NEBRASKA SUPREME COURT

Adair Holdings, LLC v. Johnson

304 Neb. 720 (2020) · No. No. S-18-1214 · Decided January 3, 2020

SUMMARY

The Nebraska Supreme Court affirmed summary judgment voiding a tax deed because the notice misstated the applicable redemption period. The court held that the landowner’s tender of payment established standing to challenge the deed and that strict compliance with statutory notice requirements was required. The court also affirmed quieting title in the landowner and declined to order reimbursement of delinquent taxes because the request was not properly raised below and the appellant was not shown to hold the relevant reimbursement rights.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	January 3, 2020
DOCKET	No. S-18-1214
DISPOSITION	affirmed
PROCEDURAL POSTURE	Adair Holdings appealed from the Franklin County District Court's grant of summary judgment for Dennis G. Johnson on his counterclaim challenging a tax deed and quieting title in Johnson.
STANDARD OF REVIEW	Standing and statutory interpretation are reviewed as questions of law independently of the lower court. Summary judgment is affirmed when the pleadings and admitted evidence show no genuine issue of material fact or ultimate inference and the moving party is entitled to judgment as a matter of law; the evidence is viewed in the light most favorable to the nonmoving party. Because a quiet title action sounds in equity, factual questions are reviewed de novo on the record, with possible weight given to the trial judge's credibility determinations when credible evidence conflicts.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Adair Holdings, LLC v. Dennis G. Johnson, et al.

TOPICS

quiet title · deeds · tax liens · summary judgment · statutory interpretation

PRACTICE AREAS

real estate · tax · civil procedure · appellate procedure · equitable remedies

QUESTIONS PRESENTED

1. Whether Johnson had standing under Neb. Rev. Stat. § 77-1844 to challenge the tax deed when he attempted to tender redemption payment but the treasurer refused it after issuance of the deed.
2. Whether the tax deed was void because the notice misstated the applicable redemption period under Neb. Rev. Stat. § 77-1831.
3. Whether a landowner must prove detrimental reliance on an inaccurate tax-deed notice to invalidate the deed.
4. Whether the district court properly quieted title in Johnson without ordering him to reimburse Adair Holdings for delinquent taxes paid by its predecessor in interest.

HOLDINGS

1. Under Neb. Rev. Stat. § 77-1844, the statutory requirement that taxes have been paid includes tendering payment. Johnson's attempted tender gave him standing to challenge the tax deed even though the tender occurred outside the statutory redemption period but within the period stated in the defective notice.
2. A tax deed is void when the tax-deed holder fails to strictly comply with the statutory notice requirements before acquiring the deed. A notice misstating the expiration of the redemption period invalidates the tax deed.
3. A landowner need not prove detrimental reliance on an inaccurate statutory notice to invalidate a tax deed.
4. The district court properly quieted title in Johnson without ordering reimbursement to Adair Holdings because Adair Holdings did not request equitable reimbursement below, did not assign the omission as error, and did not show that rights held by the entities that paid the taxes had been assigned to it.

KEY QUOTATIONS

> *"Therefore, the word "paid" in § 77-1844 includes tendering payment."* (728)

> *"We disagree with Adair Holdings' contention that Johnson was required to show detrimental reliance as a condition for invalidating a tax deed for inaccurate notice."* (730)

> *"We hold, on the facts of this case, that summary judgment in favor of Johnson's counterclaim for quiet title was proper and that equity does not require relief to be granted to Adair Holdings."* (733)

FACTUAL BACKGROUND

Adair Asset Management and BMO Harris Bank purchased a tax sale certificate for property owned of record by Dennis G. Johnson and paid additional delinquent taxes. After the statutory period, they attempted notice by certified mail and publication, but the published notice incorrectly stated that an owner-occupant had 45 days after issuance of the tax deed to redeem, although the applicable statute required redemption before issuance. Johnson discovered the deed, attempted to tender payment within the period stated in the notice, and was refused because the deed had already issued. The district court declared the tax deed void and quieted title in Johnson.

PROCEDURAL HISTORY

Adair Holdings commenced an equitable quiet title action after receiving a quitclaim deed from the entities that had obtained a tax deed. Johnson counterclaimed to quiet title and argued that the tax-deed notice misstated the redemption period and was constitutionally defective. The district court granted Johnson summary judgment, declared the tax deed void, ruled the tax sale certificate invalid and of no force and effect, and quieted title in Johnson. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018)
- Williamson v. Bellevue Medical Center, 304 Neb. 312, 934 N.W.2d 186 (2019)
- White v. Musser, 87 Neb. 628, 127 N.W. 1058 (1910)
- King v. Boettcher, 96 Neb. 319, 147 N.W. 836 (1914)
- Howell v. Jordan, 94 Neb. 264, 143 N.W. 217 (1913)
- Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007)
- Thomsen v. Dickey, 42 Neb. 314, 60 N.W. 558 (1894)
- Brokaw v. Cottrell, 114 Neb. 858, 211 N.W. 184 (1926)
- Kuska v. Kubat, 147 Neb. 139, 22 N.W.2d 484 (1946)
- Stewart v. Ridenour, 97 Neb. 451, 150 N.W. 206 (1914)
- Williams v. Daughetee, 72 Neb. 270, 100 N.W. 316 (1904)
- Countryside Developers v. Peterson, 9 Neb. Ct. App. 798, 620 N.W.2d 124 (2000)
- Wygant v. Dahl, 26 Neb. 562, 42 N.W. 735 (1889)
- Dillon v. Merriam, 22 Neb. 151, 34 N.W. 344 (1887)
- Diamond v. State, 302 Neb. 892, 926 N.W.2d 71 (2019)
- Tabler v. Callanan, 49 Iowa 362 (1878)
- State v. Kruse, 303 Neb. 799, 931 N.W.2d 148 (2019)

INSTRUCTIONS FOR AN AI ASSISTANT