IN THE COURT OF APPEALS OF IOWA

No. 0-071 / 98-1070
Filed April 28, 2000

CITY OF MUSCATINE,
Plaintiff-Appellee,

vs.

NORTHBROOK PARTNERSHIP, CO., NORTHBROOK PARTNERS, CO., and GREGORY A. JOHNSTON d/b/a NORTHBROOK PARTNERS, CO.,
Defendants-Appellants.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Muscatine County, Mark J. Smith, Judge.

The defendants appeal from a district court ruling ordering them to pay the costs of demolition of a building. **REVERSED.**

Gregory A. Johnston, Muscatine, and Patrick W. O'Bryan of O'Bryan Law Firm, Des Moines, for appellants.

Harvey G. Allbee, Jr. and R. Craig Oppel, Muscatine, for appellee.

Heard by Sackett, C.J., and Vogel and Hecht, JJ.

HECHT, J.

I. Factual and Procedural Background. Northbrook Partnership, Co., Northbrook Partners, Co., and Gregory A. Johnston, d/b/a Northbrook Partners, Co. (jointly referred to herein as "Northbrook") were owners of real estate located at 211 Pine Street in Muscatine, Iowa. Muscatine County purchased the property at tax sale on June 3, 1990, for unpaid real estate taxes in the amount of $4413. The county served notice of the expiration of the right to redeem to Northbrook on February 11, 1994. Northbrook's right to redeem the property from the tax sale expired May 10, 1994. Although Muscatine County held the tax certificate, no tax deed was ever issued to the county or its assignee.

In May of 1996, the City of Muscatine ("the City") served a notice on Northbrook informing them the residence on the property constituted a nuisance; and ordering Northbrook to commence repair or demolition of the structure within ten days of the notice. The notice informed Northbrook the City would take "additional action" if abatement of the nuisance was not commenced consistent with the notice. In a letter to Northbrook on June 5, 1996, the City's health and housing specialist advised that on June 6, 1996, the city council would consider a resolution requesting authority to abate the claimed nuisance by demolishing a dilapidated building on the premises. The letter advised Northbrook as follows: "If you have an interest in this property, you may wish to attend and comment at this meeting." Neither the notice nor the letter advised Northbrook the City would seek reimbursement of the cost of demolition from Northbrook.

[redacted] the City accepted a bid in the amount of $19,608 for demolition of the [redacted] building. The City notified Northbrook of the demolition of the structure on December 23, 1996, and requested reimbursement of the costs of the work. The City brought this action to recover the costs of demolition from Northbrook on February 18, 1997, and the district court entered judgment in favor of the City in the amount of $20,043. Northbrook appeals.

II. Contentions of the Parties. Northbrook contends the district court erred by entering judgment against them for the costs of demolition. They deny liability, contending the City cannot collect the abatement costs from them because: (1) the City failed to comply with the provisions of Iowa Code section 446.20(2) because the notice failed to inform Northbrook the structure would be demolished and the costs of the demolition would be assessed against them; (2) Northbrook had no ownership interest in the property after expiration of the redemption period when the notice was received, and consequently had no legal right or duty to abate the nuisance or liability for the cost of abatement; and (3) the notice given them by the City did not comport with due process clauses of the Federal and Iowa constitutions.

The City urges this court to affirm the judgment, claiming it was not required to comply with Iowa Code section 446.20(2) because the county purchased the real estate at the tax sale. Given that it was not the holder of the tax certificate, the City claims it properly gave Northbrook notice consistent with Iowa Code section 364.12 and its own ordinance pertaining to the abatement of a nuisance. The City further contends the district court properly identified

Northbrook as the legal titleholder liable for the cost of demolition even after the expiration of the period of redemption because no tax deed was ever issued to Muscatine County. Finally, the City posits the notice given Northbrook complied with the terms of its ordinance and due process standards.

III. Standard of Review. This is a law action and we review the district court's decision only to correct errors of law. Iowa R. App. P. 4; *Waukon Auto Supply v. Farmers & Merchants Sav.*, 440 N.W.2d 844, 846 (Iowa 1989).

IV. The Merits.

A. Applicability of Iowa Code Section 446.20(2). Iowa Code section 446.20(2) provides, in relevant part:

> If the board or council determines that any property located on a parcel purchased by the county or city pursuant to section 446.19 requires removal, dismantling, or demolition, the board or council shall, *at the same time* and in the same manner *that the notice of expiration of right of redemption is served,* cause to be served on the person in possession of the parcel and also upon the person in whose name the parcel is taxed a separate notice stating that if the parcel is not redeemed within the time period specified in the notice of expiration of right of redemption, the property described in the notice shall be removed, dismantled, or demolished. The notice shall further state that the costs of removal, dismantling, or demolition shall be assessed against the person in whose name the parcel is taxed and a lien for the costs shall be placed against any other parcel taxed in that person's name within the county.

