2011 IL App (2d) 100668-U
No. 2—10—0668
Order filed August 18, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re APPLICATION OF THE COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR FOR JUDGMENT AND ORDER OF SALE AGAINST REAL ESTATE RETURNED DELINQUENT FOR NON-PAYMENT OF GENERAL TAXES	)	Appeal from the Circuit Court of DeKalb County.
	)	No. 09—TX—12
(Realtax Developers, Ltd., Plaintiff-Appellant v. Daniel Popescu, Defendant-Appellee. Emilia Popescu, Illinois Department of Revenue, and Illinois Attorney General, Defendants).	)	Honorable Kurt P. Klein, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: Tax purchaser was not entitled to a tax deed where it had attempted substituted service by certified mail, return receipt requested, before it had attempted personal service. Personal service must have been unsuccessful before the tax purchaser may resort to service by certified mail.

¶ 1 Plaintiff, Realtax Developers, Ltd., appeals the judgment of the circuit court of DeKalb County, holding that defendants, Daniel Popescu and Emilia Popescu were not properly served with

take notices, and that Daniel Pospescu had been misled by the DeKalb County Clerk regarding the redemption payment to redeem his property. (Defendants the Illinois Department of Revenue and the Illinois Attorney General did not participate below and do not participate on appeal.) On appeal, plaintiff argues that the trial court's judgment, that it did not undertake a sufficiently diligent inquiry to serve the take notices, was against the manifest weight of the evidence. Additionally, plaintiff argues that Daniel Popescu did not prove by clear and convincing evidence that he was misled by the DeKalb County Clerk. We affirm.

¶ 2 On October 30, 2006, the 2005 real estate taxes for a property located on Waterman Road in Waterman, Illinois, were sold at the annual tax sale by the county of DeKalb. Defendants Daniel and Emilia Popescu owned the subject property. Plaintiff purchased the taxes and received a tax certificate for the subject property. On January 4, 2007, plaintiff forwarded the take notice for the property to Daniel Popescu, and it extended the redemption date three times, setting the final redemption date to be September 28, 2009.

¶ 3 During that time, the real estate taxes for tax years 2006, 2007, and 2008 were billed by the DeKalb County Treasurer for the subject property. The taxes for each of the years were not timely paid by defendants, and plaintiff paid the taxes, adding them to the redemption amount.

¶ 4 During that time frame, however, defendants tried to pay off their tax arrearage. In October 2005, Daniel testified that he tendered $10,830 via check to the county clerk, and this amount was applied to tax years 2002 and 2003. Daniel also testified that, in January 2008, he tendered $6,158 to the county clerk, and this was applied to tax year 2004. Daniel testified that he believed he was paying off the current outstanding balance for his real estate taxes.

¶ 5 On May 22, 2009, the taxes had not been paid in full, and plaintiff filed a petition for a tax deed. Plaintiff avers that its agents searched DeKalb County real estate records, the treasurer's records, the clerk's records, the recorder's records, county websites, phone books and other public sources of information. Additionally, it hired a title company to search pertinent records in order to determine the names and addresses of any parties interested in the subject property who would need to be notified about the tax deed proceedings. Douglas Huff, plaintiff's vice president, testified that he and other employees searched tax and public records and also visited the subject property before plaintiff filed its petition for tax deed.

¶ 6 Following its research, plaintiff prepared the take notice forms for service by the sheriff and the circuit clerk. On May 26, 2009, the clerk mailed the take notices by certified mail, return receipt requested, to the attorney general and the Department of Revenue, which had a lien on the subject property. The attorney general and the Department of Revenue received the notices, but they did not take part in this action. The same day, take notices were also mailed by certified mail, return receipt requested, to Daniel and Emilia Popescu, as well as the occupant of the subject property. Chris Popescu signed each of the three return receipts. The sheriff also mailed the take notices to the attorney general and the Department of Revenue because they were located outside of DeKalb County. On May 29, 2009, Chris Popescu, Daniel and Emilia's son, was personally served, as evidenced by the return of service. On May 31, June 1, and June 2, 2009, the take notice was published in a local newspaper. On June 16, 2009, the sheriff also personally served Daniel Popescu, again, as evidenced by the return of service. Emilia Popescu was not personally served, and the sheriff indicated on the return of service that she resided in California, but her exact address was unknown. On June 18, 2009, the return of service for Emilia Popescu was filed with the court.

