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IN THE
COURT OF APPEALS OF INDIANA

S&C Financial Group, LLC,
Appellant-Respondent,

v.

Pinky Khan and Ahmad Khan,
Appellees-Petitioners,

May 19, 2021

Court of Appeals Case No. 20A-TP-1934

Appeal from the Marion Circuit Court

The Honorable Sheryl Lynch, Judge

The Honorable Amber Collins-Gebrehiwet, Magistrate

Trial Court Cause No. 49C01-1904-TP-12990

Robb, Judge.

Case Summary and Issues

[1] S&C Financial Group, LLC ("S&C Financial") purchased a property at a tax sale. After the period for redeeming the property from the tax sale expired but before the tax deed was issued to S&C Financial, the owner of record at the time of the tax sale conveyed the property to another, who in turn conveyed the property to Ahmad and Pinky Khan. After S&C Financial moved to evict the tenants at the property and be placed in possession, the Khans petitioned to set aside S&C Financial's tax deed. Both parties moved for summary judgment, and the trial court granted summary judgment to the Khans, setting aside the tax deed and effectively granting the Khans ownership and possession of the property.

[2] S&C Financial appeals the trial court's grant of summary judgment to the Khans, raising several issues that we consolidate and restate as: 1) whether the Khans have standing to petition to set aside the tax deed; 2) whether the notice to the owner of record at the time of the tax sale was constitutionally sufficient; and 3) whether the bona fide purchaser defense applies to the Khans' claim to the property. Concluding the Khans had standing, the notice was sufficient, and because of that, S&C Financial was vested with a fee simple interest in the property regardless of the Khans' bona fide purchaser status, we reverse and remand.

Facts and Procedural History

[3] Prior to 2016, Oceanpointe Investments owned property in Marion County on Arnolda Avenue. In March 2016, Oceanpointe intended to convey title of the Arnolda Avenue property to Rainier Properties, LLC ("Rainier"), a Colorado limited liability company with a business address in Seattle, Washington and a mailing address of P.O. Box 181383 in Denver, Colorado (the "P.O. Box"). However, the deed misspelled the intended owner as *Rainer* Properties, LLC. Unfortunately for purposes of this case, *Rainer* Properties, LLC ("RPL") is *also* a Colorado limited liability company, with a business address on W. 67th Place in Arvada, Colorado ("Arvada Address"). The deed indicated tax notices for the Arnolda Avenue property should be mailed to RPL at the P.O. Box, which was the correct mailing address for the intended owner but the wrong name. This deed was recorded on April 14, 2016.

[4] Rainier apparently failed to pay taxes on the Arnolda Avenue property, and the property was scheduled to be sold at a tax sale in October 2017. The Marion County Auditor sent a Notice of Tax Sale dated July 27, 2017 via certified mail, return receipt requested, to RPL at the P.O. Box (as with the deed, the correct address but incorrect name). The certified mail tracking information showed the notice arrived at the P.O. Box and was "Available for Pickup" as of July 31, but was marked "Unable to deliver item, problem with address" and returned to sender. Appellant's Appendix, Volume III at 45. The Auditor also sent the notice via regular first-class mail to RPL at the P.O. Box and to "Occupant" at Arnolda Avenue. *Id.*, Vol. IV at 43-44. Neither of these notices was returned.

[5] S&C Financial purchased the property at a tax sale on October 5, 2017 and obtained a tax sale certificate from the Auditor evidencing its lien against the property. On March 28, 2018, the Auditor[1] sent a Notice of Parcel Sold at Tax Sale and Expiration of Redemption Period or Issuance of Tax Deed ("Notice of Right of Redemption") via certified mail to RPL at the P.O. Box. The certified mail tracking information showed the notice was available for pick up at the P.O. Box as of April 5 but was marked "Unclaimed/Being Returned to Sender" on April 21. *Id.*, Vol. III at 49. The Auditor also sent the notice via certified mail to RPL's "Highest Officer Found" at the Arvada Address (RPL's business address). *Id.* at 51. This Notice was "Delivered, Left with Individual" at the Arvada Address on April 2. *Id.* at 52. There is no indication in the record that RPL advised the Auditor that it had received this notice in error.

