

IN THE SUPREME COURT OF MISSOURI

JAMES SCHLERETH,)	
Plaintiff,)	
)	
vs.)	Supreme Court No. SC89402
)	
JANE TILLMAN HARDY,)	
and)	
COLLECTOR OF JEFFERSON COUNTY,)	
MISSOURI,)	
Defendants.)	

From the Circuit Court of Jefferson County, Missouri

Twenty-Third Judicial Circuit

Division 3

Honorable M. Edward Williams

APPELLANT’S BRIEF

THE SCHNAARE LAW FIRM, PC
Stanley D. Schnnare
Michelle L. Mellendorf
321 Main, P.O. Box 440
Hillsboro, MO 63050
(636) 789-3355

Attorney for Appellant James Schlereth

INDEX

TABLE OF AUTHORITIES	3
JURISDICTIONAL STATEMENT	5
STATEMENT OF FACTS	7
Events Prior to Litigation	7
The Procedural History.....	9
POINT RELIED ON.....	12
ARGUMENT	13
Standard of Review	13
Compliance with Missouri Statutes.....	14
Compliance with the Due Process Clause.....	17
CONCLUSION	26
CERTIFICATE OF SERVICE	27
CERTIFICATE OF COMPLIANCE.....	28

APPENDIX

Judgment and Order with Findings of Fact and Conclusions of Law	A-1
Section 140.340 RSMo	A-15
Section 140.450 RSMo	A-16
Mo. Const. art. I, §10	A-17

Mo. Const. art. V, §3.....	A-18
U.S. Const. amend. XIV, §1	A-19

TABLE OF AUTHORITIES

Cases

<i>Cherry v. City of Hayti Heights</i> , 563 S.W.2d 72 (Mo. banc 1978).	14
<i>Conseco Finance Servicing Corp. v. Missouri Dept. of Revenue</i> , 195 S.W.3d 410 (2006).....	21
<i>Cooper v. Finke</i> , 376 S.W.2d 225 (Mo.1964).	14
<i>Dietrich v. Pulitzer Publishing Company</i> , 422 S.W.2d 330 (Mo.1986).....	14
<i>Elliott v. Harris</i> , 423 S.W.2d 831 (Mo. banc 1968).	13
<i>E.O. Dorsch Electric Co. v. Plaza Const. Co.</i> , 413 S.W.2d 167 (Mo. 1967)....	13, 14
<i>ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.</i> 854 S.W.2d 371 (Mo.1993).	13
<i>Jones v. Flowers</i> , 547 U.S. 220 (2006).....	11, 12, 16, 19, 20, 21, 23, 24
<i>Larry Dean Dusenbery v. United States</i> , 534 U.S. 161 (2002).	18, 20, 22
<i>Mullane, Special Guardian, v. Central Hanover Bank & Trust Co., Trustee et al.</i> , 339 U.S. 306 (1950).	12, 17, 18, 20, 22
<i>State v. Elliot</i> , 225 S.W.3d 423 (Mo. 2007).....	5, 12, 20, 21, 23, 25
<i>Swink v. Swink</i> , 367 S.W.2d 575 (Mo.1963).	13
<i>Temple Bnai Shalom of Great Neck v. Village of Great Neck Estates, et al.</i> , 2006 NY Slip Op 6077, 3 (N.Y. App. Div. 2d Dep’t 2006).	12, 21, 22, 23

<i>Zafft v. Eli Lilly</i> , 676 S.W.2d 241 (Mo. banc 1984).	14
---	----

Statutes

Section 140.340 RSMo	8
Section 140.405 RSMo	5, 8, 12, 14, 15, 24

Constitutional Provisions

Mo. CONST. art. I, § 10.....	12, 17
Mo. CONST. art. V, § 3	6
U.S. CONST. amend. XIV, § 1	12, 17

