

NOTICE

Decision filed 09/26/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120546-U  
NO. 5-12-0546  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

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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<i>In re</i> Application of the County Collector for Judgment and Order of Sale Against Lands and Lots Returned Delinquent for Nonpayment of General Taxes for the Year 1999 Petition of William E. and Vicki L. Groome for a Tax Deed.	)	Appeal from the Circuit Court of Hamilton County.
	)	
	)	
	)	
	)	No. 01-TX-1(1)

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Consolidated With

COUNTRYMARK COOPERATIVE, LLP,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 04-CH-6
	)	
WILLIAM E. GROOME and VICKI L. GROOME,	)	
	)	
Defendants-Appellants,	)	
	)	
and	)	
	)	
TRENT GULLEY and GRIER GULLEY,	)	Honorable
	)	Barry L. Vaughan,
Defendants-Appellees.	)	Judge, presiding.

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JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Welch and Goldenhersh concurred in the judgment.

**ORDER**

¶ 1 *Held*: Where the trial court had *in rem* jurisdiction, the tax deed was not void. Personal property that has accrued before issuance of a tax deed remains the property of the original owner. Seeking personal property in a petition to obtain a tax deed over realty does not void the resulting tax deed which contained no reference to personal property and only conveyed the realty. Where the purchasers inserted language in their petition designed to secure both personal property and realty, inclusion of the personal property language does not amount to fraud.

## FACTS

¶ 2

¶ 3 Rose Farmer Newbold owned a 1/3 of a 1/8 royalty mineral interest in land located in Hamilton County pursuant to a lease—the Warren Lease. The oil produced pursuant to the Warren Lease was purchased by Countrymark Coop, Inc. Rose's interest entitled her to receive .0416667% of the monetary proceeds from all oil purchased by Countrymark pursuant to the lease.

¶ 4 Rose Farmer Newbold died on June 15, 1999. The mineral interest passed by her will to her only surviving heir, her sister, Gerry Janus. Rose Farmer Newbold's estate closed in 2000. On December 15, 1999, Gerry Janus died. Gerry Janus had a will by which all of her property—which included the mineral interest—passed in equal shares to her two grandsons, Trent Gulley and Grier Gulley. Trent and Grier each received .020833330% of the monetary proceeds from the oil produced pursuant to the Warren Lease.

¶ 5 The Hamilton County assessor's office assessed taxes against the mineral rights lease for 1999, which were payable in 2000. The tax bill was sent to Rose Farmer Newbold. The taxes were not paid. Because the taxes were not paid, the mineral rights lease was sold at public auction on January 30, 2001. William E. and Vicki L. Groome purchased the lease for \$491.84. The Groomes received a certificate of purchase, which contained a redemption period during which the true owner could repay the taxes and retain ownership rights. The document incorrectly indicated that the true owner could redeem the property within 30 months. The correct redemption period is 24 months. 35 ILCS 200/21-350 (West 1998).

¶ 6 The Groomes filed a petition for a tax deed on September 5, 2002, seeking the following:

"0.0416667 ROYALTY INTEREST; WARREN 2-1; Section One (1) Township Six (6), Range Seven (7) Mayberry Township, Hamilton County, Illinois. All oil, gas, and other minerals of ROSE FARMER NEWBOLD and/or any successors in and to

the above described real estate, including all impounded proceeds held by COUNTRYMARK COOP INC. and/or their successors, if any, credited to the account of ROSE FARMER NEWBOLD and/or any successors whether or not said funds were attributable to the oil produced prior to the tax sale, during the period of redemption, or subsequent to the period of redemption. Subject to validly subsisting oil and gas leaseholds."

A "Take Notice" filed by the clerk of the circuit court on this same date was addressed to Rose Farmer Newbold, Countrymark Cooperative, Inc., and others. The notice correctly indicated that the redemption period would expire on January 30, 2003. The next day, the Hamilton County circuit clerk sent the take notice by certified mail to Rose Farmer Newbold at her last-known address in Lady Lake, Florida, and to Countrymark Cooperative, Inc., in Mt. Vernon. In September 2002, the Groomes published a legal notice about the take notice on three dates in a Hamilton County newspaper.

