FAYETTE LEGAL JOURNAL

VOL. 84 JUNE 12, 2021 NO. 24



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

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The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

MARK ANKROM, a/k/a MARK J. ANKROM, late of Fayette City, Fayette

County, PA (3)

Personal Representative: Monica Willson

c/o George & George 92 East Main Street

Uniontown, PA 15401

Attorney: Joseph M. George

M. KATHLEEN BURNS, a/k/a MARY KATHLEEN BURNS, late of South Union

Township, Fayette County, PA (3)

Executrix: Joni Richardson Basescu

c/o John & John

96 East Main Street

Uniontown, PA 15401

Attorney: Anne N. John

JENNIE P. FIRESTONE, late of Melcroft,

Fayette County, PA (3)

Administrator: Gertrude Larosa c/o Casini & Geibig, LLC 815B Memorial Boulevard

Connellsville, PA 15425

Attorney: Jennifer M. Casini

KEVIN L. HENSEL, late of Connellsville,

Fayette County, PA (3)

Executrix: Betty L. Horner c/o 300 North Market Street Ligonier, PA 15658 Attorney: Del Nolfi, III

AUSTIN MORGAN, a/k/a AUSTIN E. MORGAN, late of Uniontown, Fayette County, PA (2)

Executor: Michael J. Sanders, Sr. 186 Grange Road McClellandtown, PA 15458 c/o P.O. Box 1007 Hopwood, PA 15445 Attorney: Nicholas Clark

CHARLES W. RISER, SR., late of South

Connellsville, Fayette County, PA (3) Executor: Charles W. Riser, Jr. c/o 815A Memorial Boulevard Connellsville, PA 15425 Attorney: Margaret Z. House

GEORGE G. SMITH a/k/a GEORGE GLENN SMITH, late of Lower Tyrone

Township, Fayette County, PA. (3)

Executrix: Lisa Stimmel

P.O. Box 58

Dawson, PA 15428.

Attorney: Jennifer M. Merx

Skarlatos Zonarich LLC 320 Market St., Ste. 600W

Harrisburg, PA 17101

RUTH M. WILIUSZIS, a/k/a RUTH MARY WILIUSZIS, late of Perryopolis, Fayette

County, PA (3)

Administratrix: Karen Barry c/o 815A Memorial Boulevard Connellsville, PA 15425 Attorney: Margaret Z. House

Second Publication

FRANKLIN D. COLE, late of South Union

Township, Fayette County, PA (2) Executor: Thomas J. Conn, Sr.

c/o Fitzsimmons and Barclay

55 East Church Street, Suite 102

Uniontown, Pa 15401

Attorney: James N. Fitzsimmons, Jr.

ALICIA L. GLASSBURN, a/k/a ALICIA D. GLASSBURN, late of Connellsville, Fayette

County, PA (2)

Executrix: Carolyn W. Maricondi

P.O. Box S

Dawson, PA 15428

c/o P.O. Box 760 Connellsville, PA 15425 *Attorney*: Carolyn W. Maricondi

MARGARET L. LANE, late of Dickerson Run, Dunbar Township, Fayette County, PA (2) Personal Representative: Donna L. Bryner 207 Water Street Dickerson Run, PA 15430 c/o 208 South Arch Street, Suite 2 Connellsville, PA 15425

LOIS MCELHANEY, late of South

Attorney: Richard A. Husband

Connellsville, Fayette County, PA (2)

Co-Executor: Melanie S. Joy and Julius A. Fuchs
10571 East 28th Place
Denver, Colorado 80238
c/o Lezzi Law
140 South Main Street, Suite 201
Greensburg, PA 15601
Attorney: Patsy A. Lezzi, Jr.

SPENCER PROVANCE, a/k/a SPENCER T. PROVANCE, a/k/a SPENCER THERON PROVANCE, late of Hopwood, Fayette

County, PA (2)

Personal Representative:
David Scott Provance
c/o George & George
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George, Sr.

