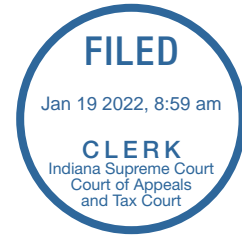


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Norma L. Mora Maciel,  
*Appellant-Respondent,*

v.

New Hanna, LLC,  
*Appellee-Petitioner.*

January 19, 2022

Court of Appeals Case No.  
21A-TP-1881

Appeal from the Lake Circuit  
Court

The Honorable Marissa J.  
McDermott, Judge

The Honorable Lisa A. Berdine,  
Magistrate

Trial Court Cause No.  
45C01-1911-TP-2148

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellant-Respondent, Norma Lisset Mora Maciel (Maciel), appeals the trial court's Order denying her Emergency Motion to Set Aside Order Granting Petition for Issuance of Tax Deed in favor of Appellee-Petitioner, New Hanna, LLC (New Hanna).
- [2] We affirm.

## ISSUE

- [3] Maciel raises one issue on appeal, which we restate as: Whether the tax sale notices sent to the property owner pursuant to Indiana Code sections 6-1.1-25-4.5 & -4.6 substantially complied with Indiana law and the property owner was thus provided with adequate notice of the tax sale of the real estate, as would satisfy the Due Process Clause.

## FACTS AND PROCEDURAL HISTORY

- [4] In 2015, Maciel acquired fee simple title to the real estate, located at 4912 Homerlee Avenue, in East Chicago, Indiana (Property). Since its acquisition, Maciel has leased the apartment units in the Property to tenants and collected rent payments. In 2016, the Lake County Treasurer received the property taxes for the Property; however, no subsequent tax payments were received. As a result, on July 3, 2018, the Lake County Treasurer issued a notice of tax sale to Maciel (Pre-Sale Notice), sent by U.S. certified mail, to her address of record and residence at 4827 Wegg Avenue, in East Chicago, Indiana. The Pre-Sale Notice was received and signed for on July 5, 2018, at the residence by "Julisa,"

Maciel's daughter (Appellant's App. Vol. II, p. 76). On September 7, 2018, the tax sale was conducted, at which New Hanna purchased the Property.

[5] On January 15, 2019, following the tax sale, New Hanna mailed a Notice of Real Property Sold at Tax Sale (the 4.5 Notice) by certified mail and First Class mail to the Property owner, identified as "Norma Lisset Mora Michael" pursuant to Ind. Code § 6-1.1-25-4.5. (Appellant's App. Vol. II, p. 8). The 4.5 Notice was delivered at Maciel's residence on January 22, 2019. The certified mail envelope was signed for by someone at the residence by the name of "Norma." (Appellant's App. Vol. II, p. 9). The redemption period to redeem the Property expired on September 7, 2019, without the delinquent taxes having been paid.

[6] On October 12, 2019, New Hanna sent a Notice of Petition for Tax Deed (4.6 Notice) by certified mail and First Class mail to the Property owner, again identified as "Norma Lisset Mora Michael" pursuant to I.C. § 6-1.1-25-4.6. (Appellant's App. Vol. II, p. 19). On October 15, 2019, the certified mail envelope was delivered at Maciel's residence where it was left in the mailbox. On November 6, 2019, New Hanna filed a verified petition for issuance of tax deed with the trial court. Following a hearing, on March 1, 2020, the trial court entered its Order for issuance of Tax Deed and on July 24, 2020, the Lake County Auditor issued a tax deed for the Property to New Hanna. On December 29, 2020, Maciel filed an Emergency Motion to Set Aside Order Granting Petition for Issuance of Tax Deed because she contended that she had never received the statutory notices as the owner of record. On August 2, 2021,

following a bench trial, the trial court entered its Order, denying Maciel's Petition and finding that:

(1) [Maciel] presented as a non-credible witness.

(2) [New Hanna] provided notice, reasonably calculated under all the circumstances, to apprise [Maciel] of the pendency of the action and to her afford her an opportunity to present an objection.

