

2019 IL App (1st) 171539-U
Nos. 1-17-1539 & 1-17-2276 (cons.)
Order filed December 20, 2019

Fifth Division

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 THE COUNTY TREASURER) Appeal from the
OF COOK COUNTY, ILLINOIS, for General Taxes for) Circuit Court of
the Years 2009-2011) Cook County.
)
(Stonedry, LLC,)
) No. 14 COTD 2392
Petitioner-Appellee,)
)
v.)
)
The Ridgeland Corporation; Cook, Revak & Associates,)
Ltd.; Rufus Cook; Barbara J. Revak; The 7411) Honorable
Corporation; and 7411 Services Corporation,) James R. Carroll,
) Judge, Presiding
Respondents-Appellants).)
)
)

JUSTICE HALL delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Respondents' issues on appeal from the circuit court's orders of December 1, 2015, which issued a tax deed to petitioner and memorialized the parties'

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settlement agreement, as well as related orders, are dismissed for lack of appellate jurisdiction (case number 1-17-2276). The circuit court did not lack jurisdiction to enter its orders of May 1, 2017, and August 3, 2017 (case number 1-17-1539).

¶ 2 The Ridgeland Corporation (Ridgeland), Cook, Revak & Associates, Ltd. (Cook Revak), Rufus Cook (Cook), Barbara J. Revak (Revak), the 7411 Corp. (7411 Corp.), and 7411 Services Corp. (7411 Services), collectively respondents, appeal from three orders of the circuit court of Cook County entered on May 1, 2017, June 14, 2017, and August 3, 2017, granting a tax deed order of possession of a commercial property to petitioner Stonedry, LLC (Stonedry). The appeals were consolidated on December 11, 2017.

¶ 3 This case was fully briefed on August 15, 2018, and assigned to the authoring judge on August 6, 2018. The disposition was initially circulated to the panel members on October 24, 2019. On June 4, 2019, the petitioner filed a motion to require respondents to substitute bond, which was granted, and respondents were given seven days to file the security in accordance with the rules of this court. Respondents did not comply with this court's order but instead filed several motions to avoid compliance. On October 3, 2019, in disposing of respondents' last motion, this court gave them another seven days to file the appropriate bond with this court. Instead of doing so, respondents attempted to present documentation in the circuit court to satisfy the new bond requirement imposed by this court. The circuit court directed respondents to present their security with this court. On November 4, 2019, this court rejected respondents' proffered bond because it failed to comply with the rules of this court, and respondents were given another five days to comply. Instead of complying, respondents filed a motion for supervisory order in the supreme court on November 13, 2019 (case number 125468). That motion was denied by the supreme court on December 10, 2019.

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¶ 4 On appeal, respondents contend that: (1) this court must exercise its independent duty to vacate void orders where Stonedry not only failed to comply with the notice provisions of the Illinois Property Tax Code (Property Tax Code) (35 ILCS 200/1 *et seq.* (West 2014)), but also procured the tax deed by acts of clear fraud that are documented in the record; (2) the December 1, 2015, settlement agreement, which was void *ab initio*, was part of a fraudulent *modus operandi* that requires this court to void the tax deed and related orders; (3) the circuit court lacked jurisdiction to enter the May 1, 2017, subsequent order of possession; and (4) the circuit court lacked jurisdiction to enter the August 3, 2017, supplemental order of possession because the June 16, 2017, notice of appeal vested jurisdiction in the appellate court. For the following reasons, we affirm.

¶ 5 **BACKGROUND**

¶ 6 This case involves the circuit court's issuance of a tax deed and order of possession for tax-delinquent property located at 7411 South Stony Island in Chicago (the property) to Stonedry. The following facts are taken from the record on appeal.

¶ 7 Ridgeland became the owner of the property in 2005.¹ Ridgeland is a corporation and Cook serves as its registered agent. After many years of tax delinquency, Gammadock, LLC (Gammadock), an Illinois limited liability company owned by David Twardock, purchased the 2009-2011 general real estate taxes for the property for \$2200 on January 7, 2014, at the Cook County Scavenger Sale. A certificate of purchase was issued by the Cook County Clerk on March 19, 2014, and the amount necessary to redeem the property was approximately \$281,000.

