2014 IL App (2d) 130778-U
No. 2-13-0778
Order filed May 6, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LLOYD GIORDANO,	)	Appeal from the Circuit Court
	)	of Boone County.
Petitioner-Appellant/Cross-Appellee,	)	
	)	
v.	)	No. 2010-TX-17
	)	
GREGORY TRZASKA,	)	Honorable
	)	C. Robert Tobin, III,
Respondent-Appellee/Cross-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly vacated its issuance of a tax deed to the petitioner, where the petitioner procured the tax deed based on false representations in his affidavit concerning his efforts to locate the respondent property owner. Nevertheless, the court did not abuse its discretion in declining to award Rule 137 sanctions to the respondent property owner.

¶ 2 In 2006, petitioner, Lloyd Giordano, purchased the general property taxes for parcel identification number (PIN) 07-18-200-001 at the annual Boone County tax sale. The property was owned by respondent, Gregory Trzaska. In 2010, following the expiration of the redemption period, Giordano petitioned for the tax deed. In December 2010, based solely on the representations made in Giordano's affidavit supporting his petition, the trial court granted the

petition for tax deed. Trzaska subsequently filed a section 2-1401 petition to vacate the tax deed (735 ILCS 5/2-1401 (West 2010)). He argued that, pursuant to section 22-45 of the Property Tax Code (35 ILCS 200/22-45 (West 2010)), one of the four permitted bases for vacating an order for tax deed had been met, *i.e.*, the tax deed had been procured by fraud or deception. The trial court agreed, finding that Giordano set forth false and deceptive statements in his affidavit. It vacated the deed. Trzaska then petitioned for Rule 137 sanctions (Il. S. Ct. Rule 137 (eff. Feb. 1, 1994)), which the trial court denied. Giordano appeals, challenging the trial court's decision to vacate the tax deed. Trzaska cross-appeals, challenging the trial court's denial of Rule 137 sanctions. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2002, Trzaska, with the help of his family, purchased the property at issue for investment purposes. The property consists of 98 acres of farm land, 78 of which are actively farmed. It is one of two parcels of adjoining farm land in Boone County. The other parcel, which Trzaska also purchased, is much smaller, just six acres. Each of the adjoining parcels has its own PIN. The deed transferring the property was recorded in the Boone County recorder's office. The deed listed Trzaska's address as being in Lake Forest, and the collector's office sent the tax notices to that address.

¶ 5 Trzaska's family regularly purchases real estate for investment purposes, and, for the past 20 years, Attorney Michael Manuel, of the law firm Goldberg Kohn, Ltd., has represented them in these transactions. The deed named Manuel as the attorney handling the transaction, and it listed his address at Goldberg Kohn as 55 E. Monroe Street, Suite 3700, Chicago. In 2008, Goldberg Kohn moved within the same building, to suite 3300. According to Manuel, even after the move, he continued to receive mail that was addressed to the old suite number, because those in charge of

delivering the mail knew the location of his firm within the building. In the several years following the change of suite numbers, he was aware of only one instance where he did not receive mail addressed to the old suite number.

¶ 6 In 2003, Trzaska moved to Barrington. Trzaska completed paperwork with the Boone County Treasurer, advising that tax notices should now be sent to the Barrington address. In 2006, Trzaska moved to Inverness. Trzaska neglected to inform the Boone County treasurer of the change of address. He did, however, instruct the U.S. Postal Service to forward his mail to the Inverness address. When the forwarding order expired, Trzaska stopped receiving his tax notices. Trzaska did not pay his taxes for the years 2006 through 2009. The delinquency amount totaled $1,661.90.

¶ 7 According to Trzaska, he first heard that he was delinquent in his tax payments in March 2010. A neighbor in Boone County had called his aunt, Barbara Colletier, who managed the property, to inform her that the taxes were going to be sold at the upcoming county tax sale. If sold, and following a maximum three-year redemption period, the purchaser of the taxes would have the opportunity to pursue a judgment for tax deed after following certain statutory protocol, including a diligent inquiry and effort to find and serve the interested party.

¶ 8 Upon hearing that the taxes were to be sold, Trzaska called the Boone County treasurer and asked how much was owed on the two parcels. Trzaska obtained a certified check for the amount due on the smaller parcel and wrote *only* that PIN number on the check. He omitted the PIN number of the larger parcel at issue in this appeal, and did not pay its delinquent taxes. Trzaska claimed that the person he spoke with at the Treasurer's office told him that making note of only one of the PINs was sufficient. He also claimed that person told him he would not need to fill out paperwork for a change of address; the person would change it for him.

¶ 9 In fact, Giordano had already purchased the taxes on the larger farm parcel, prior to Trzaska's alleged conversation with the county treasurer. Giordano purchased the delinquent 2006 taxes on November 14, 2007. He then paid the 2007, 2008, and 2009 taxes as they became delinquent. Giordano sent a notice of the 2007 sale four months after purchase to Trzaska's Barrington address (which, of course, Trzaska allegedly never received because he had since moved to Inverness). That letter was returned with a note that the forwarding order had expired. However, other than that single act, Giordano did not promptly begin the necessary inquiry to seek a judgment for the tax deed. Rather, he extended the redemption period to the three-year maximum and set the date as November 14, 2010 (a Sunday). Then, sometime between May 2010 and August 2010, he visited the property for the first time. He noticed that the property was actively being farmed.

