DANIEL R. KNOSP, APPELLEE, V. SHAFER PROPERTIES, LLC, APPELLEE, ARCHER COOPERATIVE CREDIT UNION, APPELLANT, AND JOHN DOE ET AL., APPELLEES.

___ N.W.2d ___

Filed May 1, 2012. No. A-11-519.

1. **Equity: Quiet Title.** A quiet title action sounds in equity.
2. **Equity: Appeal and Error.** On appeal from an equity action, an appellate court decides factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the trial court's determination.
3. **Summary Judgment: Appeal and Error.** An appellate court will affirm a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.
4. **Taxation: Real Estate: Liens.** Taxes on real property shall be a first lien on the property taxed until paid or extinguished as provided by law.
5. **Statutes.** Construction of a statute will not be adopted which has the effect of nullifying or repealing another statute.
6. ____. Statutes relating to the same subject matter will be construed so as to maintain a sensible and consistent scheme and so that effect is given to every provision.
7. **Statutes: Intent.** It is a recognized rule of construction that statutes which effect a change in the common law or take away a common-law right should not be adopted unless the plain words of the act compel it.
8. **Taxation: Real Estate: Deeds: Title: Liens.** A treasurer's tax deed, issued pursuant to Neb. Rev. Stat. § 77-1837 (Reissue 2009) and in compliance with Neb. Rev. Stat. §§ 77-1801 to 77-1863 (Reissue 2009), passes title free and clear of all previous liens and encumbrances.

Appeal from the District Court for Hall County: JAMES D. LIVINGSTON, Judge. Affirmed.

Patrick M. Heng and Nicholas J. Welding, of Waite, McWha & Heng, for appellant.

Martin P. Pelster and Claire M. Osborne, of Croker, Huck, Kasher, DeWitt, Anderson & Gonderinger, L.L.C., for appellee Daniel R. Knosp.

IRWIN and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

Archer Cooperative Credit Union (Archer) appeals from the decision of the district court holding that its liens on a piece of real property were foreclosed by the issuance of a treasurer's tax deed under Neb. Rev. Stat. § 77-1837 (Reissue 2009). Archer asks us to interpret the statutes allowing for tax sales in a manner that would make Neb. Rev. Stat. § 77-1902 (Reissue 2009) the only avenue by which title to property sold at a tax sale could be obtained free and clear of previous liens. Because this interpretation would nullify other statutes that place tax liens in first priority, fails to promote a consistent statutory scheme, and conflicts with previous case law and common law, we hold that a treasurer's tax deed, issued pursuant to § 77-1837 and in compliance with Neb. Rev. Stat. §§ 77-1801 to 77-1863 (Reissue 2009), passes title free and clear of all previous liens and encumbrances. Accordingly, we affirm the decision of the district court quieting title to the relevant property free and clear of all liens held by Archer.

BACKGROUND

The property at dispute in this appeal is legally described as "Lot One (1) in Dowd Subdivision to the City of Grand Island, Hall County, Nebraska" (the property). Although Daniel R. Knosp is the current record owner of the property and is the original plaintiff in this action, the majority of the facts relevant to our analysis occurred prior to his acquisition of the property in 2010.

In July 2005, Shafer Properties, LLC, acquired the property by warranty deed. In the years following, it used the property to secure several loans from Archer. Separate deeds of trust were recorded with the Hall County register of deeds on July 22, 2005; July 17, 2007; and April 1, 2008.

In March 2007, the property was sold at a public tax sale to Helen Knosp for delinquent taxes. At that time, Helen received a certificate of tax sale which stated that "unless redemption is made of said real estate in the manner provided by law, [Helen] will be entitled to a deed therefor on and after the 8th day of March, 2010." Accordingly, on March 19, 2010, Helen filed

an application for tax deed after providing notice to Shafer Properties—record owner at the time of the tax sale—and Archer—the sole lienholder on the property. Neither Shafer Properties nor Archer redeemed the property as allowed by law, and on April 2, the Hall County treasurer issued a tax deed to Helen.

