

Circuit Court for Baltimore City
24-C-13-007494

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2128

September Term, 2016

DANE EQUITIES, LLC

v.

DWARREW BULLOCK

Arthur,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: December 12, 2017

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

— Unreported Opinion —

This appeal arises out of a tax sale conducted in Baltimore City on May 20, 2013. The property sold was owned by appellee, Dwarrew Bullock, (“Dwarrew”). The property is located at 1209 Myrtle Avenue, Baltimore City (“the Property”). The tax sale purchaser was appellant, Dane Equities, LLC (“Dane”). At the time of the tax sale, the lien against the Property, held by Baltimore City for unpaid taxes (for 2012-2013) and unpaid utility bills, was \$2,650.48. Dane’s successful bid on the Property was \$2,702.00.

On November 26, 2013, Dane filed, in the Circuit Court for Baltimore City, a complaint to foreclose Dwarrew’s right of redemption of the Property. Dwarrew did not respond to the complaint and, approximately 16 months later, the circuit court, on March 26, 2015, entered an order that foreclosed Dwarrew’s right of redemption of the Property and granted Dane title to that Property.

On May 19, June 16, and June 22, 2015, Dwarrew, *pro se*, filed pleadings that will be discussed *infra*, asking, in various ways, that the judgment entered on March 26, 2015 be vacated. The first two of those motions were denied.

On July 17, 2015, Dwarrew, by counsel, filed a motion to vacate the judgment. After hearings on August 21 and October 16, 2015, concerning the motion to vacate, and after consideration of memorandum by counsel, the circuit court, on October 19, 2015, entered an order granting Dwarrew’s motion to vacate. Dane filed a motion to alter or amend the judgment. Approximately 13 months later, on November 28, 2016, the court denied the motion to alter or amend judgment.

In this timely appeal, Dane raises two questions:

1. Did the [c]ircuit [c]ourt err in reopening the case without a condition precedent being met?
2. Did the [c]ircuit [c]ourt err in finding that fraud had occurred [sufficient] to vacate the foreclosure judgment?

In an effort to persuade us to answer “yes” to both of those questions, Dane argues: (1) that the circuit court should not have entertained Dwarrew’s motion to vacate judgment because at no time prior to the date that the judgment was vacated did Dwarrew ever pay the full amount of the taxes and utility charges that Baltimore City was owed; and (2) that Dwarrew’s claim that he did not receive notice of the judgment should have been rejected by the circuit court because, purportedly, Dwarrew did not sufficiently rebut the private process server’s affidavit of service showing that the relevant legal documents were served upon him prior to March 26, 2015, which was the date the judgment foreclosing Dwarrew’s right of redemption was entered.

I.

BACKGROUND

When property in Baltimore City is sold at a tax sale, the City uses a two-part redemption system. Upon a request made to the City to redeem the property, the City provides the former property owner with the name of the attorney who handled the tax foreclosure sale for the purchaser. Payment of the purchaser’s legal fees, costs and expenses must then be paid to the purchaser’s attorney. If these payments are made, counsel for the purchaser then provides the former owner with a partial release to be given to the Baltimore City Tax Sale clerk. The second part of the redemption process is for the former owner, who is seeking to redeem the property, to pay the City the initial lien amount,

plus interest and any other fees, taxes, utility bills and other charges that have accrued since the date of the tax sale. As mentioned, the initial lien in this case was in the amount of \$2,650.48.

About six weeks after Dane filed, on November 26, 2013, a complaint to foreclose Dwarrew's equity of redemption, Dwarrew contacted Dane's counsel and asked the latter for a redemption statement. Counsel for Dane, on January 10, 2014, emailed Dwarrew a redemption statement that showed that Dane had incurred \$2,124.44 in attorney's fees and other costs in bringing the foreclosure action. The redemption statement included the following language "this amount specifically does not include the principal and interest that should be paid to Baltimore City." Dwarrew, a few days later, paid counsel for Dane the sum of \$2,124.44 and Dane's counsel provided Dwarrew with a partial release. The release stated that it expired in seven days.