¶ 7 On February 3, 2003, the Groomes filed a report of proceedings and affidavit in support of petition for tax deed. The Groomes asserted that the redemption period had expired. In support of the report, the Groomes filed their certificate of publication. In compliance with statutory requirements, William E. Groome stated in his affidavit that after diligent inquiry, he could not locate Rose Farmer Newbold within Hamilton County. 35 ILCS 200/22-15 (West 2000). In addition to the newspaper publication, if Rose Farmer Newbold had been located in Hamilton County, the Groomes would have had to obtain personal service. *Id.*

¶ 8 The trial court entered an order on February 3, 2003, finding that the real estate had not been redeemed from the tax sale, and that the redemption period had expired. The court found that the Groomes complied with all legal mandates and that they were entitled to a tax deed on the property. The court ordered the county clerk to issue a:

"Tax Deed conveying to said Petitioner the rights and ownership to all the minerals interest of ROSE FARMER NEWBOLD and/or her successors, if any, in and to the [mineral interest], including all impounded proceeds held by COUNTRYMARK COOP. INC. and/or its successors, if any, credited to the account of ROSE FARMER NEWBOLD and/or her successors whether or not said funds were attributable to the oil produced prior to the tax sale, during the period of redemption, or subsequent to the period of redemption."

The county clerk prepared a tax deed which was filed on February 3, 2003. The tax deed granted the property interest to the Grooms. However, the tax deed did not contain any reference to oil proceeds resulting from production before, during, or after the tax sale.

¶ 9 On March 11, 2003, the Gulley brothers became aware of the tax deed when they received a letter from Countrymark. In April 2003, an attorney for the Gulleys wrote to the Grooms demanding that they execute a transfer of all interest in the crude oil proceeds that accrued before the date of the deed—February 3, 2003. The Gulleys claimed that the deed process followed by the Grooms was deficient. They also contended that Illinois law did not support payment of the oil proceeds to the Grooms before they obtained the deed.

¶ 10 On June 24, 2004, Countrymark filed a complaint in Hamilton County circuit court against the Grooms and the Gulleys to resolve the competing claims to the oil proceeds it held in Rose Farmer Newbold's name. As of that date, Countrymark was holding impounded proceeds in the amount of \$25,141.16, which corresponded to oil production from December 1999 through April 2004. Countrymark's internal documentation listed Trent Gulley and Grier Gulley as the owners of Rose Farmer Newbold's interest, in equal shares. Countrymark asked for permission to pay the impounded proceeds into the court for the benefit of both the Gulleys and the Grooms so that the court could make the proper distribution.

¶ 11 On July 2, 2004, the Gullys filed a petition to vacate tax deed in the tax case on two

grounds—that the deed was deficient and that the Groomes used fraudulent tactics to procure the deed.

¶ 12 On July 15, 2004, the trial court consolidated the tax deed case (No. 2001-TX-1(1)) with Countrymark's interpleader suit (No. 04-CH-6).

¶ 13 Eight years later, on August 12, 2012, the trial court held a bench trial on the consolidated action. Closing arguments were heard in September 2012. At the conclusion of these arguments, the trial court granted the Gulleys' summary judgment motion. The order granting the motion is simply noted in the record sheet. On November 1, 2012, the trial court entered a second order in which the court determined that the tax court never had personal or *in rem* jurisdiction over the oil produced before entry of the tax deed because the notice published in the newspaper did not state that personal property was being sought. The court also concluded that the Groomes' actions were fraudulent for seeking this personal property. The court vacated the February 3, 2003, order and declared the tax deed void. The court held that the oil proceeds and/or money attributable to the oil produced was the sole property of the Gulleys, and that the Gulleys must pay the Groomes their costs for purchase of the tax debt in the amount of \$505.58.

