2015 IL App (2d) 141178-U
No. 2-14-1178
Order filed August 10, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re APPLICATION OF THE COUNTY TREASURER AND *ex-officio* COUNTY COLLECTOR OF KANE COUNTY, ILLINOIS, For Judgment and Order of Sale Against Real Estate Returned Delinquent for the Non-Payment of General Taxes and Special Assessments for the Year 2007 and Prior Years	)	Appeal from the Circuit Court of Kane County.
	)	No. 11-TX-81
(Alpine Investments, Petitioner-Appellant, v. Old Second National Bank of Aurora, Trustee under Trust No. 5366 dated December 23, 1991, Genevieve Hays, and Occupant, Respondents; Akehtary Razzak, Trustee of Humayun Childrens Trust dated January 1, 1985, Humayun's S.C. Money Purchase Plan and Trust dated December 1, 1987, and Hamid Humayun, Respondents-Appellees; Ari Bass d/b/a Alpine Investments and Plato 47 LLC, Appellants; Shaheen Humayun, Appellee).	)	Honorable David R. Akemann, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Although trial court erred in granting summary judgment on the basis of equitable considerations, reviewing court could apply proper legal analysis to determine that summary judgment in favor of former property owners was warranted.

¶ 2 After a tax purchaser obtained a tax deed to certain property, the former owners of the property filed a petition to vacate the tax deed, which the trial court summarily granted. The tax purchaser appealed. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The property at issue (Property) consists of two parcels totaling 80 acres of farmland, located in unincorporated Plato Township in Kane County. The Property is unimproved, with no residence or other structure. The Property has been farmed by a tenant farmer for several years.

¶ 5 In January 1993, the first parcel was acquired by the Humayun Childrens Trust dated January 19, 1985 (Childrens Trust), and the second parcel was acquired by an S corporation, Humayun's S.C. Money Purchase Plan and Trust dated December 1, 1987 (Pension Plan). Trustee's deeds reflecting the ownership of the two parcels were recorded in Kane County on February 19, 1993. The president and secretary of the Pension Plan were Hamid and Shaheen Humayun. The trustee of the Childrens Trust was Akehtary Razzak, the mother of Shaheen. At all relevant times, Akehtary lived with Shaheen and Hamid (collectively, the Humayuns). The deed for each parcel identified Hamid as the person to whom property tax bills should be sent, listing his address as 77 Regent, Oak Brook.

¶ 6 Until 2006, the Humayuns lived at 77 Regent in Oak Brook. In 2006, they moved a short distance away to 110 Livery Circle, Oak Brook. Shaheen testified in deposition that she submitted a mail forwarding request to the post office when they moved. However, none of the Humayuns notified the Kane County assessor's office of their new address.

¶ 7 The 2007 property taxes for the Property were not paid. On October 27, 2008, Ari Bass, doing business as Alpine Investments, bought the taxes on the first parcel, and Land Group bought the taxes on the second parcel.

¶ 8 On January 28, 2009, Alpine and Land Group submitted to the Kane County Clerk's Office "take notice" forms for each parcel pursuant to section 22-5 of the Property Tax Code (Tax Code) (35 ILCS 200/22-5 (West 2008)). The notices stated that the parcels had been sold for delinquent taxes and provided the amount of the payments required to redeem each parcel, along with the date on which the redemption period would expire. Section 22-5 requires the county clerk to mail within 10 days, by registered or certified mail, copies of the take notice to the addresses provided. *Id*. The take notices were directed to the trustee of the Childrens Trust and to Hamid on behalf of the Pension Plan at 77 Regent. The record does not contain any documentary evidence that the section 22-5 take notices were mailed.

¶ 9 On March 1, 2011, Land Group assigned its tax certificate for the second parcel of the Property to Alpine, with the result that thereafter Alpine held the tax certificates for all of the Property.

