No. 1-10-1754

FIFTH DIVISION
March 31, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE MATTER OF THE APPLICATION OF THE COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS FOR JUDGMENT AND ORDER OF SALE AGAINST REAL ESTATE RETURNED DELINQUENT FOR THE NONPAYMENT OF GENERAL TAXES FOR 2000-2007 PETITION OF COUNTY COLLECTOR FOR REFUND TO: KENNETH PILOTA, Petitioner-Appellee v. KENNETH W. PILOTA, Respondent-Appellant.	Appeal from the Circuit Court of Cook County, Illinois, County Department, County Division. No. 2010 COVT 0329 The Honorable Robert W. Bertucci Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices JOSEPH GORDON and HOWSE concurred in the judgment.

ORDER

HELD: The circuit court did not err in entering a sale in error order pursuant to section 21-310(a)(5) of the Tax Code (35 ILCS 200/21-310(a)(5) (West 2006), invalidating the sale of a tax parcel at the treasurer's supplemental delinquent tax scavenger sale, after finding that the assessor's failure to timely process a certificate of error request resulted in the assessor's failure to object to the sale of that tax parcel on time. The circuit court

properly found that this type of clerical error fell within the scope of section 21-310(a)(5) of the Tax Code (35 ILCS 200/21-310(a)(5) (West 2006)).

This case involves the validity of a sale in error order entered by the circuit court pursuant to section 21-310(a)(5) of the Illinois Property Tax Code (Tax Code) (35 ILCS 200/21-310(a)(5) (West 2006)), with respect to a tax parcel known as PIN #18-12-101-011-000 (hereinafter the subject tax parcel).[1] The subject tax parcel was sold to respondent-appellant, attorney Kenneth Pilota (hereinafter Pilota), at a delinquent tax scavenger sale. Subsequent to the sale, the Cook County assessor (hereinafter the assessor) discovered that certain years of the delinquent taxes assessed and sold to Pilota, were erroneously included in the scavenger sale. The assessor was put on notice of its mistake after the property owner, Ortek Inc., filed a request for a certificate of error, alleging that the original assessment failed to take into account the serious environmental contamination of the property. The assessor put the petitioner-appellee, the Cook County treasurer (hereinafter the treasurer), on notice of its mistake and the treasurer promptly filed a petition with the circuit court, asking the circuit court to enter a sale in error order, vacating the sale and refunding Pilota for his purchase. The circuit court entered the sale in error order finding that the assessor's failure to timely process the certificate of error request resulted in the assessor's failure to object to the tax sale on time. The circuit court found that this error to object fell within the scope of section 21-310(a)(5) of the Tax Code (35 ILCS 200/21-310(a)(5) (West 2006)), permitting it to enter a sale in error order based upon a clerical mistake committed by a

[1]The parties agree that the tax parcel is a petroleum product plant located in McCook, Illinois, which is "currently operating at low or shutdown capacity."

county official. Pilota appeals the order of the circuit court, arguing that the circuit court erred when it found that the assessor's failure to file an objection to a tax sale was a permissible error pursuant to section 21-310 of the Tax Code. 35 ILCS 200/21-310(a)(5) (West 2006). For the reasons that follow, we affirm the finding of the circuit court.

I. BACKGROUND

Before we set forth the facts of this case, it is necessary to understand the process by which a county sells its delinquent taxes under the Tax Code (35 ILCS 200/1-1 *et seq*. (West 2006)). Each year Cook County holds an annual tax sale in order to sell delinquent real estate taxes (and special assessments) to the highest bidder.[2] The taxes sold are delinquent for the tax year two years prior to the year the tax sale is held.[3] The county treasurer receives a list of delinquent taxes from the Cook County Department of Revenue. The county also sells delinquent taxes at scavenger sales. See 35 ILCS 200/21-145 (West 2006). A scavenger sale occurs every two years, and includes all taxes which were offered for sale but were not sold at the annual sale.[4] For a tax parcel to be eligible for sale at a scavenger sale, there must be at least two years of delinquent taxes, albeit not consecutive years.[5] See 35 ILCS 200/21-145 (West

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[2]See http://www.cookcounty.com/taxdates.aspx?ntopicid=77

[3]For example, the 2008 real estate taxes (due and payable in 2009) are sold at a tax sale held in 2010.

