SUPREME COURT OF NEBRASKA

Nieveen v. TAX 106

311 Neb. 574 (2022) · No. No. S-21-364 · Decided May 13, 2022

SUMMARY

The Nebraska Supreme Court affirmed the dismissal of Sandra K. Nieveen’s action seeking to quiet title after a tax certificate holder obtained a tax deed to her property. The court held that Nieveen did not establish entitlement to Nebraska’s five-year extended redemption period for persons with a mental disorder and rejected her due process, takings, and excessive fines claims. The court concluded that the tax certificate sale and tax deed process provided constitutionally sufficient notice and postdeprivation procedures.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Papik, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Funke, J.; Freudenberg, J.; O’Gorman, District Judge
JURISDICTION	Nebraska
DECIDED	May 13, 2022
DOCKET	No. S-21-364
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Lancaster County District Court judgment dismissing Nieveen's constitutional claims, granting summary judgment to Lancaster County on her extended-redemption claim, and, after trial, dismissing the remaining claim against Vintage.
STANDARD OF REVIEW	Constitutionality of statutes and statutory interpretation are reviewed as questions of law. Dismissal on the pleadings is reviewed de novo, accepting well-pleaded factual allegations as true and drawing reasonable inferences for the nonmoving party, but disregarding legal conclusions and conclusory recitals. Because quiet title is an equitable action, factual questions are reviewed de novo on the record, with possible consideration of the trial judge's opportunity to observe witnesses when credible evidence conflicts.
PRECEDENTIAL VALUE	Published and precedential Nebraska Supreme Court opinion

PARTIES	Sandra K. Nieveen v. TAX 106, a Nebraska general partnership, Vintage Management, LLC, Lancaster County, Rachel Garver, Attorney General

TOPICS

property tax · tax liens · quiet title · motions to dismiss · due process

PRACTICE AREAS

property tax · constitutional law · real estate litigation · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether Nieveen qualified for the five-year extended redemption period under Neb. Rev. Stat. § 77-1827 because she had a mental disorder when the tax certificate was sold.
2. Whether the tax deed process violated procedural due process by providing only three months' notice before the tax deed application or by failing to provide a predeprivation hearing concerning the extended redemption period.
3. Whether issuance of the tax deed constituted an unconstitutional taking for a private purpose or required just compensation for equity exceeding the delinquent tax debt.
4. Whether the tax deed constituted an excessive fine under the federal or Nebraska Constitution.

HOLDINGS

1. A property owner has a mental disorder for purposes of § 77-1827 only when a mental-health condition actually prevents the owner from understanding legal rights or taking action to protect those rights. Nieveen did not prove that her depression and anxiety had that effect in March 2015 and therefore was not entitled to the five-year redemption period.
2. The tax deed process did not violate procedural due process by giving the delinquent taxpayer notice of the right to redeem only three months before the tax certificate holder's application for a tax deed.
3. Nieveen was not denied procedural due process because she had an opportunity, before issuance of the tax deed, to seek judicial relief asserting entitlement to the extended redemption period, even though she did not use that opportunity.
4. The issuance of the tax deed did not constitute an unconstitutional taking for a private purpose and did not require compensation for equity in the property exceeding the tax debt.
5. The issuance of the tax deed did not constitute an excessive fine under the federal or Nebraska Constitution.

KEY QUOTATIONS

> *"To the extent Nieveen has invited us to retreat from the definition of mental disorder adopted in Wisner, we decline."* (583)

> *"While we have no reason to question that Nieveen suffered from depression and anxiety in 2015, we do not believe she proved that those conditions prevented her from understanding her legal rights or taking action to protect them."* (585)

> *"Nieveen was not denied a hearing prior to the issuance of the tax deed; she failed to avail herself of the opportunity for such a hearing."* (589)

FACTUAL BACKGROUND

Nieveen did not pay her 2013 property taxes, and Lancaster County sold a tax certificate for her property to TAX 106 on March 2, 2015. TAX 106 later assigned its interest to Vintage Management, which sent Nieveen notice of its intent to seek a tax deed and obtained the deed in June 2018 after she failed to redeem. Nieveen suffered from diagnosed depression and anxiety but did not establish that those conditions in March 2015 prevented her from understanding her legal rights or acting to protect them. She brought a quiet title action challenging the deed and asserting statutory and constitutional grounds for relief.

PROCEDURAL HISTORY

After Nieveen failed to pay her property taxes, Lancaster County sold a tax certificate to TAX 106, whose interest was later assigned to Vintage Management. Vintage obtained a tax deed after Nieveen failed to redeem the property during the statutory three-month period. Nieveen filed a quiet title action alleging entitlement to a five-year redemption period because of a mental disorder and alleging violations of due process, takings, and excessive-fines protections. The district court dismissed the constitutional claims, entered summary judgment for Lancaster County, and after trial rejected the extended-redemption claim. The Nebraska Supreme Court moved the appeal to its docket and affirmed.

DISPOSITION

affirmed

CASES CITED

- Continental Resources v. Fair, 971 N.W.2d 313 (2022)
- Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018)
- HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020)
- SID No. 67 of Sarpy Cty. v. State, 309 Neb. 600, 961 N.W.2d 796 (2021)
- Sacchi v. Blodig, 215 Neb. 817, 341 N.W.2d 326 (1983)
- Vergara v. Lopez-Vasquez, 1 Neb. App. 1141, 510 N.W.2d 550 (1993)
- Shames v. State, 192 Neb. 614, 223 N.W.2d 481 (1974)
- Maycock v. Hoody, 281 Neb. 767, 799 N.W.2d 322 (2011)
- Heckman v. Marchio, 296 Neb. 458, 894 N.W.2d 296 (2017)
- Keller v. City of Fremont, 280 Neb. 788, 790 N.W.2d 711 (2010)
- Manning v. Dakota Cty. Sch. Dist., 279 Neb. 740, 782 N.W.2d 1 (2010)

- United States v. James Daniel Good Real Property, 510 U.S. 43, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993)
- Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)
- Holste v. Burlington Northern RR. Co., 256 Neb. 713, 592 N.W.2d 894 (1999)