

Circuit Court for Anne Arundel County
Case No. 02-C-13-178732

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0545

September Term, 2017

JOSEPH M. BILZOR,

v.

FRANK A. RUFF

Fader, C.J.,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specifically Assigned)

JJ.

Opinion by Shaw Geter, J.

Filed: January 17, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from the denial of Appellant’s motion to intervene and vacate an enrolled judgment in the Circuit Court for Anne Arundel County. The property at issue was purchased at a public tax sale by Appellee who subsequently obtained a final judgment foreclosing any right of redemption. After filing a motion to vacate that final judgment, Appellant filed a motion to intervene in the case. The court denied the motion to intervene, finding it was not timely filed. Appellant brings this appeal and presents the following question for our review:

- 1) Did the court abuse its discretion in denying appellant’s motion to intervene on the basis of untimeliness?

STATEMENT OF FACTS

On or about June 7, 2011, Appellee, Frank Ruff, purchased an approximately six-acre parcel of property (the “Property”), located on South Polling House Road in Anne Arundel County, at a public tax sale. Ruff then filed a complaint to foreclose any right of redemption with the court on or about May 28, 2013. The court granted a final judgment on Ruff’s complaint on September 11, 2013 (the “Final Judgment”).

Appellant, Joseph Bilzor, owns land adjacent to the Property. On December 13, 2016, Bilzor filed a motion to vacate the Final Judgment, claiming he had an interest in a portion of the Property and that he should have been made a defendant in the prior proceeding. He further alleged that since he was neither served nor notified of the case, the court did not have jurisdiction to render the Final Judgment. In response, Ruff filed a motion requesting the court strike or dismiss Bilzor’s motion to vacate because it was untimely and Bilzor had not obtained the court’s permission to intervene in the proceeding.

On March 2, 2017, Bilzor filed a motion to intervene pursuant to Maryland Rule 2–214(a), and a motions hearing was held on April 6, 2017. Bilzor claimed to have a deed to the contested portion of the Property and to have paid taxes on that property for many years. He further alleged that the Sheriff’s posting of notice for the tax sale was defective because it was posted three-tenths of a mile from the Property, notice by publication was insufficient because it was published in only one newspaper, and the legal description in the complaint and publication notice was inadequate because it did not reference any Liber or Folio. As a result, he alleged the court lacked jurisdiction to enter the Final Judgment.

At the hearing, counsel for Ruff explained to the court that Ruff and Bilzor were parties to a quiet title action regarding the Property, which had been filed in 2015. The parties had participated in two pretrial conferences, completed discovery, and a trial date was set for May 2017. Bilzor’s counsel admitted that Bilzor was aware that the Property had been sold to Ruff since at least 2015, as he filed the quiet title action in 2015. Following argument, the court denied Bilzor’s motion to intervene finding that it was “was not timely filed” pursuant to Maryland Rule 2–214(a) because he was “on notice for 18 months, at least.”

On July 25, 2017, the Property’s prior owner conveyed her interest in the Property to Ruff by quit claim deed for consideration.

DISCUSSION

I. This appeal should not be dismissed as moot.

Ruff has moved to dismiss this appeal, arguing that it has become moot. Ruff contends that, even if Bilzor could intervene in this case and invalidate the sale of the Property to Ruff, Ruff has title to the Property because of the quit claim deed he received from the Property’s prior owner in 2017. However, “[a grantor can] convey no more or greater interest than he possesse[s].” *Kelly v. Nagle*, 150 Md. 125, 136 (1926). After purchasing the Property at the tax sale and foreclosing any right of redemption, Ruff held the full fee simple interest in the Property to the exclusion of the prior owner. Accordingly, when the prior owner granted Ruff a quit claim deed to the Property in 2017, she conveyed no interest in the Property. Thus, if the sale of the Property to Ruff is invalidated so too will be his interest in the Property. As such, we deny Ruff’s motion to dismiss this appeal and his request for sanctions.

II. The court did not abuse its discretion in denying Bilzor’s motion on the basis of untimeliness.

Where a “motion to intervene [is] denied by a trial judge due to a finding of untimeliness . . . the proper standard of review is abuse of discretion, provided the trial court articulate[d] reasons why the motion was untimely.” *Maryland-Nat. Capital Park and Planning Com’n v. Town of Washington Grove*, 408 Md. 37, 65 (2009). “An abuse of discretion is said to occur where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles.” *Smith v. State Farm Mut. Auto. Ins. Co.*, 169 Md. App. 286, 298 (2006) (citing *Stidham v. Morris*, 161 Md. App. 562, 566 (2005)).

