

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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TASKER, AND THE MARKLEY
FAMILY TRUST #2800

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IN THE COURT OF APPEALS OF INDIANA

Fred T. Markley III, Emily J.
Tasker f/k/a Emily J. Markley,
and the Markley Family Trust
#2800,

Appellants-T.R. 60(B) Movants,

v.

Corey Gutierrez,
Appellee-Tax Deed Grantee,

Michael Flanagan,
*Appellee-Subsequent Tax Deed
Grantee,*

March 18, 2022

Court of Appeals Case No.
21A-TP-2195

Appeal from the
Lake Superior Court

The Honorable
Stephen E. Scheele, Special Judge

Trial Court Cause No.
45D05-2012-TP-1321

Vaidik, Judge.

Case Summary

- [1] Siblings Fred T. Markley III and Emily J. Tasker (f/k/a Markley) owned a property in Lake County but didn't pay property taxes for several years. The property was sold, and a tax deed was issued. About four-and-a-half years after the trial court issued the order for tax deed, Fred and Emily filed an Indiana Trial Rule 60(B) motion to vacate the order, arguing it was void because they didn't receive the notices required by Indiana Code sections 6-1.1-25-4.5 and 4.6. The trial court denied the motion to vacate, and Fred and Emily now appeal. We affirm.

Facts and Procedural History

- [2] In 2005, Fred and Emily became the owners of 2800 Calhoun Street in Gary following the death of their father. According to the Lake County Auditor's records, Fred and Emily's address was on Nugent Avenue in Addison, Illinois, which is where the property-tax bills were sent. *See* Appellants' App. Vol. II p. 17; *see also* Ind. Code § 6-1.1-24-4 ("The owner of real property shall notify the county auditor of the owner's correct address."). Starting in at least 2010, Fred and Emily didn't pay property taxes on the property. *See* Appellants' App. Vol. II pp. 60, 64. They also didn't visit the property. After the property went unsold at a traditional tax sale, the Lake County Auditor issued a Tax Sale Certificate to the Lake County Commissioners on September 3, 2014. *Id.* at 17.

- [3] On May 1, 2015, the Lake County Commissioners “assigned and transferred” the certificate to Corey Gutierrez for \$300. *Id.* at 16. According to the certificate, Gutierrez was entitled to a tax deed after the 120-day redemption period expired on August 29, 2015. *Id.*
- [4] On September 30, a month after the redemption period expired, Gutierrez petitioned the trial court to issue a tax deed under Indiana Code section 6-1.1-25-4.6. *Id.* at 34. He alleged the redemption period had expired, the property hadn’t been redeemed, and “[t]he notices required by law have been given.” *Id.* Gutierrez executed an “Affidavit of Service” in which he affirmed, under the penalties of perjury, that he sent the petition for tax deed by first-class mail to Fred and Emily at the Nugent Avenue address. *Id.* at 35. A hearing on the petition for tax deed was set for October 30.
- [5] At the hearing, Gutierrez as well as a representative and attorney from the Lake County Auditor’s Office appeared, but Fred and Emily did not. *Id.* at 20. That same day, the trial court issued an Order for Tax Deed, which provided Gutierrez had complied with the law and ordered the Lake County Auditor to issue a tax deed to Gutierrez:

1. The time allowed for redemption has expired;
2. The real property has not been redeemed from the sale;
3. All taxes and special assessments have been paid;
4. All notices required by law have been given;

5. The petitioner has complied with all the provisions of the law entitling it to said deed.

* * * * *

7. That Petitioner shall file this Order to Issue Tax Deed with [the] Lake County Auditor Tax Sale Department within **90 days**, together with the necessary Sales Disclosure Form, payment of tax deed recording fees and payment of subsequent real property taxes. Petitioner’s failure to do any one of the forgoing shall make this Order to Issue Tax Deed null and void.

Id. at 18.