(3) In consideration of the practicalities and peculiarities of this case, the [c]ourt finds the notice conditions were reasonably met and the constitutional requirements for notice have been satisfied.

(Appellant's App. Vol. II, p. 46).

[7] Maciel now appeals. Additional facts will be provided if necessary.

## **DISCUSSION AND DECISION**

[8] Maciel contends that New Hanna failed to comply with the requirements of I.C. §§ 6-1.1-25-4.5; -4.6 because it did not serve the tax sale notices to the property owner of record. More specifically, Maciel claims that even though three of her four names and the mailing address were correct, the failure to correctly spell her fourth name in the 4.5 Notice and 4.6 Notice rendered all efforts to provide notice defective. As such, the failure to receive proper notice amounted to excusable neglect and mistake pursuant to Indiana Trial Rule 60(B)(1) and she urges this court to set aside the trial court's Order.

### *I. Standard of Review*

[9] Pursuant to Indiana statute, “[a] tax deed issued under this section is incontestable except by appeal from the order of the court directing the county auditor to issue the tax deed filed no later than sixty days after the date of the court’s order.” I.C. § 6-1.1-25-4.6(1). The issuance of a tax deed can be appealed under this statute by either an independent action or a Trial Rule 60(B) motion in the same trial court that issued the original tax deed. *BP Amoco Corp. v. Szymanski*, 808 N.E.2d 683, 690 (Ind. Ct. App. 2004), *trans. denied*. “[B]oth remedies are subject to the same sixty-day time frame as stipulated in the [statute].” *Id.* An exception to the sixty-day deadline to appeal the trial court’s order exists 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. *S&C Fin. Gr. LLC v. Insider’s Cash LLC*, 173 N.E.3d 295, 299 (Ind. Ct. App. 2021).

[10] Although T.R. 60(B) was not specifically referenced in Maciel’s Emergency Petition, she sought to set aside the trial court’s March 1, 2020 Order granting New Hanna’s petition for issuance of a tax deed based on the ground that she received inadequate notice which violated her constitutional due process rights. On appeal, she now specifies that the emergency motion was brought pursuant to the excusable neglect and mistake prong of T.R. 60(B). A T.R. 60(B) challenge seeks equitable relief from a final judgment. *See* T.R. 60(B). “A motion made under subdivision (B) of Trial Rule 60 is addressed to the equitable discretion of the trial court; the grant or denial of the Trial Rule 60(B) motion will be disturbed only when that discretion has been abused. An abuse

of discretion will be found only when the trial court's action is clearly erroneous, that is, against the logic and effect of the facts before it and the inferences which may be drawn therefrom." *S&C Fin. Gr. LLC*, 173 N.E.3d at 299-300. If the record reveals a rational basis for the trial court's determination, there is no abuse of discretion. *Meisberger v. Bishop*, 15 N.E.3d 653, 656 (Ind. Ct. App. 2014).

[11] With respect to T.R. 60(B)(1), there is no general rule as to what constitutes excusable neglect or mistake. Each case must be determined on its particular facts. *Kmart Corp. v. Englebright*, 719 N.E.2d 1249, 1253 (Ind. Ct. App. 1999), *trans. denied*. The following facts have been held to constitute excusable neglect, mistake, or surprise:

(a) absence of a party's attorney through no fault of party; (b) an agreement made with opposite party, or his attorney; (c) conduct of other persons causing party to be misled or deceived; (d) unavoidable delay in traveling; (e) faulty process, whereby party fails to receive actual notice; (f) fraud, whereby party is prevented from appearing and making a defense; (g) ignorance of the defendant; (h) insanity or infancy; (i) married women deceived or misled by conduct of husbands; (j) sickness of a party, or illness of member of a family.

*Id.* at 1254.

## II. *Adequacy of Tax Sale Notices 4.5 and 4.6*

[12] A property may be subject to sale in the settlement of delinquent taxes if the property's owner fails to pay the applicable property taxes. *2011 Marion Cnty.*

*Tax Sale v. Marion Cnty. Auditor*, 14 N.E.3d 883, 890 (Ind. Ct. App. 2014).