Later in April 2010, Archer notified Shafer Properties that Shafer Properties was in breach of its obligations under all three deeds of trust. In three separate notices of default, each dated April 29, 2010, Archer advised Shafer Properties that "because of such default [Archer] has elected to sell or cause to be sold the trust property to satisfy the obligations under said [d]eed of [t]rust."

In May 2010, Daniel acquired the property from Helen by quitclaim deed. Because the register of deeds showed Shafer Properties and Archer as having interests in the property, Daniel subsequently filed a quiet title action with the district court for Hall County, Nebraska, to remove any cloud upon his title. Shafer Properties and Archer were named as defendants, along with "JOHN DOE and MARY DOE, real names unknown; and all persons having or claiming any interest in and to [the property]." Only Shafer Properties and Archer filed answers to the complaint.

In March 2011, Daniel filed a motion for summary judgment, alleging that there was no genuine issue of material fact and that he was entitled to summary judgment as a matter of law. A few weeks later, Archer also filed a motion for summary judgment, claiming it was entitled to summary judgment as a matter of law.

Both Daniel and Archer entered affidavits in support of their motions at a hearing held on March 30, 2011. Daniel offered the affidavit of Helen, in which she attested to purchasing the property at the tax sale, receiving a tax sale certificate, and obtaining the tax deed. She also testified that she sent notice of her application for tax deed to both Shafer Properties and Archer by certified mail and that she received signed return receipts confirming delivery. Daniel also offered the affidavit of the attorney who had prepared the interrogatories and requests for admissions that were served on Shafer Properties and

Archer. In response to the requests for admissions, both Shafer Properties and Archer admitted that they neither paid the back taxes on the property nor took any other action to redeem the property prior to issuance of the tax deed. Specifically, Archer "admit[ted] that it did not redeem the [p]roperty prior to delivery of the [t]reasurer[']s [t]ax [d]eed by the Hall County [t]reasurer, but denie[d] that it had any obligation to redeem the [p]roperty in order to protect its liens against the [p]roperty." In support of its own motion for summary judgment, Archer offered the affidavit of its vice president of lending, who testified that Archer had three liens on the property secured by deeds of trust properly recorded with the Hall County register of deeds.

On May 19, 2011, the district court denied Archer's motion for summary judgment and sustained Daniel's motion for summary judgment, "quieting title to the property . . . free and clear of the encumbrances and liens of [Shafer Properties and Archer] previously on file." In so holding, the court noted:

> [Shafer Properties and Archer] and their claim of an interest in the property were given statutory notice of the tax lien for delinquent real estate taxes on the property. [Shafer Properties and Archer] were put on notice that the purchaser of the [t]ax [s]ales [c]ertificate was going to apply for title to the real estate <u>unless</u> those claiming an interest in the real estate came forward and paid the delinquent real estate taxes. [Shafer Properties and Archer] chose not to do so and the [t]ax [d]eed issued thereafter was valid and foreclosed [Shafer Properties' and Archer's] interest in the real estate.

(Emphasis in original.)

Archer timely appeals.

ASSIGNMENTS OF ERROR

Archer alleges, restated, that the district court erred (1) in finding that Archer's deeds of trust were not first, paramount, and superior to the tax deed; (2) in finding that the tax deed did convey title free and clear of Archer's liens; and (3) in granting Daniel's motion for summary judgment and denying Archer's motion for summary judgment.

STANDARD OF REVIEW

[1,2] A quiet title action sounds in equity. *Newman v. Liebig*, 282 Neb. 609, ___ N.W.2d ___ (2011). On appeal from an equity action, an appellate court decides factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the trial court's determination. *Id*.

[3] An appellate court will affirm a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law. *Heritage Bank v. Bruha*, 283 Neb. 263, ___ N.W.2d ___ (2012).

ANALYSIS

Effect of Tax Deed.

Archer's first two assignments of error effectively present the same question: whether a county treasurer's tax deed transfers property free and clear of all previously recorded liens and encumbrances. As such, we address these assignments of error together.

We begin by reviewing the statutory scheme that provides for property to be sold at a tax sale and for the resulting property rights to be enforced.

