

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

|                        |   |                         |
|------------------------|---|-------------------------|
| STARK COUNTY TREASURER | : | JUDGES:                 |
|                        | : | W. Scott Gwin, P.J.     |
| Plaintiff-Appellee     | : | Julie A. Edwards, J.    |
|                        | : | Patricia A. Delaney, J. |
| -vs-                   | : | Case No. 2009 CA 00171  |
|                        | : |                         |
| CHARLES D. COPELAND    | : | <u>OPINION</u>          |
| Defendant-Appellant    | : |                         |

CHARACTER OF PROCEEDING: Civil Appeal from Stark County  
Court of Common Pleas Case No.  
2009 CV 00305

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: December 29, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO  
Prosecuting Attorney  
Stark County, Ohio

CHARLES D. COPELAND  
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BY: JOHN F. ANTHONY, II  
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*Edwards, J.*

{¶1} Appellant, Charles D. Copeland, appeals a summary judgment of the Stark County Common Pleas Court entering judgment in favor of appellee Stark County Treasurer on a complaint for a tax foreclosure.

#### STATEMENT OF FACTS AND CASE

{¶2} Appellant failed to pay real estate taxes to appellee on his property located at 1233 Oxford Ave. N.W., in Canton. The parcel accumulated delinquent taxes which were posted on appellee's tax duplicate. Appellee conducted a sale of tax lien certificates created by the delinquent taxes on several parcels of property, including appellant's property, on November 11, 2006. Plymouth Park Tax Services, LLC (hereinafter "Plymouth") was the purchaser of the tax lien certificate covering appellant's property. The lien certificate covered appellant's delinquent taxes for the year 2005. Additional tax lien certificates on appellant's parcel were sold to Plymouth on September 27, 2007, for delinquent taxes for the year 2006, and again on September 30, 2008, for delinquent taxes for the year 2007. The total redemption amount of these tax lien certificates is \$8,602.22, which appellant did not pay. In addition, appellant failed to pay taxes for the year 2008 resulting in a delinquency in the amount of \$942.48, which is owed directly to appellee.

{¶3} Plymouth requested foreclosure on the unredeemed certificates pursuant to R.C. 5721.37(A)(1). Pursuant to R.C. 5721.37(C)(1), the action was brought in appellee's name. On January 22, 2009, appellee filed a complaint for tax foreclosure in the Stark County Common Pleas Court.

{¶4} Appellant filed an answer and motion to dismiss the complaint on February 13, 2009. The court overruled the motion to dismiss on February 25, 2009. Appellant filed a notice of appeal. This Court dismissed the appeal for want of a final, appealable order on May 28, 2009.

{¶5} Appellee filed a motion for summary judgment on June 5, 2009. Appellee attached an affidavit of Gary Ziegler, Stark County Treasurer, and the duplicate tax certificates which were authenticated by the affidavit. The affidavit averred that the redemption prices of the tax certificates were due and unpaid, and the subject parcel had not been redeemed.

{¶6} Appellant responded to the summary judgment motion without presenting evidence. In his response to summary judgment, appellant also moved to strike appellee's filings due to fraud and filed a counterclaim for damages for filing a fraudulent claim.

{¶7} On June 24, 2009, the court granted the motion for summary judgment and ordered appellee to prepare an appropriate foreclosure decree within ten days. On June 25, 2009, the court struck the counterclaim which was filed by appellant without leave of court and denied appellant's motion to strike. On July 6, 2009, the court entered judgment on the decree of foreclosure and order of sale. Appellant assigns fifteen errors on appeal:

{¶8} "I. BOTH THE FEDERAL GOVERNMENT AS WELL AS THE CITY OF CANTON ARE SUPPOSE TO HOLD A DPRIVATION [SIC] HEARING BEFORE PROPERTY INTEREST CAN BE NEGATIVELY EFFECTED ESPICALLY [SIC] A PROPERTY FORFEITUR...E [SIC] (CITATIONS OMMITTED).

{¶9} “II. COURT OF COMMON PLEAS ERRORED [SIC] IN ACCEPTING SUCH A CASE OR TRIED TO HEAR SUCH A CASE (WHERE NO TRANSCRIPTS HAVE BEEN FILED TO SHOW BOTH PLAINTIFF AND DEFENDANT HAVE A LEGAL CLAIM TO THE PROPERTY) THE TRANSCRIPTS ARE NEEDED TO PROVIDE AN OPPORTUNITY TO INTRODUCE EVIDENCE (CITATIONS OMITTED).

