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IN THE
COURT OF APPEALS OF INDIANA

Broadway Logistics Complex,
LLC, and Thomas Wisniewski,
Appellants-Plaintiffs,

v.

Peggy Holinga Katona, as Lake
County Treasurer, and John
Petalas, as Lake County Auditor,
Appellees-Defendants.

October 29, 2021

Court of Appeals Case No.
21A-PL-738

Appeal from the Lake Circuit
Court

The Honorable Marissa J.
McDermott, Judge

Trial Court Cause No.
45C01-1909-PL-599

Brown, Judge.

- [1] Broadway Logistics Complex LLC (“BLC”) and Thomas Wisniewski (“Wisniewski,” and collectively with BLC, “Appellants”) appeal the trial court’s order denying their request for injunctive relief and declaring the tax sale certificates they acquired forfeitable by the Lake County Treasurer (“Treasurer”). Appellants raise two issues which we consolidate and restate as whether the court erred in entering the order. We affirm.

Facts and Procedural History

- [2] The Lake County Auditor (“Auditor”), through its tax sale department, administers and serves as the clerk of annual Lake County Commissioners’ tax sales. Ind. Code § 6-1.1-24-5.3 prohibits certain persons from buying a tract offered for sale in a tax sale, including a person who owes delinquent taxes or special assessments, and any person who is an agent of the person who is prohibited from buying a tract in a tax sale. Lake County Ordinance Number 1412B establishes local tax sale rules for tax sale buyers, which, among other topics, includes requirements that each prospective buyer register in person as a tax sale bidder, sign a bidder packet acknowledging the local rules, provide identification, and pay a \$500 tax sale bidder registration which is applied to any winning bid or refunded if no winning bid is made.¹ The Auditor also

¹ The Lake County Council subsequently adopted a revised version of Ordinance 1412B in August of 2020, which includes additional rules on bidder eligibility.

requires a prospective applicant to sign a document, titled “Disclaimer-Terms of Tax Sale” as part of the tax sale registration process. Exhibit Volume 1 at 11-12.

[3] On February 20, 2019, Wisniewski paid and directed Guadalupe Gamez (“Gamez”), an employee of Wisniewski’s spouse, Marilyn Wisniewski (“Marilyn”), to form BLC as an entity and register BLC to bid in Lake County’s March 2019 tax sale. Gamez provided the Auditor’s tax sale department with the BLC operating agreement when she registered to bid in the March 2019 tax sale, which indicated that it had two members, Grantway Logistics, LLC (“Grantway”) and Gamez. The “Disclaimer-Terms of Tax Sale” that Gamez signed included the following provisions:

By signing this Disclaimer the tax sale bidder swears or affirms that the bidder (either individually and/or business entity and principals) does not have delinquent property taxes in any Indiana County, including Lake, nor open bankruptcies or personal property judgments. If bidder does have such delinquent taxes or judgments, the tax sale registration may be **REJECTED immediately and any accepted and paid registration fee and/or tax sale bid may be subject to immediate forfeiture pursuant to Indiana law.**

BIDDERS MAY NOT BID “ON BEHALF OF” ANY OTHER PARTIES or FAMILY MEMBERS WHO OWE DELINQUENT TAXES ON ANY PARCEL – DOING SO CONSTITUTES FRAUD UPON THE LAKE CIRCUIT COURT TAX SALE PROCESS AND IS IN VIOLATION OF I.C. 6-1.1-24-5.3. ANY VIOLATION OF THIS STATUTE WILL BE GROUNDS FOR THE AUDITOR TO BAN THE OFFENDING BUYER FROM ALL FUTURE TAX SALES.

Id. (emphasis and capitalization in original). Between the two members, Grantway had a 90% interest in BLC, and Gamez had a 10% interest in BLC. According to the court’s findings, Wisniewski also prepared the operating agreement for Grantway, which listed Arik Mizrachi (“Mizrachi”) as Grantway’s sole owner, and Mizrachi, at Wisniewski’s instruction, registered Grantway to bid in the March 2019 tax sale. The Auditor’s tax sale department approved BLC to bid in the March 2019 tax sale.

