IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

JAMES J. KAY,
Appellant,

v.

AJPJ I, L.L.C.,
Appellee.

AJPJ I, L.L.C.,
Appellant,

v.

JAMES J. KAY,
Appellee.

Nos. 2 CA-CV 2015-0116 and 2 CA-CV 2015-0145 (Consolidated)
Filed February 26, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
Nos. C20131373, C20132119, and C20142874
The Honorable Christopher P. Staring, Judge
The Honorable Gus Aragón, Judge

AFFIRMED

COUNSEL

James Kay, Tucson
In Propria Persona

DeConcini McDonald Yetwin & Lacy, P.C., Tucson
By Gary F. Urman
Counsel for AJPJ I, L.L.C.

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 In this consolidated appeal, James Kay challenges the trial court's judgments awarding appellee AJPJ I, L.L.C. ("AJPJ") title and possession of real property after it had purchased a tax lien and foreclosed Kay's right to redeem. Although Kay raises several arguments, he primarily claims he did not receive notice of delinquent taxes prior to AJPJ purchasing the tax lien. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 The relevant facts are undisputed. Kay was the owner of real property described as "Lot 40 of Collen," located in Pima County. AJPJ acquired a certificate of purchase for the property after paying the delinquent taxes assessed against it.

¶3 In March 2013, AJPJ initiated an action (Pima County Superior Court No. C20131373) to foreclose Kay's right to redeem and to obtain title to the property. The following month, Kay filed an action (Pima County Superior Court No. C20132119) to enjoin the tax-lien foreclosure and to quiet title to the property. Pursuant to Kay's request, the trial court later consolidated the two cases.

¶4 In July 2013, AJPJ filed a motion for summary judgment in the foreclosure action. In his response, Kay argued that his due-process rights were violated because he was not notified that the taxes were delinquent or that AJPJ intended to purchase the tax lien. The trial court granted AJPJ's motion, explaining AJPJ had "complied with the notice requirements" and "there [was] no genuine dispute as to any material fact." When the court entered judgment in January 2014, it also dismissed Kay's quiet-title action.

¶5 In April 2014, Kay filed a motion for relief from the judgment pursuant to Rule 60(c), Ariz. R. Civ. P. Among other arguments, Kay again asserted that "due process was violated" because he had "received no notifications of any kind." The trial court denied the motion as to the foreclosure action, explaining that it "ha[d] already considered and resolved the issue of notice." However, the court also determined that it had prematurely dismissed Kay's quiet-title action because AJPJ had not requested a dismissal, and it therefore vacated that portion of the judgment.

¶6 Meanwhile, AJPJ obtained title to the property through a treasurer's deed and sent a letter to Kay requesting that he vacate the property. When Kay failed to vacate, AJPJ filed a forcible entry and detainer (FED) action (Pima County Superior Court No. C20142874) in May 2014. Three months later, during the trial in that action, after all the evidence and argument had been presented, the court stayed its decision until Kay's quiet-title action was resolved.

¶7 AJPJ then filed a motion to dismiss the quiet-title action, arguing that the judgment as to the foreclosure action had rendered the quiet-title action "moot" and "barred by the principle of res judicata." After a hearing, the trial court granted the motion in March 2015. The court explained that the January 2014 judgment as to the foreclosure action had "address[ed] the issue of actual title to the real property" and was thus res judicata. The court then entered a final judgment in April 2015, restating that AJPJ was the title owner of the property and that Kay's right to redeem had been foreclosed and also dismissing Kay's quiet-title action.[1] A few days

[1]Although the trial court explained that it had intended the January 2014 judgment to be final, it did not contain language

later, the court entered a final judgment in the FED action, finding that AJPJ was entitled to possession of the property and to restitution for Kay's holdover.

¶8 Kay appealed both those judgments. Upon this court's own motion, we consolidated the appeals. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Foreclosure Action

Notice of Delinquent Taxes

¶9 Kay characterizes the "primary issue" in this appeal as lack of "notice." He maintains a property owner like himself should receive notice prior to someone else "being allowed to 'pay' purported delinquent taxes assessed to the land." He argues that the statutes are unconstitutional because they do not provide for notice and that he was, in any event, not given notice of delinquent taxes by the county treasurer. He further contends that the failure to provide such notice violates procedural due process. "We review questions of statutory interpretation and constitutional law de novo." *Niehaus v. Huppenthal*, 233 Ariz. 195, ¶ 5, 310 P.3d 983, 985 (App. 2013).

