

**IN THE COURT OF APPEALS OF IOWA**

No. 0-516 / 10-0098  
Filed September 9, 2010

**CHARLES CLAUDE DEARCHS,**  
Plaintiff-Appellant,

**vs.**

**BOARDWALK INVESTORS/  
US BANK,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Kossuth County, David A. Lester,  
Judge.

Plaintiff appeals the decision of the district court denying his challenge to a  
tax deed on the ground he had not received notice of his right to redemption.

**REVERSED AND REMANDED.**

Eldon J. Winkel of Eldon J. Winkel Law Office, Algona, for appellant.

Deana K. Walocha, Omaha, Nebraska, for appellee.

Considered by Doyle, P.J., and Mansfield, J., and Miller, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MILLER, S.J.****I. Background Facts & Proceedings**

Charles Dearchs owned property at 2007 Irvington Road, Algona, Iowa. In 1991 Dearchs moved to 9749 Hibiscus Avenue, Fountain Valley, California. According to his testimony, Dearchs permitted his daughter and a child of a stepdaughter to live in the home. In an oral agreement, instead of paying rent, his relatives were to pay the taxes, insurance, and repairs on the property.

The property taxes on the Iowa property were not paid, and Boardwalk Investors, a nominee company of U.S. Assets, L.L.C., purchased the property at a tax sale held on June 20, 2005. According to his testimony, Dearchs did not receive notice his property taxes had not been paid, or that the property had been sold at a tax sale.

Dearchs contends that during his years in California, he received at his address in California only one tax statement for the property—a tax statement for 2005-2006 property taxes on the Iowa property, mailed to his California address by the Kossuth County Treasurer on August 16, 2006. He called his daughter and asked her to pay the taxes. The record also shows that the Kossuth County Assessor issued a tax assessment statement on April 13, 2007, to Dearchs at his California address.

Boardwalk Investors held the property for one year and nine months, as required by Iowa Code section 447.9(1) (2005).<sup>1</sup> On October 16, 2007, Boardwalk Investors attempted to give Dearchs notice of his right of redemption

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<sup>1</sup> The law in effect at the time of the tax sale governs redemption. Iowa Code § 447.14. Therefore, we will apply the 2005 Iowa Code in this case.

by mailing notice to him by regular mail and certified mail at the following addresses: (1) Box 352, Algona; (2) 2003 Irvington Road, Algona; and (3) 2007 Irvington Road, Algona. Boardwalk Investors had attempted to find a current address for Dearchs by looking at two websites.<sup>2</sup>

The certified mail to the post office box address was returned as “NOT DELIVERABLE AS ADDRESSED-UNABLE TO FORWARD.” The certified mail to the two street addresses was returned as “UNCLAIMED-UNABLE TO FORWARD.” The regular mail was not returned. Boardwalk Investors then served notice by publication, as permitted by section 447.10. The notice was published in the *Algona Upper Des Moines*, an official newspaper in Kossuth County. Dearchs testified he received this newspaper in California, but he did not regularly read the legal notices and had not seen the published notice.

No party redeemed the property. The Kossuth County Treasurer issued a tax deed to Boardwalk Investors on March 25, 2008. The tax deed was recorded on April 3, 2008. Boardwalk Investors filed an affidavit by tax title holder on May 2, 2008. For unknown reasons it later executed another somewhat similar affidavit on July 7, 2008. Dearchs received one of these affidavits. On August 29, 2008, he filed a claim adverse to the tax title, as required by section 448.16. On September 25, 2008, he filed a petition in equity, as permitted by section 447.8, seeking to set aside the tax deed on the ground he had not been properly served with notice of his right to redeem.

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<sup>2</sup> Boardwalk Investors looked at [lowaassessors.com](http://lowaassessors.com) and [Zabasearch.com](http://Zabasearch.com) to look for a current address for Dearchs. Dearchs’s California address was not on these websites.

After a hearing the district court denied Dearchs's claim. The court found Dearchs had failed to show he was not properly served with notice of his right of redemption. The court concluded Boardwalk Investors's use of addresses it found on the two websites was reasonable. The court also concluded that when the two notices sent by certified mail to street addresses were returned unclaimed, Boardwalk Investors properly served notice by publication. The court denied Dearchs's post-trial motion. He appeals.

