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PREVIEW

OF UNITED STATES SUPREME COURT CASES



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TAKINGS CLAUSE

May the Government Keep Surplus Proceeds Resulting from a Property-Tax-Foreclosure Sale Without Violating the Fifth or Eighth Amendments?

CASE AT A GLANCE

Geraldine Tyler owned a condominium but owed delinquent property taxes totaling \$15,000 in taxes, penalties, costs, and interest. Hennepin County, Minnesota, foreclosed on the property and sold it for \$40,000. Because Minnesota’s delinquent-property-tax statute deems a taxpayer’s entire property forfeited when the homeowner is delinquent in the payment of property taxes, the government kept not only the \$15,000 to satisfy the tax debt but also the \$25,000 in surplus proceeds from the sale. Tyler sued the county, claiming the state’s confiscation of the entire value of her property (including her equity in her condo in excess of her tax debt) was an unconstitutional taking and excessive fine violating the Fifth and Eighth Amendments. The district court dismissed her complaint, and the Eighth Circuit affirmed.

Tyler v. Hennepin County, Minnesota, and Daniel P. Rogan, Hennepin County Auditor-Treasurer
Docket No. 22-166

Argument Date: **April 26, 2023** From: **Eighth Circuit**

by **Stephen S. Davis**

True North Law LLC, St. Louis, Missouri

Introduction

When a property owner is delinquent in paying property taxes, the local government can foreclose on the property to satisfy the tax debt. In most states, if the sale of the property results in a surplus exceeding the tax debt (and the costs of the sale and satisfaction of any other liens on the property), the owner is paid any surplus amount. But in Minnesota and a minority of states, state statutes provide for the forfeiture of all of the proceeds of the foreclosure sale, allowing the government to keep all sale proceeds, including the owner’s equity in the property. According to Geraldine Tyler and her counsel, between 2014 and 2020, more than 1,000 Minnesota homeowners lost their homes, including all equity in their homes (averaging 92 percent of the home’s value), under Minnesota’s delinquent-property-tax-forfeiture statute. Additionally, the trial court pointed out that “[i]n taking and selling Tyler’s condo and

retaining the surplus, the County acted in strict compliance with a Minnesota statute that has been used on countless occasions over the past 85 years.”

Issues

Does foreclosing on and selling a home to satisfy a debt to the government, and keeping the surplus value, violate the Takings Clause of the Fifth Amendment?

Does the forfeiture of property worth substantially more than the amount needed to satisfy a debt to the government, plus interest, penalties, and costs, constitute a fine within the meaning of the Eighth Amendment?

Facts

Geraldine Tyler is now 94 years old. She owned a one-bedroom condominium in Hennepin County, Minnesota, in which she lived for just over ten years. She moved out

of her condo in 2010 in order to rent an apartment in a senior community. While she lived in her condo, she timely paid her property taxes, but after moving out, she stopped paying. By 2015, her delinquent property taxes totaled \$2,311, and penalties, costs, and interest added an additional \$12,689, for a total property-tax debt of \$15,000.

Hennepin County foreclosed on Tyler's tax debt under Minnesota's delinquent property tax statutory provisions. According to this statutory scheme (originally enacted in 1935), annual unpaid property taxes become delinquent on January 1 of the year following assessment. The county auditors generate a list of delinquent taxpayers, which, when filed in state court, initiates a lawsuit against each delinquent taxpayer. The county notifies the taxpayer that a lawsuit seeking payment of the delinquent taxes is pending. If the taxpayer fails to file a response to the lawsuit within 20 days, the court enters judgment for the delinquent property taxes. If the judgment is not satisfied by the deadline, the statute provides for the transfer of ownership of the property to the state, and the former owner has three years to redeem the property by paying the amount of the delinquent taxes, penalties, costs, and interest. The county must provide notice of the right to redeem the property.

If the former property owner wishes to redeem the property but cannot afford to do so, the statute provides the owner the option of filing a "confession of judgment," whereby the taxpayer agrees to the entry of judgment against her for all delinquent taxes, penalties, and interest. Once filed, this allows the tax debt to be consolidated and paid over a period of up to ten years. If the former owner fails to redeem the property or file a confession of judgment, the property is forfeited, absolute title vests in the state, and the property taxes and liens are canceled. After forfeiture, the former owner is able to apply to repurchase the property for the "amount of the taxes, penalties, costs, interest, and special assessments owing at the time of forfeiture, along with any taxes that would have been collected if the property had not been forfeited."

