

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000300-MR

AMERICAN TAX FUNDING, LLC

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE GREGORY A. LAY, JUDGE  
ACTION NO. 05-CI-00653

WILLIE GENE AND MARY SAWYERS;  
FIRST NATIONAL BANK & TRUST; CITY  
OF LONDON, KENTUCKY; AND LAUREL  
COUNTY, KENTUCKY

APPELLEES

OPINION  
AFFIRMING IN PART  
AND  
REVERSING IN PART

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BEFORE: CLAYTON AND NICKELL, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

NICKELL, JUDGE: American Tax Funding, LLC (“ATF”) has appealed from the  
January 4, 2006, order of the Laurel Circuit Court which amended its earlier judgment

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<sup>1</sup> Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS)21.580.

and order of sale entered in ATF's favor in this tax lien enforcement action. The latter order fixed ATF's attorney's fee award at \$1,500.00, and awarded it taxable costs authorized by CR<sup>2</sup> 54.04. For the following reasons, we affirm in part, reverse in part, and remand for further proceedings.

Under our statutory scheme as set forth in KRS<sup>3</sup> Chapter 134, if the owner of real property fails to timely pay the taxes assessed against such real property, “[t]he state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for ten (10) years following the date when the taxes become delinquent . . . .” KRS 134.420(1)(a). Under KRS 134.420(1)(c), these tax liens “shall include all interest, penalties, fees, commissions, charges, costs, reasonable attorney fees and other expenses incurred” as a result of the delinquency in payment or in the process of collecting same. KRS 134.450 authorizes the sale of delinquent tax bills, along with the right to collect and enforce the liens thereby created, to private purchasers. The various legal remedies available to private purchasers of these liens are set forth in KRS 134.490, and include the ability to institute actions for collection of the delinquent amount and enforcement of the lien, and foreclosure on the property to secure payment for any judgment rendered.

On June 17, 2005, ATF filed a complaint pursuant to KRS 134.490 against Willie Gene Sawyers and Mary Sawyers (collectively “Sawyers”), First National Bank and Trust (“First National”), and the City of London, Kentucky,<sup>4</sup> seeking enforcement of

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<sup>2</sup> Kentucky Rules of Civil Procedure.

<sup>3</sup> Kentucky Revised Statutes.

<sup>4</sup> The Commonwealth of Kentucky, County of Laurel, was subsequently added as a party to the action.

the statutory tax lien it held<sup>5</sup> against real property owned by Sawyers. The tax lien arose from Sawyers' delinquency in paying taxes for 1999 on a parcel of real property located in Laurel County, Kentucky.

On April 7, 2006, the trial court entered a default judgment in favor of ATF against First National and the City of London, Kentucky, and a summary judgment against Sawyers and Laurel County, Kentucky. The judgment awarded ATF \$1,281.67 plus interest on the underlying delinquent tax claim. Further, ATF was awarded its costs incurred in pursuing the claim pursuant to CR 54.04, and its attorney's fees pursuant to KRS 134.420, but the court reserved ruling on the actual amounts to be awarded. ATF and Sawyers were permitted to take discovery and to file supplemental briefs on these two issues. ATF calculated the total amount it was due for attorney's fees, costs and expenses at \$5,329.59. Sawyer generally objected to this amount as exorbitant but did not provide alternative calculations regarding the fees, expenses or costs. On January 4, 2007, the trial court entered an order fixing ATF's attorney's fees at \$1,500.00,<sup>6</sup> and awarding it the

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<sup>5</sup> ATF is a private purchaser of the tax lien at issue as authorized under KRS 134.450, and sought to enforce the lien as authorized under KRS 134.490.

<sup>6</sup> We are aware KRS 134.452 sets limits on the amount of recovery for attorney's fees in tax lien enforcement actions based upon the amount of the underlying tax delinquency. However, this statute became effective on June 26, 2007, and was not made retroactive. Thus, this statutory provision is not applicable to this appeal.

taxable costs authorized under CR 54.04.<sup>7</sup> This appeal followed.

ATF contends the trial court erred in refusing to award the full amount it requested for its attorney's fees. Further, ATF contends it is entitled to reimbursement for all of its costs and expenses associated with this action pursuant to KRS 134.420(1), not merely those costs and expenses set forth in CR 54.04. ATF's judgment for the amount of the delinquent taxes, accrued interest, and additional interest accruing from and after the date of entry of the judgment are not at issue in this appeal. The only disputes are those regarding ATF's attorney's fees, costs and expenses.