¶ 10 On May 17, 2011, Alpine filed a petition for a tax deed to the Property in the circuit court of Kane County. About the same time, Alpine filed a second take notice pursuant to section 22-10 of the Tax Code (35 ILCS 200/22-10 (West 2010)). That notice stated that the redemption period for the Property would expire on October 27, 2011, and that a hearing on the potential transfer of the Property to Alpine would occur on November 2, 2011.

¶ 11 Although section 22-10 requires that this second take notice be given to "the owners, occupants, and parties interested in the property" (*id*.), the notice filed by Alpine was addressed only to the Property's owners prior to 1993—Genevieve Hays and Old Second National Bank of Aurora (as trustee under a trust)—and the "occupant" of the property. The court clerk's certificate of mailing reflects that the second notice was mailed via certified mail to these three recipients, not to the Pension Plan or the trustee of the Childrens Trust. The record contains copies of the envelopes addressed to Hays and "occupant," both of which were mailed to

43W752 Plato Road in Elgin, the "street address" of the Property. However, as noted, the Property is unimproved farmland. The envelopes were returned to the clerk's office bearing the notation "return to sender, no such number." The record also contains a copy of the green card from the envelope addressed to Old Second National Bank, reflecting that it was delivered to the bank.

¶ 12 Alpine also caused the publication of a legal take notice regarding its petition for a tax deed for the Property, pursuant to section 22-15 of the Tax Code (35 ILCS 200/22-15 (West 2010)). The publication notice, which appeared in the Elgin Courier News on July 4, 5, and 6, 2011, was directed to the trustee of the Childrens Trust, the Pension Plan, and the Humayuns, as well as Hays, Old Second National Bank, and "occupant."

¶ 13 On July 11, 2011, the Kane County sheriff's office attempted to serve copies of the petition for tax deed (which included, as an exhibit, the second take notice) on the trustee of the Childrens Trust, the Pension Plan, and Hamid individually, by certified mail sent addressed to them at 77 Regent. The record contains copies of the envelopes for those certified letters, which were returned to the sheriff's office marked "unclaimed." On July 19, 2011, the sheriff's office sent out two more envelopes by certified mail, addressed to Hays and "occupant," both at the "street address" of the Property. The record contains copies of both envelopes, which were returned to the sheriff's office marked "return to sender, attempted – not known."

¶ 14 On November 2, 2011, Alpine filed in the circuit court an application for a tax deed, in the form of an affidavit by Alpine's attorney. Among other things, the application stated that Alpine had made a diligent inquiry "as to the identity, address and location of each person with an interest in the Property" and that "all notices ha[d] been given in the manner and form and within the time required by law." However, the application identified Akehtary, the trustee of the Childrens Trust, as the sole owner of the Property. The application included, as exhibits,

"[o]riginals of the notice of sale that the Kane County Clerk sent by certified mail" to Akehtary (*i.e.*, the section 22-5 take notice), and a copy of the Kane County circuit court clerk's certificate of mailing of the section 22-10 notice, which Alpine asserted showed "the notice to owners and occupants required by the applicable statute." However, as noted, the former exhibit included no certificate or other evidence of mailing by the county clerk, and the latter exhibit showed that it had been sent only to Hays, Old Second National Bank, and "occupant."

¶ 15 On the same date that the application for a tax deed was filed, an *ex parte* hearing was held and the trial court entered an order directing the Kane County Clerk to issue Alpine a tax deed for the Property. The Clerk issued the tax deed, which was recorded on November 15, 2011.

¶ 16 On January 25, 2012, Alpine sold the Property to Plato 47 LLC, an entity that had been registered as a limited liability company with the Secretary of State only two days earlier.

