

No. 1-16-0427

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 JUDICIAL DISTRICT**

IN THE MATTER OF THE APPLICATION OF)	Appeal from the
THE COUNTY COLLECTOR FOR JUDGMENT)	Circuit Court of
AND ORDER OF SALE AGAINST LANDS AND)	Cook County.
LOTS RETURNED DELINQUENT FOR NON-)	
PAYMENT OF GENERAL TAXES FOR THE)	
YEAR 2007 AND PRIOR YEARS:)	
)	
9351 S. RIDGELAND AVENUE LAND TRUST,)	No. 11 COTD 003865
)	
Petitioner-Appellant,)	
)	
v.)	
)	
E.K. PRINCE, JR., <i>et al.</i> ,)	Honorable
)	Paul Karkula,
Respondents-Appellees.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Justices Simon and Mikva concurred in the judgment.

ORDER

Held: The judgment of the circuit court finding the September 10, 2013, order void due to lack of jurisdiction is affirmed where the section 2-1401 petition filed did not present a proper collateral attack on the court's November 7, 2012, order, the court was not re-vested with jurisdiction more than 30 days after the November 7, 2012, order was entered, and the order could not be considered *nunc pro tunc*.

¶ 1 Petitioner, 9351 S. Ridgeland Avenue Land Trust, appeals the order of the circuit court granting respondents', E.K. Prince *et al.*, motion for a judgment declaring that the court's prior order entered on November 7, 2012, and all subsequent orders, were null and void because the trial court was without jurisdiction in the matter. On appeal, petitioner contends the trial court erred in granting the motion because the court had jurisdiction to enter the November 7, 2012, order where petitioner's request for relief was filed pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)), and merely sought to correct the redemption expiration date on a previous order. For the following reasons, we affirm.¹

¶ 2 JURISDICTION

¶ 3 The trial court entered its order granting respondents' motion for a declaratory judgment on July 1, 2015. Petitioner filed a motion to reconsider which the trial court denied on January 12, 2016. Petitioner filed its notice of appeal on February 9, 2016. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), and Rule 303 (eff. Jan. 1, 2015), governing appeals from final judgments entered below.

¶ 4 BACKGROUND

¶ 5 The following facts are relevant to the issues on appeal. Petitioner purchased the delinquent 2007 real estate taxes on the property in question on July 20, 2009. The record shows that respondent failed to pay these taxes from 2007 through 2011, taxes which petitioner subsequently paid. The documents in the record also show that the redemption expiration date was extended at least twice: first to January 25, 2012, and again to May 4, 2012.

¹ We consider this appeal solely based on petitioner's brief, as respondent failed to file a brief on appeal and this court allowed petitioner's motion requesting such consideration. Where the record is not complex and the issues can be determined without the aid of an appellee's brief, this court can decide the merits of an appeal based on appellant's brief alone. *State Farm Mutual Insurance Co. v. Ellison*, 354 Ill. App. 3d 357, 388 (2004).

¶ 6 Petitioner filed its original petition for tax deed on November 7, 2011, but the petition erroneously stated the redemption expiration date as May 4, 2011, instead of May 4, 2012. An amended petition was filed to reflect the correct redemption expiration date. This date was used on all notices prepared and served pursuant to section 22 of the Property Tax Code (35 ILCS 200/22 (West 2012)), including the sheriff's Take Notices, the Take Notices served by the circuit court clerk, and the publication notice. The trial court conducted a prove-up on August 30, 2012, and after receiving exhibits into evidence and hearing testimony, found all the required notices had been served as required by the Property Tax Code. On September 26, 2012, the trial court entered an order directing the county clerk to issue the tax deed and for other relief.

¶ 7 Petitioner's counsel subsequently discovered an error in the September 26, 2012, order, where the case caption was stated as *2012* COTD 3865 when in fact the case number was *2011* COTD 3865. The September 2012 order also had January 25, 2012, as the redemption expiration date. Petitioner filed a motion on October 25, 2012, to correct the case number and the court granted petitioner leave to submit an amended order. On November 7, 2012, after counsel submitted an amended order, the trial court entered the order vacating the previous September 2012 order due to a "scrivener's error stating the incorrect case number," and an order directing issuance of the tax deed. The redemption expiration date was still listed as January 25, 2012, on the amended order.

