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IN THE CIRCUIT COURT OF MONROE COUNTY, WEST VIRGINIA

EARL J. REYNOLDS AND
ANNA REYNOLDS,
Petitioners,

v. CIVIL ACTION NO: 08-C-52

JERRY I. HOKE, SR.,
Respondent.

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

On the 24th of October 2008, the Respondent, Jerry I. Hoke filed a Motion for Summary Judgment, pursuant to Rule 56 of the *West Virginia Rules of Civil Procedure*. On October 28, 2008, the Petitioners, Earl J. Reynolds and Anna Reynolds filed a response. The parties appeared by counsel for a hearing on the Respondent's motion on November 3, 2008, at which time the matter was taken under advisement. The Court has now studied the motions, reviewed the supporting documents, listened to the arguments of counsel and consulted pertinent legal authorities.

As a result of these deliberations, the Court has determined that no genuine issue of material fact exists to the adjudication of Respondent's claim, and for this reason the Respondent's Motion for Summary Judgment should be granted. Therefore, the Court does hereby **GRANT** the Motion for Summary Judgment filed on behalf of the Respondent. The facts of the case and applicable legal authority to support this contention are as follows:

I. FACTS

This case involves real estate in Sweet Springs District, Monroe County, West Virginia. Petitioners are seeking to set aside a tax deed vesting title to this real estate in the Respondent.

Title to the land in question was originally vested in the name of Bill and Rose Reynolds. Taxes on this land became delinquent, and it was sold to the Respondent at a delinquent tax sale on October 24, 2006 for the sum of $3,000.00.

On December 2, 2007, the Respondent made an application for a tax deed. On March 28, 2007, the Respondent filed a Certificate of Sale application, along with an invoice for services rendered in connection with the title examination, with the Monroe County Clerk (hereinafter referred to as "County Clerk").

On January 24, 2008, the County Clerk published a notice to redeem, in the Monroe Watchman for three consecutive weeks. The notice to redeem was addressed to "Bill Reynolds and Rose Reynolds, The Unknown Heirs and Creditors of Bill Reynolds and Rose Reynolds". The Respondent also mailed a notice of right to redeem via certified mail to Bill and Rose Reynolds, which was accepted and signed for by Beverly Haynes and to Beverly Haynes, which was accepted and signed for by her. On April 15, 2008, the County Commission of Monroe County, West Virginia, by its clerk, Donald J. Evans, conveyed the subject property to the Respondent by a tax deed.

According to the affidavit of Darla M. Ingles, a legal assistant with the Pritt Law Firm, she examined the records maintained by the County Clerk's office and determined that Bill and Rose Reynolds were the record owners of the real estate at issue in this case and that there have never been any probate records filed with the County Clerk's office indicating that either Bill or Rose Reynolds is now deceased. Furthermore, Ms. Ingles attested that there have never been any deed transfers indexed under the name of either Bill or Rose Reynolds, or under the name of their respective estates or any records indicating who may have been an heir to the Estate of either Bill or Rose Reynolds.

On June 23, 2008, the Petitioners filed a Petition to Set Aside the Deed, alleging the Petitioners, as persons with a redeemable interest in the property, were not notified of their right to redeem the property by the Respondent. Furthermore, the Petitioners claim the Respondent failed to properly examine the title to the subject property in order to ascertain the names of all individuals with an interest in the property.

The Petitioner's claim arises out of a quitclaim deed executed pursuant to a Settlement Agreement between Beverly Haynes and the Petitioners, resolving a lawsuit between parties involving the Estate of Bill Reynolds, filed in Boone County, West Virginia. The exact nature of this litigation is not clear from the pleadings.

As a result of the Settlement Agreement, Beverly Haynes conveyed the subject property, by quitclaim deed, to the Petitioners. The quitclaim deed was signed on February 8, 2006 and was recorded in the Office of the Clerk of the County Commission of Monroe County on June 7, 2006 by the Petitioner, Earl J. Reynolds. There is nothing in the pleadings to indicate this deed was ever indexed so as to give constructive notice of the Petitioners' claim to the subject real estate, or to give notice that it purported to convey an interest in the lands owned by Bill and Rose Reynolds at the time of their death. The Petitioners do not identify any deficiency in the title examination conducted prior to the application for a tax deed.