¶ 10 On July 30, 2010, Giordano petitioned for the tax deed for the property. Giordano attached an affidavit making various representations of diligence to the court. For example, Giordano reported that:

> "16. The persons named at the end of this paragraph [*i.e.*, Trzaska] cannot upon diligent inquiry be found in Boone County, *nor on diligent inquiry can the place of residence of [Trzaska] be ascertained*. Such inquiry was made prior to three (3) months before the expiration of the extended period of redemption.
>
> *Unless otherwise hereinafter stated*, such inquiry consisted of a search of the local telephone directories, telephone calls to persons listed therein bearing the same names, inquiry of persons residing in the vicinity of the above described real estate, inquiry *at* the applicable address, if any, listed in the pertinent documents in the office of the Recorder of Deeds of the county aforesaid, and (in the case of heirs and devisees) inquiry *at* the

> applicable addresses, if any listed in the pertinent documents in the office of the Probate or Civil Divisions of the Clerk of the Circuit Court in the county aforesaid, and inquiry *at* the applicable addresses, if any, listed in the documents of the Collector of the county aforesaid." (Emphases added.)

Neither party disputes that the Boone County collector listed Trzaska's addresss as 130 Rainbow Road in Barrington, and the Boone County recorder of deeds listed Trzaska's address as 640 Old Elm Road in Lake Forest. Also, neither party disputes that Trzaska's attorney's address was listed on the deed itself.

¶ 11 Giordano also attested that he went to the subject property to speak with neighbors to seek the contact information of the owner (Trzaska) or occupant (the person farming the land):

> "Affiant interviewed neighbors (2 mature women) at 3785 Cherry Valley Rd. house across from East side of property; they did not know the owner or occupant of the subject property. The women stated that the property was originally owned by the Schlie brothers (bachelors) who lived in a house at the North side of Rossetter Rd. The Schlie brothers sold the property to someone from Chicago perhaps 10 years ago. The house was torn down."
>
> And,
>
> "Affiant interviewed neighbors (man and woman) at 3579 Cherry Valley Rd. house (at Wheeler [Road].) across from Southeast side of property; they did not know the owner or occupant of the subject property."

¶ 12 As is less critical to the instant appeal, the affidavit also stated that Giordano: (1) caused notice of the petition for tax deed to be published on August, 8, 10, and 11, 2010, in a Boone County newspaper, The Belvidere Republican; (2) described the activity on the property as "no

person observed. Corn field, vacant, creeks, surrounded by a black 4 board wood fence;" and (3) could not, upon diligent inquiry, find and serve Trzaska with notice in the county wherein the property at issue is located (*i.e.*, Boone County).

¶ 13 On December 2, 2010, the trial court entered an order for tax deed. It did so based solely on the representations made in Giordano's affidavit. It did not question Giordano in court. On March 8, 2011, the Boone County clerk issued the deed.

¶ 14 On March 22, 2011, Trzaska petitioned pursuant to section 2-1401 (735 ILCS 5/2-1401) (West 2010)) to vacate the order for deed and declare the issued deed a nullity. Tax deeds may only be vacated under section 2-1401 for a limited number of reasons, the primary reason offered by Trzaska being that Giordano procured the deed by fraud or deception (35 ILCS 200/22-45(3) (West 2010)). Trzaska complained that Giordano allowed the court to rely solely on an affidavit that set forth false statements and created a false impression of diligence.

¶ 15 On September 11, 2012, the trial court conducted a hearing on the motion to vacate. Giordano testified to his personal background. He has a bachelor's degree in engineering from the Illinois Institute of Technology and a masters in business administration from the University of Chicago. He worked for Motorola, where he was involved in computer technology. He retired in 1994. He began participating in tax sales in 1977, and he continued this practice in retirement. He estimated that he has been involved in 350 tax sales. He has acquired about 30 to 35 properties through the tax sales.

¶ 16 Trzaska, through his attorneys, questioned Giordano about his averment that he "inquired at" the "applicable addresses" listed on the "pertinent documents," *i.e.*, the Lake Forest, Barrington, and attorney addresses. For example, in regards to the Barrington address, Giordano testified:

"Q: So, unless otherwise stated, you told this court in this affidavit that you visited the addresses listed on the pertinent documents in the office of the recorder of deeds, right?

A: Yes.

Q: And one of the—and you also said that you visited, again, unless otherwise stated, that you visited the locations listed in the documents of the collector of the county, Boone County, right?

A: Yes.

Q: But you didn't, right? You didn't go to the [Barrington] Rainbow Road address, and you didn't otherwise state in this affidavit, right?

A: No. I didn't go to the [Barrington] Rainbow Road property; it's true.

Q: And you didn't otherwise state in the affidavit that you didn't go to the [Barrington] Rainbow Road property?

A: Apparently not.

Q: So the affidavit is false?

A: No. It was probably an oversight.

Q: It's an oversight, but it's also false.

A: Well, technically I guess it is.

Q: It's false.

A: I know that's—

Q: Not technically; it's false.

A: No, it's not.

Q: You made an oversight, and you submitted an affidavit that you swore to. And it is completely inaccurate on this point. Yes or no?

A: I didn't go to the property; that's true."

¶ 17 When asked why it was that he stated in his affidavit that he inquired at the "applicable addresses" when he did not, Giordano stated that the addresses listed on the pertinent documents were not, in fact, the "applicable addresses." Giordano stated that it was obvious the Lake Forest address was superseded by the Barrington address. Therefore, in Giordano's view, the Lake Forest address was not an applicable address. The Barrington address was outdated because Giordano received mail back indicating that the forwarding order had expired. Therefore, in Giordano's view, the Barrington address was not an applicable address. The attorney did not have a personal interest in the case. Therefore, in Giordano's view, the attorney's address was not an applicable address. Giordano further opined that the statute did not require him to search outside Boone County. Therefore, in Giordano's view, this was a second reason that none of the three addresses were applicable.

¶ 18 Giordano testified that he conducted an Internet search on a search engine called "Zaba Search." Giordano typed in the words "Gregory Trzaska" and requested all Illinois results. That search produced 89 similar names but no "Greg Trzaska" and no "G. Trzsaka." Giordano initially stated that the result "G. Trzaska" appeared, but then he corrected himself. Giordano could have found out more information about these 89 listed names, many of which were duplicates, but the website charged a fee, and Giordano did not pursue the search further.

