

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ronald E. Davidhizar,

Appellant,

v.

SAVVY IN, LLC,
Elkhart County Auditor,
and Elkhart County Treasurer,
Appellee.

March 7, 2023

Court of Appeals Case No.
22A-TP-1082

Appeal from the Elkhart Circuit
Court

The Honorable Michael A.
Christofeno, Judge

Trial Court Cause No.
20C01-1712-TP-707

Memorandum Decision by Judge Weissmann

Judges May and Crone concur.

Weissmann, Judge.

- [1] Property investor Ronald E. Davidhizar bought an Elkhart County home (the Property) at a sheriff's sale in 2012 but did not record the deed. As a result, tax bills for the Property were sent to the previous owner, rather than to Davidhizar, and no taxes were paid. In 2016, the Property was sold at tax sale to SAVVY IN, LLC, which obtained a tax sale deed to the Property after the trial court ordered the Elkhart County Auditor to issue it.
- [2] Nearly three years later, and seven years after he bought the property at tax sale, Davidhizar moved to set aside the trial court's order under Indiana Trial Rule 60(B), claiming the order was void because Davidhizar had not received notice of the tax sale or SAVVY's request for a tax sale deed. The trial court entered summary judgment against Davidhizar, finding adequate notice and that Davidhizar waited too long to challenge the tax sale and deed. Davidhizar appeals, and we affirm, finding the issue of delay dispositive. We agree with the trial court that Davidhizar is not entitled to relief under Indiana Trial Rule 60(B) because, after learning of the tax deed, he unreasonably waited at least 14 months before attempting to set it aside.

Facts

- [3] After purchasing the Property for \$44,000 at a sheriff's sale, Davidhizar lost the Sheriff's deed, failed to seek a replacement, and did not record the deed. Due to

his failure to record the deed, the Elkhart County Auditor sent tax notices for the Property to the previous owner at the Property's address. Davidhizar failed to pay property taxes on the Property for four years.

[4] The Property eventually was sold to SAVVY through a tax sale without notice to Davidhizar. After the one-year period for redeeming the Property expired, SAVVY petitioned for a tax deed. Like the tax notices, notice of SAVVY's petition was sent to the recorded owner of the Property, who was not Davidhizar, due to Davidhizar's failure to record his deed. The trial court granted SAVVY's petition in January 2018 and ordered the Elkhart County Auditor to issue a tax deed, which SAVVY then recorded.

[5] A few months later, SAVVY conveyed its interest in the Property to INDYRE, a related business. In February 2021, INDYRE sued Davidhizar for fraud, conversion, and theft over the rents and security deposits that Davidhizar had collected from the Property's tenants. Only then did Davidhizar seek a replacement Sheriff's Deed for the Property. He recorded it in March 2021—eight years after he purchased the Property at the sheriff's sale and four years after SAVVY bought it at the tax sale.

[6] In May 2021, Davidhizar moved under Trial Rule 60(B)(6) to set aside the trial court's order directing the Auditor to issue the tax deed to SAVVY. Davidhizar claimed the order was void because he had not received the statutory notice allegedly due him. The trial court later granted SAVVY's motion for summary judgment on two bases. First, it found Davidhizar's Trial Rule 60(B)(6) motion

was untimely. Second, it determined that Davidhizar was not entitled to notice of the tax sale and tax deed petition because he was not the recorded owner of the Property.

Discussion and Decision

[7] Davidhizar claims that the trial court erred in finding that he received adequate notice of the tax sale proceedings from the Elkhart County Auditor and from SAVVY. He also asserts that his Trial Rule 60(B) motion was timely. The timeliness issue is dispositive. Finding Davidhizar failed to file his Trial Rule 60(B) motion within a reasonable time, we conclude the trial court properly entered summary judgment against him and in favor of SAAVY.

[8] We apply the same standard as the trial court in our review of summary judgment rulings. *Fox v. Barker*, 170 N.E.3d 662, 665 (Ind. Ct. App. 2021). The moving party bears the burden of showing no genuine issues of material fact exist and that it is entitled to judgment as a matter of law. *Id.* And if the movant succeeds, the non-moving party must then establish a genuine issue of material fact. *Id.* “We construe all factual inferences in the nonmoving party’s favor, and all doubts as to the existence of a material issue against the moving party.” *Id.* at 665-66.

I. Timing Requirements

[9] A tax sale deed is generally “incontestable” except through an appeal or Indiana Trial Rule 60(B) motion filed within 60 days after the deed’s issuance. Ind. Code § 6-1.1-25-4.6(1); *Gupta v. Busan*, 5 N.E.3d 413, 415 (Ind. Ct. App.

2014). “The only exception [to this 60-day deadline] . . . is where a motion for relief from judgment alleges a tax deed is void due to constitutionally inadequate notice; then, the motion must be filed within a ‘reasonable time.’” *Gupta*, 5 N.E.3d at 415-16.

[10] Davidhizar’s Trial Rule 60(B) motion rests on a theory of inadequate statutory notice of the tax sale and tax deed proceedings, not on the trial court’s alleged lack of personal jurisdiction. But in this context, whether notice is adequate is a different question than whether personal or subject matter jurisdiction exists. *Tax Certificate Invs., Inc. v. Smethers*, 714 N.E.2d 131, 133 n.2 (Ind. 1999). A judgment granting a tax deed without constitutionally required notice can be challenged only if the appeal or Trial Rule 60(B) motion is filed within a “reasonable time.” *See Gupta*, 5 N.E.3d at 415-16; Ind. Code § 6-1.1-25-4.6(l).