[6] The redemption period expired on October 8, 2018, and on October 30, the Auditor sent a Notice of Filing Petition for Tax Deed ("Notice of Petition for Tax Deed") to three addresses: 1) RPL at the P.O. Box via certified and regular first-class mail; 2) RPL's "Highest Officer Found" at the Arvada Address via certified and regular first-class mail; and 3) the occupants of the Arnolda

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[1] The Marion County Auditor and Treasurer have mutually agreed pursuant to Indiana Code section 6-1.1-25-4.7 that the Auditor will send the notices of the right of redemption and petition for tax deed rather than the purchaser, as is typical in other counties. *See* Appellant's App., Vol. III at 43. And according to an affidavit from an employee of the Marion County Recorder's office, when a tax deed is issued, the "county taxing officials provide the tax deed to the Marion County Recorder and the Marion County Recorder records the tax deed and returns it to the county taxing officials." *Id.*, Vol. IV at 124. Thus, a tax sale purchaser in Marion County is responsible only for turning in the tax sale certificate after the redemption period ends and thereafter receives a recorded tax deed in return. *Id.* at 128-29, 135.

Avenue address via regular first-class mail. The certified mail tracking information for the notice sent to the P.O. Box indicates the notice was returned to sender on March 29.[2] The certified mail notice sent to the Arvada Address was "Delivered, Left with Individual" on November 5, 2018. *Id.* at 60. None of the notices sent by first-class mail were returned, including the notice sent by first-class mail to the P.O. Box. The Auditor petitioned the trial court for a tax deed on S&C Financial's behalf on November 5, 2018.

[7] On November 14, 2018, Rainier conveyed the Arnolda Avenue property to GPS Property Acquisition, LLC ("GPS") via warranty deed. This deed was recorded on November 26, 2018. And on January 30, 2019, GPS conveyed the property to the Khans via warranty deed ("Warranty Deed"). The title search conducted by Nations Title for this transaction did not identify a prior tax sale, issuance of a tax sale certificate, or lis pendens notice for the property. The Khans averred they had no knowledge of the tax sale prior to their purchase of the Arnolda Avenue property or the recording of their deed. The Warranty Deed was recorded on February 12, 2019 at 7:02 a.m.

[8] On January 15, 2019, the court ordered a tax deed to be issued pursuant to the Auditor's petition. The Auditor issued a tax deed ("Tax Deed") to S&C

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[2] The tracking information for this notice shows the steps for the notice being returned to Indiana: the notice was in Colorado on March 25, 2019, departed Colorado on March 26, arrived in Indiana on March 28, and was delivered in Indiana on March 29. *See* Appellant's App., Vol. III at 56-57. It is unclear what happened to the notice between its mailing in Indiana on October 30, 2018, and its being in Colorado on March 25, 2019.

Financial dated January 15 and recorded the Tax Deed on February 12 at 7:47 a.m., forty-five minutes after the Khans recorded their deed. On February 18, Nations Title informed the Khans of the recording of the Tax Deed.

[9] At the time the deeds were recorded, the Arnolda Avenue property was occupied by tenants. On March 1, 2019, S&C Financial filed a Motion for Writ of Assistance in the tax sale case seeking an order directing the Marion County Sheriff to "dispossess and evict any person or persons wrongfully holding the property" and "place [S&C Financial] in possession" of the property. Appellant's App., Vol. III at 13. The trial court issued the writ of assistance on March 5, allowing the Sheriff to evict the tenants by March 25. The Khans became aware of the motion for writ of assistance when the writ was forwarded to them by the tenants at the Arnolda Avenue property. On March 15, the Khans filed an Emergency Motion seeking to stay the writ. The trial court stayed the writ pending a hearing.

[10] On April 12, the Khans filed a Petition to Set Aside Tax Deed in the current cause number, naming S&C Financial, Rainier, GPS, and the Marion County Auditor and Treasurer (collectively, "Marion County") as defendants.[3]

[11] Both the Khans and S&C Financial filed a motion for summary judgment. After a hearing, the trial court granted the Khans' motion for summary

[3] The trial court directed the Khans to file this case under a new cause number because the tax sale cause number encompassed a large number of parcels, not just the Arnolda Avenue property.

judgment and denied S&C Financial's motion, finding first, that despite S&C Financial's argument to the contrary, the Khans had standing to bring this action, and second, that although the notices sent by the Auditor were legally sufficient, the Khans were bona fide purchasers with no actual or constructive knowledge of the tax sale which "overrules the sufficiency of the notices." Appealed Order at 12. The trial court subsequently denied S&C Financial's motion to correct error[4] and S&C Financial now appeals to this court.