Because Dwarrew did not pay Baltimore City in the allotted time, a second release was emailed to Dwarrew, at the latter's request, on February 11, 2014. According to Dwarrew's later testimony, he took the partial release to the Baltimore City Tax Office and was told that all taxes had been fully paid. He evidently was not told by the employee at the tax office to whom he spoke that he was required to pay the lien amount that Dane had paid when it purchased the Property plus interest. According to Dwarrew, because of this misunderstanding, he thought that the tax lien matter had been settled.

Because Dwarrew had not paid the tax lien amount, counsel for Dane, on August 28, 2014, asked the clerk of the circuit court to reissue the summonses in the case so that Dwarrew could be served with suit papers at the address that was on file at the tax office

(1103 N. Lakewood Avenue, Baltimore, Maryland) and to serve Northwest Savings Bank, the holder of the mortgage on the property, at its Baltimore City address.

On October 20, 2014, Dane filed an affidavit of service signed by Joseph Peter Grant, a private process server employed by Dane. Mr. Grant swore that on October 8, 2014, at 1103 N. Lakewood Avenue, Baltimore, Maryland, he personally served “Dwarrew Bullock a/k/a Dwagne” with suit papers in this matter. He described the person served as a black male, 6 ft. tall weighing 200 pounds. Dwagne Bullock is Dwarrew’s identical twin brother. Dwagne Bullock, at all times here relevant, lived at 1103 N. Lakewood Avenue in Baltimore.

On February 4, 2015, Dane’s counsel filed an affidavit of compliance, pursuant to Md. Code (2012 Repl. Vol.), Tax-Property Article, § 14-833(a)(1). The affidavit, signed by Dane’s counsel lists Dwarrew’s address as 1103 N. Lakewood Avenue, Baltimore, Maryland, and also listed the address of Northwest Savings Bank (hereafter “Northwest”) the “beneficiary to [an] open mortgage” on the Property. The affidavit shows that on September 20, 2013, and October 18, 2013, Dane’s counsel sent Northwest and Dwarrew the notice required by § 14-833(a) of the Tax-Property Article. A certificate of service filed with the affidavit states: “I HEREBY CERTIFY that on this 3rd day of February, 2015, a true-copy of the foregoing affidavit of compliance was delivered by first-class mail to the defendants in the matter.” As Dwarrew’s counsel was later to point out, the certificate of service did not specify the address to which the affidavit of compliance was sent.

As mentioned, on March 26, 2015, the Circuit Court for Baltimore City entered an order forfeiting Dwarrew’s right to redeem the property.

On May 6, 2015, Dane filed in the circuit court, a request for a writ of possession of the Property. On May 19, 2015, Dwarrew, *pro se*, filed a pleading titled: “Motion to Petition to [R]edeem.” The body of the motion contained nine words: “property taxes and attorney’s fees were paid in full.” On May 15, 2015, counsel for Dane sent Dwarrew a check in the amount of \$2,124.44, which was the amount Dwarrew had earlier paid Dane’s counsel for a partial release. Next, on June 16, 2015, Dwarrew filed a pleading titled: “Affidavit for Motion to Petition to Redeem.” This pleading, like his earlier one, was succinct, *viz.*, “Property taxes and attorney’s fees were paid in full to the City.” Both those motions were later denied.

On June 22, 2015, Dwarrew, *pro se*, filed a request for an emergency hearing. That request was granted and a hearing was scheduled for August 21, 2015. Before that hearing, counsel entered his appearance for Dwarrew on July 20, 2015 and filed, *inter alia*, a motion to vacate the judgment foreclosing Dwarrew’s right of redemption. Significantly, however, counsel did not allege that Dwarrew had paid the taxes and other charges that were owed to the City.

