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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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*In re* APPLICATION OF THE COUNTY ) Appeal from the Circuit Court  
TREASURER AND *ex officio* COUNTY ) of Kane County.  
COLLECTOR OF KANE COUNTY, )  
ILLINOIS, FOR JUDGMENT AND ORDER )  
OF SALE AGAINST REAL ESTATE )  
RETURNED DELINQUENT FOR THE )  
NONPAYMENT OF GENERAL TAXES )  
FOR THE YEAR 2007 )  
) Nos. 11-TX-162  
) 12-LM-1760  
)  
(Marcelo Meraz, Petitioner-Appellee, v. Manoj )  
Amin, d/b/a RKNK, Inc., Plaintiff and )  
Respondent-Appellant (Jose C. Meraz, ) Honorable  
Herlinda Meraz, and Dominge Chavez, ) David R. Akemann,  
Defendants)). ) Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Presiding Justice Burke and Justice Schostok concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court properly granted petitioner’s section 2-1401 petition to vacate a tax deed: petitioner had a “recorded interest” in the property, which entitled him, under section 22-45(4) of the Property Tax Code, to notice of the relevant tax-deed proceeding, and he did not otherwise have actual knowledge of it.
- ¶ 2 Manoj Amin, d/b/a RKNK, Inc., appeals from a judgment of the circuit court of Kane County granting Marcelo Meraz’s section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)),

vacating an order granting a tax deed, and dismissing Amin's forcible entry and detainer action. Because Amin failed to diligently inquire as to whether the public records showed that Marcelo had a recorded interest in the subject property and failed to provide Marcelo with proper notice of the tax deed proceeding, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 Amin filed an action to obtain a tax deed for real property located at 647 Hammond Avenue, Aurora, Illinois (case No. 11-TX-162). Pursuant to an order of the court, the clerk issued a tax deed to Amin, which was recorded on November 7, 2011.

¶ 5 On September 12, 2012, Amin filed a forcible entry and detainer action against defendants, Jose C. Meraz, Herlinda Meraz, and Dominge Chavez, seeking to have them removed as occupants of the house located at 647 Hammond Avenue (case No. 12-LM-1760). On October 31, 2012, Marcelo obtained a stay of the forcible entry and detainer action.

¶ 6 Prior to seeking the stay, Marcelo filed, in case No. 11-TX-162, an amended petition to vacate the tax deed pursuant to section 2-1401 of the Code of Civil Procedure. See 735 ILCS 5/2-1401 (West 2012).<sup>1</sup> In the section 2-1401 petition, Marcelo alleged, relying on section 22-45 of the Property Tax Code (35 ILCS 200/22-45 (West 2012)), that Amin fraudulently obtained the tax deed, failed to diligently inquire as to his having a recorded interest in the property, and failed to properly notify him of the tax deed proceeding.

¶ 7 The trial court conducted a hearing on the section 2-1401 petition, at which the following evidence was adduced. According to Amin, in 2008, RKNK purchased the property taxes on the subject property for the 2007 tax year. He thereafter completed an affidavit in support of a

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<sup>1</sup> The tax deed case and the forcible entry and detainer action were consolidated in the trial court on May 29, 2013.

petition for a tax deed, which stated, in part, that he or his authorized agent searched the “appropriate records in the offices of the County recorder of deeds, the County collector, and the clerk of the circuit court.” They checked the clerk of the circuit court’s records to determine if there was an “ongoing case” related to the property, but they did not check for any previous tax deed cases, because those would be closed. He admitted at the hearing that had he checked he would have discovered any closed tax deed cases.

¶ 8 Amin stated that “[s]omebody was collecting the rent” for the property after he filed the tax deed case. He described that party as the “previous owner.” He did not know who was maintaining the property after RKNK purchased the taxes. Later, he learned that someone was living there, so he filed the forcible entry and detainer action. He was aware that someone had paid the 2009 taxes but he did not know who.