Upon forfeiture of the property to the state, the county can sell the property, retaining and allocating all net proceeds for government purposes. As the district court explained, "Minnesota's statutory tax-foreclosure scheme does not provide [the former owner] with any means to claim the proceeds of the sale in excess of the tax debt," and "Minnesota is one of just a handful of states that statutorily requires the surplus to be distributed to recipients other than the former property owner."

Once the property is forfeited, the tax debt is canceled, and a statutorily authorized government feeding frenzy ensues. After payment of any expenses and assessments relating to the property, the county may designate all or a portion of the sale proceeds for forest development, county parks, and/or county recreation programs. Any leftover funds not so designated are then divvied up among the county, school district, and city.

Tyler failed to pay the delinquent property taxes or redeem the property or apply to repurchase her condo from the state. Hennepin County took "absolute title" to Tyler's condo in 2015, and then a year later, it sold the condo for \$40,000, canceled Tyler's \$15,000 tax debt, and distributed the proceeds pursuant to the statute without returning the \$25,000 in surplus funds to Tyler. Tyler sued the county for both taking her property interest in the nontax equity in her condo without paying her "just compensation" under the Fifth Amendment and imposing an excessive fine under the Eighth Amendment. She also alleged the county had violated her substantive due process rights in taking her property and that it was unjustly enriched by keeping the surplus funds.

Tyler did not challenge the sufficiency of the notice provided by Hennepin County, dispute that she received notice that her condo was added to the delinquent tax list that triggered the county's lawsuit against her property, nor dispute that she received notice of her right to redeem her property. The district court noted that "Tyler had opportunity after opportunity to avoid the forfeiture of the surplus equity."

Hennepin County moved to dismiss Tyler's lawsuit, and the district court granted that motion. Tyler appealed to the Eighth Circuit, and the Eighth Circuit panel unanimously affirmed the district court's decision. The Eighth Circuit held that Tyler did not have a property interest in the surplus funds. The court explained that homeowners may have had a common-law property interest in foreclosure-sale "surplus equity" stemming from an 1884 decision of the Minnesota Supreme Court, but any such common-law right was abrogated by the 1935 statute.

The court ruled Minnesota's statutory scheme was constitutional under the U.S. Supreme Court's 1956 decision in *Nelson v. City of New York*, 352 U.S. 103 (1956), where New York retained all the proceeds from a tax-foreclosure sale. The Eighth Circuit explained that "[w]here state law recognizes no property interest in surplus proceeds from a tax-foreclosure sale

conducted after adequate notice to the owner, there is no unconstitutional taking.” The Eighth Circuit compared New York’s tax-foreclosure scheme to Minnesota’s, found that any differences between the two were immaterial, and applied *Nelson’s* holding to Minnesota, stating, “nothing in the Federal Constitution prevents’ the government from retaining the surplus ‘where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings.” The district court had been even more emphatic, stating,

nothing in the constitutions of the United States or Minnesota, nothing in any federal or state statute, and nothing in federal or state common law gives the former owner of a piece of property that has been lawfully forfeited to the state and then sold to pay delinquent taxes a right to any surplus.

And the district court noted, “Minnesota has been distributing surplus proceeds pursuant to [this statute] for 85 years, and yet Tyler has not pointed to a single case in which any litigant has even argued—much less any court has actually suggested—that the statute unconstitutionally deprives a delinquent taxpayer of her property.”

The Eighth Circuit summarily affirmed the district court’s decision denying Tyler’s Eighth Amendment and unjust enrichment claims for failure to state a claim upon which relief can be granted. The district court held that the county’s retention of all of the proceeds of the sale did not constitute a “fine” for purposes of analyzing whether it violated the Eighth Amendment because the Minnesota statutory scheme was remedial and was not intended to impose punishment. The delinquent property-tax statutory scheme is remedial when “its primary purpose is to compensate the government for lost revenues due to the non-payment of taxes.” It is not punitive because, should the property be sold for less than the amount of delinquent taxes, the Minnesota statute “confers a windfall” upon the taxpayer by canceling the remaining tax debt. And even in cases, like this, where the tax debt is relatively small compared with the amount generated by the sale of the property, the Supreme Court, in *United States v. Bajakajian*, 524 U.S. 321 (1998), a case involving the forfeiture of cash involved in committing a crime, “rejected the notion that a penalty or forfeiture must be deemed punitive if the government receives more than what is necessary to make it whole.” Furthermore, the statute was not punitive because it afforded the homeowner multiple opportunities to avoid forfeiture. Finally, the court held the county could not have been

unjustly enriched because its actions were “specifically authorized by Minnesota law,” and the county “did not receive anything ‘to which [it] was not entitled.”

