

**FIFTH DIVISION
MCMILLIAN, J.,
GOSS and MARKLE, JJ.**

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June 19, 2019

**NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

A19A0463. CRIPPEN & LAWRENCE INVESTMENT
COMPANY, INC. v. A TRACT OF LAND BEING KNOWN
AS 444 LEMON STREET, MARIETTA COBB COUNTY,
GEORGIA, et al.

MARKLE, Judge.

In 2013, Crippen & Lawrence Investment Co., Inc. (“Crippen”) purchased Lillie Mae Bedford’s property on Lemon Street in Marietta, Georgia, at a non-judicial tax sale. After it believed the redemption period had expired, Crippen filed a petition to quiet title under OCGA § 23-3-40 et seq.¹ The executor of Bedford’s estate² moved

¹ This statutory provision allows for conventional quiet title actions. In contrast, OCGA § 23-3-60 et seq. provides for quiet title against all the world. The procedure for these two petitions differs. See *Patel v. Patel*, 342 Ga. App. 81, 90 (2) (a) (ii), nn. 21-22 (802 SE2d 871) (2017).

² Bedford also names an alternate executor. This alternate executor was a party to all the proceedings in the trial court, and we include her in our references to the executor.

to dismiss, alleging that he had not received notice of the right to redeem. Following lengthy proceedings, including the appointment of and report by a special master, the superior court dismissed the petition for quiet title. Crippen now appeals, arguing that the executor had no interest in the property and thus was not entitled to notice of foreclosure of the redemption period. For the reasons that follow, we affirm.

“In an action to quiet title . . . the findings of the special master which are adopted by the trial court will be upheld unless clearly erroneous. Therefore, if there is any evidence supporting the judgment of the trial court, it will not be disturbed.” (Citations and punctuation omitted.) *Smith v. Mitchell County*, 334 Ga. App. 374, 378 (2) (779 SE2d 410) (2015).

So viewed, the record shows that Bedford obtained the property by warranty deed in 1955. In 1997, after Bedford died, the executor of the estate, Rubin Dixon, filed a petition to probate the will. The sole heir was Bedford’s daughter, Jennifer Hood. The only deed, other than the tax deed, that appears in the record is the initial warranty deed to Bedford. However, it appears that Hood lived on the property some time after Bedford’s death.

Although the City of Marietta sent tax bills to Hood at the property, no one paid the taxes on the property from 2009 through 2012, and the City of Marietta

initiated a writ of fieri facias to sell the property. Both the executor and Hood were notified of the outstanding debt and pending tax sale. On July 2, 2013, Crippen purchased the property at the non-judicial tax sale. Both the executor and Hood were notified after the sale that Crippen had purchased the property.

Thereafter, Crippen initiated a foreclosure of the right to redeem, providing notice that the right to redeem the property would expire on September 3, 2014. It is undisputed that Crippen did not send a copy of this notice to the executor of Bedford's estate, but that it sent the notice to Hood.

After September 3, 2014 passed without any attempts to redeem the property, Crippen filed the instant petition to quiet title.³ The executor then filed a motion to

³ Over the next three years, this case took a turn for the worse. The executor and Hood refused to cooperate with discovery requests and did not attend depositions. Crippen moved for default judgment against both Hood and the executor and for summary judgment, submitting evidence to show notice was given to the parties. Without addressing the motion for summary judgment, the superior court granted the executor's motion to dismiss and to set aside the tax sale. Crippen filed a motion for new trial, which the court denied after a hearing, and Crippen appealed to the Supreme Court of Georgia, which dismissed the appeal as interlocutory. Back in the superior court, Crippen moved to set aside the trial court's order and renewed its motions for summary judgment and for default judgment against Hood. It also moved for payment of rent. It does not appear that the superior court ever ruled on the motion to set aside the original order, but it did issue a new final order that is the subject of this appeal; thus, it at least implicitly granted the motion to set aside the prior order.

dismiss the quiet title and to set aside the tax sale, arguing that he had not received notice of any of the proceedings.⁴

Crippen served the executor and Hood with various discovery requests, including requests to admit. In response, the executor and Hood denied each request to admit and e-mailed the responses to Crippen's counsel. Importantly, the e-mail to counsel containing their responses lacked any certificate of service.