Discussion and Decision

I. Standard of Review

[12] We begin by noting the parties have advanced two different standards of review: S&C Financial has cited the standard of review applicable to summary judgment decisions and the Khans have cited the clearly erroneous standard applicable to Trial Rule 52 findings. *See* Brief of Appellees at 10-11. The trial court did include "findings of fact" and "conclusions of law" in its order ruling on the parties' summary judgment motions. *See* Appealed Order at 2-12. But that does not change the procedural posture in which this case arises. Trial Rule 52 applies when a case is *tried* without a jury. This case was disposed of on summary judgment. We therefore reject the Khans' attempt to parlay the format of the trial court's order into a more favorable standard of review. The

[4] Marion County also filed a motion to correct error but does not participate in this appeal.

correct standard for reviewing the trial court's order in this case is the standard applicable to a summary judgment decision.

[13] When reviewing the grant or denial of summary judgment, we apply the same test as the trial court: summary judgment is appropriate only if the designated evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Sedam v. 2JR Pizza Enters., LLC*, 84 N.E.3d 1174, 1176 (Ind. 2017). "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). The moving party bears the initial burden of showing the absence of any genuine issue of material fact as to a determinative issue. *Id*.

[14] Our review is limited to those facts designated to the trial court, T.R. 56(H), and we construe all facts and reasonable inferences drawn from those facts in favor of the non-moving party, *Meredith v. Pence*, 984 N.E.2d 1213, 1218 (Ind. 2013). Because we review a summary judgment ruling de novo, a trial court's findings and conclusions offer insight into the rationale for the court's judgment and facilitate appellate review but are not binding on this court. *Denson v. Estate of Dillard*, 116 N.E.3d 535, 539 (Ind. Ct. App. 2018). Additionally, we are not constrained by the claims and arguments presented to the trial court, and we may affirm a summary judgment ruling on any theory supported by the designated evidence. *Id*. The fact that the parties have filed cross-motions for

summary judgment does not alter this standard of review or change our analysis. *Id*. Instead, we must consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law. *Diversified Invs., LLC v. U.S. Bank, NA*, 838 N.E.2d 536, 539 (Ind. Ct. App. 2005), *trans. denied*.

II. Standing

[15] S&C Financial first contends the Khans do not have standing to petition to set aside the Tax Deed because they did not acquire their alleged interest in the Arnolda Avenue property until after the redemption period had passed.

[16] The judicial doctrine of standing focuses on whether the complaining party is the proper party to invoke the court's power. *Founds. of E. Chicago, Inc. v. City of E. Chicago*, 927 N.E.2d 900, 903 (Ind. 2010). Courts seek to assure that litigation will be actively and vigorously contested. *Id*. It is generally insufficient to establish standing that a plaintiff has a general interest common to all members of the public. *Id.* Rather, to have standing, a party must demonstrate a personal stake in the outcome of the lawsuit and must show that he or she has sustained, or is in immediate danger of sustaining, some direct injury as a result of the conduct at issue. *See id*. The Khans' petition alleged they were in danger of sustaining damages in the form of loss of their investment in the Arnolda Avenue property because of a competing deed. As the Khans explained in their response to S&C Financial's summary judgment motion, "The Khans' personal stake in the outcome of this lawsuit is whether

they own the Property. They will sustain a direct injury if they are not deemed title holders of the Property, as they paid valuable consideration . . . and have expended additional funds to maintain the Property and in paying a mortgage on the Property." Appellant's App., Vol. IV at 144. We therefore conclude that they have standing.

III. Tax Sale Procedure

[17] The Khans' petition to set aside the Tax Deed was premised on both legal and equitable grounds. We begin with the legal ground: the Khans assert they stepped into the shoes of Rainier, the owner of record at the time of the tax sale, when they purchased the property and argue that Rainier did not receive constitutionally adequate notice of the tax sale and ensuing proceedings.