[6] On April 13, 2016, Gutierrez filed the papers and paid the fees with the Lake County Auditor. On April 22, the Lake County Auditor issued a Tax Deed to Gutierrez, which was later recorded. *Id.* at 87. At some point, Michael Flanagan became the new owner of 2800 Calhoun Street.¹

[7] Meanwhile, Emily filed for bankruptcy on July 27, 2017. On “Schedule A/B: Property,” Emily said, under the penalties of perjury, that she had no legal or equitable interest in “any residence, building, land, or similar property.”

¹ The Markleys allege Gutierrez didn’t file the papers and pay the fees with the auditor within ninety days as required by the language of the Order for Tax Deed, thereby making the order void. As Flanagan notes, the Markleys don’t cite any authority for the proposition that an order for tax deed must be filed with the auditor within ninety days or else it is void. Flanagan also notes that although the Order for Tax Deed contains a “Filed in Open Court” stamp by the “Clerk Lake Circuit Court” dated October 30, 2015, it also contains a “Received” stamp by the “Clerk Lake Circuit Court” dated January 18, 2016. Appellants’ App. Vol. II p. 18. According to Flanagan, the ninety days started to run on January 18, 2016, meaning Gutierrez filed the papers and paid the fees with the auditor within ninety days. The Order for Tax Deed is not void on this basis.

Appellee’s App. Vol. II p. 160. Emily also said 2800 Calhoun Street had been “sold at tax sale” in 2016. Appellants’ App. Vol. II pp. 68-69.

[8] In March 2020, Todd Hansen approached Fred and Emily about “the sale of [their] interest in certain properties [including 2800 Calhoun Street] in Lake County, Indiana, the formation of the Markley Family Trust #2800, and whether the issuance of certain tax deeds to properties in Lake County, Indiana could be challenged.” *Id.* at 59, 63. Hansen paid Fred and Emily \$5,000 each “as an initial payment for [their] interest” in the properties. *Id.*

[9] On July 23, 2020—about four-and-a-half years after the trial court issued the Order for Tax Deed—Fred, Emily, and The Markley Family Trust #2800 (which Hansen is trustee of) (collectively, “the Markleys”) moved to vacate the Order for Tax Deed under Trial Rule 60(B) on grounds it was void. *Id.* at 21. The Markleys alleged they “were not served with any notices required by” Indiana Code sections 6-1.1-25-4.5 and 4.6. *Id.* at 23. In October 2021, the court denied the Markleys’ motion to vacate.

[10] The Markleys now appeal.

Discussion and Decision

[11] The Markleys appeal the trial court’s denial of their Trial Rule 60(B) motion to vacate the Order for Tax Deed. We review rulings on Trial Rule 60(B) motions

for an abuse of discretion. *S&C Fin. Grp. LLC v. Insider's Cash LLC*, 173 N.E.3d 295, 300 (Ind. Ct. App. 2021).²

[12] The Markleys argue the Order for Tax Deed is void because they didn't receive the notices required by Indiana Code sections 6-1.1-25-4.5 and 4.6. Before a tax deed can be issued, there are at least three notice requirements. *S&C Fin. Grp., LLC v. Khan*, 172 N.E.3d 280, 289 (Ind. Ct. App. 2021), *reh'g denied, trans. denied*. The first 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. *See* I.C. § 6-1.1-24-4; *Khan*, 172 N.E.3d at 289. The second notice, called the Section 4.5 Notice, is the notice of the right of redemption, by which the purchaser informs the property owner when the property was sold at a tax sale, when the redemption period expires, and the consequences of failing to redeem the property, among other things. *See* I.C. § 6-1.1-25-4.5; *Khan*, 172 N.E.3d at 289. The third notice, called the Section 4.6 Notice, is the notice of petition for tax deed, by which the purchaser informs the property owner that the property hasn't 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 trial court. *See* I.C. § 6-

² Within the Trial Rule 60(B) proceeding, the parties filed motions for summary judgment under Trial Rule 56, the review of which is de novo. However, they don't cite any authority that allows for a Trial Rule 56 motion in a Trial Rule 60(B) proceeding. But even if such a motion were allowed and we reviewed it de novo, we would reach the same result. *See Insider's Cash*, 173 N.E.3d at 300 ("Neither party raised an objection to the trial court's proceeding with the motions to set aside the tax deed by way of summary judgment proceedings. We find that the manner in which the trial court disposed of the motions did not alter the result. Under either standard of review, neither Insider's nor McCabe IRA was entitled to notice of the tax sale as a matter of law[.]").