¶ 7 The hearing on plaintiff's petition for tax deed was scheduled to occur November 23, 2009. On November 18, 2009, the defendants' attorney filed an appearance on behalf of Daniel and Emilia Popescu. Also on that day, the attorney filed a motion for leave to file appearance and a motion to vacate default judgment for Daniel only. No additional pleadings were filed on behalf of Emilia, and she did not appear in person at trial.

¶ 8 In the November 18 motion to vacate, Daniel asserted that he was a resident of the state of California. He also asserted that, in the summer of 2006, he left the DeKalb County area. Additionally, in the motion, Daniel further asserted that left the subject property in the care of his son, Chris. In his supporting affidavit to the motion, Daniel averred that he left the subject property in the care of his adult children.

¶ 9 On March 24, 2010, the trial on the petition for tax deed commenced. Douglas Huff testified on behalf of plaintiff. Huff testified about the various activities that he and other employees undertook to unearth information giving the identities and addresses of defendants and other interested parties.

¶ 10 In particular, Huff testified that he had examined the subject property, both before and after defendant filed the petition for tax deed. He also testified that, in June 2009, he examined the court file, noting that the sheriff's returns indicated that Daniel and the occupant of the subject property had been personally served. He further noted that someone had signed the three return receipts from the certified mailing of the take notices to the occupant of the subject property and to Daniel and Emilia at the address of the subject property. Huff testified that the sheriff's return of service for Emilia indicated that she had moved to California. Huff testified that he conducted additional searches of DeKalb County public records as well as an internet website to try to find another

address for Emilia. Other than the Waterman address, Huff was unsuccessful in finding another address for Emilia.

¶ 11 Chris Popescu testified that he had been personally served with a take notice by the sheriff and acknowledged that he signed the three certified mail return receipts at the post office in Waterman. Chris denied that he lived at the subject property. He testified instead that, on May 28 and 29, 2009, he was just visiting the property and his brothers when he was personally served and when he signed for the certified mail to the subject property. Chris testified that he did not recall what he did with the mail or the document that had been personally served on him; he believed he may have just left them somewhere in the house. Chris did not recall that he discussed the documents with his parents. Chris testified that he told the sheriff's deputy that his parents resided in California, but he did not give the deputy an address because the deputy did not ask for one.

¶ 12 Daniel Popescu testified that he currently resided at the subject property, but that he lived in California from December 2008 to September 2009. Daniel testified that, in June or July 2009, he had returned to DeKalb County, but he denied that he had been served by the sheriff. Despite this denial, Daniel conceded that the return of service correctly stated his birth date. Daniel testified that he had never received any of the take notices from Chris. Daniel also denied that he discussed the real estate taxes with Emilia before the expiration of the redemption date.

¶ 13 Daniel testified that he believed that all of the real estate taxes were current and paid as of January 2008, when he sent his daughter to pay them. Daniel produced a May 4, 2005, receipt and a check dated January 7, 2008, to demonstrate that he had paid all of the taxes on the subject property. On cross-examination, however, Daniel admitted that his daughter actually delivered the

check to the clerk's office in January 2008, so he did not know what had been said to her regarding any other outstanding real estate taxes.

¶ 14 Daniel admitted that he was aware that real estate taxes were due annually. Daniel testified, however, that it was his practice to pay the taxes when he had the money available. When asked what he did to insure that the taxes were paid on time each year, Daniel wondered what he was supposed to do; he did not have the money.

¶ 15 Daniel testified that, after he returned to DeKalb County in November 2009 and discussed the tax status of the subject property with his sons, he visited the county clerk's office. Daniel testified that he was given an estimate of the redemption amount for the subject property and was told that the deadline for paying the taxes was November 24, 2009. Defendant obtained funds and returned to the clerk's office with a check dated November 20, 2009. When he returned to the clerk's office, he was told for the first time that it was too late to pay the delinquent taxes for the subject property.

¶ 16 Sharon Holmes, the DeKalb County Clerk, testified that information on the subject property was available on a website maintained by her office. Holmes testified about a print-out of the past 20 years of tax activity for the subject property and noted that, from 1986 to 2008, the taxes for the subject property had only been paid on time in four years. For the remaining years, the taxes were either sold at a tax sale or were paid as subsequent taxes by tax purchasers.