Crippen filed a renewed motion for summary judgment or to appoint a special master. The trial court appointed a special master who, after a hearing, found, as is relevant to this appeal, that Bedford's estate had not been completely administered or discharged; there was no deed conveying the property to Hood; the executor had an interest in the tax sale and was entitled to notice of the foreclosure of the right to redeem; the executor was never served with the foreclosure of the right of redemption; publication was insufficient to constitute service on the executor; and

⁴ Despite his initial argument that the tax sale was invalid due to lack of notice, the executor later admitted that he received notice of the tax sale, and that the sale was valid. It also appears that, after this litigation started, Hood gave a quitclaim deed for the property to the executor, the alternate executor, and the executor's son, although no such deed appears in the record. In any event, this alleged transfer seems inconsistent with the executor's claim that Hood does not own the property. We note that only a person with an interest in the property can redeem it. OCGA § 48-4-40; *La Chona, LLC v. Aberra*, 300 Ga. 670, 678-679 (3) (b) (797 SE2d 895) (2017).

notice of the right to redeem appended to the complaint for quiet title was also not sufficient.⁵ Accordingly, the special master recommended dismissing the action for quiet title without prejudice. The executor then filed a motion to enforce his right to redeem the property, noting that his son had proffered the redemption amount and Crippen had refused it.⁶

Following a hearing, the trial court adopted the special master's report, over Crippen's objections. Crippen now appeals.

1. Crippen first argues that the trial court erred by finding that the executor was entitled to notice of the foreclosure of the right of redemption. It contends that the executor assented to passing the title of the property to Hood, and therefore the executor lost any interest in the property. Alternatively, it argues that the executor received notice through Hood as his agent. In making these arguments, Crippen relies on the executor's and Hood's failure to properly respond to the requests to admit, which it contends rendered the content admitted. We disagree.

⁵ The special master also found, and the trial court accepted, that Crippen was entitled to sanctions due to the executor's and Hood's discovery violations.

⁶ We again question how the executor's son could redeem the property, as the only interest he possessed was from the supposed quitclaim deed Hood allegedly signed. Such action appears inconsistent with the executor's contention that Hood does not own the property.

The outcome of this case depends on our interpretation of the relevant statutes.

[T]he fundamental rules of statutory construction require us to construe the statute according to its terms, to give words their plain and ordinary meaning, and to avoid a construction that makes some language mere surplusage. Put another way, when we consider the meaning of a statute, we must (1) presume that the General Assembly meant what it said and said what it meant, and (2) read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would. As our Supreme Court has recently explained, in our search for the meaning of a particular statutory provision, we look not only to the words of that provision, but we consider its legal context as well. After all, context is a primary determinant of meaning. For context, we may look to the other provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question. Thus, when we speak of discerning the intent of the legislature (inadvisable as it may be to do so), we are referring to interpreting the relevant statutory text within its contextual backdrop.

(Citations and punctuation omitted.) *Loveless v. State*, 344 Ga. App. 716, 723-724 (2) (812 SE2d 42) (2018), disapproved of on other grounds, *Nordahl v. State*, ___ Ga. ___ (1), n.8 (___ SE2d ___) (2019), 2019 WL 2332063, *3 (1) n.8 (Ga. 2019).

Before we consider the merits of Crippen’s arguments, we first place the issues in the context of the non-judicial tax sale.⁷ Where, as here, property taxes are not paid, the tax commissioner is authorized to issue a writ of fieri facias and direct the appropriate party to sell the property at a tax sale. See OCGA §§ 48-3-3 (b) (2010); 48-4-1.