¶ 9 According to Amin, he ordered a “tract search,” which indicated “everybody who [had] an interest of record.” A “judgment search” was completed in an effort to discover any court proceedings regarding the property. He sent notice of the tax deed proceeding to everybody found via the tract and judgment searches. Amin’s affidavit identified the following parties as having an interest in the property: Jose C. and Herlinda Meraz, 647 Hammond Avenue (owners); Old Second National Bank (mortgagor); Jose C. Meraz, 1438 Galena Boulevard (owner); Dora Marquez, 1438 Galena Boulevard (owner); and Fox Metro Water Reclamation District (utility provider).

¶ 10 Mamahar Patel performed work on behalf of RKNK related to the tax deed proceeding. According to Patel, he initiated a “take notice” through the county clerk. The take notice was to be sent to the owners listed on the tax bills. Patel added that the judgment search would have

shown any outstanding judgments, any judgment creditors, and any lien holders. He did not check for any prior tax deed proceedings. He was interested only in pending cases.

¶ 11 Patel would check to see if the taxes for the year purchased had been redeemed. If not, he would pay any taxes for subsequent years. On cross-examination, Patel testified that in this case the subsequent taxes had been paid by someone else. He did not know who paid them, and he explained that he “[did not] need to check that.”

¶ 12 Patel would wait two years and six months to see if anyone redeemed the taxes for the year purchased. If not, he would order a second judgment search. He conducted “all inquiries with the County clerk, County recorder’s office, and treasurer’s office.” He did not search to see if the listed owners were deceased. The judgment search did not indicate any probate proceedings regarding the property.

¶ 13 Patel then requested the sheriff’s office to serve notice on each party identified as an interested party. He also requested the clerk’s office to send a “certified notice” to whomever was staying at the property. He also arranged for notice to be published in The Daily Herald for three consecutive days.

¶ 14 According to Patel, no one contacted him regarding the sale, and no one appeared in court. The first person to inquire was Marcelo after the tax deed was issued.

¶ 15 Marcelo testified that his parents, Jose C. and Herlinda Meraz, purchased the house at 647 Hammond Avenue in the 1970s and that he and his three siblings grew up there. His parents, who owned the house in “joint tenancy,” continued to live in the house until his father and mother died in November 2005 and February 2006, respectively.

¶ 16 Two of his sisters lived in the house with his parents. After his mother died, one of his sisters moved out, but the other stayed for another year or two. According to Marcelo, he and his

siblings inherited the house, but his parents had no will. He never filed any notice of probate regarding the house. Nor did he change the names on the tax bills after his parents' deaths. He never consulted with an attorney regarding the property. After his other sister moved out, he started fixing the house up and rented it out in 2010.

¶ 17 In 2009, Marcelo received a notice that the property taxes were unpaid. He spoke to his sister, but she did not know anything about the tax situation, although "they had also received similar notices." He denied having received a take notice from anyone living at the house regarding the 2007 taxes. Had he, he would have promptly paid the tax bill for that year.

¶ 18 Upon receiving the notice of the unpaid taxes, Marcelo went to the "clerk's office" to inquire as to how much was owed. He wanted to know "everything that was owed on [the] property." The clerk's office provided him with a "redemption receipt," which showed the amount of taxes owed for the years 2005, 2006, and 2008. He denied noticing that the taxes due on the redemption receipt did not cover the year 2007, and he did not ask about the 2007 taxes. Marcelo paid the entire amount of \$10,212.87 with a cashier's check. He would have paid the 2007 taxes as well had he known they were unpaid. Marcelo subsequently paid the 2009 and 2010 taxes.

¶ 19 When the 2011 tax bill did not arrive, Marcelo called the clerk's office to inquire. At about that time, the tenant at the 647 Hammond Avenue house called to tell him that someone had left a handwritten note on the door, stating that the tenant must leave because the property had a new owner. Marcelo contacted the clerk's office and discovered that the property had been purchased pursuant to a tax sale. The clerk's office referred him to the sheriff's office, which in turn advised him that it had served notice on "another address but not [on] any of us, none of our siblings."