¶ 17 Diane Chappel, an employee in the county clerk's office, testified about a copy of the check dated January 7, 2008, delivered by Daniel's daughter. The second page of that exhibit was a copy of a receipt that would have been given to the person who paid the taxes. The receipt shows in two places that the payment was applied to the 2004 taxes (the year before the taxes at issue in this case).

Chappel also testified that tax years could be combined if they were paid in subsequent years by a tax purchaser. Chappel testified that, regarding the January 7, 2008, check, it covered taxes not for 2005 and 2006, but for only one year, 2004. Anyone inquiring about the status of the 2005 and 2006 taxes after submitting the January 7, 2008, check would have been informed that additional taxes were due for the 2005 and 2006 tax years.

¶ 18 Chappel also testified that a deputy clerk named Sheila Larson was usually responsible for generating the reports. Daniel testified that he spoke to Sheila about this matter. Chappel testified that Larson had been prepared to testify at trial, but she had come down with pneumonia the day before and was unable to testify. Defendant asked for leave to present sur-surrebuttal, but this request was denied (defendant did not specifically request a continuance to allow Larson to testify).

¶ 19 Defendant moved for judgment at the close of plaintiff's case, arguing that plaintiff had not met its burden of proof. The trial court required both parties to file closing memoranda, and allowed verbal arguments to be made at a later date. Defendant, at the beginning of the closing arguments, reminded the trial court about his motion for a directed finding. The trial court denied the motion and moved on to the arguments. When the arguments were concluded, the trial court reserved ruling, scheduling a date for its ruling.

¶ 20 On June 8, 2010, the trial court orally presented its ruling. The trial court especially noted that plaintiff had produced neither the deputy sheriff who served the take notices nor Larson, the deputy clerk who had spoken with Daniel. The court identified two issues: whether Daniel had been personally served with the take notice, and whether he had been misled by the county clerk. Considering plaintiff's failure to produce the witnesses who personally participated in dealing with Daniel on these issues and defendant's testimony, the trial court concluded that Daniel had presented

clear and convincing evidence to prove that he had not been personally served and had been misled by the clerk's office. Plaintiff timely appeals.

¶ 21 Plaintiff raises two issues on appeal. First, plaintiff contends that it met its burden of proof by showing that it made a diligent inquiry and effort to serve the take notices on the proper parties, particularly Daniel, Emilia, and Chris. In addition, plaintiff argues that defendants did not demonstrate by clear and convincing evidence that Daniel was not personally served or that the other methods of service for Emilia and Chris were inappropriate. Second, plaintiff contends that Daniel did not demonstrate, by clear and convincing evidence, that he had been misled by personnel at the county clerk's office.

¶ 22 Before addressing the substantive issues in this case, we first provide an overview of the procedures to be followed in obtaining a tax deed. In a tax sale proceeding, the trial court's jurisdiction is invoked when the county collector makes an application for judgment and order for sale. *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 165 (1983). Further, the tax-sale proceeding is *in rem*, and once the trial court acquires jurisdiction over the subject property, it will retain such jurisdiction to make all necessary findings and enter all necessary orders in and following the original tax sale. *Vulcan Materials*, 96 Ill. 2d at 165. This means that any issues about sufficiency of notice go to whether the court should have ordered the tax deed and not whether the court had jurisdiction over the matter. *S.I. Securities v. Powless*, 403 Ill. App. 3d 426, 443 (2010). The court will lack jurisdiction over a property if the taxes have been fully paid or if the property is tax-exempt. *S.I. Securities*, 403 Ill. App. 3d at 443.

¶ 23 After a tax sale, the Property Tax Code provides that, in order to seek a tax deed, the purchaser must deliver notice to the county clerk to be given to the party who was last assessed the

taxes for the subject property. *In re Application of the County Collector*, 225 Ill. 2d 208, 212 (2007) (*Apex*). This notice must be delivered to the county clerk within five months after the tax sale, and the county clerk must mail the notice within 10 days of receipt, by registered or certified mail, return receipt requested. The notice (a section 22—5 take notice) advises a party that redemption can be made until a date certain, and that the tax purchaser will file a petition for a tax deed if the subject property is not redeemed. *Apex*, 225 Ill. 2d at 212.