[11] Davidhizar filed his Trial Rule 60(B)(6) motion three years after the tax deed was issued to SAVVY and at least 14 months after he learned of the deed. Davidhizar argues that no deadlines other than statutes of limitations should be imposed on property owners seeking the return of their property sold in a tax sale. He relies on *Stidham v. Welch*, 698 N.E.2d 1152, 1156 (Ind. 1998), in which our Supreme Court ruled that “a [default] judgment that is void for lack of personal jurisdiction may be collaterally attacked at any time and that the ‘reasonable time’ limitation under Rule 60(B)(6) means no time limit.” But *Stidham* did not involve a tax sale. Instead, it arose from a default judgment

against an indispensable party over which the trial court lacked personal jurisdiction—circumstances not before us.¹

[12] We have consistently applied the “reasonable time” limitation to Trial Rule 60(B)(6) motions filed in tax deed challenges under Indiana Code § 6-1.1-25-4.6 in which the petitioner alleges constitutionally inadequate notice. *See, e.g., Gupta*, 5 N.E.3d at 416 (finding trial court could hear Trial Rule 60(B) motion challenging tax deed if motion were filed within a “reasonable time” and movant alleged constitutionally inadequate service); *Diversified Invs., LLC v. U.S. Bank, NA, et. al*, 838 N.E.2d 536, 545 (Ind. Ct. App. 2008) (noting that 60-day deadline in Indiana Code § 6-1.1-25-4.6 applied when Trial Rule 60(B) petitioner challenging tax deed alleged constitutionally inadequate service); *In re The 2005 Tax Sale Parcel No. 24006-001-0022-01*, 898 N.E.2d 349, 354-55 (Ind. Ct. App. 2008) (applying “reasonable time” standard to Trial Rule 60(B)(6) motion challenging tax deed).

II. Motion Untimely

[13] We agree with the trial court that Davidhizar’s motion was untimely because he filed his Trial Rule 60(B)(6) motion about three years after the tax deed was issued and about 14 months after Davidhizar learned of the dispute over

¹ The same is true of the other cases upon which Davidhizar relies in arguing that the “reasonable time” limitation does not apply here. *Hair v. Deutsche Bank Nat. Tr. Co.*, 18 N.E.3d 1019, 1022 (Ind. Ct. App. 2014) (default judgment in mortgage foreclosure action); *Legacy Buildings Indiana, Inc. v. Crocker*, 188 N.E.3d 48, 52-53 (Ind. Ct. App. 2022) (default judgment on complaint against contractors).

ownership of the Property. Appellant’s Reply Br., p. 10. Whether a Trial Rule 60(B) motion is filed within a “reasonable time” varies with the circumstances of each case. *Gupta*, 5 N.E.3d at 416. In making that determination, we may consider prejudice to the opposing party and the reason for the delay in filing the motion to set aside the judgment. *Id.*

[14] In arguing that a 14-month delay is reasonable, Davidhizar mainly relies on *Kressen v. Graft*, 694 N.E.2d 317 (Ind. Ct. App. 1998). *Kressen*, however, is distinguishable and involves a shorter delay. In that case, the Kressens received notice of the tax sale and deed in December 1993 and filed suit against the Grafts to quiet title six months later. *Id.* at 322. Two years after that, the trial court ruled against the Grafts but later granted the Grafts’s motion to correct error and dismissed the Kressens’s lawsuit for lack of subject matter jurisdiction. *Id.* Nine days after the dismissal, the Kressens filed their appeal, which the trial court found untimely under Trial Rule 60(B). *Id.* at 320. Therefore, at most, the delay attributable to the Kressens amounted to 6½ months—less than half of Davidhizar’s delay.

[15] We have found Trial Rule 60(B) motions to be timely when filed within six months after the movant learned of the tax sale or deed. *See, e.g., In re The 2005 Tax Sale Parcel No. 24006-001-0022-01*, 898 N.E.2d at 355 (finding delay of less than six months in filing Trial Rule 60(B) motion challenging tax sale did not render the motion untimely); *Edwards v. Neace*, 898 N.E.2d 343, 349 (Ind. Ct. App. 2008) (finding Trial Rule 60(B) motion was filed within reasonable time when filed within 90 days after movant learned of tax deed and six months after

tax deed was issued). Davidhizar cites no tax deed challenges in which delays of more than one year attributable to the Trial Rule 60(B) movant have been found to be reasonable.

[16] Davidhizar also does not explain or justify his 14-month delay—a factor we may consider in determining whether his Trial Rule 60(B)(6) motion was filed in a reasonable time. *See Diversified Invs. LLC*, 883 N.E.2d at 544. Davidhizar was an experienced real estate investor and tax sale purchaser, a circumstance that suggests he reasonably should have been aware of the need to act promptly in enforcing property rights.

[17] Prejudice from Davidhizar’s delay—another factor we may consider—is evident. *See id.* SAVVY transferred the Property to INDYRE months before Davidhizar challenged SAVVY’s ownership. And INDYRE reported leasing and improving the Property after the transfer. INDYRE also launched litigation against Davidhizar. All of these actions might have been averted if Davidhizar had not waited more than a year to assert his claim.

[18] Given all these circumstances, we conclude that Davidhizar’s Trial Rule 60(B)(6) motion challenging the tax deed was not filed within a reasonable time. As no genuine issue of material fact exists as to whether Davidhizar’s motion was timely, the trial court did not err in granting SAVVY’s motion for summary judgment.

[19] We affirm the trial court's judgment.

May, J., and Crone, J., concur.