COURT OF APPEALS
DECISION
DATED AND RELEASED

NOVEMBER 21, 1995

No. 95-1130-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

DONALD J. ANDERSON,

Plaintiff-Appellant,

v.

COUNTY OF DOUGLAS,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Douglas County: JOSEPH A. MC DONALD, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Donald Anderson appeals a summary judgment that dismissed his lawsuit against Douglas County seeking to set aside a tax sale of his real estate and to recover damages under 42 U.S.C. § 1983.[1] Anderson lost

[1] This is an expedited appeal under RULE 809.17, STATS.

his real estate when he failed to pay real estate taxes and respond to the tax sale proceedings. The County gave him notice of the proceedings by publication after attempting without success to provide him notice by certified mail. The trial court correctly granted the County summary judgment if the County showed the nonexistence of material factual disputes and a right to judgment as a matter of law. ***Powalka v. State Mut. Life Assur. Co.***, 53 Wis.2d 513, 518, 192 N.W.2d 852, 854 (1972). Anderson raises several matters that he claims voided the tax sale: (1) § 75.12(3), STATS., required the County to exhaust notice by both personal service and certified mail before resorting to service by publication; (2) § 75.12(1) required the County to serve him twice, once as the real estate's owner and again as its occupant; (3) the County resorted prematurely to service by publication without first making a "diligent search" for Anderson; (4) the County treasurer falsely swore in affidavits that the County had attempted personal service and that the real estate had no occupants; and (5) the County's actions, judged against its true motives, denied him due process and warranted damages under 42 U.S.C. § 1983. We reject these arguments and affirm the summary judgment.

Chapter 75, STATS., governs tax sales of real estate. Under § 75.12(1), STATS., no county clerk may issue a tax deed unless the county treasurer serves "notice of application for tax deed" upon the owner. If the land contains a building and if someone has occupied the building for thirty days before the service of the notice, then the county treasurer must serve the notice on the building's occupant. Section 75.12(1), STATS. The notice must specify that the county will apply for a tax deed after the expiration of three months from the date of service. ***Id.*** The county treasurer has the obligation to serve the notice for application of tax deed. Section 75.12(3), STATS. Under § 75.12(3), the treasurer must serve the notice in the manner that litigants serve a summons and complaint, or serve it by certified mail, with return receipt demanded of the addressee. If notice cannot be given by use of either of these methods, the county treasurer must make an affidavit setting forth the effort to make service and the inability to do so. ***Id.*** The affidavit must be filed with the county clerk, and then notice must be given by publication through a class three notice under ch. 985, STATS., in the county. Section 75.12(3), STATS. Section 75.12(3) provides that the county treasurer's affidavit, together with proof of publication, is deemed completed service of the notice of application for tax deed. The tax deed itself is "presumptive evidence" of the regularity of all the proceedings. Section 75.14(1), STATS.

None of Anderson's arguments merits relief. First, § 75.12(3), STATS., is unambiguous. Courts construe terms in such statutes their ordinary meaning. ***State v. Skamfer***, 176 Wis.2d 304, 307-08, 500 N.W.2d 369, 370 (Ct. App. 1993). On its face, § 75.12(3) does not purport to bar service by publication unless the County first attempts both personal service and certified mail service. It covers these matters in the alternative, using terms like "or" and "either"; it does not use words like "and," "both" or "dual," which might signify that service by publication was a third, not a second resort. This reading is consistent with the practical view the tax sale statutes take of notice; the legislature did not intend such statutes to set up technical obstacles. *See* ***Carroll v. Richland County***, 264 Wis. 96, 99, 58 N.W.2d 434, 436 (1953). We see nothing in § 75.12(3) that denied the County the freedom to try nothing more than certified mail before resorting to service by publication.

Second, § 75.12(1), STATS., does not require the County to make two attempts to serve one person in his separate capacities as owner and occupant. As noted above, the statutes approach notice in a practical way. For example, the county treasurer has no duty to notify all owners of the tax proceedings; notice to one is sufficient. ***Id.*** Understood in this context, § 75.12(1) makes notice dependent on the recipient's identity, not capacity. Owners and occupants get separate notice only when they are separate parties.

Third, the County complied with the "diligent search" requirement before resorting to service by publication. Anderson cites ***Welsh v. Mulligan***, 251 Wis. 412, 420, 29 N.W.2d 736, 740 (1947), which construed § 75.12(3), STATS., to require municipalities to make a "diligent search" for the owner before they may resort to service by publication. Anderson has not persuaded us that this rule governs service by certified mail. At any rate, if the rule does apply, the County's actions qualified as a "diligent search." It sent notice by certified mail to a valid Anderson address, the post office box number he had furnished. The postal service returned the County's notice as "unclaimed," not as "addressee unknown." According to information that the postal service stamped on the undelivered envelope, it had put two postal service notices in Anderson's post office box within a seven-day period indicating that the post office had certified mail for him. We conclude that the "diligent search" rule does not compel counties to send notices to a landowner's alternative addresses, even if these are readily ascertainable, as long as counties do furnish notice to a valid address.

The county treasurer's affidavits contained no falsehoods that voided the tax proceedings. None of the claimed falsehoods were material; they pertained to the collateral issues of personal service and occupancy. As long as the treasurer's affidavit truthfully covered the material issues, by truthfully stating that the County attempted service by certified mail to the owner's valid address, it satisfied the statutes. None of the cases Anderson has cited held that immaterial or collateral inaccuracies have the effect of voiding otherwise valid tax sales. *See* ***Carroll***, 264 Wis. 96, 58 N.W.2d 434; ***Welsh***, 251 Wis. 412, 29 N.W.2d 736; ***Rosenberg v. Borst***, 185 Wis. 223, 201 N.W. 233 (1924); ***Preston v. Iron County***, 105 Wis.2d 346, 314 N.W.2d 131 (Ct. App. 1981). In fact, § 75.22, STATS., states that mistakes and irregularities do not invalidate tax deeds unless they affect "the groundwork of the tax," or put another way, its fundamental basis. The collateral matters here qualify as such inconsequential irregularities; they have no bearing on whether the County treated Anderson fairly in terms of giving him notice, allowing for redemption, selling the real estate, and collecting the unpaid taxes. They also do not rebut the presumption of regularity that attached to the proceedings by virtue of § 75.14(1), STATS.

Last, Anderson has no grounds to pursue a 42 U.S.C. § 1983 claim against the County for taking property without due process. He believes that the County simply used the unpaid taxes as a means to rid the area of his building, which he claims the County considered an eyesore. The County adhered to the tax sale statutes; they have a rational connection to municipal revenue raising and provide landowners adequate notice. The tax sale thus satisfied substantive and procedural due process; ***State ex rel. Shroble v. Prusener***, 185 Wis.2d 102, 113-14, 517 N.W.2d 169, 173 (1994) (substantive); ***Irby v. Macht***, 184 Wis.2d 831, 843, 522 N.W.2d 9, 13-14 (1994) (procedural); regardless whether the County may have had some additional motive or incentive besides unpaid taxes, for a tax sale. Anderson's position has no merit. The unpaid taxes, together with the landowner's nonexercise of his redemption rights, give counties the keys to the real estate; landowners have no basis to later question counties' motives on the basis of due process. The County demonstrated the nonexistence of material factual disputes and a right to judgment as a matter of law. In sum, the trial court correctly granted the County summary judgment dismissing Anderson's complaint.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.