## **II. Standard of Review**

Actions to set aside tax deeds arise in equity. *Strong v. Jarvis*, 524 N.W.2d 675, 677 (Iowa Ct. App. 1994). Consequently, our review is de novo. See Iowa R. App. P. 6.907 (2009). In equity cases, we give weight to the district court's factual findings, especially considering the credibility of witnesses, but are not bound by those findings. Iowa R. App. P. 6.904(3)(g).

## **III. Merits**

Dearchs contends Boardwalk Investors did not give him proper notice, as required by section 447.9(1). This section provides:

After one year and nine months from the date of sale . . . the holder of the certificate of purchase may cause to be served upon the person in possession of the parcel, and also upon the person in whose name the parcel is taxed, a notice . . . stating . . . that the right of redemption will expire and a deed for the parcel be made unless redemption is made within ninety days from the completed service of the notice.

Iowa Code § 447.9(1). The notice must be "served by both regular mail and certified mail to the person's last known address." *Id.* Service by publication is authorized only "[i]f notice in accordance with section 447.9 cannot be served

upon a person entitled to notice in the manner prescribed in that section.” *Id.* § 447.10.

The purchaser at a tax sale must give certain parties notice of the right of redemption. *City of Waterloo v. Bainbridge*, 749 N.W.2d 245, 249 (Iowa 2008). One of the parties entitled to notice is the person in whose name the parcel is taxed. *Kilts v. Am. Legion Okoboji Lakes Post 654*, 581 N.W.2d 189, 191 (Iowa Ct. App. 1998). The purpose of notice is to provide information “concerning the facts of the sale, the description of the property, the name of the purchaser, and that the right of redemption will expire without further action.” *Pendergast v. Davenport*, 375 N.W.2d 684, 688 (Iowa 1985). The notice gives the person served ninety days from the completion of service to redeem. *City of Waterloo*, 749 N.W.2d at 250.

“[T]he notice requirements of section 447.9 are to be strictly construed in favor of the taxpayer.” *Pendergast*, 375 N.W.2d at 688. “We have consistently held that the requirement of serving notice of redemption is an absolute, and the statutory provisions as to notice must be strictly complied with before parties are deprived of their property.” *Id.* at 691. Where the statutory requirements are not followed, the rights of redemption do not expire. See *Farmers State Sav. Bank v. J.B.H. Enter.*, 561 N.W.2d 836, 838 (Iowa Ct. App. 1997) (discussing section 447.12). A tax deed is void if the statutory redemption notice is not properly given. *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 89 (Iowa Ct. App. 1994).

The district court relied upon *Cowell v. All-American, Inc.*, 308 N.W.2d 92, 95 (Iowa 1981), a workers' compensation case that held substantial compliance with service of notice requirements in section 17A.19(2) was sufficient. Within the requirements of section 447.9 the Iowa Supreme Court has differentiated between areas where absolute compliance is essential and where substantial compliance is adequate. See *Pendergast*, 375 N.W.2d at 689. "Immaterial variances or defects in inscribing the recipient's name in the salutation segment of the notice of redemption do not vitiate the notice if it substantially complies with the requirements of the statute," as long as all parties are sent their statutorily-required notice. *Id.* at 688. On the other hand, all parties entitled to notice must be actually afforded the notice the statute requires, and "the requirement of serving notice of redemption is an absolute." *Id.* at 691.

In a recent case involving section 447.9's requirement that the holder of a certificate of purchase at a tax sale serve notice of the right of redemption upon the person in possession of the property, our supreme court held that the holder of the certificate is required to engage in a "diligent investigation" to determine who is in possession of the property in order to send that party notice. *Dohrn v. Mooring Tax Asset Group, L.L.C.*, 743 N.W.2d 857, 862 (Iowa 2008). The court held that it was not sufficient for the certificate holder to have merely relied on a public record; a "diligent investigation" may have required an on-site inspection or even contacting neighbors or others in the community. *Id.* at 861-62.

Similarly, we determine a purchaser must engage in a "diligent investigation" to find the "last known address" of the person in whose name the

parcel is taxed. See Iowa Code § 447.9(1); *Dohrn*, 743 N.W.2d at 862. On our de novo review, we conclude the evidence does not show Boardwalk Investors engaged in a diligent investigation to ascertain the last known address for Dearchs.