On August 21, 2015, a hearing was held in the Circuit Court for Baltimore City concerning the motion to vacate. At the outset of the hearing, counsel for Dwarrew stated that his “client [was] ready, willing and able to pay the outstanding lien. . . .” At that hearing, counsel for Dwarrew argued that the City was guilty of constructive fraud because the City’s agent, at the tax office, failed to correctly advise Dwarrew that there still was a lien on the Property. Counsel also argued that Dwarrew didn’t even know that there had been a judgment foreclosing his right to redeem until May 2015 when one of his tenants

notified him that a notice of eviction had been received. The circuit court decided to postpone the hearing and allow Dwarrew's counsel twenty days to submit a memorandum showing that his client was entitled to the grant of a motion to vacate and allowing Dane an additional twenty days to file a reply.

Counsel for Dwarrew, on September 8, 2015, filed a memorandum in further support of his client's motion to vacate the judgment foreclosing Dwarrew's right of redemption. In that memorandum, counsel contended that his client never received notice of the filing, by Dane, of the complaint asking the court to foreclose Dwarrew's right of redemption. Counsel claimed that Dane was guilty of "constructive fraud" because no such notice had been given.

On September 18, 2015, Dane filed a response and opposition to the motion to vacate in which it contended, *inter alia*, that in order to challenge the foreclosure of an owner's equity of redemption, the taxes and other relevant charges due must be paid prior to filing a challenge to the forfeiture or simultaneously with the challenge. Because that condition, precedent to the right to file a motion to vacate had not been met, Dane argued that Dwarrew's motion to vacate should be denied. In support of that argument, Dane cited *Quillens v. Moore*, 399 Md. 97, 125 (2007). Dane's counsel pointed out that as of that date (September 18, 2015) Dwarrew still had not paid to Dane, the collector of taxes, or to the court, the amount of delinquent taxes, utility fees and expenses that were then due. Dane's counsel also contended that there was no constructive fraud because the process server's affidavit of service showed that Dwarrew had been served with suit papers prior to the date that the judgment foreclosing the right of redemption was entered.

On the same date that Dane filed its response to the motion to vacate, counsel for Dwarrew filed a “Motion to Deposit Funds in Court Pending Resolution.” The motion stated that counsel for Dwarrew “hereby deposits the delinquent taxes due (\$3,100.00) into the escrow of this Honorable Court pending the outcome of this litigation.” Six days later, on September 24, 2015, Dane’s counsel filed a response and objection to Dwarrew’s motion to deposit funds, in which Dane’s counsel pointed out, accurately, that the proffered sum of \$3,100.00 was not sufficient to cover the “undisputed amounts still owed by” Dwarrew. Counsel for Dane stressed that the “initial tax lien was for \$2,650.48, and with the statutory interest (18% per annum or \$1.31 per day), the total amount owed was “over \$3,700.00.”¹ Also, as pointed out by Dane’s counsel, Dwarrew still owed legal fees because, on May 15, 2015, counsel for Dane had returned to Dwarrew the attorney’s fees previously paid (\$2,124.44).² In addition, as of September 18, 2015, to redeem the Property as of that date, Dwarrew would have had to pay \$1,886.50 for an overdue water bill, a \$500.00 fine for failing to obtain a license to operate a multi-family dwelling, and \$573.04 for taxes due for the 2014/2015 tax year.

On October 16, 2015, the circuit court had a second hearing concerning Dwarrew’s motion to vacate the judgment foreclosing his right of redemption. At that hearing,

¹ As of September 18, 2015, 815 days had elapsed since the date of the tax sale. This meant that \$1,067.65 (815 x \$1.31) was owed in interest plus the amount of the original tax lien. The total amount due to the City for taxes and interest alone was \$3,718.13 (\$1,067.65 + \$2,650.48).

² On July 12, 2016, the circuit court denied Dwarrew’s motion to deposit funds in court, presumably because the proffered amount was inadequate.