JURISDICTIONAL STATEMENT

The action involves the question of whether the Appellant's notice to Respondent of a tax sale of Respondent's property was sufficient under Section 140.405 of the Revised Missouri Statutes, Article I, Section 10 of the Missouri Constitution and Section 1 Amendment XIV of the United States Constitution to satisfy Respondent's due process rights. The trial court determined that the process used by Appellant for providing notice under the Missouri Statute was without effect, invalid and not sufficient to provide due process under the Missouri Constitution and the Constitution of the United States. Because the statutes provide a mechanism of tax sale to provide revenue for the government, and they are used annually by Jefferson County and all other counties across the entire state, and because the public who purchase at those sales rely upon those statutes to give proper notice of redemption to former owners, the failure of this Circuit Court Judge to acknowledge sufficient due process had been satisfied where the party to whom notice was given had it delivered to their actual physical residence, ultimately results in failing to give effect to the statute, when applied by this and other judges, unless this Supreme Court clarifies its earlier ruling in *State v. Elliot*, 225 S.W.3d 423 (Mo. 2007), and construes its application to the tax sale statutes,

and Federal and State due process provisions. This appeal thus involves the validity of a statute or provision of the laws of Missouri. Mo. Const. art. V, § 3.

STATEMENT OF FACTS

Events Prior to Litigation

This action is the result of a tax sale that took place on August 26, 2002. (L.F. Vol. I 11-12, 66).¹ Prior to the tax sale, Jane Hardy (hereinafter known as “Respondent”) was the owner of a particular tract of real estate described as follows and hereinafter known as “Property”:

“The South Half of the Southwest Quarter of the Southeast Quarter of Section Three (3), Township Forty-Two (42), Range Three (3).

Parcel No.: 06-2.0-03.0-013.” (L.F. Vol. I 11-12.”)

Respondent failed to pay the taxes, special assessments, interest penalties, and costs on the Property for the years 1999, 2000, and 2001. (L.F. Vol. I 11-12, 66.) These taxes were recorded in the Office of the Collector of Revenue of Jefferson County as delinquent. (L.F. Vol. I 12.) Due to this delinquency, the Property was subject to tax sale by Jefferson County in August 2002. (L.F. Vol. I 11-12, 66.)

The Collector of Revenue of Jefferson County, after lawful publication, sold the property on August 26, 2002. (L.F. Vol. I 11-12.) On that same day, James

¹ Appellant has filed a two volume legal file titled “Legal File Volume I” and “Legal File Volume II” containing pleadings filed in trial court.

Schlereth (hereinafter known as Appellant) paid \$9,500.75 to the Collector of Revenue and received a Tax Sale Certificate of Purchase. (L.F. Vol. I 11-12, 66; L.F. Vol. II 209.) The delinquent taxes owed were only \$2,139.25, which created a surplus of \$7,361.50. (L.F. Vol. I 73; L.F. Vol. II 229.)

Following his purchase of the Property, and in conformity with Section 140.405 of the Revised Statutes of Missouri, Appellant sent notice of redemption rights to Respondent by certified mail with service attempted on May 10, May 21, and June 1, 2004. (L.F. Vol. I 66.) The notice was properly delivered to 817 Blossom Lane, St. Louis, MO 63119, the address where Respondent actually resided. (L.F. Vol. I 66.) Notwithstanding her residency at 817 Blossom Lane, St. Louis, MO 63119, Respondent refused to pick up the certified notices. (L.F. Vol. I 66.) Delivery of this notice was attempted on at least three different occasions. (L.F. Vol. I 68.) The notices were returned to Appellant as “unclaimed.” (L.F. Vol. I 66.) Respondent admits the certified mail was sent to her but she simply did not claim said article of mail. (L.F. Vol I. 62.)

In March of 2004, Respondent appeared at the office of the Collector of Revenue and paid the taxes due on the real estate for the years 2002 and 2003. (L.F. Vol. I 20.) The payment of such taxes was after the sale and not part of any lawful redemption scheme under Section 140.340 of the Revised Statutes of Missouri. (L.F. Vol. I 62.)

Respondent failed to redeem her right to the Property within the two (2) year time period following the tax sale. (L.F. Vol. I 11-12, 66.) Because of Respondent's failure to redeem, Appellant obtained a Collector's Deed to the Property. (L.F. Vol. I 11.) This Collector's Deed is dated August 26, 2004 and recorded in the Jefferson County Records as Document 040049735. (L.F. Vol. I 11.)

The Procedural History.

