2013 IL App (4th) 121071-U

NO. 4-12-1071

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 9, 2013
Carla Bender
4th District Appellate
Court, IL

In re: The Application of the County Collector for Judgment and Order of Sale Against Lands and Lots Returned Delinquent for the Nonpayment of General Taxes for the Year 2003,	)	Appeal from Circuit Court of Morgan County No. 07TX19
DENNIS D. BALLINGER, Petitioner-Appellant,	)	
v.	)	Honorable
SILVAN E. NERGENAH and JANICE B. NERGENAH, Respondents-Appellees.	)	Richard T. Mitchell, Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court held the trial court properly granted the petition for relief from judgment as its finding the property owner did not receive notice was not against the manifest weight of the evidence and the tax deed was void.

¶ 2 In 2004, respondents, Silvan E. and Janice B. Nergenah, owned an 80-acre parcel of farmland in Morgan County which was sold to petitioner, Dennis D. Ballinger, for taxes due for tax year 2003. In 2007, petitioner represented he provided respondents with the statutorily required notice of the tax delinquency proceedings and requested a tax deed from the trial court. In 2011, respondents filed a "Petition to Set Aside Tax Deed" alleging the deed was void because petitioner failed to provide notice to Janice. In 2012, the trial court granted respondents' request to set aside the tax deed.

¶ 3 Petitioner appeals, arguing (1) respondents' petition is untimely, and (2) the trial

court erred in setting aside the tax deed because (a) the question of notice cannot be "re-litigated in the absence of fraud," and (b) it had jurisdiction to conduct the tax sale. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Initial Proceedings

¶ 6 Respondents owned an 80-acre parcel of farmland (Morgan County parcel No. 02-25-100-003) which was sold in November 2004 to petitioner for taxes due for tax year 2003.

¶ 7 In June 2007, petitioner filed a petition requesting the trial court to issue a tax deed, stating the redemption period would expire on November 16, 2007. He submitted a "Take Notice" to the Morgan County clerk for mailing to respondents. See 35 ILCS 200/22-10, 22-25 (West 2006). The notice described the property as located at "SE Cor of Brockhouse Rd & Stakes Rd. Concord, Illinois," and included the parcel number. Petitioner listed respondents' addresses as "42 Book Ln." and "R.R. 1 Box 166" in Jacksonville. Notices sent by certified mail to the Book Lane address were returned as nondeliverable "Unable to Forward." Notices sent by certified mail to the "R.R. 1 Box 166" address were returned as "Insufficient Address." Petitioner published the take notice in the Waverly Journal between June 29, 2007, and July 13, 2007.

¶ 8 On November 26, 2007, petitioner requested the trial court to issue a tax deed for the property. By affidavit, petitioner stated the sheriff served written notice personally to Silvan and Janice. He also stated Silvan and Janice could not, upon diligent inquiry, be found in Morgan County and he sent, by certified mail, notices to respondents at "R.R. 1 Box 166" in Jacksonville.

¶ 9 The same day, the trial court ordered issuance of the tax deed. It found "[t]hat it

has jurisdiction of the subject matter hereof and all the parties hereto" and petitioner had complied with all the statutory requirements relating to tax sales. The court ordered the county clerk to issue a tax deed and placed petitioner in possession of the property. Petitioner recorded the deed on November 6, 2008.

¶ 10 B. The Set-Aside Proceedings

¶ 11 On August 31, 2011, respondents filed a "Petition To Set Aside Tax Deed" alleging the tax deed should be set aside because petitioner failed to provide notice. Respondents attached an affidavit stating "during the years 1980 through the spring of 2003 their mailing address was R.R. #1, Box 166, Chapin, Illinois 62628. That address was later changed to 1960 Staake Road." In 2007, their residential address was "12 Ivywood Drive" in Jacksonville and Silvan maintained a business address at "1960 Staake Road" in Chapin. They attached city directories from 2006 and 2007 listing their address at Ivywood and the Staake Road address as in Chapin. Respondents stated they paid taxes on the property in tax years 2004 through 2009.

