

No. 1-10-3484

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF THE APPLICATION OF THE COUNTY)	Appeal from the
TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF)	Circuit Court of
COOK COUNTY, ILLINOIS FOR ORDER OF JUDGMENT)	Cook County.
AND SALE OF LANDS [ETC.] PURSUANT TO SECTION)	
21-145 OF THE ILLINOIS PROPERTY TAX CODE.)	
)	
DEVON BANK, AS TRUSTEE u/t/a NO. 4678,)	
)	
Petitioner-Appellee,)	
)	
v.)	No. 02 CD 2234
)	
CHECKMATE ACQUISITIONS, INC., MICHAEL R.)	
ANCHETA, and RENE MENDOZA,)	
)	
Respondents,)	
)	
and)	
)	
BRUCE MILLER,)	The Honorable
)	Susan Fox Gillis,
Respondent-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

HELD: A trial court is required to enforce an appellate court mandate to the letter, and may not, even upon appellant's contention otherwise, enter a modified order on remand deviating from that mandate.

¶ 1 In accordance with a decision on appeal entered by this Court in 2009 involving a tax deed to land, the trial court issued an order vacating its original judgment and instead setting aside the deed, thereby ruling in favor of petitioner-appellee Devon Bank, as Trustee u/t/a No. 4678 (Devon Bank). Respondent-appellant Bruce Miller (Miller) now appeals from that order, contending that the trial court should have entered a different judgment partially enforcing the tax deed (dividing the land sale between him and Devon Bank) rather than vacating the deed as a whole. He asks that we vacate the trial court's order and remand the cause with instructions to enter an order vacating the tax deed only partially. For the following reasons, we affirm.

¶ 2 **BACKGROUND**

¶ 3 The facts of this cause begin with those outlined in the aforementioned previous appeal, as found in *In re Application of the County Collector, et al.*, 397 Ill. App. 3d 535 (2009). Essentially, Devon Bank held legal title to a certain parcel of property located at Deer Road and North Street in Palatine, Illinois, since 1982. In 2001, the Cook County Collector held a tax scavenger sale, during which respondent Checkmate Acquisitions, Inc. (Checkmate)¹ successfully bid on this parcel. Following the issuance of a tax deed on March 4, 2003, Checkmate conveyed the property to respondents Michael R. Anchetta and Rene Mendoza² via

¹Checkmate is not a party to the instant appeal.

²Respondents Anchetta and Mendoza are not parties to the instant appeal.

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warranty deed. Anchetta and Mendoza then conveyed the property to Miller, who recorded his deed in December 2004.³ See *County Collector*, 397 Ill. App. 3d at 537.

¶ 4 In March 2005, Devon Bank filed a petition pursuant to section 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1401 (West 2006)), seeking to set aside the tax deed issued to Checkmate during the scavenger sale and contending that it had never received any notice of the conveyance as required under the Property Tax Code (35 ILCS 200/1-1 *et seq.* (West 2006)). Devon Bank attached to its petition evidence that notice had been given to two other entities rather than to it, that a tract index search conducted by Checkmate was not proper, and, most critically, that the legal description for the property used in that search and tax deed from Checkmate to (eventually) Miller erroneously included several lots rather than only Devon Bank's parcel. Instead, the legal description Checkmate used in the deed was taken from another tax deed that included, along with Devon Bank's parcel, a parcel of property located immediately to the south. Accordingly, Devon Bank claimed that, because Checkmate failed to comply with both constitutional and statutory notice requirements, and because Miller could not be a *bona fide* purchaser of its property due to these obvious errors, the trial court had lacked jurisdiction to enter the tax deed and the deed must be declared void. See *County Collector*, 397 Ill. App. 3d at 537-39.

¶ 5 Checkmate and Miller filed a motion to dismiss Devon Bank's petition, which the trial court denied. Devon Bank eventually filed a motion for summary judgment raising the same

³Anchetta and Mendoza made this conveyance to Miller, in exchange for \$90,000, before they recorded their deed from Checkmate. Anchetta and Mendoza then went back and recorded their deed, and Miller recorded his sequentially, all on December 16, 2004.

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allegations it had in its 2-1401 petition. Following depositions, Miller filed a cross-motion for summary judgment, asserting that the tax deed was not void. Ultimately, the trial court denied Devon Bank's motion for summary judgment and granted Miller's cross-motion for summary judgment, directing the issuance of the tax deed to Miller. See *County Collector*, 397 Ill. App. 3d at 539-41.

¶ 6 Devon Bank appealed, and we reversed and remanded the cause. Based on the facts before us, we found that the tax deed proceedings inappropriately resulted in one tax deed being issued treating Devon Bank's parcel and the adjacent parcel as if they were one property which was then conveyed to Miller. See *County Collector*, 397 Ill. App. 3d at 545-46. We concluded that the responsible party for this "egregious" error was Checkmate, due to its shortcuts in transferring its interest in the property via an incorrect legal description, which was "overly broad and covered adjacent lots." *County Collector*, 397 Ill. App. 3d at 546 (finding that Checkmate failed to make a diligent inquiry and effort to serve Devon Bank with the requisite statutory and constitutional notices and, thus, Devon Bank, as "record owner is entitled to relief from the tax deed"). Accordingly, because the trial court never acquired jurisdiction over Devon Bank due to the total lack of notice afforded it by Checkmate, we declared the tax deed "void." See *County Collector*, 397 Ill. App. 3d at 548.

