

MEMORANDUM DECISION

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APPELLANT *PRO SE*

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IN THE COURT OF APPEALS OF INDIANA

Thomas DeCola,
Appellant-Plaintiff,

v.

Matt H. & Anne L. Sheaffer,
Appellees-Defendants.

February 2, 2024

Court of Appeals Case No.
23A-PL-2071

Appeal from the Jasper Superior
Court

The Honorable Daniel J. Molter,
Special Judge

Trial Court Cause No.
37D01-2112-PL-1121

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

- [1] Thomas DeCola acquired tax sale certificates to two parcels (“the Parcels”) of real estate. DeCola subsequently transferred his interests in the Parcels to Argento, LLC (“Argento”), a company wholly owned by DeCola, which subsequently petitioned for and received tax deeds to the Parcels. Argento, by and through DeCola, then sold the Parcels to Matt and Anne Sheaffer (“the Sheafers”), for a combined sum of \$10,200.00. After this sale was completed, DeCola attempted to assert a superior interest in the Parcels and filed a Trial Rule 12(B)(6) motion to defeat the tax deeds and subsequent conveyances to the Sheafers by having them declared void (“the Motion”). DeCola appeals following the denial of the Motion. We affirm.

Facts and Procedural History

- [2] On October 4, 2017, DeCola purchased tax sale certificates for the Parcels which had been owned by U.S. Railroad Vest Corporation (“Railroad Vest”): Tax Sale Certificate 371700009 Property ID # 006-00063-00 (“Property No. 63-00”) and Tax Sale Certificate 371700010 Property ID # 006-00064-00 (“Property No. 64-00”). On July 19, 2018, Railroad Vest purported to quitclaim its interest in the Parcels to DeCola by quitclaim deed.
- [3] After having purchased the tax sale certificates, on July 23, 2018, DeCola assigned his interest in the Parcels to Argento. Argento, an Indiana LLC, was established and wholly owned by DeCola.

- [4] On October 4, 2018, Argento, with DeCola acting as its agent, petitioned the trial court for issuance of tax deeds in respect to the Parcels. In these petitions, DeCola verified that all required statutory notice had been given. The record does not indicate that any objections were filed in response to Argento's petitions.
- [5] On October 5, 2018, the trial court ordered for the issuance of tax deeds relating to the Parcels. On October 24, 2018, the Jasper County Auditor issued tax deeds to Argento on the Parcels. On October 29, 2018, the deed to Property No. 64-00 was recorded as instrument number F165956 and the deed to Property No. 63-00 was recorded as instrument number F165957. Argento sold the Parcels to the Sheafers in August of 2019 and February of 2020 for a combined price of approximately \$10,200.00.
- [6] On December 9, 2021, DeCola recorded the July 19, 2018 quitclaim deed for the Parcels. The next day, DeCola filed the Motion, challenging the validity of both the tax deeds themselves as well as the subsequent conveyances to the Sheafers. Specifically, DeCola argued that the tax deeds were void for two reasons: (1) Railroad Vest Corp. had not been provided with sufficient notice of the tax sale and (2) Argento had not been represented by counsel. He also

claimed to have had superior legal title of the Parcels by virtue of the quitclaim deed.¹

- [7] Following a hearing, the trial court denied the Motion. With regard to the notice question, the trial court concluded that “[t]here was no evidence presented that [Railroad Vest] did not receive actual notice of the tax sale” and “[t]here was no evidence presented to support [DeCola’s] allegation that any party required to be noticed of the tax sale proceedings which are the subject of this cause, did not receive actual notice.” Appellant’s App. Vol. II p. 221. The trial court further concluded that the tax deeds were not void and that the Sheafers held “the status of bona fide purchaser and their title to the real estate is superior to that of others who’s [sic] claims are based on records and arguments outside the chain of title, regardless of whether the issuance of tax deeds was void or valid.” Appellant’s App. Vol. II p. 221.

Discussion and Decision

- [8] DeCola contends that the trial court abused its discretion in denying the Motion. Specifically, he argues that the tax deeds were void because of an alleged lack of notice to Railroad Vest of the tax sale and because Argento was not represented by an attorney at any point during the relevant proceedings.

¹ In rejecting this claim, the trial court subsequently concluded that the quitclaim deed was “inoperable and void as a matter of law.” Appellant’s App. Vol. II p. 219.