ROBERT PUCHYR, late of Dawson Borough,

Fayette County, PA (2)

Personal Representative: Robyn Brady
514 Walnut Street

Vanderbilt, PA 15486

c/o 208 South Arch Street, Suite 2

Connellsville, PA 15425

Attorney: Richard A. Husband

GERALDINE D. RODKEY, late of

Uniontown, Fayette County, PA (2)

Personal Representative: Debra Sickles,
a/k/a Debra Rodkey Michael
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Jeremy J. Davis

VIRGINIA GRACE ROHLF, a/k/a VIRGINIA G. ROHLF, late of Wharton

Township, Fayette County, PA (2)
Executor: Jeffrey C. Rohlf
174 Nelson Road
Ohiopyle, PA 15470
c/o Newcomer Law Offices
4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Ewing D. Newcomer

PHILIP REX SAHADY, SR., a/k/a PHILIP R. SAHADY, late of Redstone Township,

Fayette County, PA (2)

Personal Representative:
Nancy Louise Sahady
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

ROBERTA E. SCHULTZ, a/k/a ROBERTA ELIZABETH SCHULTZ, late of North Union

Township, Fayette County, PA (2)
Executor: Gary A. Schultz, Jr.
c/o Zebley Mehalov & White, P.C.
18 Mill Street Square
P.O. Box 2123
Uniontown, PA 15401
Attorney: Mark M. Mehalov

First Publication

CHARLOTTE M. BROWN, late of Fayette

City, Fayette County, PA (1)

Executrix: Joni L. Powell
P.O. Box 599
Perryopolis, PA 15473
c/o 300 Fallowfield Avenue
Charleroi, Pa 15022
Attorney: Richard C. Mudrick

GEORGE W. COOPER, late of Uniontown,

Fayette County, PA (1)

Administratrix: Kathy Austin
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Anthony S. Dedola, Jr.

MERRIE JANE DAVID, late of North Union

Township, Fayette County, PA (1) Executrix: Amy Lynch c/o 815A Memorial Boulevard Connellsville, Pa 15425

Attorney: Margaret Zylka House

ROSS GIRARD, JR., late of North Union

Township, Fayette County, PA (1) Personal Representative: Angela Marie Yowler 9218 Randal Park Boulevard Orlando, FL 32832 c/o Newcomer Law Offices 4 North Beeson Boulevard Uniontown, PA 15401

RILEY HARBARGER, a/k/a RILEY D. HARBARGER, late of Georges Township,

Attorney: Ewing D. Newcomer

Fayette County, PA (1)

Administratrix: Ida M. Harbarger

101 High Street Fairchance, PA 15436 c/o Kopas Law Office

556 Morgantown Road Uniontown, PA 15401

Attorney: John Kopas

RONALD EUGENE HARDING. late of New

Salem, Fayette County, PA (1)

Personal Representative:

Gloria Jean Robinson

c/o Davis and Davis

107 East Main Street Uniontown, PA 15401

Attorney: Gary J. Frankhouser

LAIRD MAY, a/k/a LAIRD N. MAY, late of

Springfield Township, Fayette County, PA (1) Executrix: Audrey M. Cain

234 Imel Road

Normalville, PA 15469

c/o Law Office of Mackenzie A. Kline, LLC

188 Skinner Road

P.O. Box 55

Mill Run, PA 15464

Attorney: Mackenzie Kline

LEGAL NOTICES

THE DENNIS ALLAN ONDREJKO REVOCABLE TRUST AGREEMENT DENNIS ALLAN ONDREJKO, DECEASED APRIL 24, 2015

DENNIS ALLAN ONDREJKO, late of the Township of Washington, Fayette County, Pennsylvania, now deceased, created the DENNIS ALLAN ONDREJKO REVOCABLE TRUST, as Settlor and Trustee appointed his surviving spouse, Darlene Helen Ondrejko, as Successor Trustee. Notice is hereby given to all persons indebted to said Trust to make immediate payment. To those having claims against the Trust are hereby notified to present them, duly authenticated for settlement to:

Successor Trustee:

Darlene Helen Ondrejko 921 McClintock Avenue Belle Vernon, PA 15012

Counsel:

Mark J. Shire, Esquire SHIRE LAW FIRM 1711 Grand Boulevard Park Centre Monessen, PA 15062

(2 of 3)

NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about June 1, 2021, to conduct a business in Pennsylvania, under Fayette County, assumed or fictitious name of Wilderness Remodeling & Electrical Co. with the principal place of business at: 1279 Nellie Rd. Vanderbilt Pa. 15486. The name or names and addresses of persons owning and interested are: Chris Karfelt 1279 Nellie Rd., Vanderbilt. Pa. 15486.

NOTICE

Notice is hereby given that the Certificate of Organization has been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on May 5, 2021, for a limited liability company known as Rolling Hills Farm and Cattle LLC.

Said limited liability company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the limited liability company is/are: farming, cattle and any other lawful purpose related thereto for which the corporation may be organized under the Business Corporation Law.

DAVIS & DAVIS BY: Gary J. Frankhouser, Esquire 107 East Main Street Uniontown, PA 15401

NOTICE

Notice is hereby given that the Certificate of Organization has been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on April 27, 2021, for a limited liability company known as Rolling Hills Contracting LLC.

Said limited liability company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the limited liability company is/are: contracting, construction and building and any other lawful purpose related thereto for which the corporation may be organized under the Business Corporation Law.

DAVIS & DAVIS BY: Gary J. Frankhouser, Esquire 107 East Main Street Uniontown, PA 15401

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN
518 Madison Drive
Smithfield, PA 15478
724-322-6529
johnfranciswarman@gmail.com

COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE <u>E&O INSURED</u> <u>WILL TRAVEL</u> <u>ACCEPTING NEW CLIENTS</u>

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA CIVIL DIVISION

In Re: Consolidated Return of Sale of : Properties Sold for Delinquent Taxes : by the Fayette County Tax Claim : Bureau Upset Tax Sale :

:

Parcel No. 32-05-0003

Seneca Leandro View, LLC, : No. 2194 of 2020

Intervenor/ Appellant : Honorable Linda R. Cordaro

OPINION

Cordaro, J. May 17, 2021

SUMMARY

Intervenor appeals this Court's decision to set aside an upset tax sale, where this Court found that the Fayette County Tax Claim Bureau failed to satisfy the notice requirements under the Real Estate Tax Sale Law. For the following reasons, this Court respectfully requests that its decision be affirmed.

BACKGROUND

Edward and Karen Berry own Property located at 23 Church Road, Smithfield, Pennsylvania. Mr. and Mrs. Berry reside at the Property. The Fayette County Tax Claim Bureau conducted a tax sale of the Property at the 2020 Fayette County Tax Upset Sale. The highest bidder was Seneca Leandro View, LLC, who is the Intervenor/Appellant.

Mr. and Mrs. Berry filed exceptions to the tax upset sale. This Court held a Hearing on the exceptions on February 25, 2021. At the Hearing, Attorney Sheryl Heid, who represents the Fayette County Tax Claim Bureau, stipulated that the Tax Claim Bureau did not meet its statutory burden with regard to notice of the pending tax sale to Mr. and Mrs. Berry. Specifically, the Tax Claim Bureau stipulated that it did not personally serve Mr. and Mrs. Berry with notice of the sale, which is required under 72 P.S. § 5860.601(a)(3) because the Berrys are both the owners and the occupiers of the Property. Counsel for Intervenor/Appellant, Seneca Leandro View, agreed to stipulate that the Berrys were not personally served. However, Intervenor/Appellant argued that the Berrys instead received actual notice of the tax upset sale, and that this negated the statutory requirement that the Berrys be personally served by the Tax Claim Bureau.

At the conclusion of the Hearing, this Court found in favor of Mr. and Mrs. Berry. First, this Court found that personal service is a requirement under the Tax Sale Law,

that the Tax Claim Bureau's failure to personally serve the Berrys was contrary to the Tax Sale Law, and that the sale should be set aside as a result. Additionally, this Court also found that the Berrys made a payment on their 2018 tax claim that they mistakenly believed was sufficient to remove their Property from being exposed at the tax sale. This Court then signed an Order setting aside the tax sale.

On March 18, 2021, Seneca Leandro View filed a Notice of Appeal. Intervenor/Appellant filed a timely Statement of Matters Complained of on Appeal.

ISSUES ON APPEAL

Seneca Leandro View raises one issue for review on appeal:

1) The Court erred as a matter of law when the Court found the Petitioners did not receive sufficient notice of said Upset Tax Sale, thereby denying them adequate due process. {1}

DISCUSSION

Appellant's Issue on Appeal is without merit. {2}

"[T]he forfeiture of a person's property rights for failure to pay taxes is a momentous event under the Pennsylvania and United States Constitutions." Stanford-Gale v. Tax Claim Bureau of Susquehanna County, 816 A.2d 1214, 1216 (Pa. Commw. Ct. 2003), citing Tracy v. Chester County, Tax Claim Bureau, 489 A.2d 1334, 1339 (Pa. 1985). The Real Estate Tax Sale Law was enacted "with the primary purpose of [ensuring] the collection of taxes, and not to strip away citizens' property rights." Stanford-Gale at 1216, citing Tracy at 1339. "[T]he 'strict provisions of the Real Estate Tax Sale Law were never meant to punish taxpayers who omitted through oversight or error... to pay their taxes." Tracy at 1339, citing Ross Appeal, 76 A.2d 749, 753 (1950).

