

NOTICE

Decision filed 04/16/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140360-U

NO. 5-14-0360

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> APPLICATION OF THE COUNTY)	Appeal from the
TREASURER AND EX-OFFICIO COUNTY)	Circuit Court of
COLLECTOR OF FRANKLIN COUNTY,)	Franklin County.
ILLINOIS, FOR ORDER OF JUDGMENT)	
AND SALE AGAINST REAL ESTATE)	
RETURNED DELINQUENT FOR THE)	
NONPAYMENT OF GENERAL TAXES FOR)	
THE YEAR 2006)	
)	
(American Homeowner Preservation Fund LP,)	
)	
Petitioner-Appellee,)	
)	
v.)	No. 13-TX-18
)	
Scott Sieron and Illinois Realty Group Holdings,)	
LLC,)	Honorable
)	Thomas J. Dinn III,
Respondents-Appellants).)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Cates and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred by not ordering petitioner to reimburse respondent Scott Sieron applicable amounts due under section 22-80(b) of the Illinois Property Tax Code (35 ILCS 200/22-80(b) (West 2012)), when it entered an order setting aside a tax deed procured by Sieron.

¶ 2 The respondents, Scott Sieron and Illinois Realty Group Holdings, LLC (IRGH), appeal the December 27, 2013, order of the circuit court of Franklin County that granted a motion for summary judgment in favor of the petitioner, American Homeowner Preservation Fund LP (American), to set aside tax deed, and denied the respondents' motion to dismiss. For the following reasons, we vacate the order and remand with instructions.

¶ 3 FACTS

¶ 4 The facts of this case are not in dispute and are summarized as follows. On March 19, 2013, American filed a petition to set aside tax deed. The petition alleged, *inter alia*, that on December 18, 2007, pursuant to an order of judgment and sale against the subject property for nonpayment of 2006 general taxes, the property was sold and a tax sale certificate of purchase was issued. The tax sale certificate was assigned to Sieron on March 16, 2010. On March 25, 2010, Sieron filed at the county clerk's office a notice of extension of period of redemption from tax sale.¹ On March 29, 2010, Sieron filed a petition for tax deed.

¶ 5 Also on March 29, 2010, Sieron caused to be issued to certain parties "take notices" via which notice of the hearing for tax deed was provided, as well as notice of the last date for redemption of the property. A *lis pendens* for the petition for tax deed

¹American asserted in its appellee brief that Sieron obtained the extension via a motion. However, the record reflects that the extension was in fact obtained via a notice of extension filed with the county clerk.

was also filed on March 29, 2010. Sieron had published in the Benton Evening News on March 31, 2010, April 1, 2010, and April 2, 2010, notice of the purchase of taxes at tax sale. On July 26, 2010, the circuit court entered an order directing the issuance of a tax deed. The tax deed was issued to Sieron and recorded on September 24, 2010. Sieron conveyed the property to IRGH by quitclaim deed on April 16, 2012, which was recorded on April 19, 2012.

¶ 6 The record reflects that, in the petition to set aside tax deed, it was alleged that, by virtue of a duly recorded assignment of mortgage on June 9, 2008, Stewardship Fund, LP (Stewardship), had an interest in the property when the petition for tax deed and *lis pendens* were filed on March 29, 2010. However, Stewardship received no notice of the tax sale, the tax deed proceeding, or the expiration of the redemption period. The "take notice" was not sent to Stewardship, nor was the publication addressed to Stewardship. The mortgage was later assigned by Stewardship to Stewardship Fund No. 5 LP, and to American, the same of which was recorded on January 16, 2013.

¶ 7 On June 11, 2013, American filed a motion for summary judgment on its petition to set aside the tax deed, pursuant to section 22-45(4) of the Illinois Property Tax Code (Code) (35 ILCS 200/22-45(4) (West 2012)), in which it alleged that Sieron did not provide proper notice to Stewardship prior to obtaining the tax deed. American requested that the circuit court grant its motion for summary judgment, vacate the July 26, 2010, order directing the issuance of the tax deed, set aside the tax deed as void, declare void the quitclaim deed from Sieron to IRGH, and declare the mortgage assigned by Stewardship to American a valid lien on the property.

