[Cite as *Cadiz v. Fledderus*, 2009-Ohio-3054.]

STATE OF OHIO, HARRISON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

VILLAGE OF CADIZ,	)	
	)	CASE NO. 08 HA 4
PLAINTIFF-APPELLANT,	)	
	)	
- VS. -	)	O P I N I O N
	)	
MYRON FLEDDERUS,	)	
	)	
DEFENDANT-APPELLEE.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Common Pleas Court, Case No. 08-480-CVH.
JUDGMENT:	Affirmed.
APPEARANCES:	
For Plaintiff-Appellant:	Attorney Costa Mastros Suite 1210, Bank One Building P.O. Box 608 Steubenville, Ohio 43952
For Defendant-Appellee:	Attorney Mark Beetham 146 South Main Street Cadiz, Ohio 43907

JUDGES:
Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: June 8, 2009

VUKOVICH, P.J.

¶{1} Plaintiff-appellant, the Village of Cadiz, appeals the decision of the Harrison County Common Pleas Court which dismissed the public nuisance action filed against defendant-appellee Myron Fledderus finding that after forfeiture of the property to the state, appellee no longer had a sufficient remaining interest in the building to be held liable as the owner for abatement of a nuisance. The sole issue presented on appeal is whether a person is the "owner" of a building under the nuisance abatement provisions in R.C. 3767.41 where his land has been forfeited to the state under R.C. 5723.01, a statute which transfers and vests "all the title, right, claim, and interest of the former owner" to the state. For the following reasons, we conclude that appellee became the "former owner" of real property upon forfeiture to the state and thereafter a nuisance action could not be maintained against him as the owner of the building. As such, the judgment of the trial court is affirmed.

STATEMENT OF THE CASE

¶{2} In 2004, the treasurer of Harrison County filed a delinquent tax action against the real property located at 420 East Market Street in Cadiz, Ohio. After the property was twice unsuccessfully offered for sale by the treasurer, the county prosecutor certified this to the trial court under R.C. 5723.01(A)(1)-(2). On September 14, 2006, the court entered an order pursuant to Chapter 5723, declaring that the land was forfeited to the state and subject to sale by the county auditor as it had been offered twice for sale by the treasurer but had not been sold for want of bidders. The court noted that the land was to be removed from the county tax list and added to the list of forfeited lands.

¶{3} On March 17, 2008, the Village of Cadiz, a municipal corporation, filed an action for public nuisance under R.C. 3767.41 against appellee as the owner of the real property and residence located at 420 East Market Street in Cadiz, Ohio. The Village asked the court to declare the real estate a public nuisance and to order appellee to completely rehabilitate the residence or to order demolition of the building with all costs taxed against appellee. The Village acknowledged the prior forfeiture and even attached the court's September 14, 2006 entry to the complaint.

¶{4} Appellee filed an answer and a motion for judgment on the pleadings under Civ.R. 12(C). He urged that the remedies in R.C. 3767.41 are limited to the owner and that he lost his status as the owner upon the court's entry of forfeiture. He focused on the language of R.C. 5723.01 that all right, title, interest, and claim of the former owner transfers to and vests in the state after the court's forfeiture entry is certified to the county auditor. He also pointed out that he had no right to enter the property to abate a nuisance as the state has the exclusive right to possession and thus concluded he could have no corresponding liability. He urged that the right to redeem upon payment of the full tax bill or the right to receive any remaining proceeds after sale does not mean that he is still the owner.

¶{5} The Village of Cadiz countered that appellee is still the owner for purposes of R.C. 3767.41. The Village noted that the phrase "all right, title, interest, and claim" is still not an absolute indefeasible fee simple and pointed out that the state acquired only possession of the land for the sole purpose of selling it to recover the delinquent taxes.

¶{6} The trial court held a hearing on appellee's status regarding the property. On August 20, 2008, the trial court agreed with appellee's argument that he does not remain the owner merely because he has a statutory right to redeem prior to sale or to receive excess proceeds after a sale. The court found that the plain language of R.C. 5723.01 provides that appellee is the former owner and that all title, right, claim, and interest has transferred to the state. The court thus found no rights remaining in the former owner that would make him liable for nuisance.

¶{7} The Village filed timely notice of appeal. As the relevant facts are undisputed and the parties present solely a question of law, we review the trial court's decision de novo. See, e.g., *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 166 (Civ.R. 12(C) presents only questions of law); *Brennaman v. R.M.I. Co.* (1994), 70 Ohio St.3d 460, 466 (questions of law, such as statutory interpretation, are reviewed de novo).

