

Illinois Official Reports

Appellate Court

In re Application of Davis, 2023 IL App (3d) 210573

Appellate Court
Caption

In re APPLICATION OF ROBIN E. DAVIS, County Treasurer and *ex officio* Collector of Taxes for the Year 2016 and Special Assessments of Delinquent Lands and for Judgment Fixing the Correct Amount of Taxes Under Protest, in the County of Knox (Charles Bellemey Revocable Trust, Dated June 10, 2016, Petitioner-Appellant, v. Robin E. Davis, in Her Official Capacity as Knox County Treasurer and *ex officio* Collector, Respondent-Appellee).

District & No.

Third District
No. 3-21-0573

Filed

May 26, 2023

Decision Under
Review

Appeal from the Circuit Court of Knox County, No. 17-TX-01(35); the Hon. William A. Rasmussen, Judge, presiding.

Judgment

Reversed and remanded with directions.

Counsel on
Appeal

William M. Anderson IV, of Creve Coeur, for appellant.

Jeremy S. Karlin, State's Attorney, of Galesburg, for appellee.

Panel

JUSTICE HETTEL delivered the judgment of the court, with opinion. Justices Peterson and Davenport concurred in the judgment and opinion.

OPINION

¶ 1 Petitioner, Charles Bellemey Revocable Trust, dated June 10, 2016, appeals the Knox County circuit court’s denial of two motions for declaration of a tax sale in error under articles 21 and 22 of the Property Tax Code (Code) (35 ILCS 200/arts. 21, 22 (West 2020)). Petitioner claims the court’s finding that it was not entitled to a sale in error under section 21-310(b)(2) (*id.* § 21-310(b)(2)) or section 22-35 (*id.* § 22-35) of the Code was against the manifest weight of the evidence and an abuse of discretion. We hold the trial court erred in denying the motion for a sale in error under section 22-35 and remand with instructions.

¶ 2 I. BACKGROUND

¶ 3 On November 16, 2017, petitioner purchased a hotel located at 29 Public Square in Galesburg through a tax sale held by the Knox County treasurer. Petitioner successfully purchased the property for the taxes, interest, penalties, and costs for 2016.

¶ 4 On July 24, 2020, approximately four months before the end of the redemption period, petitioner filed an application under the Code, seeking issuance of a tax deed to the property. Petitioner provided notice of the tax sale, redemption period, the petition for tax deed, and future court dates to several interested parties, including the City of Galesburg (City). On August 20, 2020, the City responded to the petition, alleging a lien on the property in the amount of \$690.51 for mowing, weeding, and general maintenance. The City attached copies of two liens to its response, one for \$365 for services provided on May 21, 2020 (recorded June 29, 2020) and another for \$325.51 for services provided on July 1, 2020 (recorded August 3, 2020).

¶ 5 On December 2, 2020, the trial court conducted a status hearing on the petition. At the hearing, petitioner’s attorney indicated that his client was still seeking issuance of the tax deed but wanted to pay the liens first. Kathleen Bellemey testified that she is Charles Bellemey’s daughter and she assists her father in his business of buying delinquent taxes. She stated, “Well, we think we are gonna go ahead and ask you to sign an order, but we have to pay that lien, and we’re unable to right now. So we would like to go ahead and pay that lien in a week or so.” On that basis, the court continued the matter. Petitioner paid both liens on May 12, 2021.

¶ 6 On August 9, 2021, the trial court held a hearing on the tax deed petition and the City’s response. The City’s attorney appeared and informed the court that the liens had been paid.

“THE COURT: Okay for the record ***, and this matter comes before the Court on a tax deed petition, specifically it seems as if there is an objection filed by the City due to a lien.

MR. NOLDEN [(CITY ATTORNEY)]: There was an objection. The lien has been paid. So we are paid and actually working with the certificate holders to acquire the property after deed issues.

* * *

THE COURT: Okay, and you are withdrawing your objection on to the issuance of the deed—is that correct—on behalf of—

MR. NOLDEN: We'll withdraw our objection, your Honor.”

¶ 7 Without further objection, the trial court granted the petition for tax deed. In its written order, the court found that the time for redemption had expired and the taxes had not been redeemed, that all taxes and special assessments had been paid, and that petitioner had complied with all statutory provisions entitling him to a tax deed. The court directed the Knox County clerk to issue a tax deed. Petitioner did not present the tax sale certificate or the trial court's order to the county clerk, and a deed was not issued prior to petitioner's motion for a sale in error.

¶ 8 On October 21, 2021, petitioner filed a motion asking the trial court to declare a sale in error pursuant to section 21-310(b)(2) of the Code (*id.* § 21-310(b)(2)). Charles Bellemey claimed that improvements on the property had been substantially destroyed or rendered uninhabitable or otherwise unfit for occupancy subsequent to the tax sale and prior to the issuance of the tax deed and requested a refund of the amount paid for the taxes. Petitioner attached a violation notice from the City, dated April 12, 2021, stating that the hotel was a dangerous and unsafe building due to multiple broken doors, including the entrance door on the ground level that was accessible to trespassers.

