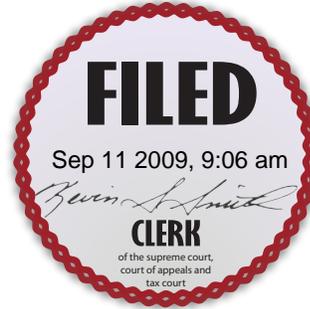


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

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

Appellants-Petitioners,)

vs.)

No. 82A01-0905-CV-216

WILLIAM J. FLUTY, JR., as Auditor of)
Vanderburgh County, Indiana, and)
VANDERBURGH COUNTY, INDIANA)
by and through its Board of Commissioners)
Bill Nix, Troy Tornatta, and Jeff Korb)

Appellees-Defendants.)

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Carl A. Heldt, Judge
Cause No. 82C01-0801-PL-49

September 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

A.H. Patch, Inc., C Field, Inc., Z.K. Digs, Inc., and C.B. Hill, Inc.¹ (the Owners) owned several parcels of real property that were subject to delinquent taxes and placed for tax sale. When the properties were not purchased, Vanderburgh County (the County) filed a tax lien and sent notice to the Owners that it acquired a lien on the properties and wished to acquire title to the properties via petition for tax deed. The Owners did not timely respond. Thereafter, the Owners filed a Request for Injunctive Relief Preventing Vanderburgh County from Issuing a Tax Deed and Alternative Motion to Extend Redemption Period (the Complaint). The County answered and filed a motion for summary judgment. The trial court granted that motion and the Owners appeal.

We affirm.

The facts are that, among them, the Owners owned a total of eighteen parcels of real property in Vanderburgh County that were subject to delinquent taxes and ultimately placed for tax sale on September 10, 2007. The properties were not sold at that sale and on December 10, 2007, the County sent notices via certified mail to the Owners that the County had acquired a tax lien on the properties pursuant to Ind. Code Ann. § 6-1.1-24-6 (West, PREMISE through 2009 Public Laws approved and effective though 4/20/2009).² The notices advised the Owners that pursuant to I.C. § 6-1.1-25-4.5 (West, PREMISE through 2009 Public Laws approved and effective though 4/20/2009), the County intended to take tax

¹ All but Hill owned more than one parcel involved in this lawsuit.

² Subsection (a) of this statute provides, “[w]hen a tract or an item of real property is offered for sale under this chapter and an amount is not received equal to or in excess of the minimum sale price prescribed in section 5(e) of this chapter, the county executive acquires a lien[.]”

deed to the properties if the Owners did not redeem the properties as prescribed by statute, and further advised that the redemption period expired on January 10, 2008. The United States Post Office returned the certified mail copies of the notices to the Vanderburgh County Auditor's Office because the Owners had failed to claim the certified mail after receiving two notices from the Post Office. Thereafter, the Auditor's Office sent a copy of the notices via first class mail to the property owners at the addresses on file in the Auditor's Office. The Owners failed to respond by the January 10, 2008 deadline.

Sometime shortly thereafter, the Owners learned of the notification letters. They contacted county officials and were advised that their only recourse was to seek an extension of time for the redemption of the properties. On January 30, 2008, the Owners collectively filed the Complaint asking the trial court to enjoin the County "from effectuating the issuance of a tax deed to Vanderburgh County" and to order the County to grant a thirty-day extension of time to permit the Owners to perform redemption of the Property. *Appellants' Appendix*.³ The County timely answered the Complaint. On September 18, 2008, the County filed a motion for summary judgment. On December 8, 2008, the Owners filed a belated response to the County's motion for summary judgment. The County objected to the late filing and moved to strike the response. Following a hearing, the trial court granted the motion to strike but ruled that the Owners would be permitted to offer oral argument at the hearing on the County's motion for summary judgment. On March 6, 2009, following oral argument, the

³ We note that the pages of the Appellants' Appendix are not numbered, in contravention of Indiana Appellate Rule 51(C), which states, "All pages of the Appendix shall be numbered at the bottom consecutively, without obscuring the Transcript page numbers, regardless of the number of volumes the Appendix requires."

trial court granted the County's motion for summary judgment.