¶ 14 The Groomes appeal from this order.

¶ 15 **LAW AND ANALYSIS**

¶ 16 On appeal, the Groomes argue that the deed should not have been declared void. The Groomes argue that the trial court erred in finding that they committed fraud in pursuit of the deed. Alternatively, they argue that the doctrine of *res judicata* should have barred the Gulleys' efforts to have the deed declared void. The Groomes acknowledge that they are not entitled to any oil proceeds prior to the date of the tax deed—February 3, 2003.

¶ 17 We briefly review the tax sale process because this background will aid in the understanding of the facts of this case. The Property Tax Code provides the process by

which a person may obtain a tax deed. 35 ILCS 200/1 *et seq.* (West 1998). After an owner fails to pay property taxes, the property can ultimately be sold at auction. 35 ILCS 200/21-110 *et seq.* (West 1998). The purchaser must then pay the past-due taxes. 35 ILCS 200/21-240 (West 1998). Upon payment of these taxes, the county clerk issues the tax purchaser a certificate of purchase. *Id.*; *West Suburban Hospital Medical Center v. Hynes*, 173 Ill. App. 3d 847, 850, 527 N.E.2d 1086, 1088-89 (1988). The certificate of purchase does not confer ownership. *Id.* However, the purchaser can obtain ownership if no one comes forward to redeem the property during the statutory two-year period of time. *Id.*; 35 ILCS 200/21-350 (West 1998). After the expiration of the redemption period, the person who holds the certificate of purchase may begin the process of obtaining a tax deed. 35 ILCS 200/21-350, 22-30 (West 1998). Before a tax deed is created in the purchaser's name, the trial court must carefully examine the record to confirm that the purchaser has fully complied with all statutory requirements. *Farlow v. Oliver*, 29 Ill. 2d 493, 498, 194 N.E.2d 262, 265 (1963). The tax deed transfers ownership of the property to the purchaser. 35 ILCS 200/22-40(a) (West 1998).

¶ 18 After the tax deed has issued, the original owner can seek recourse in two ways. The original owner can appeal the order entered by the trial court which directed the county clerk to issue the tax deed. 35 ILCS 200/22-45 (West 2000). Alternatively, the original owner can seek relief from the trial court's order by filing a petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2000)). However, the only grounds for relief from the issuance of a tax deed pursuant to section 2-1401 are the following:

- "(1) proof that the taxes were paid prior to sale;
- (2) proof that the property was exempt from taxation;
- (3) proof by clear and convincing evidence that the tax deed had been procured by fraud or deception by the tax purchaser or his or her assignee; or

(4) proof by a person or party holding a recorded ownership or other recorded interest in the property that he or she was not named as a party in the publication notice \*\*\*, and that the tax purchaser or his or her assignee did not make a diligent inquiry and effort to serve that person or party with the notices required \*\*\*." 35 ILCS 200/22-45 (West 2000).

¶ 19 In this case, the trial court concluded that pursuant to the third section referenced above, the Gulleys were entitled to relief from its earlier tax deed judgment because the tax deed was procured by the Groomes' fraud or deception. 35 ILCS 200/22-45 (West 2000). The trial court also concluded that the order allowing the tax deed was void in part because that court lacked personal and *in rem* jurisdiction.

¶ 20 Lack of Jurisdiction. Although the Groomes do not argue the issue of jurisdiction on appeal, the order contained a statement that the court lacked personal and *in rem* jurisdiction. If the trial court lacked *in rem* jurisdiction over the land, then the tax deed is void. *In re Application of County Treasurer*, 51 Ill. App. 3d 697, 702, 366 N.E.2d 511, 515 (1977), *aff'd & remanded by* 72 Ill. 2d 317, 381 N.E.2d 260 (1978). Therefore, we must consider the jurisdictional issue.

¶ 21 The trial court cited no authority for its statement that it lacked *in rem* jurisdiction over the property. The court linked the *in rem* jurisdiction over the property with personal jurisdiction over Rose Farmer Newbold and her heirs related to the oil proceeds. The court indicated that because the court did not have personal jurisdiction over Rose Farmer Newbold and her heirs that would encompass the oil proceeds, it also lacked jurisdiction over Rose Farmer Newbold and her heirs regarding the property itself.

¶ 22 The tax deed process is an *in rem* process—not an *in personam* process—and the trial court must have jurisdiction over the land in order to enter an order directing the county clerk to issue a tax deed. *In re Application of County Treasurer*, 51 Ill. App. 3d at 702, 366 N.E.2d

at 515. The trial court acquires *in rem* jurisdiction over the realty at the beginning of the process when the county collector applies for judgment and an order of sale. *Id.* at 703, 366 N.E.2d at 515. The jurisdiction is tied to the realty. The court's jurisdiction over the property is retained throughout the process. *In re Application of County Collector*, 48 Ill. App. 3d 572, 584, 362 N.E.2d 1335, 1344 (1977). There are situations in which the court lacks *in rem* jurisdiction over the property. For example, the court lacks jurisdiction in cases where there was a mistake and it was determined that the property taxes were not delinquent, or if for some reason the land itself was exempt from separate taxation. *In re Application of Dickey*, 72 Ill 2d 317, 325, 381 N.E.2d 260, 264 (1978). In this case, we find no authority for the trial court's contention that an improper request for personal property, in the form of oil proceeds, serves to void the court's jurisdiction over the realty itself. We conclude that the trial court maintained *in rem* jurisdiction over the property throughout the process, and did not lose that jurisdiction when the Groomes also asked for personal property. The tax deed prepared and filed by the Hamilton County clerk on February 3, 2003, was correct.

¶ 23 The trial court also held that the tax court did not have personal jurisdiction over Rose Farmer Newbold and her heirs when it entered the order granting accrued oil proceeds to the Groomes. A right to receive a royalty interest is based upon underlying ownership of mineral interests. *Hardy v. Greathouse*, 406 Ill. 365, 373, 94 N.E.2d 134, 138 (1950). Royalties that have accumulated from prior oil production are not realty and are considered to be personal property. *Id.* The parties do not dispute that the right to receive royalties is a realty interest, while any accrued proceeds are personal property. *Walsh v. Guth*, 50 Ill. App. 2d 40, 50, 199 N.E.2d 428, 433 (1964) (citing *Ohio Oil Co. v. Wright*, 386 Ill. 206, 212, 53 N.E.2d 966, 969 (1944), *rev'd on other grounds by Thorpe v. Mahin*, 43 Ill. 2d 36, 250 N.E.2d 633 (1969)); *Hardy*, 406 Ill. at 372-73, 94 N.E.2d at 138. Therefore, any royalties received after issuance of the tax deed would rightfully belong to the new owners of the mineral interests—the

Groomes. Furthermore, any accrued proceeds prior to the filing of the tax deed on February 3, 2003, rightfully belonged to Rose Farmer Newbold's heirs—the Gulleys. On appeal, the Groomes agree with this analysis and are not claiming entitlement to oil proceeds before the tax deed was issued. The trial court's February 3, 2003, order directing the county clerk to issue the tax deed contained references to the accrued oil proceeds. Directing issuance of a real estate deed that was to include nonrealty-acrued proceeds was beyond the scope of what the trial court could order in a real estate deed case. However, despite the language of the trial court order, the deed filed on February 3, 2003, properly conferred only the real estate interest.

¶ 24 Fraud. Having concluded that the trial court maintained jurisdiction to convey the mineral interest, we turn to the issue of fraud—the primary reason stated by the court for voiding the deed. The Gulleys successfully claimed that they were entitled to relief from issuance of the tax deed on the basis of fraud. 35 ILCS 200/22-45 (West 2000); 735 ILCS 5/2-1401 (West 2000). The trial court centered its finding of fraud on the fact that because the Groomes were sophisticated tax sales purchasers, they knew that they had no right to proceeds accrued prior to the tax deed filing. The record supports the fact that the Groomes have included this same language in other petitions for tax deeds. Mr. Groome testified that he copied this language from documents drafted by other tax sale purchasers from other tax deed cases.