Once the property is purchased at a tax sale, the delinquent taxpayer has a period of time in which he or she may redeem the property by paying the outstanding debt. OCGA §§ 48-4-40; 48-4-43. The party who bought the property at the tax sale holds a defeasible fee interest in the property and is not entitled to exclusive title or possession until the period of redemption runs. See *National Tax Funding, L. P. v. Harpagon Co., LLC*, 277 Ga. 41, 43 (1) (586 SE2d 235) (2003). After the one-year redemption period has expired, the purchaser can foreclose on the right of redemption – sometimes called barment – by providing notice of the intent to foreclose to all interested parties. OCGA §§ 48-4-40 (1); 48-4-45; 48-4-46 (b). When the redemption

⁷ Although Crippen contends that the trial court erred by applying the law for judicial tax sales, as opposed to non-judicial tax sales, and that the standards vary, we see no error in the trial court’s analysis or the statutes on which the special master and trial court relied. In any event, we evaluate Crippen’s claims under the law governing non-judicial tax sales. Non-judicial tax sales are governed by the procedures set forth in OCGA § 48-4-40 et seq. Judicial tax sales are governed by the procedures set out in OCGA § 48-4-75 et seq.

period has ended, and no one has come forward to redeem the property, the purchaser can seek to quiet title to the property to obtain fee simple ownership. See *National Tax Funding, L. P.*, 277 Ga. at 43 (2).

Importantly, when we construe the barment statute, OCGA § 48-4-45, we recognize that

the enforcement and collection of taxes through the sale of the taxpayer's property has been regarded as a harsh procedure, and, therefore, the policy has been to favor the rights of the property owner in the interpretation of such laws. Since the policy has been to favor the property owner, provisions permitting the owner to redeem his property are liberally construed to accomplish their objectives.

(Citation and punctuation omitted.) *Reliance Equities, LLC v. Lanier 5, LLC*, 299 Ga. 891, 894 (1) (792 SE2d 680) (2016); see also *Hamilton v. Renewed Hope, Inc.*, 277 Ga. 465, 468 (589 SE2d 81) (2003) (“[I]aws of this state governing the right to redeem are to be construed liberally and most favorably to persons allowed by the statute to redeem.” (citation omitted)).

In this case, the parties now agree, and the special master found, that the tax sale was valid. At issue is whether the executor was entitled to receive notice of barment. It is undisputed that Crippen served notice of the barment on Hood and that

it did not serve any notice on the executor. Crippen contends it was not required to serve notice on the executor because he no longer held any interest in the property. With the above framework in mind, we turn to Crippen's arguments as to why notice was not required.

Our Supreme Court has explained that notice of the barment "must be served on the delinquent taxpayer, any occupant of the property, and *all* holders of any right, title, or interest in, or lien on, the property." (Emphasis supplied.) *Saffo v. Foxworthy, Inc.*, 286 Ga. 284, 286 (2) (687 SE2d 463) (2009). Specifically, OCGA § 48-4-45 (a) provides that notice

be served upon all of the following persons who reside in the county in which the property is located: (A) The defendant in the execution under or by virtue of which the sale was held; (B) The occupant, if any, of the property; and (C) All persons having of record in the county in which the land is located any right, title, or interest in, or lien upon the property;

(2) To be sent by registered or certified mail or statutory overnight delivery to each of the persons specified in subparagraphs (A), (B), and (C) of paragraph (1) of this subsection who resides outside the county in which the property is located, if the address of that person is reasonably ascertainable; and

(3) To be published . . . in the newspaper in which the sheriff's advertisements for the county are published in each county in which that property is located[.]

Under the plain language of the statute, Hood was entitled to notice as an occupant of the property and as a party having a right to the property as the sole heir to Bedford's estate. However, the executor was also entitled to notice if he had any "right, title, or interest in" the property. OCGA § 48-4-45 (a) (1) (C), (2). The executor retained an interest in the property because, under Georgia law, after the decedent's death, title to the property vests in the executor until the estate has been administered or he otherwise assents to the devise. *State Highway Dept. v. Stewart*, 104 Ga. App. 178, 181 (1) (121 SE2d 278) (1961); see also *Morrison v. Stewart*, 243 Ga. 456, 458 (2) (254 SE2d 840) (1979).