Under § 77-1801, a county treasurer can sell any real estate on which taxes have not been paid in full by the first Monday of March. Any person who offers to pay the amount of taxes due can purchase the property and, if successful, receives a tax sale certificate and acquires a tax lien on the property. See §§ 77-1807 and 77-1818. At that point in time and for several years thereafter, the owner or occupant of the property or any person having a lien on the property can redeem the property by paying the delinquent taxes plus interest. See § 77-1824.

There are two processes through which the holder of a tax sale certificate can exercise his or her rights to the property purchased at a tax sale. Pursuant to § 77-1837, the holder of the certificate can obtain a tax deed from the county treasurer.

To exercise this option, the holder must provide notice of his or her intent to apply for a tax deed at least 3 months prior to applying for the deed. See § 77-1831. Alternatively, the holder of a tax sale certificate or a tax deed can foreclose upon the tax lien and compel sale of the property pursuant to § 77-1902. The purchaser of the property in the foreclosure proceedings receives a sheriff's deed, the delivery of which "shall pass title to the purchaser free and clear of all liens and interests of all persons who were parties to the proceedings, who received service of process, and over whom the court had jurisdiction." Neb. Rev. Stat. § 77-1914 (Reissue 2009). Under both §§ 77-1837 and 77-1902, the individual who purchases the property at a tax sale must act within a 6-month period upon the expiration of 3 years from the date of sale.

In the instant case, Helen applied for and received a tax deed under § 77-1837, which she later transferred to Daniel. Archer does not contend that the tax deed was issued improperly, but, rather, assigns error to the district court's conclusion that the tax deed transferred title to the property free and clear of Archer's liens. Contrary to the court's conclusion, Archer urges that § 77-1902 provides "the sole method for a holder of a [t]reasurer's [t]ax [d]eed to obtain title 'free and clear' of all previous liens." Brief for appellant at 5. For the reasons that follow, we do not agree with Archer's interpretation of § 77-1837 and the tax sale statutes.

[4] First, this interpretation yields a result contrary to other Nebraska statutes that place tax liens in a position of first priority. Neb. Rev. Stat. § 77-203 (Reissue 2009) mandates that "taxes on real property shall be a first lien on the property taxed until paid or extinguished as provided by law." According to Neb. Rev. Stat. § 77-208 (Reissue 2009), a lien under § 77-203 "shall take priority over all other encumbrances and liens thereon." Similarly, Neb. Rev. Stat. § 14-557 (Reissue 2007), applying to cities of the metropolitan class, states that "[a]ll general municipal taxes upon real estate shall be a first lien upon the real estate upon which it is levied and take priority over all other encumbrances and liens thereon."

Archer's interpretation, when taken to its logical conclusion, places the holder of a tax deed who chooses to follow the

procedure of § 77-1837 instead of § 77-1902 in a position other than first priority. As Archer itself confesses, under its interpretation, the holder of a tax deed who does not foreclose "falls in line behind other liens previously filed." Brief for appellant at 11. We need look no further than the instant case to see how a tax lien could be defeated under this interpretation—a previous lienholder would simply need to wait out the tax sale proceedings and then foreclose on its lien after the issuance of a tax deed.

[5,6] This interpretation is decidedly contrary to §§ 14-557, 77-203, and 77-208 and, if adopted by this court, would nullify not one but three other statutes. Construction of a statute will not be adopted which has the effect of nullifying or repealing another statute. *Sack v. State*, 259 Neb. 463, 610 N.W.2d 385 (2000). Additionally, statutes relating to the same subject matter will be construed so as to maintain a sensible and consistent scheme and so that effect is given to every provision. *State v. County of Lancaster*, 272 Neb. 376, 721 N.W.2d 644 (2006). In order to reconcile the statutes mandating that tax liens be given first priority with § 77-1837, tax deeds issued pursuant to § 77-1837 must pass title free and clear of all previous liens and encumbrances.

We note that the Nebraska Supreme Court has applied similar reasoning in upholding the passing of title free and clear of liens through foreclosure following a tax sale:

> In the very nature of things[,] a sale under a foreclosure of a first lien cannot be made subject to any other lien, for to do so would be to make the junior lien a senior lien. It would destroy the very purpose of the legislative provisions making general taxes a first lien. . . . If the special assessments remain a lien after title passes under the foreclosure . . . , the result would be that the junior lien could then come forward and destroy the title based on the superior lien. Such a result would nullify the very purpose of the tax foreclosure laws.