¶ 12 In January 2012, respondents filed an amended petition asserting the tax deed was void because no copy of the take notice was left at or mailed to Janice's usual place of abode. They admitted, on August 6, 2007, Silvan was served with the take notice at the Staake Road address and a take notice for Janice was left with Silvan at that time.

¶ 13 In February 2012, petitioner filed a motion to dismiss respondents' petition. Petitioner argued it is a petition pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)) and filed in excess of two years after the judgment from which relief was sought.

¶ 14 In October 2012, the trial court held an evidentiary hearing on respondents'

petition. Janice testified she and Silvan, her husband, moved from their home on Staake Road in 2003. Since 2005, they had lived on Ivywood Drive in Jacksonville. Janice changed her address with the post office after each move. A copy of her driver's license issued in February 2007 showed her address at Ivywood Drive. Janice never received notice and first learned of problems with taxes on the property in 2011. Silvan had not received a tax bill for the property and went to pay the taxes. On cross-examination, Janice admitted the "R.R. 1 Box 166" address was the same as the Staake Road address as it had been changed for 9-1-1 purposes. She also admitted she signed for the notice in Morgan County case No. 07-TX-18 on July 5, 2007, at the Staake Road address. Respondents redeemed the delinquent taxes and that case was dismissed. The record suggests petitioner was the tax purchaser in Morgan County case No. 07-TX-18, a case involving another parcel.

¶ 15 Silvan testified he was the fourth generation in his family to own the property. The property was one of several parcels in the area owned by respondents. The property had previously been held in trust and was transferred out of the trust in 2003. A trustee's deed, recorded December 10, 2003, was stipulated into evidence. No one had claimed ownership of the property and Silvan continued to hire someone to farm the land.

¶ 16 Michael Ballinger, petitioner's son, testified he conducted a search through "Net Detective" to find property owners' addresses. He only found the rural route and Book Lane addresses for respondents. On cross-examination, he admitted he did not search the county voter registration rolls, Secretary of State's driver's license records, or the Polk Directory.

¶ 17 After the testimony and the parties' arguments, the trial court took the matter under advisement.

¶ 18 C. The Trial Court's Order

¶ 19 On November 5, 2012, the trial court issued its written order, which stated in relevant part,

> "Petitioner had attempted abode service on Janice Nergenah. In order to comply with 735 ILCS 5/2-203, a copy of the service papers must be left at the defendant's usual place of abode and a copy mailed to the defendant's usual place of abode. That was not done in this case. The Court further finds that the attempted service by publication failed due to lack of diligent inquiry. Therefore, the Court had not obtained jurisdiction over the Respondent, Janice B. Nergenah, and the orders directing issuance of a tax deed and possession are void. The amended petition to set aside tax deed is granted."

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Petitioner appeals, arguing (1) respondents' petition is untimely, and (2) the trial court erred in setting aside the tax deed because (a) the question of notice cannot be "re-litigated in the absence of fraud," and (b) it had jurisdiction to conduct the tax sale. Respondents assert the two-year statute of limitations does not apply because the tax deed is void as Janice did not receive notice. Alternatively, they argue petitioner fraudulently represented to the court he provided notice in order to obtain the tax deed. We address the parties' arguments in turn.

¶ 23 A. Jurisdiction

¶ 24 Petitioner contends the trial court's order is a final order under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), and respondents do not argue otherwise. Section 22-80(a) of the Property Tax Code states, "[a]ny order of court vacating an order directing the county clerk to issue a tax deed based upon a finding *** that the tax sale was otherwise void[] *shall* declare the tax sale to be a sale in error pursuant to Section 21-310 of this Act [(35 ILCS 200/21-310 (West 2006))]" and "*shall* direct the county collector to refund to the tax deed grantee." (Emphases added.) 35 ILCS 200/22-80(a) (West 2006). See also *In re Application of County Collector (Phoenix Bond & Indemnity Co. v. Mattingly)*, 367 Ill. App. 3d 34, 40, 854 N.E.2d 244, 250 (2006) (section 22-80(b) of the Property Tax Code does not apply where deed was void). The November 5, 2012, order did not include provisions required by section 22-80(a) of the Property Tax Code and is not a final order.

