

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE MATTER OF FORECLOSURE
OF LIENS FOR DELINQUENT LAND
TAXES BY ACTION IN REM: MANAGER
OF REVENUE OF JACKSON COUNTY,
MISSOURI**

**THE NIGRO FAMILY
PARTNERSHIP, LP**

**v.
SANDRA K. FREY**

RESPONDENT,

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD71978

DATE: November 30, 2010

Appeal From:

Jackson County Circuit Court
The Honorable William Stephen Nixon, Judge

Appellate Judges:

Division Three: Alok Ahuja, Presiding Judge, Cynthia L. Martin and Gary D. Witt, Judges

Attorneys:

Jacqueline A. Sommer, Kansas City, MO for respondent Manager of Revenue of Jackson County, Missouri and
John W. Roe and Frank A. Brancato, Kansas City, MO, for respondent The Nigro Family Partnership, LP.

Shawn E. Stewart, Kansas City, Missouri appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

SANDRA K. FREY,

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No. WD71978

Jackson County

Before Division Three Judges: Alok Ahuja, Presiding Judge, Cynthia L. Martin and Gary D. Witt, Judges

Sandra Frey, a purchaser of property at a tax sale, appeals from the trial court's judgment setting aside the sale on Jackson County's motion. The County's motion asserted that the address used to notify the property owner, Nigro Family Partnership, was inaccurate. Frey alleged that use of an inaccurate address, without evidence the County knew the address was inaccurate, is not sufficient to permit a tax sale to be set aside, and that so long as notices are sent as required by statute to the address for the property owner shown upon the records of the collector, the notices are constitutionally sufficient. Partnership intervened as a party on appeal.

REVERSED AND REMANDED.

Division Three holds:

(1) Actual notice of a petition to foreclose property due to delinquent taxes and of the tax sale need not be received by the property owner to satisfy due process. Due process merely requires that notice be reasonably calculated to reach interested parties.

(2) Generally, notices sent in the manner required by Missouri's Land Tax Collection Law are deemed reasonably calculated to reach interested parties, and thus sufficient to satisfy due process.

(3) However, a trial court faced with a motion to set aside a tax sale must evaluate the particular facts of the case to determine whether the collector's attempt to notify was unreasonable, balancing the duties imposed by due process and a party's obligation to protect its own property.

(4) The trial court summarily granted the County's motion to set aside the sale, with no prior notice to Frey, and based solely on the County's bare allegation that the address used to notify the Partnership was incorrect. This was error. The minimal record before the trial court was not sufficient to support a conclusion one way or the other with respect to the constitutional sufficiency of the notice provided to the Partnership.

(5) Once the tax sale occurred, Frey acquired an interest in the property that could not be summarily impacted by the County's unilateral assertion that notice to the Partnership was insufficient.

(6) The trial court's judgment is reversed, and the matter is remanded for an evidentiary hearing to determine whether the notice sent by the County was reasonably calculated to reach the Partnership and thus, constitutionally sufficient.

(7) The foreclosure judgment which preceded the tax sale is not res judicata on the issue of proper notice. The County's motion essentially asserted that an error of fact, demonstrable by extrinsic evidence, and not appearing on the face of the record, affected the validity of the proceedings, and was thus a new action in the nature of an independent and direct attack on the foreclosure judgment, and not a collateral attack on the foreclosure judgment.

Opinion by: Cynthia L. Martin, Judge

November 30, 2010

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