¶ 24 The Property Tax Code, pursuant to section 22—10, also provides for a second take notice (the one at issue in this case) to be sent to the parties interested in the subject property, including the owners and occupants. The second take notice is sent not less than three months or more than five months before the redemption period expires. *Apex*, 225 Ill. 2d at 213. There are three ways to serve this take notice: personally by the sheriff, by registered or certified mail with return receipt requested, and by three publications in a local newspaper. *Apex*, 225 Ill. 2d at 213, citing 35 ILCS 200/22—15, 22—20, 22—25 (West 1994). Also within the time period for the second take notice (within five months but not less than three months before the redemption period expires), the tax purchaser may file a petition in the trial court requesting an order directing the county clerk to issue a tax deed to the subject property. *Apex*, 225 Ill. 2d at 213. The tax purchaser will receive an order issuing a tax deed if the subject property is not redeemed and if the purchaser proves to the trial court that he or she strictly complied with the notice provisions set forth in sections 22—10 through 22—25 of the Property Tax Code (35 ILCS 200/22—10 through 22—25 (West 2008)). *Apex*, 225 Ill. 2d at 213.

¶ 25 Of particular relevance to this case is section 22—15 of the Property Tax Code. 35 ILCS 200/22—15 (West 2008). It provides:

"Service of note. The purchaser or his or her assignee shall give the notice required by Section 22—10 by causing it to be published in a newspaper as set forth in Section 22—20. In addition, the notice shall be served by a sheriff (or if he or she is disqualified, by a coroner) of the county in which the property, or any part thereof, is located or, except in Cook County, by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 upon owners who reside on any part of the property sold by leaving a copy of the notice with those owners personally.

In counties of 3,000,000 or more inhabitants where a taxing district is a petitioner for tax deed pursuant to Section 21—90, in lieu of service by the sheriff or coroner the notice may be served by a special process server appointed by the circuit court as provided in this Section. The taxing district may move prior to filing one or more petitions for tax deed for the appointment of such a special process server. The court, upon being satisfied that the person named in the motion is at least 18 years of age and is capable of serving notice as required under this Code, shall enter an order appointing such person as a special process server for a period of one year. The appointment may be renewed for successive periods of one year each by motion and order, and a copy of the original and any subsequent order shall be filed in each tax deed case in which a notice is served by the appointed person. Delivery of the notice to and service of the notice by the special process server shall have the same force and effect as its delivery to and service by the sheriff or coroner.

The same form of notice shall also be served in the manner set forth under section 2—203, 2—204, 2—205, 2—205.1, and 2—211 of the Code of Civil Procedure, upon all

other owners and parties interested in the property, if upon diligent inqury they can be found in the county, and upon the occupants of the property.

If the property sold has more than 4 dwellings or other rental units, and has a managing agent or party who collects rents, that person shall be deemed the occupant and shall be served with notice instead of the occupants of the individual units. If the property has no dwellings or rental units, but economic or recreational activities are carried on therein, the person directing such activities shall be deemed the occupant. Holders of rights of entry and possibilities of reverter shall not be deemed parties interested in the property.

When a party interested in the property is a trustee, notice served upon the trustee shall be deemed to have been served upon any beneficiary or note holder thereunder unless the holder of the note is disclosed of record.

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

If any owner or party interested, upon diligent inquiry and effort, cannot be found or served with notice in the county as provided in this Section, and the person in actual occupancy and possession is tenant to, or in possession under the owners or the parties interested in the property, then service of notice upon the tenant, occupant or person in possession shall be deemed service upon the owners or parties interested.

If any owner or party interested, upon diligent inquiry and effort cannot be found or served with notice in the county, then the person making the service shall cause a copy of the

notice to be sent by registered or certified mail, return receipt requested, to that party at his or her residence, if ascertainable.

The changes to this Section made by Public Act 95—477 apply only to matters in which a petition for tax deed is filed on or after June 1, 2008 (the effective date of Public Act 95—477)." 35 ILCS 200/22—15 (West 2008).

¶ 26 With these principles in mind, we turn to plaintiff's contentions. Plaintiff first contends that it made a diligent inquiry and effort to make sure that the take notices were properly served on all of the interested parties. Plaintiff argues that Daniel was personally served and that his denial of service was not clear and convincing evidence to overcome the presumption of service evidenced by the return of service. While, based on our review of the record, we are inclined to agree with plaintiff on this point, we note that this case actually hinges on the plaintiff's efforts to serve Emilia and otherwise strictly comply with the statutory procedures set forth in the Property Tax Code. Accordingly, we will address the issue of the propriety of Emilia's service first.