On September 14, 2004, Appellant filed a petition to quiet title against Respondent and the Collector of Revenue of Jefferson County. (L.F. Vol. I 11-12.) The petition requested that the court enter an order that the Property be held in fee simple by Appellant. (L.F. Vol. I 11-12.) Beth Mahn, in her official capacity as Collector of Revenue of Jefferson County consented to the quiet title petition. (L.F. Vol. I 15-16.) Respondent answered, filed a counterclaim against Appellant requesting the court to set aside the tax sale and deed and award the Property to Respondent, filed an alternative counterclaim requesting the court award \$1,251.70 to Respondent (the amount of the 2002 and 2003 property taxes paid by Respondent) if the court awarded the property to Appellant, and filed a cross-claim against the Collector of Revenue of Jefferson County requesting that the court order the surplus held by the Collector of Revenue from the tax sale be paid to Respondent. (L.F. Vol. I 19-25.)

On April 20, 2006 Summary Judgment was entered in favor of Appellant and against Respondent with respect to the petition and Respondent's counterclaim. (L.F. Vol. I 34-35.) The court denied Appellant's motion for summary judgment on the cross-claim and the alternative counterclaim. (L.F. Vol. I 34-35.) The court also denied Respondent's motion for summary judgment. (L.F. Vol. I 34-35.)

On April 24, 2006 Beth Mahn filed a motion to dismiss the cross-claim as moot because she paid the surplus from the tax sale to Respondent. (L.F. Vol. I 36-37.) On November 8, 2006 Respondent filed a motion to voluntarily dismiss her cross-claim. (L.F. Vol. I 41-42.) On November 13, 2006 the Judge signed and ordered the Consent Judgment signed by both parties awarding Respondent \$1,251.70 on her alternative counterclaim for payment of the 2002 and 2003 taxes. (L.F. Vol. I 43.)

On December 13, 2006, Respondent filed a motion to amend the judgment and a motion for a new trial. (L.F. Vol. I 49-53.) The court heard arguments on Respondent's motion to amend the judgment and motion for a new trial on February 23, 2007 and March 1, 2007. (L.F. Vol. I 58-59.) The Court granted the motion for new trial on March 1, 2007. (L.F. Vol. I 59.)

On February 29, 2008 the court heard arguments for Appellant's and Respondent's Motions for Summary Judgment. (L.F. Vol. II 207.) On May 21,

2008 the Court issued Findings of Fact and Conclusions of Law granting Respondent's Motion for Summary Judgment and denying Appellant's Motion for Summary Judgment on the basis of *Jones v. Flowers*, 547 US 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006). (L.F. Vol. II 224-237.)

On June 16, 2008 Appellant filed notice of appeal. (L.F. Vol. II 240.)

POINT RELIED ON

THE TRIAL COURT ERRED IN CONCLUDING THAT THE NOTICE TO RESPONDENT WAS INEFFECTIVE BECAUSE APPELLANT COMPLIED WITH THE STATUTORY REQUIREMENTS AND NO ADDITIONAL STEPS WERE NECESSARY TO PROVIDE DUE PROCESS IN THAT RESPONDENT LIVED AT THE ACTUAL PHYSICAL ADDRESS TO WHICH NOTICE WAS SENT.

Jones v. Flowers, 547 U.S. 220 (2006).

Mullane, Special Guardian, v. Central Hanover Bank & Trust Co., Trustee et al., 339 U.S. 306 (1950).

State v. Elliot, 225 S.W.3d 423 (Mo. 2007).

Temple Bnai Shalom of Great Neck v. Village of Great Neck Estates, et al., 2006 NY Slip Op 6077, 3 (N.Y. App. Div. 2d Dep't 2006).

Mo. CONST. art. I, § 10

U.S. CONST. amend. XIV, § 1

Section 140.405 RSMo

ARGUMENT

THE TRIAL COURT ERRED IN CONCLUDING THAT THE NOTICE TO RESPONDENT WAS INEFFECTIVE BECAUSE APPELLANT COMPLIED WITH THE STATUTORY REQUIREMENTS AND NO ADDITIONAL STEPS WERE NECESSARY TO PROVIDE DUE PROCESS IN THAT RESPONDENT LIVED AT THE ADDRESS TO WHICH NOTICE WAS SENT.

Appellant's Point relates to the final judgment entered by the trial court based on the second series of motions for summary judgment.

