

**Summary of SC89402, *James Schlereth v. Jane Hillman Hardy, Jefferson County Collector of Revenue***

Appeal from the Jefferson County circuit court, Judge Edward Williams

**Attorneys:** Schlereth was represented by Stanley D. Schnaare and Michelle L. Mellendorf of The Schnaare Law Firm PC in Hillsboro, (636) 789-3355; and Hardy was represented by Earl G. Burton III of Webster Groves, (314) 961-6775.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man who bought property from a county collector at a tax sale sent notice to the tax-delinquent former owner, as required by statute, by certified mail, but the former owner did not respond to two attempts to deliver the certified mail. Because it found the certified mail notice was not constitutionally sufficient, the trial court voided the man's collector's deed to the property and held the former owner's period to redeem the property was not expired. In a unanimous decision written by Judge Michael A. Wolff, the Supreme Court of Missouri affirms the trial court's judgment. The United States Supreme Court has held that, when certified mail notice is returned undelivered, due process requires the sender to take additional steps to send notice through a follow-up means reasonably calculated to reach the person being notified. Here, the man did not follow up.

**Facts:** Jane Hardy, who owned a piece of property in Jefferson County but did not occupy it, failed to pay taxes on the property in 1999, 2000 and 2001. The county's collector of revenue sold the property in August 2002, following publication of the sale, to James Schlereth for \$9,500. The taxes owed on the property totaled nearly \$2,140. In March 2004, Hardy appeared at the collector's office and paid the taxes that had been due on the property for 2002 and 2003. She says she was not aware at the time that the property had been sold more than a year and a half earlier. In May 2004, Schlereth sent, by certified mail, notice to Hardy's suburban St. Louis residence of her right to redeem the property that had been sold. Hardy admits she received two delivery notifications there but did not pick up the certified mail on either occasion. In June 2004, the notice was returned to Schlereth as "unclaimed." Because Hardy did not redeem her property within two years of the tax sale, Schlereth in August 2004 obtained and recorded a collector's deed to the property pursuant to section 140.410, RSMo 2000. The next month, he filed an action to quiet title. The collector consented, but Hardy answered and filed a counterclaim against Schlereth, asking the court to set aside the tax sale, to return the property to her and to refund the property taxes she paid in March 2004. Hardy also filed a cross-claim against the collector, asking the court to order that the surplus from the tax sale be paid to her. The trial court subsequently ruled that the collector's deed was void and that Hardy's redemption period had not expired because she received insufficient notice of her redemption rights. Schlereth appeals.

**AFFIRMED.**

**Court en banc holds:** The trial court correctly concluded that the notice of redemption rights, as prescribed in section 140.405, is constitutionally insufficient; that the collector's deed was void; and that Hardy's period for redemption of the property has not expired. Two cases of the United States Supreme Court apply. The first, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), addresses the adequacy of notice by what is known before the notice is sent, while the second, *Jones v. Flowers*, 547 U.S. 220 (2006), requires the government to act on information it receives after the notice was sent.

There is no question here that Schlereth, proceeding under section 140.405, RSMo 2000, takes on the governmental obligation to give notice that satisfies due process. Schlereth's certified mail notice satisfied *Mullane* because, along with the two notifications of attempted delivery, it reasonably was calculated to notify Hardy of her redemption rights. *Jones*, however, compels the grant of summary judgment in Hardy's favor, even though the effect may be to encourage parties to evade certified-mail notices. Although the dissent in *Jones* would not require any additional steps for a person to be taken for a person such as Hardy, who failed to pay property tax bills and then failed to pick up certified mail notices, this Court is obligated to follow the majority opinion, which does not discuss why the addressee failed to claim the certified letter but rather allows for the possibility that an addressee such as Hardy simply would ignore the requests to pick up the certified letter. Because the majority opinion in *Jones* makes clear that the certified mail notice prescribed by section 140.405 is constitutionally inadequate under these circumstances but also makes clear it does not require actual notice, it is up to the legislature to determine what notice should be sent when the certified mail notice is returned unclaimed. In the absence of a legislative corrective, those who use governmental authority to take property, even in tax delinquency situations such as this, must take heed of the notice requirements of the constitutional cases of *Mullane* through *Jones*.

Here, *Jones* compelled Schlereth, whom the statute requires to give notice to the tax-delinquent former owner, to take additional steps to ensure constitutionally adequate notice when he learned the certified-mail notice was unclaimed. Notice by publication of the tax sale does not meet the longstanding requirements of notice explained in *Mullane*, especially when the collector had Hardy's correct address. While the gold standard of notice is services of process by the sheriff or other process server, under *Jones*, the least that could be expected was for Schlereth to send Hardy notice by regular mail to follow up on the returned certified mail. If not returned, Schlereth could have presumed that Hardy received the letter because there is no question that the address the collector and Schlereth had for Hardy was correct. Hardy then would have been hard-pressed to rebut the presumption that she received the notice, and the outcome of this case would be different.