



ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

NOV - 8 2023

JOHN D. HADDEN
CLERK

GAYLA ATKINS, as Trustee of the)
FRH13, Irrevocable Trust and sole)
member of Fran and GiGi's Painted)
Cottage, LLC,)

Plaintiff/Appellant,)

vs.)

STEVE STATES, and ROBIN ROTHER,)
acting in her official capacity as)
County Treasurer of Kingfisher County,)

Defendants/Appellees.)

Case No. 121,136

Rec'd (date)	11-8-23
Posted	<i>[Signature]</i>
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Distrib	<i>[Signature]</i>
Publish	yes <input checked="" type="checkbox"/> no

APPEAL FROM THE DISTRICT COURT OF
KINGFISHER COUNTY, OKLAHOMA

HONORABLE PAUL K. WOODWARD, DISTRICT JUDGE

REVERSED AND REMANDED

Stephen Jones
JONES, OTJEN & JEWELL
Enid, Oklahoma

For Plaintiff/Appellant

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Enid, Oklahoma

For Defendant/Appellee
Steve States

Jimmy Bunn, Jr.
KINGFISHER COUNTY
ASSISTANT DISTRICT ATTORNEY
Kingfisher, Oklahoma

For Defendant/Appellee
Robin Rother

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Gayla Atkins, as Trustee of the FRH13 Irrevocable Trust and sole member of Fran and GiGi's Painted Cottage, LLC, appeals the district court's order granting Steve States's motion to dismiss her petition to set aside a tax sale and quiet title. After review, we find that the district court erred in granting the motion to dismiss and therefore reverse the order of dismissal and remand for further proceedings.

BACKGROUND

The following facts are taken primarily from Atkins petition. On June 16, 2015, Atkins received a quitclaim deed for the following real property:

The South 990 feet of the West Half (W/2) of the Northeast Quarter (NE/4) of Section Twelve (12), Township Seventeen (17) North, Range Five (5) West of the IM, less and except the east 330 feet of the south 660 feet thereof, and less and except all of the oil, gas and other minerals

R., Doc 1, *Petition to Set Aside Tax Sale and Quiet Title*, pg. 2. (hereinafter the "subject property"). The deed directs the County Treasurer to send the tax statements for the property to an address in Bethany, Oklahoma.¹ Later, on or about June 30, 2019, Atkins alleges she went to the Kingfisher County

¹ Atkins first received the subject property in March 2013 via quitclaim deed from Jack and Frances Hoskins. Tax statements in this deed were also to be sent to the Bethany address. The same tract of land was again conveyed to Atkins by Frances as Trustee of the Jack R. Hoskins Trust via quitclaim deed in June 2015, with the same address listed. As described, neither deed purports to convey any minerals underlying the property. However, on December 29, 2016, Atkins conveyed to herself, as sole member of Fran & GiGi's Painted Cottage, LLC, the minerals underlying the property. The mineral deed provided that tax statements were to be sent to an address in Oklahoma City. Although Atkins maintains that this conveyance "severed the mineral interest" from the rest of the property, we somewhat doubt this assertion given the description of the subject property as "less and except all of the oil, gas and other minerals." Nevertheless, this issue remains open on remand. See note 2, *infra*.

Assessor's office and changed her legal address for tax notices. *Id.* at 3 (¶ 5). The County denies that Atkins ever changed the address. R., Doc. 2, *Answer*, 1 (¶ 2).

On June 14, 2021, the County Treasurer, Robin Rother, sold the subject property at a tax sale to the defendant Steve States. A resale deed was recorded in the Kingfisher County records that same day.

Prior to the tax sale, notice was sent via certified mail to Atkins at the address the Treasurer had on file, which was apparently the Bethany address. It was returned to the County as undelivered. Rother, via the Kingfisher County Sheriff, then posted notice of the tax sale to a fence or gate located on the subject property.

Fourteen months and six days after the tax sale, Atkins filed a petition to set aside the sale and to quiet title. She alleged that as an owner of the subject property she was entitled to, and did not receive, constitutionally sufficient notice of the tax sale. Rother answered, maintaining that the tax sale was valid because Atkins had been given constitutionally sufficient notice.