¹ The other respondents are tenants of the property.

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¶ 8 On April 4, 2014, Gammadock assigned the certificate to Stonedry, also an Illinois limited liability company. Stonedry is managed by Gammadock and S. Bronze, LLC (S. Bronze), also an Illinois limited liability company. S. Bronze is owned by Andres Schcolnik. Gammadock and S. Bronze are equal members of Gammadock.

¶ 9 On April 23, 2014, Gammadock filed and sent to Cook a first "take notice" ² as required by section 22-5 of the Property Tax Code (35 ILCS 200/22-5 (West 2014)). This notice listed Gammadock's name as the purchaser or assignee, indicated "county court house" instead of "office of the county clerk," and misspelled further as "futher." The take notice also stated that the redemption period expired on July 7, 2014, and that payment of the \$281,196.45 redemption amount could be made at any time on or before July 7, 2014. Ridgeland did not redeem the property.

¶ 10 The second take notice, as required by section 22-10 of the Property Tax Code (35 ILCS 200/22-10 (West 2014)), was filed on July 9, 2014, and service was attempted on all respondents. This second take notice indicated that Stonedry was the purchaser or assignee and that the redemption period would expire on January 8, 2015. It also indicated that a hearing was set for January 28, 2015, and that the recipients should check with the Cook County Clerk for the exact amount owed.

² A take notice is a notice that taxes were sold, prepared by the tax buyer in a specific format required under Illinois law. Take notices are sent at two different times. The tax buyer prepares the first take notice and files it with the Cook County Clerk's office within 4 and one-half months after the date of sale. The Clerk's office then sends the notice via certified mail. If the taxes have not been redeemed, the tax buyer prepares a second take notice within three to six months before the last day of the redemption period. These take notices are served by the Cook County Sheriff's office and mailed by the Circuit Court Clerk's office. <https://www.cookcountyclerk.com/service/tax-faqs-and-glossary-tax-terms>.

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¶ 11 After expiration of the redemption date, on January 22, 2015, Stonedry filed an "Application for an Order Directing the County Clerk to Issue a Tax Deed," in the county division of the circuit court of Cook County. The circuit court set the application for hearing on February 9, 2015. On February 4, 2015, Cook appeared *pro se*, and Revak filed her appearance on behalf of the other respondents.

¶ 12 On February 9, 2015, the circuit court held a hearing on Stonedry's application; respondents were not present. During the hearing, Schcolnik testified that he was a member of Stonedry. Stonedry's counsel also presented documentary evidence of the filed take notices, and its attempts to serve respondents.

¶ 13 After the hearing, Ridgeland opposed Stonedry's petition, asserting that the April 23, 2014, take notice was invalid because it was deficient. Stonedry responded that the notices were valid, it complied with all statutory requirements, and it was entitled to a tax deed. The circuit court took the matter under advisement.

¶ 14 On February 24, 2015, Stonedry served a notice of motion for "Proof of Payment of Subsequent Taxes, Transcript of Proceedings, and for Entry of Order Directing County Clerk to Issue Tax Deed and for Other Relief" on respondents, with the motion set for March 4, 2015. Cook subsequently filed a motion to substitute judge as of right, which the circuit court granted on March 4, 2015.

¶ 15 On April 1, 2015, respondents filed a combined motion to dismiss the petition and application pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)). Respondents contended under section 2-615 (735 ILCS 5/2-615 (West 2014)) that Stonedry's notices, petition and application failed to comply with sections 22-5, 22-

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10 and 22-20 of the Property Tax Code. Respondents further contended under sections 2-619(a)(1) and (9) (735 ILCS 5/2-619(a)(1), (9) (West 2014)) that Stonedry lacked standing to invoke the court's jurisdiction.³

¶ 16 Stonedry responded that respondents' combined motion was vague because it failed to clearly show the grounds it relied upon.

¶ 17 Respondents subsequently filed a motion to withdraw its section 2-619.1 motion on June 2, 2015, which the circuit court granted.

¶ 18 A question was raised as to whether the current circuit court judge presiding over the matter could sign the transcript of the February 9, 2015, hearing since it was held before a different circuit court judge prior to substitution, and the circuit court set a briefing schedule for this issue on June 4, 2015.