¶ 19 Perhaps anticipating this testimony, Trzaska's attorneys instructed a paralegal at their firm to perform an Internet search of Trzaska. The paralegal reported the results of her Internet search in an affidavit that was submitted into evidence. The paralegal attested that she was able to locate Trzaska's present and accurate Inverness address in under 15 minutes. Specifically, she accessed the publicly available Google Search engine and typed the words "Greg Trzaska Barrington [*i.e.*,

the city listed in records available to Giordano]." The search resulted in a hit on "whitepages.com," which accurately showed Trzaska's Inverness address. Additionally, the "whitepages" website showed Trzaska's previous Barrington address. When the paralegal clicked on that address, it directed her to the Inverness address. This portion of the search took no more than five minutes and was free of charge. Next, the paralegal went to two additional public domains, "peoplefinder.com" and "ussearch.com." She entered the words "Greg Trzaska Illinois" into each of these sites. The "peoplefinder" website resulted in four "Greg Trzaskas," in Lake Forest, Barrington, Inverness, and Carpentersville. The "ussearch" websites resulted in five "Greg Trzaskas," repeating the aforementioned results with an additional Inverness result. Those searches required payment for more precise information, which the paralegal did not pursue. The latter portion of the search took approximately 10 minutes. Based on the affidavit, both parties, including Giordano, stipulated that the paralegal was able to locate Trzaska's present address using common Internet search methods on public domains within 15 minutes. The search took place approximately six months after Giordano conducted his Internet search for Trzaska's address.

¶ 20 Trzaska also submitted the affidavit of Warren Kelm, the farmer who farmed the property at issue. Kelm stated that he had been farming the property for the past six years. On or about March 14, 2011, Giordano called him and informed him that he, Giordano, now owned the property. Giordano told him that he obtained his contact information after asking neighbors in the area who farmed the property.

¶ 21 When questioned as to the apparent inconsistencies between Kelm's affidavit and his own (wherein he stated that the neighbors were unable to tell him who farmed the property), Giordano stated that Kelm was mistaken. He did not obtain Kelm's contact information from the

neighbors. Rather, he asked around the area for potential farmers to farm his property. He was not looking for the same farmer; he was looking for any farmer. According to Giordano, it was pure coincidence that he was referred to Kelm.

¶ 22 At the close of evidence the trial court took the matter under advisement. In a written order, it granted the petition to vacate the order for tax deed, finding that the deed had been procured based upon Giordano's fraudulent representations. It noted for the record that it did not believe Trzaska's claims that the person he spoke with at the treasurer's office told him that making note of only one PIN was sufficient to pay outstanding taxes, or that he would not need to fill out change-of-address paperwork. Still, Trzaska's actions leading to the tax sale were not at issue in this case; Giordano's actions in procuring the tax deed were at issue. The court explained its ruling:

> "Giordano made false statements to the court with the intent to deceive the court into believing that Trzaska could not be found and he did so with the ultimate goal of obtaining an order for tax deed from [the court]. As a starting point, it is material that [the court] did not ask any questions of Giordano [in initially issuing the deed]. If [it] had ***, the accuracy of the affidavit would be less of an issue. ***.
>
> Of additional importance is the intelligence and experience of [Giordano]. *** This is not an average person of average intelligence unfamiliar with the process.
>
> As for his assertion in his affidavit that he conducted a due diligent search, the question is *** whether Giordano knew that his actions did not rise to the level of due diligence. ***.
>
> Under the totality of the circumstances, Giordano displayed a pattern of deception. The property was being farmed, yet he made no reasonable inquiry to find the name and

> contact information of the person farming it. The original warranty deed named Trzaska's attorney and provided his address, yet Giordano made no efforts to contact that attorney to inquire as to Trzaska's location. He stated in his affidavit that he went to Trzaska's last known address and the applicable addresses listed in the pertinent documents in the office of the Recorder of Deeds; yet, this was false. He conducted an Internet search for Trzaska and *** he did not explore [the] 89 results because he would have been charged a fee. All of this shows a pattern by Giordano to keep his inquiry to a bare minimum with the hopes of not locating the property owner. However, while keeping his efforts low, he swore under oath [in his affidavit] that his efforts to locate Trzaska were greater than they were."

¶ 23 Giordano filed a motion to reconsider, and Trzaska filed a motion for Rule 137 sanctions (Il. S. Ct. R. 137 (eff. Feb. 1, 1994)). Rule 137 permits sanctions when a party files a motion that is not made in good faith or grounded in fact. *Id.* The sanctions may include the reasonable expenses incurred responding to the offending motion. *Id.* Trzaska argued that Giordano's motion for tax deed and accompanying affidavit were not made in good faith and were not grounded in fact. He stated that he had incurred $442,000 in legal fees in this case. Even reducing the fees based on the rate of the more junior attorneys at the firm or local counsel (at $305 per hour), the fees would be $273,000.

¶ 24 The trial court denied both motions. As to the Rule 137 sanctions, it stated, "none of us would be here if [Trzaska] would ha[ve] done what he was supposed to." The court did not believe Trzaska's claim that Boone County personnel told him not to worry about completing any paperwork to correct the tax issue. "I don't believe him at all. Just unbelievable." The court also noted that, as of March 2010, Trzaska knew: (1) he forgot to let the county know he had moved; (2) he forgot to pay his taxes; *and (3) the taxes had been sold*. This was before Giordano

had obtained the judgment for deed. In the court's view, if Trzaska had contacted his attorney at that point, before any judgment had been entered and before any litigation had begun, the whole matter could have been resolved with less than 10 hours of work by a competent attorney. This was not to say that Giordano did not also do wrong. However, Trzaska was not entitled to sanctions because he exacerbated the problem through his own negligence (beyond the simple negligence of not paying his taxes). The court stated: "[W]hen I balance what [] Supreme Court Rule 137 was intended to do, I just don't think it was intended to get to this point." The court did, however, award Trzaska approximately $24,000 in revenue generated from the land during Giordano's possession, order that Giordano's payment of the taxes be returned, and reinstate the 2002 deed by which Trzaska had originally acquired the property. This appeal and cross-appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, Giordano challenges the trial court's finding that Trzaska was entitled to have the order for deed vacated. Trzaska cross-appeals, arguing that the trial court abused its discretion in denying his request for Rule 137 sanctions. For the reasons that follow, we affirm the trial court on each issue.