¶ 25 Illinois Supreme Court Rule 304(b)(3) (eff. Feb. 26, 2010) provides an appeal may be made from an order granting or denying any of the relief requested by a section 2-1401 petition. As the ruling appealed is an order granting the relief requested by a section 2-1401 petition, we find we have jurisdiction to consider this appeal under Rule 304(b)(3).

¶ 26 B. Standard of Review

¶ 27 Petitioner does not include a statement of the applicable standard of review in his brief as required by Illinois Supreme Court Rule 341(h)(3) (eff. July 1, 2008) ("The appellant must include a concise statement of the applicable standard of review for each issue."). Respondents assert a trial court's grant of a section 2-1401 petition "after an evidentiary hearing should be reviewed under the deferential standards of abuse of discretion and manifest weight of the evidence" and "[t]he abuse-of-discretion standard applies to a [section] 2-1401 review even

where an issue addressed by the trial court is a question of law."

¶ 28 Petitions seeking relief from void judgments are section 2-1401 petitions. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 105, 776 N.E.2d 195, 202 (2002). Historically, Illinois courts applied the abuse of discretion standard to a trial court's grant or denial of a section 2-1401 petition. *People v. Vincent*, 226 Ill. 2d 1, 14-16, 871 N.E.2d 17, 26-28 (2007). In *Vincent*, the supreme court stated, "the operation of the abuse of discretion standard is the result of an erroneous belief that a section 2-1401 petition 'invokes the equitable powers of the court, as justice and fairness require.' " *Id.* at 15, 871 N.E.2d at 27 (quoting *Elfman v. Evanston Bus Co.*, 27 Ill. 2d 609, 613, 190 N.E.2d 348, 350 (1963)). The supreme court held where "a court enters either a judgment on the pleadings or a dismissal in a section 2-1401 proceeding, that order will be reviewed, on appeal, *de novo*." *Id.* at 18, 871 N.E.2d at 28. The court did not directly address other situations, but it noted "[t]he abuse of discretion standard is not tied to any quantum of proof" and the grant or denial of relief is traditionally reviewed under the manifest-weight-of-the-evidence standard. *Id.* at 17, n. 5, 871 N.E.2d at 28, n. 5.

¶ 29 Questions of law are reviewed *de novo*. *Martin v. Keeley & Sons, Inc.*, 2012 IL 113270, ¶ 25, 979 N.E.2d 22. Illinois courts apply the *de novo* standard of review where a section 2-1401 petitioner requests relief based on the allegation the judgment is void. *Deutsche Bank National Trust Co. v. Hall-Pilate*, 2011 IL App (1st) 102632, ¶ 12, 957 N.E.2d 924. The *de novo* standard of review does not apply to factual questions decided by the trial court, and a trial court's findings of fact are reviewed under the manifest-weight-of-the-evidence standard of review. See *Shulte v. Flowers*, 2013 IL App (4th) 120132, ¶ 19, 983 N.E.2d 1124; *S.I. Securities v. Powless*, 403 Ill. App. 3d 426, 440, 934 N.E.2d 1, 12 (2010).

¶ 30 In this case, we have a mixed standard of review: We will uphold the trial court's findings of fact unless those findings are against the manifest weight of the evidence, but whether the tax deed is void as a matter of law is reviewed *de novo*.

¶ 31 C. Petitioner's Timeliness Claim

¶ 32 Petitioner argues respondents' section 2-1401 petition is untimely because it did not "allege that either of them were under a mental disability or duress" or petitioner "fraudulently concealed anything" to circumvent the two-year statute of limitations.

