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Tax Deeds: Effect of Short Statute of Limitations

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TAX DEEDS: EFFECT OF SHORT STATUTE OF LIMITATIONS

Wells v. Thomas, 78 So.2d 378 (Fla. 1955)

Plaintiff originally purchased the land in issue in 1925. Defendant obtained good title by tax deed in 1928 but for twenty years thereafter failed to pay taxes on the land. In 1944 plaintiff was deeded the property by one Ashmore, who had purchased the tax deed earlier the same year. Defendant did not receive notice of Ashmore's application for a tax deed, which the clerk is required to mail.[1] In a suit to quiet title, summary judgment for defendant was entered on the ground that the published notice of application for a tax deed was defective. On appeal, HELD, a curative statute[2] will cure defective notice of application for a tax deed but will not cure the jurisdictional defect of failure to give notice. In the absence of proof to the contrary, however, the clerk is presumed to have given notice in compliance with the statute. Decree reversed and case remanded.

When the holder of a tax certificate makes application for a tax deed to the clerk of the circuit court,[3] the clerk is required by statute[4] to publish notice of the application, including a description of the property and the number on the certificate held by the applicant. In the instant case defendant contended that the tax deed to Ashmore was invalid because the published notice failed to clearly identify the appropriate certificate numbers with the property described in the notice.

In granting summary judgment for defendant, the trial court relied on *Kester v. Bostwick*,[5] which held that a similar published notice was fatally defective. The Supreme Court pointed out[6] that since the *Kester* decision a statute[7] has been enacted providing, *inter alia*, that all provisions of law relating to assessment and collection of revenue are directory only unless otherwise specified; on the authority of this statute the Court has held that mere defects in form will

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[1]FLA. STAT. §194.18 (1953).
[2]FLA. STAT. §192.48 (1953).
[3]FLA. STAT. §194.15 (1953).
[4]FLA. STAT. §194.16 (1953).
[5]153 Fla. 450, 15 So.2d 208 (1943).
[6]At 381.
[7]FLA. STAT. §192.21 (1953).

not vitiate a tax deed.[8] The Court added that the defects in the notice of application for the tax deed were likewise cured by the one-year statute of limitations.[9]

Another Florida statute[10] provides that the clerk shall mail a copy of the notice to the owner of the property or, if the owner is unknown, to the person last paying taxes on the property. The defendant contended that the tax deed was void because the clerk failed to mail the required notice to him.[11] The Court cited a Florida statute[12] to the effect that the issuance of a tax deed is prima facie evidence of the regularity of the proceedings; this would include a presumption that the clerk mailed the notice. The presumption is not rebutted by either the owner's testimony of nonreceipt or by the fact that the records in the clerk's office fail to show that the notice has been mailed. In practical effect the Court has established an almost irrebuttable presumption, making more effective the one-year statute of limitations[13] on actions to set aside a tax deed for other than jurisdictional defects.

This decision arrives at a sound result. Adequate safeguards protect the delinquent taxpayer, who, by legislative declaration, is "held to know that taxes are due and payable thereon annually."[14] The Court's liberal application of the curative act aids in attaining the desirable end of free alienability of land.

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[8]Goodman v. Carter, 158 Fla. 112, 27 So.2d 748 (1946).

[9]FLA. STAT. §192.48 (1953).

[10]FLA. STAT. §194.18 (1953).

[11]Montgomery v. Gipson, 69 So.2d 305 (Fla. 1954); Thacker v. Biggers, 48 So.2d 750 (Fla. 1950); Swigert v. Parker, 46 So.2d 16 (Fla. 1950); Heinberg v. Andress, 45 So.2d 488 (Fla. 1950).

[12]FLA. STAT. §194.23 (1953).

[13]FLA. STAT. §192.48 (1953).

[14]FLA. STAT. §192.21 (1953).