I. Alleged Lack of Notice of Tax Sale

[9] Under Indiana law, “[i]f an owner of real estate fails to pay the property taxes, the property may be sold in order to satisfy the tax obligation.” *Farmers Mut. Ins. Co. of Grant & Blackford Cntys. v. M Jewell, LLC*, 992 N.E.2d 751, 755 (Ind. Ct. App. 2013) (internal quotation omitted), *trans. denied*. Tax sale proceedings “must comport with the due process requirements of the United States Constitution[, ... t]hus, prior to conducting a tax sale, notice must be provided to one who may be deprived of a property interest.” *Id.* “In keeping with these constitutional requirements, the General Assembly has enacted an extensive statutory framework governing tax sales and requiring notice to the property owner at various stages of the process.” *Id.* “The tax sale process is purely a statutory creation and requires material compliance with each step of the governing statutes.” *Id.* (cleaned up). “Although issuance of a tax deed creates a presumption that a tax sale and all the steps leading up to the issuance of the deed were conducted in compliance with the applicable statutes, this presumption may be rebutted by affirmative evidence to the contrary.” *Id.*

[10] A person may defeat a tax deed only by proving one of the seven defects set forth in Ind. Code [section] 6-1.1-25-16 []. [Indiana Code section] 6-1.1-25-16 provides, in pertinent part, that a person may defeat a tax deed if the notices required by ... [Indiana Code section] 6-1.1-24-4 ... were not in substantial compliance with the manner prescribed in those sections. This court has noted that the proper procedure for appealing the issuance of a tax deed is found in Ind. Trial Rule 60....

T.R. 60(B)(6) provides that a trial court may relieve a party from

the entry of judgment if the judgment is void. Failure to comply substantially with statutes governing tax sales renders void subsequent tax deeds which deprive owners of their property. As a general matter, a trial court's ruling on a T.R. 60(B) motion is reviewed for an abuse of discretion. A ruling under T.R. 60(B)(6), however, requires no discretion on the part of the trial court because either the judgment is void or it is valid.

Id. at 754 (cleaned up).

[11] DeCola argues that the tax deeds were void because of a lack of notice to Railroad Vest. We disagree. Again, the trial court expressly concluded that “[t]here was no evidence presented support [DeCola’s] allegation that any party required to be noticed of the tax sale proceedings which are subject of this case, did not receive actual notice.” Appellant’s App. Vol. II p. 221. Furthermore, the Jasper County Auditor and Treasurer filed a joint affidavit in which they averred that notice had been sent to the owners of the real property at issue, including the Parcels, as required by Indiana Code section 6-1.1-24-4. Contrary to DeCola’s claim on appeal, in its petitions for the issuance of tax deeds for the Parcels, Argento, by and through DeCola, had attested “under the penalties for perjury” that all required statutory notice had been given. Appellees’ App. Vol. II pp. 11, 33. Aside from making a blanket accusation that the underlying notice had been inadequate, DeCola points to no affirmative evidence indicating that Railroad Vest had not been notified of the tax sale in a manner consistent with Indiana Code sections 6-1.1-24-2 and 6-1.1-24-4.

[12] Again, “[t]he issuance of a tax deed by the trial court creates a presumption that a tax sale and all of the statutory steps leading up to the issuance of the tax deed were proper.” *First Am. Title Ins. Co. v. Calhoun*, 13 N.E.3d 423, 431 (Ind. Ct. App. 2014). This presumption may only be rebutted by “*affirmative* evidence” showing the contrary. *Id.* (internal quotation omitted, emphasis in original). DeCola has failed to point to any affirmative evidence indicating that proper notice was not given to Railroad Vest. Based on the record before us, we cannot say that the trial court abused its discretion in finding that the tax deeds were not void for lack of notice.

II. Argento’s Lack of Representation by an Attorney

[13] Generally, Indiana Code section 34-9-1-1(c) requires that “[a] corporation and any organization required to make application to the secretary of state ... must appear by attorney in all cases.” DeCola argues that the tax deeds were void, and the trial court had therefore “lacked jurisdiction to entertain Argento’s petition(s) for issuance of tax deed(s),” because Argento had not been represented by an attorney during the underlying proceedings. Appellant’s Br. p. 11. For their part, the Sheafers argue that the challenged order was not void because DeCola could have cured the alleged defect by hiring an attorney to represent Argento.

[14] The trial court recognized that “[a]n individual may not appear *pro se* for an organized business entity” and “[a]n organization or business entity is incapable of appearing *pro se*.” Appellant’s App. Vol. II p. 222 (emphases in original).

The trial court concluded however, “[a]s the only member of [Argento, DeCola] is the only person who could have hired an attorney to represent Argento, and therefore, the only person who could have cured the defective representation.” Appellant’s App. Vol. II p. 222. In reaching this conclusion, the trial court cited to our decision in *Trook v. Lafayette Bank and Trust Co.*, 581 N.E.2d 941, 945 (Ind. Ct. App. 1991), *trans. denied*, in which we stated that a judgment should be considered voidable rather than void when alleged “the defect was susceptible to cure or waiver.”

[15] In denying the Motion, the trial court determined that

[DeCola] has failed to carry his burden in respect to his petition and, therefore, the same is overruled and denied. The judgments rendered in respect to the issuance of tax deeds are not void; [DeCola] himself is the only individual who could have hired an attorney to represent Argento and he chose not to....

Appellant’s App. Vol. II pp. 223. We agree that DeCola could have cured the defect, *i.e.*, the lack of counsel representing Argento, but apparently chose not to. Given the specific facts and circumstances at play here, we cannot say that the trial court abused its discretion in rejecting DeCola’s assertion that the tax deeds were rendered void by Argento’s lack of representation. To conclude otherwise would allow DeCola to unfairly benefit from a defect of his own making.

[16] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, J., concur.