¶ 19 The parties briefed the matter and over the next several months, the circuit court entered and continued its ruling on the transcript motion and the matter was set for final settlement status on December 1, 2015.

¶ 20 On December 1, 2015, the parties entered into a "Settlement Agreement" (agreement). Schcolnik signed the section for "Stonedry, LLC" as "member." Under the terms of the agreement, Stonedry would pay Ridgeland \$80,000 in exchange for respondents' agreement to withdraw any and all objections to the tax deed proceedings and their agreement to the entry of an order directing the County Clerk to issue a tax deed by agreed order. The parties further agreed that enforcement of the issuance of the tax deed was stayed until April 1, 2016, and that the statutory timeframe for Stonedry to have issued and recorded its tax deed would be tolled the

³ No reason was stated in the motion for how Stonedry lacked standing to invoke the circuit court's jurisdiction.

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number of days from February 15, 2015, until December 1, 2015. The parties also agreed that the circuit court would retain jurisdiction to enforce the agreement's terms and to enter an order of possession. Additionally, respondents agreed not to file any litigation regarding the property.

¶ 21 The parties memorialized their settlement in an agreed order granting possession of the property to Stonedry, which the circuit court entered on December 1, 2015. That same day, the circuit court also entered an order directing the county clerk to issue a tax deed to Stonedry, and stayed the order of possession until April 2016. The tax deed was subsequently recorded on January 5, 2016.

¶ 22 Respondents remained in possession of the property after the agreed-upon date of April 1, 2016. Stonedry subsequently sent the December 1, 2015, possession order to the Cook County Sheriff, who served an eviction notice on respondents on May 16, 2016.

¶ 23 Respondents responded by filing a breach of contract action against Stonedry and the Cook County Sheriff in the circuit court of Cook County on June 2, 2016 (case number 2016 L 5774), hereinafter, “law division.”

¶ 24 In their law division complaint, respondents alleged that prior to the expiration of the stay, Schcolnik offered them the opportunity to stay in the premises rent-free until Stonedry found an occupant for the first floor. Respondents further contended that this new agreement superseded the order of possession from December 1, 2015, and rendered it moot.⁴

⁴ During the pendency of this appeal, a memorandum opinion and order was entered in respondents' breach of contract action in the law division on July 12, 2019, in favor of Stonedry and the Cook County Sheriff on all counts. *Ridgeland Corporation, et al. v. Stonedry LLC and Sheriff of Cook County Illinois*, No. 2016 L 5474 (Cir. Ct. Cook County, July 12, 2019). We take judicial notice of the judgment in the breach of contract case because it is a readily verifiable fact that will aid in the efficient disposition of the case. *Aurora Loan Services, LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 37.

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¶ 25 On January 18, 2017, Stonedry filed a notice of motion to present its "Petition for Order of Possession" in the circuit court presiding over this case, hereinafter the "county division," but the motion itself is not contained in the record on appeal.

¶ 26 On February 28, 2017, respondents filed their response to Stonedry's motion for possession in which they contended that: (1) the county division had no jurisdiction to enter a "subsequent" order of possession because more than 30 days had passed since the entry of the agreed order; (2) they satisfied the terms of the agreement in March 2016 and the parties made a new oral contract; and (3) the law of priority of jurisdiction precluded the county division's jurisdiction to grant possession to Stonedry due to the pending breach of contract action in the law division.

¶ 27 In its reply filed on March 16, 2017, Stonedry contended that: (1) it was still entitled to a possession order because while respondents provided it with access to the property, that access did not equate to legal possession of the property; (2) the county division maintained jurisdiction over the matter because section 22-40 of the Property Tax Code allowed the court to retain jurisdiction after 30 days to put the tax deed grantee in possession of the subject property; and (3) because the county division originally had jurisdiction over the possession matter, it retained jurisdiction until possession proceedings concluded.

¶ 28 On May 1, 2017, the county division entered a written order granting Stonedry's petition for possession.