Standard of Review

Appellate review of a summary judgment is *de novo*. *E.O. Dorsch Electric Co. v. Plaza Const. Co.*, 413 S.W.2d 167, 169 (Mo.1967). The propriety of summary judgment is purely an issue of law. *Elliott v. Harris*, 423 S.W.2d 831, 834 (Mo. banc 1968); *Swink v. Swink*, 367 S.W.2d 575, 578 (Mo.1963); *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.* 854 S.W.2d 371 (Mo.,1993). The trial court's judgment is founded on the record submitted and the law, and an appellate court need not defer to the trial court's order granting summary judgment. *Id.*

The criteria on appeal for testing the propriety of summary judgment are no different from those which should be employed by the trial court to determine the propriety of sustaining the motion initially. *E.O. Dorsch v. Plaza Const. Co.* at 169. The Court should review the record in the light most favorable to the party against whom the judgment was entered. *Zafft v. Eli Lilly*, 676 S.W.2d 241, 244 (Mo. banc 1984); *Cooper v. Finke*, 376 S.W.2d 225, 228 (Mo.1964). Facts set forth by affidavit or otherwise in support of a party's motion are taken as true unless contradicted by the non-moving party's response to the summary judgment motion. *Cherry v. City of Hayti Heights*, 563 S.W.2d 72, 75 (Mo. banc 1978); *Dietrich v. Pulitzer Publishing Company*, 422 S.W.2d 330, 333 (Mo.1986).

Compliance with Missouri Statutes

Section 140.405 of the Missouri Statutes provides in part,

“Any person purchasing property at a delinquent land tax auction shall not acquire the deed to the real estate... until the person meets with the following requirement or until such person makes affidavit that a title search has revealed no publicly recorded deed of trust, mortgage, lease, lien or claim on the real estate. At least ninety days prior to the date when a purchaser is authorized to acquire the deed, the purchaser

shall notify any person who holds a publicly recorded deed of trust, mortgage, lease, lien or claim upon that real estate of the latter person's right to redeem such person's publicly recorded security or claim. **Notice shall be sent by certified mail to any such person, including one who was the publicly recorded owner of the property sold at the delinquent land tax auction previous to such sale, at such person's last known available address.** Failure of the purchaser to comply with this provision shall result in such purchaser's loss of all interest in the real estate.”

Section 140.405 RSMo.

The Appellant complied with all notice provisions in this statute because he sent a certified letter to the Respondent, at her last know available address. In fact, Appellant sent the certified letter to the Respondent’s actual residence. The letter was sent on May 7, 2004 and states,

“This letter is to inform you that property recorded in your name has been sold at Tax sale on August 26, 2002. (PARCEL #062.003.0013). You have until August 26, 2004 to redeem this property by contacting the County Collector’s Office of Jefferson County, Court House, Hillsboro, Missouri.” (L.F. Vol. I 32).

Thus, Appellant complied with the notice provisions of the Missouri Statutes.

The trial court erred in relying on language in *Jones v. Flowers*, 547 U.S. 220 (2006); concluding that the actual physical residence of the taxpayer was not a relevant factor in determining whether the notice to Respondent of her right to redeem her property was effective. Appellant sent notice to Respondent at her actual residence and she voluntarily chose not to accept such notice. The notices were returned as “Unclaimed” not as “Moved, Left No Address”, “Not Deliverable as Addressed—Unable to Forward”, or “Attempted—Not Known.”³ Because Respondent refused to accept the letter, she received due process.

³ According to the USPS website, the following endorsements are given for the following reasons for non delivery of certified and other mail.

Attempted: Not Known Delivery attempted, addressee not known at place of address.

Deceased: Used only when known that addressee is deceased and mail is not properly deliverable to another person. This endorsement must be made personally by delivery employee and under no circumstance may it be rubber-stamped. Mail addressed in care of another is marked to show which person is deceased.

Moved, Left No Address: Addressee moved and filed no change-of-address order.

Not Deliverable as Addressed/Unable to Forward: Mail undeliverable at address given; no change-of-address order on file; forwarding order expired.

Unclaimed: Addressee abandoned or failed to call for mail.

(**Domestic Mail Manual** Section 507 Exhibit 1.4.1, May 2008;

<http://pe.usps.com/text/dmm300/507.htm#wp1218184>.)

Compliance with the Due Process Clause

The Constitution of the United States provides that,

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1.

The Missouri Constitution provides that,

“No person shall be deprived of life, liberty or property without due process of law.” Mo. CONST. art. I, §10.