¶ 7 As for Miller, who never argued that the two parcels should be separated, we further concluded, again based on the facts before us, that he was not a *bona fide* purchaser of the property conveyed in the tax deed. See *County Collector*, 397 Ill. App. 3d at 551. Rather, we found that he had both constructive notice of Devon Bank's interest and inquiry notice of the

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numerous defects in the tax deed proceedings, and that he failed to meet his own burden of proof on the notice issue. See *County Collector*, 397 Ill. App. 3d at 550-51. Therefore, whatever interest Miller believed he held in the combined property as conveyed in the tax deed was not entitled to protection over Devon Bank's interest in its own parcel of land. See *County Collector*, 397 Ill. App. 3d at 551. Accordingly, we specifically held:

“we reverse the judgment of the circuit court, and remand this cause with directions for the circuit court to set aside the tax deed under section 2-1401(f) of the Code of Civil Procedure and section 22-45(4) of the Property Tax Code.”

County Collector, 397 Ill. App. 3d at 551.

We issued the mandate reflecting our decision on July 9, 2010.

¶ 8 In September 2010, Devon Bank filed a motion to enforce our mandate and asked the trial court to set aside the tax deed. Miller filed an objection to this motion, arguing for the first time that the trial court should separate the parcels that had been combined in the tax deed so as not to vacate the deed in its entirety, but only as to Devon Bank's parcel, while allowing the deed to remain in effect as to the adjacent parcel which Miller claimed he properly owned. Devon Bank replied that this would have the effect of the trial court issuing a new tax deed without complying with any of the statutory prerequisites of the Property Tax Code and, most significantly, would have the court issuing an order that was not in line with our Court's mandate.

¶ 9 The trial court granted Devon Bank's motion to enforce the mandate. Accordingly, the court voided its original judgment which had directed the issuance of the tax deed, and entered an order setting aside the tax deed as a whole.

¶ 10

ANALYSIS

¶ 11 On appeal, Miller contends that the trial court's order vacating the tax deed was in error because there was never a challenge to the validity of this deed in relation to the second parcel of property but, rather, only to Devon Bank's parcel. He asserts that the deed, at least in relation to this second parcel, should not be disturbed and that, regardless, Devon Bank has no standing to challenge its merits, as it does not own this parcel. Accordingly, he claims that the trial court's order should be vacated and that the court should reform or reissue the tax deed to exclude Devon Bank's parcel and secure his title to the remaining parcel. We disagree.

¶ 12 We begin by noting that, contrary to Miller's primary contention, the trial court here did not err in any way when it entered its order setting aside the tax deed as a whole.

¶ 13 A case reaches its final disposition once the mandate issues from the reviewing court to the trial court. See, e.g., *People v. Curoe*, 97 Ill. App. 3d 258, 272 (1981). This means that, once all the open questions in a cause have been decided and reviewed, the cause has reached its final disposition and there remains nothing for the trial court to do or consider, except to enforce the mandate. See *Tegtmeyer v. Tegtmeyer*, 321 Ill. App. 573, 576 (1944). To this end, the trial court on remand must follow the mandate as issued and cannot retry the case or enter a new order which may have this effect in any way. See *Blackaby v. Blackaby*, 189 Ill. 342, 346 (1901).

¶ 14 In determining whether a trial court erred in issuing an order on remand, we are to look at the mandate and employ a *de novo* standard of review. See *PSL Realty Co. v. Granite Investment Co.*, 86 Ill. 2d 291, 309 (1981); *Emerald Casino, Inc. v. Illinois Gaming Board*, 377 Ill. App. 3d 930, 935 (2007). Again, the "trial court has no authority to act beyond the dictates of the

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mandate." *PSL Realty Co.*, 86 Ill. 2d at 309 ("trial court may only do those things directed in the mandate" issued by reviewing court). Instead, "a trial court must follow the specific directions of the appellate court's mandate to the letter" to ensure that its order is in line with the directions contained in the mandate. *Fidelity and Casualty Co. v. Mobay Chemical Corp.*, 252 Ill. App. 3d 992, 997 (1992). The mandate's precise and unambiguous directions must be followed by the trial court. See *Keefe-Shea Joint Venture v. City of Evanston*, 364 Ill. App. 3d 48, 55-56 (2005). This is particularly true if the mandate invokes the trial court with a positive or specific duty to enter an order in accordance with the reviewing court's decision. See *Keefe-Shea*, 364 Ill. App. 3d at 56. A trial court's order on remand will be considered erroneous only when that order is incongruent with the mandate as issued. See *Keefe-Shea*, 364 Ill. App. 3d at 56 (citing *Mancuso v. Beach*, 187 Ill. App. 3d 388, 391 (1989)).