Importantly, "[t]he Tax Sale Law assists in the collection of taxes and is not intended to create investment opportunities for others." Jenkins v. Fayette County Tax Claim Bureau, 176 A.3d 1038, 1043 (Pa. Commw. Ct. 2018) (Internal citation omitted).

^{1} Seneca Leandro View's Concise Statement of Matters Complained of on Appeal does not actually list any issues, but rather it contains several paragraphs with a variety of arguments. To the best of this Court's discernment, this is the only issue actually raised in the Statement.

^{2} In its Statement of Issues on Appeal, Appellant states: "The Court erred as a matter of law when the Court found the Petitioners did not receive sufficient notice of said Upset Tax Sale, thereby denying them adequate due process" (emphasis added). As a matter of grammar and logic, Appellant's Issue appears to state that this Court deprived "the Petitioners"-the Berrys-of adequate due process, even though this Court found in favor of the Petitioners. The pronoun "them" must refer to its antecedent "the Petitioners" as there are no other possible antecedents in the Statement. Further, because Seneca Leandro View, LLC is a single company, the proper pronoun used to refer to Seneca Leandro View should be "it" and not "them." Regardless, this Court believes Appellant's Statement intends to mean that the Court deprived Seneca Leandro View of due process.

The Real Estate Tax Sale Law requires that the county tax claim bureau provide notice to property owners prior to a tax sale. 72 P.S. § 5860.602(e)(1). This is not just a technical requirement; notice must be adhered to strictly. Teslovich v. Johnson, 406 A.2d 1374, 1378 (Pa. 1974) ("The notice provisions of the tax sale statute must be strictly complied with in order to guard against the deprivation of property without due process of law.") (Internal citation omitted). Further, "even technical compliance with the statute may not always satisfy the demands of due process since the Real Estate Tax Sale Law states the minimum effort to be done by a tax claim bureau." (Internal citations and brackets omitted). Brodhead Creek Associates, LLC v. County of Monroe, 231 A.3d 69, 75 (Pa. Commw. Ct. 2020); see also Geier v. Tax Claim Bureau of Schuylkill County, 588 A.2d 480,483 (Pa. 1991) ("[A] taxing authority's strict compliance with the tax sale law does not necessarily satisfy the demands of due process."). Further, 72 P.S. § 5860.601(a)(3) states:

No owner-occupied property may be sold unless the bureau has given the owner occupant written notice of such sale at least ten (10) days prior to the date of actual sale by personal service by the sheriff or his deputy or person deputized by the sheriff for this purpose...

(Emphasis added).

"When exceptions are filed to a tax sale, the burden of proof is on the tax claim bureau to prove compliance with the notice requirements of the Real Estate Tax Sale Law." FS Partners v. York County Tax Claim Bureau, 132 A.3d 577, 581 (Pa. Commw. Ct. 2016). In determining whether to set aside a tax sale, the trial court has broad discretion regarding the credibility of the witnesses and the findings of fact. See Krumbine v. Lebanon County Tax Claim Bureau, 621 A.2d 1139, 1140 (Pa. Commw. Ct. 1993) ("In tax sale cases, [the Commonwealth Court's] scope of review is limited to determining whether the trial court abused its discretion, rendered a decision with lack of supporting evidence, or clearly erred as a matter of law.") (Internal citation omitted); see also Nguyen v. Delaware County Tax Claim Bureau, 244 A.3d 96, 111 (Pa. Commw. Ct. 2020) ("Pennsylvania courts have long recognized the broad discretion of the fact- finding trial court...") (Internal citations and brackets omitted).