¶ 29 In the order, the county division noted that its December 1, 2015, order was a final and appealable order but that no appeal had been filed. The county division also referenced the litigation in the law division breach of contract case. The county division found that the plain

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language of the Property Tax Code provided flexibility in that it "allow[ed] a court to maintain the grantee in possession of that property as it contemplate[d] entry of a subsequent order as 'necessary or desirable' to maintain possession in the grantee." The county division further noted that "a motion for possession of property is a summary proceeding which is auxiliary or incidental to the prior judgment granting title and used to assist the court in effectuating the transfer of possession of the property after title has already transferred." The county division concluded that the statute did not set a 30-day finality rule to bar its jurisdiction to transfer possession later. Additionally, the county division noted that both the settlement agreement and the agreed orders clearly stated that it retained jurisdiction to hear the issue of possession and the terms of the order were not appealed.

¶ 30 The county division rejected respondents' argument that the law division had primary jurisdiction to hear the matter because the tax deed case was filed long before the breach of contract case, and the county division specifically retained jurisdiction to decide issues of possession, noting that circuit courts are courts of concurrent jurisdiction. The county division also rejected respondents' alternate argument that Stonedry forfeited its right to seek possession of the property by failing to timely enforce its right after the breach of contract case was filed because the Property Tax Code does not contain a time limitation for enforcement of a transfer or to maintain possession of a property.

¶ 31 The county division's May 1, 2017, order stayed enforcement until June 1, 2017. Respondents subsequently filed a motion to reconsider and vacate the May 1, 2017, order which was denied on June 14, 2017.

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¶ 32 On June 15, 2017, Stonedry filed a motion for "Entry of an Amended Order of Possession," arguing that the Cook County sheriff would not enforce the order of possession unless it contained the following language: "[t]hat the Sheriff of Cook County is directed to enforce the provisions of this Order[.]" Stonedry requested that the county division amend the May 1, 2017, order to contain that language.

¶ 33 On June 16, 2017, respondents filed a notice of appeal from the county division's May 1, 2017, order of possession and the June 14, 2017, order denying respondent's motion to reconsider and to vacate the May 1, 2017, order (case number 17-1539).

¶ 34 On June 27, 2017, respondents filed a motion to strike Stonedry's motion to amend the order of possession, arguing that the circuit court lost jurisdiction to enter further orders when respondents filed their appeal on June 16, 2017. In response, Stonedry contended that the circuit court could enter an amended final order even with respondents' pending appeal because the court retained jurisdiction to enter orders as to collateral matters that did not affect the appellate court case. In reply, respondents reiterated their contentions that the circuit court lost jurisdiction to enter "additional orders" when respondents appealed the order.

¶ 35 Additionally, respondents filed a section 2-1401 petition (735 ILCS 5/2-1401(f) (West 2016)) in the county division on August 2, 2017, seeking to vacate the December 1, 2015, agreed order. Respondents contended that the agreed order was void because it violated section 22-5 of the Property Tax Code and was fraudulent because the take notice served by Gammadock on April 23, 2014, was null as Gammadock no longer had an interest in the property, noting that Gammadock's interest was assigned to Stonedry on April 7, 2014. Respondents further contended that Stonedry perpetuated the fraud by asserting to the county division that the take

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notice was proper and that Schcolnik lied during the prove-up hearing on February 9, 2015, when he testified that he was a member of Stonedry. Respondents also argued that Schcolnik made the same fraudulent statement in the settlement agreement.

¶ 36 Stonedry's August 31, 2017, response to respondents' section 2-1401 petition contended that: (1) respondents' motion was improper because it was not supported by affidavit and did not specify how the Property Tax Code was allegedly violated; (2) respondents violated the settlement agreement when they filed the breach of contract action in the law division; (3) the December 1, 2015, order was not void because the respondents raised no jurisdictional issue that made it void; and (4) respondents were not diligent in presenting their contentions to the county division. Stonedry later filed a motion to dismiss respondents' section 2-1401 petition, based on the same arguments.

¶ 37 On August 3, 2017, the county division entered a written supplemental order granting petitioner's motion for an amended order of possession. In its supplemental order, the county division noted that respondents filed an appeal on June 15, 2017, of the county division's orders of May 1, 2017, and June 14, 2017, in "an attempt to divest [the court] of jurisdiction to consider Stonedry's motion." The county division reasserted its statements from the prior order that it retained jurisdiction to enforce its orders and found that the language Stonedry sought in an amended order of possession would give Stonedry full and complete possession of the property and the amended order of possession to include the language required by the sheriff.