Polenz v. City of Ravenna, 145 Neb. 845, 849, 18 N.W.2d 510, 512 (1945). Although the court in *Polenz* was discussing the passing of title through an action to foreclose a tax sale certificate, we believe the same reasoning is applicable to § 77-1837,

because the procedure under this statute shares the same goal of recovering delinquent taxes. According to this reasoning, after a tax sale, title must pass free and clear of all liens and encumbrances in order for the tax lien to remain in a position of first priority as mandated by statute.

Second, we decline to adopt the interpretation urged by Archer, because it yields a result contrary to case law. Most cases pertaining to tax sales either do not reach the issue of whether a tax deed passes title free and clear of liens and encumbrances, see *Ottaco Acceptance, Inc. v. Larkin*, 273 Neb. 765, 733 N.W.2d 539 (2007), or speak only to the passing of title through foreclosure proceedings, see, *Dent v. City of North Platte*, 148 Neb. 718, 28 N.W.2d 562 (1947); *Polenz v. City of Ravenna, supra*; *County of Garden v. Schaaf*, 145 Neb. 676, 17 N.W.2d 874 (1945); *Coffin v. Old Line Life Ins. Co.*, 138 Neb. 857, 295 N.W. 884 (1941); *Topliff v. Richardson*, 76 Neb. 114, 107 N.W. 114 (1906). However, there is a body of case law that addresses the issuance of tax deeds other than through foreclosure. These cases clearly state that title conveyed under a tax sale is a new title, not derivative, and that the purchaser takes title free from any encumbrances. See, *Sanford v. Scott*, 105 Neb. 479, 484, 181 N.W. 148, 150 (1920) (concluding that county treasurer's tax deed "conveyed the title to the defendant . . . free from the lien of plaintiff's mortgage"); *Rickards v. Coon*, 13 Neb. 420, 422, 14 N.W. 163 (1882) (addressing tax deed from county treasurer and stating that "tax deeds divest the title of the land owner" and that "the purchaser takes the title entirely free from all prior claims"); *Boeck v. Merriam*, 10 Neb. 199, 202, 4 N.W. 962, 963 (1880) (stating that holder of tax deed "takes an absolute title free from all liens and [e]ncumbrances").

[7] Furthermore, it was the rule at common law for tax deeds to convey title free and clear of prior liens even before the statutory scheme for obtaining a tax deed, now codified at § 77-1837, was enacted in 1903. See, *Rickards v. Coon, supra*; *Boeck v. Merriam, supra*. It is a recognized rule of construction that statutes which effect a change in the common law or take away a common-law right should not be adopted unless the plain words of the act compel it. *Guzman v. Barth*, 250 Neb.

763, 552 N.W.2d 299 (1996). Thus, because the plain words of § 77-1837 do not demand Archer's interpretation, which would be contrary to common law, we are further constrained from adopting his interpretation of § 77-1837.

[8] In conclusion, our rules of statutory construction compel us to adopt an interpretation of § 77-1837 that does not nullify §§ 14-557, 77-203, and 77-208 but respects their mandates, promotes a consistent statutory scheme, and is consistent with previous holdings of the Nebraska Supreme Court and with common law. We hold that a treasurer's tax deed, issued pursuant to § 77-1837 and in compliance with §§ 77-1801 to 77-1863, passes title free and clear of all previous liens and encumbrances.

Archer does not contend that Helen failed to comply with any of the statutory procedures and dismisses the fact that when it was notified of Helen's intent to apply for a treasurer's tax deed, it could have protected its lien by redeeming the property from sale using the procedure specified in § 77-1824 (authorizing redemption by owner or "any person having a lien thereupon" and allowing redemption at any time before delivery of tax deed). Archer attempts to justify its failure to protect its lien by asserting that foreclosure proceedings "provide adequate protections to a lienholder by way of the disposition of surplus proceeds of the foreclosure sale." Brief for appellant at 10. But this argument utterly fails to explain why Archer should now be protected when it refused to act when given the opportunity. Had Archer redeemed the property under § 77-1824, it not only would have protected its lien position, it would have been entitled under § 77-1828 to reimbursement from Shafer Properties (as the titleholder which would have benefited by redemption) of the moneys expended in redeeming the property. Thus, the statutory framework provided a means for Archer to protect its lien, but it failed to do so.