[4]http://www.cookcounty.com/taxdates.aspx?ntopicid=77

[5]For example, if the 2000 real estate taxes and the 2004 real estate taxes are not paid on a parcel, then these two years may be sold at a subsequent scavenger sale in 2007.

2006).

The annual tax sale and scavenger sale processes are very similar and in each scenario the county treasurer must put the public on notice of all of the properties to be put up for a tax sale, by publishing an advertisement in an appropriate (county) newspaper with a list of those properties. See 35 ILCS 200/21-110, 21-115, 21-120 (West 2006); see also 35 ILCS 200/21-145 (West 2006). "Properties upon which taxes have been paid in full under protest shall not be included in the list." 35 ILCS 200/21-115 (West 2006). In addition, "[n]o advertisement or publication may include parcels for which, under section 14-15 [of the Tax Code], certificates of error have been executed by the county assessor, or by both the county assessor and the board of appeals." 35 ILCS 200/21-120 (West 2006).

Prior to selling the property at either the annual or scavenger tax sales (*i.e.*, prior to applying for a judgment and sale on any delinquent tax parcel), the treasurer must check the list of delinquent taxes for errors to make certain that the taxes listed were properly assessed, that they were not exempt from taxation, that they are in fact delinquent, and that they have not been paid in full. See 35 ILCS 200/21-170 (West 2006) ("On the day on which application for judgment on delinquent property is applied for, the collector *** shall post all payments, compare and correct the list, and shall make and subscribe an affidavit" affirming "to the best of his knowledge" that the list is a "true and correct list of the delinquent property within the county" upon which he has been unable to collect taxes, and that the taxes now remain "due and unpaid"). The treasurer then must make an application to the circuit court for judgment and sale of all the delinquent properties. See 35 ILCS 200/21-170 (West 2006).

While the application for judgment and sale is pending before the circuit court, both county officials and private parties may object to the inclusion of tax parcels in the sought after tax sale. See 35 ILCS 200/14-15 (West 2006); see also 35 ILCS 200/21-175 (West 2006). The county assessor's objections are most often made as a result of certificates of error. A certificate of error concerns an error made in the assessment of a property and can only be brought by the county assessor, albeit often after a request from the property owner seeking reassessment of the property. See 35 ILCS 200/14-15 (West 2006). Pursuant to section 14-15 of the Tax Code, if, after a tax assessment, "the county assessor discovers an error or mistake in the assessment, the assessor shall execute a certificate setting forth the nature and cause of the error." 35 ILCS 200/14-15 (West 2006). If the difference in the amount of assessed value to be corrected is less than $100,000, the assessor may process that certificate of error interoffice. See 35 ILCS 200/14-15 (West 2006) ("Certification is authorized, at the discretion of the county assessor, for *** certificates of error reducing assessed value by less than $100,000"). If the amount to be corrected is over $100,000 in assessed value, the assessor must petition the circuit court for an adjudication of the certificate of error. 35 ILCS 200/14-15 (West 2006). In either event, the assessor may present the certificate of error to the circuit court in which the application for judgment and order of sale is filed as an objection to the application for the same year of taxes for which the certificate of error is requested. 35 ILCS 200/14-15 (West 2006).

Once the application for judgment and sale of all the delinquent properties is granted by the circuit court, a tax sale is held. See 35 ILCS 200/21-170 (West 2006). Any errors or mistakes made by the treasurer, and discovered after the sale occurs, may nevertheless be corrected by a

"sale in error," which may be sought in the circuit court by the county treasurer, the taxbuyer, or the municipality, which owns or owned the property ordered sold. See 35 ILCS 200/21-310 (West 2006).