¶ 8 On December 27, 2013, the circuit court entered an order granting American's motion for summary judgment, denying the respondents' motion to dismiss, and setting aside as void the tax deed to Sieron and the subsequent quitclaim deed to IRGH. The circuit court did not order American to reimburse Sieron the amounts he expended in acquiring the tax deed, pursuant to section 22-80(b) of the Code (35 ILCS 200/22-80(b) (West 2012)). After the motion to reconsider was denied, the respondents filed a timely notice of appeal.

¶ 9 ANALYSIS

¶ 10 The respondents conceded at oral argument that the tax deed was void on the basis of improper notice. The sole issue raised on appeal is whether the circuit court erred by not ordering American to reimburse Sieron the applicable amounts under section 22-80(b) of the Code (35 ILCS 200/22-80(b) (West 2012)), when it granted American's motion for summary judgment to set aside the tax deed. "A summary judgment is properly granted when the pleadings, depositions and affidavits show no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law." *Hagy v. McHenry County Conservation District*, 190 Ill. App. 3d 833, 842 (1989). "In appeals from summary judgment rulings, a reviewing court conducts a *de novo* review." *Makowski v. City of Naperville*, 249 Ill. App. 3d 110, 115 (1993).

¶ 11 In this case, the respondents contend that the circuit court erred when it granted American's motion for summary judgment to set aside tax deed without complying with section 22-80(b) of the Code (35 ILCS 200/22-80(b) (West 2012)), which requires American to reimburse Sieron the applicable amounts he expended in procuring the tax

deed. Section 22-80(b) provides, *inter alia*, that "any order *** finding that an order directing the county clerk to issue a tax deed should be vacated *shall* direct the party who successfully contested the entry of the order to pay to the tax deed grantee *** within 90 days after the date of the finding" certain expenses incurred by the tax deed grantee. (Emphasis added.) 35 ILCS 200/22-80(b) (West 2012)). The section further provides that "[n]o final order vacating any order directing the county clerk to issue a tax deed shall be entered *** until the payment has been made" and "[i]f the payment is not made within the 90-day period, the petition to vacate the order directing the county clerk to issue a tax deed shall be denied with prejudice, and the order directing the county clerk to issue a tax deed shall remain in full force and effect." 35 ILCS 200/22-80(b) (West 2012).

¶ 12 American argues, *inter alia*, that the reimbursement requirements of section 22-80(b) do not apply because an exception within that section was triggered when Sieron requested an extension of the redemption period. The corresponding provision states that the party who successfully contests the entry of an order issuing a tax deed shall reimburse the tax deed grantee certain expenses "unless *the court on motion of the tax deed petitioner* extends the redemption period." (Emphasis added.) 35 ILCS 200/22-80(b) (West 2012). We find the exception inapplicable here because Sieron did not file a motion with the circuit court to extend the redemption period. Rather, he filed a notice of extension with the county clerk and the extension was obtained without involvement

from the circuit court.² Accordingly, the extension of time exception does not apply here and American should have been ordered to reimburse Sieron within 90 days the amounts in accordance with the pertinent provisions of section 22-80(b).

¶ 13 Although American was entitled to judgment as a matter of law to the extent that the tax deed should have been set aside due to Sieron's failure to provide proper notice, the circuit court erred by failing to order American to reimburse Sieron the appropriate amounts as required by section 22-80(b). See 35 ILCS 200/22-80(b) (West 2012).

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, we vacate the December 27, 2013, order of the circuit court of Franklin County, that granted American's motion for summary judgment, and remand with instructions for the circuit court to enter a new order setting aside the tax deed and ordering American to reimburse Sieron within 90 days the appropriate amounts in accordance with the provisions of section 22-80(b) of the Code (35 ILCS 200/22-80(b) (West 2012)).

²Section 21-385 of the Code provides that if a petition for tax deed is filed prior to the expiration of the period of redemption, action by the circuit court is required in order to extend the redemption period. 35 ILCS 200/21-385 (West 2012). Here, Sieron filed the notice of extension four days before filing the petition for tax deed. Accordingly, filing the notice with the county clerk was proper and action by the circuit court was not necessary. See 35 ILCS 200/21-385 (West 2012).

¶ 16 Order vacated and remanded with directions.