

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (4th) 150566-U

NO. 4-15-0566

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 5, 2016

Carla Bender

4th District Appellate
Court, IL

In re: The Application of the County Treasurer and Ex-)	Appeal from
Officio County Collector of Macon County, Illinois,)	Circuit Court of
for Order of Judgment and Sale Against Real Estate)	Macon County
Returned Delinquent for the Nonpayment of General)	No. 12TX84
Taxes for the Year 2008, JEFFREY PYATT, and)	
TOWN & COUNTRY BANC)	
MORTGAGE SERVICES, INC.,)	
Petitioners-Appellees,)	
v.)	Honorable
CATHERINE BALLINGER,)	Scott B. Diamond,
Respondent-Appellant.)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* A tax sale certificate of purchase issued to respondent is void, with no right to reimbursement, because she failed to record a tax deed within one year after the expiration of the period of redemption, as section 22-85 of the Property Tax Code (35 ILCS 200/22-85 (West 2014)) required, and because none of the tolling circumstances in that section are present in this case.

¶ 2 Respondent, Catherine Ballinger, appeals from the trial court's declaration that her tax sale certificate of purchase for 730 Wildwood Drive, Mt. Zion, Illinois, is void because she failed to record a tax deed for that property within one year after the expiration of the period of redemption, as section 22-85 of the Property Tax Code (35 ILCS 200/22-85 (West 2014)) required.

¶ 3 In our *de novo* review (see *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 232 (2001); *Mills v. McDuffa*, 393 Ill. App. 3d 940, 948 (2009)), we conclude the trial court was correct. None of the tolling circumstances in section 22-85 are present in this case, and in the absence of any tolling circumstance, failure to record a tax deed within the requisite time makes the tax sale certificate of purchase "absolutely void with no right to reimbursement." 35 ILCS 200/22-85 (West 2014). Therefore, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On November 20, 2009, respondent, Catherine Ballinger, bought 730 Wildwood Drive, Mt. Zion, Illinois, in a tax sale. See 35 ILCS 200/21-90 (West 2008). The Macon County clerk issued her a tax sale certificate of purchase. See 35 ILCS 200/21-250 (West 2008).

¶ 6 On May 21, 2012, respondent filed a petition, in which she requested the circuit court to order the issuance of a tax deed conveying 730 Wildwood Drive to her if that property was not redeemed by October 25, 2012. See 35 ILCS 200/22-30 (West 2008).

¶ 7 On July 10, 2012, the circuit clerk sent, by certified mail, a "Take Notice" to each of the three persons whom respondent or her assignee had designated, namely, the county clerk, Donald W. Dicken, and Sheila R. Pasley. The "Take Notice" warned that "the period of redemption from the sale [would] expire OCTOBER 25, 2012." See 35 ILCS 200/22-10 to 22-25 (West 2008).

¶ 8 On November 16, 2012, after the period of redemption expired and no one redeemed the property, respondent filed an application for an order directing the county clerk to issue a tax deed. That same day, the circuit court granted respondent's application by entering two orders: (1) an order directing the county clerk to issue a tax deed to respondent for 730

Wildwood Drive and (2) an order that the sheriff assist respondent or her assignee in obtaining possession of the property.

¶ 9 Afterward, however, respondent never recorded a tax deed for 730 Wildwood Drive. Nor did she have the county clerk issue her a tax deed for the property.

¶ 10 On August 14, 2013, petitioner, Jeffrey Pyatt, filed a petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)), asking the circuit court to vacate its order of November 16, 2012, directing the county clerk to issue a tax deed. He stated two grounds for this request. First, 730 Wildwood Drive was subject to a mortgage in favor of Town and Country Banc Mortgage Services, Inc. (hereinafter, "the bank"), as the assignee of the original mortgagee, Town and Country Bank, and no "Take Notice" ever was served on the bank. Second, notwithstanding the record title, petitioner believed he was the true owner of 730 Wildwood Drive. By way of explanation, he alleged that a warranty deed for the property had been "erroneously delivered to" Dicken and Pasley, who, unbeknownst to him, had breached an "Agreement for Warranty Deed in Escrow" by failing to establish an escrow and by failing to pay real estate taxes for 2008 and thereafter.