Here, all parties-including Intervenor/Appellant-stipulated to the fact that the Fayette County Tax Claim Bureau did not personally serve the Berrys with notice of the tax sale. The Berrys were the owners and occupiers of the Property at issue. This is undeniably a failure by the Tax Claim Bureau to comply with the "strict requirements" of the Tax Sale Law. As a result, this Court set aside the tax sale on the Property.

At the Hearing, Intervenor/Appellant cited Zelno v. Lyons, 245 A.3d 1185 (Pa. Commw. Ct. 2021) to support its proposition that statutory notice is not required. However, Zelno is inapposite. In Zelno, the owner/occupier of property did not receive proper notice of a tax claim against her property, but then did receive proper notice of the tax sale. Id. at 1185-86. The Commonwealth Court held that because the tax claim bureau had complied with all of the statutory requirements regarding notice of the tax sale, the sale was proper, regardless of the fact that the owner did not receive proper notice regarding the tax claim on her property.

Here, the Fayette County Tax Claim Bureau admitted that it did not personally serve the Berrys with notice of the tax sale. Unlike Zelno, the matter currently before the Court has nothing to do with notice of the tax claim. Because the Tax Claim Bureau failed to satisfy the strict requirements of the Pennsylvania Tax Sale Law regarding notice of the 2020 tax sale of the Property, this Court set aside the 2020 tax sale.

Even though the Parties stipulated to a controlling fact at the Hearing, Appellant still wished to present testimony at the Hearing to establish that the Berrys had "actual notice" regarding the tax sale of their Property. Actual notice of a tax sale obviates due process concerns, but"[w]hether a taxpayer has actual notice of an upset tax sale of his or her property is a question of fact that will not be disturbed on appeal if supported by substantial evidence." In re Consolidated Reports and Return by Tax Claims Bureau of Northumberland County of Properties, 132 A.3d 637, 647 (Pa. Commw. Ct. 2016) (internal citation omitted).

After the Hearing, this Court found that in addition to the Tax Claim Bureau's failure to comply with the strict requirements of the Tax Claim Law, Intervenor/Appellant failed to present sufficient evidence to show that the Berrys had actual notice of the tax sale. Specifically, Mrs. Berry testified credibly at the Hearing that after she saw a posting on her Property regarding a tax sale, she subsequently made a payment in the amount of \$1,150 to the Tax Claim Bureau, believing that that payment would remove the Property from the tax sale. Unbeknownst to the Berrys at that time, the payment fell short of the taxes due in the amount of \$94.98. Ms. Berry even contacted the Tax Claim Bureau after making the payment, and after speaking with someone at the Tax Claim Bureau, it was Ms. Berry's understanding that her payment of \$1,150 was sufficient to pay the taxes that she owed and that her Property would be removed from the tax sale. This Court found that the posting alone was insufficient to provide the Berrys with actual notice, because the Berrys made a payment that they believed would have removed the Property from exposure at the tax sale.

Issues like these accentuate the need for the Tax Claim Bureau to strictly comply with the rules of the Tax Claim Law with regard to notice. Had the Berrys received personal service of the notice of tax sale, they would have had an additional opportunity to make sure that their taxes on the Property were properly paid. This Court found that the Fayette County Tax Claim Bureau did not com ply with the strict requirements of the Tax Sale Law, and that the Berrys did not have actual notice that their Property would be exposed at the 2020 upset tax sale.

CONCLUSION

For the foregoing reasons, this Court respectfully asks that its decision to set aside the upset tax sale of the Property be affirmed.

BY THE COURT: Linda R. Cordaro, J.

ATTEST: Prothonotary

FCBA Conference Room

The Fayette County Bar Association conference room has reopened at 45 East Main Street, Suite 100, Uniontown, Pennsylvania. Reservations may be made with the Association's Secretary, Cindy McClain at 724-437-7994 or cindy@fcbar.org.

LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: Wednesday, June 16th from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topics: ODC Practice and Procedure and Rule 8.4(g)
- Presenters: Thomas A. Farrell, Chief Disciplinary Counsel, Disciplinary Board of the Supreme Court of Pennsylvania, and Anne N. John, Esquire

CLE Credit

1.5 hours of Ethics CLE credit for the program. The fees are as follows:

Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2016

• No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit
 - ** All fees to be paid at the door **

A light lunch will be provided.

While same day registrants are welcome, lunch will be served first to those who register in advance of the program day due to the difficulty in estimating the number of walk-ins.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to cindy@fcbar.org on or before Monday, June 14th.

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