Case Analysis

This case asks whether Minnesota’s delinquent-property-tax-forfeiture statutory scheme violates the Fifth Amendment’s Takings Clause or the Eighth Amendment’s Excessive Fines Clause because the statute provides that the state acquires a taxpayer’s property by forfeiture and then keeps all of the foreclosure-sale proceeds, including the former-owner’s equity (in excess of the tax debt), but where the statute also permits the taxpayer-owner notice of and opportunity to redeem the property to recover the owner’s equity.

The Fifth Amendment to the U.S. Constitution provides, among other things, that private property shall not “be taken [by the government] for public use, without just compensation.” The Takings Clause was the first provision of the Bill of Rights to be made applicable to the states through the Fourteenth Amendment, as set forth by the Supreme Court in *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*, 166 U.S. 258 (1897), and the Minnesota Constitution contains its own Takings Clause. Tyler conceded that Hennepin County could foreclose on and take her condo to recoup the \$15,000 in taxes, penalties, costs, and interest she owed the county, but she claimed she had a property interest in the surplus equity that could not be taken by the government without the government paying her “just compensation.” The Supreme Court has repeatedly affirmed that the “Fifth Amendment’s guarantee that private property shall not be taken for a public use without just compensation was designed to bar [g]overnment from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40 (1960) (involving the government’s termination of a contract extinguishing a state-law lien on property). Thus, if the government took a property interest from Tyler, the government must justly compensate her for that taking. See *Horne v. Department of Agriculture*, 576 U.S. 350 (2015) (The Takings Clause “protects ‘private property’ without any distinction between different types.”).

Tyler argues she had a property interest in her equity in her condo—equity being defined, Tyler explains, in *Black’s Law Dictionary* as “an ownership interest in property and the amount by which the value of or an interest in

property exceeds secured claims or liens.” Although Tyler admits that the Supreme Court has never explicitly held that equity in real property is a property interest protected by the Takings Clause, she argues that the Court has treated it as private property protected from government takings without payment of compensation, and that the common law dating back to Magna Carta has considered it as such. Further, equity “bears all the hallmarks of a property interest,” including possession, use, and transferability, for which the Court has consistently held the government must compensate the property owner when it takes that property interest.

The Takings Clause, Tyler asserts, protects all forms of property, including both real and personal property. In *Horne*, Tyler continues, the Supreme Court held the Takings Clause “protects ‘private property’ without any distinction between different types[, which] principle... goes back at least 800 years to Magna Carta, which specifically protected agricultural crops from uncompensated takings.” (“The [g]overnment has a categorical duty to pay just compensation when it takes your car, just as when it takes your home.”). And at least since World War II, when companies sued the federal government for taking commercial property for the war effort, the Court explained that the “Takings Clause protects ‘every sort of interest the citizen may possess’ in a ‘physical thing.’” *United States v. General Motors Corp.*, 323 U.S. 373 (1945).

Throughout the country’s history, Tyler argues, state and federal courts have protected equity as private property from government taking without payment of compensation. For instance, the Michigan Supreme Court explained that Magna Carta “recognized that tax collectors could only seize property to satisfy the value of the debt payable to the Crown, leaving the property owner with the excess.” *Rafaeli, LLC v. Oakland County*, 952 N.W.2d 434 (2020). And prior to the enactment of Minnesota’s delinquent-property-tax statute, the Minnesota Supreme Court held that “[a]fter the lien of the state is satisfied, any surplus realized from the sale must revert to the owner.” *Farnham v. Jones*, 19 N.W. 83 (Minn. 1884). Even after the statute’s enactment, Tyler asserts, the Minnesota Supreme Court “construed the state’s tax statute to preserve [a] tax-delinquent owner’s right to recover the proceeds [from the state’s condemnation of the property], noting ‘[i]t is not the policy of the state, nor should it be, to deprive owners of real estate of their interest therein on account of tax delinquency.’” *Burnquist v. Flach*, 6 N.W.2d 805

(Minn. 1942). In sum, according to Tyler, “equity is private property that belongs to the debtor, the government violates the Takings Clause when it takes equity without compensation.”