Iowa Code § 446.20(2) (1995) (emphasis added). The district court determined this statute was not applicable to the facts of this case. We agree. Although the legislature's incorporation of the words "board or council" and "county or city" in the statute would seem to support Northbrook's contention the legislature intended to require a city to give the separate, specific notice of the intention to demolish a structure and assess costs whenever it determines a building on land

[redacted] a tax sale must be demolished, such an interpretation ignore[redacted] language within the statute. The requirement that the separate notice of the intended demolition be given "at the same time . . . that the notice of expiration of right of redemption is served" suggests the legislature contemplated the separate notice of demolition would be given by the party who holds the tax sale certificate. The holder of the tax certificate gives the notice of expiration of the right of redemption. *See* Iowa Code § 447.9. In the case now before the court, Muscatine County was the tax sale purchaser and holder of the tax certificate. The county gave the notice of the expiration of the right of redemption to Northbrook in this case. Accordingly, the district court correctly determined the City had no obligation to give the notice contemplated in section 446.20(2) under the circumstances of this case.

Further, even if the City had been the holder of the tax certificate, section 446.20(2) would not have authorized the district court to enter judgment against Northbrook in this case because the City did not make the decision to require demolition of the structure until more than two years after Northbrook's right to redeem expired. By its express terms, the statute authorizes action by a city or county in furtherance of the removal, dismantling, or demolition of structures on property subject to tax sale prior to the expiration of the right of redemption. As noted [redacted] Northbrook's redemption period expired two years before the City decided to require demolition of the structure. We are guided by what the legislature actually said, rather than what it could have said. *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995); *State v. Hatter*, 414 N.W.2d 333, 337 (Iowa

1987), if the drafters of the statute intended section 446.20(2) to permit a city or county holding a tax certificate to seek reimbursement for costs of demolition from delinquent taxpayers after tax sale without first giving a specific separate notice prior to expiration of the redemption period, we believe they would have included language in the statute to that end. The absence of such language leads us to conclude the legislature did not intend to authorize actions against delinquent taxpayers to recover costs of demolition after expiration of the redemption period unless the required notice is given before the redemption period expires. Because it made the decision to require demolition of the structure and gave no notice of its intention until after Northbrook's right of redemption expired, the City's authority to seek reimbursement for the costs of demolition could not have been derived from section 446.20(2) even if it had been the holder of the tax certificate. Since the City could not bring this action against Northbrook pursuant to 446.20(2), the district court properly determined the adequacy of the City's notice was not governed by this section under the circumstances of this case.

B. Northbrook's Liability For Demolition Costs After Expiration of Period of Redemption. Northbrook contends it cannot be liable for the cost of demolition undertaken more than two years after its right to redeem the property from tax sale had expired because the county became the owner of the property when it acquired the tax certificate as a result of its bid at the tax sale. In response, the City argues the district court properly held Northbrook liable for the demolition cost because Northbrook's status as legal titleholder continued after Muscatine

[redacted] certificate. *See Moffitt v. Future Assurance Assocs., Inc.*, [redacted] 1169; 140 N.W.2d 108, 113 (1966) (stating the holder of the tax certificate owns only a chattel that does not constitute an interest in the real estate). As purchaser of the tax certificate, the county acquired "merely an inchoate right or lien which can ripen into title only upon compliance with the statutory requisites." *Id.* at 1169; 140 N.W.2d at 113. The county held "no title or right of possession to the property" after it acquired the tax certificate because a tax deed never issued to it. *See Currington v. Black Hawk County*, 184 N.W.2d 675, 676 (Iowa 1971). The tax sale purchaser holds the certificate as evidence of his equitable title and lien during the time for redemption. Until the deed is made by the treasurer to the tax purchaser, legal title remains in the owner. *Moffitt*, 258 Iowa at 1169-70, 140 N.W.2d at 113. Thus, Northbrook cannot successfully defend against the City's claim on the ground that the county succeeded it as owner upon acquisition of the tax certificate.

Although it held the tax sale certificate, the county was under no duty to demand issuance of a tax deed and take legal title. 1990 Op. Iowa Att'y Gen. 1067; 1982 Op. Iowa Att'y Gen. 519. The rationale for this rule is the county should not be forced to obtain a tax deed if such an act would create expenses for taxpayers in excess of amounts that may be recovered by obtaining the deed, and if obtaining the deed would not promote the collection of taxes. Though it seems anomalous, the delinquent taxpayer who has lost the right to redeem the property from the tax sale is considered, under existing authorities, owner of legal

title in perpetuity[1] so long as the county does not require the issuance of a tax deed. *See Thornton v. Jones*, 47 Iowa 397, 399 (1877); *Eldridge v. Kuehl*, 27 Iowa 160, 174 (1869); *Williams v. Heath*, 22 Iowa 519, 524 (1867).

However, the question remains whether Northbrook, as holder of mere legal title, may be held liable for the costs of demolition after the expiration of its right to redeem the property from tax sale. The City claims statutory authority to seek reimbursement of its costs under Iowa Code sections 364.12(3) and (4). Section 364.12(3) provides, in relevant part:

> 3. A city may:
>
> a. Require the abatement of a nuisance, public or private, in any reasonable manner.
> *****
> h. If the property owner does not perform an action required under this subsection within a reasonable time after notice, a city may perform the required action *and assess the costs against the property* for collection in the same manner as a property tax. Notice may be in the form of an ordinance or by certified mail to the property owner as shown by the records of the county auditor, and shall state the time within which action is required.