“Before the government may do so, however, the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires it to provide the property owner with ‘notice and opportunity for hearing appropriate to the nature of the case.’” *Id.* at 890 (quoting *Jones v. Flowers*, 547 U.S. 220, 223, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006)). We have previously summarized the applicable notice requirements as follows:

In Indiana, title conveyed by a tax deed may be defeated if three required notices, specifically the notice of tax sale, the notice of the right of redemption, and the notice of petition for the tax deed, are not in substantial compliance with statutory requirements. The notice of tax sale is governed by Indiana Code section 6–1.1–24–4, which requires the county auditor to send notice of the tax sale by certified mail to the owner or owners of the real property at their last known address.

Next, Indiana Code section 6–1.1–25–4.5 governs notices of the right of redemption. According to that statute, a person who purchases property at a tax sale must send the owner of the property a notice of the sale and of the right of redemption via certified mail at the last address for the owner as indicated in the county auditor’s records.

Finally, if the owner of record does not redeem the property from the tax sale within the required period, the purchaser may petition the trial court for issuance of a tax deed. Ind. Code § 6–1.1–25–4.6. The purchaser must provide notice of the petition to the owner of record in the same manner set forth in Indiana Code section 6–1.1–25–4.5. Ind. Code § 6–1.1–25–4.6.

*Prince v. Marion Cnty. Auditor*, 992 N.E.2d 214, 219–220 (Ind. Ct. App. 2013), *trans. denied*.

- [13] Maciel contends that the 4.5 Notice and 4.6 Notice sent to the address listed as that of the Property owner were mistakenly addressed to Michael and therefore she did not receive notice of the sale nor an opportunity to be heard. In turn, New Hanna responds that despite the incorrect spelling of one of the names, the notices substantially complied with the statutory requirements and thus were sufficient to apprise Maciel with notice of the Property’s tax sale.
- [14] In addressing these arguments, we are mindful that “the determination of whether a notice ‘substantially complied’ with the statutory requirements ‘is a determination based on the facts and circumstances of the case and is a question of fact.’” *First Am. Title Ins. Co. v. Calhoun*, 13 N.E.3d 423, 433 (Ind. Ct. App. 2014). The notices in question must be reasonably calculated, under all the circumstances, to apprise any interested parties of the pendency of the action and must afford them an opportunity to present objections. *2011 Marion Cnty. Tax Sale*, 14 N.E.3d at 890. “But if with due regard for the practicalities and peculiarities of the case these [notice] conditions are reasonably met, the constitutional requirements are satisfied.” *Id.*; *see also Anton v. Davis*, 656 N.E.2d 1180, 1183 (Ind. Ct. App. 1995) (“while all ‘essential acts’ concerning [a] tax sale must be properly performed, substantial compliance with the statutory procedures will satisfy the due process requirements”) (internal citation to authority omitted).



[15] In *First Bank of Whiting v. 524, LLC*, 39 N.E.3d 698 (Ind. Ct. App. 2015), we were presented with the similar issue of a delinquent property owner’s incorrect identifying information on the statutorily mandated tax notices. In *First Bank of Whiting*, the trial court granted the tax sale certificate holder’s petition for a tax deed, following the expiration of the redemption period. *Id.* at 698. The facts indicated that the ownership of the parcels was transferred to First Bank of Whiting as trustee of a trust in 1987 and thereafter, in 1990, the Lake County Auditor’s property records were updated to identify the owner and the owner’s address as “First Bank of Whiting as Trustee of Trust 1865, c/o SSAY Corp., 2135 Westchester Boulevard, Westchester, IL 60154.” *Id.* at 700. On appeal, the delinquent property owner contended that despite the notices being mailed to the correct address of record, the failure to include “c/o SSAY Corp.” in the notices rendered the notices defective and violated the owner’s due process rights. *Id.*

[16] On appeal, we affirmed the trial court, holding that a delinquent owner’s due process rights are not violated where, despite deficiencies in the identifying information, the delinquent owner has notice of the sale, notice of the redemption period, and notice of a petition for a tax deed following the redemption period. *Id.* at 702. In its analysis, this court focused on the long ownership of the parcel by the trust, the tax notices were received and signed for at the property owner’s address, and the notices were sufficient to timely file an objection. *Id.* at 702-03.