¶ 8 Some time after the trial court entered its November 7, 2012 order reflecting the corrected case number, petitioner discovered that the order stated the redemption expiration date as January 25, 2012, instead of May 4, 2012. On February 25, 2013, petitioner filed a section 2-1401 petition seeking to amend the order directing tax deed to reflect the redemption expiration date of May 4, 2012. Petitioner alleged that all notices and pleadings throughout the

proceedings had identified the redemption expiration date as May 4, 2012. Respondent, however, requested time to file an appearance and object. On April 9, 2013, the trial court continued the matter for a hearing and ordered that the "one year statutory period for petitioner to take out and record a tax deed by May 4, 2013 is tolled until further action by the court in this regard." On April 16, 2012, respondent filed a *pro se* objection to the petition arguing that the trial court should deny the petition because he received no notice of any motions to amend and therefore had no opportunity to respond. On September 10, 2013, the trial court entered an order finding that respondent properly received notice of the tax deed proceedings. It also corrected the redemption expiration date to May 4, 2012, and granted petitioner until October 10, 2013, to record its deed. Petitioner recorded the tax deed on September 26, 2013.

¶ 9 Respondent filed objections and pleadings, and the trial court continued the matter. On April 23, 2015, respondent filed a motion seeking a declaration that the tax deed issued pursuant to the trial court's September 10, 2013, order was void without right to reimbursement because the trial court lost jurisdiction 30 days after the November 7, 2012 order was entered; therefore, the court's November order, with the stated redemption expiration date of January 25, 2012, remained in effect. Respondent argued that since petitioner did not record the deed within one year after January 25, 2012, as required by the Property Tax Code, the certificate of purchase was also null and void. On July 1, 2015, the trial court granted respondent's motion for declaratory judgment, and petitioner subsequently filed a motion to reconsider which the trial court denied. The court did not "like the fact that [petitioner] put up the money and is not going to get any reimbursement;" however, it acknowledged that "statutorily [reimbursement] may not be allowed." Petitioner filed this timely appeal.

¶ 10

ANALYSIS

¶ 11 Petitioner first contends that the trial court erred in finding that the September 10, 2013, order issuing the tax deed was void for lack of jurisdiction, where petitioner had filed a 2-1401 petition that vested the trial court with jurisdiction to amend its November 7, 2012 order. We review challenges to the trial court's subject matter jurisdiction, and issues raised as to whether an order is void, *de novo*. *Gershak v. Feign*, 317 Ill. App. 3d 14, 18 (2000).

¶ 12 The parties do not contest that the trial court conducted a prove-up on August 30, 2012, and after receiving exhibits into evidence and hearing testimony, found all the required notices had been served as required by the Property Tax Code. The court therefore entered an order on September 26, 2012, directing the county clerk to issue the tax deed to petitioner. The parties also do not contest that the trial court issued an amended order on November 7, 2012, upon petitioner's timely motion to correct the case number captioned on the September order. The record further shows that on February 25, 2013, more than 30 days after the November 7, 2012, order was entered, petitioner filed a section 2-1401 petition seeking an amendment of the November order to reflect the redemption expiration date as May 4, 2012, instead of January 25, 2012. On September 10, 2013, the trial court entered an order on the petition correcting the redemption expiration date to May 4, 2012, and granting petitioner until October 10, 2013, to record its deed.

¶ 13 Petitioner recorded the deed on September 26, 2013, well within the time period outlined in the court's September 10, 2013, order, but past the January 25, 2013, date applicable from the November 7, 2012, order. See 35 ILCS 200/22-85 (West 2012) (purchaser must record the tax deed "within one year from and after the time for redemption expires"). Since the trial court, pursuant to the 2-1401 petition, tolled the time to record the deed, amended the expiration date,

and then extended the date for recording the deed, it follows that petitioner timely recorded its deed under the Property Tax Code only if the 2-1401 petition presented a proper collateral attack on the November 7, 2012, order, thereby vesting the trial court with jurisdiction over the matter.

