SUPREME COURT OF ILLINOIS

In re Application of the County Treasurer (Forus Mortgage Corporation v. Denis Dwyer et al.)

In re Application of the County Treasurer · No. 98146 · Decided February 17, 2005

SUMMARY

The Illinois Supreme Court held that an order directing issuance of a tax deed may be challenged by a timely postjudgment motion under section 2-1203 of the Code of Civil Procedure. Because the Dwyers' motions were timely, their notice of appeal was also timely, and the court reversed the appellate court's dismissal and remanded for consideration of the appeal on the merits.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Freeman
JURISDICTION	Illinois
DECIDED	February 17, 2005
DOCKET	98146
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The property owners appealed the appellate court's dismissal of their appeal as untimely. The Illinois Supreme Court granted review to determine whether an order directing issuance of a tax deed could be challenged by a timely postjudgment motion for reconsideration or to vacate.
STANDARD OF REVIEW	De novo review applied to the appellate court's construction of the Property Tax Code and to the constitutionality of the statute.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Denis Dwyer, Lillian Dwyer v. Forus Mortgage Corporation

TOPICS

tax · statutory interpretation · appellate procedure · real estate

PRACTICE AREAS

civil procedure real estate law property tax appellate procedure

QUESTIONS PRESENTED

1. Whether section 22-45 of the Illinois Property Tax Code permits a property owner to challenge an order directing issuance of a tax deed by a timely postjudgment motion under section 2-1203 of the Code of Civil Procedure.
2. Whether the Dwyers' timely postjudgment motions tolled the period for filing a notice of appeal under Supreme Court Rule 303.
3. Whether it was necessary to decide the constitutional challenge to section 22-45.

HOLDINGS

1. Section 22-45 of the Property Tax Code permits a direct attack on an order directing issuance of a tax deed through a timely postjudgment motion under section 2-1203 of the Code of Civil Procedure.
2. The Dwyers' notice of appeal was timely because their postjudgment motions were filed within 30 days of the tax-deed order and tolled the time for filing an appeal until the circuit court disposed of those motions.
3. The constitutional issues did not need to be decided because the case could be resolved by construing section 22-45 to permit timely postjudgment motions.

KEY QUOTATIONS

> *“We conclude that the statute permits a direct attack, by postjudgment motion, pursuant to section 2–1203 of the Code of Civil Procedure.”*

> *“The appeal was timely in that it met the requirements of Rule 303.”*

FACTUAL BACKGROUND

Denis and Lillian Dwyer owned a residence sold for delinquent 1996 property taxes. Tax Deed, Inc., purchased the property at the tax sale and later transferred it to Forus Mortgage Corporation. Forus petitioned for a tax deed after the redemption period expired, and the circuit court ordered issuance of the deed on July 30, 2002. The Dwyers filed motions to vacate within 30 days, but the appellate court treated those motions as ineffective to toll the appeal period.

PROCEDURAL HISTORY

The circuit court of Cook County entered an order on July 30, 2002, directing the county clerk to issue a tax deed to Forus Mortgage Corporation. The Dwyers filed postjudgment motions within 30 days, and the circuit court denied them on October 24, 2002. The Dwyers then filed a notice of appeal; the appellate court dismissed the appeal as untimely, holding that postjudgment motions were not proper challenges to the tax-deed order and did not toll the appeal period. The Illinois Supreme Court reversed and remanded to the appellate court to consider the appeal on the merits.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the Illinois Appellate Court with directions to consider the Dwyers' appeal on the merits.

CASES CITED

- Bridgestone/Firestone, Inc. v. Aldridge, 179 Ill. 2d 141, 149 (1997)
- Illinois Power Co. v. Mahin, 72 Ill. 2d 189, 194 (1978)
- In re B.C., 176 Ill. 2d 536, 542 (1997)
- Michigan Avenue National Bank v. County of Cook, 191 Ill. 2d 493, 504 (2000)
- Sylvester v. Industrial Comm'n, 197 Ill. 2d 225, 232 (2001)
- Collins v. Board of Trustees of the Firemen's Annuity & Benefit Fund, 155 Ill. 2d 103, 111-12 (1993)
- In re D.F., 208 Ill. 2d 223, 230 (2003)
- Burger v. Lutheran General Hospital, 198 Ill. 2d 21, 31 (2001)
- People v. Greco, 204 Ill. 2d 400, 406 (2003)
- In re R.C., 195 Ill. 2d 291, 296 (2001)
- Bonaguro v. County Officers Electoral Board, 158 Ill. 2d 391, 396 (1994)
- Beahringer v. Page, 204 Ill. 2d 363, 370 (2003)
- Cherin v. The R. & C. Co., 11 Ill. 2d 447 (1957)
- Young v. Madden, 20 Ill. 2d 506 (1960)
- Shapiro v. Hruby, 21 Ill. 2d 353 (1961)
- Stanley v. Bank of Marion, 23 Ill. 2d 414 (1961)
- Farlow v. Oliver, 29 Ill. 2d 493 (1963)
- Urban v. Lois, Inc., 29 Ill. 2d 542, 547 (1963)
- In re Application of the County Collector, 281 Ill. App. 3d 467 (1996)