¶ 27 A. Appeal: Vacating the Order for Deed

¶ 28 i. Criteria for Vacating the Order for Tax Deed and Standards of Review

¶ 29 Here, the trial court vacated the order for tax deed pursuant to section 2-1401 (735 ILCS 5/2-1401) (West 2010)). Section 22-45 of the Property Tax Code (35 ILCS 200/22-45 (West 2010)) limits the bases by which a tax deed may be vacated under section 2-1401. Section 22-45 states:

"[A] [t]ax deed [is] incontestable unless [the] order [is] appealed or relief [is]

petitioned. Tax deeds issued under Section 22-40 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 [s]ections 2-1203 or 2-1401 of the Code of Civil Procedure [735 ILCS 5/2-1203 or 735 ILCS 5/2-1401] in the same manner and to the same extent as may be had under those [s]ections with respect to final orders and judgments in other proceedings. The grounds for relief under [s]ection 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." 35 ILCS 200/22-45 (West 2010).

Here, the court applied the third subsection, concerning fraud or deception. Fraud in this context is a wrongful intent or an act calculated to deceive. *Murray v. Gerus*, 67 Ill. App. 3d 122, 124 (1978). The fourth subsection, concerning diligence, could not be used to *vacate* the deed, because Trzaska *was* named on the publication notice. However, the question of diligence did weigh into the court's determination, because the court found that Giordano falsely stated his own diligence in order to obtain the deed in the first place.

¶ 30 The parties state that the grant of a section 2-1401 petition is reviewed for an abuse of discretion, citing *Paul v. Gerald Adelman & Associates*, 223 Ill. 2d 85, 95 (2006). We disagree

and find the law cited by the parties to be outdated. In *Mills v. McDuffa*, 393 Ill. App. 3d 940, 945 (2009), this court applied to civil cases the section 2-1401 principles set forth in *People v. Vincent*, 226 Ill. 2d 1 (2007). *Vincent* explicitly stated that it is incorrect for courts to continue to view a section 2-1401 petition as a matter of judicial discretion, subject to an abuse-of-discretion review on appeal:

> "[T]he operation of the abuse of discretion standard is the result of the erroneous belief that a section 2-1401 petition 'invokes the equitable powers of the court' ***. When the legislature abolished the [common-law] writs in favor of today's statutory remedy, it became inaccurate to continue to view the relief in strictly equitable terms. *** Because relief is no longer purely discretionary, it makes little sense to continue to apply an abuse of discretion standard on review." *Id.* at 15-16.

The *Vincent* court essentially held that the standard by which we should review the trial court's disposition of a section 2-1401 petition depends upon the manner in which it was disposed. *Id*. at 15-17. Five types of final dispositions are possible in section 2-1401 litigation: "the trial judge may dismiss the petition; the trial judge may grant or deny the petition on the pleadings alone (summary judgment); or the trial judge may grant or deny relief after holding a hearing at which factual disputes are resolved." *Id*. at 9 (citing D. Simko, *Updating the Standard of Review for Petitions to Vacate Final Judgments*, 86 Ill. B. J. 34 (1998) (listing the five possible dispositions as dismissal, granting relief without an evidentiary hearing, denying relief without an evidentiary hearing, granting relief after an evidentiary hearing, and denying relief after an evidentiary hearing)). *Vincent* mandates that, where a trial court enters a judgment on the pleadings or a summary judgment in a section 2-1401 proceeding, that judgment will be reviewed *de novo* on appeal. *Vincent*, 226 Ill. 2d at 18. Although *Vincent* dealt with the dismissal of a section 2-1401

petition (possibility number one), the court stated that future analyses regarding the standard of review for a grant or denial of a section 2-1401 petition should "be *** grounded in the notion that each of the dispositions available in a section 2-1401 action is borrowed from our civil practice and pleadings rules." *Id*. at 17.

¶ 31 After *Mills*, this court split on the application of *Vincent* to section 2-1401 proceedings in civil cases. See, *e.g.*, *Rockford Financial Systems, Inc. v. Borgetti*, 403 Ill. App. 3d 321 (2010) (continuing to apply abuse-of-discretion review) (Jorgensen, J., specially concurring, disagreed with the application of that standard); *Domingo v. Guarino*, 402 Ill. App. 3d 690, 699 (2010) (the standard of review to be applied to a section 2-1401 determination following an evidentiary hearing is, per *Vincent*, the manifest-weight-of-the-evidence standard). Other cases within our court have declined to come down on either side of the split. See, *e.g.*, *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 32 (finding that the result of the case before it would be the same under either of the proposed standards). We, consistent with *Mills* and like *Domingo*, hold that *Vincent* instructs us to review a trial court's section 2-1401 determination following an evidentiary hearing according to the manifest-weight-of-the-evidence standard.

¶ 32 A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident, or if the finding is unreasonable, arbitrary, or not based on the evidence. *People v. Holman*, 402 Ill. App. 3d 645, 648 (2010). A trial court has the opportunity to observe the witnesses' demeanor; it is, therefore, in a superior position to determine the credibility of the witnesses and to resolve conflicts in their testimony. *People v. Richardson*, 234 Ill. 2d 233, 251 (2009).