{¶10} “III. BOTH PLAINTIFF AND DEFENDANT [SIC] FAILED TO SUPPLY AN ACCEPTABLE PLEADING TO HOW JUST CAUSE (FOR TRIAL IN COURT OF COMMON PLEAS DOCUMENTS ATTACHED AS EXHIBITS TO PETITION [SIC] DO NOT CONSTITUTE A RECORD OF EVIDENCE FROM WHICH A TRIAL COURT SHOULD DRAW ITS CONCLUSION. (CITATIONS OMITTED)

{¶11} “IV. COURT OF COMMON PLEAS ERRORED [SIC] BY NOT REQUIRING A TRANSCRIPT (THAT THE COURT SHALL BE CONFINED TO THE TRANSCRIPTS AS FILED MEANS THAT FACTUAL RECORD IN CASE IS LIMITED TO RECORD MADE UP IN ADMINISTRATIVE FORUM. (CITATIONS OMITTED).

{¶12} “V. IF THE LEGISLATIVE BODY/OR GOVERNMENT/CITY OR STATE (HAS CONDUCTED ITS HEARING IN CONFORMITY WITH STATUTORY REQUIREMENTS THEN COMMON PLEAS COURT IS CONFINED IN ITS REVIEW OF THAT PROCEEDINGS IN WHICH BOTH THE DEFENDANT I.R.S. AND PLAINTIFF HAS FILED TO DO, THERE WAS NO NOTICE OR OPPORTUNITY TO PRESENT ANY EVIDENCE TO SUPPORT MY POSITION, NOTHING LEGAL WAS DONE. (CITATIONS OMITTED).

{¶13} “VI. COURT OF COMMON PLEAS MAY NOT (NOT BLATANTLY SUBSTITUE [SIC] ITS JUDGMENT FOR THAT OF THE AGENCY AND DECISION

MADE ON THE PROBATIVE EVIDENCE ON THE WHOLE RECORD AS NOTED IN EARLIER LEGAL ARGUMENTS THAT WOULD INCLUDE THE TRANSCRIPTS THAT THE PARTIES DON'T HAVE BECAUSE THEIR ACTIONS ARE ILLEGAL AND UNCONSTITUTIONAL [SIC]. (CITATIONS OMITTED).

{¶14} “VII. (A) THE FILING INTO THE COURT SYSTEM WITHOUT HOLDING A HEARING FIRST DENIES A PERSON OF THEIR CONSTITUTIONAL [SIC] RIGHTS RT [SIC] A FAIR TRIAL (PREPONDERANCE OF THE EVIDENCE STANDARD OF REVIEW IS INAPPLICABLE TO COMMON PLEAS COURT NO INTERROGATIONS ALLOWED OF WITNESSES OR OF THE LEGISLATIVE BODY CONCERNING ISSUES IN COURT....CASE CANNOT BE HEARD DE NOVO.

{¶15} “VII. (B) TREASURER IS NOT A PROPER PARTY INVOLVED IN THIS CASE ONCE THEY ILLEGALLY SOLD THE PROPERTY WITHOUT NOTICE OR HEARING THEY COULD NOT ACCEPT MONEY AND ACT AS A PRIVATE PARTY OR LEGAL COUNSEL CONCERNING THEIR OWN DECISIONS [SIC] TO DO SOMETHING (IN GENERAL ADMINISTRATIVE AGENCY HAS NO PARTISAN [SIC] INTEREST IN ITS DECISION AND MAY NOT PARTICIPATE IN APPEALATE [SIC] REVIEW OF ITS OWN DECISION.....SO THEY WERE NOT A PROPER PARTY TO FILE IN THE COURT OF COMMON PLEAS AND SUCH AN ACT INJURED ONE IN THEIR CONSTITUTIONAL RIGHT TO A FAIR TRIAL. (CITATIONS OMITTED).

{¶16} “VIII. (A) THE FILINGS OF BOTH THE FEDERAL GOVERNMENT AND THAT OF THE TREASURERS OFFICE WAS DONE IN BAD FAITH, THERE WAS NO TRANSCRIPT PROVIDED TO COURT SHOWING THAT THEY WERE INTITLED [SIC]

NO TRIAL AS REQUIRED UNDER AMENDMENT 14 NO PROOF OR COMPLETE RECORD SUBMITTED BAD FAITH DEFINED AS A DISHONEST PURPOSE MORAL OBLIGATION CONCIIOUS [SIC] WRONG DOING (OR) BREACH OF A KNOWN DUTY THROUGH SOME ULTERIOR MOTIVE OR ILL WILL PARTAKING IN OF A NATURE OF FRAUD. (CITATIONS OMITTED).