On July 14, 2008, the Respondent filed a Response to the Petition to Set-Aside the Deed, asserting that the Petitioners are not the record owners of the property and therefore, not entitled to relief, and that he complied with all statutory provisions applicable to tax deeds.

II. DISCUSSION OF AUTHORITY

Rule 56(c) of the West Virginia Rules of Civil procedure requires summary judgment to be granted when the record reveals that there is "no genuine issue as to any material fact and that

the moving party is entitled to a judgment as a matter of law." A "material fact" is one that has the capacity to sway the outcome of the litigation under the applicable law.

Summary judgment is a device designed to effect a prompt disposition of controversies on their merit without resort to a lengthy trial, if in essence there is no real dispute as to salient facts or if only a question of law is involved. Hanks v. Beckley Newspapers Corp., 153 W.Va. 834 (1970).

The standard for granting a Motion for Summary Judgment has been often stated by the West Virginia Supreme Court of Appeals as, "[a] motion for Summary Judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law" Williams v. Precision Coal, Inc., 194 W.Va. 52, 59 (1997), quoting Syllabus Point 1, Andrik v. Town of Buckhannon, 187 W.Va. 706 (1992), quoting Syllabus Point 3, Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W.Va. 160 (1963).

At issue in this case is whether or not the Respondent complied with the proper procedures for purchasing a tax deed, including providing proper notice of the right to redeem to all interested parties. In addressing this issue, the Court will first look to the proper procedure for securing a tax deed. W. Va. Code § 11A-3-19 sets forth a list of requirements that a purchaser of property at a tax sale must satisfy in order to secure a deed to the purchased property. Under this statute, in order to secure a deed for the real estate subject to the tax lien, the purchaser shall:

> 1) prepare a list of those to be served with notice to redeem and request the clerk to prepare and serve a notice as provided in sections twenty-one and twenty two of this article; 2) provide the clerk with a list of any additional expenses incurred after the first day of January of the year following the Sheriff's sale for the preparation of the list of those to be served with notice to redeem including proof of the additional expenses in the form of receipts or other evidence of reasonable legal expenses incurred for the services

> of any attorney who has performed an examination of the title to the real estate and rendered a written opinion and certification thereon; 3) deposit, or offer to deposit, with the clerk a sum sufficient to cover the costs of preparing and serving the notice; and 4) present the purchaser's certificate of sale, or order of the county commission where the certificate has been lost or wrongfully withheld from the owner, to the clerk of the county commission.

Once the provisions of W. Va. Code § 11A-3-19 have been complied with, a notice to redeem shall be issued pursuant to the requirements of W. Va. Code § 11A-3-21. Under this statute, the clerk of the county commission shall prepare a notice to redeem.

After a thorough review of the facts and evidence in this case, it appears the Respondent complied with W. Va. Code § 11A-3-19 and § 11A-3-21. The Respondent prepared a list of persons entitled to be served with notice of the right to redeem pursuant to W. Va. § 11A-3-19 and filed the same with the Clerk of the County Commission of Monroe County (herein after "Clerk"). The list included Bill Reynolds, Rose Reynolds, and Beverly Haynes

Thereafter, the Clerk served notice by publication in the Monroe Watchman to Bill Reynolds, Rose Reynolds, Beverly Haynes, and to any of their unknown heirs and creditors of their right to redeem the property by March 31, 2008. Publication was made on January 24, 2008 for three consecutive weeks. After the time to redeem expired, the Clerk issued a deed dated April 15, 2008, conveying the property to Respondent.