In the present case, it is undisputed that the taxes on the subject property were delinquent for the years 2000 through 2009, and that the taxes sold were for the years 2000 through 2007. It is further undisputed that the subject tax parcel (for years 2000 through 2007) was initially sold on December 21, 2007, to taxbuyer, Mazen Khatib at the 2007 scavenger sale. On July 9, 2009, however, Khatib, represented by attorney Pilota, the respondent-appellant in the cause at bar, petitioned the circuit court for a sale in error pursuant to section 21-310(b)(4) of the Tax Code (35 ILCS 200/21-310(b)(4) (West 2006)), alleging that the property was environmentally contaminated as it contained underground storage tanks with hazardous materials requiring removal pursuant to federal regulations. On July 21, 2009, the circuit court granted Khatib's request and entered a sale in error order, permitting the county to vacate the sale and refund Khatib.

It is further undisputed that the tax parcel was not offered up for sale at the original 2009 supplemental scavenger sale in December 2009, but was offered at a special 2009 supplemental scavenger sale held in January 2010.[6] On January 10, 2010, the treasurer filed an application for

[6]It is not entirely clear from the record or the briefs of the parties why the property was not offered in the initial 2009 scavenger sale. The parties appear to agree, however, that the parcel was added to the 2009 supplemental scavenger sale list only after a motion was filed by attorney Pilota on behalf of a third party, objecting to the lack of its inclusion in the original 2009

judgment and order for sale of that tax parcel at the 2009 supplemental scavenger sale, and the circuit court granted that application on January 26, 2010. The sale was held on January 27, 2010, and the tax parcel was sold to Pilota, as the highest bidder, for $250 plus costs and fees.

Somewhere in the interim between the July 2009 sale of error order annulling the initial purchase of the tax parcel by taxbuyer Khatib, and the subsequent purchase of that same tax parcel by Pilota in January 2010,[7] the assessor's office received a request by the property owner, Ortek Inc., for a certificate of error, *i.e.*, a reassessment of the property for the years 2005 through 2008, as a result of environmental contamination to the property. Ortek made this request as a result of the July 2009 sale in error order entered by the circuit court after the initial purchase of the subject tax parcel by Khatib. The assessor, however, did not process this request for a certificate in error in a timely fashion and as a result it failed to timely object to the inclusion the subject tax parcel in the 2009 supplemental tax scavenger sale list.[8] Immediately after

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scavenger sale list. After the filing of this motion, and upon confirming that the prior sale in error was resolved by the July 2009 court order, the treasurer agreed to offer the parcel up for sale at a special 2009 supplemental scavenger sale.

[7]The treasurer states, and Pilota does not seem to dispute, that it received this request on December 15, 2009. The record contains a copy of an application for a certificate of error with the county assessor's office, which is not file-stamped, but which does include a signature of the assessor's representative, and which is dated December 14, 2009.

[8]Neither party elaborates the findings of the county assessor with respect to the request for a certificate of error, but both parties agree that the assessor noted that the 2006 and 2007 tax

discovering its mistake, the assessor requested that the county treasurer bring a petition for sale in error for the subject property. That petition was brought by the treasurer on April 13, 2010.[9] The circuit court granted the sale in error order on May 24, 2010.[10] Pilota now appeals.

II. ANALYSIS

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years should not have been included in the sale. In addition, the record contains a letter from the assessor's office to the treasurer asking that the treasurer request a sale in error on the subject tax parcel for the following reasons:

> "The certificate of error is warranted for tax years 2006 to 2007. This Office docketed and had pending the referenced [certificate of error] as of December 15, 2009. Therefore, a factual error occurred wherein the [certificate of error] was in possession of the Assessor's office but not processed in a timely manner to avoid the tax sale."

In support of its request, the assessor's letter to the treasurer included several attached documents, including a "Certificate of Error Application for Taxable Properties," an "Industrial/Commercial Apartment Appeal," and an "Owner/Leseee Verification Affidavit" all filed by the property owner, Ortek, Inc.

[9]Although Pilota alleges that on May 5, 2011, a certificate of error was issued, subject to adjudication by the circuit court because the amount of reassessment was in excess of $100,000, he fails to cite to the relevant portions of the record to support this contention. Our review of the record has revealed no document that would substantiate this claim.

[10]We note that the parties agree that there is no transcript of the proceedings below the circuit court.