{¶17} “IX. (A) TREASURERS DEPARTMENT ACTED IN AN CORRUPT MANNER BY ADDING AND COLLECTING FROM THE ILLEGAL SALE, MONEY TO ACT AS LEGAL COUNSEL, AND ADD THAT TO THE TAX BILL, AS ATTORNEY FEES INVOLVED BECAUSE THEY ARE NOT A PROPER PARTY IN SAID CASE OR ANY CASE OUTSIDE OF THEIR OFFICES SEE ARGUMENT 2<sup>ND</sup> #7.

{¶18} “VIII (B) FILINGS MADE BY PLAINTIFF WHO WAS NOT A PROPER PARTY AND DEFENDANT FILED RECORDS AND DUCUMENT [SIC] WITH THE PURPOSE TO MISLEAD A PERSON INTO BELIVING [SIC] THEY HAD A CLAIM SEE EXHIBIT ARGUMENT #8.

{¶19} “IX. (B) TREASURY CANNOT USE ITS OFFICE COLLECT CITY MONEY THEN CHARGE PEOPLE AN ADDITIONAL MONEY FOR A JOB HE IS ALREADY GETTING PAYED [SIC] FOR FEE,S [SIC] ON A CASE THAT NEVER HAPPENED.

{¶20} “X. WRIT OF MANDAMS [SIC] THE I.R.S. HAS TAKEN ALL OF MY MONEY WITHOUT TRIAL TO PROVE THAT I OWE SUCH AN AMOUNT, TREASURY DEPARTMENT DENIED ME DUE PROCESS BY USING THE LEGAL SYSTEM TO DENY ONE,S [SIC] LEGAL RIGHTS SEE ARGUMENT #9.

{¶21} “XI. DEFENDANT CHARLES D COPELAND IS ENTITLED TO DAMAGES IN THE AMOUNT OF 1.5 MILLION FROM EACH PARTY FOR THEIR

WILLFUL MISCONDUCT AND ABUSE OF PROCESS, FURTHER FOR THEIR TOTAL LACK OF RESPECT FOR THE LEGAL SYSTEM AND TRY TO STEAL FROM PEOPLE WITHOUT DUE PROCESS

{¶22} "XII. SAID COURT IN THIS CASE HAS MADE SEVERAL FINAL DECISIONS IN WHICH THERE IS TO BE ONE FIRST DECISION WAS THAT DEFENDANT CHARLES D COPELAND WAS IN DEFAULT, SECOND NOW IS THAT DEFENDANT DID ANSWER BUT YOU FOUND IN FAVOR OF [SIC] DEFENDANT I.R.S. ON ISSUES STILL PENDING IN ANOTHER COURT FURTHER TAX PAYER ADVOCATE IS STILL INVESTIGATING THE CLAIMS DEALING WITH THE BACK TAXES SEE EXHIBIT DATED JULY 17<sup>TH</sup> 2009 SO HOW DID YOU COME UP WITH A DECISION THAT THEY ARE INTITLED [SIC] TO MONEY (BACK TAXES) WHEN ITS [SIC] STILL UNDER INVESTIGATION AND THE FEDERAL CASE HAS YET TO BE RESOLVED.

{¶23} "XIII. WITH THIS DECISION YOU FAILED TO DECIDE IF THE I.R.S. OWED ME MONEY IN MY FILINGS, SO IF THEY DON'T OWE ME MONEY THEN YOU IMPLIED THAT I COMMITTED [SIC] FRAUD UNDER 18 U.S.C. 18 § 1001 SO IF I DID ANSWER WHAT WAS THE VERDICT [SIC] DEALING WITH THE TAX FILINGS SO YOU I GUESS HAVE IMPLIED THAT I COMMITTED [SIC] TAX FRAUD ON A CASE STILL PENDING IN FEDERAL COURT.