Pursuant to W. Va. Code § 11A-4-4(b), the Petitioners must prove by "clear and convincing evidence" that the Respondent did not use "reasonably diligent effort" to provide them, or their predecessors in title, with notice of the right to redeem:

> No title acquired pursuant to this article shall be set aside in the absence of a showing by clear and convincing evidence that the person who originally acquired such title failed to exercise reasonably diligent efforts to provide notice of his intention to acquire such title to the complaining party or his predecessors in title.

In light of the above facts and analysis, the Court finds the Petitioners have failed to prove by clear and convincing evidence that the Respondent did not use reasonably diligent efforts to provide them with notice of a right to redeem. The West Virginia Supreme Court of Appeals has held that "where a party having an interest in the property can reasonably be identified from public records or otherwise, due process requires that such party be provided notice by mail or other means as certain to ensure notice." Citizens National Bank of St. Albans v. Dunnaway, 184 W.Va. 453, 400 S.E.2d 888 (1990). The Court finds that the Petitioners were not reasonably identifiable from the records at the Clerk's office.

According to the pleadings, the Petitioners recorded their quitclaim deed to the subject property in the Clerk's office. It was not indexed under the name of Bill Reynolds or Rose Reynolds, or indexed in such as manner as to allow a title examiner to determine that an interest in lands owned by these persons was being conveyed to another person. Furthermore, there were no probate or other records were filed with the Clerk's office giving notice to any interested person of the pendency of an estate for these persons.

The burden is on the person seeking to protect himself or herself, under the recording laws, against the rights of intervening third parties, and to see that all of the prerequisites of a valid and complete recordation are complied with. 66 AM. JUR. 2D *Records and Recording Laws* § 110 (2008). The Petitioners failed to meet this burden and did not have the deed indexed in such a fashion as to give constructive notice of their interest in the subject real estate to third parties.

The West Virginia Supreme Court of Appeals has held that a "tax deed in the form prescribed by statute is prima facie evidence of title to land . . . and can be set aside, or its affect annulled by such person only by proof of a fatal defect in the proceedings . . . ." Hogan v.

Piggott, 60 W.Va. 541, 56 S.E. 189 (1906). The Court finds the notice that was given in this case to be reasonable and finds no fatal defects in the proceedings.

A collateral issue is the distinction between a quitclaim deed and a general warranty deed. A quitclaim deed is "a deed that conveys a grantor's complete interest or claim in certain real property but that neither warrants nor professes that the title is valid." BLACK'S LAW DICTIONARY 446 (8th ed. 2004). A general warranty deed is " a deed containing one or more covenants of title; esp., a deed that expressly guarantees the grantor's good, clear title and that contains covenants concerning the quality of title, including warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title against all claims." *Id.* at 446-447.

The Petitioners received a quitclaim deed pursuant to the Settlement Agreement with Beverly Haynes. As such, they are not entitled to the protections afforded a person claiming under a general warranty deed, although this is not an issue here.

III. CONCLUSION

For the reasons set forth above, the Court concludes as a matter of law that the Respondent complied with the proper procedures for applying for a tax deed, that proper notice was given to those persons entitled to notice under the statute, and that the notice that was given was reasonable under the circumstances. Therefore, since no dispute exists as to the facts material to the adjudication of the issues of this case against Jerry I. Hoke, it appears the Motion for Summary Judgment should be granted. It appearing proper to do so, it is hereby **ORDERED and ADJUDGED** as follows:

1. That the Respondent's Motion for Summary Judgment is **GRANTED**.
2. The civil action against Jerry I. Hoke is dismissed with prejudice and the case

is removed from the docket.

3. The Circuit Clerk shall distribute certified copies of this order to counsel of record.

Dated July 1, 2009.

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ROBERT A. IRONS, CIRCUIT JUDGE

STATE OF WEST VIRGINIA
COUNTY OF MONROE, TO-WIT:

I, JULIA L. LIGHT, Clerk of the Circuit Court of Monroe County, do hereby Certify that the foregoing and hereto annexed writing is a true copy of Order As found of record in this office in Civil Order Book No. 25, page 50.

Given under my hand and seal of said Court this the 15 day of July 2009

Julia L. Light Clerk