¶ 38 On August 24, 2017, respondents filed a second notice of appeal seeking a stay of the order of possession and reversal of the circuit court's August 3, 2017, order (case number 17-2276). Subsequently on December 29, 2017, the county division granted respondents' motion

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for a stay. The order stated that upon respondents' filing of a bond, all pending matters would be stayed, including respondents' 2-1401 petition, until after the appellate court disposed of the pending appeals. The purpose of the stay was to secure the various orders the county division entered in 2017 and to maintain the status quo in the lower court during the pendency of the appeal. On March 22, 2018, the county division stayed all pending matters based on respondents' bond submission.

¶ 39 This court later consolidated both appeals for review.

¶ 40 DISCUSSION

¶ 41 On appeal, respondents contend that: (1) this court must exercise its independent duty to vacate void orders where Stonedry not only failed to comply with the notice provisions of the Property Tax Code (35 ILCS 200/1 *et seq.* (West 2014)), but also procured the tax deed by acts of clear fraud that are documented in the record; (2) the December 1, 2015, settlement agreement, which was void *ab initio*, was part of a fraudulent *modus operandi* that requires this court to void the December 1, 2015, tax deed and related orders; (3): the circuit court lacked jurisdiction to enter the May 1, 2017, subsequent order of possession; and (4): the circuit court lacked jurisdiction to enter the August 3, 2017, supplemental order of possession because the June 16, 2017, notice of appeal vested jurisdiction in the Appellate Court.

¶ 42 A. The County Division's December 1, 2015, Orders

¶ 43 As a preliminary matter, we must first determine whether we have jurisdiction to review the agreed orders of December 1, 2015, (respondent's issues 1 and 2) when they were not appealed within 30 days of their entry nor were they included in either of respondents' notices of appeal. We further note that respondents' section 2-1401 petition, filed on August 2, 2017, in

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which they sought to vacate the county division's December 1, 2015, orders based on the same arguments advanced on appeal, has not been resolved by the circuit court as it was stayed on March 22, 2018.

¶ 44 Respondents contend that although they did not include the orders of December 1, 2015, in their notices of appeal, this court has the jurisdiction to review them because they are orders in the procedural progression to the orders listed in their notices of appeal. We disagree.

¶ 45 "The timely filing of a notice of appeal is the only jurisdictional step for initiating appellate review." *JP Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App (1st) 140428, ¶ 22. In the absence of a properly filed notice of appeal, a reviewing court lacks jurisdiction and must dismiss the appeal. *Id.* The purpose of a notice of appeal is to notify the prevailing party that the other party seeks review of the circuit court's judgment and confers jurisdiction on the reviewing court to only consider the judgments specified therein. *Id.* at ¶ 23.

¶ 46 Supreme Court Rule 303(a)(1) (eff. July 1, 2017) provides that a "notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from." A notice of appeal filed more than 30 days after a final, appealable order does not invoke this court's jurisdiction to consider the appeal. *JP Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App (1st) 140428, ¶ 27.

¶ 47 The notice of appeal is to be liberally construed and it will confer jurisdiction on the appellate court if the notice, when construed as a whole, fairly and adequately sets out the judgment complained of and the relief sought so that the successful party is advised of the nature of the appeal. *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433-34 (1979). Unless the appellee is prejudiced thereby, the absence of strict technical compliance with the form of the

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notice is not fatal, and where the deficiency in the notice is one of form only, and not of substance, the appellate court is not deprived of jurisdiction. *Burtell*, 76 Ill. 2d at 434.

¶ 48 When an appeal is taken from a specified judgment only, or from a part of a specified judgment, the court of review acquires no jurisdiction to review judgments or parts thereof not so specified or not fairly to be inferred from the notice as intended to be presented for review on the appeal. *Burtell*, 76 Ill. 2d at 434. A notice of appeal need not specify a particular order to confer jurisdiction if the order specified in the notice of appeal directly relates back to the judgment or order sought to be reviewed. *Dalen v. Ozite Corp.*, 230 Ill. App. 3d 18, 23 (1992). The unspecified judgment is reviewable if it is a step in the natural progression leading to the judgment specified in the notice of appeal. *Dalen*, 230 Ill. App. 3d at 23. As noted in *Burtell*, the notice of appeal in that case was sufficient to confer jurisdiction because the earlier order sought to be reviewed, but was not mentioned in the notice of appeal, was an order for an accounting and the notice of appeal referred to the final judgment, which was based on the accounting. *Burtell*, 76 Ill.2 d at 431-36.

