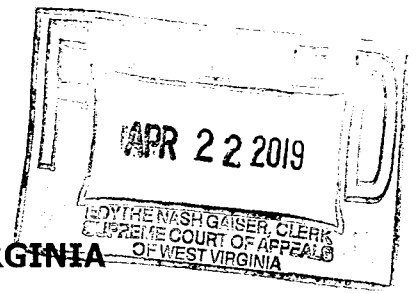


**FILE COPY** DO NOT REMOVE  
FROM FILE



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SUPREME COURT NO: 19-0011

---

REDDENFOX Properties, LLC,

PETITIONER/APPELLANT

V.

WILLIAM MAZE and TERRY MAZE,

RESPONDENT/APPELLEE

---

APPEAL FROM THE CIRCUIT COURT OF  
KANAWHA COUNTY, WEST VIRGINIA

(Case No.: 2018-C-AP-15)

BRIEF OF APPELLANT

---

ORAL PRESENTATION REQUESTED

DERRICK W. LEFLER  
DERRICK W. LEFLER ATTORNEY AT LAW  
P.O. BOX 1250  
PRINCETON, WV 24740  
WV STATE BAR NO.: 5785  
TELEPHONE: (304) 425-4484  
E-MAIL: [dlef@citlink.net](mailto:dlef@citlink.net)

*ATTORNEY FOR PETITIONER/APPELLANT*

---

## TABLE OF CONTENTS

	<u>PAGE</u>
<b>TABLE OF AUTHORITIES</b> -----	ii
<b>ASSIGNMENTS OF ERROR</b> -----	1
<b>STATEMENT OF THE CASE</b> -----	2
<b>SUMMARY OF ARGUMENT</b> -----	6
<b>STATEMENT REGARDING ORAL ARGUMENT IN DECISION</b> -----	8
<b>ARGUMENT</b> -----	9
<b>I.    The Circuit Court Erred in Finding Appellant Failed           to Provide Sufficient Notice of the Right to Redeem           to Appellees</b> -----	9
<b>A.    Statutory Obligations</b> -----	10
<b>B.    Constitutional Considerations</b> -----	11
<b>C.    Application to the Case at Bar</b> -----	12
<b>II.   The Circuit Court Erred in Finding that Terry Maze           Was Under a Mental Disability at the Times Relevant           to the Case</b> -----	20
<b>III.  The Circuit Court Erred in Refusing to Allow a Witness           to Testify Remotely as to the State of Knowledge of           Terry Maze at Times Relevant to the Case</b> -----	21
<b>CONCLUSION</b> -----	22
<b>CERTIFICATE OF SERVICE</b> -----	23

## TABLE OF AUTHORITIES

<b>CASES</b>	<b>Page</b>
<u>Chystal R.M. v. Charlie A. L.</u> , 194 W.Va. 138, 459 S.E.2d 415 (1995) .....	9
<u>Federal Deposit Ins. Corp. v. Schaffer</u> , 731 F.2d 1134 (4 <sup>th</sup> Cir. 1984) .....	15
<u>Jones v. Flowers</u> , 547 U.S. 220, 126 S.Ct. 1708, (2006) .....	12, 14, 16, 19
<u>Kelber LLC, v. WVT LLC</u> , 213 F.Supp.3d 780 (N.D.W.Va 2016).....	13, 19
<u>Mason v. Smith</u> , 760 S.E.2d 487 (W.Va. 2014) .....	13
<u>Mingo County Redevelopment Auth. v. Green</u> , 534 S.E.2d 40 (W.Va. 2000) .....	17
<u>Mullane v. Central Hanover Bank and Trust Co.</u> , 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed 865 (1950) .....	12
<u>O’Neal v. Wisen</u> , 16-cv-08597 (S.D.W.Va., August 1, 2017) .....	13
<u>State ex. Rel. Morgan v. Miller</u> 350 S.E.2d 724, 177 W.Va. 97 (1986) .....	11
<u>Plemons v. Gale</u> , 396 F. 3d 569, (4 <sup>th</sup> Cir. 2005) .....	11, 13, 16
<u>Shafer v. Mareve Oil Corp.</u> , 157 W.Va. 816, 204 S.E. 2d 404 (1974) .....	11