¶ 20 Either the clerk's office or the sheriff's office gave him Patel's telephone number. When Marcelo contacted him, Patel said that he would talk to his partner. When Marcelo did not receive a return call from Patel, he contacted the sheriff's office and obtained Amin's name. He telephoned Amin and offered to "pay [the] taxes [and] any interest" and told him that he would "like to take care of [the situation]."

¶ 21 According to Marcelo, there was no longer any mortgage due on the house. He estimated that the house was worth about \$100,000. He and his siblings were currently the owners of the house. However, his parents were still the owners for purposes of the tax bills.

¶ 22 Pamela Stahl, a customer service representative for the Kane County treasurer's office, testified that its records showed that the 2009 taxes were paid by Jose C. and Herlinda Meraz through MB Financial Bank. The records showed that Jose and Herlinda paid the first installment of the 2010 taxes online and that the second installment was paid by Marcelo through his company, Colonial Construction and Remodeling. That latter payment was by check, which showed an address in Oswego as well as 647 Hammond Avenue.

¶ 23 John Emerson, a deputy clerk in the Kane County clerk's office, identified a redemption receipt for the tax years of 2005, 2006, and 2008, which showed that the tax purchaser for those years was Z Financial. He identified a cashier's check from Marcelo that redeemed the taxes for those three years.

¶ 24 Emerson explained that to redeem unpaid taxes a party must redeem "all of the taxes that are due from a particular year [and] from a particular tax buyer." If a party asks to redeem taxes for a particular year, he would have to ask for the amount due for that year. Had Marcelo wanted to redeem the 2007 taxes, he would have needed to ask for the amount due for that year, because it was not included in the redemption amount for 2005, 2006, and 2008. It was not included

because, even though it fell between 2006 and 2008, there was a different tax buyer for 2007. Thus, had Marcelo asked to pay for all the years due, he would have received two different redemption estimates, one for 2005, 2006, and 2008 and one for 2007. Emerson elaborated that, if someone came in and asked to pay “all the taxes that are due,” he would receive two redemption estimates if there were tax sales for two different years. He admitted that, in such a situation, someone from his office possibly could fail to provide one of the redemptions. The 2005, 2006, and 2008 taxes were purchased by Z Financial, and the 2007 taxes were purchased by RKNK. Therefore, there were separate accounts and redemptions for each sale.

¶ 25 After hearing the evidence, the trial court issued a written order disposing of the section 2-1401 petition and the forcible entry and detainer action. The court found that Amin did not thoroughly search the property tax records, because, if he had, he would easily have found from the “available county records” that Marcelo’s company had paid a portion of the 2010 taxes and that Marcelo had redeemed the 2005, 2006, and 2008 taxes. The court observed that Amin’s affidavit stated that he had checked the records of the clerk of the circuit court. Noting that those records contained the previous tax deed case, along with Marcelo’s address and the address of his business, the court essentially found that Amin did not actually check the records of the clerk of the circuit court and that therefore his affidavit was fraudulent within the meaning of section 22-45(3) (35 ILCS 200/22-45(3) (West 2012)).

¶ 26 The court found that Amin did not conduct a diligent inquiry, as required by section 22-45 and as the previous tax deed purchaser had apparently done. It found that Amin did not thoroughly review “the property tax records” or the “records of the Circuit Court Clerk.”

¶ 27 Finally, the court stated that Amin had paid only one year of property taxes, in the amount of approximately \$2,500 plus costs and fees, whereas Marcelo and his siblings would

lose the house valued at about \$100,000. Therefore, the court found the hardship to Marcelo to be “grave compared to the small investment of the tax purchaser.” Thus, the court granted the section 2-1401 petition, ordered Marcelo to pay Amin the amount of taxes that Amin had paid to purchase the property plus interest, dismissed with prejudice the tax deed case (No. 11-TX-162), and dismissed with prejudice the forcible entry and detainer case. Amin filed this timely appeal.

