SUPREME COURT OF FLORIDA

Delta Property Management, Inc. v. Profile Investments, Inc.

87 So. 3d 765 (Fla. 2012) · Decided March 8, 2012

SUMMARY

The Florida Supreme Court held that the law-of-the-case doctrine did not bar consideration of whether additional notice was required after certified-mail notice of a tax sale was returned undeliverable. Applying Jones v. Flowers and Vosilla v. Rosado, the Court held that due process required the clerk to take additional reasonable steps to notify the property owner. Because the clerk took no additional steps, the Court invalidated the tax deed and remanded for affirmance of summary judgment in favor of Delta.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Canady, C.J.; Pariente, J.; Lewis, J.; Quince, J.; Polston, J.; Labarga, J.; Perry, J.
JURISDICTION	Florida
DECIDED	March 8, 2012
DISPOSITION	quashed
PROCEDURAL POSTURE	Delta petitioned the Supreme Court of Florida for review of the First District Court of Appeal's decision reversing summary judgment in Delta's favor and directing entry of judgment for Profile on the validity of a tax deed. The Supreme Court accepted review based on express and direct conflict concerning the law-of-the-case doctrine.
STANDARD OF REVIEW	De novo review of the application of the law-of-the-case doctrine and the grant of summary judgment; constitutional due-process adequacy of notice was reviewed as a question of law.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding precedent in Florida.
PARTIES	Delta Property Management, Inc. v. Profile Investments, Inc.

TOPICS

tax · real estate · due process · appellate procedure · summary judgment

PRACTICE AREAS

real estate · constitutional law · civil procedure

QUESTIONS PRESENTED

1. Whether the law-of-the-case doctrine barred consideration of Delta's argument that the clerk had to take additional reasonable steps after certified-mail notice of the tax sale was returned undeliverable.
2. Whether due process required the clerk to take additional reasonable steps to notify Delta before the tax sale after learning that the certified-mail notice was unsuccessful.
3. Whether the failure to take additional reasonable steps rendered Profile's tax deed invalid.

HOLDINGS

1. The law-of-the-case doctrine does not bar consideration of a legal question that was not actually presented and decided in a former appeal, even if the question could have been raised earlier.
2. When a clerk learns before a tax sale that certified-mail notice was returned undeliverable, due process requires the clerk to take additional reasonable steps to attempt to notify the legal titleholder if practicable.
3. The tax deed was invalid because the clerk took no additional reasonable steps after learning that the certified-mail notice was not successfully delivered.

KEY QUOTATIONS

> *"We again conclude that the law-of-the-case doctrine is not applicable to a legal question that has not yet been decided on appeal."* (at 770)

> *"Upon learning that delivery of the notice to Delta was unsuccessful, the Clerk was not entitled to "simply ignore that information ... and sell the owner's property.""* (at 773)

> *"Because the Clerk's office did not take any additional reasonable steps to notify the property owner after it learned that the attempt to provide notice by certified mail was unsuccessful, Delta is entitled under Jones and Vosilla to prevail on its claim that the tax deed is invalid."* (at 774)

FACTUAL BACKGROUND

Delta owned commercial property in Jacksonville and failed to pay its 1997 ad valorem taxes. After Profile purchased the resulting tax certificate and applied for a tax deed, the clerk mailed certified notice to Delta's former address listed in the tax collector's statement. The notice was returned undeliverable before the tax sale, but the clerk took no additional steps to notify Delta. Profile acquired the tax deed, and Delta challenged it, asserting that the notice was constitutionally inadequate.

PROCEDURAL HISTORY

Profile purchased a tax certificate, obtained a tax deed, and brought an action to quiet title. The trial court initially entered summary judgment for Profile, and the First District affirmed. The Supreme Court reversed in Delta II, holding that the clerk had to use the latest assessment roll when reasonably ascertainable. On remand, the trial court ultimately entered summary judgment declaring the tax deed void after applying Jones v. Flowers and Vosilla v. Rosado. The First District reversed in Delta V, concluding that the law-of-the-case doctrine barred consideration of the additional-notice issue. The Supreme Court quashed that decision and remanded with instructions to affirm summary judgment for Delta.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The First District's decision was quashed, and the case was remanded with instructions that the trial court's grant of summary judgment in favor of Delta be affirmed.

CASES CITED

- Jones v. Flowers, 547 U.S. 220 (2006)
- Vosilla v. Rosado, 944 So. 2d 289 (Fla. 2006)
- Florida Department of Transportation v. Juliano, 801 So. 2d 101 (Fla. 2001)
- U.S. Concrete Pipe Co. v. Bould, 437 So. 2d 1061 (Fla. 1983)
- Airvac, Inc. v. Ranger Insurance Co., 330 So. 2d 467 (Fla. 1976)
- Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)
- Dawson v. Saada, 608 So. 2d 806 (Fla. 1992)
- McGregor v. Provident Trust Co. of Philadelphia, 162 So. 323 (Fla. 1935)
- Strazzulla v. Hendrick, 177 So. 2d 1 (Fla. 1965)
- Greene v. Massey, 384 So. 2d 24 (Fla. 1980)
- Malone v. Robinson, 614 A.2d 38 (D.C. 1992) (per curiam)
- Delta Property Management, Inc. v. Profile Investments, Inc., 19 So. 3d 1013 (Fla. 1st DCA 2009)
- Delta Property Management, Inc. v. Profile Investments, Inc., 875 So. 2d 443 (Fla. 2004)
- Profile Investments, Inc. v. Delta Property Management, Inc., 913 So. 2d 661 (Fla. 1st DCA 2005)
- Profile Investments, Inc. v. Delta Property Management, Inc., 957 So. 2d 70 (Fla. 1st DCA 2007)
- Rosado v. Vosilla, 909 So. 2d 505 (Fla. 5th DCA 2005)