(a) Assent

Crippen argues that the evidence shows that the executor assented to Hood's ownership of the property under the will; therefore, the executor no longer held any interest in the property and thus was not entitled to notice of the barment. The executor responds that Crippen lacks standing to raise this issue. After reviewing the

relevant statutory provisions, we agree with the executor that Crippen lacks standing to claim assent.

Under the Pre-1998 Probate Code in effect at the time Bedford died, “no devise or legacy shall pass the title thereto until the assent of the executor is given to the devise or legacy.” OCGA § 53-2-108 (1997). However, “[i]f no assent has been given within one year after the executor has qualified, *a devisee or legatee* may cite the executor in the probate court to show cause why his assent should not be given or may compel him to give assent by an equitable proceeding.” (Emphasis supplied.) OCGA § 53-2-109 (c) (1997). Assent “may be express or may be presumed from [the executor’s] conduct.” OCGA § 53-2-109 (a) (1997);⁸ see also *Almand v. Almand*, 141 Ga. 372 (2) (81 SE 228) (1914) (tenant’s possession of property for more than 30 years led to presumption that executors assented to the legacy). Importantly, however, title remains in the personal representative of the estate until that person assents to the heirs or beneficiaries being vested with title. See OCGA § 53-8-15 (1996).

Under our rules of statutory construction, we conclude that Crippen has no standing to raise the issue of assent to show that the title passed to Hood. The plain language of OCGA § 53-2-109 (c) identifies only the devisee or legatee to bring an

⁸ In the current code, these provisions are found at OCGA § 53-8-15.

action to compel assent; the statute does not contemplate such action by a stranger to the will. Moreover, any action to compel assent would be filed in the probate court rather than the superior court. *Id.* Because Crippen is not one of the persons who may compel assent under the statute, and it did not move the probate court to make such a finding, we must conclude that Crippen has not established that the title passed to Hood such that the executor was no longer entitled to notice of the barment.

To the extent that Crippen argues this result is contrary to the way members of the bar practice title law, the proper remedy is before our legislature. Under the plain language of the statute, Crippen cannot seek to have the superior court determine that the executor assented to transfer the property to the heir. *Cf. La Chona, LLC v. Aberra*, 300 Ga. 670 (797 SE2d 895) (2017) (purchaser of heir’s interest in property petitioned probate court for deed of assent to transfer title of the property to the heirs). Moreover, the cases Crippen cites in support of its claim of assent all involve the issue being raised by the heir or beneficiary.⁹ See, e.g., *Holcombe v. Stauffacher*,

⁹ Crippen also cites *Coleman v. Lane*, 26 Ga. 515, 518 (2) (1858), a case involving a beneficiary who sold his interest to a third party, allowing that purchaser to “stand in [the beneficiary’s] place.” That case, however, does not indicate which party raised the issue of assent. Regardless, Crippen’s purchase of the property from a tax sale is not the equivalent of purchasing the property from a beneficiary, and thus does not enable us to conclude that a stranger to the devise can raise the issue of assent. Additionally, in *Cozart v. Mobley*, 43 Ga. App. 630 (159 SE2d 749) (1931),

201 Ga. 38 (38 SE2d 818) (1946) (beneficiary who was also the executor raised issue of assent); *Hemphill v. Simmons*, 120 Ga. App. 823 (172 SE2d 178) (1969) (widow who was both beneficiary and executor raised issue of assent). Our conclusion here is consistent with the statutory language dealing with assent and the intent of the tax laws that we interpret our statutes in “favor of the property owner” and liberally construe them in a manner that would permit the owner to redeem his or her property. *Reliance Equities, LLC*, 299 Ga. at 894 (1). In this case, both the plain language of the assent statute and the liberal construction of the redemption statutes, as well as our standard of review, require that we affirm the special master’s conclusion that the executor remained entitled to notice of the barment.