¶ 28

## II. ANALYSIS

¶ 29 Once a trial court has issued a tax deed pursuant to the Property Tax Code, it may be contested only on direct appeal or via a section 2-1401 petition. *In re Application of the County Collector*, 397 Ill. App. 3d 535, 542 (2009). The party seeking to have the tax deed set aside bears the burden of proving its invalidity. *In re Application of the County Collector*, 397 Ill. App. 3d at 542. The quantum of proof needed to sustain a section 2-1401 petition is a preponderance of the evidence. *Domingo v. Guarino*, 402 Ill. App. 3d 690, 699 (2010). If the trial court grants a section 2-1401 petition after an evidentiary hearing, we review that judgment under a manifest-weight-of-the-evidence standard. *Domingo*, 402 Ill. App. 3d at 699; *S.I. Securities v. Powless*, 403 Ill. App. 3d 426, 440 (2010). A decision is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *S.I. Securities*, 403 Ill. App. 3d at 440. However, if we are called upon to resolve a question of statutory interpretation in reviewing the grant of a section 2-1401 petition, we apply a *de novo* standard of review. *CitiMortgage, Inc. v. Sharlow*, 2014 IL App (3d) 130107, ¶ 14.

¶ 30 Section 22-45 of the Property Tax Code allows a party to collaterally attack a tax deed via a section 2-1401 petition. 35 ILCS 200/22-45 (West 2012). The grounds for such relief are limited to: (1) proof that the taxes were paid before the sale; (2) proof that the property was tax exempt; (3) proof by clear and convincing evidence that the tax deed was obtained by fraud or

deception; and (4) proof by a person holding a “recorded ownership or other recorded interest” that he was not named as a party in the published notice, as set forth in section 22-20, and that the tax purchaser did not diligently inquire and serve the party with the notices required by sections 22-10 through 22-30. 35 ILCS 200/22-45(1)-(4) (West 2012).

¶ 31 On appeal, Amin contends that Marcelo’s petition did not invoke section 22-45(4) and that therefore he cannot rely on it. Amin further asserts that he was not required to comply with section 22-45(4) because Marcelo had actual knowledge of “the tax deed proceeding.” Finally, Amin argues that Marcelo was not entitled to notice under section 22-45(4), because he was “not an owner of record.” Alternatively, Amin maintains that any failure to comply with the procedural rules is not alone sufficient to constitute fraud within the meaning of section 22-45(3).

¶ 32 We initially dispose of the argument that Marcelo cannot rely on section 22-45(4) because he failed to include that specific basis in his section 2-1401 petition. Although Marcelo did not expressly refer to that section in his petition, he effectively relied on it when he claimed a lack of diligence in notifying him. Further, it was apparent at the hearing that Marcelo was relying, in part, on section 22-45(4) when he focused on the extent of Amin’s search of the records related to the tax deed proceeding. Moreover, the trial court’s order clearly addressed a lack of diligent inquiry, an issue relevant to section 22-45(4). Finally, Amin proceeded at the hearing as though that issue was before the court and never argued otherwise. Under those circumstances, the appropriateness of relief under section 22-45(4) is an issue properly before this court.<sup>2</sup>

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<sup>2</sup> Even if the issue of relief under section 22-45(4) had not been raised below, we could still rely on it to affirm the trial court’s ruling. See *Geisler v. Everest National Insurance Co.*,

¶ 33 Focusing on section 22-45(4), we first address the issue of whether Marcelo received adequate notice of the tax deed proceeding related to the 2007 taxes. Recognizing that he did not provide any notice of that tax deed proceeding, Amin contends that it was not necessary for him to have done so, because Marcelo had actual knowledge of the tax deed proceeding. Assuming that Marcelo's actual knowledge would obviate compliance with section 22-45(4), this argument is disingenuous, because it relies on Marcelo's knowledge of the tax deed proceeding related to the 2005, 2006, and 2008 tax years and ignores the fact that that proceeding, and the notice related thereto, did not involve the 2007 taxes. The notice regarding the 2005, 2006, and 2008 taxes would not alone have provided Marcelo with knowledge of the 2007 tax deed proceeding or that the taxes for 2007 were unpaid.