1.1-25-4.6; *Khan*, 172 N.E.3d at 289. Each notice must be sent by certified mail to the property owner at the property owner’s last address as reflected in the records of the county auditor. *See* I.C. §§ 6-1.1-24-4, 6-1.1-25-4.5, 6-1.1-25-4.6.

[13] Once a tax deed has been issued, a person may defeat the title conveyed by the deed “only” by proving one of the seven defects in Indiana Code section 6-1.1-25-16.³ One such defect is if “the notices required by IC 6-1.1-24-2, IC 6-1.1-24-4, and sections 4.5 and 4.6 of this chapter were not in substantial compliance with the manner prescribed in those sections.” I.C. § 6-1.1-25-16(7). But there is not an unlimited amount of time to challenge the title conveyed by a tax deed. Indiana Code section 6-1.1-25-4.6(1)⁴ provides that a 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 order for tax deed can be “appealed” by either bringing an independent action or filing a Trial Rule 60(B) motion in the same trial court that issued the order for tax deed. *Insider’s Cash*, 173 N.E.3d at 299. Both remedies are subject to the sixty-day requirement. *Id.* However, “where a

³ The Markleys allege Gutierrez’s petition for tax deed wasn’t verified as required by statute, thereby making the resulting Order for Tax Deed void. Where, as here, a tax deed has been issued, it can be defeated only for the seven defects listed in Section 6-1.1-25-16. Section 16 is “strictly applied.” *Swami, Inc. v. Lee*, 841 N.E.2d 1173, 1177 (Ind. Ct. App. 2006), *trans. denied*. That a petition for tax deed is not verified is not one of the seven defects. Although the Markleys cite cases for the proposition that a lack of verification means the petition for tax deed isn’t valid, the cases don’t address Section 16 and thus are clearly distinguishable. To the extent the Markleys argue they are entitled to equitable relief, they haven’t cited any authority that the lack of a verification on a petition for tax deed implicates the integrity of the proceedings. *See id.* (“This court has granted equitable relief where no defect under Section 16 was demonstrated but where the integrity of the tax sale was nevertheless implicated.”). The Order for Tax Deed is not void on this basis.

⁴ In 2015, this provision was located at subsection (h).

motion for relief from judgment alleges a tax deed is void due to constitutionally inadequate notice,” the “appeal must be brought within a reasonable time rather than within sixty days.” *Khan*, 172 N.E.3d at 288; *Edwards v. Neace*, 898 N.E.2d 343, 348 (Ind. Ct. App. 2008). The determination of what constitutes a reasonable time varies with the circumstances of each case. *Edwards*, 898 N.E.2d at 349.

[14] To comply with due process, a purchaser must give notice that is reasonably calculated to inform the interested parties of the pending action to give them a chance to present objections. *Ind. Land Tr. Co. v. XL Invest. Props., LLC*, 155 N.E.3d 1177, 1184 (Ind. 2020); *Khan*, 172 N.E.3d at 288. Actual notice isn’t required, either constitutionally or by statute. *Ind. Land Tr. Co.*, 155 N.E.3d at 1184; *Khan*, 172 N.E.3d at 290. Moreover, the issuance of a tax deed creates a presumption that the tax sale and all the statutory steps leading to the issuance of the tax deed were proper. *Ind. Land Tr. Co.*, 155 N.E.3d at 1190.⁵ This presumption may be rebutted by affirmative evidence to the contrary. *Id.*

[15] The Markleys argue Fred and Emily didn’t learn about the Order for Tax Deed until March 2020 when Hansen approached them and therefore they filed their