The Supreme Court of the United States, the Missouri Supreme Court and the courts of other states have considered what it means to be deprived of these rights without due process of law.

In *Mullane v. Central Hanover Bank & Trust Company*, the Court considered the notice given to beneficiaries of the settlement of a common trust account. *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306, 309 (1950). In considering whether the beneficiaries had received due process, the court noted that, "a fundamental requirement of due process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections." *Id* at 314. The

court further stated that the notice must be of such a nature that it is reasonable to convey the required information. *Id.* "The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.* at 315. Finally, the court said that the reasonableness of the notice could be defended on the ground that the notice itself was reasonably certain to inform those affected and that the form chosen was not *substantially less likely to bring notice than other feasible and customary substitutes*. *Id.* The court concluded that publishing notice alone was not enough. *Id.* at 320.

In *Dusenbery* the issue was the sufficiency of notice of the seizure of an inmate's assets sent to that inmate. *Larry Dean Dusenbery v. United States*, 534 U.S. 161 (2002). The FBI officer who seized the property, sent notice via certified letter addressed to the inmate at the prison, to his former home and to his mother's home. *Id.* at 163. When considering whether the inmate had received due process, the court applied the framework in *Mullane*. *Id.* at 167. The prisoner argued that the FBI should have made arrangements to ensure delivery. *Id.* at 170. The court disagreed saying, "Undoubtedly the Government could make a special effort in any city to assure that a particular piece of mail reaches a particular individual who is in one way or another in the custody of the Government." *Id.* The court also noted that the Due Process Clause does not require "such heroic efforts" *but only*

requires the efforts to be reasonably calculated to notify a party. Id. The court held the certified notice was sufficient. *Id.* at 171.

In *Jones v. Flowers*, the owner of the home continued to pay the mortgage after separating from his wife and moving elsewhere. *Jones v. Flowers*, 547 US 220, 223 (2006). After the mortgage was paid off, the property taxes, which had been paid by the mortgage company, went unpaid, and the property was certified as delinquent. *Id.* The Commissioner of State Lands (Commissioner) attempted to notify Jones of his right to redeem his property, by mailing him a certified letter, addressed to the house. *Id.* The letter stated that unless Jones redeemed the property, it would be subject to public tax sale 2 years later. *Id.* Because no one was home to receive the letter and no one retrieved it from the post office within 15 days, the post office returned the letter to the Commissioner marked "unclaimed." *Id.* at 224. Two years later, the property was up for public tax sale and the Commissioner published notice of the sale in a local newspaper and mailed Jones a certified letter addressed to the house. *Id.* Again, the certified letter was returned marked, "unclaimed." *Id.* The Commissioner sold the property to Flowers. *Id.* After the post-sale redemption time expired, Flowers sent notice of an unlawful detainer to the home and the occupant notified Jones. *Id.* Jones filed suit claiming the Commissioner did not notify him of the sale. *Id.*

The *Jones* Court applied the standards of *Mullane* and *Dusenbery*. *Id* at 226-227, 229. The court added that they do consider unique information about an intended recipient regardless of whether the notice is reasonably calculated to notify the recipient. *Id* at 230. The court did not think a person who was desirous of actually informing the property owner would do nothing when a certified letter was returned unclaimed. *Id* at 229. The court held that Jones did not receive due process because the government did not take additional steps to notify Jones when the letters came back "unclaimed" even though it was practical to do so. *Id* at 234. Some additional steps might include posting notice at the property or sending regular mail to the "occupant" of the property. *Id* at 235. Finally, the court concluded that publishing notice in addition to the letters was not enough to satisfy the due process requirements. *Id* at 238.

In *State v. Elliot*, this Court considered whether the notice of tax deficiency to a taxpayer violated the Due Process Clause. *State v. Elliot*, 225 S.W.3d 423 (Mo. 2007). Notice was sent to Elliot's last known address via certified letter. *Id* at 424. This address was taken from Elliot's tax returns and there was no indication that it was not her actual residence. *Id*. The letter was returned as "unclaimed." *Id* at 425. The court considered *Mullane*, *Dusenbery* and *Jones v. Flowers* in determining that Elliot received due process. *Id* at 424-425. This Court, in a footnote, specifically distinguished *Elliot* from *Jones* on the basis that in *Elliot*

notice, although unclaimed, was sent to the actual address of the taxpayer. *Id.* at 424 fn.3. ("*Jones v. Flowers*, 547 US 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006), and *Conseco Finance Servicing Corp. v. Missouri Dept. of Revenue*, 195 S.W.3d 410 (2006), are distinguishable in that those cases involve notice sent to an address where the person affected was not present.").