On appeal, Pilota argues that the assessor's failure to timely file an objection to the application and judgment and order of sale (*i.e.*, a certificate of error) is not an error by a county official which would permit the grant of a sale in error order pursuant to section 21-310 of the Tax Code (35 ILCS 200/21-310 (West 2006)). Citing to *First Lien v. Markle*, 312 Ill. 2d 431 (1964) and *New Holy Temple v. Discount Inn*, 371 Ill. App. 3d 443 (2007), Pilota argues that the property owner should not be permitted to rely on the certificate of error being filed by the assessor's office, as a defense to the sale of its delinquent tax parcel. Instead, Pilota argues that unless and until the property owner redeemed the entire tax parcel, the sale in error order should not have been granted. In support of this contention, Pilota points out that the assessor's certificate of error pertained only to the years 2006 and 2007, while the tax sale was for the entire tax period from 2000 to 2007. For the reasons that follow, we disagree.

At the outset we note that the resolution of this question depends upon our reading of section 21-310 of the Tax Code (35 ILCS 200/21-310 (West 2006)). In construing a statute our primary objective is to give effect to the legislature's intent. *People v. Hanna*, 207 Ill. 2d 486, 497 (2003). The best indicator of the legislature's intent is the plain language of the statute itself. *Hanna*, 207 Ill. 2d at 497. A court may not depart from that plain language by reading into the statute exceptions, limitations or conditions that are not consistent with the expressed legislative intent. *Town & Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill. 2d 103, 117 (2007). Our standard of review is *de novo*. See *Cook County Board of Review v. Illinois Property Tax Appeal Board*, 395 Ill. App. 3d 776, 784-5 (2009).

Section 22-310 states in pertinent part:

"(a) *When, upon application of the county collector*, the owner of the certificate of purchase, or a municipality which owns or has owned the property ordered sold, *it appears to the satisfaction of the court which ordered the property sold* that any of the following subsections are applicable, the court shall declare the sale to be a sale in error:

* * *

(5) *the assessor, chief county assessment officer, board of review, board of appeals, or other county official has made an error* (other than an error of judgment as to the value of any property), ***." (Emphasis added.) 35 ILCS 200/21-310 (West 2006).

The plain language of the statute clearly permits a circuit court to enter a sale in error order if a *clerical* error has been committed by the assessor's office, or any other county official involved in the sale of tax properties. See 35 ILCS 200/21-310 (West 2006). In addition, the plain language of the statute gives broad discretion to the trial court in determining whether such a clerical error has been made. The standard of proof necessary for a trial court to declare a sale in error is set forth in clear language in section 21-310 of the Property Tax Code. That section requires only that "it appears to the satisfaction of the court, which ordered the property sold," that the assessor has made an error. See 35 ILCS 200/21-310 (West 2006); see also *In re Application of County Collector for Delinquent Taxes*, 291 Ill. App. 3d 588, 596 (1997), citing 35 ILCS 200/21-310 (West 1994) (noting the low threshold of proof for an entry of a sale in error order by the circuit court).

In the present case, the sale in error was premised on a petition filed by the treasurer as a result of the assessor's error in failing to object to the inclusion of the subject tax parcel in the

supplemental 2009 scavenger sale. The treasurer admitted that the failure occurred because the assessor failed to timely process the owner's request for a certificate of error alleging environmental damage to the property. Even though the assessor was in possession of this certificate of error request prior to the circuit court's adjudication that the parcel could be sold at the tax scavenger sale, that request was not processed on time. The treasurer admitted that had the assessor processed the certificate of error request on time, it would have objected to the inclusion of the tax parcel in the sale by timely filing an objection to the application for judgment and order of sale with the circuit court (*i.e.*, by presenting a certificate of error to the circuit court). See 35 ILCS 200/14-15 (West 2006) ("Certificates of error that will be presented to the court shall be filed as an objection in the application for judgment and order of sale for the year in relation to which the certificate is made ***").

There is nothing in the statute, which would permit us to find that the circuit court erred when it "appeared to its satisfaction" that this type of error (*i.e.*, a mistake in the timely processing of certain documents, namely certificate of error requests, in the assessor's office) was contemplated as a clerical error by section 21-310 of the Tax Code. See 35 ILCS 200/21-310 (West 2006). Accordingly, we find that the sale in error order was properly granted.