[17] Similarly, in *Iemma v. JP Morgan Chase Bank, N.A.*, 992 N.E.2d 732, 742 (Ind. Ct. App. 2013), we held that the tax sale notices containing an error in the identification of a parcel, namely the incorrect use of ‘Street’ rather than ‘Boulevard’ in the mailing address, substantially complied with the statutory notice requirements and satisfied due process. In *Anton v. Davis*, 656 N.E.2d 1180, 1184 (Ind. Ct. App. 1995), we determined that a statutory tax sale notice containing an error in the date of the tax sale was insufficient to invalidate the tax sale or deprive the tax sale purchaser of a tax deed.

[18] Turning to the facts before us, New Hanna sent the 4.5 and 4.6 Tax Notices by certified mail to the Property’s listed mailing address and to the attention of Norma Lisset Mora Michael, whereas the Treasurer’s records reflect that the Property owner’s name was Norma Lisset Mora Maciel. During the bench trial, Maciel testified that she received the Pre-Sale Notice sent by the Treasurer’s Office, notifying her of the delinquent property taxes and the scheduled tax sale date for the Property. She further acknowledged having received the 4.5 Notice but she did not take any action because the notice was not “under [her] name.” (Transcript p. 22). The 4.5 Notice was sent to the correct address and was signed for by “Norma.” (Appellant’s App. Vol. II, p. 9). Likewise, the 4.6 Notice “arrived at [her] house,” but she again claimed that the Notice was “not addressed to [her]” as it also contained the misspelled fourth name and therefore she took no action on it. (Tr. p. 23).

[19] We find that New Hanna substantially complied with the statutory notice requirements. It is undisputed that Maciel owned the Property since 2015 and

was aware that after 2016 no property taxes had been paid on the Property. It is undisputed that Maciel received the Pre-Sale Notice sent by the Treasurer's office and was therefore notified of the upcoming sale of the Property. It is equally undisputed that, notwithstanding the failure to correctly spell 'Maciel,' the Property owner's three other names were correctly spelled on the subsequent 4.5 and 4.6 Notices, which she acknowledged receiving by certified mail at the Property's mailing address. Although she now asserts that she did not take action on the 4.5 and 4.6 Notices because she does not speak English, we note that, in light of her awareness of the Pre-Sale Notice, Maciel could have retained legal counsel upon receipt of the 4.5 and 4.6 Notices. Failure to do so is not an excusable mistake. *See G.H. Skala Const. Co. v. NPW, Inc.*, 704 N.E.2d 1044, 1050 (Ind. Ct. App. 1998) (stating that error of judgment is not excusable conduct), *trans. denied*. *See also Rogers v. Lockard*, 767 N.E.2d 982, 987 (Ind. Ct. App. 2002) (holding that a person of mature years and judgment may not idly ignore a summons to defend an action); *Mason v. Ault*, 749 N.E.2d 1288, 1292 (Ind. Ct. App. 2001) (finding no excusable neglect where defendants did not contact a lawyer or otherwise make any arrangements with respect to their defense upon receipt of complaint and summons), *reh'g denied, trans. denied*. Accordingly, we conclude that despite the incorrect spelling of one of the Property owner's four names, the 4.5 and 4.6 Notices were "reasonably calculated, under all the circumstances, to apprise [Maciel] of the pendency of the action and [] afford[ed] [her] an opportunity to present objections" and to be heard. *2011 Marion Cnty Tax Sale*, 14 N.E.3d at 890.

## CONCLUSION

[20] Based on the foregoing, we hold that the tax sale notices sent by New Hanna to the Property owner pursuant to Indiana Code sections 6-1.1-25-4.5 & -4.6 substantially complied with Indiana law and Maciel was provided with adequate notice of the tax sale of the real estate, which satisfied the Due Process Clause.

[21] Affirmed.

[22] Robb, J. and Molter, J. concur