## STATUTES & CONSTITUTIONS

<u>U.S. Const. Amend. V &amp; XIV</u> .....	10, 11
<u>West Virginia Code § 11A-3-1</u> .....	17
<u>West Virginia Code § 11A-3-22</u> .....	18, 20
<u>West Virginia Code § 11A-3-22</u> .....	14
<u>West Virginia Code § 11A-3-37</u> .....	18
<u>West Virginia Code § 11A-3-52</u> .....	10
<u>West Virginia Code § 11-3-55</u> .....	10, 14
<u>West Virginia Code § 11A-4-1</u> .....	10
<u>West Virginia Code § 11A-4-3,</u> .....	17, 20
<u>West Virginia Code § 11A-4-4</u> .....	3,5,12
<u>West Virginia Code § 11A-4-6</u> .....	3
<u>West Virginia Code § 56-2-1</u> .....	15
<u>West Virginia Constitution, Art. 3, § 10</u> .....	10, 11
<u>West Virginia Constitution, Art. 13, § 6</u> .....	10

## **ASSIGNMENTS OF ERROR**

Appellant, Reddenfox LLC, assigns the following errors from the proceedings before the Circuit Court of Kanawha County, West Virginia.

1. The Circuit Court erred in finding Appellant had failed to provide sufficient Notice of the Right to Redeem to Appellees.
2. The Circuit Court erred in finding that Terry Maze was under a mental disability at the times relevant to the case.
3. The Circuit Court erred in refusing to allow a fact witness to testify remotely as to the mental status of Terry Maze at times relevant to the case at bar.

## STATEMENT OF THE CASE

The instant appeal is from the grant of judgment by the Circuit Court of Kanawha County setting aside the conveyance from the State Auditor (hereinafter "Auditor") to Appellant, Reddenfox Properties, LLC, (hereinafter "Reddenfox"). Appellant, Reddenfox, seeks relief from the Circuit Court's order granting judgment and remand to the Circuit Court for the appropriate disposition. (App. 119).

Appellant, Reddenfox Properties, LLC, is a West Virginia Limited Liability Corporation with two members, Eric Porterfield, and his wife, Jessica Porterfield. Reddenfox's primary business is the purchase and sale of real estate. A portion of the real estate bought and sold by the company is delinquent tax property purchased through sales conducted by County Sheriffs, as well as the State Auditor. (App. 181).

On July 20, 2017, Reddenfox purchased a tax lien at a sale conducted by a Deputy Commissioner of Delinquent Lands for the property owned by appellees, Terry Maze and William Maze. Reddenfox then provided information for the purpose of providing Notice of Right to Redeem to the appropriate parties. (App. 186). Certified mailings were made to property owners William Maze and Terry Maze as well as "occupant" at the property address. (App. 133-138 & 143-145). Returns for the mailings to Terry Maze and William Maze indicate delivery of the certified mailings on August 2, 2017. (App. 158-159).<sup>1</sup> The returns contained a signature later identified as being that of Terry Maze. (App. 56). Terry Maze and William Maze are husband and

---

<sup>1</sup> The record contains no information as to the delivery of the certified mailing to "Occupant" at the Macon Street address. Likewise documents from the Auditor's office indicating "Personal Service" on occupant at that address provide no information as to whether such service was ever made or attempted. (App. 149-151).

wife and at the time of the delivery of the certified mailings resided together at the Macon Street address. (App. 53 & 78).

A certified mailing was also sent to a lien holder, Precision Recovery Analytics Inc., in Austin, Texas. (App. 139-141). That mailing failed and was returned with notations of "Return to Sender", "Not Deliverable as Addressed" and "Unable to Forward". (App. 142). Reddenfox was able to locate an additional address for the lienholder in Morristown, New Jersey and directed personal service be made at the New Jersey address. (App. 152-154 & 160).

Following the notices described above, no redemption was sought, and a deed was subsequently delivered to Reddenfox by R. Russell Rollyson, Jr. dated November 28, 2017 and placed of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia in Deed Book 2988, at Page 439. (App. 131).

The action below originally was filed as an unlawful detainer action by Reddenfox seeking removal of appellees from the subject property. (App. 180). Appellees were served, but did not answer, and appellant obtained a default judgment. (App. 183). When appellant attempted to evict appellees they filed an appeal to Circuit Court, and sought to set aside the default judgment. The Mazes also counterclaimed seeking to set aside the conveyance to the subject property based on an alleged disability of Terry Maze at the time of the conveyance under West Virginia Code § 11A-4-6, and lack of notice to William Maze pursuant to West Virginia Code § 11A-4-4. (App. 187). Reddenfox, by Eric Porterfield, its President and Managing Member, filed an Answer to the counterclaims. (App. 198).

The matter was tried to the bench, the Hon. Charles E. King presiding, on June 25 and 26, 2018. Terry Maze and William Maze appeared in person and by counsel. Reddenfox appeared by Eric Porterfield. (App. 7). Testimony was taken from Mr. Porterfield and both Terry Maze (App. 53), and William Maze (App. 78).

By orders of September 20, 2018 (App. 119) and October 10, 2018 (App. 129), the court granted judgment in favor of appellee, William Maze, and set aside the conveyance to appellant, Reddenfox. In reaching its decision the court made a number of factual findings. Most prominent among those was the finding that "Terry Maze, was operating under a mental disability at the time that the notices of right to redeem were delivered by certified mail." The court further found that, "the condition of Terry Maze's mind prevented her from bringing the information to the attention of her husband, William Maze, even after she was made aware of it with the filing of the unlawful detainer action." (App. 121).

The court's dispositive finding of law was that Reddenfox and the State Auditor had provided insufficient notice of the Right to Redeem to William Maze. Central to the Circuit Court's decision was the finding that William Maze had not received actual notice of the tax sale, or his right to redeem. The court further found that the receipt of the certified mail addressed to William Maze being signed by his wife and household member, Terry Maze, was "analogous to the circumstances in which a certified mail notice of sale is returned marked "undeliverable"; "not at this address"; "not known"; "unable to forward"; "not known"; or "unclaimed" or similar notation" . (App. 122).



In light of this finding, the court determined that due process required additional action by Reddenfox and/or the State Auditor to provide notice to William Maze. The court finding that no such additional action was undertaken, found the notice provided insufficient to satisfy due process standards. The court granted judgment to William Maze pursuant to West Virginia Code § 11A-4-4. (App. 125-126).<sup>2</sup>

---

<sup>2</sup> Although not necessarily inappropriate, it is noteworthy that the findings and conclusions set forth in the court's order (App. 119-128) is drawn verbatim from the Amended Counterclaim filed by the Mazes. (App. 187-193)

## SUMMARY OF ARGUMENT

### I.

#### **The Circuit Court Erred in Finding Appellant Failed to Provide Sufficient Notice of Right to Redeem to Appellees.**

Appellant, Reddenfox, purchased the tax lien for the subject real property owned by appellees Terry and William Maze, at a sale conducted by the State Auditor. Reddenfox provided information to the State Auditor as to those persons necessary to serve a notice of right to redeem, including appellees and an additional lien holder. On a form provided by the State Auditor, Reddenfox requested service by certified mail to those entitled to receive the Notice of Right to Redeem. The certified mail delivery to the Maze household was signed for by the appellees wife as to her notice, and as to the notice of her husband, who was also a member of the household. No information was returned to the State Auditor to indicate that notice had not been delivered as requested, because in fact it had.

Following a bench trial, the circuit court ruled that appellant had failed to provide adequate notice because the court found that the appellee husband had not received the notice signed for by his wife who allegedly suffered from some manner of mental incapacity.

Appellant contends the Circuit Court's determination as to the sufficiency of notice provided by appellant was in error and that the notice provided by petitioner, through the State Auditor was sufficient to comply with statutory obligations and consistent with constitutional requirements relating to such matters.