(b) Crippen next contends that the executor admitted Hood was in possession of the property and was responsible for taxes by failing to respond to requests to

where a bank administrator sued an executor to enforce liability as a shareholder, this Court explained that the executor was also a beneficiary, and “[t]here [was] no suggestion that the executrix did not assent to the legacies at the proper time.” Although *Cozart* involves a third party bringing the action, the executrix did not dispute assent and, as the executrix was also a beneficiary, this Court was able to presume assent. Moreover, that case involved a specific statute addressing whether an executor could be held liable as the stockholder. Given that there is no corresponding statute in the context of a tax sale, we find this case inapposite.

admit, thereby showing the executor's assent to transfer title to Hood. It notes that the executor never sought to withdraw the admission or amend them.

Under OCGA § 9-11-36 (a) (1), “[a] party may serve upon any other party a written request for the admission . . . of the truth of any matters within the scope of [the general provisions governing discovery] which are set forth in the request. . . .”,

Pursuant to that statute, the matter is admitted unless, within 30 days after service of the request or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. Any matter admitted under OCGA § 9-11-36 is conclusively established unless the court, on motion, permits withdrawal or amendment of the admission.

(Citations and punctuation omitted.) *American Radiosurgery, Inc. v. Rakes*, 325 Ga. App. 161, 165 (1) (751 SE2d 898) (2013). “[R]equests for admission under OCGA § 9-11-36 (a) are not objectionable even if they require opinions or conclusions of law, as long as the legal conclusions relate to the facts of the case.” (Citations omitted.) *McClarty v. Trigild, Inc.*, 333 Ga. App. 112, 115 (2) (775 SE2d 597) (2015).

OCGA § 9-11-5 allows for electronic service. See OCGA § 9-11-5 (b), (f) (2009). When service is made electronically under this statute, the party serving the

responses must “transmit[] a copy via e-mail in portable document format (PDF) to the person to be served using all e-mail addresses provided pursuant to subsection (f) of this Code section and showing in the subject line of the e-mail message the words “STATUTORY ELECTRONIC SERVICE” in capital letters.” OCGA § 9-11-5 (b).

However, the statute further states that “[p]roof of service may be made by certificate of an attorney or of his employee, by written admission, by affidavit, or by other proof satisfactory to the court. Failure to make proof of service shall not affect the validity of service.” OCGA § 9-11-5 (b); *American Radiosurgery, Inc.*, 325 Ga. App. at 165 (1); see also *Cruickshank v. Fremont Investments & Loan*, 307 Ga. App. 489, 492 (705 SE2d 298) (2010) (failure to file timely certificate of service did not render requests to admit untimely). This language effectively gives the trial court discretion to determine, based on the evidence presented, whether service was sufficient. See *Roberts v. Roberts*, 226 Ga. 203, 205 (1) (173 SE2d 675) (1970); see also *McKesson HBOC v. Adler*, 254 Ga. App. 500, 504 (1) (562 SE2d 809) (2002) (“The trial court is the trier of fact in discovery disputes.”) (citation omitted).

The evidence in this case showed that the trial court did not abuse its discretion in determining that Crippen received the responses to the requests to admit, and therefore, the court was not required to deem the facts admitted. Importantly, Crippen

did, in fact, receive the responses to the requests to admit despite the improper certificate of service. Crippen's argument is based entirely on opposing counsel's failure to include the "statutory electronic service" language in the subject of the e-mail. As we have held, however, the lack of a certificate of service alone is not the equivalent of a failure to serve the discovery responses, and we therefore conclude that the trial court did not abuse its discretion in considering the discovery. As a result, we do not accept the facts as if they were deemed admitted.¹⁰ *Cruickshank*, 307 Ga. App. at 492. And again Crippen has not shown that title passed to Hood such that the executor was no longer entitled to notice of the barment.

(c) Crippen also argues that the executor cannot challenge the barment for lack of notice because service was completed on his agent – Hood – and notice was attached to the petition to quiet title, which the executor does not dispute he received. Crippen further laments that it had no opportunity to conduct discovery to establish this agency relationship because the executor and Hood failed to comply with discovery requests. We are not persuaded.