[4] On the same day Gamez registered BLC to bid in the March 2019 tax sale, at Wisniewski’s instruction Gamez signed a document titled “Assignment of Interest in Broadway Logistics, LLC” in which Gamez assigned her 10% interest in BLC to MAS Real Estate Investments, LLC (“MAS”), a company partially owned by Marilyn. *Id.* at 79. In February 2019, the members of MAS were Marilyn, Mizrachi, and Santiago Vaca.²

[5] On March 19, 2019, Lake County held the tax sale. BLC participated in the tax sale through several representatives, including John Garcia (“Garcia”), Mizrachi, and Wisniewski where it purchased 544 tax sale certificates.³ On March 22, 2019, Gamez, who had previously assigned her interest in BLC to Marilyn, paid the total bid price of \$355,400 to Lake County for BLC through a

² MAS was later determined to be an ineligible bidder at the March 2019 tax sale due to delinquent taxes owed by Marilyn and Santiago Vaca.

³ Forty of the certificates were later redeemed pursuant to Ind. Code § 6-1.1-25-1, leaving 504 certificates in dispute.

combination of four checks and cash that Wisniewski provided to her, specifically, checks of \$180,000 from Garcia, \$75,000 from WNC, LLC, and \$94,000 from Little Calumet Greenspace, LLC, and \$6,400 in cash.⁴

[6] In August of 2019, through local news media reports, the Auditor discovered Wisniewski's involvement with BLC and investigated BLC's eligibility as a bidder in the March 2019 tax sale. On September 4, 2019, the Auditor's counsel sent a letter to the Treasurer regarding BLC's eligibility. The letter informed the Treasurer that BLC was "improperly and fraudulently acting as agent for Tom Wisniewski, an ineligible tax sale bidder" and "[p]ursuant to I.C. 6-1.1-24-5.3, Mr. Wisniewski is an ineligible bidder due to his owing delinquent taxes, penalties or interest on Lake County real estate" and listed six parcels on which Wisniewski had delinquent taxes. *Id.* at 8. The letter further explained that pursuant to Ind. Code § 6-1.1-24-5.3(d) the tax sale certificates BLC purchased at the March 2019 tax sale were subject to forfeiture and requested that the Treasurer notify BLC and Wisniewski that the tax sale certificates were subject to forfeiture if the delinquent taxes Wisniewski owed were not paid within thirty days of the Treasurer's written notice.

[7] On September 11, 2019, the Treasurer sent a letter addressed to BLC and Wisniewski stating that the Auditor sought to forfeit the tax sale certificates that BLC had purchased at the March 2019 tax sale pursuant to Ind. Code § 6-1.1-

⁴ The Auditor's tax sale department denied WNC's attempt to register to bid in the March 2019 tax sale because of delinquent taxes.

24-5.3. The Treasurer’s letter listed forty-one parcels with delinquent taxes, six of which were in Wisniewski’s name and thirty-five of which were in the name of individuals or entities connected with Wisniewski. The Treasurer’s letter specified that “[u]nder subsection I.C. 6-1.1-24-5.3(d) you have an option to bring all of the delinquencies current within thirty (30) days of this notice to avoid forfeiture.” *Id.* at 6.⁵

[8] After Wisniewski received the Treasurer’s letter, he individually appeared at the Treasurer’s office “on multiple occasions to pay various delinquent taxes” to avoid forfeiture due to his and BLC’s status as ineligible bidders, but “Wisniewski refused to pay all of the delinquent taxes” the Treasurer listed in the letter it sent to Wisniewski, which included the six parcels that were owned in “Wisniewski’s own name with a total listed delinquency of \$70,555.65 and a parcel owned by his company, [Nolog Real Estate Investments, LLC] (delinquency in excess of \$22,000), all of which parcels had been listed every year on the annual county tax sales dating back to 2012.” Appellants’ Appendix Volume II at 30. Four of the six parcels Wisniewski owned in his name were later sold at the March 2020 tax sale. The parcel owned by Nolog

⁵ The court also found that Marilyn’s business entities, including MAS, Connect the Dots, LLC, Apple Real Estate Investments, Diverse Real Estate Investments, TJM Real Estate Investments, Titan Real Estate Investments, EF Real Estate Holdings, Tango Real Estate Investments, and Little Calumet Greenspace, LLC, owed delinquent real estate taxes, and that at the time of the March 2019 tax sale Wisniewski and Marilyn owed “well in excess of” \$100,000 in delinquent property taxes “individually or through their various business entities” on a “multitude of real estate parcels.” Appellants’ Appendix Volume II at 18. The court further found that Wisniewski “runs the day-to-day operations” of all of Marilyn’s “various real estate business LLCs and controls almost all aspects of those businesses, including but not limited to, their involvement in the county tax sale process[.]” and the court did “not find credible” Wisniewski’s testimony that “he merely serves as a ‘consultant’ for his wife’s various real estate business entities.” *Id.* at 23.

