SUPREME COURT OF NEBRASKA

HBI, L.L.C. v. Barnette

305 Neb. 457 (2020) · No. No. S-19-147 · Decided April 10, 2020

SUMMARY

The Nebraska Supreme Court affirmed summary judgment quieting title in favor of HBI, L.L.C. after issuance of a treasurer's tax deed. The court held that the tax certificate holder's initial filing and voluntary dismissal of a judicial foreclosure action did not bar subsequent pursuit of a tax deed, and that notice by certified mail followed by publication complied with Nebraska law. The court also rejected challenges to the statutory notice scheme and concluded that the notice procedures satisfied due process.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	April 10, 2020
DOCKET	No. S-19-147
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting HBI's motion for summary judgment, denying Barnette's motion for summary judgment, and quieting title to real property in HBI's favor after issuance of a treasurer's tax deed.
STANDARD OF REVIEW	Constitutionality of statutes and statutory interpretation present questions of law. The summary judgment ruling was reviewed for legal error under that standard.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Walter D. Barnette v. HBI, L.L.C.

TOPICS

tax liens · tax collection · due process · quiet title · statutory interpretation

PRACTICE AREAS

tax sale and tax deeds | real property | constitutional law | civil procedure | statutory interpretation

QUESTIONS PRESENTED

1. Whether the tax certificate holder's initial filing and voluntary dismissal of a judicial foreclosure action barred it from later pursuing a treasurer's tax deed.
2. Whether notice sent by certified mail to the address where the property tax statement was mailed, followed by publication in the county where the property was located after the mail was returned unclaimed, complied with Nebraska's tax deed statutes.
3. Whether the notice requirements in Neb. Rev. Stat. §§ 77-1832 and 77-1834 violated the federal or Nebraska Constitutions' due process guarantees.
4. Whether the notice was defective because it identified Guardian Tax Partners Inc. as the party that would apply for the tax deed rather than Pontian.
5. Whether Barnette was entitled to quiet title in the property.

HOLDINGS

1. A tax certificate holder's initial filing of a judicial foreclosure action did not preclude a later application for a tax deed when the foreclosure action was voluntarily dismissed before final submission and before any counterclaim or setoff was filed.
2. The notice was statutorily sufficient where Pontian sent certified mail to Barnette's actual residence, which was the address where the property tax statement was mailed, and, after the mail was returned unclaimed, published notice in the county where the property was located.
3. Nebraska's applicable tax deed notice requirements were constitutionally sufficient, and Pontian's notice to Barnette by certified mail at his actual residence, followed by publication, satisfied due process under the circumstances presented.
4. The notice was not defective merely because it identified Guardian as the party that would apply for the tax deed rather than Pontian.

KEY QUOTATIONS

> *"We hold that Pontian's election to initially file and dismiss the judicial foreclosure action did not preclude his application for a tax deed."* (at 464)

> *"The test in Jones for the constitutional sufficiency of notice is case specific and analyzes whether the action was something that someone "'desirous of actually informing'" the homeowner would do."* (at 471)

> *"Pontian complied with §§ 77-1832 and 77-1834 and was not required to publish notice anywhere other than Sarpy County."* (at 482)

FACTUAL BACKGROUND

Barnette failed to pay real estate taxes on a Nebraska property, and Pontian purchased a tax sale certificate on March 5, 2013. After three years, Pontian initially filed a judicial foreclosure action but dismissed it before a summons issued or the complaint was served, then pursued a treasurer's tax deed. Pontian sent notice by certified mail to Barnette's actual Iowa residence, where his tax statements had been mailed, but the letter was returned unclaimed; Pontian then published notice in a Sarpy County newspaper. The treasurer issued the tax deed, and HBI later acquired the property and successfully sought to quiet title.

PROCEDURAL HISTORY

Pontian Land Holdings LLC purchased a tax sale certificate, initially filed a judicial foreclosure action, voluntarily dismissed it before service, and then applied for a treasurer's tax deed. After the deed was issued, Pontian filed an action to quiet title; HBI was later substituted as plaintiff after acquiring the property. The district court granted HBI summary judgment and denied Barnette's motion, concluding that the statutory notice requirements were satisfied and constitutional due process was not violated. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Pfizer v. Lancaster Cty. Bd. of Equal., 260 Neb. 265, 616 N.W.2d 326 (2000)
- SID No. 424 v. Tristar Mgmt., 288 Neb. 425, 850 N.W.2d 745 (2014)
- Neun v. Ewing, 290 Neb. 963, 863 N.W.2d 187 (2015)
- Adair Asset Mgmt. v. Terry’s Legacy, 293 Neb. 32, 875 N.W.2d 421 (2016)
- Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018)
- Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007)
- State v. Gill, 297 Neb. 852, 901 N.W.2d 679 (2017)
- State v. Mortensen, 287 Neb. 158, 841 N.W.2d 393 (2014)
- State ex rel. Bruning v. Gale, 284 Neb. 257, 817 N.W.2d 768 (2012)
- Mullane v. Central Hanover Tr. Co., 339 U.S. 306, 314, 318 (1950)
- Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006)
- Dusenbery v. United States, 534 U.S. 161, 122 S. Ct. 694, 151 L. Ed. 2d 597 (2002)
- Robinson v. Hanrahan, 409 U.S. 38, 93 S. Ct. 30, 34 L. Ed. 2d 47 (1972)
- Covey v. Town of Somers, 351 U.S. 141, 76 S. Ct. 724, 100 L. Ed. 1021 (1956)
- Mathews v. Eldridge, 424 U.S. 319, 334-335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)
- Stenger v. Department of Motor Vehicles, 274 Neb. 819, 743 N.W.2d 758 (2008)
- St. Regis of Onslow County v. Johnson, 191 N.C. App. 516, 663 S.E.2d 908 (2008)
- Temple Bnai Shalom of Great Neck v. Village of Great Neck Estates, 32 A.D.3d 391, 820 N.Y.S.2d 104 (2006)
- Masergy Communications, Inc. v. Atris, Inc., No. 06-24948, 2007 WL 5479856 (Pa. Com. Pl. Oct. 4, 2007)
- Mikhaylov v. U.S., 29 F. Supp. 3d 260 (E.D.N.Y. 2014)

- Ho v. Donovan, 569 F.3d 677 (7th Cir. 2009)
- Schlereth v. Hardy, 280 S.W.3d 47 (Mo. 2009)
- VanHorn v. Florida, 677 F. Supp. 2d 1288 (M.D. Fla. 2009)
- State v. Thieszen, 295 Neb. 293, 887 N.W.2d 871 (2016)

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