¶ 25 The standard of review on appeal from an order disposing of a case pursuant to section 2-1401 is whether or not the trial court abused its discretion. *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 95, 858 N.E.2d 1, 7 (2006).

¶ 26 Generally speaking, the fraud necessary to set aside a tax deed is an act calculated to deceive. *In re McKeever*, 166 B.R. 648, 654 (N.D. Ill. 1994); *In re Application of the County Treasurer & ex officio County Collector*, 304 Ill. App. 3d 502, 505, 710 N.E.2d 906, 909

(1999). Courts have been reluctant to find that a purchaser's actions or inactions are fraudulent or deceptive. No cases are cited by the parties or the court that are directly on point. All of those cases involved a failure to comply with the statutory requirement of notification to actual owners. For example, in *In re Application of the Cook County Collector for Judgment & Sale Against Lands & Lots Returned Delinquent for Nonpayment of General Taxes for the Year 1985 & Petition for Tax Deed of Leslie C. Barnard*, 228 Ill. App. 3d 719, 727, 593 N.E.2d 538, 544-45 (1991), a purchaser represented to the court that he had attempted to discover the identity of the person farming the land at issue and that there were no other interested parties. The only attempt the purchaser made to discover the farmer's identity was to go to the property to see if the farmer was present. *Id.* at 733, 593 N.E.2d at 548. The purchaser's statement that there were no other interested parties was also misleading because the purchaser knew that there was another party who had been paying the annual taxes. *Id.* at 733-34, 593 N.E.2d at 548. Other cases holding that fraud could void the tax deed likewise involved failure to notify the actual owners of the proceedings. See *In re Application of County Treasurer*, 67 Ill. App. 3d 122, 131, 384 N.E.2d 729, 736 (1978) (tax deed was properly voided because the purchaser withheld evidence of the persons who should have been notified of the process); *In re Application of the County Collector*, 26 Ill. App. 3d 234, 239-40, 325 N.E.2d 15, 18-19 (1975) (tax deed found fraudulently procured when the documents in the recorder's office disclosed information about the owner, who was not notified of the process); *In re Application of County Treasurer*, 32 Ill. App. 3d 161, 165, 336 N.E.2d 167, 170 (1975) (tax deed voided where documents disclosed the owner's address, but no attempt was made by the tax purchaser to notify the owner).

¶ 27 Proper notification is a requirement of the tax sale process that must be established before a tax deed can issue. 35 ILCS 200/22-5 (West 1998). In each of the cases reviewed, the fraud at issue involved notification to the true owner, which is a critical step in the tax

deed process. If the proper notification efforts have not been made, the legitimacy of the process is undermined. If evidence establishes that a tax purchaser has made no effort to notify the actual owner, yet professes to have done so to the court, then a fraud has clearly been committed.

¶ 28 Even when the purchaser's efforts to locate the actual owner were somewhat less than diligent, courts hesitate to conclude that this failing amounted to fraud. See *McKeever*, 166 B.R. at 655 (holding that a mere cursory search of phone directories to ascertain the correct address did not amount to fraud); *In re Application of the County Treasurer & ex officio County Collector*, 304 Ill. App. 3d at 505, 710 N.E.2d at 909 (holding that the purchaser's incorrect affidavit that the corporation had been served did not amount to fraud when she relied upon the sheriff's deputy who claimed to have achieved service); *In re Application of the County Treasurer & ex officio County Collector of Cook County*, 267 Ill. App. 3d 993, 998, 642 N.E.2d 741, 744 (1994) (holding that the purchaser did not commit fraud by failing to inform the court that the taxes paid subsequent to the tax sale were paid by the original owner); *Landis v. Miles Homes Inc.*, 1 Ill. App. 3d 331, 336, 273 N.E.2d 153, 156-57 (1971) (holding that allegedly fraudulent statements made to the original owner by the purchaser would not serve as a basis for fraud in order to void the deed because the statements occurred after the 30-day period postjudgment in which the owner could have asked the court to vacate the tax deed).