## **II.**

### **The Circuit Court Erred in Finding that Terry Maze was Under a Mental Disability at the Times Relevant to the Case.**

Central to the Circuit Court's decision to set aside the deed to appellant was the Circuit Court's finding that the appellee wife, Terry Maze, was under a mental disability at the time she signed for the certified mailings addressed to both her and her husband, who was a member of the household. Appellee presented no admissible medical evidence establishing that appellee Terry Maze, in fact, suffered from a mental defect or condition which would support a finding such as issued by the Circuit Court. The entirety of the evidence before the Circuit Court as to this issue was the testimony of William Maze and Terry Maze, and unauthenticated records from Charleston Surgical Hospital and Rite Aid Pharmacy.

## **III.**

### **The Circuit Court Erred in Refusing to Allow a Fact Witness to Testify Remotely as to the State of Knowledge of Terry Maze at Times Relevant to the Case at Bar.**

In the face of testimony offered by appellees as to the alleged mental disability of Terry Maze, Reddenfox was, in the time between the first and second day of trial, able to identify, and contact an individual who could refute testimony from appellee Terry Maze as to specific factual assertions she had made in her trial testimony the day before. Such testimony would have gone directly to the credibility of appellee Terry Maze. Given the fact that Reddenfox had been required to identify, and contact the

witness in the overnight between trial days, it was unable to procure the attendance of the witness at trial the following day. Reddenfox requested the court permit the witness to testify by telephone. The court denied the request. As a result, Reddenfox was unable to present the testimony. The precluded testimony was of potential significant probative value as it would have significantly called into question the veracity of Terry Maze's testimony, to which the trial court obviously gave great weight in rendering its decision.

### **STATEMENT REGARDING ORAL ARGUMENT**

Appellant submits that oral argument is necessary in view of the criteria set forth in Rule 18 (a) of the West Virginia Rules of Appellate Procedure. The issues presented in the instant appeal, particularly those relating to the due process requirements for notice, have not been authoritatively decided. In addition, while facts and arguments are sufficiently and adequately presented in appellant's brief, appellant believes the decision process would be significantly aided by oral argument.

Appellant believes that the case at bar would be appropriate for oral argument under Rule 20 of the Rules of Appellate Procedure, in that the appeal presents constitutional questions regarding rulings of the trial court.

## ARGUMENT

### Standard of Review

The instant appeal arises from the decision of the Circuit Court of Kanawha County, West Virginia, setting aside a conveyance following the purchase of a tax lien. The Circuit Court's factual findings are reviewed under a clearly erroneous standard. Questions of law, or involving interpretation of a statute are subject to a *de novo* review. Syllabus Pt. 1 Chrystal R.M. v. Charlie A. L., 194 W.Va. 138, 459 S.E 2d 415 (1995).

#### I.

#### **The Circuit Court Erred in Finding Appellant Failed to Provide Sufficient Notice of the Right to Redeem to Appellees.**

The primary issue before the Court is relatively direct. That issue is whether the efforts to provide notice by the State Auditor and/or Reddenfox were sufficient to satisfy statutory and constitutional requirements. That issue may be further reduced to the examination of whether acceptance of a certified mailing by a spouse who is a member of the household is a failure of the certified mailing, so as to require the State and/or purchaser of a tax lien to undertake additional efforts to effectuate notice. Reddenfox submits that such mailing does not constitute failure of notice and does not require additional efforts to notify.

The law imposes a duty on each real property owner to have their land entered on the land books for taxation purposes, and to pay the taxes thereon. W.Va. Const. art. 13, §6. Those duties are tempered by statutory requirements to which those seeking to divest ownership from a taxpayer must strictly adhere. These statutory provisions are intended "to provide reasonable opportunities for delinquent taxpayers to protect their interests in their lands and to provide reasonable remedies in certain circumstances." W.Va. Code §11A-4-1. Additionally, constitutional due process requirements provide a measure of protection to participants on both sides of the equation. W.Va. Const., art. 3, § 10, U.S. Const., am. XIV.

#### A. Statutory Obligations

Among the obligations of the purchaser of a tax lien is that found at § 11A-3-52(a), which dictates the purchaser is to "prepare a list of those to be served with notice to redeem and request the clerk to prepare and serve the notice as provided in §§ 54 and 55 of this article." W.Va. Code § 11A-3-52(a)(1). Section 54 sets forth the form for the Notice to Redeem. Section 55 relates to the service of the notice, "[t]he notice shall be served upon all such persons residing or found in the state in the manner provided for serving process commencing a civil action or by certified mail, return receipt requested." W.Va. Code § 11A-3-55.

