

2013 IL App (1st) 120205-U

SIXTH DIVISION

June 14, 2013

No. 1-12-0205

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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<i>In Re</i> APPLICATION OF THE COUNTY TREASURER	)	Appeal from the
AND <i>ex officio</i> COUNTY COLLECTOR OF COOK	)	Circuit Court of
COUNTY, ILLINOIS, for Judgment and Order of Sale	)	Cook County.
Against Real Estate Returned Delinquent for the	)	
Nonpayment of General Taxes for the Year 2006	)	
	)	
(William J. Mark,	)	
	)	
Petitioner-Appellant,	)	No. 10 COTD 001781
	)	
v.	)	
	)	
Whitehall North, LLC, Glenview Terrace Nursing Center	)	
and JPMorgan Chase Bank, N.A.,	)	
	)	
Respondents-Appellees).	)	Honorable
	)	Laguina Clay-Herron,
	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.

Justices Gordon and Reyes concurred in the judgment.

**ORDER**

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¶ 1 **Held:** The circuit court's denial of a tax deed to the petitioner was proper where the petitioner failed to serve notice of the sale of the property and the expiration of the redemption period on the holders of judgment liens against the property.

¶ 2 The petitioner, William J. Mark, appeals from an order of the circuit court of Cook County sustaining the objections of Whitehall North LLC, Glenview Terrace Nursing Center (collectively the respondents) and JPMorgan Chase Bank, N.A. and denying a tax deed to the petitioner. On appeal, the petitioner contends that respondents' judgments were not liens against the real property. For the reasons explained below, we affirm the judgment of the circuit court.

¶ 3 The underlying facts are undisputed. On August 12, 2008, the petitioner purchased past due real estate taxes on real property located at 6920 Concord Lane in Niles, Illinois (the property). The property was owned by the Violet F. DeCaro Trust (the DeCaro trust), of which Violet F. DeCaro was the trustee and beneficiary. Chase Bank held a mortgage lien, dated August 28, 2006, on the property.

¶ 4 On November 16, 2007, Mrs. DeCaro was adjudicated a disabled person. The respondents were awarded judgments against Mrs. DeCaro in her disabled person's estate; a memorandum of Whitehall's judgment for \$27,117.33 was recorded on September 27, 2007, and a memorandum of Glenview Terrace's judgment in the amount of \$17,724 was recorded on December 17, 2008. Mrs. DeCaro died on June 2, 2009. After Mrs. DeCaro's death, Glenview Terrace was awarded a judgment in the amount of \$19,149.10 against Mrs. DeCaro; a memorandum of that judgment was recorded on August 26, 2010.

¶ 5 On August 18, 2010, the petitioner filed his petition for a tax deed to the property. After the expiration of the redemption period, the circuit court held a prove-up on the petition. Prior to

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the issuance of the tax deed, respondents and Chase Bank filed objections to the issuance of the tax deed.<sup>1</sup> The respondents asserted they were interested parties but had not been served with notice as required by section 22-15 of the Property Tax Code (35 ILCS 200/22-15 (West 2008) (the Code)). The petitioner acknowledged he had not served notice of the sale and expiration of the redemption period on the respondents but maintained that they were not interested parties because their judgments were invalid.

¶ 6 The circuit court sustained the objections. The court denied the petitioner's motion for reconsideration but granted his motion for a finding that he had made a *bona fide* attempt to comply with the statutory requirements for the issuance of a tax deed. See 35 ILCS 200-50 (West 2008). The court denied the petition and application for a tax deed. The order provided that it was final and appealable and contained a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). This appeal followed.

¶ 7 ANALYSIS

¶ 8 The petitioner contends that he was not required to serve the respondents with the notice of the sale of the property and the expiration of the redemption period. He maintains that the respondents were not interested parties under the Code because their judgments were invalid and therefore did not create liens against the property.

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<sup>1</sup>Chase Bank did receive notice of the sale and expiration of the redemption period. Edward Gobbo, who had contracted to purchase the property also appeared and objected to the issuance of the tax deed. He is not a party to this appeal.

¶ 9

I. Standard of Review

¶ 10 The construction of a statute is a question of law, and therefore, our review is *de novo*. *In re Application of the County Treasurer and ex officio Collector of Lake County*, 403 Ill. App. 3d 985, 990 (2010). In construing a statute, our primary concern is to ascertain and give effect to the intent of the legislature. *In re Application of the County Treasurer*, 403 Ill. App. 3d at 990. Where the language in the statute is clear and unambiguous, the language must be given its plain, ordinary and popularly understood meaning. *In re Application of the County Treasurer*, 403 Ill. App. 3d at 990.

¶ 11

II. Discussion

¶ 12 Section 22-10 of the Code sets forth the persons or entities entitled to notice of the sale and the expiration of the redemption period. Section 22-10 provides in pertinent part as follows:

"A purchaser or assignee shall not be entitled to a tax deed to the property sold unless, not less than 3 months nor more than 6 months prior to the expiration of the period of redemption, he or she gives notice of the sale and the date of expiration of the period of redemption to the owners, occupants, and parties interested in the property, including any mortgagee of record, as provided below." 35 ILCS 200/22-10 (West 2010).