In coming to this conclusion we have considered the decision of our supreme court in *First Lien v. Markle*, 312 Ill. 2d 431 (1964), cited to by Pilota, and find it inapposite. In that case, at its annual delinquent tax sale the county treasurer sold three delinquent lots to the taxbuyer, First Lien, who was issued a certificate of purchase. *First Lien*, 31 Ill. 2d at 433. Thereafter, the taxbuyer extended the period of redemption and filed a petition for an order

directing the county clerk to issue a tax deed in the event that no redemption was made by the time the period for redemption expired. *First Lien*, 31 Ill. 2d at 433. After the expiration of the period for redemption, the property owner for the first time objected to the entry of the tax deed, contending that the sale should be voided because the county assessor failed to file an objection to the application for judgment and order of sale in the annual delinquent tax sale. *First Lien*, 31 Ill. 2d at 433. The property owner argued that the assessor had assured it that an objection, then called "Objection 1" had been filed on its behalf, when in fact it had not been filed until two years after the judgement and order for sale was granted. *First Lien*, 31 Ill. 2d at 434. In fact, the assessor assured the property owner that the partial taxes it had paid to the county would be sufficient to satisfy the debt and not place the property up for sale. *First Lien*, 31 Ill. 2d at 434. Based upon the assessor's assurances that the objection was filed, the property owner did not object to the tax sale, did not appeal the order for judgment and order of sale, and did not redeem the tax sale. *First Lien*, 31 Ill. 2d at 434.

The circuit court voided the delinquent tax sale, finding that the properties were sold as a result of an improper increase in the assessment by the assessor. *First Lien*, 31 Ill. 2d at 434. The court then denied First Lien's petition for tax deed, and ordered the county assessor to refund First Lien for its purchase of the delinquent tax parcel. *First Lien*, 31 Ill. 2d at 434.

On appeal, the supreme court reversed the finding of the circuit court. In doing so, the supreme court took issue with the fact that the property owner first objected to the tax sale in the petition for tax deed hearing. *First Lien*, 31 Ill. 2d at 436. The court noted that the defenses to a petition for tax deed were clearly established by prior precedent and that objections that would

have been proper at the original proceeding for judgment and order for sale of taxes were not proper at the tax deed petition proceeding. *First Lien*, 31 Ill. 2d at 436-37, citing *Young v. Madden*, 20 Ill. 2d 506, 511 (1960). The court then went on to note that the property owner had no right to rely on the assessor filing the "Objection 1" because the "'Objection1" practice was "unauthorized by statute and constitute[d] a convenient administrative device for the correction of the assessor's errors without cost or hardship to the individual taxpayer." *First Lien*, 31 Ill. 2d at 439. The court noted that the customary use of the "Objection 1" practice could not "excuse a taxpayer from protecting his rights according to statutory procedures," and that "[t]he act of the assessor in accommodating the taxpayer [could not] defeat the statutory rights of an innocent purchaser relying on a judgment regular on its face." *First Lien*, 31 Ill. 2d at 439.

Since the decision in *First Lien*, however, the Illinois Tax Code has been changed several times and in several respects. First, in 1964 when *First Lien* was decided, under the old sale in error statute, a sale in error could be entered by a circuit court only under four circumstances: (1) where the parcel was not subject to taxation, (2) the taxes or special assessments had been paid prior to sale, (3) there was a double assessment or (4) where the description of the tax parcel was void for uncertainty. See Ill. Rev. Stat. 1957, ch. 120, par. 741 ("Sales made in error.] §260. Whenever it shall be made to appear to the satisfaction of the county clerk that any tract or lot was sold, and that such tract or lot was not subject to taxation, or that the taxes or special assessments had been paid previous to the sale of said tract or lot, or that there is a double assessment or that the description is void for uncertainty, he shall make an entry opposite to such tracts or lots in te tax judgment, sale redemption and forfeiture record, that the same was

erroneously sold ***.")