¶ 14 To determine whether the 2-1401 petition here vested the trial court with jurisdiction more than 30 days after entering its November 7, 2012, order, we look at the legislative intent underlying the Property Tax Code. The filing of a 2-1401 petition is a collateral attack upon the trial court's tax deed order. *In re Application of County Collector*, 217 Ill. 2d 1, 17 (2005). As our supreme court found, "[c]ollateral attacks upon tax deed orders implicate two competing public policies." *Id.* On the one hand, allowing such attacks "provides the delinquent taxpayer with an opportunity, in addition to the direct appeal, to ensure that the order was properly obtained. On the other hand, the availability of a collateral challenge to the tax deed order tends to undermine the finality and, hence, the marketability of the tax deed." *Id.* The court found the second point "significant because tax purchasers participate in the tax sale system in order to obtain marketable titles." *Id.*

¶ 15 To balance these competing policies, the legislature made numerous revisions to the Property Tax Code and its predecessor, the Revenue Act of 1939 (Ill. Rev. Stat. 1951, ch. 120, par. 482 *et seq.*). Early revisions sought to improve the marketability and validity of tax titles, where tax deeds prior to the revisions " 'amounted to little more than a cloud on the title of the delinquent owner' " *Id.* at 18 (quoting *In re Application of the County Treasurer*, 92 Ill. 2d 400, 406 (1982)). Before the revisions, the decision on whether the statutory requirements had been met for issuance of a tax deed was made administratively by the county clerk. *Id.* After the revisions, the issuance of the tax deed became a judicial decision made upon petition. *Id.* As a result, when the court has determined that the petitioner satisfied all of the conditions precedent

to issuance of the tax deed under the statute, "[t]he issuance of a deed automatically follows." *Young v. Madden*, 20 Ill. 2d 506, 510 (1960). Furthermore, where the trial court has entered a finding of compliance based on an examination of the evidence presented, it may be presumed that satisfactory evidence of this fact was presented to the court. See *Wilder v. Finnegan*, 267 Ill. App. 3d 422, 424 (1994); *People v. O'Keefe*, 18 Ill. 2d 386, 391 (1960).

¶ 16 To further enhance the marketability of tax deeds, the legislature made the tax deed order " 'incontestable' except by direct appeal." *In re Application of County Collector*, 217 Ill. 2d at 18-19. However, subsequent supreme court decisions recognized limited circumstances where a collateral attack on the tax deed order would be allowed: (1) lack of jurisdiction appearing from the face of the record; and (2) allegations of fraud. *Id.* at 19. The legislature later addressed the issue of collateral attacks on the tax deed, adding language that allowed relief in the limited circumstances set forth in the statute. *Id.* at 21. These amendments are currently codified in section 22-45 of the Property Tax Code (35 ILCS 200/22-45 (West 2012)), which "expresses the balance struck by the legislature between the public policies of allowing collateral relief from tax deed orders and preserving the marketability of tax deeds." *Id.*

¶ 17 Section 22-45 provides that:

"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 Sections 2-1203 or 2-1401 of the Code of Civil Procedure 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 taxing;
- (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 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 2012).

¶ 18 The fundamental rule of statutory interpretation is to ascertain and give effect to legislative intent, and "[t]he best indication of that intent is the language of the statute itself, which must be given its plain and ordinary meaning." *Gassman v. Clerk of the Circuit Court of Cook County*, 2017 IL App (1st) 151738, ¶ 15. "Where the statutory language is clear and unambiguous, the court must give it effect without resort to other tools of interpretation. [Citation.] It is never proper for a court to depart from the plain language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent. [Citation.]" *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 52. Thus, although the clear terms of section 22-45 allow for the filing of 2-1401 petitions "in the same manner and to the same extent as may be had under [that section] with respect to final orders and judgments in other proceedings," the provision explicitly limits the grounds for such relief to the four circumstances set forth in the statute.

¶ 19 Here, petitioner filed its 2-1401 petition on the grounds that the redemption expiration date on the order was inadvertently listed as January 25, 2012, instead of May 4, 2012. This basis

is not one of the limited circumstances specifically outlined in section 22-45. Therefore, the 2-1401 petition was not a proper challenge to the trial court's November 7, 2012, order under the Property Tax Code, and the trial court lacked jurisdiction to enter any of the orders made more than 30 days after that order, including the order tolling the time to record the deed, and the September 10, 2013, order amending the redemption expiration date and extending the date to record the tax deed to October 10, 2013. See *Application of County Treasurer*, 208 Ill. App. 3d 561, 563-64 (1990) ("trial court is without jurisdiction to modify its own judgment more than 30 days after the final order was entered").

¶ 20 It follows that the November 7, 2012, order remains as the enforceable final order. Since petitioner recorded the tax deed on September 26, 2013, more than one year after the January 25, 2012, redemption expiration date listed on the November 7, 2012, order, the tax deed, and the sale on which it is based, is void with no right to reimbursement. See 35 ILCS 20/22-85 (West 2012) ("[u]nless 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 of reimbursement." 35 ILCS 200/22-85 (West 2012).