[18] We first address S&C Financial's argument that the Khans' challenge to the Tax Deed was not timely. Indiana Code section 6-1.1-25-4.6(l) provides that once a tax deed has been ordered by the trial court, the tax deed "is incontestable except by appeal from the order of the court directing the county auditor to issue the tax deed filed not later than sixty (60) days after the date of the court's order." The Tax Deed was issued on January 15, 2019, and the Khans filed their petition to set the deed aside on April 12, more than sixty days later, although they did note their objection on March 15 when they filed their Emergency Motion to Stay Order Granting [S&C Financial's] Motion for Writ of Assistance. Regardless, there is an exception to the sixty-day requirement "where a motion for relief from judgment alleges a tax deed is void due to

constitutionally inadequate notice, in which case an appeal must be brought within a reasonable time rather than within sixty days." *Edwards v. Neace*, 898 N.E.2d 343, 348 (Ind. Ct. App. 2008). Thus, because the Khans alleged insufficient notice in a motion filed approximately ninety days after the Tax Deed was issued, the petition was filed within a reasonable time and the Khans' action is timely. *See id.* at 349 (petition filed approximately six months after tax deed was issued and ninety days after challenger learned of its issuance was filed within a reasonable time); *Diversified Invs., LLC*, 838 N.E.2d at 545 (challenge to issuance of tax deed over four months after it was issued was brought within a reasonable time).

[19] If an owner of real estate fails to pay the property taxes, the property may be sold in order to satisfy the tax obligation. *In re 2007 Tax Sale in Lake Cnty.*, 926 N.E.2d 524, 527 (Ind. Ct. App. 2010). Before the government may sell property due to unpaid property taxes, however, the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the government to provide the owner with "notice and opportunity for hearing appropriate to the nature of the case." *Marion Cnty. Auditor v. Sawmill Creek, LLC*, 964 N.E.2d 213, 217 (Ind. 2012) (quoting *Jones v. Flowers*, 547 U.S. 220, 223 (2006)). Due process does *not* require that a property owner receive *actual* notice before the government may take his property. *Prince v. Marion Cnty. Auditor*, 992 N.E.2d 214, 219 (Ind. Ct. App. 2013) (citing *Jones*, 547 U.S. at 226), *trans. denied*. Rather, the government must provide notice reasonably calculated, under all the circumstances, to apprise interested parties of the

pendency of the action and afford them an opportunity to present their objections. *Id*. When tax sale notices are returned in their entirety as undeliverable, it is incumbent as a matter of both federal constitutional and state law that further action be taken to effectuate notice reasonably calculated to apprise an interested party of tax sale proceedings, if it is practicable to do so. *Edwards*, 898 N.E.2d at 348. "But if with due regard for the practicalities and peculiarities of the case these [notice] conditions are reasonably met, the constitutional requirements are satisfied." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314-15 (1950).

[20] The tax sale process is a purely statutory creation. *Prince*, 992 N.E.2d at 219-20; Ind. Code chs. 6-1.1-24 (tax sale) and 6-1.1-25 (redemption and tax deed). As such, summary judgment is particularly appropriate in this case because it rests on statutory interpretation, a pure question of law. *Ramirez v. Wilson*, 901 N.E.2d 1, 2 (Ind. Ct. App. 2009), *trans. denied*.

[21] Our supreme court has recently summarized the process:

> Under the present statutory scheme, there are certain notice requirements that must be met before the property is sold. I.C. § 6-1.1-24-4. If notice is given and no property owner objects or steps forward to contest the sale, the property is subject to sale at a public auction. I.C. §§ 6-1.1-24-4.7, -5. After the tax sale, there is a redemption period during which a person may redeem the property for a certain sum of money. *See* I.C. § 6-1.1-25 *et seq*. If the property is not redeemed, the purchasing party may file a petition for the tax deed to the real property. I.C. § 6-1.1-25-4.6.