This limited scope of the sale in error statute remained in effect until 1983, when it was specifically expanded to permit, as it does now, a sale in error order to be entered for reasons of clerical errors committed by the assessor's office or any other county official involved in the practice of putting delinquent taxes on sale. See Ill. Rev. Stat. 1965, ch. 120, par. 741 ("Sales made in error.] § Whenever it shall be made to appear to the satisfaction of the county clerk that any tract or lot was sold, and that such tract or lot was not subject to taxation, or that the taxes or special assessments had been paid previous to the sale of said tract or lot, or that there is a double assessment, or that the description is void for uncertainty, he shall make an entry opposite to such tracts or lots in the tax judgment, sale, redemption and forfeiture record, that the same was erroneously sold ***."); *but see*, Ill. Rev. Stat. 1983, ch. 120, par. 741 ("§260. Whenever it shall be made to appear to the satisfaction of the county clerk or the court which ordered the property sold that any tract or lot was sold, and that such tract or lot was not subject to taxation, or that the taxes or special assessments had been paid previous to the sale of said tract or lot, *or that there is a double assessment, or that the description is void for uncertainty, or that the assessor, supervisor of assessments, county assessor, board of review, or board of appeals, as the case may be, has made an error (other than an error of judgment as to the value of any property)*, or upon application fo the tax purchaser that the improvements upon property sold have been substantially destroyed subsequent to the tax sale and prior to the issuance of the tax deed, *** the county clerk or the court which ordered the property sold shall declare such sale to be a sale in error ***.") (Emphasis added.); see also 35 ILCS 200/21-310(a)(West 2006) ("When, upon

application of the county collector, the owner of the certificate of purchase, or a municipality which owns or has owned the property ordered sold, it appears to the satisfaction of the court which ordered the property sold that any of the following subsections are applicable, the court shall declare the sale to be a sale in error: *** (5) *the assessor, chief county assessment officer, board of review, board of appeals, or other county official has made an error* (other than an error of judgment as to the value of any property.)") (Emphasis added.)

More importantly, the "Objection 1" procedure, which the court in *First Lien* noted was "unauthorized by statute," is no longer utilized by the assessor's office. Instead the assessor's office remedies its own errors by filing certificates of error with the circuit court as objections to the treasurer's applications for judgment and orders of sale. See 35 ILCS 200/14-15 (West 2006). The use of certificates of error is specifically authorized by statute and was first codified in the Tax Code in 1971, seven years after the decision in *First Lien*. See Ill. Rev. Stat. 1971, ch. 120, par. 604 ("*** if at any time before judgment is rendered in any proceeding to collect or to enjoin the collection of taxes based upon any assessment of any property belonging to any person or corporation, the county assessor shall discover an error or mistake in such assessment, such assessor shall execute a certificate setting forth the nature of such error, and the cause or causes which operated to produce it. *** A certificate *** may be presented by the assessor to the court as an objection in the application for judgment and order of sale for the year in relation to which the certificate is made"); see also 35 ILCS 200/14-15 (West 2006) ("*** if after the assessment is certified *** the county assessor discovers an error or mistake in the assessment, the assessor shall execute a certificate setting forth the nature and cause of the error. *** Certificates of error

that will be presented to the court shall be filed as an objection in the application for judgment and order of sale for the year in relation to which the certificate is made or as an amendment to the objection ***."); see also *In re Application of the Cook County Treasurer*, 172 Il. App. 3d 192, 198 (1988) (recognizing that "[s]ince 1973 the assessor has ceased utilizing the Objection 1 procedure and now seeks rectification of his assessment errors exclusively through the statutory device of a certificate of error"), citing Ill. Rev. Stat. 1985, ch. 120, par. 604, and *Cook County Collector v. Chelsea House*, 91 Ill. App. 3d 698 (1980).