Hennepin County argues, to the contrary, that this is not a case about an unconstitutional taking but simply about someone’s failure to pay taxes. As the Eighth Circuit explained, quoting *Jones v. Flowers*, 547 U.S. 220 (2006), “[p]eople must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property.” Tyler, the county says, is trying to turn this case into a taking case, when it is actually a case about “whether a taxpayer can force a local government to go beyond its role as tax collector and manage the taxpayer’s affairs.” Moreover, Tyler did not contest that she was, in fact, delinquent in paying her taxes and that she was given notice of her tax delinquency and her right to redeem the property to reclaim any surplus funds.

This is not a taking of Tyler’s property, the county argues, because, as the Eighth Circuit correctly concluded, “[w]here state law recognizes no property interest in surplus proceeds from a tax-foreclosure sale conducted after adequate notice to the owner, there is no unconstitutional taking.” Furthermore, in *Nelson*, the Supreme Court already dealt with this issue and conclusively held that like New York’s tax-forfeiture statute, Minnesota’s tax-forfeiture statute is constitutional because Tyler was afforded notice and “a right to redeem the property or to recover the surplus.” Tyler counters that the Eighth Circuit misread *Nelson* because, in that case, the owner only raised the issue relating to the surplus funds in the owner’s reply brief, which the Supreme Court, in dicta, “rejected [as an] eleventh-hour argument... noting that the New York City law gave the owners an opportunity to claim the surplus proceeds from a judicial sale of the property, which the owners failed to request in time.” Tyler argues New York’s law is significantly different from Minnesota’s, and thus, the Court’s holding in *Nelson* is inapplicable because “[u]nlike New York City’s law, Minnesota does not provide *any* opportunity for debtors to collect surplus proceeds from the sale of their tax foreclosed property.” Thus, the Eighth Circuit was wrong to extend the Supreme Court’s reasoning in *Nelson* to uphold Minnesota’s law. In addition, Tyler argues, the Court’s dicta in *Nelson* is further undercut by three 19th-century cases, including *United States v. Lawton*, 110 U.S. 146 (1884), where the Supreme Court held that “[t]o withhold the surplus from the owner [after forfeiture for payment of property-tax

debt] would be to violate the fifth amendment to the constitution, and...take his property for public use without just compensation.”

The Eighth Amendment to the U.S. Constitution provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” The Excessive Fines Clause is the provision of the Bill of Rights that the Supreme Court has most recently held to be applicable to the states through the Fourteenth Amendment. See *Timbs v. Indiana*, 139 S. Ct. 682 (2019). The Minnesota Constitution contains a similar provision. The Supreme Court has also clarified that “excessive fines” applies to both criminal and civil fines and penalties. *Austin v. United States*, 509 U.S. 602 (1993).

Addressing whether the Minnesota statute violates the Eighth Amendment as an “excessive fine,” Tyler argues the lower courts erred in finding the forfeiture could not be defined as a “fine.” Forfeiting the entire property for a tax debt amounting to much less than the value of the property constitutes a fine under the Supreme Court’s jurisprudence because, in *Austin*, as Tyler points out, the Court held the question is “whether [the sanction] is punishment,” not whether it is criminal or civil. And in *Timbs*, the Supreme Court further explained the Excessive Fines Clause applies to forfeitures that are “at least partially punitive.” The county responds that the statute’s text, purpose, and history demonstrate the statute is remedial, not punitive, and that the lower court “correctly ruled that Minnesota’s tax forfeiture statutes are ‘a debt-collection system whose primary purpose is plainly remedial[, which is] assisting the government in collecting past-due property taxes and compensating the government for the losses caused by the non-payment of property taxes.’” The government is not accusing Tyler of any crime, the county asserts, and as the district court correctly noted, Minnesota “taxpayers’ multiple opportunities to avoid forfeiture was ‘evidence that the purpose of the scheme is to collect taxes, rather than to punish delinquent taxpayers.’” Thus, the county argues, Minnesota’s delinquent-property-tax statute is not a “fine” at all, and accordingly, the statute does not come within the purview of, let alone violate, the Eighth Amendment.

Significance

Since 2005, when the Supreme Court issued its controversial decision regarding the Fifth Amendment in *Kelo v. City of New London*, 545 U.S. 469 (2005), where the Court upheld a local government’s taking as a valid

exercise of the government’s eminent domain power, the Court’s decisions have moved toward reaffirming property owners’ rights to payment of just compensation in a wide range of property takings. See, e.g., *Arkansas Game and Fish Comm’n v. United States*, 568 U.S. 23 (2012); *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013); *Horne; Knick v. Township of Scott*, 139 S. Ct. 2162 (2019); *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021). The Court may move further down this path here.