¶ 33 ii. Evidence Supports Finding that Giordano Procured Deed with False Representations of Diligence

¶ 34 The Property Tax Code requires a tax purchaser to make a "diligent inquiry and effort" to

find and serve notice to an interested party prior to seeking the tax deed. 35 ILCS 200/22-15 (West 2010); *In re Application of the County Treasurer & Ex Officio County Collector of Cook County*, 2011 IL App (1st) 101966, ¶ 44. A diligent inquiry is "that kind of search or investigation which a diligent person, intent on ascertaining a fact, would usually and ordinarily make." (Internal quotation marks omitted.) *In re County Treasurer & Ex Officio County Collector of McDonough*, 361 Ill. App. 3d 504, 508-09 (2005). A "diligent inquiry" requires a consideration of what reasonable steps might be taken under the circumstances of the case. See, *e.g.*, *Apex Tax Investments v. Lowe (In re Application of the County Collector for Judgment)*, 225 Ill. 2d 208, 231 (2007).

¶ 35 Courts have found tax deeds fraudulently procured where the order for tax deed was granted following false statements in the affidavit. See, *e.g.*, *Schott v. Short*, 131 Ill. App. 2d 854, 860-61 (1971) (finding of fraud supported where purchaser falsely attested that he personally served joint owner). Additionally, courts have held that, "[w]here the deed contains information [from which the owner's contact information could be ascertained], and the purchaser fails to [act upon] it, there is sufficient evidence of bad faith to warrant concluding that the deed was procured by fraud." *Murray*, 67 Ill. App. 3d at 132 (finding of fraud supported where, in procuring the deed, purchaser failed to inform the court that the deed contained the contact information of the owner's attorney, and purchaser did not bother to contact the attorney).

¶ 36 Here, the evidence supports the trial court's finding that Giordano made false representations in his affidavit as to his diligence, that Giordano procured the order for tax deed based on these misrepresentations, and that this amounted to fraud. The evidence supports the trial court's finding of fraud on at least four points: (1) false representations concerning the attorney's address search, combined with bad faith in failing to investigate that obvious lead; (2)

false representations concerning the Lake Forest and Barrington address searches; (3) false representations as to the difficulty of locating the farmer, combined with bad faith in trying to locate the farmer; and (4) false representations as to the difficulty of finding Trzaska's present address, combined with bad faith demonstrated through a half-hearted Internet search. Although the case law would support affirming the trial court based on the presence of the first point alone (*Murray*, 67 Ill. App. 3d at 132), here, its ruling turned upon the totality of Giordano's misrepresentations, which combined to form the impression that he had performed a diligent inquiry to locate Trzaska, when, in fact, his search was not conducted in good faith. Therefore, although Giordano attacks each point in isolation, and although we respond to and reject each of Giordano's arguments, we affirm the trial court's ruling as a whole.

¶ 37 1. Attorney Contact Information

¶ 38 Giordano argues that he was not required to contact the attorney, and, even if a typical diligent search would have included contacting the attorney, the particular circumstances at play before him relieved him of doing so. Of course, had Giordano contacted the attorney, he would have located Trzaska. Attorney Manuel continues to represent Trzaska's family in real estate transactions, and his firm, along with Boone County local counsel, has represented Trzaska in this case, both before the trial court and here on appeal.

¶ 39 We first address whether a typical diligent search requires contacting the attorney, and we hold that, while not statutorily required, it is a reasonable step in most diligent searches. It is true that the Property Tax Code does not expressly require a tax purchaser to contact the attorney listed in the deed in order to satisfy the diligence requirement. See, *e.g.*, 35 ILCS 200/22-15 (West 2010) (portion of the code requiring diligent inquiry). Still, Illinois practice guides recognize that contacting an attorney is one of several reasonable steps that likely comprise a diligent search.

See Jeffrey S. Blumenthal & David R. Gray, Jr., *A Guide to Tax Deed and Indemnity Fund Proceedings*, Real Estate Taxation, §11.6(n) (Illinois Institute for Continuing Legal Education, 2012). And, as we have stated, courts have found the failure to do so may, *in some instances*, comprise sufficient bad faith to warrant the conclusion that the deed was procured by fraud. *Murray*, 67 Ill. App. 3d at 132.

¶ 40 We next address the circumstances Giordano believes made it unnecessary to contact the attorney. The strongest of Giordano's listed circumstances include: (1) the deed listing the attorney's name was eight years old; (2) the attorney did not have an office in Boone County or in a county adjacent to Boone County; and (3) the attorney did not list his phone number on the deed. Additionally, Giordano notes that, while not known to him at the time, Trzaska's attorney had moved suites within the same building, after the issuance of the 2002 deed. Giordano points to the attorney's testimony that he was aware of one instance in the several years following the move where mail addressed to his old suite was not received, and Giordano argues that there could have been many more instances. The trial court reasonably rejected the latter argument as "purely academic." Giordano never attempted to contact the attorney, so, whether the change of suite number would have created an obstacle was speculative. In any case, sending a letter that is not received is not the same as affirmatively searching for an attorney's contact information. The trial court was certainly within the bounds of reason when it inferred that an intelligent person such as Giordano should have been able to locate an attorney in a Chicago firm when armed with the attorney's name and 2002 firm address as a starting point. The circumstances listed by Giordano do not take this case outside the general practice guidelines that a tax purchaser should contact the attorney listed on the deed as part of a diligent search to locate the owner.

¶ 41 More importantly, regardless of whether Giordano should have contacted the attorney as

part of a good-faith search for Trzaska, Giordano falsely attested that he did. Giordano attested that he performed searches and made inquiries at the names and addresses listed in the pertinent documents at the office of the recorder of deeds. The attorney's name and address were listed on a pertinent document, the deed itself, at the office of the recorder of deeds, yet Giordano performed no search and made no inquiries following up on that information. It is that false representation of diligence, more than the absence of diligence itself, that supports the trial court's finding of fraud.

