

Nos. 1-13-2442 & 1-13-2443 cons.

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re APPLICATION OF COUNTY) Appeal from the Circuit Court
TREASURER AND *ex officio* COUNTY) Of Cook County.
COLLECTOR OF COOK COUNTY for)
Illinois General Taxes for the Year 2007 on) No. 12 COTD 1117
Tax Deeds)
)
(MNM Realty, Inc., Petitioner-Appellee, v.) Honorable
Maria Pappas, Treasurer, Respondent-) Robert W. Bertucci,
Appellant).) Judge, Presiding.

In re APPLICATION OF COUNTY) Appeal from the Circuit Court
TREASURER AND *ex officio* COUNTY) Of Cook County.
COLLECTOR OF COOK COUNTY for)
Illinois General Taxes for the Year 2007 on) No. 12 COTD 1060
Tax Deeds)
)
(MNM Realty, Inc., Petitioner-Appellee, v.) Honorable
Maria Pappas, Treasurer, Respondent-) Robert W. Bertucci,
Appellant).) Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Connors and Delort concurred in the judgment.

ORDER

Held: The decision of the circuit court was affirmed where the court correctly determined that the assessor's errors in the description of the petitioner's properties satisfied section 21-310(a)(5) of the Property Tax Code (35 ILCS 200/21-310(a)(5) (West 2012)) and therefore properly granted the petitions for sales in error.

¶ 1 The petitioner, MNM Realty, Inc. (MNM), filed two petitions for sales in error pursuant to section 21-310(a)(5) of the Property Tax Code (Code) (35 ILCS 200/21-310(a)(5) (West 2012)), on the basis that the assessor erred when it described the properties in its official record cards as one-story, rather than more than one-story properties. The circuit court granted both petitions, and the County Treasurer and County Collector of Cook County (collectively "the County") now appeal, arguing that the assessor's errors fail to satisfy section 21-310(a)(5) of the Code. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 2 On July 20, 2009, MNM purchased two parcels of property, identified as Permanent Index Numbers (PIN) 20-17-319-012-0000 and 20-08-412-043-0000, by purchasing delinquent real estate taxes for the year 2007. On February 17, 2012, MNM filed petitions for the tax deeds on the properties. The petition related to PIN 20-17-319-012-0000 was filed under the circuit court case no. 12-COTD-1117; the petition related to PIN 20-08-412-043-0000 was filed under the circuit court case no. 12-COTD-1060.

¶ 3 On March 22, 2013, MNM filed petitions for sales in error pursuant to section 21-310(a)(5) of the Code, alleging that both properties were erroneously assessed as one-story residential buildings when they were, in fact, 1 ½ and two-story buildings. The circuit court consolidated and heard both petitions, and on June 25, 2013, the court granted them, setting aside the tax sales and ordering the County to refund to MNM the funds it paid for the purchase. The County appealed both circuit court orders, and upon its motion, these appeals were consolidated.¹

¹ Circuit court case no. 12-COTD-1117 is the subject of appeal no. 1-13-2442, and circuit court

¶ 4 On appeal, the County argues that the circuit court improperly construed section 21-310(a)(5) of the Code. The County contends that section 21-310(a)(5) requires that the error warranting the vacatur of a tax sale be material or detrimental to the interests of one of the parties, and the errors at issue here were neither. The County's argument raises an issue of statutory interpretation, which we review *de novo*. *In re Application of Douglas County Treasurer*, 2014 IL App (4th) 130261, ¶ 24.

¶ 5 The fundamental rule of statutory interpretation is to ascertain and give effect to the legislature's intent. *In re Application of Douglas County*, 2014 IL App (4th) 130261, ¶ 30. The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *Id.* A statutory provision should be evaluated as a whole, with each provision construed in connection with other sections. *Id.* Further, while we first consider the statutory language, we presume that the legislature, in enacting a statute, did not intend absurdity or injustice. *Id.* Where the statutory language is clear and unambiguous, we enforce it as written without reading into it exceptions, conditions, or limitations not expressed by the legislature. *Martin v. Office of State's Attorney of Cook Cnty.*, 2011 IL App (1st) 102718, ¶ 10. However, a statute is not ambiguous simply because the parties disagree as to its meaning. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 132011, ¶ 21. "A statute is ambiguous if its meaning cannot be interpreted from its plain language or if it is capable of being understood by reasonably well-informed persons in more than one manner." *Id.* Where a statute is capable of more than one reasonable interpretation, the statute is ambiguous and we may

consider extrinsic aids to construction, such as the legislative history. *Martin*, 2011 IL App (1st) 132011, ¶ 20.

¶ 6 Section 21-310(a)(5) of the Code provides:

"(a) When, upon application of the county collector, the owner of the certificate of purchase, or a municipality which owns or has owned the property ordered sold, it appears to the satisfaction of the court which ordered the property sold that any of the following subsections are applicable, the court shall declare the sale to be a sale in error:

* * *

(5) the assessor, chief county assessment officer, board of review, board of appeals, or other county official has made an error (other than an error of judgment as to the value of any property)." 35 ILCS 200/21-310(a)(5) (West 2012).

¶ 7 The purpose of section 21-310 of the Code "is to afford relief to [the] taxbuyer from the effect of caveat emptor purchases at void tax sales." *LaSalle National Bank v. Hoffman*, 1 Ill. App. 3d 470, 476 (1971) (discussing section of Illinois Revised Statutes which preceded current section of the Code). The Code has "specific enumerated grounds for sales in error," and those "grounds are exclusive." *In re Petition of Declaration of Sale in Error*, 256 Ill. App. 3d 159, 166 (1994). Subsection (a)(5) of section 21-310 of the Code provides simply that the circuit court shall declare a tax sale void if it is satisfied that the assessor "has made an error (other than an error of judgment as to the value of any property)."