Real Estate Investments, LLC had been sold in a 2018 tax sale and was assigned to the City of East Chicago.

[9] On September 30, 2019, Appellants filed an “Emergency Motion to Toll Statutory Time Limit, Enjoin Forfeiture of Tax Certificates, And To Set An Emergency Hearing” with the Lake Superior Court (“superior court”) requesting that the court enter an order tolling the thirty-day period established by Ind. Code § 6-1.1-24-5.3(d) until the Auditor and Treasurer “agree to meet with Plaintiffs about erroneous tax bills,” and enjoining the Auditor and Treasurer from forfeiting the 504 non-redeemed tax sale certificates they had purchased at the March 2019 tax sale. *Id.* at 37, 40. On October 1, 2019, the superior court granted Appellants’ emergency motion and set a hearing for October 8, 2019.

[10] On October 3, 2019, the parties filed an “Agreed Motion For Continuance Of Emergency Hearing” in which the parties by counsel agreed that the Treasurer “shall not declare the subject tax sale certificates forfeited pursuant to [Ind. Code §] 6-1.1-24-5.3 unless or until after this Court issues a ruling on the pending Emergency Motion to Toll Statutory Time Limit and Enjoin Forfeiture of Tax Certificates.” *Id.* at 45-46. That same day, the superior court entered an order granting the agreed motion in which it rescheduled the hearing for October 15, 2019, and ordered that the Treasurer “shall not declare the subject tax sale certificates statutorily forfeited pursuant to [Ind. Code §] 6-1.1-24-5.3 until after this Court issues a ruling on the subject emergency motion.” *Id.* at 48.

[11] On October 10, 2019, the Treasurer filed a petition for declaratory judgment, seeking “a judicial determination of the parties’ rights and the Treasurer’s duties herein and a declaration of whether and, to what extent, forfeiture(s) should occur.” *Id.* at 50.⁶ On October 15, 2019, the superior court transferred the case to the Lake Circuit Court (“circuit court”), and on October 24, 2019, the circuit court entered an order accepting the transfer. On March 9, 2020, the Treasurer filed a memorandum in support of its petition for declaratory judgment, noting that “the parties agreed to a temporary delay in any such forfeiture and that temporary delay below appears to have expired, the Treasurer has taken no further action towards a forfeiture, so as to allow this Court to consider the Treasurer’s Petition for Declaratory Judgement, which should resolve the issues regarding whether a forfeiture should occur.” *Id.* at 127. Appellants sought to join the Treasurer’s declaratory judgment petition, and on June 9, 2020, the circuit court granted Appellants’ motion to join. On February 17 and 19, 2021, the circuit court held a bench trial. On April 20, 2021, the circuit court issued an order that “consolidate[d] and restate[d] all issue[s] before it as whether Plaintiffs are entitled to a permanent injunction preventing the County from forfeiting the 504 tax sale certificates they purchased at the March, 2019 Lake County Commissioner’s tax sale.” *Id.* at 16. The circuit court’s order

⁶ The Treasurer’s petition also stated that Appellants had “brought forth information disputing the matters set out in the Auditor’s report; and have brought at least some of Wisniewski’s taxes current.” Appellants’ Appendix Volume II at 50.

contained findings and conclusions and provided that the stay was lifted and authorized the Treasurer to act on the forfeiture of the tax sale certificates.

Discussion

[12] Appellants argue the circuit court erred in entering its order authorizing the Treasurer to act on the forfeiture of the tax sale certificates. When, as here, the trial court issues findings of fact and conclusions thereon upon a verbal request at the hearing, but no written request is filed pursuant to Indiana Trial Rule 52, we review the findings and conclusions as if issued sua sponte. *See Leever v. Leever*, 919 N.E.2d 118, 122 (Ind. Ct. App. 2009). The trial court’s findings of fact control as to the issues they cover, and a general judgment will control as to the issues upon which there are no findings. *In re 2014 Johnson Cty. Tax Sale*, 48 N.E.3d 340, 345 (Ind. Ct. App. 2015). We will “not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Ind. Trial Rule 52(A). We first consider whether the evidence supports the findings and then we determine whether the findings support the judgment. *Marion Cnty. Auditor v. Sawmill Creek, LLC*, 964 N.E.2d 213, 216 (Ind. 2012). We do not reweigh the evidence or assess the credibility of witnesses, and we view the evidence in a light most favorable to the trial court’s judgment. *Id.*

