

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

QRP Krisbi, LLC,
Appellant-Petitioner,

v.

Elita R. Buggs,
Appellee-Respondent

November 29, 2023

Court of Appeals Case No.
23A-TP-513

Appeal from the
Lake Circuit Court

The Honorable
Marissa McDermott, Judge

The Honorable
Lisa Berdine, Magistrate

Trial Court Cause No.
45C01-2011-TP-1247

Memorandum Decision by Judge Vaidik
Judges Bradford and Brown concur.

Vaidik, Judge.

Case Summary

- [1] Following a tax sale, QRP Krisbi, LLC, petitioned for a tax deed for a property owned by Elita R. Buggs. After the trial court granted the petition, Buggs filed a Trial Rule 60(B) motion for relief from judgment. The trial court granted Buggs’s motion, and QRP Krisbi appeals. We reverse.

Facts and Procedural History

- [2] Buggs owned a house at 4373 Lincoln Street in Gary (“the Property”). In August 2019, the Property was included in a county tax sale due to delinquent taxes. The tax lien on the Property was purchased by Orgen Labowski, LLC, an Indiana limited-liability company owned and managed by Richard Dawson and co-managed by his ex-wife, Lia Dawson. A tax-sale certificate was issued to Orgen Labowski. Orgen Labowski then assigned the tax-sale certificate to QRP Krisbi, a Virginia limited-liability company owned and managed by Bivas Ghosh. Richard signed the Assignment on behalf of Orgen Labowski, and Lia notarized his signature. At the time of the Assignment, Lia, through her real-estate company, managed several properties owned by QRP Krisbi and earned commissions upon collection of rent.
- [3] Buggs had until September 3, 2020, to redeem the Property by paying the delinquent taxes. She failed to do so. In November 2020, QRP Krisbi, represented by Richard (who became an attorney in September 2020),

petitioned for the issuance of a tax deed. A copy of the Assignment was attached to the petition. Buggs opposed the petition, arguing that there were “taxing irregularities” and that she had not been given proper notice of the tax sale or the redemption period. Appellant’s App. Vol. II pp. 26-28. In August 2021, the trial court held a hearing, overruled Buggs’s objections, granted QRP Krisbi’s petition, and ordered the Lake County Auditor to issue a tax deed to QRP Krisbi. The Auditor issued the tax deed as ordered. Buggs continued living at the Property, and Lia began managing the Property on behalf of QRP Krisbi, collecting rent from Buggs, and earning commission.

[4] In October 2021, Buggs moved for relief from judgment under Trial Rule 60(B). As relevant to this appeal, Buggs argued that QRP Krisbi committed fraud on the trial court when seeking the tax deed. Specifically, Buggs asserted that Lia—as a co-manager of Orgen Labowski and/or as a property manager for QRP Krisbi—benefitted by notarizing the Assignment of the tax-sale certificate from Orgen Labowski to QRP Krisbi and that QRP Krisbi failed to disclose this fact during the tax-deed proceedings. Buggs cited Indiana Code section 33-42-13-3(a)(10), which provides:

(a) A commission as a notary public does not allow a person to do the following:

* * * *

(10) Perform a notarial act for:

(A) oneself;

(B) one's spouse; or

(C) any party;

that may directly benefit a person described in clause (A) or (B).

[5] After a hearing, the trial court granted Buggs's motion. The Court found, in part:

77. The Court finds the *Assignment* transferring the tax lien certificate to QRP Krisbi, LLC by Lia Dawson as improper and potentially violates Ind. Code § 33-42-13-3.

78. The Court finds [QRP Krisbi] failed to disclose to this Court potential notary misconduct and/or violation of Ind. Code § 33-42-13-3 relating to the *Assignment* which was attached as part of [QRP Krisbi's] *Petition for Tax Deed*.

79. The Court finds Ind. Code § 33-42-13-3 does not give the Court the authority to invalidate the *Assignment* based on alleged notary misconduct and/or violations of Ind. Code § 33-42-13-3.

80. The Court finds the actions by [QRP Krisbi] in failing to disclose to the Court the potential notary misconduct and/or violation of Ind. Code § 33-42-13-3 relating to the *Assignment* was misleading and the Court's decision to grant the *Petition for Tax Deed* was influenced by the validity of the *Assignment*.