States filed a special entry of appearance and moved to dismiss. States argued, among other things, that Atkins had sufficient notice of the tax sale in accordance with Oklahoma law and the Constitution, that her action was brought outside an applicable twelve-month statute of limitations, and that she failed to tender the taxes required for her to redeem the property.² Atkins filed a

² In addition to these arguments, States also argued that Atkins, as the sole member of Fran and GiGis's LLC, lacked standing to bring this action because the company owned minerals only and such ownership is "immaterial for purpose of ad valorem assessment." R. 4, *Motion to Dismiss*, 9 (quoting *Okla. Indus. Auth v. Barnes*, 1988 OK 98, ¶ 20, 769 P.2d

response to States's motion to dismiss, arguing that while the county might have complied with Oklahoma's statutory notice requirements, the notice she received of the tax sale was nevertheless constitutionally deficient. She also argued that a different statute of limitations was applicable because the tax sale was void *ab initio*. Finally, she asserted that if the court had found that her pleading was deficient for failure to tender the taxes, she should have been granted leave to amend and interplead the funds to the court clerk.³

The court granted the motion to dismiss citing all three grounds referenced above. Specifically, the court found that "notice of the tax sale ... was proper under Oklahoma law," that the twelve-month statute of limitations had not been complied with, and that the plaintiff failed to tender all taxes, as required by statute. Atkins appeals the dismissal.

STANDARD OF REVIEW

A trial court's dismissal of an action for failure to state a claim upon which relief can be granted is reviewed *de novo*. *Indiana Nat'l Bank v. Dep't of Human Servs.*, 1994 OK 98, ¶ 2, 880 P.2d 371, 375. In ruling on a motion to dismiss, the court must take as true all allegations in the petition and attached exhibits, together with all reasonable inferences. *Id.* ¶ 3. A petition should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of

115, 120-21). The trial court did not address this argument in its motion to dismiss, and we have no need to do so here. The issue remains open on remand. We note only that it is unclear from the record before this Court whether the company owns *any* interest in the surface or minerals of the subject property. *See* note 1, *supra*.

³ We note here that there were five exhibits attached to States's motion to dismiss. The court gave no indication that it considered the exhibits or converted the motion to one for summary judgment.

facts in support of his claim that would entitle him to relief. *Id.* The appellate court must consider whether a plaintiff's petition is legally sufficient. *Fanning v. Brown*, 2004 OK 7, ¶ 4, 85 P.3d 841, 844.

ANALYSIS

The relevant question on appeal is the same as it was below: did Atkins sufficiently plead a lack of notice? Because she did, we find that the order of dismissal must be reversed.

Notice of a tax sale must comply with Oklahoma's notice statute as well as due process. Statutory notice must be as provided in 68 O.S. § 3127. In addition to notice by publication, which is not at issue in this case, the county "shall, at least thirty (30) days prior to such resale of real estate, give notice by certified mail, by mailing to the record owner of said real estate, as shown by the records in the county assessor's office" 68 O.S. § 3127.

From the pleadings, it is unclear if the treasurer complied with the statute in this case. As noted above, in her petition Atkins claims that she "changed the address that she was to be noticed for property taxes" to the Dover address. The county denies this allegation in its answer and apparently mailed the notice to the prior, Bethany address. If the county sent the statutorily required notice to an address other than the one required by statute, the notice was plainly insufficient, and the tax deed would have to be set aside. Where notice is insufficient, "the tax sale and resultant resale tax deed are void." *Crownover*, 2015 OK 35, ¶ 31, 357 P.3d 470, 479. If the resale deed is indeed void, Mr. State's remaining arguments concerning the tendering of taxes and statute of

limitations are of no consequence. *Garcia v. Ted Parks, L.L.C.*, 2008 OK 90, ¶ 15, 195 P.3d 1269, 1273 (“A constitutionally deficient tax sale is void and ineffective, and failure to comply with the notice requirements deprives the county treasurer of jurisdiction.”).

Because the question of notice was placed at issue by the petition, and it is not possible to tell from the petition and answer—the only pleadings contained in the record—whether the county complied with the statute, the trial court erred in granting the motion to dismiss.⁴ Accordingly, we reverse the order and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

FISCHER, J., and HUBER, J., concur.

November 8, 2023

⁴ We offer no opinion regarding the primary question posed by the motion to dismiss, which will clearly be vital to the proceedings on remand, as to whether the “additional steps” taken by the county were reasonable, and thus constitutionally sufficient under the circumstances. See *Crownover v. Keel*, 2015 OK 35, ¶ 18, 357 P.3d 470, 475 (holding that when notice of tax sale is returned unclaimed, the county “must take additional reasonable steps” to provide notice to the owner of the property before it can be sold). The parties clearly disagree as to this point, and there is evidence in the record supporting both suppositions. Compare, R., Doc. 3, *Special Entry of Appearance and Motion to Dismiss*, 5 (asserting that the notice was posted “openly and conspicuously” on the property) with R., Doc. 4, *Response to Defendant Steve States Special Entry of Appearance and Motion to Dismiss by Plaintiff*, 3 (countering that the portion of fence where the notice was posted is wholly unidentifiable and “covered in foliage”). However, the trial court did not purport to convert the motion to dismiss into one for summary judgment, and it would be inappropriate for us to consider this evidence in this appeal. We note only that the adequacy of the posting of the notice of the tax sale on the property, as well as the adequacy of any other “additional steps” the county may have taken to notify Atkins of the sale, remains open on remand.