¶ 42 In sum, courts have held that fraud can be inferred from the bad faith that is demonstrated when a purchaser fails to follow up on information contained in the deed from which the truth concerning the person to be notified could have been ascertained. *Murray*, 67 Ill. App. 3d at 132. Here, not only did Giordano fail to follow up on the attorney's contact information that was contained in the deed, from which he likely could have located Trzaska, but he falsely represented that he *did* follow up on said information.

¶ 43 2. Lake Forest and Barrington Addresses

¶ 44 This brings us to Giordano's false representations concerning the Lake Forest and Barrington addresses. Again, in his affidavit, Giordano stated that he made inquiry "at the applicable addresses, if any, listed in the pertinent documents" at the relevant county offices. The Lake Forest address is listed on the 2002 deed in the office of the county recorder. The Barrington address is listed at the collector's office as the address to which tax notices should be sent. However, contrary to his affidavit, Giordano testified at the hearing that he did not visit these addresses. As we have stated, a finding of fraud may be supported where the purchaser's testimony at the hearing conflicts with the affidavit supporting the request for deed. *Short*, 131 Ill. App. 2d at 860-61.

¶ 45 Giordano urges that the trial court should not have inferred deceptive intent from the

discrepancy, where the discrepancy could be explained as a semantic misunderstanding. In Giordano's view, the trick is interpreting the word, "applicable." Giordano asserts that he, in good faith, did not believe the Lake Forest or Barrington addresses to be "applicable." He knew the Lake Forest address was no longer a current address on the tax roll. He knew that the Barrington address was no longer a current address because the 2007 certified mailing he sent to that address had come back marked "forwarding order expired." This made the addresses "inapplicable." To his line of thinking, because he stated he made inquiry "at" only the "applicable" addresses, he never stated he went to the Lake Forest or Barrington addresses. Therefore, his affidavit was truthful.

¶ 46 The trial court reasonably rejected this argument, which Giordano began to weave on the spot through his testimony. We agree with Trzaska that Giordano's explanation of the discrepancy amounts to word play. The only addresses listed on the pertinent documents, aside from the property at issue, were the Lake Forest address, the Barrington address, and the attorney's address. Giordano did not make inquiry "at" any of them.

¶ 47 We considered that the phrase "inquiry at" need not mean Giordano physically went to the property. However, this interpretation would be inconsistent with his argument that the addresses were not "applicable" to begin with, and, if they were applicable, he would have gone to them. In any case, this explanation would not have saved his averments concerning the attorney's address, which he did not physically visit or attempt to investigate in any way. Moreover, the surrounding text specifies that Giordano performed the listed tasks "unless otherwise stated," and thereby falsely assured the trial court that any nuance or exception would be affirmatively stated.

¶ 48 Giordano would have been in a stronger position to argue that the trial court should have viewed his word choice as a misunderstanding made in good faith if it had been an isolated

incident. Here, of course, the trial court found Giordano's word choice to be part of a "pattern" of deception. The question of whether the trial court should have given Giordano the benefit of the doubt concerning his word choice is one of credibility, to which the trial court is entitled deference. *Richardson*, 234 Ill. 2d at 251. Giordano has not persuaded us to upset the trial court's credibility determination.

¶ 49 3. Locating the Farmer

¶ 50 The evidence also supports the trial court's finding that Giordano did not diligently search for the farmer that farmed the property, *i.e.*, Kelm. Finding Kelm would have been an obvious step to be taken by a "diligent person, intent on ascertaining" Trzaska's contact information. *McDonough County*, 361 Ill. App. 3d at 508-09 (concerning the general standard for diligence). When Giordano visited the property, he noticed that it was actively farmed. The farmer would, logically, have Trzaska's contact information because he had contracted to farm the land. As Giordano himself testified regarding his own farming contracts, such a contract typically requires coordination between the parties concerning crop choice and payments.

¶ 51 Giordano attested that, after talking to the neighbors, he was unable to locate Kelm. Kelm attested that the neighbors *did* put him in contact with Giordano. Beyond the conflict between Giordano's and Kelm's affidavits, the bigger point is that, coincidence or not, Kelm proved reasonably easy to locate when finding a farmer suited Giordano's purposes. This, in combination with other shortcomings in Giordano's initial search, supports the trial court's finding that Giordano did not conduct his initial search in the good faith averred to in his affidavit.

¶ 52 4. Internet Search

¶ 53 Finally, Giordano's surface-level Internet search supports the trial court's finding of bad faith. Illinois Institute for Continuing Legal Education practice guides recognize Internet

searches as a likely component of a diligent inquiry to find the property owner. Blumenthal, *supra*, § 11.6(n). Giordano began an Internet search, but he did not complete it. His search on the single search engine, "Zaba," produced 89 leads. Because none of the leads contained the exact name "G. Trzaska" or "Gregory Trzaska," he determined that further inquiry would be pointless. In contrast, the parties stipulated that Trzaska's paralegal was able to find Trzaska's current address within five minutes using a simple Google search. With an additional 10 minutes, she was able to use two additional search engines to find five leads on Trzaska's current location.

¶ 54 We acknowledge that the trial court misstated the evidence when it stated that Giordano's Internet search led to 89 "G. Trzaska" results. Indeed, Trzaska corrected himself and testified that there were no results for "Gregory Trzaska" or for "G. Trzaska." However, that is not the point. The point is that the trial court found Giordano's Internet search to be half-hearted with unnecessary, self-imposed limits.

¶ 55 Also missing the point is Giordano's citation to case law stating that diligence does not require an endless, open-ended search. See, *e.g.*, *Jones v. Flowers*, 547 U.S. 220, 236 (2006) (discussing the *government's* burden to notify the owner *prior* to a tax sale); *Apex*, 225 Ill. 2d at 230 (the purchaser did not fraudulently procure the 1996 tax deed where he *accurately* reported numerous diligent steps, such as serving the law firm that prepared the owner's quitclaim deed, serving the mortgagee on the property, visiting the property and talking to neighbors, checking city and suburban phone directories, and checking voter registration records, but where he failed to follow up on a lead that the owner may have been in the hospital). Our case does not concern the failure to investigate a single lead balanced against an otherwise thorough and *accurately reported* search.

