

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

Vanessa Dale Brown,
Appellant-Petitioner,

v.

Marion County Auditor and
Marion County Treasurer,
Appellee-Respondents.

May 20, 2022

Court of Appeals Case No.
21A-TP-2148

Appeal from the Marion Circuit
Court

The Honorable Sheryl Lynch,
Judge

The Honorable Amber Collins-
Gebrehwet, Magistrate

Trial Court Cause No.
49C01-2007-TP-22136

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Petitioner, Vanessa Dale Brown (Brown), appeals the trial court's denial of her request to set aside the grant of a tax deed pursuant to Indiana Trial Rule 60(B) in favor of Appellants-Respondents, Marion County Auditor and Marion County Treasurer (Collectively, Auditor), and Appellant-Intervenor/Tax Sale Purchaser, S&C Financial Group, LLC (S&C Financial).
- [2] We affirm.

ISSUES

- [3] Brown presents this court with two issues on appeal, which we restate as:
- (1) Whether the trial court abused its discretion by allowing the Auditor to file its request to issue a tax deed in apparent disregard of the order to stay the proceedings due to an intervening bankruptcy proceeding; and
 - (2) Whether the bankruptcy trustee in Brown's bankruptcy proceeding was a person with a substantial property interest of public record and statutorily entitled to notice of the tax sale.

FACTS AND PROCEDURAL HISTORY

- [4] Brown, who resides in Camby, Indiana, is the fee simple owner of record of real property located at 1846 East 38th Street, in Indianapolis, Indiana (Property), which she acquired pursuant to a quit claim deed, dated August 15, 2017, and recorded by the Auditor on August 25, 2017. The Property is a commercial

property. The quit claim deed mandates to “[s]end Tax Bills to 1846 E. 38th Street, Indianapolis, IN[.]” (Appellant’s App. Vol. II, p. 54).

[5] On August 8, 2018, the Auditor sent a notice to the Property’s address via certified mail, return receipt requested, and via U.S. first class mail, notifying Brown that the Property was subject to past due taxes and eligible to be included in the upcoming tax sale. Notices were also sent by certified mail and U.S. first class mail to the occupants of the Property. There is no evidence that any of these notices were returned. Due to the delinquent property taxes of approximately \$4,443.93, the Property was placed in the tax sale of October 18 and 19, 2018, and purchased by S&C Financial, with the redemption period expiring on or about October 21, 2019.

[6] On September 17, 2019, while the redemption period was still running, Brown filed a voluntary petition in the United States Bankruptcy Court for the Southern District seeking relief under Chapter 13 of the Bankruptcy Code. As part of the bankruptcy proceedings, a stay of proceedings was entered by the bankruptcy court on all of Brown’s assets. Accordingly, when the redemption period expired, the Property was subject to the automatic stay of the bankruptcy proceedings. On December 13, 2019, Brown’s bankruptcy was dismissed (First Bankruptcy Dismissal), the automatic stay was lifted, but the Property was not redeemed.

[7] On January 7, 2020, Brown added S&C Financial and the Auditor as creditors to her bankruptcy proceeding. A month later, on February 6, 2020, the First

Bankruptcy Dismissal was set aside and the automatic stay was reimposed. On February 11, 2020, S&C Financial filed a proof of claim with the bankruptcy court, seeking an amount of \$15,727.52. On April 22, 2020, Brown's bankruptcy was dismissed a second time (Second Bankruptcy Dismissal), and the automatic stay was lifted again.

[8] On June 12, 2020, while the automatic stay was lifted, the trial court granted the Auditor's verified petition to issue a tax deed for the Property. On June 23, 2020, the Second Bankruptcy Dismissal was set aside and the automatic stay reinstated. Two days later, on June 15, 2020, Brown filed an objection to the issuance of the tax deed with the trial court. The trial court ordered Brown to re-file under a separate cause number, which she did.

[9] On June 2, 2021, S&C Financial and Brown filed an agreed motion for relief from the automatic stay and a motion to set a hearing. During the evidentiary hearing on July 14, 2021, Brown admitted to having received a copy of the quit claim deed after it was recorded. She also testified that she never requested the Auditor's office to send the tax sale notices to her residential address in Camby, Indiana, and stated that she never received the notice that the Property was going to be included in the 2018 tax sale. Concluding that the Auditor sent legally sufficient notice to Brown, who did not bring the property taxes current prior to the tax sale, the trial court denied Brown's objection to the issuance of the tax deed to S&C Financial.

[10] Brown now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[11] Brown presents this court with a two-fold claim. She contends that the Auditor failed to abide by the automatic stay instituted through the bankruptcy proceeding when it requested the trial court to issue a tax deed and that the Auditor failed to give notice of the petition for a tax deed to Brown's bankruptcy trustee. Based on these two contentions, Brown now requests us to set aside the trial court's order pursuant to Indiana Trial Rule 60(B).

I. *Standard of Review*

[12] 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.” Ind. Code § 6-1.1-25-4.6(l). 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).

[13] Although Trial Rule 60(B) was not specifically referenced in Brown’s motion objecting to the issuance of a tax deed, the trial court treated the motion in substance as a Trial Rule 60(B) motion for relief from judgment. A Trial Rule 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).