¶ 17 On February 10, 2012, the Humayuns (representing the Childrens Trust and Pension Plan) filed a petition to vacate the tax deed pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)) and section 22-45 of the Tax Code (35 ILCS 200/22-45 (West 2010)). The Humayuns named, as respondents to their section 2-1401 petition, Alpine Investments, Ari Bass d/b/a Alpine Investments, and Plato. In their petition, they alleged that their current home address as well as their office addresses were publicly available through Google and other internet search engines; that Alpine failed to direct the county clerk to send them a copy of the section 22-10 take notice, thereby failing to provide the statutory notice of the tax deed proceeding as required by section 22-25 of the Tax Code (35 ILCS 200/22-25 (West 2010)); that Alpine's representation that it searched diligently for the identity and addresses of the Property's owners was false; and that the Humayuns had never received any notice that the property taxes on the Property were delinquent, that the taxes had

been sold, or that Alpine had filed a petition for a tax deed. Alpine had also failed to ascertain the identity and correct address of the Property's occupant (the tenant farmer) or provide him with effective notice of the tax deed proceeding, although Alpine was able to identify and contact him within days after it obtained the tax deed, to negotiate a lease with him. The Humayuns further alleged that they were diligent in filing their section 2-1401 petition, in that they first learned that the Property had been transferred in January 2012. Finally, they asserted that Plato was not a *bona fide* purchaser.

¶ 18 In April 2014, the Humayuns filed a motion for summary judgment. On September 3, 2014, after briefing and oral argument, the trial court granted the motion, vacated its prior order granting the application for tax deed, and declared the tax deed void. Plato timely appealed from the trial court's final order, and Alpine and Bass joined the appeal.

¶ 19 ANALYSIS

¶ 20 In this case, the trial court granted summary judgment in favor of the Humayuns on their section 2-1401 petition. A motion for summary judgment is properly granted where the pleadings, depositions, admissions, and affidavits establish that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2008); *Gaylor v. Village of Ringwood*, 363 Ill. App. 3d 543, 546 (2006). "In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent." *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). "The purpose of summary judgment is to determine whether a genuine issue of material fact exists, not to try a question of fact." *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). A triable issue precluding summary judgment exists where material facts are disputed or where the material facts are undisputed but reasonable persons might draw different inferences from the undisputed facts. *Id.*

However, "[m]ere speculation, conjecture, or guess is insufficient to withstand summary judgment." *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill. App. 3d 313, 328 (1999); accord *People ex rel. Department of Professional Regulation v. Manos*, 326 Ill. App. 3d 698, 704 (2001) (on motion for summary judgment, mere suggestion that issue of material fact exists, without supporting evidence, is insufficient to create one). We review a grant of summary judgment in a section 2-1401 proceeding under a *de novo* standard. See *Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273, 286 (1982); *Mills v. McDuffa*, 393 Ill. App. 3d 940, 948 (2009) (applying *de novo* standard of review to section 2-1401 disposition that was "functionally equivalent" to a grant of summary judgment).

¶ 21 When the trial court ruled in favor of the Humayuns on their motion for summary judgment, it recited the familiar standards for the determination of such motions that we have laid out above. However, it made no findings regarding a lack of disputed material facts and did not identify any legal issues that compelled judgment in the Humayuns' favor. Rather, the trial court stated that it was entering judgment in favor of the Humayuns because "[t]he primary purpose of the Property Tax Code's tax sale provisions is to encourage property owners to pay their taxes, not to assist tax deed petitioners in depriving actual owners of the property" and "[t]he trend in Illinois is to effect substantial justice," noting that "a petition for relief from judgment invokes the equitable powers of the trial court, which should prevent enforcement of a judgment when it would be unfair, unjust, or inequitable."

¶ 22 This emphasis on equitable considerations suggests that the trial court's decision was, in essence, a ruling on the merits of the section 2-1401 petition, rather than a determination about whether the standards for granting summary judgment were met. See *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 47 (equitable considerations are relevant to factual issues, not purely legal issues.) However, the trial court had held no

evidentiary hearing before entering its judgment. As our supreme court has made clear, unless the standards for summary judgment are met (*i.e.*, the central facts alleged in the section 2-1401 are undisputed or the petitioners are entitled to judgment as a matter of law), the entry of summary judgment is inappropriate and an evidentiary hearing on the section 2-1401 petition must be held. *Ostendorf*, 89 Ill. 2d at 286. Accordingly, the trial court erred as a matter of law in granting summary judgment for the Humayuns on the basis of equitable considerations.