Ind. Land Tr. Co. v. XL Inv. Props., LLC, 155 N.E.3d 1177, 1187 (Ind. 2020). More specifically, the notice requirements involve the issuance of three notices to the property owner:

- Notice of Tax Sale, Indiana Code section 6-1.1-24-4(b). The first required notice is the Notice of Tax Sale, by which the county auditor informs the owner of a property with delinquent taxes that the property is eligible for sale. This notice must be sent "by certified mail, return receipt requested, *and* by first class mail" to the owner of record of the property "at the last address of the owner . . . as indicated in the transfer book records of the county auditor[.]" (Emphasis added.) If both notices are returned, the auditor must take an "additional reasonable step" to notify the property owner if that is practical. Proof of mailing must be presented when the application for judgment and order for sale of the property is filed, but "[f]ailure by an owner to receive or accept the notice . . . does not affect the validity of the judgment and order." The notice is considered sufficient if it is mailed to the address required by this section.
- Notice of Right of Redemption, Indiana Code section 6-1.1-25-4.5. The second required notice is the Notice of Right of Redemption, which informs the owner of the property[5] of the tax sale, when the redemption

[5] Notice must also be given to "any person with a substantial property interests of public record[,]" but the Khans concede they were not entitled to notice because their purported interest did not arise until after

period will expire, and the consequence of failing to redeem the property, among other things. Pursuant to this statute, the tax sale purchaser will be entitled to a tax deed only if the redemption period has expired, the property has not been redeemed, and notice of the sale has been given to the owner of record at the time of the sale. The notice must be given not later than six months after the sale by certified mail, return receipt requested. The notice is considered sufficient if it is mailed to the last address of the owner as indicated in the auditor's records.

- Notice of Petition for Tax Deed, Indiana Code section 6-1.1-25-4.6(a). The third required notice is the Notice of Petition for Tax Deed, which informs the owner that the property has not been redeemed from the tax sale and a petition to issue a tax deed to the purchaser has been (or will be) filed with the court. The notice is considered sufficient if it is sent to the last address of the owner of the property as indicated in the auditor's records.

[22] "If there has been material compliance with each statutory step governing the tax sale process, the trial court can order that the purchaser at the tax sale be granted a tax deed." *Badawi v. Orth*, 955 N.E.2d 849, 852 (Ind. Ct. App. 2011). The tax deed "vests in the grantee an estate in fee simple absolute, free and

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redemption period ended. Ind. Code § 6-1.1-25-4.5(a); *see* Br. of Appellees at 25; Appellant's App., Vol. IV at 151.

clear of all liens and encumbrances created or suffered before *or after* the tax sale" with certain exceptions not applicable here. Ind. Code §§ 6-1.1-25-4(f), -4.6(k) (emphasis added). Although the issuance of a tax deed creates a presumption that a tax sale and all of the statutory steps leading up to the issuance of the tax deed are proper, this presumption may be rebutted by affirmative evidence to the contrary. *In re 2007 Tax Sale in Lake Cnty.*, 926 N.E.2d at 527.

[23] Pursuant to Indiana Code section 6-1.1-25-16, a person may defeat the title conveyed by a tax deed only for one or more of the seven reasons specified in that statute. "[T]he legislative intent is clear from the words of [this statute] that a person may defeat a tax title '*only by proving'* one of the seven defects." *Leininger v. Gren*, 596 N.E.2d 955, 958 (Ind. Ct. App. 1992), *trans. denied*.[6] The only reason recited in section 6-1.1-25-16 that is potentially applicable here is that the required notices were not in substantial compliance with statutory requirements. Ind. Code § 6-1.1-25-16(7). And in seeking to set aside the Tax Deed, the Khans argued that the Auditor[7] "failed and refused to provide notice to [Rainier] and comply with the trial rules and the statutes governing the tax sale of certain real property[,]" Appellant's App., Vol. III at 19, arguing Rainier

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[6] Since *Leininger* was decided, the statute has been amended but the intent that a tax deed can only be defeated for one of the seven enumerated defects is still clear. *See Swami, Inc. v. Lee*, 841 N.E.2d 1173, 1177 n.2 (Ind. Ct. App. 2006), *trans. denied*.

[7] The Khans name the Auditor *and* S&C Financial as being at fault for the failure of notice, *see* Appellants' App., Vol. III at 19, but as noted above, *supra* n.1, S&C Financial had no obligation to provide notice because the Auditor had assumed that obligation.

never received the three required notices because none of the notices sent to the P.O. Box by certified mail were claimed and additional notices were sent to RPL's business address, not Rainier's. But *actual* notice is not required, either constitutionally or by statute. *See Ind. Land Tr. Co.*, 155 N.E.3d at 1184 (citing *Jones*, 547 U.S. at 225); Ind. Code § 6-1.1-24-4(b) (stating that failure by the owner to receive or accept the notice does not affect the validity of the judgment and order for tax sale). What is required is notice reasonably calculated under all the circumstances to apprise the owner of the action and give them an opportunity to respond. *Ind. Land Tr. Co.*, 155 N.E.3d at 1184. When notice is a person's due, the steps taken to give that notice must be such as one who desires to actually inform a property owner that his property is subject to a tax sale would take. *Id.*