The Supreme Court of New York came to the same conclusion on very similar facts in *Temple Bnai Shalom of Great Neck v. Village of Great Neck Estates. Temple Bnai Shalom of Great Neck v. Village of Great Neck Estates, et al.*, 2006 NY Slip Op 6077, 3 (N.Y. App. Div. 2d Dep't 2006). In that case, the court considered whether the notice of plaintiff's right of redemption was sufficient to satisfy the Due Process Clause. *Id.* at 392. Notice was sent to plaintiff (who was not an individual), the plaintiff's current president and former president, all via certified mail. *Id.* All of the notices were returned as "unclaimed." *Id.* The court noted that in *Jones v. Flowers*, notice was sent to a single address where the property owner did not reside and no one was home to sign for the letter. *Id.* In this case, however, the addresses to which notices were sent were current and correct physical addresses and there was no suggestion that any of the recipients were not home or unavailable to sign for the mailing. *Id.* at 393. The court found the recipients were, "attempting to avoid notice by ignoring the certified mailings." *Id.* Moreover the court held that "attempts at alternative methods of giving notice was

unnecessary and would prove futile." *Id.* Thus, the court held that the letters sent certified mail, although returned as "unclaimed" did not violate the Due Process Clause because the letters were mailed to the actual correct physical addresses.

First, as stated in *Mullane* and *Dusenbery*, the purpose of the Due Process Clause is to put the interested party on notice of the action against them and give them the opportunity to present their objections. In this case, the Respondent was placed on notice as the Appellant sent a letter via certified mail notifying her of her right of redemption. She saw that there was important mail waiting for her but chose not to claim it. As stated above, the Due Process Clause does not require actual notice. Appellant cannot force Respondent to pick up certified mail any more than Appellant can force her to read junk mail. Appellant can only send the notice and give Respondent the opportunity to read it and redeem the property.

Further, the notice need only be *reasonably calculated to notify the party* and be in a form that is *not substantially less likely to bring notice than other feasible and customary substitutes*. The notice in this case was reasonably calculated to notify Respondent because it was sent to her actual physical address. She saw that there was important certified mail, but chose not to claim it. Moreover, it was not substantially less likely to bring notice than a regular piece of mail or some other form of notification because the certified letter was sent to the actual physical address. Again, Respondent was given the opportunity to receive

the notice in a customarily accepted form, but chose not to accept the certified mail. Therefore, Appellant satisfied the Due Process Clause because Respondent was notified of the certified mail at her actual physical address, but simply chose not to pick it up.

When comparing the present case with the prior precedents, the facts are most analogous to those in *Elliot* and *Great Neck Estates*. The facts at hand are distinguishable from *Jones v. Flowers* in that notice was sent to the actual address of the property owner who had resided there before during and after these proceedings. Like *Elliot* and *Great Neck Estates*, the Appellant sent notice via certified mail to the actual address of the property owner. Like *Elliot* and *Great Neck Estates*, the notice was returned as "unclaimed." Further, like *Great Neck Estates*, there is no evidence that the Respondent was not at home or unable or unavailable to sign for the mailing. In fact, delivery in this case was attempted on three different occasions. Like the court concluded in *Great Neck Estates*, the Respondent was attempting to avoid notice and attempts at alternative methods of notice were unnecessary and would have proven futile.

Finally, this Court should consider the future problems that may arise in these types of cases as well as the fact that the Appellant relied on the statute and complied with all the provisions in effect at the time notice was sent. If this court determines that something additional must be done to satisfy due process, even

when the notice is sent to the actual physical address of the taxpayer, it gives taxpayers and other individuals an incentive to refuse certified mail. If, on the other hand, this court agrees that certified mail, when sent to the actual physical address of the taxpayer or other individual, satisfies the requirements of due process, it provides incentive for persons to accept and read their certified mail. Just as “ignorance of the law is no excuse,” neither should refusing to accept or claim certified mail provide a basis for claiming lack of due process.

