IN THE COURT OF APPEALS

WINSTON T. KNOWLES and LINDA KNOWLES,	)	HAMILTON CHANCERY
	)	C.A. NO. 03A01-9606-CH-00209
Plaintiffs-Appellants	)	
	)	
vs.	)	HON. R. VANN OWENS
	)	CHANCELLOR
	)	
STATE OF TENNESSEE, CHATEM, INCORPORATED, PHILIP E. COX and EMILY B. COX,	)	AFFIRMED AND REMANDED
	)	
Defendants-Appelees	)	

FILED

November 20, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

JOHN C. CAVETT, JR., Cavett & Abbott, Chattanooga, for Appellants.

DAVID W. NORTON, and WM. SHELLEY PARKER, JR., Chattanooga, for Appellees.

O P I N I O N

McMurray, J.

This action was originally filed against the defendants listed in the caption. The complaint was later amended, however, and The City of Chattanooga and Hamilton County were added as defendants and the defendant, State of Tennessee was dismissed from the action. The complaint sought to have a tax sale of certain properties claimed by the plaintiffs set aside. The trial court denied relief. We affirm the judgment of the trial court.

The sole issue presented in this appeal is whether there was proper service of process on the plaintiffs before the property was sold.

The plaintiffs were the owners of several tracts of land located in Chattanooga and Hamilton County which were ordered sold for delinquent taxes by the chancery court. Included were the tracts which are the subject of this action. The properties about which the plaintiffs complain are Lot 3, Rawlings Subdivision and Lot 3, Chattanooga Medicine Company.

The plaintiffs here were named defendants in the chancery court suit. The plaintiffs did not respond to the complaint and a default judgment was entered against them. The property in question was then offered for sale pursuant to an order of the chancery court. The City of Chattanooga and Hamilton County purchased both parcels. The plaintiffs failed to exercise their

right of redemption within the time permitted by law. Thereafter, the City of Chattanooga and Hamilton County conveyed Lot 3, Rawlings Subdivision to the defendants, Philip E. Cox and Emily B. Cox. Lot No. 3, Chattanooga Medicine Company was conveyed to Chatem, Incorporated.

It is insisted by the plaintiffs that the plaintiff, Ms. Knowles, was not properly served with process as to either tract. Mr. Knowles insists that he was not served with proper process on Lot No. 3, Chattanooga Medicine Company.

Service of process in delinquent tax suits is controlled by T.C.A. § 67-5-215 which provides in pertinent part as follows:

> **67-5-2415. Notice to taxpayer of suit**. —(a) The defendant, when served in any manner according to the Rules of Civil Procedure, either by mail or in person, does not have to be served with a copy of the complaint and exhibit and instead, the clerk may issue a notice to accompany the summons.
>
> (b) The notice shall identify the suit mentioned in the summons sufficiently to enable the taxpayer to know what delinquent taxes the taxpayer is being sued for and what property is being subject to the lien.
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> (c) The summons and notice may be for more than one (1) suit where suits have been consolidated.
>
> (d) Constructive service of process shall be made as now provided by law.
>
> (e) In all counties, personal service of process on the defendant may be dispensed with and the summons and notice may be sent by certified or registered mail, return receipt requested.

> (1) The return of the receipt signed by the defendant, spouse, or other person deemed appropriate to receive summons or notice as provided for in the Rules of Civil Procedure, or its return marked "refused," evidenced by appropriate notation of such fact by the postal authorities, and filed as a part of the record by the clerk, with notation on the docket of the true facts, shall be evidence of personal notice.
>
> (2) In the event the return receipt does not establish that it was signed by the defendant or the defendant's authorized agent or that the notice was refused, then the court may find through independent proof that the defendant had actual notice in compliance with notice requirements.
>
> (3) If the court does not find that the defendant had actual notice, it may order such other and further action to be taken to give the defendant notice.

The appellant insists that this case involves only an issue of law and concludes that our standard of review is de novo without any presumption of correctness. Since there are no disputed material facts regarding Lot No. 3 of Rawlings Subdivision, we agree that the issue may be disposed of as a matter of law. The resolution of the service of process issue relative to Lot No. 3, Chattanooga Medicine Company, however, was based upon findings of fact by the trial court. Therefore, our standard of review, as to that tract, is de novo upon the record, accompanied by a presumption of correctness unless the evidence preponderates otherwise. Rule 13(d), Tennessee Rules of Appellate Procedure.

As to Lot No. 3, Rawlings Subdivision, service was attempted by certified mail, return receipt requested. A summons and notice

addressed to "Knowles, Winston T. & Linda was issued and mailed "certified mail, return receipt requested." The plaintiff, Mr. Knowles, received the summons and notice and signed the receipt. Mrs. Knowles argues that since she was not signatory to the receipt for the mail and did not individually receive a notice, she was not served. We respectfully disagree. "The return of the receipt signed by the ... spouse ... shall be evidence of personal notice." See T.C.A. § 67-5-2415 above. Further, Rule 4.03 provides that "[i]f the return receipt is signed by the defendant, or by a person designated ... by statute, service on the defendant is complete. (Emphasis added). Since T.C.A. § 67-5-2415 specifically designates a spouse as a person who may sign a receipt and whose signature shall consitute evidence of personal service, we are of the opinion that the service of a summons and notice was complete as to both plaintiffs on Lot No. 3, Rawlings Subdivision. We find no error in dismissing the suit against the defendants, Philip E. Cox and Emily B. Cox.