Our standard of review with respect to appeals from the grant or denial of a motion for summary judgment is well established:

A party is entitled to summary judgment if no material facts are in dispute.... Ind. Trial Rule 56(C) (“[t]he judgment sought shall be rendered forthwith if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law”). When reviewing the propriety of a ruling on a motion for summary judgment, this Court applies the same standard as the trial court. Review is limited to those materials designated to the trial court. The Court accepts as true those facts alleged by the nonmoving party, construes the evidence in favor of the nonmoving party, and resolves all doubts against the moving party.

Estate of Mintz v. Conn. Gen. Life Ins. Co., 905 N.E.2d 994, 998 (Ind. 2009) (some citations omitted). The trial court's decision on summary judgment “enters appellate review clothed with a presumption of validity.” *Trustcorp Mortg. Co. v. Metro Mortg. Co., Inc.*, 867 N.E.2d 203, 211 (Ind. Ct. App. 2007) (quoting *Malone v. Basey*, 770 N.E.2d 846, 850 (Ind. Ct. App. 2002), *trans. denied*). Moreover,

[a] grant of summary judgment may be affirmed upon any theory supported by the designated evidence. While the trial court here entered specific findings of fact and conclusions of law in its order granting summary judgment for the appellees, such findings and conclusions are not required and, while they offer valuable insight into the rationale for the judgment and facilitate our review, we are not limited to reviewing the trial court's reasons for granting or denying summary judgment.

Van Kirk v. Miller, 869 N.E.2d 534, 539-40 (Ind. Ct. App. 2007) (citations omitted), *trans. denied*.

The Owners contend they did not receive actual notice of the right to redeem until the redemption period had expired. That assertion is not challenged by the County. The County

contends that regardless of whether the Owners received actual notice, the County complied with all of the procedures set out in I.C. § 6-1.1-25-4.5 in providing notice and therefore the Owners are not entitled to relief. For their part, the Owners do not dispute that the notices complied with all applicable statutory form requirements. In fact, the Owners rightly acknowledge that “the facts of this case are by and large undisputed.” *Appellants’ Brief* at 5.

Our review of the record reflects that the County did indeed comply with all of the statutory requirements in sending notice to the Owners. In this respect, we appreciate the Owners’ candor in conceding: “[t]he County has, it seems, complied with the applicable statutory provisions, and according to the summary judgment standard, given the lack of genuine issue of material fact and the County’s apparent entitlement to judgment as a matter of law, summary judgment ... may have been appropriate, strictly speaking.” *Id.* at 5. The Owners also concede that their claim for relief, both before the trial court and here, is entirely equitable in nature, as the law is against them. They explain that “[i]f equity is to remain as a source of relief in Indiana, ... then despite the fact that the County complied with the applicable statutory provisions, the Owners should have a least some possible recourse in equity.” *Id.*

The Owners cite *Porter v. Bankers Trust Co. of California, N.A.*, 773 N.E.2d 901, 908 (Ind. Ct. App. 2002) for the proposition that “[e]quity has power, where necessary, to pierce rigid statutory rules to prevent injustice.” This is true, but we also stated in *Porter* that “our courts generally will not exercise equitable powers when an adequate remedy at law exists”, and that “where substantial justice can be accomplished by following the law, and the parties’

actions are clearly governed by rules of law, equity follows the law.” *Id.* In exercising our equitable powers, we traditionally balance equities and hardships in determining whether an equitable remedy is appropriate. *See State ex rel. Atty. Gen. v. Lake Superior Court*, 820 N.E.2d 1240 (Ind. 2005), *cert. denied*, 546 U.S. 927 . Even if we were inclined to disregard the clear provisions of the statutes and decide this case entirely on the equities, the Owners have provided us no facts to tip the balance in their favor. It is not enough to say that the mechanical enforcement of the statute would divest the Owners of their property. If we were to hold that this (i.e., loss of property after the failure to receive actual notice) is enough to tip the equities in their favor and defeat the issuance of a tax deed to the County under these circumstances, then the statute’s notice provisions would be rendered meaningless. We decline to so hold.

The County complied with I.C. § 6-1.1-25-4.5 in sending notice of its lien and intent to acquire title to the subject property via tax deed. Tax sales and the issuance of a tax deed are purely statutory creations. *Porter v. Bankers Trust Co. of California, N.A.*, 773 N.E.2d 901. “[T]herefore, parties must strictly comply with each step set forth in the statutes.” *Id.* at 909. The Owners acknowledge that the County did that. The Owners have identified no cognizable injustice that will result from following the statute. In this case, equity must follow the law. *See Porter v. Bankers Trust Co. of California, N.A.*, 773 N.E.2d 901.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.