⁵ Indeed, the version of Section 6-1.1-25-4.6 in effect in 2015 provided that the issuance of a tax deed is “prima facie evidence” of “the regularity of all proper proceedings.” I.C. § 6-1.1-25-4.6(g) (2015). Effective January 1, 2016, Section 4.6 was amended to say that a tax deed is prima facie evidence only if the purchaser attaches the Section 4.5 Notice and the Section 4.6 Notice to the petition for tax deed. *See* P.L. 236-2015; I.C. § 6-1.1-25-4.6(c), (e) (2017). Because Gutierrez filed the petition for tax deed in 2015, the 2015 version of the statute applies. Although the Markleys argue the 2015 version “is inherently violative of procedural due process,” which is why the legislature amended the statute, *see* Appellants’ Br. p. 23, they cite no authority and have therefore waived any argument about the constitutionality of the 2015 version.

Trial Rule 60(B) motion to vacate within a reasonable time (about four months). Flanagan responds the Markleys “had actual knowledge of the sale of the property at least as early as July 27, 2017” and therefore they didn’t file their Trial Rule 60(B) motion to vacate within a reasonable time. Appellee’s Br. p. 20. We agree with Flanagan.

[16] We first note the Markleys don’t dispute that Fred and Emily received the first notice, by which the Lake County Auditor would have notified them at the Nugent Avenue address in 2014 that 2800 Calhoun Street had delinquent taxes and was eligible for sale. *See* Appellants’ Br. p. 21 (“[T]he Markleys do not challenge the validity of the tax sale process itself[.]”). As a result, we assume Fred and Emily received the first notice. *See Schaefer v. Kumar*, 804 N.E.2d 184, 194 (Ind. Ct. App. 2004) (“Schaefer does not challenge the adequacy of [the Section 4.5 Notice or the Section 4.6 Notice]. Accordingly, we assume those notices were given in substantial compliance with the procedure prescribed in those sections.”), *trans. denied*.

[17] But Fred and Emily received another notice. According to Gutierrez’s “Affidavit of Service,” in September 2015 he sent the petition for tax deed by first-class mail to Fred and Emily at the Nugent Avenue address, the address on file with the Lake County Auditor. And when Emily filed for bankruptcy in July 2017, she stated, under the penalties of perjury, that she didn’t own any real property and that 2800 Calhoun Street had been sold at a tax sale in 2016.

[18] The Markleys argue Emily’s bankruptcy filing shows she knew about the tax-sale proceedings but not the tax-deed proceedings. That Emily stated she didn’t have any interest in real property reflects that she knew not only about the tax sale but also about the tax deed transferring ownership out of her name.

Otherwise, as Flanagan points out, Emily would have listed her interest in 2800 Calhoun Street on Schedule A/B. In addition, Emily listed the year of the tax sale as 2016, which is when the tax deed was issued.

[19] The Markleys next argue that even if Emily knew about the tax-deed proceedings as reflected in her bankruptcy filing, Fred did not. But as explained above, actual notice is not required. We know that two notices were sent to Fred and Emily at the Nugent Avenue address, the address on file with the Lake County Auditor. *See Ind. Land Tr. Co.*, 155 N.E.3d at 1189 (finding no due-process violation where the certified mail of the first notice was returned to its sender but there was “no evidence the first-class mail was ever returned to its sender”).

[20] The Markleys had to challenge the Order for Tax Deed within a reasonable time. Because Fred and Emily knew about the tax-sale proceedings in 2014 and the tax-deed proceedings no later than July 2017, the Markleys didn’t act within a reasonable time when they moved to vacate the Order for Tax Deed on July 23, 2020. *Cf. Khan*, 172 N.E.3d at 288 (finding ninety days reasonable); *Edwards*, 898 N.E.2d at 349 (finding six months reasonable). We therefore affirm the trial court.

[21] Affirmed.

Najam, J., and Weissmann, J., concur.