¶ 15 Here, the mandate issued by our Court in *County Collector*, the direct predecessor of the instant cause, stated:

“we reverse the judgment of the circuit court, and remand this cause with directions for the circuit court to set aside the tax deed under section 2-1401(f) of the Code of Civil Procedure and section 22-45(4) of the Property Tax Code.”

County Collector, 397 Ill. App. 3d at 551.

The language and directions from our Court to the trial court are precise and clear. The trial court, pursuant to our mandate, had the specific duty upon remand to set aside the tax deed. Our order did not include the words "partially" or "only as to Devon Bank's parcel" of property; it unambiguously instructed the trial court to reverse its prior order confirming the tax deed and,

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instead, to enter an order reversing that judgment and vacating the tax deed. Accordingly, this was all the trial court could do in this matter. It was bound to follow our specific directions and could not do or consider anything more than enforcing them. In fact, to do anything else, such as Miller's suggestion to vacate the tax deed only partially (as to Devon Bank's parcel) but let the remainder stand (as to the second parcel) would have resulted in something clearly different than what our Court ordered. This would have, undisputably, been improper.

¶ 16 Therefore, as the trial court's order was in direct line with our mandate, and was in no way inconsistent or incongruent to it, we find, contrary to Miller's contention, that it was proper and will not be disturbed. See *Keefe-Shea*, 364 Ill. App. 3d at 56.

¶ 17 These propositions of established law clearly resolve, and end, Miller's appeal in this matter, since there was no error in the trial court's order. However, we wish to briefly address Miller's supporting arguments, in an effort to further make clear the propriety of our mandate and the trial court's order in accordance with it.

¶ 18 That is, Miller argues that the tax deed is still partially valid with respect to the second parcel of property, the ownership of which, he insists, was never challenged nor could be challenged by Devon Bank. Consequently, he asserts, the trial court could have awarded title of this parcel to him, without affecting our Court's decision in *County Collector*. This is incorrect, for several reasons.

¶ 19 First, we note for the record that Miller did not present either of these arguments in any of the prior proceedings. See *Pekin Insurance Co. v. Recurrent Training Center, Inc.*, 409 Ill. App. 3d 114, 120 (2011) (issues not previously raised cannot be argued for first time on appeal).

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Miller never argued in any of the proceedings below, either before the trial court or before us in the original appeal taken in *County Collector*, that the property at issue, namely, the two parcels of land which comprised the property conveyed under the tax deed, should be separated. Instead, while there may have been more than one parcel of land, there was, ultimately, only one tax deed and, thus, only one tax deed that could be challenged. Nor did Miller ever argue that Devon Bank did not have standing to challenge the tax deed.⁴ Thus, these arguments are, essentially, waived.

¶ 20 Moreover, with respect to Miller's assertion that the trial court could have otherwise awarded title of the second parcel to him (which he refers to as the court's "equitable 'quiet title' powers"), we note that, again, he fails to consider the pertinent law here. Our Court ordered the tax deed void in its entirety. The trial court's hands, at that point, were tied, as it was required to follow our mandate and void the deed. Miller's challenge to the trial court's order, therefore, is ineffectual; following our decision, there is no viable tax deed to any property in this case remaining for the trial court to even consider, if it could have, quieting title in Miller or anyone, for that matter.

¶ 21 Ultimately, and most significantly, there is nothing in the record in this case that supports Miller's arguments here in any way. Again, while more than one parcel of property was involved herein, there was only one tax deed issued. Accordingly, there was only one tax deed that was

⁴In fact, had Miller done so, his claim would have been rebutted by section 22-45(4) of the Property Tax Code, which states that a tax deed is contestable by one who provides proof that he holds record ownership or interest in the property, was not named as a party in the publication notice, and that the tax purchaser did not make a diligent inquiry and effort to serve him. See 35 ILCS 200/22-45(4) (West 2008).

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the subject of the trial court's initial order, of our mandate to reverse and vacate that decision, and of the trial court's subsequent order (challenged here) to enforce that mandate. In *County Collector*, we held that, because of Checkmate's improprieties in conducting the tax deed proceedings, and because Miller had notice of these and therefore could not be considered a *bona fide* purchaser, the trial court did not have jurisdiction over Devon Bank (who never received any notice of the sale) to validate the tax deed. See *County Collector*, 397 Ill. App. 3d at 548, 551. Without jurisdiction, the trial court's original judgment confirming the deed mandated vacation and the deed was required to be set aside.

¶ 22 It is axiomatic that when a judgment is vacated, it is " 'entirely destroyed' " and the rights of the parties are left as though the judgment was never entered. *Malatesta v. Winzeler*, 271 Ill. App. 3d 367, 368 (1995) (internal citation omitted). Here, then, once the trial court vacated its original judgment confirming the tax deed to Miller, it was as if the tax deed never existed and, thus, Miller had no right to the property at all. Therefore, with the trial court bound to follow our mandate, and with only one tax deed which was required to be vacated, Miller's *entire* interest, not simply a portion of it, was extinguished because the only source from which he could have obtained that interest, namely, the deed, was void.

¶ 23 CONCLUSION

¶ 24 Accordingly, for all the forgoing reasons, we affirm the judgment of the trial court.

¶ 25 Affirmed.