Noncompliance with the mandatory requirements of these code provisions has been recognized as "a jurisdictional defect, not subject to curative measures." Syllabus Pt. 3 Morgan v. Miller 350 S.E 2d 724, 177 W.Va. 97 (1986; citing Syllabus Pt. 1, Shafer v. Mareve Oil Corp., 157 W.Va. 816, 204 S.E. 2d 404 (1974)).<sup>3</sup>

#### B. Constitutional Considerations

In addition to these statutory obligations, there are constitutional, due process requirements which must be satisfied in order to effectively convey title through a deed following the sale of a tax lien. Both the Constitutions of The State of West Virginia, and the United States of America provide that no person shall be deprived of his property, "without due process of law." W.Va. Const. art. 3, §10; U.S. Const. amend. V & XIV.

These due process requirements are compatible with statutory requirements. The "initial reasonable effort to make efforts to mail notice to one threatened with loss of property will normally satisfy the requirements of due process. However, when prompt return of initial mailings makes clear that the original effort at notice has failed, the party charged with notice must make reasonable efforts to learn the correct address before constructive notice will be deemed sufficient." Plemons v. Gale, 396 F. 3d 569, 576 (4<sup>th</sup> Cir. 2005).

---

<sup>3</sup> Reddenfox had, in fact, purchased the Macon Street property at the Auditor's sale the previous year, but had failed to timely provide the required list and lost the benefit of its purchase. (App. 17).

When certified mail notice of a tax sale is returned unclaimed, the state, as a matter of due process, must take additional reasonable steps to attempt to provide notice to the property owner before selling property, if it is practicable to do so. Jones v. Flowers, 547 U.S. 220, 225 126 S.Ct. 1708, 1713 (2006). Once a defect has been identified, to satisfy due process requirements, "[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 315, 70 S.Ct. 652, 94 L. Ed. 865 (1950).

### C. Application to Case at Bar

In applying these principles to the case at hand it should first be noted that William Maze's claim was for relief pursuant to West Virginia Code § 11A-4-4, which provides a remedy in instances where those entitled to notice are not properly notified. The terms of the statute impose an obligation on the party seeking to set aside a deed to show by clear and convincing evidence that the tax sale purchaser "failed to exercise reasonably diligent efforts to provide notice of his intention to acquire such title." W.Va. Code § 11A-4-4(b).<sup>4</sup>

The circuit court's decision hinged upon the finding that the acceptance and signature for certified mail by Terry Maze, wife of William Maze, and a member of the household of William Maze, was tantamount to a failure of delivery which should have prompted further action by Reddenfox and/or the Auditor.

---

<sup>4</sup> The circuit court clearly did not apply this "clear and convincing" standard in rendering its decision.



After the certified mail receipts were returned with only one name shown demonstrating the receipt of the certified mail item; and after the certified mail receipts were returned that the two certified mail receipts in fact contained the same signature (of Terry Maze), the circumstance was analogous (with respect to William Maze) to the circumstances in which a certified mail notice of sale is returned marked "undeliverable"; "not at this address"; "not known"; "unable to forward"; "not known"; or "unclaimed" or similar notation. (App. 122).

The catalogue of envelope markings set forth by the court below is consistent with those recognized in prior cases before this court, and federal courts, including the United States Supreme Court. However, its finding that such markings are "analogous" to the facts presented in the instant case is wholly erroneous.

By way of example the trial court cited a Memorandum Opinion from the United States District Court for the Southern District of West Virginia in O'Neal v. Wisen, 16-cv-08597 (S.D.W.Va. August 1, 2017). In that matter the postal service returned notices as "undeliverable and/or unclaimed". O'Neal, at page 4.

In Mason v. Smith, 760 S.E.2d 487 (W.Va. 2014), this Court found certified mail envelopes returned, "not deliverable as addressed" or "unclaimed" was insufficient notice to land owners, requiring additional efforts to satisfy due process requirements.