II. *Automatic Stay of Bankruptcy Proceeding*

[14] Initially, Brown contends that the trial court abused its discretion by allowing the Auditor to file its petition to issue a tax deed in violation of the automatic stay instituted through the bankruptcy proceeding. Specifically, on February 7, 2020, the trial court entered an order staying proceedings, noting that due to Brown’s bankruptcy filing, “all statutory deadlines to the Petition for Issuance of a Tax Deed under I.C. § 6-1.1-25-4.6(a) are tolled during the pendency of [] Brown’s Bankruptcy until 60 days after Notice of Termination or Expiration of Automatic Bankruptcy’s Stay.” (Appellant’s App. Vol. II, p. 38). On April 22, 2020, the Second Bankruptcy Dismissal was issued, and the automatic stay was

lifted. Brown maintains that despite the trial court's order, the Auditor filed its verified petition for issuance of tax deeds on June 12, 2020, in violation of the sixty-day term which was set to expire on June 22, 2020.

[15] In her motion to set aside the tax deed and in her presentation before the trial court, Brown challenged the adequacy of the tax sale notice to herself and the bankruptcy trustee. A further review of the trial proceedings reflects that Brown failed to raise the issue that the proceedings violated the automatic stay before the trial court nor did she make any objection to this apparent violation during the proceedings. It has long been the general rule in Indiana that an argument or issue presented for the first time on appeal is waived for purposes of appellate review. *See, e.g., Plank v. Cmty. Hospitals of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013) (“[A]ppellate review presupposes that a litigant’s arguments have been raised and considered in the trial court.”). Accordingly, Brown’s argument is waived for our review.

III. *A Substantial Property Interest of Public Record*

[16] It is well-established that 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 a

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)).

[17] Pursuant to Indiana Code section 6-1.1-25, these tax lien notices must be sent “to the owner of record at the time of the sale and any person with a substantial property interest of public record in the tract or item of real property.” A person with a ‘substantial property interest of public record’ is further defined as:

(a) “Substantial property interest of public record” means title to or interest in a tract that is within the tract’s chain of record title and:

- (1) possessed by a person; and
- (2) either:

(A) recorded in the office of the county recorder for the county in which the tract is located; or

(B) available for public inspection and properly indexed in the office of the circuit court clerk in the county in which the tract is located;

not later than the hour and date a sale is scheduled to commence under [I.C. §] 6-1.1-24. The term does not include a lien held by the state or a political subdivision.

(b) For purposes of [I.C. §] 6-1.1-24 and [I.C. §] 6-1.1-25 only, chain of record title includes instruments executed by the owner and recorded within the five (5) day period before the date the owner acquires title to the tract.

Contending that the bankruptcy trustee is a person with a substantial property interest of public record in the Property, Brown asserts that the trustee should have been notified of the Auditor’s petition for tax deed. In support of her argument that a bankruptcy trustee may be a ‘person with a substantial property interest of public record in the tract or real property’, Brown relies on *Maudlin v.*

Hall, 700 N.E.2d 469, 470 (Ind. Ct. App. 1998). In *Maudlin*, the bankruptcy trustee had recorded a notice of bankruptcy and claim of interest in the tax sale property in the county recorder’s office after the notice of the petition for tax deed was sent. The appellate court noted that at the time of the tax sale in 1991, the notice statutes had yet to include a definition of ‘a substantial property interest of public record.’ *Id.* at 472. Therefore, to determine whether the bankruptcy trustee was a person with a substantial property interest of public record, as used in the notice statutes in 1991, we gave the terms their ordinary meaning and concluded that the term “would include any substantial interest in the property that is recorded in the public record prior to the time that the notices are sent.” *Id.* at 473. Because the bankruptcy trustee had recorded his interest after the notices were sent, “under these circumstances,” the *Maudlin* court found that the bankruptcy trustee was not entitled to notice. *Id.*

[18] The current statutory definition of ‘a substantial property interest of public record’ has been more recently interpreted in *S&C Fin. Grp. LLC v. Insider’s Cash LLC*, 173 N.E.3d 295, 301-02 (Ind. Ct. App. 2021), where we concluded that “[t]he pertinent question under Indiana Code [s]ection 6-1.1-23.9-3 is not whether a party appears to have an interest in a property, but whether the party actually has a substantial property interest.” Based on this interpretation, we found that appellant who had failed to timely record its assignment of the mortgage in the property was not entitled to notice because the interest was not in the record at the time the tax sale notice was issued. *Id.* at 302. And even

though a previous mortgagee still appeared to have an interest in the property, we determined that the previous mortgagee had no actual interest in the property left because of his assignment of the mortgage to appellant prior to the issuance of the tax sale notice. *Id.*

- [19] Here, the bankruptcy trustee does not have a substantial property interest of public record. There is no evidence in the record that the bankruptcy trustee's interest in the Property fell within the chain of title and was recorded. Although the bankruptcy trustee appeared to acquire an interest in the Property when Brown filed for bankruptcy on September 19, 2019, the trustee never acquired an actual interest as the property interest was never recorded in the Marion County recorder's office. Accordingly, the bankruptcy trustee was not entitled to notice pursuant to I.C. § 6-1.1-25-4.6(a).

CONCLUSION

- [20] Based on the foregoing, we hold that the trial court properly denied Brown's motion to aside the grant of a tax deed for the Property.
- [21] Affirmed.
- [22] Molter, J. concurs
- [23] Robb, J. concurring in result with separate opinion

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Robb, Judge, concurring in result.

[24] I concur in the result reached by the majority. I write separately only to note with respect to Issue 2 that I do not believe the outcome rests on whether the bankruptcy trustee was by definition an interested party entitled to statutory notice. Given the unusual facts and procedural history of this case, I do not believe formal notification to the trustee of the petition for tax deed was necessary because at least by the time the bankruptcy was dismissed for the second time, the trustee knew about the Property and on the final dismissal of the bankruptcy, the status of the Property returned to its original pre-bankruptcy posture. For that reason, I agree that the trial court properly denied Brown's motion to set aside the tax deed.