[24] In *Jones*, the Supreme Court determined that when notice of a tax sale is mailed to the owner and returned undelivered, the government must do something more if practicable to do so. 547 U.S. at 234. Following this lead, our supreme court in *Indiana Land Trust Co.* held that "an auditor's responsibility lies in what is learned after notice is given in a particular case." 155 N.E.3d at 1188. Therefore, where the auditor sent contemporaneous notice by certified and first-class mail to the owner as required by section 6-1.1-24-4(b), and the certified mail was returned but there was no evidence the first-class mail was returned to sender, "either the [first-class] mail was received by its intended recipient or simply to lost to time. . . . [T]he [a]uditor should [not] be left to speculate whether the first-class mail was truly delivered, especially when it was not

returned to its sender." *Id.* at 1189; *cf. Sawmill Creek*, 964 N.E.2d at 219-20 (following up certified mail that was returned as undeliverable as addressed with first-class mail to the same address was unreasonable based on auditor's *new* knowledge that the certified letter was not deliverable at that address).

[25] Here, the Auditor sent the Notice of Tax Sale by certified and first-class mail to the P.O. Box – the last address of the owner as indicated in the Auditor's records – as required by section 6-1.1-24-4(b). The certified mail was returned, but the first-class mail was not. Only if *both* notices are returned is the Auditor obligated to take an additional step to provide this notice. Ind. Code § 6-1.1-24-4(b); *Indiana Land Tr. Co.*, 155 N.E.3d at 1189. However, although additional measures were not required, the Auditor also sent the notice to the Arnolda Avenue property by first-class mail. *See Jones*, 547 U.S. at 236 (noting that "posting notice on real property is a singularly appropriate and effective way of ensuring that a person is actually apprised of proceedings against him") (cleaned up). Thus, the Notice of Tax Sale was sent as required by statute and was reasonably calculated to inform Rainier of the impending tax sale. The fact that the mail was addressed to RPL is of no moment because the *address* was Rainier's (and the mistake in the owner's name was not the Auditor's fault, but the fault of whoever prepared the deed and the parties who did not notice and correct the error).

[26] The tax sale occurred on October 5, 2017, and the Auditor mailed the Notice of Right of Redemption on March 28, 2018, within six months of the sale as required by section 6-1.1-25-4.5(a)(3). The notice was sent by certified mail to

the P.O. Box – the last address for the owner of the property – as required by section 6-1.1-25-4.5(d). Pursuant to section 6-1.1-25-4.5(h), this is considered sufficient notice, although it was unclaimed and returned to sender.[8] Nonetheless, the Auditor apparently looked up the business listed as the owner on the deed – RPL – and sent an additional notice to RPL's business address on Arvada Avenue. Again, the fact that the Auditor notified RPL when RPL did not in fact own the property is the fault of whoever prepared the deed and the parties to the deed who did not verify its accuracy. The fact that the owner was misnamed on the deed was neither known to nor readily discoverable by the Auditor, especially when there is in fact an entity in Colorado by the name listed on the deed. Moreover, there is no indication in the record that RPL informed the Auditor that it had received the Notice of Right of Redemption in error such that the Auditor would have been put on notice that the owner's name was spelled incorrectly in the deed.

[27] The redemption period expired on October 8, 2018 without the property being redeemed from the tax sale.[9] Accordingly, the Auditor sent the Notice of Petition for Tax Deed on October 30, 2018 and petitioned for a tax deed on November 5, 2018 – both within three months of the expiration of the redemption period as required by section 6-1.1-25-4.6(a). The notice was sent

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[8] The endorsement "Unclaimed" means that the addressee "abandoned or failed to call for mail." USPS.com Postal Explorer 507 Mailer Services, Exhibit 1.4.1, https://pe.usps.com/text/dmm300/507.htm#1218184 (last visited May 3, 2021) [https://perma.cc/C2G4-Q55V].