¶ 49 Here, the county division entered a final order granting ownership to Stonedry on its tax deed petition on December 1, 2015, according to the Property Tax Code. Section 22-45 of the Property Tax Code (35 ILCS 200/22-45 (West 2014)) provides that the award of a tax deed is "incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed." Respondents could have filed a post-judgment motion to vacate that order within 30 days after the entry of the final judgment but did not (see *In re Application of County Treasurer*, 214 Ill. 2d 253, 261-71 (2005)). As such, respondents were then required to file a notice of

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appeal within 30 days of entry of the December 1, 2015, orders which granted a tax deed to Stonedry among other things, in order to contest them, and they did not.

¶ 50 While the subsequent orders entered by the county division are related to the December 1, 2015, order of ownership, they do not affect the finality of the order awarding the tax deed. See 35 ILCS 200/22-10 *et seq.* (West 2014)), *S.I. Securities v. Powless*, 403 Ill. App. 3d 426, 429 (2010) (the legislature intended a tax deed, once it is issued, to be virtually incontestable except by direct appeal; the legislature's intent to provide a tax buyer with a new and independent title, free and clear from all previous titles and claims of every kind, and assurance to the tax buyer that his title and rights to the property would be unimpaired). The legislature drafted the Property Tax Code in this manner because, prior to 1951, there was “an alarming increase in the rate of tax delinquencies, and ‘almost any defect or deficiency, no matter how minute, in a tax deed proceeding that led to the issuance of a tax deed made a deed suspect and generally void.’” *S.I. Securities*, 403 Ill. App. 3d at 429 (quoting *Killion v. Meeks*, 333 Ill. App. 3d 1188, 1191 (2002)).

¶ 51 Moreover, we note that the circuit court’s orders of December 1, 2015, were all agreed orders. Our law is clear that once an agreed order is entered, it may not be challenged on appeal unless it was the result of fraud, coercion, or inequities between the parties. *McGath v. Price*, 342 Ill. App. 3d 19, 31 (2003). Respondents did not seek to challenge these agreed orders until their August 2, 2017, section 2-1401 petition, which was filed after their June 16, 2017, notice of appeal was filed. The record indicates that respondents did not attempt to challenge the December 1, 2015, orders until their failure to do so was brought to their attention by the circuit court. We again note that the section 2-1401 petition has not been resolved but was stayed pending the resolution of this appeal. We further note that the filing of a section 2-1401 petition

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is considered a new proceeding, not a continuation of the old one. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002).

¶ 52 To circumvent these various procedural hurdles, respondents, however, contend that the December 1, 2015, agreed orders were void because petitioner engaged in fraud or deception as a matter of law with respect to the notices required by the Property Tax Code. We disagree.

¶ 53 A void order can be attacked at any time. *Application of Cook County Collector*, 228 Ill. App. 3d 719, 731 (1991). A void judgment is from its inception a complete nullity and without legal effect. *Id.* A tax deed is not void unless the circuit court lacked jurisdiction to enter the order that directed the issuance of the tax deed. *In re County Treasurer*, 2013 IL App (3d) 120999, ¶ 29. “Thus, an order is not rendered void by error or impropriety or even by subsequent fraud, concealment, or perjury (subsequent in that it took place after the application for judgment and sale when the trial court acquired jurisdiction).” *Id.*

¶ 54 There is no question here that the circuit court had subject matter jurisdiction over tax deed cases, and the trial court obtained personal *in rem* jurisdiction over the property when the application for a tax sale was filed. *Application of Cook County Collector*, 228 Ill. App. 3d at 731. We find that the tax deed order was not void because the circuit court had the power in general to order the issuance of tax deeds.

¶ 55 Turning to respondents’ fraud allegation, fraud in this context is a “wrongful intent- an act calculated to deceive.” *Application of Cook County Collector*, 228 Ill. App. 3d at 732. The burden of proving that the tax deed was procured by fraud is on the party alleging fraud. *Smith v. D.R.G., Inc.*, 63 Ill. 2d 31, 37 (1976).

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¶ 56 Here, although there were several deficiencies in the initial take notice (as detailed previously), we find that they do not amount to fraud as alleged by respondents. We are aware that the first take notice, filed on April 23, 2014, listed Gammadock as the purchaser or assignee, even though its interest had been assigned to Stonedry several days earlier. Respondents do not dispute that Gammadock purchased the taxes in a tax sale. We further note that Stonedry is managed by Gammadock and another LLC. The noted deficiencies were corrected in the second take notice, filed on July 9, 2014. Respondents do not contest any material aspect of the take notices. Nor do respondents' arguments rise to the level of wrongful intent, at most they allege negligence. It is clear in this case that respondents received adequate notice of the tax sale, the tax proceedings and had ample opportunity to redeem the property and did not do so. Additionally, the petitioner paid respondents \$80,000 and allowed them to remain in the property until April 1, 2016, pursuant to the parties' agreed order of December 1, 2015, and it is respondents who have failed to abide by its agreements, instead seeking to circumvent them at every turn by filing dilatory pleadings in the various courts of this State in order not to comply. We find that respondents' arguments that petitioner committed fraud during the tax deed proceedings is without merit.

¶ 57 Accordingly, we find that respondents failed to properly appeal the county division's orders of December 1, 2015, which issued a tax deed to Stonedry. As such, we have no jurisdiction to review the merits of that order and dismiss the portions of respondents' appeal as to those orders.

¶ 58 B. The County Division's May 1, 2017, Order

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¶ 59 Respondents contend that the county division lacked jurisdiction to enter the May 1, 2017, "subsequent" order of possession. Specifically, respondents assert that Stonedry's January 2017 petition admitted supervening actions which showed that the agreed possession order was satisfied and obsolete by later agreement; that the county division lacked jurisdiction because it lost jurisdiction 30 days after entry of the December 1, 2015, orders. Respondents also contend that the law of priority of jurisdiction precluded any jurisdiction by the county division over the 2016 breach of contract action. We disagree.

¶ 60 A tax sale proceeding is *in rem*, and the circuit court acquires jurisdiction over the land when the county collector makes her application for judgment and order for sale. *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 165 (1983). Once acquired, the court retains its jurisdiction to make all necessary findings and enter all necessary orders supplemental to the original tax sale. *Vulcan Materials*, 96 Ill. 2d at 165.

¶ 61 Here, the county division acquired jurisdiction over the property in 2014 when the county collector filed her application for judgment and order for sale and it retained jurisdiction to enter all necessary orders, not only to effectuate the sale, but to issue supplemental orders to the original judgment and order of sale. See *Smith v. D.R.G.*, 63 Ill. 2d 31, 35 (1976).

¶ 62 The December 1, 2015, tax deed order issued a tax deed to Stonedry and granted possession of the property to respondents until April 1, 2016. Additionally, the county division specifically retained jurisdiction to grant Stonedry possession by court order at a future time, a power which is granted by the Property Tax Code. 35 ILCS 200/22-40 (West 2014). Accordingly, the county division had jurisdiction to enter the May 1, 2017, order of possession to

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Stonedry based on both the December 1, 2015, order and section 22-40 of the Property Tax Code.

¶ 63 Respondents further contend, however, that the law of priority of jurisdiction precluded any jurisdiction of the county division once their breach of contract action was filed in the law division. Respondents' argument is without merit.

¶ 64 The doctrine of priority of jurisdiction provides that where two actions between the same parties on the same subject are brought in different courts with concurrent jurisdiction the first court which acquires jurisdiction retains its jurisdiction. *Janson v. Illinois Pollution Control Board*, 69 Ill. App. 3d 324, 328 (1979).

¶ 65 However, that doctrine is not applicable in this case as both of respondents' cases were brought under the jurisdiction of the Circuit Court of Cook County. Both the county division and law division are simply divisions of the same "constitutional court of general jurisdiction," it follows then that both of these tribunals could have equal and concurrent subject matter jurisdiction over the issues raised in the tax deed application and respondents' breach of contract case. *Alfaro v. Meagher*, 27 Ill. App. 3d 292, 295-96 (1975).

¶ 66 We conclude that the county division had jurisdiction to enter the May 1, 2017, order of possession.

¶ 67 C. The County Division's August 3, 2017, Order

¶ 68 Respondents also contend that the county division lacked jurisdiction to enter the August 3, 2017, supplemental order that amended the prior order of possession because respondent's June 16, 2017, notice of appeal divested it of jurisdiction. Respondents' contention is without merit.

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¶ 69 The resolution of this issue is governed by our supreme court rules governing notices of appeal, which is a question of law and is reviewed *de novo*. *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 339 (2001).

¶ 70 An appeal may ordinarily only be taken from final orders which dispose of every claim in an action. *Id.* Unless an order resolves all claims, it must contain an express finding that "there is no just reason for delaying an appeal," otherwise, the order is not appealable. *Id.*

¶ 71 A notice of appeal is a procedural device filed with the trial court that, when timely filed, vests jurisdiction in the appellate court in order to permit review of the judgment such that it may be affirmed, reversed or modified. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 173 (2011). Once the notice of appeal is filed, the appellate court's jurisdiction attaches *instanter*, and the cause of action is beyond the jurisdiction of the circuit court. *General Motors*, 242 Ill. 2d at 173. The circuit court, however, retains jurisdiction after the notice of appeal is filed to determine matters collateral or incidental to the judgment. *General Motors*, 242 Ill. 2d at 173. Collateral or supplemental matters include those lying outside the issues in the appeal or arising subsequent to delivery of the judgment. *Moening v. Union Pacific Railroad Co.*, 2012 IL App (1st) 101866, ¶ 22.

¶ 72 Here, the May 1, 2017, order of the county division granted possession of the property to Stonedry, but stayed enforcement until June 1, 2017. Respondents' motion to reconsider and vacate was denied on June 14, 2017. On June 15, 2017, Stonedry filed a motion to amend the May 1, 2017, order of possession to add language requested by the sheriff in order to enforce the order. Subsequently, on June 16, 2017, respondents filed a notice of appeal from the May 1, 2017, order. At the time respondents filed their notice of appeal, they were aware of Stonedry's

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pending motion to amend the language of the May 1, 2017, order, which was not decided until August 3, 2017.

¶ 73 Rule 303(a)(2) (Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017)) provides that a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion or before the final disposition of any separate claims, becomes effective when the order disposing of said motion or claim is entered. Thus, respondents' June 16, 2017, notice of appeal was premature as Stonedry's June 15, 2017, motion was pending.

¶ 74 However, Rule 303(a)(2) protects the rights of an appellant who has filed a premature notice of appeal by making the notice of appeal effective when the order resolving a still-pending separate claim is entered. *In re Marriage of Valkiunas and Olsen*, 389 Ill. App. 3d 965, 967 (2008). A pending claim under Rule 303(a)(2) is the same as a claim under Rule 304(a). Ill. S. Ct. 304(a) (eff. Mar. 8, 2016). A claim under Rule 304 is any "right, liability or matter raised" in an action. *Id.* at 968. Stonedry's June 15, 2017, motion to amend the language of the May 1, 2017, order was a "matter" raised in the action and it was raised prior to respondents' June 16, 2017, notice of appeal. Thus, respondents' premature notice of appeal was not effective until after the county division ruled on Stonedry's June 15, 2017, motion, which was on August 3, 2017.

¶ 75 Since respondents' notice of appeal was not effective until after the county division ruled on Stonedry's June 15, 2017, motion it follows then that the county division retained jurisdiction to rule on that motion despite the filing of respondents' June 16, 2017, notice of appeal.

¶ 76

CONCLUSION

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¶ 77 In conclusion, this court has no jurisdiction to consider respondents' challenges related to the circuit court's orders of December 1, 2015, relating to the issuance of the tax deed, the entry of the settlement agreement and other related orders, and we dismiss the appeal from those orders. We affirm the entry of the circuit court's orders of May 1, 2017, June 15, 2017, and August 3, 2017, for the reasons stated herein.

¶ 78 No. 1-17-1539, Affirmed in part and dismissed in part.

¶ 79 No. 1-17-2276, Affirmed.