### I. ATTORNEY'S FEES

"It is well settled that awards of attorney's fees lie 'within the sound discretion of the trial court and [the court's] decision will not be disturbed on appeal absent an abuse of discretion.'" *King v. Grecco*, 111 S.W.3d 877, 883 (Ky.App. 2002) (quoting *Giacalone v. Giacalone*, 876 S.W.2d 616, 620 (Ky.App. 1994) (citing *Gentry v. Gentry*, 798 S.W.2d 928 (Ky. 1990); *Wilhoit v. Wilhoit*, 521 S.W.2d 512 (Ky. 1975))). However, under the mandatory language of KRS 134.420(1)(c), a private purchaser of a tax lien is entitled to collect its reasonably expended attorney's fees. *Flag Drilling Co., Inc. v. Erco, Inc.*, 156 S.W.3d 762, 767 (Ky.App. 2005). As there is no dispute ATF is entitled to an award for attorney's fees, the sole question is whether the trial court abused its discretion in determining the amount which was reasonable to award.

Abuse of discretion occurs when a trial court's decision is arbitrary, capricious, unreasonable, unfair or legally unsound. *Sexton v. Sexton*, 125 S.W.3d 258 (Ky. 2004); *Kuprion v. Fitzgerald*, 888 S.W.2d 679 (Ky. 1994); *Tolar v. Rapid American*,

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<sup>7</sup> The order did not set forth the amount awarded for costs, nor did it include any language identifying the costs that would be permitted.

190 S.W.3d 348 (Ky.App. 2005). ATF's counsel submitted an affidavit accompanied by a detailed billing statement for services rendered in the amount of \$4,442.10. However, the trial court found a reasonable amount of attorney's fees to be \$1,500.00. ATF contends the absence of any contradictory evidence introduced by the Sawyers means it is entitled to the amount requested, although it cites us to no authority in support of this contention. ATF thus argues the trial court abused its discretion in failing to award the full amount requested. We disagree.

Although the difference in the amount ATF requested and the amount the trial court actually awarded is substantial, we are unable to conclude the trial court abused its discretion. The amount awarded is in excess of 115% of the underlying judgment amount. As stated earlier, determination of the reasonableness of an attorney's fee lies within the sound discretion of the trial court. *King, supra; Flag Drilling, supra. See also Woodall v. Grange Mutual Casualty Co.*, 648 S.W.2d 871 (Ky. 1983). ATF has failed to convince us the trial court abused this discretion. Thus, we affirm the award of \$1,500.00 for ATF's reasonable attorney's fees.

## II. COSTS AND EXPENSES

Finally, ATF contends the trial court erred in awarding it only the costs and expenses authorized under CR 54.04. It argues the specific language of KRS 134.240(1)(c) entitles it to recovery of all costs and expenses incurred as a result of its efforts to collect and enforce the tax lien. We agree.

The language of CR 54.04 and KRS 134.420(1)(c) appear in this instance to be in conflict. The statutory language mandates the recovery of all costs and expenses, while the rule allows for recovery of only certain specified costs and expenses. When a

civil rule is in conflict with a specific statutory mandate, the rule must give way to the statute. *Hodge v. Ford Motor Co.*, 124 S.W.3d 460, 464 (Ky.App. 2003) (citing *Dawson v. Hensley*, 423 S.W.2d 911, 912 (Ky. 1968)). Thus, the trial court should have allowed ATF recovery of all its actual costs and expenses incurred in relation to this action. As we are aware the costs and expenses incurred may increase in the event of further proceedings to collect the underlying judgment herein, including the sale of the real property to which the lien is attached, we decline to set a specific amount the trial court should award. Accordingly, we must reverse this portion of the judgment and remand the matter for further proceedings.

For the foregoing reasons, the judgment of the Laurel Circuit Court is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

CLAYTON, JUDGE, CONCURS.

GRAVES, SENIOR JUDGE, CONCURS AS TO PART I. AND  
DISSENTS AS TO PART II.

BRIEF FOR APPELLANT:

James D. Ballinger  
Ilam E. Smith  
PEDLEY ZIELKE GORDINIER & PENCE  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Kenneth A. Sizemore  
London, Kentucky