[9] Notably, Rainier did not purport to sell the Arnolda Avenue property until after this date.

by certified mail to the P.O. Box – the last address for the owner of the property – and this was considered sufficient pursuant to section 6-1.1-25-4.6(a). But the Auditor also sent the notice by regular first-class mail to the P.O. Box, by certified and regular first-class mail to RPL at the Arvada Address, and by regular first-class mail to the occupants of the Arnolda Avenue property. The certified mail sent to the P.O. Box was returned, but none of the other notices were returned.

[28] All three required tax sale notices were sent to the address listed on the deed conveying the Arnolda Avenue property as required by statute and to additional addresses the Auditor had reason to believe would alert the owner to the tax sale proceedings despite the statutes not requiring those additional notices. The notices were reasonably calculated to give notice to the property owner and were therefore legally sufficient. *See* Appealed Order at 9-12. And the trial court in the tax sale case found that S&C Financial had a right to the issuance of the Tax Deed, as the redemption period had expired, the property had not been redeemed, and the notices required by law had been given. *See* Ind. Code § 6-1.1-25-4.6(f); Appellant's App., Vol. V at 180. The issuance of the tax deed created a rebuttable presumption that the tax sale and all the steps leading up to the issuance of the tax deed were proper. *See In re 2007 Tax Sale in Lake Cnty.*, 926 N.E.2d at 527. The Khans had the burden to rebut the presumption of the validity of the tax deed and they have not done so.

IV. Bona Fide Purchaser Status

[29] The Khans equitable argument, with which the trial court agreed, is that they are bona fide purchasers and that notwithstanding the constitutionally sufficient notice to Rainier of the tax sale proceedings, their bona fide purchaser status trumps S&C Financial's status as the tax sale purchaser. A bona fide purchaser is one who purchases in good faith, for valuable consideration, and without notice of the outstanding rights of others. *Chmiel v. US Bank Nat'l Ass'n.*, 109 N.E.3d 398, 412 (Ind. Ct. App. 2018). "The theory behind the bona fide purchaser defense is that every reasonable effort should be made to protect a purchaser of legal title for a valuable consideration without notice of a legal defect." *U.S. Bank, Nat'l Ass'n v. Jewell Inv., Inc.*, 69 N.E.3d 524, 529 (Ind. Ct. App. 2017) (citation omitted). We acknowledge this long-standing equitable principle, but we are not persuaded that the trial court's judgment can be supported on this basis.

[30] First, as noted above, the validity of a tax deed can only be challenged on the grounds enumerated in Indiana Code section 6-1.1-25-16. Bona fide purchaser status is not one of those grounds and the Khans do not address the effect of section 6-1.1-25-16 on their bona fide purchaser claim. But the best evidence of legislative intent is the language of the statute itself, *Madison Cnty. Bd. of Comm'rs v. Sipe*, 143 N.E.3d 973, 984 (Ind. Ct. App. 2020), and we construe a statute according to both what it says and what it does not say, *Martin v. Monroe Cnty. Plan Comm'n*, 660 N.E.2d 1073, 1075 (Ind. Ct. App. 1996), *trans. denied*. Section 6-1.1-25-16 must be strictly applied, *Swami*, 841 N.E.2d at 1177, and

the language of section 6-1.1-25-16 is clear in its omission of bona fide purchaser status as a ground for defeating a tax deed that the legislature intended for those entitled to a tax deed to be in a superior position to those seeking title through equity, *cf. Bonnell v. Cotner*, 50 N.E.3d 361, 365-66 (Ind. 2016) (noting the "relative strength" of a tax deed and concluding that "[t]here are a finite number of ways to defeat a tax deed by appeal [and an equitable] claim of title by adverse possession is not among them").