As to Lot No. 3, Chattanooga Medicine Company, an evidentiary hearing was held by the chancellor. At the conclusion of the trial, the court found that the plaintiffs had been properly served and accordingly, the plaintiff's action was dismissed.

The record reflects that the plaintiffs were the owners of 20 to 25 parcels of land in Hamilton County. Property taxes were not

timely paid on several of the parcels. The plaintiff, Mr. Knowles adknowledges receiving ten or twelve summons concerning the tax sale. He admitted receiving a summons on his home and signing a receipt for the certified mail. He denied, however, that he received a summons on the Chattanooga Medicine Company property. He specifically denied that the summons was contained in the envelope in which the summons on his residence was dispatched to him. He further admitted, however, that he had other parcels of land in the sale, that he attended the sale, and he redeemed some of the properties. He admitted that he received a copy of a motion for a default judgment in the tax suit. In response to a question asked on cross examination Mr. Knowles stated: "... the default judgment is not invalid. I still stipulate I owe the taxes. I intended to pay them before the redemption period was up and that's where things went wrong."

Additionally, Mr. Knowles admitted receiving a letter from a tenant advising him that the property was being acquired by Hamilton County. He also acknowledged receiving a letter from Ms. Rebecca Browder, Real Property Manager for Hamilton County advising him that the property had been acquired by Hamilton County. The letter was dated August 31, 1992. The letter advised Mr. Knowles that the property could be redeemed by paying the taxes by July 2, 1993. He stated that he intended to redeem the property and knew that he had a year to do so. He failed to do so.

It was clearly demonstrated by his own admission that Mr. Knowles was a poor record keeper. He knew, however, that he was delinquent on his 1988 taxes and that the only property that he was concerned about was his home. He specifically denies that he ever received a summons regarding the Chattanooga Medicine Company property.

On the other hand, the defendants assert that the summons for the property in question was mailed to the plaintiffs in the same envelope that contained the summons regarding the other tract of land involved in this case.

Mr. Jessee Potter, process server for the Clerk and Master of the chancery court testified that he was the only person who sent out the summonses in delinquent tax cases. He explained that there was a customary and routine procedure in place in the Clerk and Master's office for the issuance of service of process in back tax cases. He explained in detail how the procedure operated. Specifically, Mr. Potter explained that if two parcels of land contained consecutive parcel numbers and were going to the same address, they were placed in the same envelope for mailing. Such was the case here.

At the conclusion of all the proof the chancellor found as follows:

* * * *

> Under all these circumstances, the court — after hearing the numerous summons that the plaintiff received, he's admitted sloppy record keeping on his taxes — is of the opinion and finds that the preponderance of the evidence is to the effect that Mr. and Mrs. Knowles did receive the summons on the property in question; it did not have a specific legal description or address, but it did have the item number pertaining to this property in question which is the subject of this lawsuit.
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> The court not only finds that he was actually served as to this item number, that if not, he certainly had constructive service by the inclusion of this being one of many pieces of property for which Mr. and Mrs. Knowles were admittedly served.
>
> If it was not actual service, there was constructive service. And in fact, in this situation due process was served, because he was before the court, he certainly had notice from which he could ascertain any and all details in regard to the suit of the county and the city to sell the property.

* * * *

It is well-settled law that a taxpayer must be before the court either on actual or constructive service, else the judgment is of no effect. Rast v. Perry, 532 S.W.2d 555 (Tenn. 1976). It is also well-settled that "where the taxpayer is not properly before the court, the resulting decree and sale is a nullity as to him and may be assailed at any time." Marlowe v. Kingdom Hall of Jehovah's Witnesses, 541 S.W.2d 121 (Tenn. 1976). Of course, the converse is true. Notice, whether formal, actual, or constructive is sufficient so long as it is of such character as to make the taxpayer aware of the proceedings and give him an opportunity to

pay the taxes and make his defenses. Esch et al v. Wilcox, et al, 178 S.W.2d 770 (Tenn. 1944). See also Marlowe, supra.

There is no doubt that in this case the defendant had actual notice of the pending litigation and he was served with multiple summonses. He was aware of the proceedings, however, he neglected to appear and take advantage of his opportunity to pay his taxes or make his defenses within the time prescribed by law.

Our review of the record does not persuade us that the evidence preponderates against the findings of the trial court. Accordingly, we affirm the judgment. Costs are taxed to the appellant and this case is remanded to the trial court for the collection thereof.

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Don T. McMurray, J.

CONCUR:

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Houston M. Goddard, Presiding Judge

____
Charles D. Susano, Jr., Judge

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ORDER

This appeal came on to be heard upon the record from the Chancery Court of Hamilton County, briefs and argument of counsel. Upon consideration thereof, this Court is of opinion that there was no reversible error in the trial court.

We affirm the judgment of the trial court. Costs are taxed to the appellant and this case is remanded to the trial court for the collection thereof.

PER CURIAM