¶ 23 Nevertheless, we may sustain a judgment on any ground appearing in the record, "regardless of whether the circuit court relied on the ground[] and regardless of whether the circuit court's reasoning was correct." *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 192 (2007). Accordingly, we review the record to see whether the grant of summary judgment may be upheld. In doing so, we draw on all of the usual standards applicable to such motions, as set out above: we determine whether, viewing the evidence submitted in the light most favorable to the non-movant, there are any relevant factual disputes that must be resolved via an evidentiary hearing, keeping in mind that the parties must put forth evidence and not simply speculation to support their arguments. *Adams*, 211 Ill. 2d at 43; *Ostendorf*, 89 Ill. 2d at 286; *Manos*, 326 Ill. App. 3d at 704.

¶ 24 Plato, Alpine, and Bass (collectively, the appellants) argue that summary judgment was inappropriate for several reasons, including a legal argument that the trial court applied the wrong definition of "fraud" in finding that the Humayuns had shown that "the tax deed [was] procured by fraud or deception by the tax purchaser" (35 ILCS 200/22-45(3) (West 2010)), and a fact-dependent argument that there was conflicting evidence regarding the Humayuns' diligence (and thus the Humayuns' entitlement to section 2-1401 relief).

¶ 25 Generally, to obtain relief under section 2-1401, a petitioner must demonstrate: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting that defense or claim

to the trial court in the original action; and (3) due diligence in filing the section 2-1401 petition. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). To establish due diligence, a petitioner must show a reasonable excuse for his failure to act within the applicable time. *Id*. at 222. Section 2-1401 does not provide a remedy for the consequences of a litigant's own mistakes or negligence. *Id*.

¶ 26 Although section 2-1401 permits the vacating of a final judgment when the above requirements are met, section 22-45 of the Tax Code imposes a further limit on the granting of relief from a tax deed, providing that "a tax deed is incontestable" except by direct appeal or a petition for relief under sections 2-1203 and 2-1401 of the Code, and limiting the grounds for relief under section 2-1401 to four circumstances. See 35 ILCS 200/22-45 (West 2010). Of these four grounds, the parties agree that only the third—"clear and convincing evidence that the tax deed [was] procured by fraud or deception by the tax purchaser"—is potentially applicable here.

¶ 27 In the context of section 22-45 of the Tax Code, "fraud" does not necessarily require intentional wrongdoing by the tax purchaser. Rather, because the government's role in taking real property from its former owners involves due process concerns (*In re County Treasurer (Homeside Lending, Inc. v. Midwest Real Estate Investment Co.)* (hereinafter, *Homeside*), 347 Ill. App. 3d 769, 780 (2004)), "fraud" in tax deed proceedings includes a tax purchaser's failure to inform the trial court about facts that might change the court's ruling, such as the tax purchaser's failure to comply with the statutory notice requirements. *In re County Treasurer (TCF Bank v. Community Partners, LLC)*, 2015 IL App (1st) 133693, ¶ 23 (tracing evolution of definition of "fraud" in tax deed proceedings); see also *Remer v. Interstate Bond Co.*, 21 Ill. 2d 504, 514 (1961) (former property owner had adequately raised a claim of fraud that could support the vacation of a tax deed where her petition to vacate alleged that tax purchaser's

statement that it had employed due diligence in providing notice to all interested persons "was either negligently or intentionally false"; the claim of fraud, if known to the trial court at the time of its judgment granting the application for the tax deed, would have prevented the entry of that judgment).

¶ 28 Here, Alpine's application for a tax deed contains two demonstrably false statements: first, that it made "diligent inquiry" into the identity and location of each person with an interest in the Property, and second, that "all notices ha[d] been given in the manner and form and within the time required by law." As to the first statement, the disorganized and cursory nature of Alpine's efforts to properly identify the Property's owners appears on the face of Alpine's application for tax deed, which incorrectly identified the Childrens Trust as the sole owner of the Property despite the fact that Alpine's own records (including those attached as exhibits) showed that the Childrens Trust owned only one parcel of the Property, and the other parcel was owned by the Pension Plan. As to the second statement, the record reflects that, although the initial take notice correctly identified the owners of the Property, the second take notice was not directed to them but instead was directed only to Hays, Old Second National Bank, and "occupant," persons with no ownership interest in the Property. Accordingly, Alpine clearly had not complied with the statutory notice requirements. (This fact also supports the falsity of the statement that Alpine made "diligent" attempts to locate the owners of the Property; its failure to direct the second take notice to the correct owners whose identities were already known suggests that Alpine was not diligent but negligent about ascertaining the identity of the Property's owners and ensuring proper notice.)

¶ 29 The appellants argue that the above definition of "fraud" in tax deed proceedings should not apply here because there was no complete failure to give notice, but rather a series of errors or defects in the notice provided. They distinguish *Homeside* and another case cited by the

Humayuns, *In re Tax Deed Petition of Thomas (Citizens Federal Bank v. Thomas)*, 225 Ill. App. 3d 861 (1992), on the basis that, in those cases, the tax purchaser negligently failed to identify persons with an ownership or other interest in the property despite the fact that their interest appeared in the public record, and thus the tax purchaser had not directed *any* of the required notices to them. The appellants assert they have not committed similar fraud, because they named the correct owners of the Property in many of the notices. However, the appellants provide no legal support for the proposition that fraud may be shown only when there is an utter failure to provide any notice whatsoever of the tax deed proceeding. To the contrary, section 22-40 of the Tax Code explicitly requires "strict compliance" with all of the notice requirements contained in sections 22-10 through 22-25 of the Tax Code. 35 ILCS 200/22-40(a) (West 2010). Thus, Alpine's statement that it gave "all notices" required by the Tax Code was false, regardless of whether all of its notices or only some of them were defective and failed to comply with the statutory requirements.

¶ 30 The appellants seek to minimize Alpine's failure to provide proper statutory notice by labeling the various defects in its notices as "errors" that do not rise to the level of fraud. Once again, however, they cannot point to any case law supporting their contention. Rather, even negligent errors may amount to fraud justifying the vacating of a tax deed when the correct information is available in the public record and the error is within the tax purchaser's control. For instance, in *Thomas*, the tax purchaser had misread the property records to show release of a mortgage when in fact no such release had occurred, and accordingly it did not provide notice of the tax deed proceedings to the mortgagee. *Thomas*, 225 Ill. App. 3d at 863. The tax purchaser argued that its error was an innocent mistake and should not be held to amount to fraud that would justify setting aside the tax deed. The reviewing court rejected this argument:

> "[U]nder these facts fraud should be deemed to exist as a matter of law. *** In this case, the mistake was made by the respondent or her agent. If we are going to allow one applying for a tax deed to claim mistake in checking titles as justification for failing to give statutory notice, we are going to invite actual fraud. The burden on tax-deed purchasers to give notice to parties interested in the premises is correctly placed on those who will benefit from the tax deed. They should not be able to avoid statutory requirements by relying on their own mistakes." *Id*. at 863-64.

Here, Alpine already knew the identities of the Property's owners at the time it directed the clerk of the circuit court to send the second take notice to the wrong persons, and all of its various failures to comply with the statutory requirements for the issuance of a tax deed were within its control. Accordingly, those errors are properly chargeable to Alpine and may form the basis for a finding of fraud when considered in the context of Alpine's false statement that it complied with all of the statutory requirements. *Id*.; *Homeside*, 347 Ill. App. 3d at 780. Further, because strict compliance with the statutory notice requirements must be shown before a tax deed may be granted (35 ILCS 200/22-40(a) (West 2010)), the result of Alpine's application for a tax deed would have been different had the trial court known that Alpine's representation about such compliance was false (*Remer*, 21 Ill. 2d at 514). We therefore reject the appellants' arguments that some other definition of fraud should be applied to this tax proceeding and that they should not be charged with the consequences of their failure to comply with statutory notice requirements.

¶ 31 The next argument raised by the appellants is that they were entitled to an evidentiary hearing on the issue of whether the Humayuns were diligent in responding to the original tax deed proceeding because there was conflicting evidence about whether the Humayuns received notice of that proceeding. If the parties put forward conflicting evidence on this point, summary

judgment would be inappropriate. Instead, an evidentiary hearing would be required to resolve the section 2-1401 petition. *Ostendorf*, 89 Ill. 2d at 286. In assessing whether a conflict has been shown, we must consider only the admissible evidence submitted by the parties and the reasonable inferences therefrom, not argument or speculation. *Thompson*, 241 Ill. 2d at 438; *Manos*, 326 Ill. App. 3d at 704.

¶ 32 The appellants assert that the Humayuns received notice of the tax deed proceedings but ignored that notice, and thus were not diligent within the meaning of section 2-1401. However, all of the evidence on this issue is to the contrary. Shaheen and Hamid testified in deposition that Shaheen handled incoming mail in the household and paid most of the bills. Hamid became involved only if there was something unusual or especially worrisome about a bill. Neither he nor Shaheen recall him being made aware of any problems regarding property taxes. Shaheen testified unequivocally that she never received any notice that property taxes for the Property had not been paid, or about the expiration of the redemption period, or about the tax deed proceeding.

¶ 33 None of the documentary evidence contradicts Shaheen's testimony. There is no documentation in the record that the first take notice required by section 22-5 was ever mailed by the county clerk. As to the second take notice, Alpine did not ask the court clerk to mail it to the Humayuns, and the clerk's certificate of mailing reflects that she did not do so. The sole method employed by the sheriff to serve the petition for tax deed upon the Humayuns was certified mail, and the record contains evidence that all of the certified mail directed to the Humayuns at their pre-2007 address, 77 Regent, was returned unclaimed and undelivered. The only remaining method of notice about the tax deed proceeding was the publication notice carried in an Elgin newspaper, but the Humayuns lived in Oak Brook and worked in Chicago, and there is no evidence that they saw the notice.

¶ 34 Lacking any direct evidence that the Humayuns received notice of the tax deed proceedings, the appellants turn to circumstantial evidence. They first argue that there is a legal presumption that mail properly addressed is presumed to have been delivered. *Tabor & Co. v. Gorenz*, 43 Ill. App. 3d 124, 129 (1976). However, this presumption applies only when the mail is properly addressed to the presumed recipient. *Liquorama, Inc. v. American National Bank & Trust Co. of Chicago*, 86 Ill. App. 3d 974, 978 (1980) (presumption of receipt did not apply to mail addressed to sendee's former address). As the mail at issue here was not addressed to the Humayuns' current address, the presumption of receipt does not arise.

¶ 35 The appellants next argue that Shaheen was not credible, and so her testimony that she did not receive notice of the tax proceeding cannot constitute conclusive evidence of non-receipt. They point out that Shaheen caused her mother Akehtary to sign a verification of the section 2-1401 petition despite the fact that Akehtary was, according to Shaheen, unable to understand or manage her affairs at the time of the signature. The record also suggests that Shaheen caused one of her employees, Dr. Margo Ocampo, to issue a medical opinion stating that Akehtary had been under the care of Dr. Ocampo and that Dr. Ocampo believed Akehtary to be unable to manage her affairs, when in fact Dr. Ocampo had not examined Akehtary at the time she gave the opinion. The appellants also point out that Shaheen testified that she had submitted a mail forwarding request when the Humayuns moved from 77 Regent to 110 Livery Circle, and she was unaware of any mail other than the tax notices that had not been received at the new address.

¶ 36 We note that the appellants' attack on Shaheen's credibility is directed to an issue (Akehtary's competence) other than notice, and that attack is somewhat undermined by their simultaneous reliance on portions of her testimony that do relate to notice. We cannot resolve credibility questions when evaluating whether summary judgment is proper; such a determination must be made by the trier of fact. *Thompson*, 241 Ill. 2d at 438. However, the

most that the appellants' attack on Shaheen's credibility could achieve is to establish that her testimony is unworthy of belief. Such impeachment is not a substitute for evidence. Here, even if Shaheen's testimony is entirely disregarded, the remaining evidence in the record does not permit any inference that the Humayuns in fact received any notice of the tax proceedings. Rather, as we have stated, the evidence shows that the certified mailings directed to the Humayuns were not delivered to them. Accordingly, the record supports the Humayuns' contention that they were diligent but simply did not know of the tax proceedings.

¶ 37 The appellants also note that the 2010 taxes for the Property were paid from the Chase bank accounts of the Childrens Trust and the Pension Plan. They argue that a reasonable inference from this fact is that the Humayuns were receiving the tax bills for the Property all along, but simply neglected to pay some of those bills. However, the evidence shows that, until the time the Humayuns moved from 77 Regent, they had always paid the tax on the Property. Given that history of paying the tax bills on the Property, there is an equally (if not more) plausible inference that can be drawn from the fact that they paid the 2010 taxes—that the 2010 tax bill is the only one the Humayuns received after they moved. Although, in determining whether summary judgment should be granted, all reasonable inferences must be drawn in favor of the non-movant, "where from the proven facts the nonexistence of the fact to be inferred appears to be just as probable as its existence, then the conclusion that it exists is a matter of speculation, surmise, and conjecture, and the trier of fact cannot be allowed to draw it." *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 795-96 (1999). Because the inference that the Humayuns received only the 2010 tax bill for the Property at their new address is at least as reasonable as the inference that they also received other tax bills for the Property but did not pay them, the competing inferences are insufficient to raise a genuine factual question that would prevent the entry of summary judgment.

¶ 38 Moreover, even if the Humayuns had had notice that the 2007 taxes for the Property were delinquent or had been sold, that is not the same as having notice of the tax deed proceeding itself. There is no evidence in the record that the Humayuns received any of the statutorily-required notices of the tax deed proceeding. Without such notice, they could not be expected to take action with respect to that proceeding, and there is no factual issue as to their diligence.

¶ 39 The appellants' final argument is that the Humayuns conceded the correctness of all of the affirmative defenses raised by Alpine in its answer to their section 2-1401 petition, because the Humayuns' answer to those defenses was not verified (unlike Alpine's pleading, which was verified). However, the appellants did not raise this argument before the trial court, and accordingly we find it forfeited. *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 127 (2010) ("A reviewing court will not consider arguments not presented to the trial court.")

¶ 40 Because the appellants have not presented any evidence or reasonable inferences contradicting the central facts alleged by the Humayuns in their section 2-1401 petition—the existence of a meritorious defense (Alpine's failure to comply with the statutory notice requirements), diligence with respect to the tax deed proceeding, and diligence in filing the section 2-1401 petition—no evidentiary hearing was required, and the entry of summary judgment in favor of the Humayuns on that petition was proper. *Ostendorf*, 89 Ill. 2d at 286. This is so even though some of the trial court's stated reasoning for its ruling was mistaken.[1] *Ultsch*, 226 Ill. 2d at 192.

¶ 41 CONCLUSION

[1] The trial court also based its grant of summary judgment on its finding that the Humayuns' due process rights had been violated. However, in light of our ruling affirming the grant of summary judgment on other grounds, we need not address this additional finding.

¶ 42 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 43 Affirmed.