our holding there is applicable here as well. Sneil relies on Boston, 807 S.W.2d at 218 for the proposition that § 140.405 does not require notice of the right of redemption ninety days or more prior to the end of the one-year period following the tax sale. Contrary to Sneil's argument, it did not explicitly address Hobson v. Elmer, 163 S.W.2d 1020 (Mo. banc 1942), but rather referenced it in a footnote regarding when land sold for taxes may be redeemed. This Court in Ndegwa, 2011 WL 4790633 6, and CedarBridge, 293 S.W.3d at 465, reached a contrary interpretation of § 140.405, holding that the purchaser must give notice at least ninety days prior to the expiration of the one-year absolute statutory right to redeem property following a tax sale. We further noted in Ndegwa that the appellant's reliance on Hobson was misplaced because that case involved a third offering tax sale, not a first offering tax sale. We noted that the relevant statutes had been amended multiple times since the Hobson opinion. This Court further observed that Hobson was not a notice case, and that the notice requirement of § 140.405 was enacted over forty years after the Hobson decision. Our reasoning in Ndegwa about the inapplicability of Hobson applies equally in the present case.

Sneil also posits that neither § 140.405 nor due process requires that a tax sale purchaser provide advance notice of the time limits applicable for redemption, or the specific procedures that must be followed. In Ndegwa, 2011 WL 4790633 at 8-9, this Court analyzed the requirements of due process, and held that "fundamental due process compels a different conclusion[,]" from that reached by the Western District in United Asset Management. We held that:

One year from the date of the tax sale, the tax sale purchaser is entitled to redeem his certificate of purchase with the Collector [of Revenue], and

take title to the property if he has completed the list of other required tasks set forth in the statutory scheme. Clearly, timing is an important component of the tax sale and purchase process, and therefore for any statutorily required notice of those proceedings to be meaningful, such notice must include a time component to comport with due process. We find such reasonable notice comports with fundamental due process without rising to the level of constituting legal advice.

This Court found the cases relied on in United Asset Management were distinguishable on a “fundamental basis” as discussed above. We believe that due process mandates that the purchaser give notice that is meaningful and includes a time component. In addition, a number of cases from this Court have held that § 140.405 requires that the notice sent by the purchaser at a tax sale inform the recipient that there is a one-year right of redemption. See Hames v. Bellistri, 300 S.W.3d 235, 239-40 (Mo. App. E.D. 2009); CedarBridge, 293 S.W.3d at 465; Keylien, 284 S.W.3d at 613.

Further, the language of § 140.405.9 is clear. It states that the “[f]ailure of the purchaser to comply with this § shall result in such purchaser’s loss of all interest in the real estate.” Failure to comply with the notice requirements of § 140.405 is not a “mere irregularity” or a “technical objection.” Instead, the mandatory language of the statute dictates that the purchaser lose all interest in the real property as a matter of law. Ndegwa, 2011 WL 4790633 at 11 Drake, 306 S.W.3d at 173-74; CedarBridge, 293 S.W.3d at 466; Valli v. Glasgow Enterprises, Inc., 204 S.W.3d 273, 277 (Mo. App. E.D. 2006). Accordingly, Sneil’s argument in its first and second points relied on that the deficiencies of the notice that it sent to Tybe and Regions were technical objections or “mere irregularities” is devoid of any force. The cases cited by Sneil in support of its arguments that the defects did not void and invalidate the collector’s deed do not address

deficiencies in the notice required by § 140.405, and hence are readily distinguishable. Points one and two are denied.

In its third point relied on, Sneil claims that the trial court erred in denying it relief under Count I of its petition without making material findings of fact and conclusions of law as requested by it. Sneil argues that such findings and conclusions are required by Rule 73.01, and such lack of findings and conclusions materially affects the merits of the action and/or interferes with appellate review.

Rule 73.01 provides in part that the trial court, if requested by a party, “shall include in the opinion findings on the controverted fact issues specified by the party.” It also provides that if a party requests, the court “shall dictate to the court reporter or prepare and file a brief opinion containing a statement of the grounds for its decision and the method of deciding any damages awarded.”

Sneil timely requested a large number of findings of fact and conclusions of law. The trial court did make findings of fact and conclusions of law, but admittedly did not address each and every one of the 46 requests for findings of fact and 60 requests for conclusions of law. However, the failure of a trial court to make findings of fact that were requested properly does not automatically mandate reversal. Ratteree v. Will, 258 S.W.2d 864, 872 (Mo. App. E.D. 2008); see also Goldstein v. Studley, 452 S.W.2d 75, 78-79 (Mo. 1970). Only if such failure interferes materially with our ability to review will we reverse; if the record is sufficient to support the judgment, we will affirm. Ratteree, 258 S.W.3d at 872. Rule 73.01(c) provides that if the trial court fails to make findings on specific issues of fact, this Court will consider them as having been found in accordance with the judgment, and this applies even to findings that a party requested but

that the trial court did not make. Goldstein, 452 S.W.2d at 78-79; Ratteree, 258 S.W.3d at 872.

The trial court made sufficient findings of fact and conclusions of law to permit this Court to make a meaningful review of the issues on appeal. Having set forth the trial court's findings and conclusions above, we need not repeat them here. As for those findings requested by Sneil for which the trial court did not make specific findings of fact, per Rule 53.02(c), we consider them as having been found in accordance with the trial court's judgment. Point denied.

We would affirm the judgment of the trial court. However, due to the general interest and importance of the issues presented, we transfer the case to the Supreme Court, under Rule 83.02.

CLIFFORD H. AHRENS, Presiding Judge

Roy L. Richter, J., concurs.

Gary M. Gaertner, Jr., J., concurs.