Should the Supreme Court rule that Minnesota’s delinquent-property-tax-forfeiture statute unconstitutionally violates either the Fifth or Eighth amendments, similar statutory schemes in at least 11 other states and the District of Columbia will likely become unenforceable. More states’ regulations may fall as well, because in some states, the owners must affirmatively request that the surplus be transferred from the government to the owner.

Tyler argues that forfeiture statutes like Minnesota’s are not only unconstitutional, they are also punitive and injurious. Indeed, she states they have “devastating consequences for homeowners who fall behind on their taxes[, which] is especially pernicious for owners who have non-blameworthy reasons, including cognitive decline, physical or mental illness, or simple poverty.” In particular, Tyler continues, elderly homeowners like herself can be “especially susceptible to losing their property in this way when they leave their residences for senior living or medical facilities and fail to recognize the consequence of allowing a foreclosure to occur.”

The county argues that its statute is a legitimate way for the state to collect property taxes, and the state’s ability to collect taxes is “necessary for the orderly functioning of our civil society.” Quoting the Supreme Court’s decision in *Nicol v. Ames*, 173 U.S. 509 (1889), the county emphasizes that the

power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy, but it is also the power to keep alive.

Minnesota law, the county points out, enables taxpayers to “prevent the loss of any surplus by paying the taxes, redeeming the property, or by executing a confession of judgment and paying the tax in installments,” and thus, Tyler “should not be permitted to claim that the loss of the surplus—which is the natural consequence of [her] own actions—is the government’s fault.” Furthermore, the county says, state-government positions across the country

are not as stark as Tyler makes them out to be, explaining, “there are wide differences among the states as to who should receive any surplus left after a tax sale.” According to the county, Minnesota’s delinquent-property-tax-forfeiture scheme falls within the state’s legitimate public-policy discretion, and the “variety of approaches [among the states] demonstrates that the question of who should receive the surplus is a classic policy choice that must be resolved by the legislative branch,” not the judiciary.

But at least some of the justices may find the lower courts’ reasoning—regarding whether Tyler has a property interest in her home’s equity—problematic in another way. The Eighth Circuit held in this case that it is constitutionally permissible for the state to keep foreclosure-sale proceeds converted from an owner’s equity interest “[w]here state law recognizes no property interest in surplus proceeds from a tax-foreclosure sale conducted after adequate notice to the owner...” *Tyler v. Hennepin County*, 26 F.4th 789 (8th Cir. 2022). The district court also reasoned that, because Tyler “does not plead a viable takings claim under either the federal or state constitution unless [she] plausibly pleads that the government took something that belonged to her,” the “critical question is whether that surplus equity *belongs* to Tyler—*i.e.*, whether Tyler *retained* a property interest in the surplus equity after absolute title to the condo passed from Tyler to the County.” *Tyler v. Hennepin County*, 505 F. Supp.3d 879 (D. Minn. 2020) (emphasis added). But this is a sorites paradox. Another way to summarize the lower courts’ holding is to say that Tyler is not entitled to relief because she has no property interest in her condo’s equity in that her equity was forfeited by operation of state law—that is, Tyler possesses no compensable property interest because the government took it from her.

The Supreme Court explained in *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), the “earnings of a fund [paid by a corporation into the court’s registry] are incidents of ownership of the fund itself and are property just as the fund itself is property.” The earnings of a fund could be compared to equity in a home. The Court continued in *Webb’s*,

[t]he state statute has the practical effect of appropriating for the county the value of the use of the fund.... To put it another way: a State, by *ipse dixit*, may not transform private property into public property without compensation, [which] is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent.

Upon examination of Minnesota’s property-tax-forfeiture scheme, the Court may reverse the lower courts’ holdings because Minnesota similarly transformed Tyler’s equity into public property by *ipse dixit*. See *Preseault v. Interstate Commerce Comm’n*, 494 U.S. 1 (1990) (The court of appeals’ “view conflates the scope of the [government]’s power with the existence of a compensable taking and threatens to read the Just Compensation Clause out of the Constitution.”) (Justices Sandra Day O’Connor, Antonin Scalia, and Joseph Kennedy, concurring.) (citing *Webb’s*). *Webb’s* and *Preseault* were unanimous decisions, and although no current justices served on the Court when those decisions were issued, a majority of today’s Court—especially in light of the Court’s recent Takings Clause jurisprudence—may likewise find Minnesota’s statute constitutionally infirm.

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