¶ 8 "Error" is defined as "an act or condition of often ignorant or imprudent deviation from a code of behavior;" or "an act involving an unintentional deviation from truth or accuracy: a mistake in perception, reasoning, recollection, or expression;" or "a mistake in the proceedings of a court of record in matters of law or of fact." Webster's Third New International Dictionary 772

(1993). According to the Code, a tax sale shall be declared void if the court is satisfied that the assessor has made an error of any kind "*other than an error of judgment as to the value of any property.*"² We do not find this language to be ambiguous. Here, MNM based its petitions on the assessor's undisputed errors in its description of the number of stories of the properties, not in the judgment as to the value of the property. As the County admits in its brief, the language of the statute does not state that the error must be "material," and we enforce the statute as written without reading into it exceptions, conditions, or limitations not expressed by the legislature.

¶ 9 In so finding the language of section 21-310(a)(5) unambiguous, we note that the County correctly states that the purposes of the Code's provisions for delinquent tax sales "is to encourage buyers at tax sales, to increase the collection of taxes, and to free land to reenter the stream of commerce and bear its share of the tax burden." *In re Application of Anderson*, 162 Ill. App. 3d 815, 820 (1987). However, we disagree with the County's contention that our interpretation of the Code frustrates these purposes and leads to absurd results, namely that the County is prevented from collecting necessary tax revenues based upon an innocuous error in the assessor's records.

¶ 10 First, we find the County's reliance on *The Lake County Board of Review v. Illinois Property Tax Appeal Board (PTAB)*, 2013 IL App (2d) 120429, ¶ 10, for its position that broadly construing "error" leads to absurd results is misplaced because the *PTAB* court was interpreting a tax exemption provision. Tax exemption statutes are to be construed narrowly and strictly in

² Regarding the proper standard of review, MNM argues that section 21-310(a)(5) is discretionary and that we should review the circuit court's decision for an abuse of discretion. We disagree with MNM as the parties do not dispute the facts pertaining to the alleged "error" involved, but rather only dispute whether that error constitutes an "error" under the statute.

favor of taxation, and the *PTAB* court did just that when it construed the exemption for open spaces and improved lands which conserve landscaped areas to include only those improvements that facilitate the existence of the open space or landscaped area. *Id.* The court stated that there was nothing in its portion of the Code which indicated that "the legislature intended to create an enormous tax shelter whereby any parcel of property associated in some way with a [landscaped area] would escape taxation," noting that the taxpayer bears the burden of proving he is exempt. *Id.* Here, we are not construing a tax exemption statute nor do we find the language of section 21-310(a)(5) remotely similar to the language at issue in *PTAB*. Rather, section 21-310(a)(5) may be invoked by either the County or the tax purchaser and the burden is on the petitioner to prove to the court's satisfaction that the assessor made an error other than an error of judgment as to the property's value, which MNM did so here.

¶ 11 While the County also strenuously argues that the assessor often makes mistakes, we agree with the trial court which remarked that this section of the Code applies to both the County and the tax purchaser, meaning the effect of an assessor error does not unequally affect one party as either may petition to vacate the sale on the basis of an assessor error such as the one presented here. As MNM points out in its brief, "[i]t is because the assessor is responsible" for assessing so many properties that the "legislature contemplates errors are inevitable" and provides the protection of allowing sales in error. Additionally, we agree with MNM that the protection afforded section 21-310(a)(5) does not frustrate the Code's purpose of collecting necessary tax revenue, but actually encourages tax purchasers who might otherwise hesitate to bid on properties if they had no recourse in vacating the sale on the basis of an error. Furthermore, vacating the sale here does not eliminate the County's opportunity to collect all tax

revenue for the properties as another purchaser would be required to pay back taxes plus interest in order to obtain the tax deeds.

¶ 12 The County's reliance on *In re Matter of the Application of the County Collector*, 169 Ill. App. 3d 180, 183 (1988), for its contention that errors must be material is also misplaced. In *County Collector*, the alleged error in the description of the property was contained in the tax deed and was deemed a scrivener's error. *Id.* The property's correct description had been included in the petitioner's certificate of purchase and petition for issuance of the tax deed. *Id.* at 182. The court noted that a sale in error "refers to errors occurring before, or contemporaneously with, the tax sale and forfeiture, except for two specifically defined instances listed in section 260 of the Act that could occur after the issuance of a certificate of purchase." *Id.* at 183. The court further stated that, [i]n every instance, however, the 'error' in question affects substantial rights of ownership; whereas, in this case, rights of ownership are not affected by the misdescription where the error is little more than a scrivener's error and substantial rights have already vested." *Id.* More importantly, the court found that the petitioner, the previous property owner, had no standing to seek a sale in error under the Code. *Id.* at 186.

¶ 13 Unlike the alleged error in *County Collector*, the errors in the descriptions of the properties in this case occurred before or contemporaneously with the tax sale and were contained in the certificate of purchases and in the petitions for the issuance of the tax deeds. We cannot deem the errors at issue here as "scrivener's errors" such as the error in *County Collector* in which the tax deed changed the property description from "3.65-acre parcel" to "3.65-parcel and other lands." Furthermore, unlike in *County Collector*, MNM has standing to petition for a sale in error. Thus, we do not find *County Collector* to be applicable to the facts of our case.

¶ 14 Finally, we reject the County's contention that the error regarding the number of the stories of the properties was an error as to the judgment of the properties' values. There is nothing in the record supporting the fact that the number of stories necessarily impacts the court's judgment as to the value of the properties or that the circuit court based its decision on any error in the alleged values of the properties.

¶ 15 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.