¶10 Generally, "a tax that is levied on real or personal property is a lien on the assessed property." A.R.S. § 42-17153(A). It is the duty of the county treasurer to "secure the payment of unpaid delinquent taxes." A.R.S. § 42-18101(A). For "all real property on which the taxes for prior tax years are unpaid and delinquent," the treasurer must sell the tax lien at public auction. A.R.S. § 42-18106(A); *see also* A.R.S. § 42-18112. The purchaser obtains a certificate of purchase for the property. A.R.S. § 42-18118(A). Subject to certain limitations, the property owner may redeem the tax lien by paying the amount for which the lien was sold, along with interest and fees. A.R.S. §§ 42-18151 through 42-18153.

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pursuant to Rule 54(b) or (c), Ariz. R. Civ. P. In its March 2015 ruling, the court ordered that judgment amended to include Rule 54(c) language. The April 2015 judgment also included Rule 54(c) language.

However, "at any time beginning three years after the sale of a tax lien but not later than ten years after the last day of the month in which the lien was acquired," the purchaser "may bring an action to foreclose the right to redeem." A.R.S. § 42-18201(A). In that action,

> [I]f the court finds that the sale is valid and that the tax lien has not been redeemed, the court shall enter judgment:
>
> 1. Foreclosing the right of the defendant to redeem.
>
> 2. Directing the county treasurer to expeditiously execute and deliver to the party in whose favor judgment is entered, including the state, a deed conveying the property described in the certificate of purchase.

A.R.S. § 42-18204(A).

¶11 Procedural due process requires that a party receive adequate notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 348-49 (1976); *Cook v. Losnegard*, 228 Ariz. 202, ¶ 18, 265 P.3d 384, 388 (App. 2011); *see also Consol. Motors v. Skousen*, 56 Ariz. 481, 488, 109 P.2d 41, 44 (1941) ("[I]t is and always has been recognized that it is the duty of every citizen to pay his fair share of such taxes, the only necessary limitations, in the absence of specific constitutional provisions, being that . . . a reasonable opportunity shall be given to the citizen to be heard."). "Due process is not a static concept; it must account for 'the practicalities and peculiarities of the case.'" *Comeau v. Ariz. State Bd. of Dental Exam'rs*, 196 Ariz. 102, ¶ 20, 993 P.2d 1066, 1071 (App. 1999), *quoting Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

¶12 The relevant statutes require that notice be provided to the property owner throughout the tax-lien process. First, the county treasurer must "send by mail to the last known address of each person or firm that owes delinquent taxes notice that there are delinquent taxes against the real property that is assessed in the

taxpayer's name." A.R.S. § 42-18103. Second, after the county treasurer determines that a tax lien will be sold at public auction, he or she must "mail a copy of the notice of proposed sale to the owner of each parcel of property on the delinquent tax list at the owner's last known address." A.R.S. § 42-18108. Third,

> At least thirty days before filing an action to foreclose the right to redeem . . . , but not more than one hundred eighty days before such an action is commenced or may be commenced under § 42-18101 the purchaser shall send notice of intent to file the foreclosure action by certified mail to . . . [t]he property owner of record . . . .

A.R.S. § 42-18202(A).

¶13 Thus, to the extent Kay argues the statutes are unconstitutional on their face for failing to require notice, we disagree. *See Lisa K. v. Ariz. Dep't of Econ. Sec.*, 230 Ariz. 173, ¶ 8, 281 P.3d 1041, 1045 (App. 2012) (party challenging facial validity of statute must demonstrate no circumstances exist under which statute is valid). Both § 42-18103 and § 42-18108 require the county treasurer to notify the property owner that taxes are delinquent prior to any tax-lien sale.

¶14 Kay also argues that as applied to him the statutes violate his right to procedural due process because he did not receive any notice. However, Kay has presented no evidence that the notice required by the statutes was not provided. In the absence of such evidence, we must assume the county treasurer performed his or her duties in the tax proceedings. *See Consol. Motors*, 56 Ariz. at 486-88, 109 P.2d at 43-44; *Conway v. Mosher*, 55 Ariz. 467, 470, 103 P.2d 465, 466 (1940).

¶15 Kay seems to suggest that the notices must have been sent to an incorrect address by pointing to tax statements addressed to QTS Corporation in Chicago. QTS is a separate entity that previously had purchased a tax lien and obtained title to Kay's property, which he bought back in 2008. However, the statements

sent to QTS were for tax years 2004-2007. And, because of QTS's prior interest in the property, the county treasurer was required to send the tax statements to QTS for those years. *See* § 42-18103. Although Kay provided copies of those tax statements, the trial court record does not include copies of more recent tax statements, after he regained title, to show where they were sent.

¶16 Even assuming Kay did not receive notice of delinquent taxes or of the tax-lien sale, "the mere fact that he d[id] not actually have notice thereof does not invalidate [the] tax proceedings." *Consol. Motors*, 56 Ariz. at 489, 109 P.2d at 44; *see also* A.R.S. § 42-18111(D) (tax-lien sale not invalid when property assessed or advertised in name of person other than rightful owner if description of property and notice sufficient to identify it). "[E]very owner of property knows that taxes must be paid thereon, and the duty is imposed upon him of watching the various tax proceedings to protect his interests." *Consol. Motors*, 56 Ariz. at 489, 109 P.2d at 44. As we have noted, there is simply nothing in the record to suggest the county treasurer continued to send notices to QTS after Kay acquired the property in 2008 or, more importantly, that Kay was not also mailed such notices. Moreover, after the tax-lien sale, the property still belonged to Kay—AJPJ only held a certificate of purchase, *see* § 42-18118, and Kay had the right to redeem, which continued even after AJPJ initiated the foreclosure action, *see* A.R.S. § 42-18206. The record shows that AJPJ mailed notice of the foreclosure action to Kay's Tucson address. *See* § 42-18202(A).

¶17 In sum, a property owner is entitled to notice at each stage of the tax-lien process. *See* §§ 42-18103, 42-18108, 42-18202. There is no evidence that the statutes were not complied with here. Consequently, we cannot say that Kay's right to procedural due process was violated. *See Niehaus*, 233 Ariz. 195, ¶ 5, 310 P.3d at 985.

Summary Judgment

¶18 Kay further contends that the entry of summary judgment in favor of AJPJ in the foreclosure action was improper because a dispute as to material facts existed. "[W]e review de novo whether there are any genuine issues of material fact and whether the trial court erred in applying the law." *Eller Media Co. v. City of*

Tucson, 198 Ariz. 127, ¶ 4, 7 P.3d 136, 139 (App. 2000). In doing so, we view the facts and all inferences drawn therefrom in the light most favorable to the party against whom judgment was entered. *Bothell v. Two Point Acres, Inc.*, 192 Ariz. 313, ¶ 2, 965 P.2d 47, 49 (App. 1998).

¶19 Summary judgment is appropriate "if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(a). "[T]he burden [then] shifts to the opposing party to produce sufficient competent evidence to show that an issue exists." *Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, ¶ 14, 17 P.3d 790, 793 (App. 2000).

¶20 In support of its motion for summary judgment, AJPJ presented an affidavit from James Matusiak, AJPJ's managing member, avowing that AJPJ held the certificate of purchase for paying delinquent taxes on the property, that the taxes had been delinquent for more than three years since the sale, that Kay had not redeemed the tax lien, and that Matusiak had sent notice to Kay pursuant to § 42-18202. Kay did not dispute any of these statements.

¶21 Instead, Kay points to four letters attached to his response to the motion for summary judgment as evidence of a factual dispute. The letters were exchanged between Kay and Matusiak after AJPJ had obtained the certificate of purchase but before it had initiated the foreclosure action. Kay seems to suggest the letters show a factual dispute regarding whether the property taxes had in fact been paid.[2]

¶22 After AJPJ demonstrated in support of its motion for summary judgment that it had purchased the tax lien and the lien

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[2]Kay also appears to argue that there was a dispute between Matusiak and himself regarding whether Matusiak needed to provide Kay with information leading up to the tax-lien purchase. However, that is not a factual dispute bearing on whether AJPJ was "entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a); *see also* § 42-18204(A).

had not been redeemed, the burden shifted to Kay to present some evidence that the sale was invalid. *See* § 42-18204(A). In the second letter, which is dated November 23, 2012, Kay maintains it "seems incorrect" that no property taxes had been paid for ten years. Such a statement without more, however, is insufficient to raise a factual dispute. *See Florez v. Sargeant*, 185 Ariz. 521, 526, 917 P.2d 250, 255 (1996) (self-serving assertions not supported by factual record insufficient to defeat summary judgment); *Modular Mining Sys., Inc. v. Jigsaw Techs., Inc.*, 221 Ariz. 515, ¶ 19, 212 P.3d 853, 858 (App. 2009) (sheer speculation insufficient to preclude summary judgment). Moreover, in that same letter, Kay admitted that "the printout from the Pima [C]ounty [T]reasurer's office [does] not reflect the taxes being paid for those years." The letters thus do not show a factual dispute as to whether the property taxes had been paid. [3] Consequently, the trial court did not err by entering summary judgment in favor of AJPJ. *See Eller Media Co.*, 198 Ariz. 127, ¶ 4, 7 P.3d at 139.