¶ 21 Petitioner contends, however, that the trial court was revested with jurisdiction in the matter because the parties actively participated in litigation from April 16, 2013, through September 10, 2013, pursuant to the 2-1401 petition. "Revesting arises where the parties resubmit the dispute to the jurisdiction of the trial court either by stipulation [Citation] or by manifestation of that intent [Citation]." *Nenadic v. Grant Hospital*, 75 Ill. App. 3d 614, 620 (1979). An intent to revest may be shown where (1) the parties actively participate in

proceedings without objection; and (2) further proceedings inconsistent with the prior order are conducted. *Id.* In other words, application of the revestment doctrine requires that the parties' actions reflect an intent to continue or reopen the original proceedings. *Id.* at 621.

¶ 22 In *Nenadic*, the court addressed whether a hearing on a petition filed under section 72 of the Civil Practice Law (predecessor to section 2-1401), could constitute a jurisdictional revestment over the original proceedings. It reasoned that a section 72 petition was "not a continuation of the original proceeding, but a commencement of a new cause of action." *Id.* Therefore, it found that the hearing on the petition was not a continuation or reopening of the original proceedings; rather, "it was a part of a new proceeding under section 72, brought by plaintiff in an attempt to vacate the February order." *Id.* Accordingly, defendant's involvement at the hearing on the petition "was not 'active participation...inconsistent with the prior order of dismissal.'" *Id.* Rather, defendant's participation was "entirely consistent" with the "proper adversary representation of a client" and thus, no revestment occurred. *Id.* The court's reasoning and determination in *Nenadic*, regarding section 72 proceedings, apply equally here to section 2-1401 proceedings. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (the filing of a 2-1401 petition is considered a new proceeding, and not a continuation of a prior proceeding).

¶ 23 Furthermore, the revestment doctrine is inapplicable where the motion filed more than 30 days after judgment "did not concern the merits of the judgment" and "the participants did not ignore the judgment and start to retry the case, thereby implying by their conduct their consent to having the judgment set aside." *Sears v. Sears*, 85 Ill. 2d 253, 260 (1981). Here, petitioner's section 2-1401 petition did not seek to challenge the November 7, 2012, order on the merits, nor does petitioner on appeal argue that we should set aside the November 7th order issuing the tax

deed to petitioner. Rather, petitioner agreed with the disposition in the November 7, 2012, order, and sought only to amend the redemption expiration date on the order, an error petitioner characterized as "inadvertent." We find the trial court was not re-vested with jurisdiction, and the fact that the parties participated in hearings pursuant to the 2-1401 petition from April 16, 2013, through September 10, 2013, and the trial court ultimately ruled on the petition, "is inconsequential." See *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 540 (1984).

¶ 24 Petitioner also argues that the trial court had jurisdiction to issue a *nunc pro tunc* order to correct the November 7, 2012, order, because the court at any time may modify its judgment to correct a scrivener's error so that the record conforms to the judgment actually rendered. See *Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889, ¶ 18. Petitioner contends that since the trial court had the authority and jurisdiction to enter a *nunc pro tunc* order to correct a scrivener's error, the September 10, 2013, order should be so characterized and affirmed by this court.

¶ 25 Petitioner, however, did not move the trial court to enter an order *nunc pro tunc*. Rather, petitioner requested relief by filing a section 2-1401 petition. As this court noted in *First Bank of Oak Park v. Rezek*, 179 Ill. App. 3d 956, 959 (1989), the purposes of these vehicles for relief differ in substance. "The purpose of a section 2-1401 petition is to bring facts not of record to the attention of the trial court which, if known by the trial court at the time the judgment was entered, would have prevented its rendition." *Id.* Therefore, as discussed above, a hearing on a section 2-1401 petition "is not merely a continuation of the original proceeding, but commences an entirely new proceeding." *Id.* "In contrast, the purpose of a *nunc pro tunc* order is to correct the record of judgment, not to alter the actual judgment of the court." *Id.* An action seeking *nunc pro tunc* relief is not a proceeding for new or additional relief. *Id.* at 960. Instead, it is "merely a

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continuation of the original proceeding." *Id.* Petitioner has cited no authority to supports its contention that the section 2-1401 petition it filed should be characterized as a request for *nunc pro tunc* relief.

¶ 26 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 27 Affirmed.