¶ 27 Plaintiff argues that, despite the fact that Emilia was not served with a take notice, she was still properly served by substituted service, namely by certified mail, return receipt requested, and by publication. Plaintiff reasons section 22—15 authorizes service by certified mail and by publication in addition to personal service. See 35 ILCS 200/22—15 (West 2008). Plaintiff attempted to personally serve Emilia with the take notice, but when that was unsuccessful, the service by certified mail and publication was sufficient for the purposes of the Property Tax Code. Plaintiff further reasons that its failure to discover Emilia's California address does not show a lack of diligence, because Emilia claimed an owner-occupied exemption for the subject property, and its search of records indicated that the only address for Emilia was the address of the subject property.

In addition, searching on the internet provided only listings for Emilia with addresses for the subjet property. Plaintiff concludes that it met its burden for establishing diligent effort to serve Emilia with the take notice. We disagree.

¶ 28 As an initial matter, we note that we may sustain the trial court's judgment on any ground appearing in the record. *Simmons v. Homatas*, 386 Ill. App. 3d 998, 1014 (2008), *aff'd*, 236 Ill. 2d 459 (2010). Next, we note that the timing of the substituted service versus personal service is the key to the procedures enumerated in the Property Tax Code. Specifically, as pertinent here, the Property Tax Code authorizes substituted service (*i.e.*, service by mail) only after the tax purchaser has made diligent inquiry and effort to find the owner and has failed. *In re Application of County Collector*, 211 Ill. App. 3d 988, 992 (1991) (*D.S. Associates*). What this means is that the Property Tax Code, and specifically section 22–15, "requires attempted personal service before publication [and service by mail] is authorized." *D.S. Associates*, 211 Ill. App. 3d at 995.

¶ 29 In *D.S. Associates*, the tax purchaser purchased the owners' home for delinquent real estate taxes; at issue was the notice to the wife. *D.S. Associates*, 211 Ill. App. 3d at 989-90. The tax purchaser had published the statutory notice in the April 13, 14, and 17 editions of the Chicago Daily Law Bulletin. He attempted personal service on the wife for the first time on April 17, and then again on April 19. The return of service indicated that the husband told the sheriff that the wife had moved three years previously. Additionally, the sheriff sent notice to the wife by certified mail which, on May 1, was returned unclaimed. *D.S. Associates*, 211 Ill. App. 3d at 990. The court held that the tax purchaser had not diligently sought the wife's address and that substituted service before attempting personal service on the wife resulted in the tax purchaser's loss of entitlement to the

issuance of a tax deed. *D.S. Associates*, 211 Ill. App. 3d at 995. This was so, even though the husband, the other owner, had been properly served. *D.S. Associates*, 211 Ill. App. 3d at 995.

¶ 30 *D.S. Associates* was followed in *In re Application of the County Collector*, 278 Ill. App. 3d 168, 173 (1996) (*Commercial Credit)* (the Property Tax Code "requires attempted personal service before publication is authorized"). In that the case issue was whether the service of a take notice by certified mail and publication upon a private corporation, located outside of the county in which the subject property was located, was appropriate. *Commercial Credit*, 278 Ill. App. 3d at 171. The court determined that, other than looking at the real estate mortgage, the record was devoid of any indication that the petitioner undertook any inquiry to determine if the owner could be served in the county, and it held that the petitioner's minimal investigation did not constitute "diligent inquiry" under the Property Tax Code. *Commercial Credit*, 278 Ill. App. 3d at 172-73. The court rejected the petitioner's argument that service by certified mail combined with publication constituted proper notice under the Property Tax Code. It held that: "[The Property Tax Code] requires attempted personal service before publication is authorized. Here, [the] petitioner attempted to serve notice by certified mail and publication before attempting personal service. As such, Commercial Credit never received the mandatory statutory notice." *Commercial Credit*, 278 Ill. App. 3d at 173. *Commercial Credit* thus presents a very similar factual scenario to that of *D.S. Associates,* and both cases provide the same holding, namely, that the tax purchaser must attempt personal service before it may attempt substituted service by certified mail and publication.

¶ 31 Plaintiff contends that *D.S. Associates* and *Commercial Credit* do not accurately state the law. Plaintiff notes that the statute has been changed since these cases were published. Plaintiff reasons that the statute now provides for publication in all instances, so the prohibition against

attempting service by publication until after the tax purchaser has attempted to personally serve the owner. We disagree.