Bilzor contends the court abused its discretion in denying his motion to intervene due to untimeliness. Maryland Rule 2–214(a) provides in pertinent part:

Upon *timely motion*, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

(emphasis added). “[T]he timeliness of a motion to intervene is a threshold issue to be resolved before reaching the substantive merits of the motion.” *Hartford Ins. Co. v. Birdsong*, 69 Md. App. 615, 623 (1987). Whether a motion to intervene is timely is “dependent upon the individual circumstances of each case[.]” *Id.* The Court of Appeals has identified four factors to guide courts in assessing the timeliness of a motion to intervene:

1. The purpose for which intervention is sought;
2. The probability of prejudice to the parties already in the case;
3. The extent to which the proceedings have progressed when the movant applies to intervene; and
4. The reason for the delay in seeking intervention.

Maryland Radiological Soc’y, Inc. v. Health Services Cost Review Comm’n, 285 Md. 383, 389 (1979).

Bilzor claims the purpose of his intervention in this case—to defend his interest in the contested portion of the Property—is “compelling.” We disagree because this case does not present the sole opportunity to defend his interest and resolve this conflict. It is well established that the validity of a tax collector’s sale of property for arrears of taxes

may be collaterally attacked on the ground of jurisdictional defects. *Thomas v. Hardisty*, 217 Md. 523, 536–37 (1958); *see also Bugg v. State Roads Comm’n*, 250 Md. 459, 461 (1958) (“The court properly concluded that a tax sale of property on which taxes have been paid is invalid, and may be the subject of collateral attack if the court lacks jurisdiction over the subject matter.”). Bilzor had the ability to attempt to invalidate the public tax sale of the Property to Ruff in separate proceedings, and has done so in his quiet title action with Ruff. Accordingly, Bilzor’s alleged interest in the contested portion of the Property does not compel his intervention in this case.

Additionally, if Bilzor were to intervene at this point, Ruff would likely sustain substantial prejudice. While Bilzor does not contest Ruff’s acquisition of the Property as a whole, he does assert entitlement to a portion. Ruff purchased the Property in 2013, and the purchase price included the value derived from the contested portion of the Property. Bilzor now seeks to challenge the validity of the tax sale, which, if found to be flawed, would invalidate Ruff’s entire interest in the Property. In addition, Ruff, relying on his valid interest in the Property, has continually paid the Property’s taxes and defended his interest in a separate quiet title action with Bilzor.

Bilzor alleges he is current on the property taxes associated with the contested portion of the Property and, therefore, the potential prejudice to Ruff, due to Bilzor’s intervention, does not outweigh the prejudice to Bilzor. However, the case law is clear, when determining whether a motion to intervene is timely, the court examines “the

probability of prejudice to the parties *already in the case,*” of which Bilzor is not. *Maryland Radiological Soc’y, Inc.*, 285 Md. at 389 (emphasis added).

We next consider the extent to which the proceedings have progressed. Here, Bilzor seeks to intervene in a case that has progressed to a final judgment, the time to appeal has expired, and it has been closed for several years. In *HIYAB, Inc. v. Ocean Petroleum, LLC*, a motion to intervene was properly denied as untimely where it was filed seventeen months after the lawsuit was filed, the parties engaged in alternative dispute resolution and completed discovery, and only four months remained until the trial date. 183 Md. App. 1, 14 (2008). Moreover, a motion to intervene was held untimely where the parties brought their motion to intervene twenty-four days before the start of trial. *Hartford Ins. Co. v. Birdsong*, 69 Md. App. 615, 624 (1987).

Finally, Bilzor argues that his delay in attempting to intervene in this case is justified because he was not adequately served with notice of the proceeding—publication or posting. Specifically, he asserts the notice by publication did not sufficiently identify the Property nor him as a defendant to the action, and that service by the sheriff’s posting of notice three-tenths of a mile from the Property was inadequate pursuant to Maryland Rule 14–503(c). Bilzor relies on *Jenkins v. City of College Park* for the proposition that “a motion to intervene can be timely even after a judgment has been entered where a party holding a properly recorded title to a parcel of property . . . was not named as a defendant pursuant to Maryland law.” 379 Md. 142, 156 (2003).

Bilzor’s reliance, however, is misplaced. In *Jenkins*, the Court of Appeals stated, “If the notice by publication was invalid, then respondent’s motion to intervene may not have been untimely because respondent would not have received notice of the pending *quia timet* proceedings in violations of both § 14–108 and Rule 2–122.” *Id.* at 158–159. Thus, in that case, the motion to intervene could have been found timely only because respondent had *no* notice of the proceedings until just before moving to intervene. However, where a party waits several months before moving to intervene, despite being aware of their interest in a proceeding, the motion is untimely. *Hartford Ins. Co. v. Birdsong*, 69 Md. App. 615, 625 (1987). Here, even had Bilzor not been sufficiently notified as required, the court found Bilzor knew about this action for eighteen months before filing his motion to intervene. Bilzor produced no evidence or explanation contradicting this finding. Moreover, in *Jenkins*, the proceeding in which respondent sought to intervene was a quiet title action rather than a proceeding foreclosing rights of redemption. Accordingly, we hold the court did not abuse its discretion in denying Bilzor’s motion to intervene because it was untimely.

**JUDGMENTS OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY AFFIRMED; COSTS TO
BE PAID BY APPELLANT.**