¶ 33 Section 22-45 of the Property Tax Code provides tax deeds are "incontestable" except by direct appeal, but relief may be had under section 2-1401 of the Code "in the same manner and to the same extent as may be had under that Section with respect to final orders and judgments in other proceedings." 35 ILCS 200/22-45 (West 2006); see also 35 ILCS 200/22-45 (West 2012) (current version of section 22-45 expressly permits postjudgment motions under section 2-1203 of the Code). Ordinarily, a section 2-1401 petition for relief from judgment must be filed within two years of the entry of the order or judgment. 735 ILCS 5/2-1401(c) (West 2010). However, section 2-1401 petitions can be used to collaterally attack a void judgment. 735 ILCS 5/2-1401(f) (West 2010). Such petitions may be brought at any time and are not subject to the two-year statute of limitations. *Sarkissian*, 201 Ill. 2d at 104, 776 N.E.2d at 201-02. In other words, section 2-1401 has "expressly differentiated petitions collaterally attacking judgments on voidness grounds from all other types of collateral attacks." *In re Application of the County Collector (Devon Bank v. Miller)*, 397 Ill. App. 3d 535, 542, 921 N.E.2d 462, 471 (2009) (hereinafter *Devon Bank*).

¶ 34 Petitioner's reliance on case law some 20 to 40 years old fails to consider

legislative changes to section 22-45 of the Property Tax Code, which now expressly permits section 2-1401 petitions. Moreover, he omits any acknowledgment a void judgment is not subject to the two-year statute of limitations. This is the very argument respondents assert permits their petition to be heard and the basis for the trial court's ruling. In their response to petitioner's motion to dismiss, respondents cited to *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 497 N.E.2d 1156 (1986), to support their argument they did not need to comply with section 2-1401's statute of limitations. The supreme court in *Thill*, 113 Ill. 2d at 308, 497 N.E.2d at 1161-62, stated "a party attacking a judgment for lack of personal jurisdiction due to defective service of process is not restricted by either the time limitations or the 'due diligence' requirements of section 2-1401 of the Code of Civil Procedure." Petitioner makes no argument *Thill* was wrongly decided, is no longer controlling law, or its rule does not apply to tax deeds. Petitioner's argument the petition is untimely is unpersuasive.

¶ 35 D. Petitioner's Other Claims

¶ 36 1. *Petitioner's "Relitigation" Argument*

¶ 37 Petitioner contends when the trial court ordered issuance of the tax deed, it found "all notices had been given according to law" and, pursuant to *Smith v. D.R.G., Inc.*, 63 Ill. 2d 31, 344 N.E.2d 468 (1976), this issue "may not be re-litigated in the absence of fraud."

¶ 38 Petitioner's reliance on older case law restricting collateral attacks on tax deeds to incidents of fraud is misplaced. The supreme court in *Smith* based its decision on *Urban v. Lois, Inc.*, 29 Ill. 2d 542, 194 N.E.2d 294 (1963), which in turn based its decision on the 1961 version of the Revenue Act. In 1961, the Revenue Act did not mention petitions for relief from judgment. See Ill. Rev. Stat. 1961, ch. 120, ¶ 747. The 1971 version of the Revenue Act in

Smith did mention petitions for relief from judgment (Ill. Rev. Stat. 1971, ch. 120, ¶ 747), but the supreme court held to its position such petitions could only assert the deed was procured by fraud. *Smith*, 63 Ill. 2d at 36, 344 N.E.2d at 470; see also *Dahlke v. Hawthorne, Lane & Co.*, 36 Ill. 2d 241, 245, 222 N.E.2d 465, 467 (1966) (holding property owners could not collaterally attack finding notices had been given "unless vitiated by fraud"). The law has changed over the past 50 years; perhaps most notable is the repeal of the entire Revenue Act of 1939 in 1994. See Pub. Act 88-455, art. 32, § 32-20 (eff. Jan. 1, 1994). It was not entirely clear a petition seeking relief from void judgments was a section 2-1401 petition until 2002. See *Sarkissian*, 201 Ill. 2d at 104-05, 776 N.E.2d at 201-02. Thus, the older cases petitioner relies on stating section 2-1401 petitions are limited to incidents of fraud may have not have considered section 2-1401 petitions available for attacking void judgments. But see *In re Application of County Treasurer of Cook County (Central National Bank in Chicago v. Congua),* 92 Ill. 2d 400, 408, 442 N.E.2d 216, 220 (1982) (adhering to previous holdings collateral relief "in tax-deed cases is limited to those cases where fraud is proved *or* the judgment is void" (emphasis added)). In short, "an allegation of fraud is not always required to successfully challenge a tax deed in a section 2-1401 petition." *In re County Treasurer & Ex-Officio County Collector of McDonough County*, 361 Ill. App. 3d 504, 507, 837 N.E.2d 947, 950 (2005).