¶ 9 Two weeks later, petitioner filed an amended motion for declaration of sale in error under section 22-35 of the Code (*id.* § 22-35). In the amended motion, petitioner also alleged that the court should declare a sale in error because the City still held five liens against the property, in addition to the two liens that Bellemey previously paid, and petitioner was unaware of those liens when the court granted the petition for issuance of a tax deed on August 9, 2021.

¶ 10 At the hearing on the motions, Kathleen testified that she went to the property on November 5, 2021, and photographed the exterior and interior condition of the building. Eight pictures were admitted into evidence. They depicted broken glass doors leading into the hotel, black mold on the walls, debris in the hallways, a missing bathroom sink, a broken door leading into the hotel office, and exterior walls with crumbling foundation. Kathleen testified that when she was taking the photographs, she also noticed roofing materials that had blown off the top of the hotel since she visited in August 2021. On cross-examination, she admitted that she did not walk through the entire hotel or extend her examination beyond a few rooms on the first floor because she did not feel safe.

¶ 11 Kathleen testified that prior to the tax sale in 2017, she drove around the property and noticed that it was occupied. Shortly after her father purchased the tax bill, she drove past the hotel again and saw cars in the driveway and lights on inside the hotel. Sometime at the end of 2019 or the beginning of 2020, she drove past the hotel and noticed that it was no longer in business. She admitted that she had not been inside the hotel prior to taking photographs in November 2021.

¶ 12 Counsel for petitioner then asked Kathleen about several liens on the property that had not been paid. Kathleen testified that five additional liens were revealed based on a title search that occurred after the August 9, 2021, hearing. She attempted to identify the liens in an exhibit marked as petitioner's exhibit No. 3. The State objected, claiming that the liens were irrelevant because the City had previously withdrawn its objection. Petitioner's attorney disagreed, noting that the City's response objecting to the sale only mentioned two liens that had been paid but did not address the five outstanding liens. He argued that since the City's objection

did not speak to the remaining liens, the City had not withdrawn its objection to the sale based on those liens.

¶ 13 Kathleen continued to testify. She stated that the additional liens had not be paid or otherwise satisfied and that the City had recorded the liens on the following dates: (1) July 27, 2020, (2) August 28, 2020, (3) September 21, 2020, (4) December 14, 2020, and (5) June 1, 2021. The court interjected and noted that the City had withdrawn its objection based on the nonpayment of liens at the August 9, 2021, hearing. Petitioner’s counsel agreed that the City withdrew its objection to two liens but claimed that the City could still attack the tax deed in a motion under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2020)). The trial court declared that petitioner’s argument was premature and sustained the State’s objection to the admission of exhibit No. 3.

¶ 14 At the conclusion of Kathleen’s testimony, the trial court found there was no evidence to support the claim that the property was destroyed or uninhabitable “subsequent to the tax sale” and denied petitioner’s motion for a sale in error under section 21-310(b)(2) of the Code. The court emphasized that there was no evidence regarding the interior condition of the building at the time of purchase. It further noted that the photographs only revealed a portion of the hotel’s condition and failed to demonstrate that those conditions were widespread.

¶ 15 The trial court also denied petitioner’s amended motion for a sale in error under section 22-35 of the Code. The court found that the City waived any objection it had to issuance of a tax deed, including any objection based on liens still of record, by withdrawing its objection at the August 9, 2021, hearing. It concluded that, based on the City’s waiver, petitioner was not entitled to a sale in error under the statute.

¶ 16 II. ANALYSIS

¶ 17 On appeal, petitioner claims that the trial court erred in denying his motions for declaration of a sale in error under sections 21-310(b)(2) and 22-35 of the Code. To the extent we are asked to interpret provisions of the Code, our review is *de novo*. *Metropolitan Life Insurance Co. v. Hamer*, 2013 IL 114234, ¶ 18 (statutory interpretation is a question of law that we review *de novo*). However, where, as here, the trial court is required to make findings of fact regarding the sufficiency of the evidence as to substantial destruction and waiver, those findings will not be disturbed unless they are against the manifest weight of the evidence. See *In re Application of the County Treasurer & ex officio County Collector of Greene County*, 2022 IL App (4th) 190904, ¶ 22. A determination is against the manifest weight of the evidence “only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence.” *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16.

¶ 18 A. Sale in Error Under Section 21-310(b)(2)

¶ 19 Petitioner first claims the trial court erred in denying its motion for declaration of a sale in error under section 21-310(b)(2) of the Code. Petitioner argues that Kathleen’s pictures, together with her testimony, demonstrate that the hotel was substantially destroyed or rendered uninhabitable and that the destruction of the property occurred sometime between the date of the tax sale and when the tax deed could have been issued.