{¶24} "XIV. WHAT HAPPENED TO THE OTHER PLAINTIFF FILES CLEARLY SHOWS THAT ANOTHER PARTY WAS INVOLVED SO WHAT HAPPENED TO HIM OR THEM WHO SUPPOSEDLY ARE THE NEW OWNERS NOW WHERE IS THEIR CLAIM.

{¶25} “XV. SO IF THE INVESTIGATION IS STILL GOING ON DEALING WITH BACK TAXES AND NO TRANSCRIPTS WERE PROVIDED AS REQUIRED BY LAW THEN WOULD IT NOT BE UNDERSTANDABLE THAT THE I.R.S. COMMITTED [SIC] FRAUD UNDER 18 § 1001 OR IS IT ME SOMEBODY LIED WHO IS IT YOU CAN'T HAVE TWO TRUTHS SOMEBODY LIED AND IT DAMSURE [SIC] WASN'T ME BECAUSE I,D [SIC] BE IN JAIL RIGHT NOW ESPECIALLY SINCE I WENT FACE TO FACE WITH AN ADUIT [SIC] JUST A STATEMENT ALONE SWORN OR UNSWORN COULD LAND ME IN JAIL NOW WE ARE LOOKING AT COURT FILINGS SWORN STATEMENTS, ALONG WITH ITEMS MAILED TO THE I.R.S. SHOULD I GO TO JAIL OR NOT.”

I

{¶26} In his first assignment of error, appellant argues that the federal government and the City of Canton are required to hold a “deprivation hearing” before a property interest can be negatively affected, especially by forfeiture.

{¶27} The instant action is a tax foreclosure filed pursuant to R.C. 5721.10, 5721.37, and 5721.18(A). The action does not relate to the forfeiture of property or to claims of the federal government or City of Canton. The action was brought by appellee on behalf of himself and Plymouth, the certificate holder, pursuant to R.C. 5721.37(C)(1) on the basis of outstanding, unredeemed tax lien certificates and delinquent taxes not a part of the tax lien certificates. Nothing in the statutory procedure requires the federal government or the city to hold a hearing.

{¶28} The first assignment of error is overruled.

## II

{¶29} Appellant argues that the court erred in not requiring transcripts and evidence before deciding the case. It appears appellant is challenging the procedure by which summary judgment was entered by the court without a full trial.

{¶30} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 36. As such, we must refer to Civ. R. 56(C) which provides in pertinent part: “Summary Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.”

{¶31} Pursuant to the above rule, a trial court may not enter summary judgment if it appears a material fact is genuinely disputed. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party may not make a conclusory assertion that the

non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which demonstrates that the moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating that there is a genuine issue of material fact for trial. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 1997-Ohio-259, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-107.

{¶32} The affidavit of Gary Ziegler, Stark County Treasurer, states that real estate assessments, penalties and interest in the amount of \$8,602.22 and delinquent taxes in the amount of \$942.48 are due and have not been paid on appellant's property. The documentation supporting these claims was attached to the affidavit and authenticated by the affidavit. The affidavit further states that on October 10, 2008, the tax lien certificate holder filed with the treasurer a request to foreclose the lien pursuant to R.C. 5721.37. The affidavit claimed a valid first lien on the premises for the certificate redemption price, together with all unpaid taxes, assessments, penalties, interest and court costs.

{¶33} Appellant filed no evidentiary materials in response to the motion for summary judgment. As appellee presented evidence establishing that he was entitled to judgment on the complaint as a matter of law, the court did not err in entering summary judgment on the complaint.

{¶34} The second assignment of error is overruled.

## III

{¶35} In his third assignment of error, appellant appears to argue that the court erred in overruling his motion to dismiss the complaint because appellee failed to supply an acceptable pleading.

{¶36} Civ. R. 8(A) requires that a pleading setting forth a claim for relief contain a short and plain statement of the claim showing that the party is entitled to relief, and a demand for judgment for the relief to which the party claims to be entitled. The complaint in the instant case sets forth a claim in tax foreclosure against appellant's property for the unredeemed tax lien certificates and delinquent taxes charged against appellant's property. The complaint sets forth a right to recover under R.C. 5721.37, R.C. 323.25, R.C. 5721.18(A), and R.C. 5721.10. Appellant has not demonstrated that appellee failed to supply an acceptable pleading.

{¶37} The third assignment of error is overruled.

## IV, V, VI, VII(A)

{¶38} In his next four assignments of error, appellant appears to challenge the summary judgment proceeding. For the reasons stated in assignment of error II, assignments of error IV, V, VI, and VII(A) are overruled.