¶ 39 Petitioner's argument a tax purchaser's compliance with notice requirements cannot be collaterally attacked appears particularly anachronistic in light of section 22-45 of the Property Tax Code. Section 22-45 of the Property Tax Code expressly provides section 2-1401 petitions are permitted to collaterally attack tax deeds. The grounds for relief are limited to:

"(1) proof that the taxes were paid prior to sale;

(2) proof that the property was exempt from taxation;

(3) proof by clear and convincing evidence that the tax deed had been procured by fraud or deception by the tax purchaser or his or her assignee; or

(4) proof by a person or party holding a recorded ownership or other recorded interest in the property that he or she was not named as a party in the publication notice as set forth in Section 22-20, and that the tax purchaser or his or her assignee did not make a diligent inquiry and effort to serve that person or party with the notices required by Sections 22-10 through 22-30." 35 ILCS 200/22-45 (West 2006).

Petitioner's argument would permit a scenario where property owners would not be able to contest a tax purchaser's compliance with the notice provisions, despite never receiving notice, because the circuit court originally found the purchaser complied with those provisions. This conflicts with section 22-45(4), which expressly permits such collateral attacks and reflects a different statutory scheme than the one in place 50 years ago. As discussed below, this argument raises procedural due process questions.

¶ 40 To summarize, within the two-year statute of limitations, the property owner has the four grounds provided in section 22-45 to argue the tax deed should be set aside. 35 ILCS 200/22-45 (West 2006). Where two years have passed, the property owner is limited to arguing he or she was under a legal disability, duress, the grounds for relief were fraudulently concealed, or the deed was void. 735 ILCS 5/2-1401(c), (f) (West 2012). We note respondents cannot

frame their argument within section 22-45(4) because they are outside of the two-year statute of limitations, nor can they argue petitioner failed to strictly comply with the notice requirements, an argument limited to within 30 days of the entry of the order. See *In re Application of the County Treasurer & Ex-Officio County Collector of Cook County (Hammond v. S.I. Boo, L.L.C.)*, 386 Ill. App. 3d 906, 908-09, 899 N.E.2d 432, 434-35 (2008) (hereinafter *Hammond*) (rejecting argument, made five years after order issuing tax deed, the deed was void because the notice failed to include the courthouse address). Respondents can, and do, argue Janice did not receive *any* notice complying with the Property Tax Code.

¶ 41 2. *Petitioner's "Jurisdiction" Argument*

¶ 42 Petitioner cites and quotes several cases "dealing with defective notices" and summarily concludes the "court obtained jurisdiction when the [c]ounty [c]ollector made application to conduct the tax sale. Once that jurisdiction is obtained, it continues throughout the entire proceeding and simply because Janice *** was not personally served with the Take Notice but was served via substitute service does not rise to the level of fraud as required by the Statute." Petitioner does not include a direct citation, but our review of cases in his brief revealed no support for this assertion. It is unclear if petitioner is arguing the trial court had personal jurisdiction over Janice or if he is again arguing respondents must show fraud to set aside the deed.

