

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Henry C. Arnold,
Defendant Below, Petitioner**

vs.) No. 11-0172 (Summers County No. 08-P-42)

**Nancy Verdier,
Plaintiff Below, Respondent**

FILED
October 11, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Henry C. Arnold, defendant below, appeals an order denying his motion filed pursuant to Rule 59 of the West Virginia Rules of Civil Procedure to alter or amend an order granting summary judgment to Respondent, petitioner below, Nancy Verdier on her action to “Remove Cloud on Land Title”

This Court has considered the parties’ briefs and the record on appeal. The matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court’s Order entered in this appeal on May 10, 2011. The facts and legal arguments are adequately presented in the parties’ written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Respondent Verdier inherited a half-interest in real property located in Summers County from her parents. Ms. Verdier, who resides in Maryland, acquired the remaining half-interest in the property from her brother by deed dated August 12, 2003. Attached to the deed was a “Sales Listing Form” which contained Respondent’s correct address in Maryland. Due to Ms. Verdier’s failure to pay property taxes on the parcel, it was sold at a tax sale on October 26, 2006, to Petitioner Arnold.

On December 26, 2007, Mr. Arnold asked the Summers County Clerk’s Office to prepare a notice to redeem the property and to serve it on Ms. Verdier via certified mail pursuant to West Virginia Code § 11A-3-19. Mr. Arnold provided a Lewisburg, West Virginia, address for Ms. Verdier, which his counsel found on file at the Summers County Clerk’s or Assessor’s Office. The notice to redeem was sent to that address¹ on January 28, 2008, and thereafter, was returned to the Summers County Sheriff’s Office as

¹The address in Lewisburg was that of Ms. Verdier’s brother’s attorney.

“undeliverable.” The parties dispute whether Mr. Arnold was notified that service of the notice to redeem had failed. The notice to redeem was also published in the Hinton News on three consecutive weeks.

Ms. Verdier failed to redeem the property by the deadline set forth in the notice to redeem. The Summers County Clerk recorded the new deed in Mr. and Mrs. Arnold’s names on April 14, 2008.

Ms. Verdier filed a “Petition to Remove Cloud on Land Title” and subsequently filed a motion for summary judgment which the circuit court granted on August 20, 2010. The circuit court ruled that Mr. Arnold had failed to exercise reasonably diligent efforts to find Ms. Verdier’s correct address, particularly where the prompt return of the notice to redeem made it clear that the address used for Ms. Verdier was incorrect. The circuit court noted that the “Sales Listing Form” was sent to the Summers County Commission, the Summers County Assessor’s Office, and the Summers County Sheriff’s Tax Office and if Petitioner had inquired at any of these offices, he would have found Ms. Verdier’s Maryland address.

Mr. Arnold’s motion filed pursuant to Rule 59 of the West Virginia Rules of Civil Procedure was denied by the circuit court on September 24, 2010. Mr. Arnold asserts that the circuit court erred when it determined that there was no question of material fact that he had failed to exercise reasonably diligent efforts to provide notice to Ms. Verdier of her right to redeem property purchased at a sheriff’s tax sale.

In Syllabus Point 1 of *Wickland v. Am. Travellers Life Ins. Co.*, 204 W.Va. 430, 513 S.E.2d 657 (1998), we held that:

The standard of review applicable to an appeal from a motion to alter or amend a judgment, made pursuant to W. Va. R. Civ. P. 59(e), is the same standard that would apply to the underlying judgment upon which the motion is based and from which the appeal to this Court is filed.

Because the underlying judgment was based on a motion for summary judgment, we review Petitioner Arnold’s appeal under that standard. “A motion for summary judgment should be granted only when it is clear that there is no genuine issue of material fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” Syllabus Point 3, *Aetna Cas. & Sur. Co. v. Fed. Ins. Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963).

In granting Ms. Verdier’s motion for summary judgment, the circuit court relied on *Plemons v. Gale*, 396 F.3d 569 (4th Cir. 2005), in which the Fourth Circuit, in regard to notice of the right to redeem property purchased at a sheriff’s tax sale, held that “[a]lthough a party required to provide notice need not ‘undertake extraordinary efforts to discover . . .

whereabouts . . . not in the public record,’ it must use ‘reasonably diligent efforts’ to discover addresses that are reasonably ascertainable.” *Id.* at 574 (internal quotations omitted). “[I]t is, at the very least, reasonable to require examination (or re-examination) of all available public records when initial mailings have been promptly returned as undeliverable.” *Id.* at 577 (emphasis added). “Requiring perusal of publicly available information does not subject the tax lien purchaser to the ‘impracticable and extended searches [that] are not required in the name of due process.’” *Id.* at 577-578 (quoting *Mullane v. Cent. Bank & Trust Co.*, 339 U.S. 306, 317-18 (1950)).

In *Reynolds v. Hoke*, 226 W.Va. 497, 702 S.E.2d 629 (2010)(*per curiam*), this Court addressed the reasonable diligence owed by a tax sale purchaser to the putative landowner in regard to the notice to redeem. In *Reynolds*, the tax-sale purchaser failed to search the county clerk's office for deed transfers indexed under the name of a taxpayer noted on the certificate of sale. If the tax sale purchaser had searched the deed transfers, he would have found that the taxpayer had transferred the property and discovered the names of the property's current owners. This Court held that the tax sale purchaser did not make reasonably diligent efforts to notify those with an interest in the property of their right to redeem.

In light of *Plemons* and *Reynolds*, this Court disagrees with Mr. Arnold's contention that his efforts to locate Ms. Verdier's correct address were reasonably diligent. Therefore, the circuit court's refusal to alter or amend its summary judgment order was proper given the undisputed evidence that the petitioner failed to search all available county records for Ms. Verdier's correct address.

For the foregoing reasons, the circuit court's September 24, 2011 Order denying the petitioner's Rule 59 motion is affirmed.

Affirmed.

ISSUED: October 11, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh