

NOTICE  
Decision filed 08/10/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 160230-U

NO. 5-16-0230

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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

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<i>In re</i> APPLICATION FOR A TAX DEED	)	Appeal from the
	)	Circuit Court of
(SI Resources, LLC, and Cadijah Brown,	)	Hamilton County.
	)	
Petitioners-Appellants,	)	
	)	
v.	)	No. 15-TX-10
	)	
Opal Castleman and/or Stephen R. Castleman,	)	Honorable
	)	Barry L. Vaughan,
Respondents-Appellees).	)	Judge, presiding.

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JUSTICE GOLDENHERSH delivered the judgment of the court.  
Justices Cates and Barberis concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* This appeal is dismissed for lack of jurisdiction where the petition to vacate, filed by a nonparty to the underlying lawsuit, did not extend the 30-day period to appeal the order directing issuance of the tax deed.
- ¶ 2 This appeal arises from the February 29, 2016, trial court order dismissing petitioner-appellants', SI Resources, LLC, and Cadijah Brown's, section 2-1203 petition to vacate the trial court's October 19, 2015, order directing issuance of a tax deed for lack of standing pursuant to respondent-appellees', Stephen and Opal Castleman's, section 2-

619(a)(9) motion to dismiss. 735 ILCS 5/2-1203 (West 2014); 735 ILCS 5/2-619(a)(9) (West 2014). For the following reasons, we dismiss this appeal for lack of jurisdiction.

¶ 3

### FACTS

¶ 4 The relevant facts necessary for the disposition of this appeal are as follows. On July 28, 2013, the Hamilton County treasurer sold the delinquent 2011 real estate taxes on the mineral rights of a property identified by Hamilton County as parcel number 08-702-100-04 (property). The last known person to be assessed taxes for the property according to the Hamilton County treasurer's records was "Brown L I Jr." The 2011 delinquent tax lien on the property was sold to Kathy Riley (Riley) for \$79.64, including penalties and costs. On June 1, 2015, Riley assigned the property's certificate of purchase to the Castlemans.

¶ 5 On June 22, 2015, the Castlemans filed a *pro se* petition for tax deed in the circuit court of Hamilton County, naming the following respondents: L I Brown, Jr.; Sunrise Exploration, Inc.; the Hamilton County Clerk; unknown owners or interested parties; and nonrecord claimants. The petition alleged Riley had purchased the delinquent real estate taxes regarding all oil, gas, and other mineral rights related to the property, and assigned these rights to the Castlemans. According to the petition and its attachments, the redemption period for these mineral rights expired on October 10, 2015. The trial court entered an order directing issuance of the tax deed on October 19, 2015.

¶ 6 On November 12, 2015, SI Resources filed a petition, pursuant to section 2-1203 of the Code of Civil Procedure (Code), to vacate the October 19, 2015, trial court order

issuing the tax deed. 735 ILCS 5/2-1203 (West 2014). According to the petition and its attached exhibits, SI Resources purchased the mineral rights to the property from Cadijah Brown (Brown) and her two siblings, Ross A. Brown and Kevin B. Brown, via quitclaim deed on October 21, 2015 (L I Brown Jr. died in March 1981 without a last will and testament, and Cadijah, Ross, and Kevin were his only surviving blood relatives). The petition alleged that the October 19, 2015, order directing issuance of the tax deed must be vacated because the Castlemans failed to strictly comply with the mandatory notice serving and diligence requirements set forth in sections 22-5 through 22-40 of the Property Tax Code. 35 ILCS 200/22-5 to 22-40 (West 2014).

¶ 7 On November 30, 2015, the Castlemans filed a motion to dismiss SI Resources' petition to vacate the trial court's order issuing the tax deed, asserting SI Resources lacked standing. Also on November 30, 2015, SI Resources was granted leave to file an amended petition, which added Brown as a petitioner. SI Resources filed its amended petition to vacate on December 15, 2015. Regarding standing, the amended petition asserted:

"On October 21, 2015, Section 2-1203 Petitioner, Cadijah Brown, conveyed her interest in the property that is the subject of this proceeding to Section 2-1203 Petitioner, SI Resources, LLC, via a recorded Mineral Quit Claim Deed, which included all rights, titles, and royalties, as well as thirty-percent (30%) of all impounded proceeds, unclaimed suspense."

¶ 8 On December 21, 2015, the Castlemans filed a motion to dismiss SI Resources' amended petition to vacate the October 19, 2015, order directing issuance of the tax deed,

asserting SI Resources and Brown lacked standing. The court heard arguments on the Castlemans' motion to dismiss on February 29, 2016, and entered an order granting the motion after finding SI Resources and Brown lacked standing. Specifically, the court concluded:

"The court finds that Petitioner Brown lacks standing because her interest was conveyed by Quit Claim Deed. The court finds S.I. lacks standing because they do not have a bona fide interest because their interest was acquired after the redemption period had ended."

¶ 9 SI Resources and Brown filed a motion to reconsider the court's order granting the Castlemans' motion to dismiss on March 23, 2016, which the trial court denied on May 19, 2016. SI Resources and Brown filed a notice of appeal on June 1, 2016.

¶ 10 ANALYSIS

¶ 11 Initially, we observe that the facts of the instant case are substantially similar to those of *In re Application for a Tax Deed*, 2016 IL App (5th) 150517, a case recently decided by this court which involves a similar petitioner and respondent. Accordingly, we turn to the reasoning employed by this court in *In re Application for a Tax Deed* for guidance in this case.

¶ 12 As an appellate court, we have the duty to consider our jurisdiction to decide an appeal and to dismiss the appeal if we find jurisdiction is lacking. *In re Application for a Tax Deed*, 2016 IL App (5th) 150517, ¶ 7. Even if the issue is not raised by the parties, this court must nevertheless determine the question of its jurisdiction before proceeding

to the merits of an appeal. *Hamilton v. Williams*, 237 Ill. App. 3d 765, 772 (1992). Implicit in these rules is the principle that an appellate court's proceeding to the merits of an appeal necessitates a threshold jurisdictional inquiry and determination. *Hamilton*, 237 Ill. App. 3d at 773.

¶ 13 In this case, SI Resources was not a party to the proceedings resulting in the trial court's order directing issuance of the tax deed on October 19, 2015, holding no interest in the property during the pendency of those proceedings. On November 12, 2015, without seeking leave to intervene using the procedures set forth in section 2-408 of the Code, SI Resources filed a postjudgment motion to vacate the trial court's issuance of the tax deed pursuant to section 2-1203 of the Code. 735 ILCS 5/2-408 (West 2014); 735 ILCS 5/2-1203 (West 2014). Section 2-1203 provides:

"In all cases tried without a jury, *any party* may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief." (Emphasis added.) 735 ILCS 5/2-1203(a) (West 2014).

¶ 14 Illinois Supreme Court Rule 303 requires that a notice of appeal must be filed within 30 days of a final order, unless a "timely posttrial motion directed against the judgment is filed." Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015); *In re Application for a Tax Deed*, 2016 IL App (5th) 150517, ¶ 8. Here, SI Resources filed a motion to vacate the judgment within 30 days. However, by its express terms, section 2-1203 applies only to parties and does not allow nonparties to move for postjudgment relief. *In re Application*

*for a Tax Deed*, 2016 IL App (5th) 150517, ¶ 8. Accordingly, the section 2-1203 motion filed by SI Resources "was a nullity and was not a proper postjudgment motion which would extend the time period for filing a notice of appeal to 30 days after the order disposing of it." *In re Application for a Tax Deed*, 2016 IL App (5th) 150517, ¶ 8. Since no proper postjudgment motion was filed, the October 19, 2015, order directing the issuance of the tax deed became final 30 days after it was entered. *In re Application for a Tax Deed*, 2016 IL App (5th) 150517, ¶ 8. Accordingly, the June 1, 2016, notice of appeal was untimely and does not vest this court with jurisdiction over this appeal.

¶ 15 In its supplemental brief and argument in support of its position that this court has jurisdiction over this appeal, SI Resources and Brown assert (1) the Castlemans acquiesced to SI Resources being a party to the tax deed proceeding by not objecting to SI Resources' oral motion to amend its petition adding Brown as a section 2-1203 petitioner and by agreeing to a briefing schedule on the amended petition. In further support of its claim that this court has jurisdiction, SI Resources and Brown assert (2) "the supplemental circuit court retained exclusive jurisdiction over the property to enter the order for tax deed which establishes that the [Property Tax Code's] take notice requirements set forth in sections 22-10 through 22-40(a) of the [Property Tax Code] are not governed by the [Property Tax Code's] 'party' requirements for new causes of action or new civil cases." Thus, SI Resources and Brown essentially ask us to depart from this court's recent holding in *In re Application for a Tax Deed*.

¶ 16 After careful consideration, we decline to do so. This court has already determined and explained its reasoning for why a petition to vacate an order directing issuance of a

tax deed filed by a nonparty, in this case SI Resources, is a nullity, and, therefore, not a proper postjudgment motion which extends the 30-day period to appeal the order directing issuance of the tax deed. *In re Application for a Tax Deed*, 2016 IL App (5th) 150517, ¶ 8. Further, this court has acknowledged that although the Property Tax Code provides that any person who has an ownership interest in the subject property, as SI Resources and Brown claim, may appear in the proceeding, it is section 2-408 of the Code (735 ILCS 5/2-408 (West 2014)) which provides the procedural basis for doing so. *In re Application of a Tax Deed*, 2016 IL App (5th) 150517, n.1; *In re Petition for Annexation of Unincorporated Territory to the Village of Palatine*, 234 Ill. App. 3d 927, 929 (1992). Section 2-408 sets forth the procedures by which a party may intervene in an action, and it is well settled that leave to intervene must be sought during the pendency of the suit rather than postjudgment. 735 ILCS 5/2-408 (West 2014); *In re Application of a Tax Deed*, 2016 IL App (5th) 150517, ¶ 7 n.1; *In re Petition for Annexation of Unincorporated Territory to the Village of Palatine*, 234 Ill. App. 3d at 929.

¶ 17 Here, SI Resources never petitioned the trial court to intervene. Since SI Resources' section 2-1203 motion to vacate applies only to parties and does not allow nonparties to move for postjudgment relief, along with the fact that SI Resources was a nonparty which never petitioned the court to intervene in the action, its motion was a nullity. Accordingly, SI Resources' erroneous filing of its motion to vacate did not extend the 30-day time period for appealing the October 19, 2015, order directing issuance of the tax deed. *In re Application for a Tax Deed*, 2016 IL App (5th) 150517, ¶ 8.

¶ 18 Regarding SI Resources' and Brown's claim that the Castlemans acquiesced to SI Resources being a party to the tax deed proceeding, we cannot agree. We find nothing in the record which suggests the Castlemans agreed to the appearance of either petitioner in this case. Contrary to this assertion, the record shows the Castlemans objected to SI Resources' appearance. Further, we find nothing in the record which suggests there was an agreement between the parties for Brown to be added as a petitioner. More importantly, this argument ignores the fact that SI Resources' petition to vacate was a nullity which did not extend the 30-day time period for appealing the court's order directing issuance of the tax deed. As a result, that order became final 30 days after it was entered on October 19, 2015. For these reasons, we reject this argument.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction.

¶ 21 Appeal dismissed.