

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JULY TERM 2002

DONALD MILLER;
CLAUD BREWSTER BROWN;
CITIZENS AND SOUTHERN NATIONAL
BANK n/k/a Nations Bank, N.A.; and
NATIONAL BANK OF NORTH
CAROLINA n/k/a Nationsbank,

Appellants,

v.

THOMAS P. KNAPP,

Appellee.

CASE NO. 4D01-1919

Opinion filed July 24, 2002

Appeal from the Circuit Court for the
Nineteenth Judicial Circuit, Indian River County;
Scott M. Kenny, Judge; L.T. Case No. 000125 CA
13.

Robert C. Hackney and Michelle M. Rochon of
Hackney Miller, P.A., Palm Beach Gardens, for
appellant.

Christopher C. Campione of Bowen &
Campione, P.A., Vero Beach, for appellee.

FARMER, J.

The owner of property sold to pay delinquent
taxes complains that a Clerk's sale is defective
because he was not given notice of a second sale
date after he failed to attend the first sale date set
by the Clerk of Court. In affirming, we find no
constitutional defect in the statutory notice
provision.

Section 197.542(3) provides that notice of a tax
deed sale need not be sent to the landowner when
the first sale is not completed because the high

bidder fails to make payment and a second sale is
held within thirty days. The statute says:

"If the sale is canceled for any reason, the clerk
shall immediately readvertise the sale to be held
no later than 30 days after the date the sale was
canceled. Only one advertisement is necessary.
No further notice is required."

The owner argues that in failing to require another
notice of sale to the delinquent owner the statute
is invalid under *Mullane v. Central Hanover Bank*
& *Trust Co.*, 339 U.S. 306, 314 (1950), and
Menonite Board of Missions v. Adams, 462 U.S.
791 (1983). We disagree.

In addressing such tax deed sales the Florida
Supreme Court agreed that due process requires
notice reasonably calculated to apprise owners of
the pending sale of their property. But the court
has explicitly held that "[s]ubject to this
limitation, the legislature has the authority to
determine the extent and character of the notice
which shall be given by the state before property
is sold for nonpayment of taxes." *Dawson v.*
Saada, 608 So. 2d 806, 808 (Fla. 1992); *accord*
Saggese v. Dep't of Revenue, 770 So. 2d 1244
(Fla. 4th DCA 2000). Thus, so long as a
landowner receives notice of the impending sale
of his property under a scheduled tax deed sale,
secondary notices are not mandatory for due
process concerns. As the court explained in
Dawson:

"section 197.522(1) meets constitutional due
process requirements by mandating notice
reasonably calculated to apprise landowners of
the pending deprivation of their property.
Section 197.522(2) provides an additional
opportunity for owners of tax-delinquent
property to redeem their interest when
circumstances allow the sheriff to make service
of notice upon the landowner. However, the
legislature has clearly stated that any failure on
the part of the sheriff to serve notice upon the
titleholder would 'not affect the validity of the
tax deed.' § 197.522(2), Fla. Stat. (1987).
Moreover, '[t]he failure of anyone to receive
notice' as provided in section 197.522(1) does
not affect the validity of the tax deed as long as

the clerk complies with the notice requirements of subsection (1).

"Based upon the plain language of section 197.522, we find that subsection (1) specifies the mandatory duties of the clerk upon an application for a tax deed, namely that the clerk must notify by mail the persons listed in the tax collector's statement. However, subsection (2), which provides for additional notice by the sheriff, is directory only.

"This construction of section 197.522 is consistent with the modern trend of courts to regard many statutory provisions relating to the validity of tax sales as merely directory rather than jurisdictional."

Dawson, 608 So. 2d at 808. Thus, because the clerk sent notice of the certificate application and tax deed sale to the landowner as required by subsection one, the sheriff's failure to serve another notice when the first auction failed to result in an actual sale does not invalidate the tax deed. 608 So. 2d at 809.

Section 197.542(3) is obviously not identical to section 197.522, in that the former pertains to a secondary notice of the same sale while the latter pertains to original notice to the title holder of the fact that the property will be sold for unpaid taxes. As regards due process concerns, however, the two statutes are functionally indistinguishable and the court's holding in *Dawson* is applicable here.

We stress that the owner was given notice of the first sale but failed to attend the sale and bid on the property. Had he done so, undoubtedly the Clerk would have included the owner in the follow-up sale. In this sense the owner is master of his own fate.

AFFIRMED.

WARNER and GROSS, JJ. concur.

**NOT FINAL UNTIL DISPOSITION OF ANY
TIMELY FILED MOTION FOR REHEARING.**