¶ 11 On February 5, 2015, the bank filed its own petition to vacate the order for a tax deed. This petition likewise was pursuant to section 2-1401, and it had three grounds. First, respondent never recorded a tax deed within one year after the expiration of the period of redemption, as section 22-85 (35 ILCS 200/22-85 (West 2014)) required. Second, respondent obtained the order by fraud in that she failed to do an adequate search for interested parties, such as the bank. Third, the Federal National Mortgage Association had an interest in 730 Wildwood Drive, and thus the order was "an unconstitutional exercise of state power over a federally held interest in the subject property."

¶ 12 On February 13, 2015, petitioner filed an amended petition to vacate the order for a tax deed, in which he, too, raised the failure to record a tax deed within one year after the expiration of the period of redemption. See 35 ILCS 200/22-85 (West 2014).

¶ 13 Respondent made essentially two arguments in opposition to the section 2-1401 petitions. First, the bank recorded its mortgage *before* Dicken and Pasley recorded their warranty deed, and consequently the bank, being outside the chain of title, had no right to receive a "Take Notice." See *Landis v. Miles Home Inc. of Illinois*, 1 Ill. App. 3d 331, 334-35 (1971). Second, respondent argued that "when there [was] pending litigation[,] the time constraints imposed by [section 22-85 were] tolled during the pendency of that litigation" (we quote from her brief). In that connection, respondent cited two cases: *In re Application of The County Treasurer & ex officio County Collector of Cook County, Illinois, For Judgment of Real Estate*, 309 Ill. App. 3d 181 (1999) (hereinafter, *Bowman*); and *In re Application of The County Treasurer & ex officio County Collector of Cook County for Order of Judgment & Sale of Lands & Lots Upon Which All or a Part of the General Taxes for Five or More Years are Delinquent*, 225 Ill. App. 3d 349 (1992) (hereafter, *In re Application*).

¶ 14 On June 10, 2015, the trial court entered judgment in favor of petitioner and the bank and against respondent. The reason was respondent's failure to record a tax deed within one year after the expiration of the period of redemption. See 35 ILCS 200/22-85 (West 2014). The court explained:

"5. *** [I]n her [p]etition[,] [respondent] stated the redemption period had expired on October 25, 2012.

6. *** [O]n November 16, 2012[,] the Honorable R.C. Bollinger signed an [o]rder directing the issuance of a [t]ax [d]eed.

7. *** [O]n November 16, 2012[,] the Honorable R.C. Bollinger signed an [o]rder for [p]ossession.

8. *** [N]ormally[,] [respondent] would have until October 25, 2013[,] to record the [d]eed.

9. [Respondent] neither had the [c]lerk issue a [t]ax [d]eed[,] nor did she record a [t]ax [d]eed.

10. *** [I]t is clear to the [c]ourt that [respondent] was not prevented from obtaining a [d]eed by injunction or [o]rder of any [c]ourt, or by the refusal or inability of any [c]ourt to act upon the application for a [t]ax [d]eed or by the refusal of the [c]lerk to execute the same [d]eed.

11. *** [I]t is clear [respondent] did not record a [t]ax [d]eed within one year from the time of redemption."

¶ 15

II. ANALYSIS

¶ 16

Section 22-85 provides as follows:

"Failure to timely take out and record deed; deed is void. Unless the holder of the certificate purchased at any tax sale under this Code takes out the deed in the time provided by law, and records the same within one year from and after the time for redemption expires, the certificate or deed, and the sale on which it is based, shall, after the expiration of the one year period, be absolutely void with no right to reimbursement. If the holder of the certificate is prevented from obtaining a deed by injunction or order of any

court, or by the refusal or inability of any court to act upon the application for a tax deed, or by the refusal of the clerk to execute the same deed, the time he or she is so prevented shall be excluded from computation of the one year period. Certificates of purchase and deeds executed by the clerk shall recite the qualifications required in this Section." 35 ILCS 200/22-85 (West 2014).