¶ 20 Section 21-310 of the Code provides:

“(b) When, upon application of the owner of the certificate of purchase only, it appears to the satisfaction of the court which ordered the property sold that any of the following subsections are applicable, the court shall declare the sale to be a sale in error:

(2) The improvements upon the property sold have been substantially destroyed or rendered uninhabitable or otherwise unfit for occupancy subsequent to the tax sale and prior to the issuance of the tax deed[.]” 35 ILCS 200/21-310(b)(2) (West 2020).

¶ 21 Specifically, subsection (b)(2) allows a purchaser to file an application for a sale in error if the improvements “have been substantially destroyed or rendered uninhabitable or otherwise unfit for occupancy *subsequent to the tax sale* and prior to the issuance of the tax deed.” (Emphasis added.) *Id.* An application should be granted when “it appears to the satisfaction of the court which ordered the property sold” that the property was destroyed or rendered uninhabitable during the statutory period. *Id.* § 21-310(b). It is the petitioner’s responsibility to present evidence that the destruction of the property occurred between the date of the tax sale and issuance of the tax deed. See *id.* (“upon application of the owner of the certificate of purchase only”); see also *Wagner v. Rumler*, 177 Ill. App. 3d 301, 304 (1988). Where a sale is declared to be in error, the owner of the certificate of purchase is entitled to reimbursement of the purchase price with interest. 35 ILCS 200/21-315 (West 2020).

¶ 22 Here, the court found there was insufficient evidence to show that the hotel was substantially destroyed or rendered uninhabitable after petitioner purchased the property at the tax sale. The record supports that finding. Kathleen, the only witness to testify at the motion hearing, stated that she drove around the hotel before the tax sale and observed that it was occupied but admitted that she did not go inside the hotel prior to the sale. No other evidence was offered to establish the condition of the hotel and other improvements on the property at the time petitioner purchased the taxes in 2017. The record demonstrates that the property was substantially destroyed or deemed uninhabitable prior to the issuance of the tax deed but is void of evidence proving that the improvements were substantially destroyed *subsequent to the tax sale*.

¶ 23 Although Kathleen testified that she photographed the interior and exterior of the hotel and described the conditions inside the hotel as unsafe, she admitted that she did not physically investigate the property or take pictures of the hotel until November 2021. Prior to that date, petitioner’s investigation of the condition of the property consisted of Kathleen’s observations as she drove around the block. Petitioner also attached a notice from the City, stating that the building was dangerous and unsafe, which suggests that the interior was substantially uninhabitable, but that notice was issued in 2021. In fact, nothing in the record addresses the interior condition of the hotel as of the date of the tax sale in November 2017. Based on the evidence presented, the rooms and hallways depicted in the photographs could have been substantially destroyed before Bellemey purchased the taxes. Thus, the trial court’s finding that petitioner failed to show the property was substantially destroyed or deemed uninhabitable *after* the tax sale was not against the manifest weight of the evidence. The court, therefore, did not err in dismissing petitioner’s motion for declaration of a sale in error under section 22-310(b)(2) of the Code.

¶ 24 Petitioner claims that the evidence presented in support of the motion falls within the timeline required for declaration of a tax sale in error under section 22-310(b)(2)—subsequent to the tax sale but prior to issuance of the tax deed—and relies on *Wagner*, 177 Ill. App. 3d 301. In that case, the trial court’s declaration of a sale in error was reversed on appeal, where the record was silent regarding the condition of the property at the time the tax deed was issued. In reversing the lower court’s decision, the appellate court determined that evidence necessary to prove the property’s condition at the end of the statutory timeline—prior to issuance of the tax deed—was lacking. *Id.* at 304 (“Our review of the certified report of proceedings verifies the trial court’s finding that the improvements on each respective property were substantially destroyed subsequent to the tax sale but is void of any indication as to whether these improvements were destroyed prior to the issuance of the deed.”). Here, the trial court focused on the beginning of the statutory timeline—subsequent to the tax sale—and denied the sale in error because it found no evidence that improvements on the property were destroyed after the taxes were purchased. Accordingly, the holding in *Wagner* is inapplicable and does not require a different result.

¶ 25 Even if the timeline in *Wagner* applied, we decline to extend its holding. The *Wagner* court reversed the trial court’s finding of substantial destruction, concluding that there was no evidence in the record to show that substantial destruction took place prior to when the deed could have been issued. *Id.* (“Since the record, as certified, is silent regarding the condition of each property at the time the respective tax deeds *could have been issued*, the trial court’s finding is against the manifest weight of the evidence and must be overturned.” (Emphasis added.)). We note that *Wagner*’s “could have been issued” interpretation of the application requirements in section 21-310(b)(2) does not comport with the plain language of the statute and has not been adopted by any other court. See *In re Application of the County Treasurer of Greene County*, 2022 IL App (4th) 190904, ¶¶ 31-32 (refuting *Wagner*’s interpretation of the statute).

