Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-065

JULY TERM, 2019

Rick Colt v. Randy Hook*	}	APPEALED FROM:
	}	
	}	Superior Court, Windsor Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 322-7-18 Wrcv
		Trial Judge: Michael R. Kainen

In the above-entitled cause, the Clerk will enter:

Defendant appeals a civil division order granting summary judgment to plaintiff in this ejectment action. On appeal, defendant argues that the notice of the tax sale, which resulted in plaintiff purchasing the property, violated due process and that the court erred in granting summary judgment without a hearing. We affirm.

In July 2018, plaintiff filed an ejectment action to evict defendant from property in Hartland that plaintiff had acquired through a tax sale. The complaint stated that defendant formerly owned the property, had not redeemed the property within the statutory redemption period, and had received notice of termination. Plaintiff sought compensatory damages and a writ of possession. Plaintiff filed a motion for judgment on the pleadings. Defendant filed an answer and a motion to dismiss. He denied that plaintiff gained ownership to the property through a tax sale and that he had failed to redeem during the statutory redemption period. Defendant alleged that the Town of Hartland did not provide adequate notice to him of the tax sale because "[n]otice was sent by first class mail to [defendant] on the 27th of January, only six days before the tax sale of February 2nd."

In October 2018, the court denied the motions for judgment on the pleadings and to dismiss. The court explained that plaintiff's complaint set out a claim for relief but that defendant's answer demonstrated there was a dispute as to whether plaintiff owned the property after a tax sale. The order stated: "Should a party wish to file a motion for summary judgment in accordance with the procedures set forth in V.R.C.P. 56, the Court will consider the motion once any nonmovant has had the opportunity to timely submit a response." The court set the matter for trial.

In November 2018, plaintiff filed a motion for summary judgment. Plaintiff also filed a motion to reschedule the hearing. In the motion plaintiff explained that "[r]escheduling the hearing for a later date will allow defendant the full thirty (30) days provided in V.R.C.P. 56(b) to file any response and will allow time for the court to rule on the motion." The motion to continue was granted and the hearing date was canceled. Defendant did not file a response to the summary-judgment motion.

In February 2019, the court granted plaintiff's motion for summary judgment. Because defendant had not responded, the court accepted the facts as set forth in plaintiff's statement of undisputed facts as true. The court concluded that these facts demonstrated that plaintiff was entitled to judgment. In particular, the facts showed that the Town of Hartland properly followed all procedures for the tax sale, including the statutory notice requirements. Defendant appeals.

"We review motions for summary judgment de novo, applying the same standard of review as the trial court." In re All Metals Recycling, Inc., 2014 VT 101, ¶ 6, 197 Vt. 481. Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. V.R.C.P. 56(a).

On appeal, defendant first argues that plaintiff was not entitled to summary judgment because defendant did not receive proper notice from the Town of Hartland of the tax sale, which resulted in plaintiff purchasing the property. In evaluating whether the notice was sufficient we, like the trial court, rely on the plaintiff's statement of undisputed facts, which was supported by documents and affidavits. See V.R.C.P. 56(c)(1).

Those facts were as follows. Due to unpaid taxes from 2009 to 2016, the Town of Hartland prepared a notice of the time and place of a tax sale for the property to take place on February 2, 2017. The notice was posted in the town clerk's office and published in the daily newspaper. The town attorney sent the notice by certified mail to defendant and the lienholders of record. Delivery confirmations were received for the lienholders, but defendant's letter was returned as unclaimed. On January 27, 2017, the town attorney sent the notice to defendant by first-class mail. The property was sold at the tax sale to plaintiff on February 2, 2017. On February 7, 2017, the town attorney sent defendant a letter notifying him of the sale and information regarding his redemption rights. Defendant did not redeem the property and on February 13, 2018, the town provided plaintiff with a tax deed.

Defendant admits that the notice provided by the Town complied with the statutory requirements, 32 V.S.A. § 5252, but asserts that it was inadequate to satisfy his due process rights.[1] "Due process requires 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of [an] action and afford them an opportunity to present their objections.' " Hogaboom v. Jenkins, 2014 VT 11, ¶ 15, 196 Vt. 18 (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 315 (1950)). In Hogaboom, the taxpayer claimed that the town violated his due process rights by conducting a tax sale of delinquent property after the notice sent by registered mail was returned as undeliverable. This Court concluded that to satisfy due process, the Town "was required to take additional reasonable steps once the registered mail notice was returned unclaimed." Id. ¶ 19. The Court explained that the additional reasonable steps "must be reasonably calculated to provide the taxpayer notice of the impending sale" and provided examples such as "resending notice by regular mail, posting notice on the taxpayer's front door, or addressing otherwise undeliverable mail to 'occupant.' " Id. ¶ 27. As suggested in Hogaboom, after the certified notice was returned as unclaimed in this case, the Town resent the notice by regular mail. We conclude that the Town's actions satisfied due process.

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[1] At the time, the statute only required notice to taxpayer by registered mail. The statute was subsequently amended and now requires that if the notice by certified mail is unclaimed, "notice shall be provided to the taxpayer by resending the notice by first-class mail or by personal service pursuant to Rule 4 of the Vermont Rules of Civil Procedure." 2017, No. 117 (Adj. Sess.), § 3.

Defendant also claims that the court erred in granting plaintiff's motion for summary judgment without a hearing. Defendant contends that he believed that a written response was not necessary, and that he would have an opportunity to respond to the summary-judgment motion at a hearing. He asserts that the trial court treated the parties differently because in response to his motion to dismiss the court issued a notice providing plaintiff with a time to respond but failed to provide him with notice that he could respond to plaintiff's motion for summary judgment.

We conclude that there was no error. When a party is self-represented, the court "should be cautious" that the "litigant is not taken advantage of by strict application of rules of procedure," but also "does not abuse its discretion where it enforces the rules of civil procedure equitably." In re Verizon Wireless Barton Permit, 2010 VT 62, ¶ 22, 188 Vt. 262 (quotations omitted). Here, the court acted within its discretion and applied the rules equitably. A hearing is not required before the court decides a motion for summary judgment. V.R.C.P. 56(f); Lussier v. Truax, 161 Vt. 611, 612 (1993) (mem.) (rejecting claim that court erred in granting summary judgment without a hearing because hearing is not required); see V.R.C.P. 78 (indicating that party must request opportunity to present evidence on motion and even if requested, court can deny if there is "no genuine issue as to any material fact"). In any event, the court did indicate to defendant that a response to summary judgment could be filed. When the court denied the motions to dismiss and for judgment on the pleadings, it indicated that it would consider motions for summary judgment after a time to respond. Moreover, after the hearing was canceled, no additional hearing was scheduled. The court provided defendant with adequate time to respond to the motion for summary judgment and did not abuse its discretion in ruling on the summary-judgment motion without a hearing where defendant did not respond or contest the facts submitted by plaintiff.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice