No. 3–10–0430

Order filed June 29, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In the Matter of the Application of the COUNTY COLLECTOR for the Sale of Delinquent Real Estate Taxes for 2005	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois
(JOHN W. SCOTT, Petitioner-Appellant, v. FDP CD, LLC, Respondent-Appellee).	)	No. 09-TX-7 Honorable Alan G. Blackwood, Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice McDade dissented in the judgment.

ORDER

Held: The trial court's finding, that tax-deed petitioner failed to make a diligent inquiry to obtain personal service of take notice upon respondent corporation's registered agent, was not against the manifest weight of the evidence. The trial court's denial of petition for tax deed, therefore, was affirmed.

Petitioner, John W. Scott, filed a petition for a tax deed to certain commercial property in Moline, Illinois, owned by respondent, FDP CD, LLC. After a bench trial, the trial court denied the

petition for tax deed finding that Scott failed to satisfy the diligent-inquiry requirement of the Property Tax Code (35 ILCS 200/22-15 (West 2008)) (the Code) to obtain personal service of the take notice on FDP. Scott appeals, arguing that the trial court erred: (1) in finding that he failed to make a diligent inquiry; and (2) in improperly conducting an independent investigation of the facts relating to service. We affirm the trial court's ruling.

FACTS

On December 29, 2006, petitioner, John W. Scott, purchased the real property in question at the county's annual tax sale for the delinquent 2005 real estate taxes and received a certificate of purchase. The property was located at 5200 Avenue of the Cities in Moline, Illinois, and was owned by respondent, FDP CD, LLC, an Illinois limited liability company. A commercial building was located on the property, but FDP was not an occupant of the building. Rather, the building was occupied by Blockbuster Video. There was also a mortgage on the property through Midwestone Bank (the bank).

On March 13, 2009, within the statutorily required time frame prior to the end of the redemption period, which had been extended, Scott filed the instant petition for a tax deed to the property. Take notices were prepared and were served on Blockbuster by personal service and on the bank by certified mail. Neither party filed an appearance or and objection in the tax deed proceeding, and neither party is involved in this appeal.

The period for redeeming the taxes expired on July 27, 2009, and the taxes were not redeemed. On July 30, 2009, Scott appeared in court for a hearing on the petition for tax deed. FDP appeared in court on that date and objected to the issuance of a tax deed. A bench trial was held on the matter in November of 2009.

Of relevance to this appeal, Scott testified at the bench trial that he had been buying properties in the county at tax sales for over the past 20 years and was familiar with the procedures involved in such a proceeding. Scott kept a detailed worksheet on each property that he had purchased, listing his notes on the property and the actions that he had taken. Scott's worksheet for the instant property was admitted into evidence at trial. On the issue of diligence in obtaining personal service upon FDP, Scott testified at the bench trial that he searched the real estate records, the local telephone book, the city directory, and other public sources of information in Rock Island County to determine the names and locations of the interested parties with respect to the tax deed proceeding. Scott determined through the Secretary of State's records that FDP's registered agent in Illinois was listed as a "Rodney A. Blackwell." Scott further determined through the Secretary of State records and through the local phone book and city directory that Blackwell's address in Rock Island County was listed as 1630 5 Avenue, No. 514, Moline, Illinois (the Rock Island County address). Scott also checked the assessor's records for the subject property, which listed the assessee as "FDP CD[,] LLC/Blackwell Rod" with an address of 220 N. Main Street, Suite No. 517, Davenport, Iowa.

Scott provided the Rock Island County sheriff with the required take notice and with directions to personally serve the notice on FDP or Blackwell at the Rock Island County address. The sheriff made one attempt at personal service on FDP or Blackwell on April 2, 2009. The sheriff was unable to serve FDP or Blackwell at the Rock Island County address and indicated on the return of service that FDP or Blackwell was not found in the county on that date and was unknown at that address. The sheriff subsequently sent the take notice to Blackwell by certified mail. No testimony or other evidence was provided as to the circumstances involved in the sheriff's attempt of personal

service on FDP or Blackwell at the Rock Island County address. The certified mailing sent by the sheriff to FDP or Blackwell at the Rock Island County address was signed for on April 7, 2009, by a "Gene A. Martin." Scott also directed the sheriff to send the take notice to FDP or Blackwell by certified mail to the Iowa address listed on the assessor's records. The certified mailing by the sheriff to the Iowa address was signed for on or about March 30, 2009, by a "Kim Brown."

In addition to the take notices that were sent or served by the sheriff, Scott also caused take notices to be sent to the interested parties by certified mailing on March 17, 2009, by the Rock Island County Circuit Clerk, as required under section 22-25 of the Code. The certified mailing sent to FDP or Blackwell by the clerk to the Rock Island County address was returned as unclaimed. The certified mailing sent to FDP or Blackwell by the clerk to the Iowa address was signed for on March 18, 2009, by "Kim Brown."

Scott noted in his testimony that he had also forwarded an additional copy of the take notice to the address of the assessee in early 2009, approximately two years after the clerk had forwarded its take notice. Scott noted on his worksheet that the take notice was not returned, which he believed was an indication that the mailing address was valid. In addition, Scott traveled to the subject property on at least one occasion and spoke with a Blockbuster employee in his efforts to determine that name of the manager of the store for service of process. There was no indication in Scott's testimony, however, that he made any inquiry as to the name or location of the owner or landlord when he visited the subject property. In addition, Scott testified that he never went to the Rock Island County address listed for FDP or Blackwell and that he did not know whether an office building was located at that address.

As required by section 22-20, Scott caused publication of the take notice to be made in the

local newspaper. Publication was made on March 19, March 20, and March 21, 2009.

At the bench trial, after Scott rested, FDP called Blackwell to the stand. Blackwell testified that he was the sole owner of FDP, that he owned over 100 properties, and that he was an experienced property owner. Blackwell did not recall receiving the tax bill for the 2005 taxes and testified that before July of 2009, he was not personally aware that the taxes were delinquent. Blackwell acknowledged, however, that the annual tax bills listed the taxes as delinquent. Blackwell stated further that he did not check with the assessor or the treasurer to determine if the taxes had been paid. Blackwell commented that he was not personally involved in the actual payment of the property taxes, and that he had an office that handled those matters. Blackwell admitted that he had received a take notice in late July of 2009, and stated at trial that he was prepared to pay or redeem the delinquent real estate taxes. During his testimony, Blackwell was not questioned by either party as to his residence address, his office address, or the office address of FDP. Nor was Blackwell questioned by either party as to the identity or relationship of Kim Brown or Gene Martin to FDP or to Blackwell himself.

In January of 2010, the trial court entered its opinion and order. The trial court found, among other things, that Scott failed to make a diligent inquiry to obtain personal service upon Blackwell as FDP's registered agent. The trial court, therefore, denied Scott's petition for tax deed. In making its ruling, the trial court noted that although Scott checked the phone book, he apparently overlooked an address of 48 Wildwood Drive, Rock Island, Illinois, which was listed for Blackwell. The trial court also commented that Scott's efforts in the present case were less than the efforts of tax deed petitioners in other cases in this area of law in which the courts had found that the diligent inquiry requirement had not been satisfied.

Scott subsequently filed a motion to vacate the trial court's ruling. In the motion, Scott argued that the trial court erred in finding no diligent inquiry. Scott also argued that in reaching its ruling, the trial court considered improper information and had apparently conducted its own investigation into the phone book records when it referenced an alternative address for Blackwell that was not produced in evidence by either of the parties. At a hearing on the motion, Scott presented evidence that although Blackwell had previously owned real property at the Wildwood Drive address, he had sold his interest in that property in April of 2008, before the petition for tax deed in the instant case was filed. After listening to the arguments of the attorneys, the trial court denied the motion to vacate. In so doing, the trial judge commented that he had looked at a phone book, and possibly a city directory, and had seen the Wildwood Drive address listed for Blackwell. The trial judge commented further that he did not make any particular finding that Blackwell lived at that address and that he only cited that information for illustrative purposes to suggest to Scott that there was more that he could have done to personally serve FDP or Blackwell. This appeal followed.

ANALYSIS

On appeal, Scott argues that the trial court erred in finding that he failed to make a diligent inquiry. Scott asserts that the efforts he made to obtain personal service on FDP or Blackwell were sufficient to satisfy the strict notice requirements of the statute and that there were no errors in the take notice itself. FDP argues that the trial court's ruling was proper and should be affirmed.

Whether a tax-deed petitioner has made a diligent inquiry to serve the required parties is a question of fact, and the trial court's determination on the issue of diligence will not be reversed on appeal unless it is against the manifest weight of the evidence. *Gacki v. La Salle National Bank*, 282 Ill. App. 3d 961, 964 (1996). A trial court's finding is against the manifest weight of the evidence

only if it is clearly evident from the record that the trial court should have reached the opposite conclusion or if the trial court's finding itself is arbitrary, unreasonable, or not based upon the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006). Under the manifest weight of the evidence standard, deference is given to the trial court as finder of fact, because the trial court is in a better position than the reviewing court to observe the conduct and demeanor of the parties and witnesses, and the reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn from the evidence. See *Best*, 223 Ill. 2d at 351.

A petitioner for a tax deed has the burden to persuade the court that he or she complied with the Code, including the provisions relating to notice. See *Matter of County Collector*, 219 Ill. App. 3d 396, 403 (1991) (*Keyway Investments, Inc.*). The notice requirements under the Code are very rigid, and a tax buyer must strictly comply with those requirements to obtain a valid tax deed. 35 ILCS 200/22-40 (West 2008); *In re County Treasurer and ex officio County Collector of Lake County*, 403 Ill. App. 3d 985, 990 (2010) (*Glen Investments*); *In re County Treasurer and Ex-Officio County Collector of McDonough County*, 361 Ill. App. 3d 504, 507 (2005) (*H & H Investments*). Under section 22-10 of the Code, a tax buyer must give written notice of the sale and the date of expiration of the redemption period to the owners, occupants, and parties interested in the property. 35 ILCS 200/22-10 (West 2008); *H & H Investments*, 361 Ill. App. 3d at 507. Section 22-15 provides further that if any interested party upon diligent inquiry and effort cannot be found or served with notice in the county, then the person making the service shall send a copy of the notice by registered or certified mail to the interested party at his or her residence. 35 ILCS 200/22-15 (West 2008); *H & H Investments*, 361 Ill. App. 3d at 508. A diligent inquiry does not require perfection.

See *Keyway Investments, Inc.*, 219 Ill. App. 3d at 404. Rather, it is the kind of search or investigation that a diligent person, intent on ascertaining a fact, would usually and ordinarily make. *H & H Investments*, 361 Ill. App. 3d at 508-09.

The service requirements in this context for a private corporation are slightly different. See *H & H Investments*, 361 Ill. App. 3d at 508. Under the Code of Civil Procedure, which applies to the extent that the Property Tax Code does not regulate matters of procedure, a private corporation may be served: "(1) by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law." 735 ILCS 5/2-204 (West 2008); *H & H Investments*, 361 Ill. App. 3d at 508. Thus, to satisfy the notice requirements in the present case, Scott was required to make a diligent inquiry to personally serve FDP's registered agent in this State (or any officer or agent of the corporation). See 35 ILCS 200/22-15 (West 2008); 735 ILCS 5/2-204 (West 2008); *H & H Investments*, 361 Ill. App. 3d at 508. Other forms of service were not permissible, unless after diligent inquiry, Scott was unable to locate FDP's registered agent in this State for personal service. See 35 ILCS 200/22-15 (West 2008); 735 ILCS 5/2-204, 2-206 (West 2008); *Burton v. Perry*, 146 Ill. 71, 121-22 (1893); *Application of County Collector*, 211 Ill. App. 3d 988, 992-95 (1991) (*D.S. Associates*).

In the instant case, as to the issue of diligent inquiry, the record shows that Scott made one attempt to have the sheriff personally serve FDP's registered agent, Blackwell, at the Rock Island County address, which proved to be unsuccessful. No evidence was presented at trial as to the time or circumstances of the sheriff's attempt or as to whether the sheriff spoke to anyone at the Rock Island County address or in the vicinity of that address. The record also showed that Scott looked for an alternative address for FDP or Blackwell in the phone book for the area but was unable to find

an alternative address. Although Scott spoke to the tenant of the subject property, there was no evidence presented at trial to suggest that Scott inquired about the whereabouts of the owner at that time. Furthermore, Scott did not go to the Rock Island County address listed for FDP or Blackwell or attempt to make contact with anyone at that address or in that vicinity to try to obtain personal service or to try to learn additional information so that personal service could be obtained. Scott also did not check the court file for the status of personal service on FDP or Blackwell. Under the circumstances of the present case, the trial court's finding of a lack of a diligent inquiry was not against the manifest weight of the evidence and must be affirmed on appeal. See *H & H Investments*, 361 Ill. App. 3d at 508-09 (tax buyer failed to make a diligent inquiry or effort to properly serve corporate mortgagee of subject property with notice in that tax buyer merely obtained mortgagee's out-of-state address from mortgage document and made no effort to locate the mortgagee's registered agent within the state); *D.S. Associates*, 211 Ill. App. 3d at 996 (tax buyer's single ineffective attempt at personal service on owner did not constitute diligent effort as a matter of law); *Keyway Investments, Inc.*, 219 Ill. App. 3d at 404-05 (trial court's finding, that tax buyer's inquiry did not meet burden of diligence and effort, was not against the manifest weight of the evidence where tax buyer failed to notice alternative address for land-trust owner and upon being made aware of alternative address, merely made one telephone call to that location to try to obtain more information).

As a final matter, we must address Scott's second argument, that the trial court's ruling must be reversed and the case remanded for a new trial, because the trial court improperly conducted its own investigation into the facts relating to service. There is no question that the trial court considered matters outside of the evidence presented at trial when the trial judge cited the Wildwood

Drive address for Blackwood in his order. FDP argues that the trial court took judicial notice of the phone book in question, an argument that is rebutted by the record and by the trial judge's own comments. In the alternative, FDP argues that there was no prejudice to Scott from the trial court's consideration of the extraneous information.

We agree with FDP's second argument and find it to be dispositive of this issue. As the trial court indicated in its order and at the hearing on the motion to vacate, its finding of no diligent inquiry was primarily based upon a review of the case law in this area and a comparison of those cases to the facts of the present case. Specifically, the court noted several cases where a finding of no diligent inquiry was either made or upheld, despite the fact that the petitioners in those cases had taken greater steps to obtain personal service on the party in question than did Scott in the present case. In addition, as the trial judge specifically indicated at the hearing on the motion to vacate, he did not make any finding regarding the Wildwood Drive address. In fact, the trial judge stated that he only cited the address for illustrative purposes. Thus, even if we were to find that the trial court erred in considering information from a phone book that was not part of the evidence presented at trial, we would still have find that any error that occurred was harmless and would not result in a reversal in this case. See *In re Marriage of Brudd*, 307 Ill. App. 3d 57, 62 (1999) (to constitute reversible error, the petitioner must prove that he or she was prejudiced to the extent that the improperly-considered evidence materially affected the outcome of the case; otherwise, the error is harmless).

For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

Affirmed.

JUSTICE McDADE, dissenting:

The majority holds that the trial court's finding that petitioner failed to make a diligent inquiry to obtain personal service of take notice upon respondent's registered agent was not against the manifest weight of the evidence. I respectfully dissent and would reverse the trial court's judgment denying petitioner's petition for tax deed. Specifically, I disagree with the majority's reading and application of section 22-15 of the Property Tax Code (35 ILCS 200/22-15 (West 2008)).

Section 22-15 of the Property Tax Code provides, in pertinent part:

> "The purchaser or his or her assignee shall give the notice required by Section 22-10 [35 ILCS 200/22-10] by causing it to be published in a newspaper as set forth in Section 22-20 [35 ILCS 200/22-20]. 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 [225 ILCS 447/5-5 et seq.] upon owners who reside on any part of the property sold by leaving a copy of the notice with those owners personally.
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> The same form of notice shall also be served, in the manner set forth under Sections 2-203, 2-204, 2-205, 2-205.1, and 2-211 of

> the Code of Civil Procedure [735 ILCS 5/2-203, 735 ILCS 5/2-204, 735 ILCS 5/2-205, 735 ILCS 5/2-205.1, and 735 ILCS 5/2-211], upon all other owners and parties interested in the property, if upon diligent inquiry they can be found in the county, and upon the occupants of the property.
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> * * *
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> 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).

Section 22-15 expressly requires that "the notice" be served by the sheriff "upon owners who reside on any part of the property." 35 ILCS 200/22-15 (West 2008). The record reveals that respondent does not "reside on any part of the property." Thus, we turn to a latter portion of section 22-15 to determine what type of service is required upon "other owners" who do not reside on the property.

Section 22-15 provides that "other owners" who do not reside on the property must be served with the "same form of notice" and "in the manner set forth under Sections 2-203, 2-204, 2-205, 2-205.1, and 2-211 of the Code of Civil Procedure." 35 ILCS 200/22-15 (West 2008). I call attention to the fact that the legislature refers to both "form of notice" and "manner" in which service is to be carried out. Thus, it appears clear that the use of the term "same form of notice"

was intended to reference the actual take notice itself, not the "manner" of service.

Now that I have set out the appropriate portion of section 22-15 at issue in the present case, I turn to the Code of Civil Procedure in an effort to determine what "manner" of service petitioner could employ when attempting to serve the take notice upon respondent, a private corporation. Under section 2-204 of the Code of Civil Procedure, which applies to the extent that the Property Tax Code does not regulate matters of procedure, a private corporation may be served: "(1) by leaving a copy of process with its registered agent ***; *or (2) in any other manner now or hereafter permitted by law*." (Emphasis added.) 735 ILCS 5/2-204 (West 2008). Under section 22-15, petitioner was allowed to serve respondent the take notice by certified mail if "upon diligent inquiry and effort" he could not find or personally serve respondent with the take notice. 35 ILCS 200/22-15 (West 2008).

Unlike the majority, I believe the record substantiates both diligent inquiry and diligent effort by petitioner in effectuating service on respondent. Respondent is based Davenport, Iowa. For purposes of doing business in Illinois, it has registered with the secretary of state, designating Rodney Blackwell, 1630 5th Avenue, No. 51, Moline, IL 61265, as its registered agent. Petitioner identified Blackwell from the secretary of state's records and also found Blackwell in the current local phone book and city directory listed at that address and no other. Because petitioner successfully identified and located the address of respondent's official registered agent, I believe he satisfied the diligent inquiry prong.

After identifying and locating respondent's agent, he tendered Blackwell's name and address to the sheriff of Rock Island County, requesting that he effect personal service on Blackwell. It is undisputed that this name and address constituted the correct identification and

location of respondent's registered agent. The sheriff made a single attempt at personal service on April 2, 2009, and the following day, without any additional input from petitioner, sent the take notice in statutory form to Blackwell at the designated address by certified mail. The receipt was signed at that location by Gene Martin on April 7, 2009. Because petitioner attempted to personally serve Blackwell at the address respondent provided the secretary of state, I believe he satisfied the diligent effort prong. Thus, I believe petitioner has complied with the requirements found in section 22-15.

I have reviewed the three cases cited by the majority in support of its holding that petitioner failed to make a diligent inquiry. All three cases are distinguishable. The tax buyer in *In re County Treasurer and Ex-Officio County Collector of McDonough County*, 161 Ill. App. 3d 504, 508-09 (2005), involved a tax buyer who failed to even make an effort to locate the mortgagee's registered agent within the state. Here, petitioner not only made an effort, but also successfully identified and located the registered agent.

The tax buyer in *In re Application of County Collector*, 211 Ill. App. 3d 988, 995 (1991) (*D.S. Associates*), intentionally placed notice for publication *before* attempting personal service. Here, petitioner attempted personal service *prior* to attempting service by certified mail. Moreover, unlike petitioner in the instant case, the tax buyer in *D.S. Associates* never successfully served the owner through certified mail. See *D.S. Associates,* 211 Ill. App. 3d at 990. The sheriff in *D.S. Associates* sent notice to the owner by certified mail, which was returned unclaimed. *D.S. Associates,* 211 Ill. App. 3d at 990.

The tax buyer in *In re Application of County Collector*, 219 Ill. App. 3d 396, 404-05 (1991) (*Keyway Investments*), failed to notice an alternative address of the owner and also upon

being made aware of the alternative address, merely made one telephone call to that location to try to obtain more information. Here, the majority acknowledges that petitioner looked for an alternative address for respondent and its registered agent but did not find one. Unlike the *Keyway Investments* court, the majority does not point to any alternative address petitioner "failed to notice."[1] See *Keyway Investments*, 219 Ill. App. 3d at 404-405. Moreover, the facts in the instant case do not present us with a situation where the tax buyer simply made one telephone call in an effort to obtain service. Instead, petitioner successfully identified and located the registered agent. Upon doing so, petitioner then attempted to have the sheriff personally serve the agent. None of the majority's cited cases presents us with facts similar to the instant case.

Finally, I would be remiss if I did not note that the actual question before this court is extremely narrow. Specifically, the sole question before us is whether the trial court erred in finding petitioner failed to make a diligent inquiry. (Slip op. at 6). The question of whether petitioner satisfied the diligent effort prong is not before this court. Stated another way, we have simply been called to review the trial court's finding that petitioner failed to make a diligent inquiry under section 22-15. The question of whether he made a diligent effort in actually serving the registered agent is an entirely separate question, which is not before us. The majority's order intermixes the terms "inquiry" and "effort" with one another.

It is for these reasons that I dissent from the majority's decision affirming the trial court's order denying petitioner's petition for tax deed. I believe that the trial court's finding that petitioner failed to make a diligent inquiry is against the manifest weight of the evidence. Thus, I

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[1] The majority disregards the trial court's own independent, and incorrect (outdated), finding of an alternative address as merely "illustrative" in nature. (Slip op. at 10).

would reverse the trial court's judgment and remand for further proceedings.

While my position on this specific issue does not require me to reach petitioner's second argument, I would note that I also believe the trial court's judgment must be reversed and remanded because the trial court improperly conducted its own investigation into the facts relating to service and petitioner suffered prejudice as a result of this error.