¶ 26 B. Sale in Error Under Section 22-35

¶ 27 Petitioner also argues that the trial court erred in denying the amended motion for declaration of a sale in error under section 22-35 of the Code. Petitioner claims that section 22-35 requires satisfaction of all municipal liens before a tax deed is entered and, in the absence of a valid waiver of the remaining liens, the tax sale in the instant case must be set aside.

¶ 28 Section 22-35 of the Code states, in relevant part:

“[A]n order for the issuance of a tax deed under this Code shall not be entered affecting the title to or interest in any property in which a county, city, village or incorporated town has an interest under the police and welfare power by advancements made from public funds, until the purchaser or assignee makes reimbursement to the county, city, village or incorporated town of the money so advanced or the county, city, village, or town waives its lien on the property for the money so advanced. However, in lieu of reimbursement or waiver, the purchaser or his or her assignee may make application for and the court shall order that the tax purchase be set aside as a sale in error.” 35 ILCS 200/22-35 (West 2020).

¶ 29 The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *In re Application of the County Treasurer of Cook County of Cook County*, 343 Ill. App. 3d 122, 125 (2003). In determining legislative intent, a court should consider the statutory

language first, giving the terms of the statute their ordinary meaning. *MQ Construction Co. v. Intercargo Insurance Co.*, 318 Ill. App. 3d 673, 681 (2000). A dictionary may be used as a resource to determine the ordinary and commonly accepted meaning of words. *Melliere v. Luhr Bros., Inc.*, 302 Ill. App. 3d 794, 797 (1999). Where the language of the statute is clear, we will not resort to other aids or construction. *Augustus v. Estate of Somers*, 278 Ill. App. 3d 90, 97 (1996).

¶ 30 The plain language of section 22-35 provides that a tax deed to the purchased property shall not be issued until the purchaser reimburses the municipality for any monies it expended on the property pursuant to its police and welfare power, unless the city waives its lien on the property for any money so expended. Alternatively, instead of reimbursement or waiver, the purchaser of the tax deed may apply for a sale in error.

¶ 31 “Waiver” is defined as “the act of *** intentionally relinquishing or abandoning a known right, claim, or privilege.” Webster’s Third New International Dictionary (2002). To constitute a waiver under section 22-35, the municipality must intentionally relinquish its lien on the subject property. See *In re Application of the County Treasurer of Cook County*, 343 Ill. App. 3d at 126 (municipality did not intentionally relinquish its lien for funds expended to demolish building on tax sale property where it did not expressly execute a waiver); cf. *In re Application of the County Collector for Judgment & Order of Sale Against Lands & Lots Returned Delinquent for Non-Payment of General Taxes & Special Assessments for the Year 1983 & Prior Years*, 206 Ill. App. 3d 22, 29 (1990) (city waived its liens against property purchased at tax sale by voluntarily dismissing its section 2-1401 petition to vacate issuance of the tax deed).

¶ 32 Here, the City spent public funds to maintain the hotel property. The City imposed liens against the property for those services and, after being properly served with notice of the proceedings, filed an objection in response to petitioner’s tax deed petition. The City attached a lien for two bills for its services that were recorded in June and August 2020. Petitioner paid those bills, and the City withdrew its objection at the hearing on August 9, 2021, stating in open court that it no longer objected to issuance of a tax deed because the lien had been paid. Specifically, counsel for the City stated, “There was an objection. The lien has been paid.” Counsel then confirmed, “We’ll withdraw our objection, your Honor.” By withdrawing its objection at the August 9, 2021, hearing, the City intentionally relinquished those liens attached to its objection—dated May 21 and July 1, 2020. However, there is no indication in the record that the City expressly or intentionally waived the remaining liens that had been recorded. The City did not appear at the hearing on the amended motion for a sale in error, nor did it otherwise object to the motion for a sale in error under section 22-35. On this record, we cannot say that the City’s silence constitutes an intentional relinquishment of the remaining liens. Without any evidence in the record to show that the City actively abandoned or relinquished the right to seek reimbursement for the expenditure of public funds on the property, we conclude that the court’s finding of waiver is against the manifest weight of the evidence. Accordingly, the trial court erred in denying the amended motion. Petitioner is entitled to a sale in error under section 22-35 of the Code.

¶ 33

III. CONCLUSION

¶ 34

The judgment of the circuit court of Knox County is reversed and remanded with instructions for the trial court to enter an order granting petitioner’s motion for a sale in error

pursuant to section 22-35 of the Code.

¶ 35 Reversed and remanded with directions.