Accordingly, since the present statutory scheme is unlike the one in existence at the time *First Lien* was decided, we find that decision inapplicable to the circumstances at bar.[11]

We similarly find the decision in *New Holy Temple*, cited to by Pilota, inapposite. In that case, a church whose parking lot was sold to a taxbuyer at a forfeiture sale of delinquent taxes, filed a motion to vacate the tax deed pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2004)). *New Holy Temple*, 371 Ill. App. 3d at 445. The church argued that the tax deed should be vacated and the tax parcel never sold because it was mistakenly listed on the Department of Revenue's tax rolls instead of being exempted. *New Holy Temple*, 371 Ill. App. 3d at 447. The taxbuyer filed a motion to dismiss the church's motion to vacate and that motion was granted by the circuit court. *New Holy Temple*, 371 Ill. App. 3d at 445. The circuit court found, *inter alia*, that the church did not diligently present a

[11]We note that even if we were to find *First Lien* applicable, for the reasons that shall be more fully discussed below in context of our discussion of the New Holy Temple decision, we would nevertheless find First Lien factually distinguishable.

meritorious defense to the tax deed. *New Holy Temple*, 371 Ill. App. 3d at 446.

The appellate court disagreed and found that, even though the church did not pay its taxes, nor redeem the tax sale, it was diligent in presenting its meritorious defense. *New Holy Temple*, 371 Ill. App. 3d at 447. The court noted that the church property was listed as exempt from 1986 through 1998, but that from 1999 through 2003, it was not listed as exempt although the church mistakenly believed that it was. *New Holy Temple*, 371 Ill. App. 3d at 444. The court further noted that upon discovery of this mistake, the church immediately hired an attorney to correct the mistake by contacting the appropriate county taxing office and filing the necessary paperwork, including asking the board of review to correct the exemption, filing a certificate of error with the assessor to correct the exemption and filing an injunction to correct the exemption, while the tax deed case was proceeding in the circuit court. *New Holy Temple*, 371 Ill. App. 3d at 444. The appellate court held that the church had been diligent when it filed its section 2-1401 motion within two and a half months of the tax deed order. *New Holy Temple*, 371 Ill. App. 3d at 447. The court noted that the lack of diligence the court is concerned with in a section 2-1401 petition is whether or not a party has wilfully disregarded the process of the court or is so indifferent as to be chargeable with culpable negligence. *New Holy Temple*, 371 Ill. App. 3d at 447.

Unlike in *New Holy Temple* (and for that matter also unlike in *First Lien*), in the present case, the treasurer (and not the property owner) petitioned the circuit court for a sale in error order. In addition, unlike in *New Holy Temple,* where the petition was made *after* the tax deed order was already entered, in the present case the petition was made prior to Pilota performing

any of the necessary steps required under the Tax Code to make him eligible to petition the court for a tax deed. See 35 ILCS 200/22-5 through 22-40 (West 2006).[12] In fact, here, Pilota took no action other than obtaining the winning bid at auction of the delinquent taxes and paying for the certificate of purchase from the tax sale. Accordingly, Pilota's statutory rights to a tax deed had not yet ripened at the time the sale was vacated. See *In re County Collector*, 391 Il. App. 3d 656, 660 (2009) ("It is clear that a tax certificate does not pass title to the purchaser until the redemption period has passed and a tax deed has been issued."), citing *Illinois Ry. Museum, Inc., v. Siegel*, 132 Ill. App. 2d 77, 82 (1971). Accordingly, it was proper for the circuit court to enter a sale in error order based upon its finding that the assessor had committed a clerical error in placing the tax parcel on the supplemental scavenger list.

Pilota attempts to argue that the circuit court had no right to enter the sale in error order until the owner redeemed the entire tax parcel because the certificate of error order referenced only errors in the tax years 2006 and 2007. Pilota is confusing the issue, however. As already noted above, the circuit court is granted with substantial discretion in determining whether a sale in error order is warranted as a result of a clerical error committed by a county official. The question before the circuit court was not the validity of the certificate in error for the tax years 2006 and 2007, but rather whether the improper and untimely processing of that certificate of error request, resulting in the assessor's untimely objection to the tax parcel being included in the

[12]These steps, *inter alia*, require, that in order to be entitled to a tax deed, a taxbuyer provide the property owner with proper notice of the tax sale, as well as the date when the period of redemption will expire on the delinquent taxes (see 35 ILCS 200/22-5, 22-10 (West 2006).

scavenger sale, was a clerical error pursuant to section 21-310 of the Tax Code. See 35 ILCS 200/21-310 (West 2006).

III. CONCLUSION

Accordingly, for all of the aforementioned reasons, we affirm the judgment of the circuit court.

Affirmed.