Under section 441.23, if there has been an increase or decrease in the valuation of property, a county assessor must “inform the person assessed, in writing, of the valuation.” Also, “in the event the assessor increases any assessment the assessor shall give notice in writing thereof to the taxpayer by mail . . . .” Iowa Code § 441.28. Because a county assessor is required to give these notices to a taxpayer, clearly the assessor’s office would be a reasonable place to inquire about the last known address of a person in whose name property is taxed. Additionally, a county treasurer is required to deliver to the titleholder of property “by regular mail, or if requested by the titleholder, by electronic transmission” a tax statement. *Id.* § 445.5(1). Thus, a county treasurer would in all likelihood have the current address of the person in whose name the property is taxed, and the county treasurer’s office would also be a reasonable place to inquire about a taxpayer’s last known address.<sup>3</sup>

Boardwalk Investors did not inquire at either of these county offices in an attempt to ascertain the last known address for Dearchs. The evidence shows, however, that both the county assessor and county treasurer were aware of Dearchs’s California address because statements from those offices were sent to

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<sup>3</sup> As suggested by the statute, the county treasurer’s office might not have the mailing address of the titleholder to property only if the person had specifically requested to be contacted by electronic transmission. See Iowa Code § 445.5(1).

him at that address in August 2006 and April 2007. An inquiry to either or both of these offices, which are statutorily required to send notices to the property owner, would have revealed Dearchs's long-standing, current, last known address.

Instead, according to the witness testifying for Boardwalk Investors it used two websites, what the witness described as "the assessor's web site," [lowaassessors.com](http://lowaassessors.com), and [Zabasearch](http://Zabasearch.com). There is no other evidence in the record about who created "the assessor's web site," and no evidence as to who created [Zabasearch](http://Zabasearch.com), where the creators of the two websites acquired the information exhibited on them, or when or how often the websites are updated.<sup>4</sup> There is no other substantial evidence concerning these websites that would allow us to determine whether one or both would be likely or unlikely to have the last known address for Dearchs.<sup>5</sup>

Because Boardwalk Investors did not engage in a diligent investigation to determine the last known address for Dearchs, the person in whose name the parcel was taxed and whose current address was available in both the Kossuth County Assessor's and Treasurer's offices, and did not serve Dearchs at that address, we conclude Boardwalk Investors did not fulfill its obligation to properly

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<sup>4</sup> Defendant's Exhibit "B," identified by the sole witness for Boardwalk Investors as a page from [Zabasearch](http://Zabasearch.com) and "the search that was used to make services in this case," lists one address for Dearchs, 2003 Irvington Road, and indicates the information was "Recorded:4/15/2001."

<sup>5</sup> The sole witness called by Boardwalk Investors was asked on cross-examination whether Boardwalk Investors had made any effort to look anywhere other than the two websites to find a current address for Dearchs. He answered that based on the information acquired from the website Boardwalk Investors believed it had correct addresses, with the fact the certified mail letters came back "unclaimed" rather than "unable to forward" "typically indicat[ing] to us that they're just not willing to claim the letters." The exhibits show, however, that all three returned letters came back bearing, among the Postal Service's notations, "UNABLE TO FORWARD."



serve Dearchs with notice of his right of redemption, as required by section 447.9(1). We note that service by publication is permitted only if notice under section 447.9 cannot be served. See Iowa Code § 447.10. In this case there is no showing that notice could not have been properly served if Boardwalk Investors had engaged in a diligent investigation, and therefore service by publication was not sufficient.

When the statutory notice of redemption has not been given to a required person, the right of redemption does not expire. *Pendergast*, 375 N.W.2d at 689. We conclude the tax deed issued to Boardwalk Investors is void. The district court should have declared the tax deed void. Boardwalk Investors must send out new notices of redemption. See *Dohrn*, 743 N.W.2d at 865. If the property is not redeemed within the statutory period after completed service of notice of redemption, a new tax deed may be issued.

Because we have reversed on the issue of proper service of notice, we do not address Dearchs's claim he was denied due process by the lack of notice of his right to redeem. We reverse the judgment of the district court and remand to the district court for entry of an order declaring the tax deed void.

**REVERSED AND REMANDED.**