ASSIGNMENT OF ERROR & STATUTES

¶{8} The Village's sole assignment of error provides:

¶{9} "THE TRIAL COURT ERRED IN RULING, AS A MATTER OF LAW, THAT AN INDEFEASIBLE ABSOLUTE FEE SIMPLE INTEREST WAS TRANSFERRED TO THE STATE UPON FORFEITURE OF THE PROPERTY PURSUANT TO R.C. 5723, AND, THAT THE APPELLEE HAD NO REMAINING INTEREST IN THE PROPERTY SO THAT HE COULD BE LIABLE IN A NUISANCE ACTION."

¶{10} Pursuant to R.C. 3767.41, a municipal corporation can file a civil action for abatement of a public nuisance within its territory. Abatement includes repair or removal of the nuisance. R.C. 3767.41(A)(3). Notice must be provided to the owner and other interested parties. R.C. 3767.41(B)(2)(a). Interested party is defined in the statute. R.C. 3767.41(A)(4). As the trial court can only order an "owner" to abate the nuisance and as appellee was named only as the owner, we only need concern ourselves with the owner category, not the interested party category. See R.C. 3767.41(C)(1). Owner is not defined in the statute. If the owner fails to abate the nuisance as ordered by the court and no other interested party abates the nuisance, then the court can appoint a receiver to oversee the abatement. R.C. 3767.41(C)(2). The costs are then charged as a first lien on the property and the property can be sold by the receiver. R.C. 3767.41(H)(2)(b), (I)(1).

¶{11} Since the nuisance action was filed only against appellee as the owner, if he is not the owner, then the trial court's dismissal must be upheld. This leads to our discussion of the forfeiture statutes.

¶{12} The forfeiture entry attached to the complaint by the Village establishes that the forfeiture proceeded under R.C. 5723.01(A)(1), rather than R.C. 5723.01(B), as the entry stated that forfeiture was the result of two unsuccessful sales. Specifically, R.C. 5723.01(A)(1) provides that where real property was twice unsuccessfully offered for sale, not less than two weeks apart, pursuant to foreclosure proceedings on lien of the state under R.C. 5721.18, the property shall be forfeited to the state.

¶{13} To activate this forfeiture, the county prosecutor is to certify these unsuccessful sale attempts to the court. Upon the court's entry and its certification to the county auditor:

¶{14} "all the right, title, claim, and interest of the former owner is transferred to and vested in the state to be disposed of in compliance with this chapter." R.C. 5723.01(A)(2).

¶{15} As the trial court's entry explains, both parties agree that the property was properly forfeited. The Village acknowledges that the effect of this forfeiture statute is relevant to determining whether a person is an owner under the nuisance statute.

ANALYSIS

¶{16} Under the plain language of the forfeiture statute, appellee lost his status as owner. In transferring his title and rights to the state, the statute relegates him to the status of "former owner". Moreover, the statute specifies that all of his right, title, claim, and interest has been transferred to the state. The fact that appellee is then granted a statutory right to redeem prior to sale or to receive proceeds upon request if any remain after the sale does not mean that he is still the owner. See R.C. 5723.03; R.C. 5723.11. Notably, his name was removed from the tax list at the time of forfeiture, and new taxes are not chargeable thereafter. See R.C. 5723.02; R.C. 5723.03. See, also, R.C. 3767.09 (another nuisance statute, which presumes property owner is the one whose name is on the county auditor's books for taxes).

¶{17} Contrary to the text of the Village's assignment of error, the trial court did not find that the state had an absolute indefeasible fee simple interest in the property. Rather, the trial court essentially found that despite the fact that the state did not have an absolute indefeasible title, appellee is no longer considered the owner of the property. This dispute requires a discussion of the following case.

¶{18} The Supreme Court once addressed a statute providing for the survival of prior liens on land "acquired" by the state. *Dubin v. Greenwood* (1942), 129 Ohio St. 546. The Court was asked to apply this provision to forfeited land. The Court refused, noting that this would negate the forfeiture statute's[1] effect of providing the purchaser a title free from prior liens. Id. at 549-550. In discussing the forfeiture

[1]We note that the prior forfeiture statute used the same pertinent terminology as the current statute as it read: "all right, title, claim, and interest of the former owner or owners thereof, shall be considered as transferred to and vested in the state to be disposed of as the General Assembly may direct." See *Cech v. Schultz* (1937), 132 Ohio St. 353, 358-359.

statutes, the *Dubin* Court mentioned that the state does not acquire an absolute indefeasible title to the land due to the rights of redemption or to extra proceeds. Id. at 549. The Court also stated that the state acquires possession of the land and the entire estate[2] therein with power to dispose of the land for the single purpose of securing the amount of unpaid taxes. Id.