In Kelber, LLC, v. WVT, LLC, 213 F.Supp.3d 780 (N.D.W.Va. 2106), mailings were returned with notations of: "Not known, Unable to Forward", "Not Deliverable" and "Unclaimed".

In Plemons v. Gale, 382 F.Supp. 826 (S.D.W.Va. 2005), 396 F.3d. 569 (4th Cir. 2005), the notices in question had been returned as "unclaimed".

The United State Supreme Court found notices returned as "unclaimed" were not sufficient and required additional reasonable steps to provide notice to a property owner. Jones v. Flowers, 547 U.S. 220,126 S.Ct. 1708, 164 L.Ed.2d 415 (2006).

The distinction to be drawn between these cases and the instant case is obvious. All of the notations set forth above make clear on their return to the original sender that the notice attempted has unequivocally failed. There is no question or doubt that the property owner could have even possibly been provided notice of his right to redeem. It is these instance that due process requires further "reasonable steps" to provide notice.

In this matter the circuit court extended the due process requirements of additional effort beyond the boundaries of those cases cited above to any case where certified mail is accepted by anyone other than the addressee. The question is whether this Court will endorse that extension. Principle and policy suggest it should not.

Statutory provisions relating to service of Notice of Right to Redeem documents authorize service by "certified mail, return receipt requested." W.Va. Code §§ 11A-3-55 & 11A-3-22. Appellant is aware of no case that has suggested that service of the required notice by this process, is on its face constitutionally deficient.

It would appear however, that this is the standard urged by the Mazes and adopted by the circuit court. The mailing of certified mail with a return receipt was successfully completed. In arguing that due process requires more, the court below improperly modifies the clear intent of the statue, an in effect raises the requirement to

a certified mailing with delivery restricted to the addressee, rendering the statute necessarily deficient.

It is submitted, however, that the standard imposed by the circuit court beyond that established by the prior cases. Certified mail, duly accepted, provides a level of verification worthy of consideration and deference.

“A letter properly addressed, stamped and mailed is presumed to have been duly delivered to the addressee.” C. McCormick, McCormick’s Handbook of the Law of Evidence, Sec. 343 (1972) (footnote omitted). The presumption is especially strong when the delivery is by certified mail.

Federal Deposit Ins. Corp. v. Schaffer, 731 F.2d 1134 (4<sup>th</sup> Cir. 1984) at Fn. 6

In this instance, not only was the certified mail signed for, it was signed for by Mr. Maze’s spouse, who was also a member of the household. Although not directly on point, the provisions of West Virginia Code § 56-2-1 are instructive. That section relates to service of notice, “no particular mode of serving which is prescribed”. The section states that such notice can be delivered at his usual place of abode to a spouse, or any member of the family above the age of 16, if the individual to be served is not available. W.Va. Code §56-2-1.

That this statute allows for delivery to an individual’s place of abode, and to presumably responsible individuals, such as a spouse or adult family member of the household, recognizes the sound policy in the presumption that there is sufficient likelihood of its delivery to its intended recipient. It is further suggested that as a matter of course, the likelihood of delivery is enhanced when the notice is delivered to a co-owner of the property.

Central to the circuit court's decision was the determination that William Maze had not received the certified Notice of Right to Redeem signed for and accepted by his wife. However, the circuit court's focus on the subjective knowledge of the delinquent property owner is misplaced.

The focus of those cases setting forth constitutional issues is not on the individual and whether in fact they received the notice in question. No case suggests that this is the requirement. In fact, the United States Supreme Court in Jones explicitly stated that actual notice is not required before the government may deprive a person of their property. Jones, 547 U.S. at 226. Rather, the appropriate focus is on the process, and whether such process is reasonably calculated to provide notice to the property owner. Those cases have only found the process deficient when it is clear that the notices could not have been received, and that based upon such clear indications it is evident the property owner has not received notice.

When a party required to give notice **knows** that a mailed notice has, for some reason, failed to inform the person holding a property interest of the impending deprivation, the notice does not pass constitutional muster. [Emphasis in original] Plemons v. Gale, 396 F.3d at 573. Therefore, the appropriate examination is not of the subjective knowledge of the delinquent property owner, but rather that of the State and/or purchaser of a tax lien as to the status of the notice. In the case at bar there was nothing which would have indicated that William Maze had not received the notice sent. In light of the absence of such evidence or knowledge on the part of Reddenfox or the State Auditor, due process does not require further action.