Dwarrew and his identical twin brother both testified. Dwarrew testified that since January 2014, he had been living at 5501 Todd Avenue in Baltimore City. Previously, he had lived with his mother and identical twin brother, Dwagne, at 1103 N. Lakewood Avenue in Baltimore City. Nevertheless, even though he had moved from the Lakewood Avenue address, he stopped by that address two or three times a week to pick up his mail. He testified that he had never been known as Dwagne Bullock and that, contrary to what the private process server said in his affidavit, he was not served with suit papers by a private process server. He also denied receiving any notice whatsoever that a judgment foreclosing his right of redemption had been entered until sometime in May 2015. He admitted, that although he actually lived at 5501 Todd Avenue, on the *pro se* pleadings that he had filed in court when attempting to set aside the judgment foreclosing his right of redemption, he used the 1103 N. Lakewood Avenue address. He explained that he did this because the N. Lakewood Avenue address was the one that was on the tax records as his address. Dwarrew further testified that the description of him given by Mr. Grant, the private process server, was incorrect because he was 5'11", not six feet tall, and he weighed 230 pounds not 200 pounds. Dwarrew added that at all times pertinent he was ready and willing to pay the back taxes owed on the property.

Dwagne Bullock testified that his brother, Dwarrew, had in fact moved from the N. Lakewood Avenue address and was not living there on October 8, 2014, which was the date that the private process server claimed that Dwarrew was served. Dwagne further testified that he was never served by the private process server and that, to his knowledge,

no notice of the complaint to foreclose the right of redemption was ever received at the N. Lakewood Avenue address.

The circuit court, on October 18, 2015, signed an order granting Dwarrew's motion to vacate the judgment foreclosing his right of redemption. The court did so because it found that Dwarrew was never properly served and notified of Dane's complaint to foreclose Dwarrew's right of redemption. In other words, the trial judge believed Dwarrew when he testified that the private process server never served him with a copy of the suit papers on October 8, 2014. In the order granting Dwarrew's motion, the trial judge did not address Dane's contention that, as a condition precedent to filing a motion to vacate a judgment foreclosing a right of redemption, movant must pay all back taxes plus interest and expenses connected with the tax foreclosure sale.

Dane filed a timely motion to alter or amend judgment. That motion was taken under advisement and was not decided for over a year, i.e., November 28, 2016.

Meanwhile, on November 18, 2015, counsel for Dwarrew filed a “motion to set the redemption amount.” In that motion, counsel for Dwarrew stated that his client had “tendered the entire amount demanded by[p]laintiff’s counsel to redeem the property” in the amount of \$11,568.58. That \$11,568.58 figure included the amount of the original tax lien (\$2,650.48) together with a water bill (\$1,886.50), citations (\$1,000.00), legal fees and many other expenses. The court, on July 7, 2016, passed an order establishing the redemption amount at \$11,334.52, including interest on the original judgment up to July 6, 2016. On August 12, 2016, counsel for Dwarrew filed a Line with the court confirming that his client had paid the redemption amount in compliance with the July 7, 2016 order.

II.

DISCUSSION

Dane contends that as a condition precedent to filing a motion to vacate a judgment foreclosing a right of redemption, the former owner must first pay the taxes, expenses and other charges that are due. Dwarrew argues that the rule is that a former property owner, in order to file a motion to vacate a judgment foreclosing a right of redemption, must either pay the delinquent taxes and other expenses prior to filing a motion to vacate or demonstrate that he can bring into court the sum due.

We agree with Dane and reject Dwarrew's contention that a motion to vacate can be filed if a former owner simply proffers that he or she can pay the taxes and expenses owing. The money due must be paid before a motion to vacate is filed or contemporaneously therewith.

In *Quillens v. Moore*, 399 Md. at 125, the Court (quoting *Canaj, Inc. v. Baker and Division Phase III*, 391 Md. 374, 396 (2006)) stated:

We continue to hold that in order to challenge the foreclosure of the equity of redemption in a tax sale, the taxes and other relevant charges acknowledged to be due, either prior to the challenge or simultaneously with it, must, as a condition precedent, be paid. Appellant has not contested the fact that taxes are owed, or in this appeal, the amounts. There is no issue as to his obligation to pay the taxes. If we were to overrule our cases holding that payment is first required, the City would be left where it was before the tax sale. The public would be burdened perpetually with the problems created by the thousands of abandoned properties, which the delinquent owners would be unlikely to ever pay taxes on or ever to rehabilitate.

