SUPREME COURT OF GEORGIA

Saffo v. Foxworthy, Inc., 286 Ga. 284

687 S.E.2d 463 (2009) · No. S09A0988 · Decided November 23, 2009

SUMMARY

The Supreme Court of Georgia affirmed dismissal of delinquent taxpayers' action challenging a tax sale and resulting tax deed because they had not paid or tendered the statutory redemption amount required by OCGA § 48-4-47. The court held that a subsequent foreclosure notice supplied sufficient notice and that the payment-or-tender requirement did not violate due process. The court also concluded that alleged defects in the sheriff's conduct of the tax sale supported a potential damages action against the sheriff rather than invalidation of the tax deed against the purchaser.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Nahmias, Justice
JURISDICTION	Georgia
DECIDED	November 23, 2009
DOCKET	S09A0988
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Fulton County Superior Court's dismissal of the taxpayers' complaint and grant of summary judgment to the tax-sale purchaser and its manager.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review; it reviewed the trial court's rulings on motions to dismiss and for summary judgment.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; binding Georgia precedent.
PARTIES	Sallie M. Saffo, Forrest J. Saffo v. Foxworthy, Inc., Charles L. Wilson III

TOPICS

property tax · tax liens · tax collection · due process · civil procedure

PRACTICE AREAS

Tax law · Real estate law · Constitutional law · Civil procedure · Remedies

QUESTIONS PRESENTED

1. Whether OCGA § 48-4-47 barred the Saffos' action challenging the validity of the tax sale and resulting tax deed because they had not paid or tendered the redemption amount.
2. Whether the second exception to OCGA § 48-4-47's payment-or-tender requirement applied because the first foreclosure notice allegedly failed to provide timely notice.
3. Whether OCGA § 48-4-47's payment-or-tender requirement violated the Saffos' constitutional right to due process.
4. Whether alleged defects in the Sheriff's implementation of the tax-sale process could invalidate the tax sale or deed as against the bona fide purchaser.

HOLDINGS

1. After proper foreclosure-of-redemption notice and passage of the barment date, OCGA § 48-4-47(a) bars both filing and maintaining an action to set aside or invalidate the tax deed unless the plaintiff first pays or tenders the full redemption amount.
2. The court did not need to decide whether the first notice was defective because the later notice independently satisfied the statutory notice requirement and barred continuation of the action.
3. OCGA § 48-4-47's payment-or-tender requirement does not violate federal or Georgia due process guarantees, either facially or as applied to the Saffos.
4. Defects in the Sheriff's compliance with statutory tax-sale notice and advertising requirements may support a damages action against the Sheriff but do not invalidate the tax sale or deed as against a bona fide purchaser.

KEY QUOTATIONS

> *"Due process does not require that a property owner receive actual notice before the government may take his property."* (467)

> *"But procedures may be harsh without being unconstitutional."* (468)

FACTUAL BACKGROUND

The Saffos purchased the residence in 1983 and stopped paying property taxes after escrow payments ceased in 1990. Fulton County foreclosed a tax lien and sold the property to Foxworthy, Inc. for $51,406.88 on February 1, 2000. The Saffos did not redeem during the initial redemption period, did not redeem after receiving notice of foreclosure of the equity of redemption, and never paid or tendered the redemption amount, which later reached $112,516. They sued Foxworthy and Wilson to challenge the tax sale and prevent removal from the property.

PROCEDURAL HISTORY

The Saffos sued Foxworthy, Inc. and Charles L. Wilson III in the Fulton County Superior Court after Foxworthy demanded possession of a residence acquired at a tax sale. They sought injunctive relief and asserted tort claims challenging the tax sale and resulting tax deed; Foxworthy counterclaimed for quiet title, conversion, and trespass. After a second foreclosure-of-equity-of-redemption notice was served, the trial court granted the appellees' motions to dismiss and for summary judgment, denied the Saffos' motions, and referred Foxworthy's counterclaim to a special master. The Saffos appealed, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Mark Turner Properties, Inc. v. Evans, 274 Ga. 547, 550, 554 S.E.2d 492 (2001)
- Dixon v. Conway, 262 Ga. 709, 709, 425 S.E.2d 651 (1993)
- Jones v. Flowers, 547 U.S. 220, 223, 226, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006)
- Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313-14, 70 S. Ct. 652, 94 L. Ed. 865 (1950)
- Haden v. Liberty Co., 183 Ga. 209, 211, 188 S.E. 29 (1936)
- GE Capital Mortgage Svcs., Inc. v. Clack, 271 Ga. 82, 83, 515 S.E.2d 619 (1999)
- Sizemore v. Brown, 179 Ga. App. 594, 347 S.E.2d 345 (1986)
- Davis v. Harpagon Co., 281 Ga. 250, 252, 637 S.E.2d 1 (2006)
- Wallace v. President Street, L.P., 263 Ga. 239, 240, 430 S.E.2d 1 (1993)

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