This focus on the process as opposed to the property owner is necessary in order to have a workable system that serves the ultimate goal of the statutory scheme, to ensure that the taxing body receives taxes due, and that property is ultimately held by responsible individuals who meet their obligations to their community, i.e. payment of taxes.

This Court has recognized the significant policy interests arising from the non-payment of taxes and the subsequent sale of tax liens.

As an initial matter, the Auditor argues that, because of the importance of finality in tax-sales, it is imperative that no court overturn a valid sale. To do otherwise would invite a flood of challenges and would create title problems for thousands of buyers who obtained their property through tax-sales.

We agree with the Auditor that confidence in one's title to land is of paramount importance. As we have remarked previously, "certainty above all else is the preeminent compelling public policy to be served... We are also mindful that the government must make a timely collection of property taxes in order to function properly.

Mingo County Redevelopment Auth. v. Green, 534 S.E.2d 40, 45 (W.Va. 2000).

The court in Green also noted that these policies have been explicitly recognized by the Legislature in the provisions of § 11A-3-1.

In view of the paramount necessity of providing regular tax income for the state, county, and municipal governments. Particularly for school purposes; and in view of the further fact that delinquent land not only constitutes a public liability, but also represents a failure on the part of the delinquent private owners to bear a fair share of the cost of government.

W.Va. Code § 11A-3-1 (1994).

For the focus to be upon the property owner and their actual receipt of notice, as the Mazes suggest, would create an unduly burdensome and cumbersome system whereby the taxing entity becomes the nanny to the intransigent taxpayer, who has by this point necessarily failed to meet his fundamental obligation as a landowner. The constitution, on both the state and federal level are not offended by the state taking property for the non-payment of taxes. It is only the taking without due process that offends constitutional protections. Those protections were not offended in this instance by the purchase of the Macon Street property by Reddenfox.

While there is no question that the obligation for compliance with statutory and due process requirements rests with the purchaser of the tax lien, property owners have duties and obligations with reference to the taxation of their property that bear consideration.

Somewhat incredibly, William Maze testified that once he and his wife purchased the property out of foreclosure in January 2014 he “didn’t realize there was a specific property tax, that I had to acquire – have them send it to me and get it or you know pay the taxes.”<sup>5</sup>(App. 100). “It is the duty of the owner of land to have his land entered for taxation on the land books of the appropriate county, have himself charged with the taxes due thereon, and pay the same.” W.Va. Code § 11A-3-37

William Maze’s profession of complete ignorance of any issue with property taxes, or even the existence of such taxes, notwithstanding, by time the Notice to

---

<sup>5</sup> The Mazes had owned the Macon Street property since 2000. (App. 175). Until 2013 the taxes were paid as part of their mortgage payment. (App. 53). In 2104 the Maze purchased the property outright from WV Housing which had purchased the property at the foreclosure sale. (App. 178).

Redeem was sent to the Macon Street property by certified mail, and signed for by his house-member wife, there would have been, according to statutory procedures for the sheriff's sale, and auditor's sales alone, a prior notice of delinquency sent to the Macon Street property, and a minimum of four publications identifying the Mazes as the owners of the Macon Street property and the taxes on the property as delinquent.<sup>6</sup>

For William Maze to plead ignorance of any issue whatsoever, presumably due to his wife's deception or incompetence, seems a bit disingenuous. If such ignorance is legitimate, given his knowledge of his wife's past conduct and difficulties, it was invited ignorance.<sup>7</sup>

Reddenfox does not suggest that any claims of lack of knowledge of any issues relating to property taxes or any failure or lack of diligence on the part of William Maze relieves it of its' obligation to provide notice. "A property owner's failure to update its record address did not excuse the obligation of the State to take additional steps once notice is promptly returned as unclaimed or undeliverable. Kelber, 213 F.Supp.3d at 805, citing Jones, 547 U.S. at 232. However, those facts are germane to the issues of credibility relating to Mr. Maze's claims that he did not receive or see the Notice of Right to Redeem sent to his home by certified mail, and signed for by his wife.

