

Summary of SC90732, *In the Matter of Foreclosures of Liens for Delinquent Land Taxes by Action in Rem. Collector of Revenue and Lewis Mitchell Company v. Mohammad Bhatti*

Appeal from the St. Louis circuit court, Judge Michael F. Stelzer
Argued and submitted Dec. 8, 2010; opinion issued March 1, 2011

Attorneys: Bhatti was represented by Angela S. Yee of the Yee Law Firm in St. Louis, (314) 503-3517; Lewis Mitchell Company was represented by Richard Blanke of Uthoff, Graeber, Bobinette & Blanke in St. Louis, (314) 621-9550; the city's collector of revenue was represented by Anthony J. Sestric of The Sestric Law Firm in St. Louis, (314) 351-2512, and Tyrone Taborn of St. Louis, (314) 367-2600; the city's sheriff was represented by Gordon Schweitzer Jr. of St. Louis, (314) 622-4987; and the state's department of revenue was represented by its general counsel, Michael S. Kisling, of Jefferson City, (573) 522-3769.

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 whose property was sold at a foreclosure sale of tax liens against his property appeals, challenging the constitutional adequacy of the notice of the foreclosure sale. In a 4-3 decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the trial court's judgment confirming the tax sale. United States Supreme Court precedent requires that notice be reasonably calculated to inform such an owner that an action is pending and give the owner an opportunity to object; it does not require the government to take additional steps to provide notice when the government does not know or have reason to know that the notice provided is insufficient. Here, the sheriff sent notice to the address the man listed with city officials for real estate taxes, and although the man testified he did not live at the property, he never changed his address with city officials. As such, there was no reason for the sheriff to take additional steps to provide a different form of notice.

Judge Michael A. Wolff dissents. He would have reversed the judgment and remanded (sent back) the case for further proceedings to allow the man an opportunity to be restored to ownership of his property upon payment of his taxes and other authorized expenses properly chargeable to him. He would find that the notice used by the city here did not meet the United States Supreme Court's precedential requirements that notice be the "best practicable," especially given that the postal service does not deliver to vacant properties such as the one here and that there was no one except the man to represent his interests as the property owner. He also would require the city, as the only party with knowledge of whether notices sent by first-class mail were "returned to sender," to keep records of such returns to satisfy additional United States Supreme Court precedent.

Facts: Mohammad Bhatti failed to pay real estate taxes for 2005, 2006 and 2007 on a house he owned in St. Louis. The city collector filed a tax lien foreclosure suit against him to enforce the tax lien. After Bhatti defaulted, the circuit court entered a foreclosure judgment and ordered that the property be sold to satisfy the tax lien. The city sheriff sent Bhatti notice of the pending tax sale via first-class mail to his last-known address, which was the address of the property being

foreclosed and the address Bhatti provided when he acquired title to the property. The property was sold at the tax sale to Lewis Mitchell Company for \$7,600. The company filed a motion with the circuit court to confirm the sale and sent Bhatti notice of the hearing to the same address the sheriff used. The circuit court found the purchase price was adequate and confirmed the sale. Five months later, Bhatti moved to set aside the tax sale and confirmation judgment, claiming he did not receive notice of the tax sale and confirmation hearing; he did not claim he did not receive notice of the foreclosure suit or judgment. During an evidentiary hearing on the motion, Bhatti testified that he did not live at the property but that he was renovating the house and was there frequently. He testified that he never notified the assessor of any change of address and that he never received a tax bill for the property or notice of the sheriff's tax sale. The court overruled Bhatti's motion, determined the notices were sent to the address in the assessor's records as Bhatti provided and denied him relief because he failed to present evidence that the sheriff knew or had reason to know the tax sale notice was ineffective. Bhatti appeals.

AFFIRMED.

Court en banc holds: The court did not err in overruling Bhatti's motion to set aside the tax sale and confirmation judgment because Bhatti failed to present evidence that the sheriff knew or should have known the tax sale notice was ineffective.

Under the federal and state constitutions, no person may be deprived of property without due process of law. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), the United States Supreme Court held that due process requires notice reasonably calculated under all the circumstances to inform interested parties that an action is pending and giving them an opportunity to object. In *Jones v. Flowers*, 547 U.S. 220 (2006), the Supreme Court held that, to be constitutionally sufficient, a property owner need not receive actual notice and that a government entity must take additional reasonable steps to notify the property owner if it knows or has reason to know the notice was ineffective.

Here, Bhatti offered no evidence that the sheriff's notice was not reasonably calculated to inform him about the tax sale or that the sheriff knew or should have known the notice was ineffective. The sheriff used the address Bhatti had provided for receiving real estate tax notices, and despite not living in the home, Bhatti never changed the address with the city officials. In contrast with *Robinson v. Hanrahan*, 409 U.S. 38 (1972), and *Conseco Finance Servicing Corp. v. Missouri Department of Revenue*, 195 S.W.3d 410 (Mo. banc 2006) – in which the government knew the notice was sent to an address to which the person to receive the notice did not have access – here there was no evidence that Bhatti could not have received notice at the address to which notice was sent. Without knowledge that notice would not inform Bhatti of the sale, *Flowers* did not require the sheriff to take any further steps – whether to search for an alternate address or to provide personal service – to provide notice. Cost also is not a factor in determining whether additional notice is required under *Flowers*. This Court cannot consider a register of the sheriff's sale, which contains a notice marked “return to sender,” but the document was dated a year after the foreclosure sale and it never was offered as evidence before the trial court. By presenting no evidence that the sheriff knew or should have known the tax sale notice was ineffective, Bhatti failed to show the statutes governing the tax sale, as applied to him, violated his right to due process.

Further, Bhatti presented no evidence that he did not receive notice of the confirmation proceeding. He did not testify about this notice, and there was no evidence that the company purchasing his property knew or should have known the notice of the confirmation proceeding was ineffective.

Dissenting opinion by Judge Wolff: The author would have reversed the judgment and remanded (sent back) the case for further proceedings to allow Bhatti an opportunity to be restored to ownership of his property upon payment of his taxes and other authorized expenses properly chargeable to him.

He would find that the notice provided here did not meet *Mullane*'s requirement that the notice be the "best practicable." He notes that, at the time the property was sold for \$7,600 to satisfy the \$1,452.06 in back taxes that Bhatti owed on it, he was listing the property for sale for \$169,900. Although mail may be sufficient in some circumstances to satisfy due process when the owner actually receives notice, in the circumstances here, notice by mail was insufficient. Because the cost of notice is assessed against the delinquent taxpayer, the government should have used a different method of service to provide notice to Bhatti. He distinguishes *Mullane*, noting that it involved a class of individuals whose interests were represented by other class members who received notice, whereas here, there was no one but Bhatti to represent his interests as the property owner. Bhatti's property was vacant and, therefore, not an address to which the United States Postal Service delivers mail. Further, because Bhatti's property was in foreclosure, and because some foreclosed properties may be vacant, the city should have known notice mailed to the property's address is not reasonably calculated to reach the property's owner, especially given that the city's records elsewhere provided an alternative address for Bhatti.

Flowers examines the effectiveness of notice after it was sent rather than at the time it was sent. *Flowers* also involved certified mail, which creates a record of whether notice is delivered. The notice here was sent by first-class mail, for which no postal-service record is created. Here, no "return to sender" notices were included in the record, and although Bhatti argues he obtained such notices from the city's sheriff after the trial court's proceeding, this Court cannot consider documents that were not introduced in the trial court. As the only party with access to information as to whether notice was returned, the city should maintain records detailing when notices are "returned to sender" to meet the *Flowers* standard.