Therefore, the district court did not err in finding that the tax deed in the instant case conveyed title free and clear of the liens of Archer. Because its liens were foreclosed by the tax deed, Archer's deeds of trust were not first, paramount, and superior to the tax deed, and the district court did not

err in so holding. Archer's first two assignments of error lack merit.

Summary Judgment.

Archer finally alleges that the district court erred in sustaining Daniel's motion for summary judgment and denying its motion for summary judgment. We agree with the district court that Daniel proved he was entitled to judgment as a matter of law and that Archer did not.

As the plaintiff in a quiet title action, Daniel was required to prove that he was the owner of the legal or equitable title to the property or had some interest therein superior to the rights of Archer. See *Weesner v. Weesner*, 168 Neb. 346, 95 N.W.2d 682 (1959). Because the tax deed conveyed title free and clear of all other liens and encumbrances, it necessarily follows that Daniel could meet his burden of proof by showing that he was the rightful and current owner of the property and that Archer held no liens on the property that postdated the tax deed. He met a portion of this burden with Helen's affidavit, which established both her original possession of the property under the tax deed and the subsequent transfer of the property to Daniel by quitclaim deed. He met the remainder of his burden of proof with the affidavit of the attorney, who testified that the only parties with an interest in the property other than Daniel were Shafer Properties and Archer and that their interests predated the tax deed.

Given this evidence, the district court did not err in sustaining Daniel's motion for summary judgment, thus quieting his title to the property. It naturally follows that the court correctly overruled Archer's opposing motion for summary judgment.

CONCLUSION

Because a contrary interpretation would nullify other statutes that place tax liens in first priority, fail to promote a consistent statutory scheme, and conflict with previous case law and common law, we hold that a treasurer's tax deed, issued pursuant to § 77-1837 and in compliance with §§ 77-1801 to 77-1863, passes title free and clear of all previous liens and encumbrances. Given this holding and the evidence that

Daniel's title to the property flowed from a treasurer's tax deed issued in compliance with the statutory procedures, the district court did not err in sustaining Daniel's motion for summary judgment and quieting title to the property originally obtained by tax deed. We affirm the court's decree.

AFFIRMED.

INBODY, Chief Judge, participating on briefs.

RYAN KRIZ, APPELLANT, V. BEVERLY NETH, DIRECTOR, STATE OF NEBRASKA, DEPARTMENT OF MOTOR VEHICLES, AND THE NEBRASKA DEPARTMENT OF MOTOR VEHICLES, APPELLEES.

___ N.W.2d ___

Filed May 1, 2012. No. A-11-560.

1. **Administrative Law: Judgments: Appeal and Error.** A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record.
2. ____: ____: ____. When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is not arbitrary, capricious, or unreasonable.
3. **Due Process.** Due process claims are generally subjected to a two-part analysis: (1) Is the asserted interest protected by the Due Process Clause and (2) if so, what process is due?
4. **Administrative Law: Due Process.** Where procedural due process is required, the State must provide a forum for the determination of the question and a meaningful hearing appropriate to the nature of the case.
5. **Administrative Law: Due Process: Notice: Evidence.** An administrative hearing must include notice, identification of the accuser, factual basis for the accusation, reasonable time and opportunity to present evidence concerning the accusation, and a hearing before an impartial adjudicator.
6. **Administrative Law: Motor Vehicles.** Pursuant to 247 Neb. Admin. Code, ch. 1, §§ 003.05 and 003.05E (2006), an administrative hearing officer has the duty to take appropriate action to avoid unnecessary delay in the disposition of the proceeding and the power to regulate the course of the proceedings in the conduct of the parties and their representatives.
7. **Administrative Law: Due Process: Motor Vehicles.** Due process does not require administrative hearings at any length demanded by a motorist.

Appeal from the District Court for Box Butte County: LEO DOBROVOLNY, Judge. Affirmed.