[13] Here, Appellants do not argue that any of the trial court’s specific findings are unsupported by the evidence. When a party challenges only the judgment as contrary to law and does not challenge the special findings as unsupported by the evidence, we do not look to the evidence but only to the findings to

determine whether they support the judgment. *Smith v. Miller Builders, Inc.*, 741 N.E.2d 731, 734 (Ind. Ct. App. 2000).

[14] At the time Appellants received the Treasurer's letter, Ind. Code § 6-1.1-24-5.3 provided, in pertinent part, as follows:

(a) This section applies to the following:

* * * * *

(5) A person who owes:

(A) delinquent taxes;

(B) special assessments;

(C) penalties;

(D) interest; or

(E) costs directly attributable to a prior tax sale;

on a tract or an item of real property listed under section 1 of this chapter.

* * * * *

(7) A person who is an agent of the person described in this subsection.

(b) A person subject to this section may not purchase a tract offered for sale under section 5 or 6.1 of this chapter. However, this section does not prohibit a person from bidding on a tract that is owned by the person and offered for sale under section 5 of this chapter.

* * * * *

(d) If a person purchases a tract that the person was not eligible to purchase under this section, the sale of the property is subject to forfeiture. If the county treasurer determines or is notified not more than six (6) months after the date of the sale that the sale of the property should be forfeited, the county treasurer shall:

(1) notify the person in writing that the sale is subject to forfeiture if the person does not pay the amounts that the person owes within thirty (30) days of the notice;

(2) if the person does not pay the amounts that the person owes within thirty (30) days after the notice, apply the surplus amount of the person's bid to the person's delinquent taxes, special assessments, penalties, and interest;

(3) remit the amounts owed from a final adjudication or civil penalties in favor of a political subdivision to the appropriate political subdivision; and

(4) notify the county auditor that the sale has been forfeited.

Upon being notified that a sale has been forfeited, the county auditor shall issue a certificate to the county executive under section 6 of this chapter.

(e) A county treasurer may decline to forfeit a sale under this section because of inadvertence or mistake, lack of actual knowledge by the bidder, substantial harm to other parties with interests in the tract or item of real property, or other substantial reasons. If the treasurer declines to forfeit a sale, the treasurer shall:

(1) prepare a written statement explaining the reasons for declining to forfeit the sale; and

(2) retain the written statement as an official record.

(Subsequently amended by Pub. L. No. 159-2020, § 45 (eff. July 1, 2020); Pub. L. No. 66-2021, § 2 (eff. July 1, 2021)).

[15] Appellants acknowledge that BLC acted as an agent of Wisniewski in the March 2019 tax sale and that Wisniewski was ineligible to purchase a tract under Ind. Code § 6-1.1-24-5.3. Thus, BLC, as Wisniewski’s agent, was also ineligible to purchase a tract in the March 2019 tax sale. *See* Ind. Code § 6-1.1-24-5.3(b). Despite their ineligibility, Appellants contend that a plain reading of Ind. Code § 6-1.1-24-5.3 shows that, pursuant to subsection (d), the legislature intended to allow a person who is ineligible to bid in a tax sale “but [who] nevertheless does, a statutory right to cure the ineligibility and avoid forfeiture by paying the delinquent property taxes that made the person ineligible within thirty (30) days of receiving notice from the treasurer.” Appellants’ Brief at 24.

[16] “A tax sale is purely a statutory creation, and material compliance with each step of the statute is required.” *Iemma v. JP Morgan Chase Bank, N.A.*, 992 N.E.2d 732, 738 (Ind. Ct. App. 2013) (quoting *Nieto v. Kezy*, 846 N.E.2d 327, 337 (Ind. Ct. App. 2006)). To the extent we must interpret Ind. Code § 6-1.1-24-5.3, if a statute is not susceptible to more than one interpretation, we must give the statute its clear and plain meaning. *Cook v. Atlanta, Ind. Town Council*, 956 N.E.2d 1176, 1178 (Ind. Ct. App. 2011), *reh’g denied, trans. denied*. If a statute is susceptible to multiple interpretations, we attempt to ascertain the legislature’s intent and interpret the statute so as to effectuate that intent. *Id.* We presume the legislature intended logical application of the language used in

the statute, so as to avoid unjust or absurd results. *Id.* We will avoid an interpretation that renders any part of the statute meaningless or superfluous. *Id.*