Quiet-Title Action

¶23 Kay also maintains the trial court erred in dismissing his quiet-title action based on res judicata. He argues this action was "essential to determining the nature of the title and the true owner." We review an order granting a motion to dismiss for an abuse of discretion. *Dressler v. Morrison*, 212 Ariz. 279, ¶ 11, 130 P.3d 978, 980 (2006).

¶24 Even assuming without deciding whether the trial court erred in applying res judicata, we cannot say it abused its discretion

[3]Kay also points to the same four letters in support of his contention that the trial court erred in denying his Rule 60(c) motion. Specifically, he maintains "these letters clearly show a dispute between these parties which [the court] apparently ignored" in its summary-judgment ruling. However, "Rule 60(c) does not provide relief from judgment where a party merely asks the court to reconsider a previous legal ruling." *Tovrea v. Nolan*, 178 Ariz. 485, 491, 875 P.2d 144, 150 (App. 1993). The court therefore did not abuse its discretion in denying the Rule 60(c) motion on this basis. *See id.*

in granting the motion to dismiss. *See Old Republic Nat'l Title Ins. Co. v. New Falls Corp.*, 224 Ariz. 526, ¶ 19, 233 P.3d 639, 643 (App. 2010) ("[W]e may affirm the trial court's grant of a motion to dismiss if it is correct for any reason."). The court consolidated the foreclosure and quiet-title actions upon Kay's request because they involved "common questions of law and fact." *See* Ariz. R. Civ. P. 42(a). In its ruling on the motion to dismiss, the court correctly noted that "[t]he issue of title to the property was decided" as a result of its ruling on AJPJ's motion for summary judgment. The January 2014 judgment, which the court affirmed in response to Kay's Rule 60(c) motion, "declared and decreed" AJPJ to be "the title owner" of the property. Thus, the court resolved the exact issue raised by Kay in the quiet-title action and did not need to take further action. *See Powell-Cerkoney v. TCR-Montana Ranch Joint Venture, II*, 176 Ariz. 275, 278, 860 P.2d 1328, 1331 (App. 1993) ("law of the case" describes judicial policy of refusing to reopen questions previously decided in same case by same or higher court).

FED Action

¶25 Kay asserts the FED trial was "flawed" because AJPJ had not notified him beforehand of the witnesses it intended to present. We generally review evidentiary and disclosure rulings for an abuse of discretion. *Larsen v. Decker*, 196 Ariz. 239, ¶ 6, 995 P.2d 281, 283 (App. 2000); *Link v. Pima Cty.*, 193 Ariz. 336, ¶ 3, 972 P.2d 669, 671 (App. 1998). However, we review the interpretation and application of court rules de novo. *Haroutunian v. Valueoptions, Inc.*, 218 Ariz. 541, ¶ 22, 189 P.3d 1114, 1122 (App. 2008).

¶26 AJPJ's list of witnesses and exhibits was filed two days before trial, and Kay alleged he had not received it prior to trial. However, an FED action is a summary proceeding that "do[es] not furnish all of the procedural safeguards provided in a general civil action." *Colonial Tri-City Ltd. P'ship v. Ben Franklin Stores, Inc.*, 179 Ariz. 428, 433, 880 P.2d 648, 653 (App. 1993). Consequently, a list of witnesses and exhibits need only be disclosed "[u]pon request." Ariz. R. P. Eviction Actions 10(a). Kay made no such request here.

¶27 Kay also contends he was "confused by the process of questioning the witness" and the trial court "should have ordered a

continuance so [he] could . . . prepare." First, contrary to Kay's suggestion otherwise, the court did not deny him the opportunity to question Matusiak, AJPJ's only witness at trial. Rather, the court explained the process to Kay, giving him multiple opportunities to question the witness. Second, Kay never requested a continuance for time to prepare. *See Marquette Venture Partners II, L.P. v. Leonesio*, 227 Ariz. 179, ¶ 21, 254 P.3d 418, 423 (App. 2011) (argument waived on appeal when not raised below). Based on the foregoing, the court did not err with respect to the FED trial. *See Haroutunian*, 218 Ariz. 541, ¶ 22, 189 P.3d at 1122; *Larsen*, 196 Ariz. 239, ¶ 6, 995 P.2d at 283; *Link*, 193 Ariz. 336, ¶ 3, 972 P.2d at 671.

Disposition

¶28 For the reasons stated above, we affirm.