¶ 17 Respondent interprets section 22-85 as meaning that "when there is litigation pending[,] the time constraints imposed by [section 22-85] are tolled during the pendency of that litigation," and in support of that interpretation, she cites *Bowman* and *In re Application*.

¶ 18 But that is not what section 22-85 says, and *Bowman* and *In re Application* are distinguishable. Under section 22-85, it is not the pendency of any litigation whatsoever that tolls the time for recording a tax deed. Rather, as the statute plainly says, the time is tolled only under the following circumstances: (1) an injunction or order of a court prevented the tax purchaser from obtaining a tax deed, (2) a court was unable to act upon the application for a tax deed or refused to do so, or (3) the clerk refused to execute a tax deed. *Id.*

¶ 19 In *Bowman*, for example, the "respondents challenged [the] petitioner's tax deed petition and application for an additional 10 months after the redemption period expired," and consequently, "the court was prevented from acting on [the] petitioner's application for an order directing issuance of the tax deed until 11 months after the period of redemption expired." (Emphases added.) *Bowman*, 309 Ill. App. 3d at 190. Likewise, in *In re Application*, the tax purchaser applied for tax deeds two weeks after the expiration of the redemption period and obtained a prove-up date, but from that date and for the next eight months, an objector "actively pursued his alleged redemption right to the parcels." *In re Application*, 225 Ill. App. 3d at 361.

The appellate court found that "while competing interest in the parcel[s] were unresolved and were being litigated, *the court was unable legally to order tax deeds* to issue and the statute was tolled." (Emphasis added.) *Id.* Thus, *Bowman* and *In re Application* are applicable only if litigation prevented the circuit court from acting on respondent's application for a tax deed.

¶ 20 Litigation posed no such obstacle in the present case. There was no "refusal or inability of [the] court to act upon the application for a tax deed." 35 ILCS 200/22-85 (West 2014). Rather, on November 16, 2012, the circuit court *granted* respondent's application for a tax deed and ordered the county clerk to issue a tax deed to her. It would make no sense to say that the subsequent section 2-1401 petitions prevented the court from acting upon respondent's application for a tax deed; the petitions *presupposed* that the court had granted the application, as the court had in fact done—otherwise, there would have been no order to vacate. See *In re Application of The County Treasurer & ex officio County Collector of Cook County*, 292 Ill. App. 3d 1017, 1020-21 (1997).

¶ 21 That petitioner filed his section 2-1401 petition on August 14, 2013, before the expiration of the one-year deadline, should not have hindered respondent from going ahead and obtaining a tax deed from the county clerk and filing it. She had a valid order in her hands. The mere filing of a section 2-1401 petition had no effect on the validity and force of that order.

¶ 22 In fact, section 22-45 of the Property Tax Code (35 ILCS 200/22-45 (West 2014)) contemplated challenges to tax deeds that already had been issued. That section provided:

"Tax deeds issued under Section 22-40 [(35 ILCS 200/22-40 (West 2014))] are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. However, relief from such order may be had under Sections 2-1203 or 2-

1401 of the Code of Civil Procedure [(735 ILCS 5/2-1203, 2-1401 (West 2014))] in the same manner and to the same extent as may be had under those Sections with respect to final orders and judgments in other proceedings. The grounds for relief under Section 2-1401 shall be 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." *Id.*

If respondent had recorded a tax deed within one year after the expiration of the period of redemption, as section 22-85 of the Property Tax Code (35 ILCS 200/22-85 (West 2014)) required her to do, petitioner and the bank would have been limited, in their section 2-1401 petitions, to the grounds set forth in section 22-45.

¶ 24 For the foregoing reasons, we affirm the trial court's judgment.

¶ 25 Affirmed.