¶ 32 While plaintiff is correct that the statute has changed, and section 22—15 now provides for publication in all instances, the cases specified that service by publication *and by mail* could only be attempted after the tax purchaser had attempted to personally serve the owner. *Commercial Credit*, 278 Ill. App. 3d at 173; *D.S. Associates*, 211 Ill. App. 3d at 995. Indeed, section 22—15 contains the following provision:

> "If any owner or party interested, upon diligent inquiry and effort cannot be found or served with notice in the county, then the person making the service shall cause a copy of the notice to be sent by registered or certified mail, return receipt requested, to that party at his or her residence, if ascertainable." 35 ILCS 200/22—15 (West 2008).

This provision in the current statute corresponds exactly to provisions in the old statute at issue in *Commercial Credit*, 278 Ill. App. 3d at 172, and *D.S. Associates*, 211 Ill. App. 3d at 991.

¶ 33 Further, *D.S. Associates* relies upon *Burton v. Perry*, 146 Ill. 71, 121-22 (1893), in which the supreme court stated:

> " 'The making of diligent inquiry, and the failure to find as a result thereof, must precede the publication. *** The statute does not contemplate, that the purchaser shall first publish his notices, and then afterwards make diligent inquiry. *** The statute does not permit the holder of the tax certificate to postpone his diligent inquiry, until after he has published his notice. The publication in such case has no legal foundation to rest upon, because it is not justified or authorized until there has first been diligent inquiry resulting in

a failure to find.' " *D.S. Associates*, 211 Ill. App. 3d at 992, quoting *Burton*, 146 Ill. at 121-22. Nothing in the cases or the law has changed to invalidate this reasoning. Indeed, the current section 22—15 is written in such a manner as to suggest that, first, the purchaser must attempt to personally serve the owner, and then, if unsuccessful, to serve the owner by certified mail. See 35 ILCS 200/22—15 (West 2008) ("If any owner ***, upon diligent inquiry and effort cannot be found or served with notice in the county, then the person making the service shall cause a copy of the notice to be sent by registered or certified mail, return receipt requested, to that party at his or her residence, if ascertainable"). Thus, we conclude that *D.S. Associates* and *Commercial Credit* are still good law, at least with respect to the timing of the attempt at service by mail.

¶ 34 Plaintiff does not offer any other argument in support of his position that Emilia's service was proper. Likewise, plaintiff does not attempt to distinguish further either *D.S. Associates* or *Commercial Credit.*

¶ 35 We conclude that personal service must be attempted before service by mail may be attempted, and we note that the record in this matter supports the trial court's judgment. On May 22, 2009, plaintiff filed his petition for a tax deed. At that time, he submitted the take notices to be served upon the owners and other interested parties. On May 26, the clerk of the court mailed the take notices via certified mail to the owners and occupants of the subject property. On May 28, 2009, Chris signed for the certified mailings, and the return receipts were submitted. On May 29, Chris was served; on June 16, Daniel was served. On June 18, all of the personal service returns were filed together, with Emilia's indicating that she was not resident in the county, but in California. There is no other evidence of any attempts at service in the record. (We have omitted the service by publication because of the change in the statute rendering service by publication

mandatory in all cases, which was a change from the old statute, under which publication had to follow an attempt at personal service.) It is clear from the record that, at best, plaintiff's efforts to personally serve the owners were carried out at the same time as (and after) the take notices were being served by certified mail. This is clearly improper under *D.S. Associates* and *Commercial Credit.*

¶ 36 In *D.S. Associates*, when the wife was not properly served, even though the other parties had been properly served, the court held that the petitioner was not entitled to the issuance of a tax deed. *D.S. Associates*, 211 Ill. App. 3d at 995. That same result also obtains here. Because Emilia was not properly served, then, despite the arguably proper service to the other owners and interested parties, plaintiff is not entitled to the issuance of a tax deed. The trial court correctly refused to issue a tax deed, and we therefore affirm its judgment.

¶ 37 Because the service-to-Emilia issue is dispositive, we need not address plaintiff's other arguments regarding Daniel and Chris, as well as the argument that the clerk misled Daniel. Accordingly, for the foregoing reasons, we affirm the judgment of the circuit court of DeKalb County.

¶ 38 Affirmed.