¶ 56 Recently, the Fourth District provided context for the *Jones* principle by stating that, while

a tax purchaser need not conduct an open-ended search, "all cases require a tax purchaser to pursue all lines of inquiry open to him." *Ballinger v. Moore*, 2014 IL App (4th) 130261, ¶ 45. A diligent inquiry must be "as full as the situation will permit." *Id*. ¶ 42 (quoting *Liepelt v. Baird*, 17 Ill. 2d 428, 432-33 (1959)). Therefore, "some cases may require only a quick investigation while others may require more effort and shoe leather." *Id*. ¶ 45. Additionally, that same court stated that, in "our contemporary, technologically connected society, a diligent individual would undoubtedly utilize the Internet—with its enormous reach and nearly instant results—to locate property owners and addresses." *Id*. We do not disagree with the Fourth District's assessment of the Internet's role in modern society, and, if a tax purchaser failed to utilize the Internet as part of his or her diligent search, he or she would be hard-pressed to explain why not. Regardless, here, the trial court did not approach the *Ballinger* standard and did not find against Giordano because he failed to perform a single precise step, such as searching the Internet. Rather, it found that Giordano failed to follow through on a *number* of logical steps that a sincere searcher might have taken, and, worse, that Giordano, in his best light, misstated the thoroughness of his search, and, in his worst, outright lied about it.

¶ 57 5. Giordano's Remaining Challenges

¶ 58 Giordano argues that the "diligent inquiry" requirement is limited to searches within the county in which the property is located. Giordano cites no case law for this proposition. In fact, it appears that courts have not addressed the territorial limitations of a diligent search since 1901, when our supreme court held that a diligent inquiry is to be made *without* reference to county lines. *Glos v. Boettcher*, 193 Ill. 534, 536 (1901).

¶ 59 Giordano argues that the following portion of the Property Tax Code *does* place territorial limitations on a diligent search for the owner:

> "If any owner or party interested, *upon diligent inquiry and effort, cannot be found and 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." (Emphasis in Giordano's brief.) 35 ILCS 200/22-15 (West 2010).

Giordano misreads the plain language of the statute. This portion of the statute in no way states that a tax purchaser's diligent search for the owner is limited to the county in which the property was located. To the contrary, it states that, if the owner cannot be found and served with notice in the county, then the next step is to ascertain the owner's residence, regardless of the county. 35 ILCS 200/22-15 (West 2010).

¶ 60 Each case presents unique circumstances that dictate the bounds of a reasonable, diligent search. See, *e.g.*, *Apex*, 225 Ill. 2d at 231. Here, the property at issue was not residential property. Where a purchaser tries to obtain non-residential property, he or she can reasonably anticipate that the owner will reside elsewhere, perhaps even outside the county. In any case, regardless of whether Giordano was required to search outside the county, he represented that he did. All of the contact addresses listed on the pertinent documents were outside Boone County (in Lake Forest, Barrington, and Chicago), and Giordano represented that he inquired at these addresses.

¶ 61 Giordano next complains that the trial court erred in considering his intelligence and his knowledge and experience in the area of tax sales. Giordano also contends that the court placed undue emphasis on his familiarity with computers, having worked at Motorola. We disagree. A party's intelligence and experience is clearly relevant to the question of whether that party made an honest mistake or whether that party acted deceptively. Courts have considered this factor before.

See, e.g., *Murray*, 67 Ill. App. 3d at 131 (sufficient evidence of wrongful intent where, *inter alia*, "a man who had made more than 1,000 searches over 13 years" misinformed the court as to the contact information on the face of the deed). The court's consideration of Giordano's intelligence and experience was proper, and the record does not support Giordano's assertion that the court placed undue emphasis on, or otherwise overestimated, Giordano's computer skills.

¶ 62 Giordano next argues that the trial court erred in failing to consider his argument that Trzaska is not entitled to relief under section 2-1401, because "a [section 2-1401] petition is not intended to relieve a party from the consequences of his own mistakes or negligence." *Brainerd v. First Lake County National Bank*, 1 Ill. App. 3d 780, 783 (1971). Giordano's argument is misplaced for several reasons. First, *In re Lake County Collector*, 279 Ill. App. 3d 133 (1996), is instructive. There, the owner received notice but did not appear at the hearing. *Id*. at 135-36. The court issued the tax deed, based in part on the purchaser's fraudulent misrepresentations. *Id*. *Despite* the owner's negligence in failing to appear, the court found the purchaser's fraud to be a sufficient basis upon which to vacate the tax deed. *Id*. at 139. Second, as we will discuss, the court did consider Trzaska's negligence in relation to the question of whether he should be awarded sanctions. Third, section 22-45 of the Property Tax Code anticipates the use of section 2-1401 petitions to vacate the issuance of a tax deed. 35 ILCS 200/22-45 (West 2010). In almost every section 22-45 case, the property owner will have been negligent in the sense that he or she allowed for his or her taxes to become delinquent. Pursuant to section 22-45, an acceptable line of inquiry in determining whether to vacate the issuance of the tax deed is whether, following the owner's delinquent tax payments, the purchaser procured the tax deed by fraud or deception. 35 ILCS 200/22-45 (West 2010). The trial court applied the correct analysis to determine whether the tax deed should be vacated based on the allegation that Giordano procured the tax

deed by fraud.

¶ 63 We affirm the trial court's ruling on the section 2-1401 petition based on its finding that Giordano procured the deed by fraud and deception in that he made false statements in his affidavit and he falsely represented his diligence in searching for Trzaska. Therefore, we will not address Trzaska's alternative argument that the trial court's ruling could also be affirmed based on Giordano's failure to strictly comply with the statute's requirement that the redemption period not end on a Sunday, as it did here.