¶ 43 Illinois courts have held the circuit court acquires subject-matter jurisdiction when the county collector applies for judgment and order of sale. See *Wilder v. Finnegan*, 267 Ill. App. 3d 422, 425, 642 N.E.2d 496, 499 (1994). Courts have also stated "any doubt about the fulfillment of the notice requirements goes to whether the court should order the tax deed issued,

not whether the court has jurisdiction in the matter." *Hammond,* 386 Ill. App. 3d at 909, 899 N.E.2d at 435; see also *Wilder*, 267 Ill. App. 3d at 425, 642 N.E.2d at 499 ("a determination of whether a party has been given the notice required goes to whether the court should order the tax deed to issue and not to whether the court has jurisdiction in the proceeding"). Petitioner appears to interpret these cases to hold a tax deed is valid regardless of whether the circuit court has personal jurisdiction over the property owners or notice was afforded. This is incorrect.

¶ 44 In *Devon Bank*, a case relied on by respondents, the First District addressed whether the tax deed was void because of a lack of diligent inquiry to determine the property owners and serve notice, and whether the failure to provide notice violated the owner's due process. *Devon Bank*, 397 Ill. App. 3d at 537, 921 N.E.2d at 466. The appellate court concluded the tax purchaser's use of a title company's computerized tract index to determine the property owner was not a diligent inquiry or effort. *Id.* at 545, 921 N.E.2d at 472. The court observed there was no question the circuit court had subject-matter jurisdiction to enter the tax deed; rather, the question concerned the circuit court's acquisition of personal jurisdiction over the property owner. *Id.* at 547, 921 N.E.2d at 474. The court stated:

> "Unless the defendant enters a general appearance, a court can acquire personal, or *in personam*, jurisdiction only where there has been service of process on a defendant in the manner prescribed by statute. *Thill*, 113 Ill.2d at 309[, 497 N.E.2d 1156]; [citations]. Illinois courts have often held that tax sale proceedings are *in rem* and that, therefore, once the county collector files the application for judgment, the circuit court retains jurisdiction to

enter all orders supplemental to the tax sale. [Citation.]

However, a court's acquisition of *in rem* or *quasi in rem* jurisdiction over property or a defendant's interest in property is no different for purposes of due process. *Shaffer v. Heitner*, 433 U.S. 186, 212 *** (1977). Although due process does not require actual notice before the government may take an owner's property, it does require some notice. See, *e.g.*, *Jones v. Flowers*, 547 U.S. 220, 226 *** (2006). That notice must be ' "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." ' *Jones*, 547 U.S. at 226, *** quoting [*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)]. For example, in *Mullane*, the Supreme Court held that although publication notice may constitute sufficient notice under certain circumstances, publication notice is insufficient to apprise 'known persons whose whereabouts [were] also known of substantial property rights.' *Mullane*, 339 U.S. at 320 ***." *Id.* at 547-48, 921 N.E.2d at 474-75.

The court found the statutory notices requirements set forth in the Property Tax Code, "when followed, do comport with due process" but "those notice procedures were simply not followed." *Id.* at 548, 921 N.E.2d at 475. Accordingly, "this total lack of notice means that the circuit court never acquired personal jurisdiction over [the property owner], even though this action could be

described as *in rem* or *quasi in rem*" and the deed was void. *Id.* at 548, 921 N.E.2d at 475.

¶ 45 As *Devon Bank* points out, the question of a circuit court's jurisdiction to issue the tax deed is separate from questions of personal jurisdiction, notice, and due process. There is no question the trial court had subject-matter jurisdiction in this case. The real question is whether it had personal jurisdiction over Janice. The Property Tax Code provides a comprehensive means, when complied with, to ensure notice is provided to interested parties who are potentially subject to the loss of their property. Section 22-15 of the Property Tax Code requires "a copy of the notice to be sent by registered or certified mail, return receipt requested, to [the individual] at his or her usual place of residence." 35 ILCS 200/22-15(a) (West 2006). Section 22-15 of the Property Tax Code requires the notice to be published in a newspaper as set forth by section 22-20 (35 ILCS 200/22-20 (West 2006)) and personal service upon all interested parties "if upon diligent inquiry they can be found in the county." 35 ILCS 200/22-15 (West 2006). The Property Tax Code's notice requirements, when followed, do comport with due process. *Devon Bank*, 397 Ill. App. 3d at 548, 921 N.E.2d at 475.