81. The Court, if given the benefit of disclosure prior to ruling on the *Petition for Tax Deed*, could have ordered [QRP Krisbi] to seek an advisory opinion from the Indiana Secretary of State Office

regarding the alleged misconduct, violation, defect and/or cure of the *Assignment*.

82. The Court finds the evidence demonstrated [QRP Krisbi] engaged in an unconscionable plan to improperly influence the Court's decision and its conduct prevented [Buggs] from fully and fairly presenting her case or defense.

83. The Court finds the actions by [QRP Krisbi] constitute a fraud upon the Court.

Appellant's App. Vol. II pp. 9-10. The court vacated its order directing the Auditor to issue a tax deed and gave Buggs thirty days to redeem the Property.

[6] QRP Krisbi now appeals.

Discussion and Decision

[7] QRP Krisbi contends the trial court erred by finding fraud on the court. Buggs has not filed a brief. When an appellee does not respond to an appeal, we will not undertake the burden of developing an argument on their behalf. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error. *Id.* In this context, "prima facie error" means error "at first sight, on first appearance, or on the face of it." *Id.* Under that relaxed standard, we conclude that reversal is appropriate.

[8] The trial court found QRP Krisbi committed fraud on the court by failing to disclose "potential notary misconduct and/or violation of Ind. Code § 33-42-13-

3.” QRP Krisbi first argues that Lia did not violate the statute by notarizing the Assignment. Again, Section 33-42-13-3(a)(10) provides that a notary public is not allowed to perform a notarial act that “may directly benefit” the notary.

QRP Krisbi asserts:

The only benefit Lia could have possibly received from the notarization of the Assignment was purely speculative and highly contingent on several factors out of her control, namely: 1) the successful conversion of the Tax Lien Certificate to a Tax Deed (and failure to redeem by Buggs); 2) the successful renting of the subject property to the Tenant[;] and 3) the continued working relationship her property management company had with QRP. Such a speculative and highly contingent benefit could not be considered direct under any stretch of the definition of the word.

Appellant’s Br. pp. 13-14.

[9] QRP Krisbi also argues the even if Lia violated that statute, there is no evidence that QRP Krisbi fraudulently concealed this information from the trial court.

We agree with QRP Krisbi on this issue and therefore need not decide whether Lia violated the statute.

[10] “Fraud on the court has been narrowly applied and is limited to the most egregious of circumstances involving the courts.” *Stonger v. Sorrell*, 776 N.E.2d 353, 357 (Ind. 2002). A party claiming such fraud “must establish that an unconscionable plan or scheme was used to improperly influence the court’s decision and that such acts prevented the losing party from fully and fairly presenting its case or defense.” *Id.*

[11] Assuming Lia violated the statute, there are two possible explanations for why QRP Krisbi didn't say so during the tax-deed proceedings. Either it honestly but mistakenly believed there was no violation and nothing to disclose, or it knew there was a violation and intentionally concealed this information from the court. The circumstances simply don't support the latter conclusion. First, QRP Krisbi attached a copy of the Assignment—with Richard's signature and Lia's notarization—to its petition for a tax deed even though it wasn't required to do so. *See* I.C. § 6-1.1-25-4.6(b) (providing that a purchaser's assignee "may" include a copy of the assignment with a petition for tax deed). That is not the action of someone trying to hide a document or its significance from a court. Second, there is no dispute that Richard signed the Assignment. In other words, no one suggests that Richard didn't sign the Assignment and that Lia's notarization of the Assignment was therefore false. And third, there is no indication that Richard could not have had his signature notarized by another notary public and that Lia was his only option. Notaries aren't in the business of vetting the documents they notarize, and it seems to us that if Richard and QRP Krisbi knew or thought Lia was barred by statute from notarizing the Assignment, they would have just found a different notary public to perform this important but ministerial task. Our review of the record leaves us confident that Richard had Lia notarize the Assignment because it was convenient, not as part of some fraudulent scheme.

[12] Because QRP Krisbi has shown prima facie error, we reverse the trial court's grant of Buggs's motion for relief from judgment.

[13] Reversed.

Bradford, J., and Brown, J., concur.