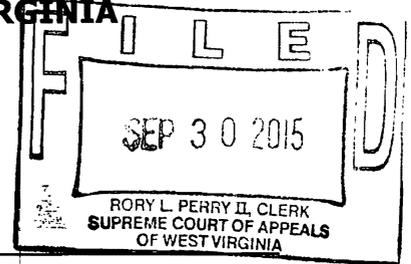


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SUPREME COURT NO: 15-0364



**ALBIN LITTELL, individually, and as
TRUSTEE OF THE LITTELL COAL
INTEREST TRUST**

PETITIONER/APPELLANT

V.

**STEVE MULLINS, and DONALD HICKS
CLERK OF THE COUNT COMMISSION
OF MCDOWELL COUNTY, WEST VIRGINIA,**

RESPONDENT/APPELLEE

**APPEAL FROM THE CIRCUIT COURT OF
MCDOWELL COUNTY, WEST VIRGINIA**

(08-C-178)

REPLY BRIEF OF APPELLANT

ORAL PRESENTATION REQUESTED

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Argument

Appellee in his response does not offer significant substantive argument against the assertions set forth in Appellant's initial brief. As is his prerogative as the party prevailing below, in essence, Appellee simply asserts that the court was correct in its analysis and rulings.

Appellant does take exception with Appellee's assertion that there was "no evidence of record indicating Mr. Mullins did not do everything required by statute as to notification of known owner or owners." The evidence of record clearly indicates that despite the fact Mr. Mullins understood that there were cotenant's with separately assessed interests who owned other fractional interests in the property in question, he made no effort to identify those individuals or entities, or to include them on the list of it individuals or entities to be provided notice. While there may be argument as to the legal effect of such failure, it is clear that those individuals were required notice under the statute, and Mr. Mullins made no effort to notify them, or include them in the list of persons to be notified.

Appellee points to the passage of time between the nonpayment of taxes and the action to set aside the resulting tax deed. However, there is no indication, or legitimate argument, that Appellant did not take necessary action within the appropriate time frames, or that Appellant's actions is, in some fashion, time-barred. As the evidence indicated, Mr. Littell was under the impression that Mr. Reidy had been attending to the payment of taxes on the

property in question, and that it was not until lawyers, working for he and other cotenants, discovered the tax deed delivered to Mr. Mullins, that he became aware of the nonpayment of taxes. Upon learning such information, Appellant timely addressed the matter, and action was taken within the statutory periods for addressing the setting aside of the tax deed. Therefore, Appellee's discussions relating to time frames would not appear to be relevant to any issue pending in this appeal.

Appellee's counsel also goes to some length to discuss Mr. Mullins' experience in dealing with tax sale matters and asserting his "expertise" in such matters. Appellee then asserts that Mr. Mullins had "done everything he knew to do as what was required by statute." However, Appellant submits that Mr. Mullins failed to appropriately interpret the statutory requirements, as they related to noticed cotenant's and relying upon his own "expertise" as opposed to seeking the services of an attorney, failed to fulfill his requirements under the statute.

As noted in Appellant's initial brief, strict compliance with all statutory requirements is a condition precedent of an effective tax sale conveyance. The necessity of strict compliance is not peculiar to this state. "It is well settled in Virginia that each and every step which the law requires a person, the state, or a political subdivision of the state, to take, in order to acquire a title to lands sold at a tax sale, must be strictly complied with, else the tax sale is invalid, and there is a missing link in the title of a subsequent purchaser. City of Richmond v.

Monument Avenue Development Corporation, 34 S. E. 2d 223, 226, 184 Va. 152, 160 (1945).

The rationale upon which the requirements of strict compliance are posited is unassailable.

The power to sell land for nonpayment of taxes is not a common law power, but arises entirely from statute, and therefore exists only when the conditions prescribed by statute are fulfilled; and since the statutes are penal, and the proceedings under them ex parte, summary, executive rather than judicial, and an infringement on the rights of property only tolerated by reason of necessity, great strictness and exactness in the following the law is required in favor of the landowner. All acts prescribed by statute must be performed in the place, manner, form, and time therein named; every provision in which the owner could possibly have an interest must be strictly obeyed, or the resulting tax title will be void.

Id. at 160, citing, Boone v. Simmons, 13 S.E. 440, 88 Va. 59 (1891).

Additionally, among the declared legislative purposes and policies relating to the sale of tax liens and nonentered lands as set forth in West Virginia Code §11 A-3-1 et seq. is "to secure adequate notice to owners of delinquent and non entered property of the pending issuance of a tax deed." West Virginia Code §11A-3-1(3). Given such purpose and policy, each of the provisions found in §11A-3-1 et seq. must be viewed as consistent with such purpose, and in furtherance of such purpose, together with the other stated purposes and policies. Therefore, those provisions relating to the required notice to cotenants with separately assessed interests, being among those entitled to pay the taxes, and therefore entitled to notice of right to redeem, should be seen as having the

purpose, in addition to affording notice to such cotenants, further facilitating potential notice to the taxpayer.

Although the trial court determined the lack of privity between cotenant's indicated there was no special relationship between cotenants which would make notice to such cotenant germane to the issue of notice to the taxpayer, other courts have recognized the nature of cotenancy as constituting such relationship. In considering the issue of whether a cotenant with a separately assessed ownership interest was an "interested party" the Supreme Court of Montana citing earlier precedent recognized that,

A cotenant has "some interest in the property as a whole in addition to the legal ownership of a portion thereof. That interest ... may be only a desire that the [current cotenant] be the cotenant to whom the redeeming respondent must account or with whom the redeeming respondent must deal to bring about any plans for the future of the property." [citations omitted]

Kneedler v. League Wide Inc., 979 P.2d 163, 165, 1999 MT 80 (1999).¹

Similar reasoning would be applicable in the instant circumstance.

Notwithstanding the trial court's reference to prior litigation among and between various cotenants in the subject property, cotenants, have potential interests in controlling, to the extent they are able, with whom they will be cotenant's. This may be seen as especially true where, as here, cotenants have familial ties. This interest, under our statute, permits such cotenant to pay the taxes of a delinquent cotenant. Additionally however, notice to such cotenants also affords them the opportunity to provide notice to the delinquent cotenant of such

¹ The issue in Kneedler would not have been before this court because the West Virginia statutory scheme makes clear such a cotenant would be entitled to such notice.

delinquency. The unrefuted evidence in this matter clearly indicated this is precisely what would have happened in this matter had the statutorily required notice been provided.

Therefore, the failure to provide such notice to cotenant's is not only a failure to strictly comply with the statutory requirements, but also a failure to meet the requirements of due process by failing to afford Appellant one of the potential methods incorporated into the statutory scheme by which notice might be delivered.

Conclusion

As supplemented by the matters set forth herein, Appellant reasserts those points of error set forth in this initial brief, and again respectfully requests this Court vacate and reverse the order of the Circuit Court, and set aside the April 26, 2006 deed from Appellee, Donald Hicks, as Clerk of the County Commission of McDowell County, West Virginia to Appellee, Steve Mullins.

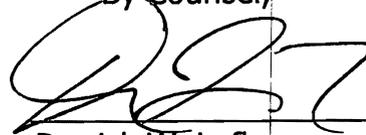
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ALBIN LITTELL,
By Counsel,



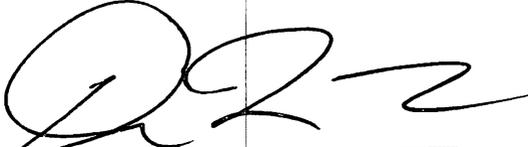
Derrick W. Lefler

CERTIFICATE OF SERVICE

I, Derrick W. Lefler, counsel for Appellant, do hereby certify that I have served a true copy of the foregoing Reply Brief of Appellant to the Supreme Court of Appeals of Southern West Virginia, via Federal Express Mail Services, addressed to said counsel as follows, on this the ____ day of September, 2015:

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