¶ 46 The trial court found petitioner did not comply with the Property Tax Code's notice requirements. It expressly found petitioner did not serve or mail a copy of the notice to Janice's "usual place of abode." Petitioner does not contest Janice was not personally served but asserts she was "served via substitute service." While due process does not require actual notice, it does require *some* notice. *Id.* at 548, 921 N.E.2d at 475. Despite this threshold, petitioner does not articulate how Janice would have notice or offer clarification as to what "substitute service" he refers. Respondents admitted Silvan was served with notice in this case at his place of business and a copy for Janice was left with him there. Petitioner does not argue this complies

with the Property Tax Code, which requires notice be left at the place of abode (35 ILCS 200/22-15 (West 2006)), or notice to one spouse is imputed to another. He does not contest the evidence Janice was not aware of the delinquent taxes until 2011, some four years after the tax deed. Petitioner refers to the fact notices were sent by certified mail, but these notices were returned as undeliverable and for insufficient address. In *Jones*, the United States Supreme Court considered a similar situation where tax sale notices were sent by certified mail to the property owners and the post office returned the notices as " 'unclaimed.' " *Jones*, 547 U.S. at 224. The Supreme Court held "that when mailed notice of a tax sale is returned unclaimed, [the party] must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Id.* at 225. The Court added: "We do not think that a person who actually desired to inform a real property owner of an impending tax sale of a house he owns would do nothing when a certified letter sent to the owner is returned unclaimed." *Id.* at 229.

¶ 47 Here, Michael Ballinger testified he made no additional effort to locate Janice or her home address other than using an online search database. It was obvious something was wrong with the addresses when the post office returned them as nondeliverable and for insufficient address. It is common knowledge rural route addresses have been replaced and petitioner should have been aware such an address was outdated. Moreover, the evidence showed Janice's home address was discoverable if petitioner had consulted the local telephone directory. See *In re Application of County Collector (Apex Tax Investments, Inc. v. Lowe)*, 225 Ill. 2d 208, 231, 867 N.E.2d 941, 953 (2007) (concluding *Jones* does not require an "open-ended search" but noting tax purchaser checked city and suburban phone directories and voter

registration records for property owners' current address).

¶ 48 Petitioner notes respondents had been served with notice in *another* proceeding (presumably Morgan County No. 07-TX-18) and argues Janice, in the *other* case, "was served with a Take Notice personally and substitute service was perfected on her husband Silvan by serving her with that Take Notice." Notice in an entirely different proceeding does not serve as notice in the instant case. Last, petitioner provides no argument how the publication service, which the court found was not in compliance with section 22-10 of the Property Tax Code (35 ILCS 200/22-10 (West 2006)), provided notice to Janice or comports with due process. See *Jones*, 547 U.S. at 237 (quoting *Mullane*, 339 U.S. at 317) ("notice by publication is adequate only where 'it is not reasonably possible or practicable to give more adequate warning' "). Petitioner has offered no argument how the trial court's findings are against the manifest weight of the evidence or how his failure to comply with the statutory notice requirements comport with due process.

¶ 49 Based on its findings, the trial court concluded it lacked personal jurisdiction over Janice and the deed was void. A court order is void as a matter of law "where the court which entered it lacked jurisdiction, exceeded its authority, or lacked the inherent power to enter the order." *Wilder*, 267 Ill. App. 3d at 425, 642 N.E.2d at 499. Petitioner did not provide the statutorily required notice and the court lacked jurisdiction over Janice. The deed was void as a matter of law and the court properly granted respondents' section 2-1401 petition.

¶ 50 E. Respondents' Fraud Claim

¶ 51 We need not address respondents' alternative argument petitioner's representations to the trial court statutory notice provisions had been followed constituted fraud.

¶ 52 III. CONCLUSION

¶ 53 We affirm the trial court's judgment. We remand with directions for the trial court to amend its order to comply with section 22-80(a) of the Property Tax Code (35 ILCS 200/22-80(a) (West 2006)) and order respondents to pay the delinquent taxes owed.

¶ 54 Affirmed and remanded with directions.