SUPREME COURT OF THE STATE OF MONTANA

Catherine E.W. Hansen Trust v. Michael Ward; Theodora Tarbet; Timshel Tarbet; Tarbet Schrier LLC; Dale Tarbet; Estate of Dale Tarbet

Catherine E.W. Hansen Trust v. Ward, 2015 MT 131, 379 Mont. 161 (2015) · No. DA 14-0505 · Decided May 19, 2015

SUMMARY

The Montana Supreme Court affirmed summary judgment declaring a tax deed void because the purchaser failed to obtain the mandatory property title guarantee and provide the required notice to interested parties. The Court also upheld the district court's calculation of the tax-lien redemption amount, including the deposited taxes, interest, and additional taxes paid during litigation, while rejecting additional expenses not required by law. The Court declined to consider the purchaser's constitutional challenge to the governing statute because it was raised for the first time after judgment.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Mike McGrath; Michael E. Wheat; Patricia Cotter; Beth Baker; Laurie McKinnon
JURISDICTION	Montana
DECIDED	May 19, 2015
DOCKET	DA 14-0505
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from summary judgment declaring a tax deed void, an order directing payment of the tax lien and entry of final judgment, and denial of post-judgment motions.
STANDARD OF REVIEW	Summary judgment is reviewed de novo; the district court's legal conclusions are reviewed for correctness; the denial of the post-judgment motion concerning interest was reviewed for error, and the Court stated that the district court did not abuse its discretion in directing payment of the lien and denying the motions.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential

PARTIES	Catherine E.W. Hansen Trust v. Michael Ward, Theodora Tarbet, Timshel Tarbet, Tarbet Schrier LLC, Dale Tarbet, Estate of Dale Tarbet

TOPICS

tax liens · property tax · summary judgment · statutory interpretation · appellate procedure

PRACTICE AREAS

property tax · real estate · trusts · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court properly granted summary judgment and declared the tax deed void because Hansen Trust failed to obtain a property title guarantee and provide the statutory notice.
2. Whether the District Court properly determined the amount payable to Hansen Trust for redemption of its tax lien, including interest, additional taxes, and requested costs.
3. Whether the District Court properly denied Hansen Trust's post-judgment motions, including its motion to correct the interest calculation and its newly raised constitutional challenge.

HOLDINGS

1. Under §§ 15-18-212(1)(b) and -212(4)(a), MCA, a tax-lien purchaser must obtain a qualifying property title guarantee and provide the required certified-mail notice to each nonutility party listed on that guarantee. Failure to comply with these mandatory requirements renders the resulting tax deed void.
2. When a tax deed is declared void, the purchaser is entitled to recover the taxes, interest, penalties, and legally required costs that would have accrued in a regular redemption proceeding, while the true owner must receive the amount deposited with the court, applicable interest, and additional taxes paid during the litigation. Costs not required by law, including the requested insurance, trust-administration, and attorney fees, need not be awarded.
3. The Court declined to review Hansen Trust's constitutional challenge because it was raised for the first time in a post-judgment motion and therefore was not preserved for appeal.

KEY QUOTATIONS

> *"The plain language of the statute does not make the title guarantee optional, rather it mandates that the notice must be made to "each party . . . listed on a property title guarantee.""* (¶ 30)

> *"Failure to comply with this mandatory obligation renders the tax deed void."* (¶ 31)

FACTUAL BACKGROUND

Michael Ward purchased two lots in Anaconda, Montana, under a promissory note secured by a Montana Trust Indenture naming Ward as owner and taxpayer and Dale Tarbet, later Tarbet Schrier LLC, as beneficiary. Ward failed to pay property taxes for 2008 through 2010, and the county assigned the resulting tax lien to the

Catherine E.W. Hansen Trust and later issued a tax deed to the Trust. Hansen Trust had not obtained a property title guarantee and did not notify Montana Abstract and Title Company of the tax lien or impending tax deed.

PROCEDURAL HISTORY

Hansen Trust filed an action to quiet title to a tax deed issued after it acquired a property tax lien. The District Court ultimately granted the Tarbets' cross-motion for summary judgment, declared the tax deed void because Hansen Trust had not obtained a property title guarantee or provided the required notice, ordered payment of the tax lien redemption amount, entered final judgment, and denied Hansen Trust's post-judgment motions. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Lorang v. Fortis Insurance Co., 2008 MT 252, 345 Mont. 12, 192 P.3d 186
- Baxter v. State, 2009 MT 449, 354 Mont. 234, 224 P.3d 1211
- Certain v. Tonn, 2009 MT 330, 353 Mont. 21, 220 P.3d 384
- Day v. Payne, 280 Mont. 273, 929 P.2d 864 (1996)
- Dayberry v. City of East Helena, 2003 MT 321, 318 Mont. 301, 80 P.3d 1218
- Cenex, Inc. v. Board of Commissioners, 283 Mont. 330, 941 P.2d 964 (1997)
- Gaub v. Milbank Insurance Co., 220 Mont. 424, 715 P.2d 443 (1986)
- Montana Earth Resources Partnership v. North Blaine Estates, 1998 MT 254, 291 Mont. 216, 967 P.2d 376
- Zinvest, LLC v. Hudgins, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135
- Moran v. Robbin, 261 Mont. 478, 863 P.2d 395 (1993)
- Tax Lien Services v. Hall, 277 Mont. 126, 919 P.2d 396 (1996)