The trial court ruled in favor of Appellant, and reversed the judgment only after the decision in *Jones v. Flowers*. At the time the Appellant sent notice, there was no indication that he or anyone else was not satisfying the due process requirements. In fact, this determination was not made until two years after the Appellant sent notice. Appellant had no way of knowing that there might be additional requirements to satisfy due process.

The trial court in their judgment, essentially declared that Section 140.405 of the Revised Statutes of Missouri was unconstitutional in that the notice provisions were not enough to satisfy the Due Process Clause, where the recipient merely declines the mailing. The Supreme Court rather than the trial court has the authority to declare a Missouri statute unconstitutional.

The trial court failed to correctly interpret the notice provision where the notice was sent to the actual physical residence of the taxpayer, especially in light

of the holding in *Elliot*. The notice was sufficient to satisfy the requirements of the Due Process Clause because the letter was sent the actual physical address of the Respondent, but she refused to claim the letter, and the trial court's judgment should be reversed.

CONCLUSION

For the reasons set for above, Appellant, James Schlereth respectfully requests that this Court reverse the trial court's judgment because the delivery of the certified letter to Respondent's actual physical address meets all the requirements of due process where Respondent simply failed to claim the letter at her **last known available actual** physical address.

Appellant, James Schlereth respectfully requests that this Court affirm the trial court's judgment denying Respondents Second Motion for Summary Judgment based on all other arguments.

Stanley D. Schnaare, #29382
The Schnaare Law Firm, P.C.
321 Main; PO Box 440
Hillsboro, MO 63050
(636) 789-3355, 797-3355
Attorney for Appellant

Michelle L. Mellendorf #59587
The Schnaare Law Firm, P.C.
321 Main; PO Box 440
Hillsboro, MO 63050
(636) 789-3355
Attorney for Appellant

CERTIFICATE OF SERVICE

A copy of this Appellant's Brief, and a CD containing this brief, were mailed first class, U.S. Mail, postage pre-paid on October 28, 2008 to:

Mr. E.G. Burton, III
21 East Drave Ave.
Webster Groves, MO 63119-5255
Attorney for Respondent Hardy

Mr. Dennis Kehm Jr.
Jefferson County Counselors Office
P.O. Box 100
Hillsboro, MO 63050
Attorney for Collector of Jefferson County

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Appellant's Brief includes the information required by Rule 55.03 and complies with the limitations contained in Rule 84.06(b). Relying on the word count and line count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 4,673 and that the total number lines of monospaced type in the brief is 426, exclusive of the cover, signature block, and certificates of service and compliance.

The undersigned further certifies that the disks filed with the Appellant's Brief and served on respondent were scanned for viruses and found virus-free.

APPENDIX

Table of Contents - Appendix

Judgment and Order with Findings of Fact and Conclusions of Law	A-1
Section 140.340 RSMo	A-15
Section 140.405 RSMo	A-16
Mo. Const. art. I, §10	A-17
Mo. Const. art. V, §3.....	A-18
U.S. Const. amend. XIV, §1	A-19

Missouri Revised Statutes
Chapter 140
Collection of Delinquent Taxes Generally
Section 140.340

August 28, 2008

Redemption, when--manner.

140.340. 1. The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the one year next ensuing, in the following manner: by paying to the county collector, for the use of the purchaser, his heirs or assigns, the full sum of the purchase money named in his certificate of purchase and all the cost of the sale together with interest at the rate specified in such certificate, not to exceed ten percent annually, except on a sum paid by a purchaser in excess of the delinquent taxes due plus costs of the sale, no interest shall be owing on the excess amount, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of eight percent per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption.

2. Upon deposit with the county collector of the amount necessary to redeem as herein provided, it shall be the duty of the county collector to mail to the purchaser, his heirs or assigns, at the last post office address if known, and if not known, then to the address of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for redemption.

3. Such notice, given as herein provided, shall stop payment to the purchaser, his heirs or assigns, of any further interest or penalty.

4. In case the party purchasing said land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the one year next following the date of sale, no interest shall be charged or collected from the redemptioner after that time.

(RSMo 1939 § 11145, A.L. 2003 S.B. 295, A.L. 2004 S.B. 1012)

© Copyright



Missouri General Assembly

§ 140.405 R.S.Mo.

