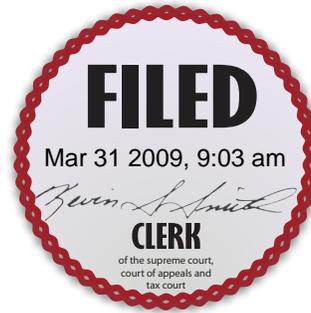


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANTS:

ATTORNEYS FOR APPELLEES:

**TERRY A. WHITE**  
Olsen, White & Hambidge, LLP  
Evansville, Indiana

**JEAN M. BLANTON**  
**CLAY W. HAVILL**  
Zeimer, Stayman, Weitzel & Shoulders, LLP  
Evansville, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

Z.K. DIGS, INC., C.B. HILL, INC., and )  
C. FIELD, INC., )

Appellants-Plaintiffs, )

vs. )

No. 82A03-0809-CV-456

TREASURER OF VANDERBURGH COUNTY, )  
INDIANA, and BILL NIX, TROY TORNATTA, )  
and CHERYL MUSGRAVE, as the )  
COMMISSIONERS OF VANDERBURGH )  
COUNTY, INDIANA, )

Appellees-Defendants. )

---

APPEAL FROM THE VANDERBURGH SUPERIOR COURT  
The Honorable Scott R. Bowers, Judge  
Cause No. 82D03-0704-PL-1950

---

**March 31, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Z.K. Digs, Inc., C.B. Hill, Inc., and C. Field, Inc. (the “Owners”) appeal the trial court’s order granting summary judgment in favor of the Treasurer of Vanderburgh County (“Treasurer”) and Commissioners of Vanderburgh County (“Commissioners”) (collectively, the “County”). The Owners raise the following issue: whether the trial court erred in finding no genuine issue of material fact concerning whether the statutory notice requirements for a tax sale were met.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

The Owners were in possession of fifteen parcels of real property, which were subject to certain delinquent taxes. In March, 2007, the Vanderburgh County Auditor sent notice to the Owners that Vanderburgh County had acquired a lien on the properties<sup>1</sup> and intended to file a petition for tax deed to acquire title to the properties.<sup>2</sup> The notice indicated that the Owners could redeem the properties on or before April 30, 2007 and that, to do so, the Owners were required to pay, among other things, the attorney’s fees and costs incurred by Vanderburgh County.

On April 30, 2007, the Owners filed a complaint for injunctive relief and declaratory judgment, requesting an order enjoining the Treasurer from collecting or charging attorney’s fees on the properties subject to tax sale. The complaint also requested declaratory judgment as to what dollar amount constituted reasonable attorney’s fees.

---

<sup>1</sup> See Ind. Code § 6-1.1-24-6.

<sup>2</sup> See Ind. Code § 6-1.1-25-4.5.

The County moved for summary judgment. The trial court granted the County's motion for summary judgment, finding no genuine issue of material fact and specifically finding that the County had complied in all respects with the applicable law. The Owners now appeal.

### **DISCUSSION AND DECISION**

Rule 56(C) of the Indiana Rules of Trial Procedure provides that summary judgment is appropriate when there are no genuine issues of material fact and when the moving party is entitled to judgment as a matter of law. *McDonald v. Lattire*, 844 N.E.2d 206, 210 (Ind. Ct. App. 2006). When reviewing a trial court's decision to grant summary judgment, this Court applies the same standard as the trial court. *Id.*

Here, in response to the County's motion, the Owners argued that summary judgment was improper because the notice provided by the County was not tendered by certified mail in a timely fashion and did not delineate the components of the amount required to redeem the parcels of property. On appeal, the Owners abandon these contentions and argue for the first time that the notice they received was insufficient because they were misinformed of the amount of attorney's fees required to redeem the properties.

The Owners have waived this claim because they failed to raise it before the trial court. "As a general rule, a party may not present an argument or issue to an appellate court unless the party raised that argument or issue to the trial court." *GKC Ind. Theatres, Inc. v. Elk Retail Investors, LLC*, 764 N.E.2d 647, 651 (Ind. Ct. App. 2002). The Indiana Supreme Court has held that, "[a]t a minimum, a party must show that it gave the trial court a bona

vide opportunity to pass upon the merits of the claim before seeking an opinion on appeal.” *Endres v. Ind. State Police*, 809 N.E.2d 320, 322 (Ind. 2004). The policy reasons supporting this requirement include “preservation of judicial resources, opportunity for full development of the record, utilization of trial court fact-finding expertise, and assurance of a claim being tested by the adversary process[.]” *Id.* Because the Owners have waived the issue on which they base their claim of error, we affirm the trial court’s grant of summary judgment in favor of County.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.