---

<sup>6</sup> See West Virginia Code §§ 11A-10A; 11A-3-2; 11A-3-13; 11A-3-46.

<sup>7</sup> William Maze testified that his wife had hidden the foreclosure of the home in 2013 from him until after the property had been sold. (App. 88). Terry Maze acknowledged this as well. (App. 54).

## II.

### **The Circuit Court Erred in Finding that Terry Maze was Under a Mental Disability at the Times Relevant to the Case.**

Central to the Circuit Court's decision to set aside the deed to Reddenfox was the Circuit Court's finding that the appellee wife, Terry Maze, was under a mental disability at the time she signed for the certified mailings addressed to both her and her husband, who was a member of the household. Appellees presented no admissible medical evidence establishing that Terry Maze, in fact, suffered from a mental defect or condition which would support such a finding. The entirety of the evidence before the Circuit Court as to this issue was the testimony of William Maze and Terry Maze, and unauthenticated records from Charleston Surgical Hospital and Rite Aid Pharmacy.

The trial court found as a factual matter that at the time of delivery of the accident all times relevant, Terry Maze was under a mental disability. (App. 121). To support this assertion, counsel for Terry Maze submitted into evidence a single page document purporting to be from the Charleston Surgical Hospital. (App. 165). However, the single page contains no medical information, and provides no support for Ms. Maze's testimony about her treatment, other than it appears to indicate an admission date of July 27 and discharge date of July 31, 2018.

Ms. Maze also submitted several pages of pharmacy records indicating she had been prescribed narcotic pain medication. (App. 166). No testimony was provided to



indicate the anticipated effects of the medications involved and how they might affect competency.<sup>8</sup>

The assertion that Terry Maze was mentally incapacitated is not supported by any medical evidence or medical opinion. It is supported only by self-serving testimony and documents which were unauthenticated, contain hearsay, and are of limited probative value. The circuit court's finding, so central to its' decision, based upon such scant evidence was clearly in error.

### **III.**

#### **The Circuit Court Erred in Refusing to Allow a Witness to Testify Remotely as to the State of Knowledge of Terry Maze at Times Relevant to the Case.**

In the face of testimony offered by Terry Maze, and her lack of knowledge as to the existence of any issues with taxes on the Macon Street property. Reddenfox was, in the time between the first and second day of trial, able to identify, and contact, an individual who could refute that testimony from Terry Maze. Such testimony would have gone directly to the credibility of appellee Terry Maze. Given the fact that Reddenfox had been required to identify, and contact the witness overnight between trial days, it was unable to procure the attendance of the witness at trial the following day.

Reddenfox requested the court permit defendant to testify by telephone. The court denied the request. As a result, Reddenfox was unable to present the testimony of such

---

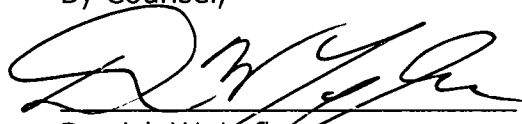
<sup>8</sup> Reddenfox properly objected to the admission of these documents as lacking proper foundation. The court overruled stating "that don't have anything to with the admissibility of them." "It may have something to do with the weight that you attach to them." (App. 71).

witness. The precluded testimony was of potential significant probative value as it would have significantly called in to question the veracity of Terry Maze testimony the trial court obviously gave great weight in rendering its decision.<sup>9</sup>

### **CONCLUSION**

For the reasons set forth herein, appellant respectfully requests, that his appeal be granted and request the decision of the trial court be vacated and the matter returned to the Circuit Court of Kanawha County, West Virginia for appropriate disposition consistent with the orders of this court.

REDDENFOX PROPERTIES, LLC,  
By Counsel,



Derrick W. Lefler

---

<sup>9</sup> Reddenfox proffered the testimony of the witness, Jay Folse, who would have testified that he had a conversation with Terry Maze the year prior to the effect that the Macon Street property was delinquent and subject to sale. (App. 102-103). This testimony would have directly contradicted testimony from Terry Maze that she had no idea of any issues relating to taxes prior to the unlawful detainer action filed by Reddenfox.