¶ 34 Moreover, Marcelo testified that he did not know that the tax notice that he received did not cover the 2007 tax year, and he asserted that he never asked about the 2007 taxes. He added that, had he known that the 2007 taxes were unpaid, he would have paid those as well. That seems quite likely considering the evidence that Marcelo, upon receiving notice, promptly paid the taxes for 2005, 2006, and 2008. He also paid the taxes for 2009 and 2010. Further, when he did not receive a tax bill for 2011, Marcelo promptly inquired. That undisputed evidence refutes any argument that Marcelo knew about the unpaid 2007 taxes and yet failed to pay them.

¶ 35 Nor was there any reasonable basis for Marcelo to have inferred the existence of the tax deed proceeding involving the 2007 taxes from the notice he had of the proceeding related to the 2005, 2006, and 2008 taxes. A reasonable person in Marcelo's situation, having received notice of the need to redeem the taxes for 2005, 2006, and 2008, would not have suspected that there was any other tax deed proceeding pending or that any other taxes were due. That was especially

so in this case, because, when Marcelo inquired about the amount needed for redemption, he was given one figure. It was reasonable for a person in Marcelo's situation to assume that that amount satisfied all of the unpaid taxes, and he would have had no reason to inquire further about any other possible unpaid taxes or other tax deed proceedings.

¶ 36 Nor did the fact that his parents were deceased provide any reasonable basis for him to inquire further. Although Marcelo might have concluded that, with his parents being dead, the 2007 taxes were also unpaid, he had no reason to think that he had not paid those when he asked about "everything that was owed" and paid the taxes in the amount provided by the treasurer's office. Although Emerson testified to what the standard procedures were regarding such an inquiry, he did not testify specifically to Marcelo's situation or otherwise refute Marcelo's testimony regarding his inquiry about the amount of taxes owed. Based on the evidence, Marcelo did not have actual knowledge that the taxes were unpaid for 2007 or that a tax deed proceeding was pending as to that year's taxes.

¶ 37 We next must determine whether Marcelo established that he was entitled to notice because he had a protectable interest under section 22-45(4). He does not contend that he had a recorded ownership interest.<sup>3</sup> Rather, he relies on having an "other recorded interest" within the meaning of section 22-45(4). Therefore, we must decide whether, under the facts of this case, Marcelo had a recorded interest for purposes of section 22-45(4). To do so, we first must interpret the statutory meaning of recorded interest.

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<sup>3</sup> The only evidence that he had any ownership interest was his testimony that he and his siblings owned the house at the time of the hearing. There was no evidence, however, that they had recorded that interest. Additionally, the names on the tax bill continued to be those of his deceased parents.

¶ 38 The fundamental rule of statutory interpretation is to ascertain and effectuate the legislative intent. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 180 (2011). The best indicator of that intent is the plain and ordinary meaning of the language itself. *Pappas*, 242 Ill. 2d at 180. In construing a statute, we must presume that the legislature did not intend an absurd or unjust result. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 64 (2004).

¶ 39 In interpreting the Property Tax Code, we note that its primary purpose is to encourage property owners to pay their taxes, as opposed to assisting tax deed petitioners in obtaining properties. See *In re Application of the Douglas County Treasurer*, 2014 IL App (4th) 130261, ¶ 31. Therefore, we interpret section 22-45(4) in light of that purpose. *In re Application of the Douglas County Treasurer*, 2014 IL App (4th) 130261, ¶ 31.