[31] Second, the Khans' argument that they can both stand in the shoes of Rainier for purposes of challenging the sufficiency of notice *and* be bona fide purchasers is contradictory: if they are standing in Rainier's shoes in this action, then the constitutionally sufficient notice to Rainier that there was a tax sale proceeding precludes the Khans from being bona fide purchasers. Third, although the redemption statute does not deprive a delinquent taxpayer of his right to convey the property after a tax sale and *prior to its redemption*, *Atkins v. Niermeier*, 671 N.E.2d 155, 159 (Ind. Ct. App. 1996),[10] there are statutory restrictions on such a conveyance. Indiana Code chapter 32-21-8 applies to conveyances of property from a delinquent taxpayer to another person "after the property is sold at a tax sale . . . and before the tax sale purchaser is issued a tax sale deed[,]" Ind. Code § 32-21-8-1, and states that a conveyance is "inoperable and void if the conveyance document is not recorded with the county recorder . . . on or before

[10] In such a case, the purchaser acquires title to the property, but the interest is subject to the tax sale buyer's lien and right to exchange the tax sale certificate for a tax deed. *Atkins*, 671 N.E.2d at 159. In other words, the purchaser acquires only the grantor's right of redemption. *Id.*

the expiration of the redemption period[,]" Ind. Code § 32-21-8-7(b). "[U]nless the property of the delinquent taxpayer is redeemed during the redemption period, the tax sale process continues to its conclusion with the issuance by the auditor of a deed to the tax sale purchaser." *Lamaso Redevelopment, LLC v. Henry County*, 80 N.E.3d 257, 261 (Ind. Ct. App. 2017), *aff'd on reh'g, trans. denied*. The redemption period had already expired when Rainier purported to convey the property to GPS, which in turn purported to convey the property to the Khans. Rainier therefore had nothing to convey and any purported conveyance after that date was "inoperable and void."

[32] Finally, as to the Khans' assertion that *Kumar v. Bay Bridge, LLC,* 903 N.E.2d 114 (Ind. Ct. App. 2009), holds the tax sale statutes "do not foreclose the possibility of applying equitable doctrines," we find *Kumar* distinguishable. Br. of Appellees at 9. Kumar purchased real estate owned by a trust at a tax sale. Although the tax sale notices were returned as undeliverable, he was issued a tax deed in 2003. He did not record the deed at that time. In 2004, the trust conveyed the property to Bay Bridge, which recorded its deed shortly thereafter. In January 2007, Bay Bridge filed a complaint to quiet title to the property naming Kumar as a defendant. In February 2007, Kumar recorded his tax deed. Both parties filed motions for summary judgment, with Bay Bridge arguing that Kumar's tax deed was void for insufficient notice and/or that it was a bona fide purchaser. The trial court granted summary judgment to Bay Bridge upon finding the tax sale notices had been insufficient and Kumar's tax deed was void. On appeal, we affirmed, although on different grounds. We

held that Bay Bridge was a bona fide purchaser because Kumar's failure to record his tax deed before the conveyance to Bay Bridge meant Bay Bridge had no notice of his interest. *Kumar*, 903 N.E.2d at 117.

[33] A major consideration in *Kumar* was that the tax deed holder did not promptly record his interest, delaying recording the deed for over four years and only doing so after he was sued to quiet title. The court on appeal specifically noted that Kumar's failure to record his tax deed for over four years "has resulted in the litigation at issue." *Id.* at 117 n.3. The operative facts of *Kumar* are significantly different from this case, given that Bay Bridge did not acquire its interest until well after the tax sale proceedings were over and the tax deed had been issued and could have been recorded, whereas in this case, the Khans acquired their purported interest during the tax sale proceedings and S&C Financial did not delay in recording the Tax Deed nor did it do so only in response to litigation. The equities in *Kumar* were clearly with Bay Bridge, as Kumar sat on his rights; but here, S&C Financial and the Auditor did everything required by statute in a timely fashion. Given the other impediments to deciding this case on the bona fide purchaser doctrine, we cannot say *Kumar* compels a decision in the Khans' favor.

[34] In sum, the Khans are not entitled to summary judgment on either legal or equitable grounds. Instead, S&C Financial is entitled to summary judgment in its favor because the presumption that the tax sale and all of the statutory steps leading to the issuance of the Tax Deed were proper was not rebutted by the Khans. The Tax Deed gave S&C Financial fee simple ownership in the

Arnolda Avenue property free and clear of all liens and encumbrances created before or after the tax sale, including the Khans' purported interest. Ind. Code § 6-1.1-25-4(f).

Conclusion

[35] For the foregoing reasons, the trial court erred in granting summary judgment to the Khans and denying it to S&C Financial. Accordingly, the judgment of the trial court is reversed, and this case is remanded to the trial court to enter judgment for S&C Financial.

[36] Reversed and remanded.

Bailey, J., and May, J., concur.