Iowa Code §§ 364.12(3)(a),(h) (emphasis added). This section contemplates *in rem* proceedings, but does not authorize an action for personal judgment against Northbrook for the cost of the demolition. The City next points to Iowa Code section 364.12(4) that provides, in relevant part:

> 4. In addition to any other remedy provided by law, a city may also seek reimbursement for costs incurred in performing any act

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[1] The county's claim under a tax certificate does not expire three years after the tax sale failing issuance of a tax deed as would the claim of a non-governmental tax sale purchaser. See Iowa Code § 446.37 (1995); and 1990 Op. Iowa Att'y Gen. 1067.

[redacted] section by a civil action for damages against a [redacted] Iowa C[redacted] 364.12(4). The City claims this statute authorizes the personal judgment against Northbrook. We conclude, however, the legislature did not intend in this legislation to authorize a municipality to seek personal judgments against a delinquent taxpayer for the cost of nuisance abatement incurred after tax sale and expiration of the period of redemption.

A general principle of statutory construction aids our analysis: "When a general statute is in conflict with a specific one, the more specific statute generally prevails, irrespective of the time of its enactment." *Kelly v. State*, 525 N.W.2d 409, 411 (Iowa 1994). When construing a general and a specific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another, and they are to be harmonized if possible. *State v. Lutgen*, 606 N.W.2d 312, 314 (Iowa 2000). Section 446.20(2) is a specific statute governing the right of a county or city to seek a personal judgment against a delinquent taxpayer for the cost of demolition of a structure after a tax sale. As we have noted above, this specific statute precludes entry of a personal judgment against a delinquent taxpayer if he is not given a separate notice of potential liability for the cost of demolition or removal prior to the expiration of the redemption period. Iowa Code chapter 364.12(4) is, by comparison, a general statute granting municipalities the general power to abate a nuisance and seek reimbursement of the resulting expense against a property owner outside the tax sale context. We conclude the legislature intended the specific statute, 446.20(2), to control actions for costs of demolition against delinquent taxpayers

[redacted] 364.12, the general statute authorizing abatement of nuisances, authorizes cities to seek nuisance abatement from delinquent taxpayers outside the tax sale context. The two statutes are thus harmonized in a manner that gives effect to a consistent legislative policy.

The City also claims the judgment entered in this case against Northbrook is supported by its city ordinances. Section 9-4-3(A) provides as follows:

> (A) Whenever any nuisance as defined in this Chapter is found to exist, the City shall serve upon the owner, occupant, or agent of the property upon which such nuisance is found to exist or from which such nuisance comes, or upon the person causing or permitting such nuisance to exist upon or in any street, alley public place, or private property, a notice requiring him to abate or remove such nuisance within ten (10) days or such time as the City may determine to be reasonably sufficient to enable such abatement or removal to be made.

Muscatine, Iowa, City Code, Title 9, ch. 4, § 3A. The City's ordinances further provide if any person served with the notice fails to abate the nuisance, the city may abate it. *See id.* at Title 9, ch. 4, § 4(A). The ordinance directs the city clerk to report the "cost and value of all tools, appliances, materials, labor, and assistance used, consumed and performed by and for him, . . . and the name of the person responsible for the commission of such nuisance and a description of the property, lot, or parcel of ground where such nuisance existed . . . . " *Id.* at Title 9, ch. 4, § 4(B). The city council is then authorized to "levy a special tax thereon by resolution, and such tax shall be collected in the manner provided by the Code of Iowa." *Id.* at Title 9, ch. 4, § 4(C).

The City's ordinances do not support the personal judgment entered by the district court in this case. The City concedes it derives its statutory authority

[redacted] abatement ordinances from section 364.12. As noted above, we have determined the legislature did not authorize, in that general statute, a city to seek a personal judgment against a delinquent taxpayer after tax sale and expiration of the redemption period. Finding no statutory authority in section 364.12 for the judgment against Northbrook, we also conclude the City's ordinances provide no basis for the decision reached by the district court.

V. Summary. We reverse. Iowa Code section 446.20(2) limits the power of a city or county to seek reimbursement from delinquent taxpayers for the costs of demolition of structures after tax sale. The legislature's restriction of a governmental subdivision's power to seek a personal judgment against a delinquent taxpayer in that specific statute suggests an intention to preclude such actions after tax sale and expiration of the redemption period in the absence of proof of timely notice described in the section. We conclude the general nuisance abatement statute, section 364.12, does not support the judgment entered in this case. For the same reason, the City's general nuisance abatement ordinances adopted pursuant to Iowa Code section 364.12 do not authorize the judgment entered by the district court against Northbrook. Having determined this case must be reversed, we do not reach the due process issue raised by Northbrook.

REVERSED.

Vogel, J., concurs; Sackett, C.J., concurs specially without opinion.