[17] Pursuant to the timeline set forth in Ind. Code § 6-1.1-24-5.3(d), the Treasurer sent Appellants a letter on September 11, 2019, indicating that the tax sale certificates issued to BLC following the March 2019 tax sale were subject to forfeiture if certain delinquent taxes were not paid within thirty days. The Treasurer’s letter listed forty-one parcels with delinquent taxes, six of which were in Wisniewski’s name and thirty-five of which were in the name of individuals or entities connected with Wisniewski. The Treasurer’s letter also indicated that Ind. Code § 6-1.1-24-5.3(d) provides for a thirty-day period to pay the delinquent taxes on the identified parcels to avoid the forfeiture. After receipt of the Treasurer’s letter, Wisniewski individually appeared at the Treasurer’s office on multiple occasions to pay various delinquent taxes to avoid forfeiture. The circuit court found that Wisniewski “refused to pay all of the delinquent taxes listed by the Treasurer in its tax certificate forfeiture notice,” which included the delinquent taxes associated with the “six (6) parcels that were owned in Plaintiff Wisniewski’s own name with a total listed delinquency of \$70,555.65[,] and a parcel owned by his company, [Nolog Real Estate Investments, LLC] (delinquency in excess of \$22,000), all of which parcels had been listed every year on the annual county tax sales dating back to 2012.” Appellants’ Appendix Volume II at 30.

[18] In addition, four of the six parcels in Wisniewski's name included in the Treasurer's forfeiture letter were sold to a third-party buyer at the March 2020 tax sale. In its order, the circuit court concluded that even in light of Ind. Code § 6-1.1-24-5.3(d)'s provision allowing for payment of delinquent taxes within thirty days to prevent forfeiture, "the evidence at trial was that Plaintiff Wisniewski (and other people and entities later revealed to be connected to his dealings, including Marilyn Wisniewski) failed to make good on delinquent taxes owed." *Id.* at 35. The record establishes that neither Wisniewski nor BLC paid the full amounts due on the parcels identified in the Treasurer's September 11, 2019, forfeiture letter. Under these circumstances we cannot say the circuit court erred by lifting the stay and authorizing the Treasurer to act on the forfeiture of the 504 ineligibly obtained tax sale certificates.

[19] To the extent Appellants contend that they were denied the right to cure their ineligibility, the superior court's October 3, 2019 order provided that the Treasurer "shall not declare the subject tax sale certificates statutorily forfeited pursuant to [Ind. Code §] 6-1.1-24-5.3 until after this Court issues a ruling on the subject emergency motion" which was twenty-two days after Appellants received the Treasurer's letter notifying them that the tax sale certificates for the tracts they purchased were subject to forfeiture. *Id.* at 48. The circuit court's April 20, 2021 order noted that, before the case was transferred from the superior court, "the parties agreed to stay or toll any forfeiture deadline during the pendency of this litigation" and that "the stay that was previously entered in this case is now, on the court's own motion, lifted" which authorized the

Treasurer to act on the forfeiture of the tax sale certificates. *Id.* at 16, 36. At that point, Appellants had eight days remaining to pay the amounts owed, and Appellants do not point to evidence that they made any payments after the circuit court issued its order.

[20] To the extent Appellants also argue that the circuit court erred by analyzing the dispute under the standard for a permanent injunction rather than a petition for declaratory relief, we note that the court's findings answered the questions raised in the request for declaratory relief. As noted, the circuit court's findings provided that BLC was an agent of Wisniewski, who was ineligible to bid at the subject tax sale, which Appellants have acknowledged on appeal, and that BLC was therefore ineligible. As to whether Wisniewski was delinquent on any of the forty-one parcels identified in the forfeiture letter, the court found Wisniewski owed delinquent taxes on six parcels owned in his own name, four of which were sold at the March 2020 tax sale, and one parcel that he owned through Nolog Real Estate Investments, LLC, and that the Treasurer was authorized to act on the forfeiture of the tax sale certificates. We cannot say that Appellants are entitled to relief on this basis and decline to disturb the court's order.

[21] For the foregoing reasons, we affirm the court's order.

[22] Affirmed.

Najam, J., and Riley, J., concur.