¶{19} Contrary to the Village's suggestion, the fact that the state does not have an absolute or indefeasible title to the property does not mean that appellee is still the owner. It just means that because the former owner is provided with a right to redeem or to extra proceeds after sale and because the state is only permitted to sell the land in order to receive its delinquent taxes, there are statutory limits to the state's title, right, claim, and interest. This does not mean that someone else is the owner; it merely means that the state is the owner subject to special statutory limitations. See Ohio 1996 Ohio Atty. Gen. Op. No. 96-047 (declaring that state is considered to have "ownership" to extent necessary to dispose of property and noting that a 1937 attorney general opinion, opining that the state did not have possession, was no longer valid after *Dubin*). Otherwise, the phrase "former owner" would be without meaning.

¶{20} A later case out of the Supreme Court further supports this position. See *Monroe v. Zangerle* (1951), 155 Ohio St. 129. In that case, the Court addressed a statute which provided that after a delinquent tax lien is foreclosed, the "owner" can contract to pay the bill in annual installments over ten years to avoid sale. Id. at 133-134. The Court held that once that property goes past the foreclosure stage and is forfeited to the state, this statute does not apply because the one attempting to enter the contract for annual installments is no longer the "owner". Id. at 135-136. Thus, the only way the defendant could restore the property to his name after forfeiture was under the redemption statute which requires a full payment. Id. at 135. The Court pointed out that the forfeiture statute uses the phrase "former owner" and that the "former owner" is no longer the "owner" as used in the other statute. Id. at 136. In fact, the Court explained that the point of forfeiture to the state is equivalent to the point when a purchaser is given a deed at a tax foreclosure sale. Id.

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[2]When referring to the condition in which the owner stands with regard to his property, "estate" has been said to be synonymous with right, title, and interest. See Black's Law Dictionary (6th Ed.1991) 379.

¶{21} *This establishes that appellee is not the owner for purposes of another statute where he has been relegated to former owner under the forfeiture statute.*

¶{22} The legislature divested appellee of his status as "owner" and labeled him a "former owner" in the forfeiture statute. In the public nuisance statute utilized by the Village here, the legislature provided for orders against only the "owner". If the legislature wished to equate a person in appellee's position with "owner", then the nuisance statute could have defined "owner" to include "the former owner pursuant to the forfeiture statute" or this phrase could have been inserted as an alternative to "owner" similar to the statutes in other states that impose liability on former owners or on the owner who created the condition. See, e.g., Title 50, Sec. 5 of Ok. Statute (imposing liability on former owner and successive owners).

¶{23} We must abide by the plain language of the statutes and the *Zangerle* precedent. Public policy is properly the province of the legislature, not a court. Thus, the Village's public policy arguments cannot divert our focus. In any event, the policy arguments are overstated. For instance, the building may not become a nuisance until after forfeiture, and where the building is a nuisance prior to forfeiture, the nuisance action can be filed against the owner prior to the forfeiture, which is not some automatic or unanticipated proceeding. Notably, the tax delinquency proceeding began in 2004, the forfeiture took place in 2006, and the Village did not file its action until March of 2008. Had the Village ensured the nuisance was declared at a time when appellee was still the owner, any receiver's notes or liens still could have been paid after the forfeiture. See R.C. 5723.05. We are merely holding that appellee cannot be named as the owner under R.C. 3767.41 because he has been relegated to former owner under R.C. 5723.01.

CONCLUSION

¶{24} After forfeiture, "all the right, title, claim, and interest of the former owner is transferred to and vested in the state to be disposed of in compliance with this chapter." R.C. 5723.01(A)(2). The Supreme Court in *Zagerle* has attributed this demotion to former owner as a bar to the application of another statute that merely uses the term "owner." R.C. 3767.41(C)(1) only allows abatement orders to be entered against the owner. As such, where a property has been forfeited to the state

under R.C. 5723.01, the former owner cannot be named as the owner in a public nuisance action under R.C. 3767.41 or ordered to abate a nuisance under R.C. 3767.41(C)(1).

¶{25} For the foregoing reasons, the judgment of the trial court is hereby affirmed.

Donofrio, J., concurs.
Waite, J., concurs.