¹⁰ The executor could have avoided this argument by filing an amended certificate to correct the error. See *Adams v. Adams*, 260 Ga. App. 597, 602 (4) (580 SE2d 261) (2003).

In considering the statutory requirements regarding notice as set forth in OCGA § 48-4-45, we are again mindful of our rules of statutory construction and give the statutory text its plain and ordinary meaning. *Reliance Equities, LLC*, 299 Ga. at 894 (1). And we are reminded of the policy favoring property owners and construing the redemption statute liberally in their favor. *Id.*

Looking at the relevant statute, then, shows that the purchaser is required to notify the occupant and the “defendant in the execution under or by virtue of which the sale was held.” OCGA § 48-4-45 (a) (1) (A)-(B). The defendant in the underlying tax sale was Bedford. Moreover, the statute requires *all* persons having any record of title or interest be given notice, as well as any occupant. By using the term “all” in addition to other specific categories, the legislature indicated its intent that each person with a potential interest or right in the property receive notice. See *Blizzard v. Moniz*, 271 Ga. 50, 52-53 (518 SE2d 407) (1999) (failure to give notice to all tenants in common invalidated barment). We cannot extend this intent to deem the occupant or beneficiary of the will as an agent of the executor.

Moreover, Crippen’s argument in this respect confuses the relationship between an heir and the executor. Although there is a quasi-agency relationship

between an executor and an heir, it is the executor who is the agent of the heir. See *Fowler v. Latham*, 201 Ga. 68, 74 (3) (38 SE2d 732) (1946); *Quarterman v. Perry*, 190 Ga. 275 (1) (9 SE2d 61) (1940) (executor acted as agent of heir). Crippen has cited no law - and we have found none - to establish that an heir can be the agent of the executor.

Finally, we also reject Crippen's argument that the executor received sufficient notice of the barment because it was attached to the petition to quiet title. We are bound to construe the barment statute according to its plain terms and to construe it liberally in favor of the property owner. The statute requires service of the barment by registered or certified mail if the party lives outside the county in which the property is registered where such address is readily attainable. OCGA § 48-4-45 (a) (2). It is undisputed that Crippen was aware of the executor's address, or at least that such information was readily attainable. Thus, due process does not allow us to circumvent this notice requirement. See, e.g. *Dukes v. Munoz*, 346 Ga. App. 319, 322-323 (1) (816 SE2d 164) (2018) (in quiet title action, failure to use reasonably available information to locate defendant and notify him of petition to quiet title violated due process). The fact that the executor was aware of the barment does not excuse Crippen's obligation to serve notice to the executor. See, e.g., *Dip Lending I*,

LLC v. Cleveland Avenue Properties, LLC, 345 Ga. App. 155, 157-158 (1) (a) (812 SE2d 532) (2018) (fact that owner was aware of foreclosure did not excuse failure to provide the statutorily required notice).¹¹

Accordingly, we conclude that Crippen failed to serve the executor with notice of the barment and thus Crippen has not foreclosed the executor's right to redeem the property. The superior court therefore properly dismissed the petition to quiet title.

2. In light of our conclusion in Division 1 that the executor was entitled to notice of the barment, Crippen's remaining arguments are moot.¹²

Judgment affirmed. McMillian and Goss, JJ., concur.

¹¹ To the extent that Crippen argues that equity requires the barment stand against the executor, we disagree. Equity requires the opposing party to have acted in good faith and with diligence. See *Dip Lending I*, 345 Ga. App. at 159 (1) (b). A review of the record here shows that neither party acted with due diligence.

¹² In addition, we do not reach Crippen's claim that the trial court abused its discretion by not awarding fees under § 9-11-37 (d) (1) with respect to discovery violations. Crippen did not enumerate this claim as error, instead mentioning it only in a footnote, and we therefore decline to address it. *Moultrie Ins. Agency, Inc. v. Goodbar*, 203 Ga. App. 677, 678 (4) (417 SE2d 658) (1992). Nevertheless, we note that the trial court did impose sanctions for discovery violations. We also decline Crippen's request that we impose sanctions against the executor's attorney for filing an untimely brief in this Court.