LEXISNEXIS (TM) MISSOURI ANNOTATED
STATUTES

*** CURRENT THROUGH THE FIRST EXTRA
SESSION OF THE REGULAR SESSION ***
*** OF THE 94TH GENERAL ASSEMBLY (2007) ***
*** MOST CURRENT ANNOTATION SEPTEMBER 2,
2008 ***

TITLE 10. TAXATION AND REVENUE (Chs. 135-155)
CHAPTER 140. COLLECTION OF DELINQUENT
TAXES GENERALLY
REAL ESTATE TAXES

**[GO TO CODE ARCHIVE DIRECTORY FOR THIS
JURISDICTION](#)**

§ 140.405 R.S.Mo. (2008)

§ 140.405. Purchaser of property at delinquent land tax auction, deed issued to, when--affidavit--
notice of right of redemption--loss of interest, when

Any person purchasing property at a delinquent land tax auction shall not acquire the deed to the real estate, as provided for in [section 140.420](#), until the person meets with the following requirement or until such person makes affidavit that a title search has revealed no publicly recorded deed of trust, mortgage, lease, lien or claim on the real estate. At least ninety days prior to the date when a purchaser is authorized to acquire the deed, the purchaser shall notify any person who holds a publicly recorded deed of trust, mortgage, lease, lien or claim upon that real estate of the latter person's right to redeem such person's publicly recorded security or claim. Notice shall be sent by certified mail to any such person, including one who was the publicly recorded owner of the property sold at the delinquent land tax auction previous to such sale, at such person's last known available address. Failure of the purchaser to comply with this provision shall result in such purchaser's loss of all interest in the real estate. If any real estate is purchased at a third-offering tax auction and has a publicly recorded deed of trust, mortgage, lease, lien or claim upon the real estate, the purchaser of said property at a third-offering tax auction shall notify anyone with a publicly recorded deed of trust, mortgage, lease, lien or claim upon the real estate pursuant to this section. Once the purchaser has notified the county collector by affidavit that proper notice has been given, anyone with a publicly recorded deed of trust, mortgage, lease, lien or claim upon the property shall have ninety days to redeem said property or be forever barred from redeeming said property. If the county collector chooses to have the title search done then the county collector must comply with all provisions of this section, and may charge the purchaser the cost of the title search before giving the purchaser a deed pursuant to section 140.420

Mo. Const. Art. I, § 10

LEXISNEXIS (TM) MISSOURI ANNOTATED
STATUTES

*** CURRENT THROUGH THE FIRST EXTRA
SESSION OF THE REGULAR SESSION ***
*** OF THE 94TH GENERAL ASSEMBLY (2007) ***
*** MOST CURRENT ANNOTATION SEPTEMBER 2,
2008 ***

CONSTITUTION OF MISSOURI
ADOPTED 1945
ARTICLE I. BILL OF RIGHTS

[GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION](#)

Mo. Const. Art. I, § 10 (2008)

§ 10. Due process of law

That no person shall be deprived of life, liberty or property without due process of law.

Mo. Const. Art. V, § 3

LEXISNEXIS (TM) MISSOURI ANNOTATED
STATUTES

*** CURRENT THROUGH THE FIRST EXTRA
SESSION OF THE REGULAR SESSION ***
*** OF THE 94TH GENERAL ASSEMBLY (2007) ***
*** MOST CURRENT ANNOTATION SEPTEMBER 2,
2008 ***

CONSTITUTION OF MISSOURI
ADOPTED 1945
ARTICLE V. JUDICIAL DEPARTMENT

[GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION](#)

Mo. Const. Art. V, § 3 (2008)

§ 3. Jurisdiction of the supreme court

The supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of a treaty or statute of the United States, or of a statute or provision of the constitution of this state, the construction of the revenue laws of this state, the title to any state office and in all cases where the punishment imposed is death. The court of appeals shall have general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the supreme court.

USCS Const. Amend. 14, § 1

UNITED STATES CODE SERVICE
Copyright © 2008 Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved

CONSTITUTION OF THE UNITED STATES OF AMERICA
AMENDMENTS
AMENDMENT 14

[Go to the United States Code Service Archive Directory](#)

USCS Const. Amend. 14, § 1

[Review Court Orders which may amend this Rule.](#)

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.