## VII(B), VIII(B)

{¶39} In these two assignments of error appellant argues that the treasurer is not a proper party to file the instant action after selling the tax lien certificates.

{¶40} R.C. 5721.37(C)(1) provides:

{¶41} "With respect to a certificate purchased under section 5721.32, 5721.33, or 5721.42 of the Revised Code, if the certificate parcel has not been redeemed and at

least one certificate respecting the certificate parcel, held by the certificate holder filing the request for foreclosure and eligible to be enforced through a foreclosure proceeding, has not been voided under section 5721.381 of the Revised Code, the county treasurer, within five days after receiving a foreclosure request and the payment required under division (B) of this section, shall certify notice to that effect to the county prosecuting attorney and shall provide a copy of the foreclosure request. The county treasurer also shall send notice by ordinary first class or certified mail to all certificate holders other than the certificate holder requesting foreclosure that foreclosure has been requested by a certificate holder and that payment for the tax certificates is forthcoming. Within ninety days of receiving the copy of the foreclosure request, the prosecuting attorney shall commence a foreclosure proceeding in the name of the county treasurer in the manner provided under section 323.25, sections 323.65 to 323.79, or section 5721.14 or 5721.18 of the Revised Code, to enforce the lien vested in the certificate holder by the certificate. The prosecuting attorney shall attach to the complaint the foreclosure request and the county treasurer's written certification."

{¶42} Pursuant to this section, the county treasurer is the proper party to bring a foreclosure action upon request of the certificate holder. The procedure outlined by the statute was followed by appellee to institute the instant action.

{¶43} Assignment of error VII(B) and assignment of error VIII(B) are overruled.

#### VIII(A)

{¶44} Appellant again appears to challenge the entry of summary judgment without a trial, arguing that the lack of a trial constituted bad faith or fraud. For the

reasons stated in assignment of error II, summary judgment was appropriate in the instant case, and this assignment of error is overruled.

IX(A), IX(B)

{¶45} In these two assignments of error, appellant argues that the treasurer cannot add a fee to the amount of taxes owed to compensate the prosecutor to act as legal counsel because the treasurer is not a proper party, and the prosecutor is already getting paid for his job.

{¶46} As discussed in assignments of error VII(B) and VIII(B), the treasurer is the proper party to bring the instant action under R.C. 5721.37(C)(1). Further, the treasurer is permitted to charge a fee to cover the county prosecutor's costs to prosecute the action pursuant to R.C. 5721.37(B)(3).

{¶47} Assignments of error IX(A) and IX(B) are overruled.

X

{¶48} Appellant's tenth assignment of error is not pertinent to the litigation before this Court and is overruled.

XI

{¶49} Appellant claims he is entitled to damages in the amount of \$1.5 million for willful misconduct and abuse of process. However, no action for damages was properly before the trial court. The eleventh assignment of error is overruled.

XII, XIII

{¶50} Appellant's twelfth and thirteenth assignments of error relate to tax claims pending in federal court and are not pertinent to the issues in the instant action. Assignments of error XII and XIII are overruled.

XIV

{¶51} Appellant's claim that the file clearly shows that another party was involved is without merit. The fourteenth assignment of error is overruled.

XV

{¶52} Appellant's final assignment of error relates to an investigation with the IRS, which is not pertinent to the instant case. Appellant also again appears to challenge the entry of summary judgment without a trial. For the reasons stated in assignment of error II, summary judgment was appropriate in the instant case, and this assignment of error is overruled.

{¶53} The judgment of the Stark County Common Pleas Court is affirmed.

By: Edwards, J.

Gwin, P.J. and

Delaney, J. concur

s/Julie A. Edwards

s/W. Scott Gwin

s/Patricia A. Delaney

JUDGES

JAE/r1103

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

|                        |   |                        |
|------------------------|---|------------------------|
| STARK COUNTY TREASURER | : |                        |
|                        | : |                        |
| Plaintiff-Appellee     | : |                        |
|                        | : |                        |
| -vs-                   | : | JUDGMENT ENTRY         |
|                        | : |                        |
| CHARLES D. COPELAND    | : |                        |
|                        | : |                        |
| Defendant-Appellant    | : | CASE NO. 2009 CA 00171 |

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to appellant.

s/Julie A. Edwards

s/W. Scott Gwin

s/Patricia A. Delaney

JUDGES