¶ 40 The Property Tax Code does not define the term “recorded interest” or specify where such an interest must be recorded. *In re Application of the Douglas County Treasurer*, 2014 IL App (4th) 130261, ¶ 32. Several courts have interpreted the term to mean an interest that can be inferred from the public records. See, e.g., *In re Application of the Douglas County Treasurer*, 2014 IL App (4th) 130261, ¶ 32 (a will filed in probate, but not “recorded,” constituted a recorded interest of the beneficiaries under the will); *In re Application of the County Treasurer*, 347 Ill. App. 3d 769, 776-79 (2004) (recorded mortgage was recorded interest on behalf of husband of the mortgagor); *In re Application of Ward*, 311 Ill. App. 3d 314, 319-20 (1999) (recorded plat and declaration of covenants was a recorded interest of homeowners who benefitted from the dedication of a park); *Payne v. Williams*, 91 Ill. App. 3d 336, 341-42 (1980) (tax records showing that deceased owner last paid taxes six years before the tax sale constituted recorded interest on behalf of heirs). Those cases recognize that a party with an “interest ascertainable from the public records” is entitled to rely on section 22-45(4) to challenge a tax

purchaser's failure to provide proper notice. *In re Application of the Douglas County Treasurer*, 2014 IL App (4th) 130261, ¶ 34. If the tax purchaser can infer the interest from the public records, the interest is a "recorded interest" within the meaning of section 22-45(4). *In re Application of the County Treasurer*, 347 Ill. App. 3d at 778.

¶ 41 Applying these principles to our case, the question is whether there was any part of the public records that obligated Amin to ascertain Marcelo's interest and to provide appropriate notice. We conclude that there was. The tax records showed that there had been a recent tax redemption involving the subject property. Had Amin examined those records thoroughly, he would have discovered that Marcelo had redeemed those taxes. That would have put him on notice that Marcelo had an interest in the property. Additionally, the same records showed that the taxes had been paid by someone other than Amin for 2009 and 2010. Had Amin looked into who had paid those taxes, he would have learned that Marcelo's company had paid for them in 2010. That would have caused him to provide notice to the company, which would have effectively notified Marcelo. Therefore, there was a recorded interest into which Amin failed to diligently inquire and provide appropriate notice. Thus, Marcelo was entitled to relief under section 22-45(4).<sup>4</sup>

¶ 42 Amin contends that, though he was aware that someone other than himself had paid the taxes for 2009 and 2010, he had no obligation to inquire as to who the party was. That ostrich-like reasoning is of no avail. In the context of a tax deed proceeding, a tax purchaser has an obligation to make a diligent inquiry into the public records to ascertain any parties with a

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<sup>4</sup> Although we need not rely on any other recorded interest, it is at least arguable that the records of the prior tax deed proceeding, contained in the records of the clerk of the circuit court, also constituted a recorded interest within the meaning of section 22-45(4).

recorded interest. It was not diligent for Amin to fail to take the simple step of learning who had paid the taxes. Indeed, after examining the records, Amin should have been aware of a recent irregular pattern of tax payments. Based on that knowledge, he should have been concerned that there might be another interested party that he was unaware of. Instead, he simply ignored those warning signs. Therefore, Amin's argument that he had no obligation to further inquire fails under the facts of this case.

¶ 43 Our conclusion, that Amin failed to diligently inquire as to Marcelo's recorded interest, is reinforced by the purpose behind section 22-45. As noted above, the primary purpose of section 22-45 is to achieve the payment of taxes and not to facilitate the acquisition of property. Amin minimally examined the public records in an effort to obtain a \$100,000 property for a relatively small cost to him. Had he taken a few additional simple steps, he would readily have discovered that Marcelo had an interest in the property sufficient to require notice. Section 22-45(4) prohibits such a minimal approach, which would result in the loss of a significant property interest.

¶ 44 Because we base our decision on section 22-45(4), we need not decide the issue of whether Amin obtained the tax deed fraudulently within the meaning of section 22-45(3).

¶ 45 **III. CONCLUSION**

¶ 46 For the reasons stated, we affirm the judgment of the circuit court of Kane County granting Marcelo's petition for relief under section 2-1401, dismissing with prejudice case No. 11-TX-162, and dismissing with prejudice case No. 12-LM-1760.

¶ 47 Affirmed.