¶ 29 In this case, the trial judge was able to assess the demeanor of the Groomes at the hearing on the petition to vacate. Typically, because we are only able to look at the record, we defer to the trial court's credibility assessment. *Jackson v. Bowers*, 314 Ill. App. 3d 813, 818, 731 N.E.2d 1252, 1257 (2000). However, upon review of the record, we find that there is not an issue of witness credibility. Undisputed facts included in the evidence and found by the court do not rise to the level of duplicity required by Illinois law to establish fraud.

We agree that the court correctly vacated that portion of the order which awarded oil proceeds accrued before February 3, 2003, to the Groomes, as that award was unsupported by law. *Walsh*, 50 Ill. App. 2d at 50, 199 N.E.2d at 433; *Hardy*, 406 Ill. at 372-73, 94 N.E.2d at 138. However, requesting relief to which a party is not entitled is not sufficient to constitute fraud.

¶ 30 The trial court found that the Groomes were deceptive by seeking the accrued personal property. In support of its finding of deception, the trial court cited the Groomes' experience in tax auction purchases and the fact that they had used the same forms with the same improper language in other cases. Other than the attempt to obtain the oil proceeds, which the tax deed itself did not confer, there are no findings by the trial court that the Groomes otherwise committed any actions or inactions that amounted to deception. The court did not conclude that the Groomes committed an act designed to mislead the court about the statutory requirements for obtaining the tax deed. The record supports the fact that notification was made to Rose Farmer Newbold's last-known Florida address. The record contains no evidence that the Groomes knew that Rose Farmer Newbold had died. The record also contains no proof that the Groomes were aware of the existence of the Gulleys. Mr. Groome testified that he had sought information from Countrymark about ownership, but that Countrymark refused to respond. No contradictory evidence was entered at the trial to counter this statement.

¶ 31 The attempt to have personal property included in the real estate deed was not allowable by law. However, we do not agree that this request, without more, amounts to deception under Illinois case law. The trial judge noted the erroneous request for accrued personal property, and wanted to correct this "wrong." In reaching its conclusion, the court utilized the fraud or deception option as the only potential grounds for relief from judgment available to the Gulleys. 35 ILCS 200/22-45 (West 2000); 735 ILCS 5/2-1401 (West 2000).

While the personal property request was improper, we conclude that the trial court abused its discretion in finding that the Groomes' act of asking for the accrued proceeds constituted a fraudulent or deceptive act. Accordingly, we reverse that portion of the trial court's order which vacated the February 3, 2003, order directing the issuance of the tax deed. We also reverse the order voiding the tax deed. We conclude that the Hamilton County tax deed issued on February 3, 2003, is valid.

¶ 32 Res Judicata. Since we reach the conclusion that the trial court's order reversing the February 3, 2003, order and voiding the tax deed due to fraud was incorrect, we do not need to address the alternate *res judicata* argument proposed by the Groomes.

¶ 33 Countrymark's Interpleader. The trial court's order indirectly resolved Countrymark's interpleader in that by voiding the tax deed, the property reverted to the Gulleys, and thus any proceeds held by Countrymark would be owned by the Gulleys. Our order reversed the court's order voiding the tax deed, and thus we remand this case to the trial court for an assessment of the monetary amount through the date of the tax deed—February 3, 2003. That amount shall be awarded to the Gulleys. Any amount accrued subsequent to that date is the property of the Groomes, the new owners of the realty interest.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the circuit court of Hamilton County is hereby affirmed in part, reversed in part, and remanded for further proceedings consistent with this order.

¶ 36 Affirmed in part and reversed in part; remanded with directions.