Section 22-15 of the Code provides in pertinent part as follows:

"When a judgment is a lien upon the property sold, the holder of the lien shall be served with notice if the name of the judgment debtor as shown in the transcript, certified copy or memorandum of judgment filed of record is identical, as to given name and surname, with the name of the party interested as it appears of record." 35 ILCS 200/22-

15 (West 2010).

¶ 13 The creation of a lien against real property requires that a memorandum of judgment be recorded, and there must be an enforceable judgment standing behind the memorandum. *Maniez v. Citibank, F.S.B.*, 383 Ill. App. 3d 38, 41 (2008); see 735 ILCS 5/12-101 (West 2010) ( a judgment is a lien on property only from the time a memorandum of judgment is recorded against the property).

¶ 14 The petitioner argues that the judgments obtained by the respondents are not enforceable because they were entered against Mrs. DeCaro individually rather than against her disabled person's estate. The petitioner cites no authority for this argument. Therefore, the argument is waived. Ill. S. Ct. R. 341(h)(7) (eff. July1, 2008).

¶ 15 The petitioner argues next that judgments were not valid because they were entered against Mrs. DeCaro, individually, rather than as trustee of the DeCaro trust. He points out that as an asset of the trust, the property was considered personal property and therefore was not real estate owned by Mrs. DeCaro. He relies on *Nelson v. Fogelstrom*, 5 Ill. App. 3d 804 (1972). In *Nelson*, the Department of Public Aid recorded a lien against real property held in a trust. The reviewing court determined that under the language of the deed in trust, the beneficiary's interest in the trust was personal property and not real estate. Therefore, the lien did not attach to the real estate. *Nelson*, 5 Ill. App. 3d at 806.

¶ 16 The petitioner points out that the deed in trust which conveyed the property into the DeCaro trust contained the same provision as in *Nelson*, stating that the beneficiary's interest was personal not real property. The respondents respond that unlike the trust in *Nelson*, the DeCaro

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trust was a self-settled trust, which was void as to creditors. In *Rush University Medical Center v. Sessions*, 2012 IL 112906, the supreme court stated in pertinent part as follows:

"Traditional law is that if a settlor creates a trust for the settlor's own benefit and inserts a spendthrift clause, the clause is void as to the then-existing and future creditors, and creditors can reach the settlor's interest under the trust.' [Citation.] And the rule is 'applicable although the transfer is not a fraudulent conveyance \*\*\* and it is immaterial that the settlor-beneficiary had no intention to defraud his creditors.'" *Sessions*, 2012 IL 112906, ¶ 20 (quoting Helene S. Shapo *et al.*, Bogert's Trusts and Trustees § 223, at 424-67 (3d ed. 2007); Restatement (Second) of Trusts § 156 cmt.a (1959)).

See *In re Marriage of Chapman*, 297 Ill. App. 3d 611, 620 (1998) ("A self-settled trust is invalid as a spendthrift trust under Illinois law.").

¶ 17 The petitioner does not dispute that the DeCaro trust was a self-settled trust of which Mrs. DeCaro was the sole lifetime beneficiary. Therefore, the property contained in the trust was available to the respondents as her creditors.

¶ 18 The petitioner then argues that a holder of a lien is only entitled to notice "if the name of the judgment debtor as shown in the transcript, certified copy or memorandum of judgment filed of record is identical, as to given name and surname, with the name of the party interested as it appears of record." 35 ILCS 200/22-15 (West 2010). He argues that the respondents were not entitled to notice because in the memorandum of judgment the name of the debtor appeared as Violet F. DeCaro. Since Mrs. DeCaro had died prior to the notice period, the judgment liens were invalid because they did not identify the estate of Violet F. DeCaro as the party of record.

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¶ 19 The petitioner's reliance is misplaced. Nothing in that provision of section 22-15 invalidates a judgment lien because name of debtor is incorrect. Even if we were to accept the petitioner's argument, the memoranda of judgment refer to the same given and surnames of the judgment debtor as would have appeared if the judgment debtor were listed as "the estate of Violet F. DeCaro."

¶ 20 Strict compliance with the notice requirements of the Code is required. *In re Application of the County Treasurer*, 403 Ill. App. 3d at 990 (citing 35 ILCS 200/22-40 (West 2008)). In this case, the respondents were awarded judgments against Mrs. DeCaro, which were recorded against the property. Because the DeCaro trust was void as to Mrs. DeCaro's creditors, the judgments were valid and enforceable liens against the property. Section 22-15 specifies that a holder of a judgment lien "shall be served with notice." 35 ILCS 200/22-15 (West 2010). As holders of judgment liens against the property, the respondents were interested parties and entitled to receive notice of the sale and the expiration of the redemption period.

¶ 21 A purchaser is not entitled to a tax deed unless the interested parties have been given the notice required by section 22-10 of the Code. 35 ILCS 220/22-10 (West 2010). Therefore, the circuit court did not err when it denied the petitioner's application and petition for a tax deed to the property.

¶ 22 The judgment of the circuit court is affirmed.

¶ 23 Affirmed.