¶ 64 B. Cross-Appeal: Sanctions

¶ 65 In his cross-appeal, Trzaska argues that the trial court erred in denying his petition for Rule 137 sanctions. Rule 137 states:

> "A party who is not represented by an attorney shall sign his pleading, motion, or other document and state his address. ***. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ***. If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee." Il. S. Ct. R. 137 (eff. Feb. 1, 1994).

¶ 66 The allowance of fees and expenses under Rule 137 is within the discretion of the trial court. *Rein v. David A. Noyes & Co.*, 271 Ill. App. 3d 768, 775 (1995), *aff'd*, 172 Ill. 2d 325 (1996). The trial court's decision should not be disturbed where it was an informed one, where it was based on valid reasons that fit the case, and where it followed logically from the application of the reasons stated to the particular circumstances of the case. *In re Estate of Smith*, 201 Ill. App. 3d 1005, 1009-10 (1990).

¶ 67 In his initial brief, Trzaska stresses the fraudulent nature of Giordano's affidavit. However, there is no controversy here. The trial court already agreed with Trzaska on this point. We affirmed the trial court's ruling that Giordano procured the deed through the fraud and deceit of his affidavit.

¶ 68 More to the point, Trzaska argues for the first time in his reply brief that the trial court erred by considering his, Trzaska's, actions in determining whether he was entitled to have sanctions imposed upon Giordano. Again, the trial court stated that it "did not believe" Trzaska when Trzaska stated that the clerk allowed him to write a check with only one PIN or that the clerk told Trzaska he did not need to fill out change-of-address paperwork. Additionally, the court stated that, had Trzaska contacted his attorney immediately upon knowledge of the tax sale, the entire matter could have been resolved likely within one or two hours, and no more than 10 hours, of a competent attorney's time. Trzaska cites *Heckinger v. Welsh*, 339 Ill. App. 3d 189, 192 (2003), for the proposition that "the rule's focus is exclusively on the party's action of filing an unreasonable pleading," and, therefore, his own actions are irrelevant.

¶ 69 Trzaska raises this challenge to the trial court's ruling concerning the relevance of his own actions for the first time in his reply brief. Arguments not raised in the initial brief and raised for the first time in the reply brief are forfeited. Il. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Although

Giordano mentioned Trzaska's actions as support for his argument that the trial court's ruling was sound, Giordano did not cite case law concerning the relevance of the responding party's action. Giordano's cursory mention of the issue does not save Trzaska from forfeiture. Il. S. Ct. R. 341(j) (eff. July 1, 2008) (in a reply brief, an appellant may respond to issues raised by the appellee in the response brief). Giordano did not have the opportunity to respond to this allegation of error with a developed argument in the context of a tax deed case.

¶ 70 We understand that forfeiture is a limitation on the parties, and not the court. *People v. Kliner*, 185 Ill. 2d 81, 127 (1998). Still, forfeiture aside, we would be reluctant to extend the case law cited by Trzaska to the instant case. None of the cases cited by Trzaska in his reply brief are tax deed cases. See, *e.g.*, *Heckinger*, 339 Ill. App. 3d at 190 (plaintiff pursued judgment for notes he knew to be fully or partially paid and was, therefore, deserving of sanctions despite the defendant's failure to appear); *In re Marriage of Schneider*, 298 Ill. App. 3d 103, 110 (1998) (spouse in a divorce proceeding improperly alleged without adequate investigation that the other spouse's paramour was hiding marital assets); *Ashley v. Scott*, 266 Ill. App. 3d 302, 306 (1994) (insurer, acting as subrogee of passenger, failed to investigate a negligent entrustment claim against driver and based the claim upon four unrelated moving violations that occurred 14 months prior to the accident). Unlike *Heckinger*, Trzaska's dilatory or negligent actions were not subsequent to the complained-of motion; rather, Trzaska did not follow the law requiring him to pay property tax and this precipitated the petition of which he now complains. Trzaska knew the tax sale was going to take place and, therefore, had the ability, particularly with the help of his attorneys, to resolve the matter. In other words, although it was not *Giordano* who officially contacted and notified Trzaska (and who proceeded to falsely inform the court as to the diligence of his efforts), Trzaska *was* on unofficial notice that his property was subject to loss through the tax

sale process before Giordano petitioned for deed and made the false statements.

¶ 71 If we were to set aside the trial court's reasoning, we would be virtually mandating sanctions in every case where a tax deed was vacated based on "fraud and deception" under section 22-45. If sanctions were required, as opposed to discretionary, when a motion to vacate was granted on the ground of fraud, we think the statute would say so. See, *e.g.*, *Stinson v. Chicago Board of Election Commissioners*, 407 Ill. App. 3d 874, 876-77 (2011) (a court should not go outside the plain language of the statute to read into it requirements that are not there). The statute limits the bases to four grounds by which an order for tax deed may be vacated pursuant to section 2-1401. 35 ILCS 200/22-45 (West 2010). This limitation is a fair burden to place on the owner, because it is the owner who allowed for his taxes to become delinquent.

¶ 72 We did consider awarding sanctions for the amount hinted at, but not ordered, by the trial court, *i.e.*, for attorney fees of not more than 10 hours. Trzaska would have been in some legal trouble no matter who had purchased the taxes, even if the purchaser followed all the recommend protocol. Again, the trial court found "completely unbelievable" Trzaska's stated efforts to prevent the loss and found that the entire matter could have been remedied with one or two hours, and certainly no more than 10 hours, of a competent attorney's time. However, in light of the deferential standard of review and in light of Trzaska's failure to raise until his reply brief this challenge concerning the trial court's consideration of his, Trzaska's, actions, we will not award sanctions.

¶ 73 III. CONCLUSION

¶ 74 For the aforementioned reasons, the judgment of the trial court is affirmed.

¶ 75 Affirmed.