As can be seen, the condition precedent to filing a motion to vacate is to either: (1) pay the taxes and expenses prior to filing a motion to vacate; or (2) pay the taxes and expenses simultaneously with the filing of the motion to vacate. As Dane pointed out in both the circuit court and in this Court, Dwarrew did neither. And, as can be seen by the language used by the Court in *Canaj*, quoted with approval in *Quillens*, Dwarrew is mistaken when he argues, in effect, that the condition precedent is met by proffering, after the motion is filed, that the former owner can pay the amount owed.

Dwarrew argues, in the alternative, that he was not required to meet the aforementioned condition precedent because he was never served with the complaint to foreclose the equity of redemption and therefore the circuit court did not have jurisdiction “to enter the original judgment.” In this regard, Dwarrew relies on Md. Rule 2-535(b), which reads:

Fraud, mistake, irregularity. On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Dwarrew argues that he demonstrated both fraud and irregularity within the meaning of Md. Rule 2-535(b) because he proved Dane’s failure to properly serve him on October 8, 2014 or to otherwise notify him of the petition to foreclose in accordance with the tax sale statute. Whether Dwarrew proved fraud or irregularity has no bearing on whether Dwarrew was required, as a condition precedent to filing a Md. Rule 2-535(b) motion to vacate, to pay the outstanding taxes and other costs. This was made clear in *Quillens*, 399 Md. at 124-25:

In *Canaj*, the owner of fourteen properties located in Baltimore City, *Canaj*, failed to pay its real property taxes, and the City attempted to sell the properties at a tax sale. Baker purchased the properties and filed complaints seeking to foreclose *Canaj*'s right of redemption, which the circuit court ordered. *Canaj* filed a motion seeking to vacate the judgments based on allegations of fraud, mistake or irregularity; the court denied the motions, and on appeal, we affirmed. The first issue we considered was whether, in order to challenge a tax sale, the individual had to pay the overdue taxes. We determined that he did, stating:

If a delinquent taxpayer can find a way to overturn a tax sale without paying the delinquent taxes, the delinquent taxpayer will never redeem. It is for this reason that the general rule is that in order to challenge a tax sale, the payment of taxes in arrears is a condition precedent. It was not met in the case at bar (at one point prior to the judgments, appellant appeared to question the computation of taxes but not that some amount was due. That issue was abandoned and not raised in the case before us.).

The case law that seems to support the right of a taxpayer to proffer a sum (instead of paying it) only relates (if it applies at all) to claims that the purchase price at the tax sale was inadequate. *It does not change the requirement that in order to challenge the holding of a tax sale, the taxes must be paid as a condition precedent.*

Based on *Canaj* and *Quillens*, we conclude that before a property owner is allowed to challenge a judgment foreclosing his right to redeem based on fraud, mistake or irregularity, the owner must, prior to filing the motion or contemporaneously thereto, pay the taxes, costs, and expenses related to the tax sale. Because Dwarrew did not fulfill that condition precedent, the circuit court should have denied Dwarrew's motion to vacate. Accordingly, there is no need for us to address the second question presented by Dane.

On remand, the court should file an order requiring that the redemption amount (\$11,568.58) paid by Dwarrew be repaid to him.

**JUDGMENT VACATED; CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY WITH INSTRUCTIONS FOR THE COURT TO:
1) FILE AN ORDER DENYING APPELLEE'S MOTION TO VACATE THE JUDGMENT FORECLOSING APPELLEE'S RIGHT OF REDEMPTION;
AND 2) FILE AN ORDER DIRECTING THAT APPELLEE BE REIMBURSED FOR THE REDEMPTION AMOUNT THAT HE HAS PAID. COSTS TO BE PAID BY APPELLEE.**