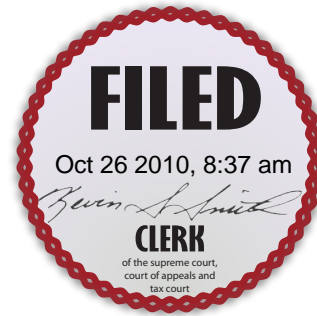


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

THE LAW OFFICES OF WAYNE GREESON PC,)
and SHAMMAH INVESTMENTS, LLC,)

Appellants-Petitioners,)

vs.)

No. 76A03-1003-MI-122

STEUBEN COUNTY AUDITOR,)

Appellee-Respondent.)

APPEAL FROM THE STEUBEN SUPERIOR COURT
The Honorable William C. Fee, Judge
Cause No. 76D01-0910-MI-345

OCTOBER 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Petitioners-Appellants The Law Offices of Wayne Greeson PC (“Greeson”) and Shammah Investments, LLC (“Shammah”) appeal the trial court’s judgment in favor of Respondent-Appellee the Steuben County Auditor (the “county auditor”). We affirm.

ISSUE

Greeson and Shammah raise one issue for our review, which we restate as: Whether the trial court and county auditor erred in their interpretation of Indiana Code Section 6-1.1-25-2(e) and Indiana Code Section 6-1.1-25-2.5.

FACTS AND PROCEDURAL HISTORY

This is a tax sale case concerning the discretion of the trial court and the duties of the county auditor in applying fees and costs of a tax lien purchaser to the redemption sum under Indiana Code section 6-1.1-25-2(e). On October 30, 2009, the county auditor petitioned the Steuben Circuit Court for a schedule of fees pursuant to Indiana Code section 6-1.1-25-2.5. The county auditor’s petition requested that reasonable attorney fees for giving notice pursuant to Indiana Code 6-1.1-24 (the chapter governing sale of real property when taxes or special assessments become delinquent) “should not exceed the sum of \$500.00 and should be based upon an hourly rate times the time expended to give notice pursuant to the statute.” Appellants’ Appendix at 6. The petition further requested that the attorney fee claim be supported “by an affidavit of the attorney providing the fees.” *Id.* The petition also requested that “the costs of a title search should not exceed the sum of \$250.00 and should be supported by a statement from a title company setting forth the costs of providing necessary services.” *Id.*

The trial court issued an order that no attorney fees would be permitted beyond \$350.00 and no costs beyond \$150.00 “unless approved by further petition to the Court.” Appellants’ App. at 8. The order further provided that each request for reimbursement of attorney fees “shall be accompanied with an affidavit of the attorney providing the service setting forth the time spent and the hourly rate.” *Id.* The order also provided that each request for reimbursement of title expenses “shall be accompanied by a statement from a title company indicating the necessary cost incurred for services provided.” *Id.*

Subsequently, Steuben County conducted a tax sale of fifteen parcels of real property owned by various individuals and entities. Shammah was the highest bidder for these properties, and the county auditor issued certificates of sale for the properties to Shammah.

Shammah retained Greeson as its attorney to provide the notices which were the prerequisite to Shammah petitioning for tax deeds for the properties. Greeson was also retained to obtain title searches of the properties.

On behalf of Shammah, Greeson filed with the county auditor fifteen separate forms entitled “Statement of Costs Paid on Tax Sale Property,” including on each a claim for attorney fees and the costs of giving notice in the amount of \$350.00 and a claim for the cost of a title search in the amount of \$150.00. These claims were “received” but not paid because Greeson did not attach “proper documentation detailing your expenses as directed per our court order....” Appellants’ App. at 12. Greeson then filed an affidavit stating that charging a flat fee for attorney fees, costs of giving notice, and a title search

was customary. The county auditor again advised Greeson that his claims did not meet the trial court's requirements.

Greeson filed with the trial court his "Petition for Order on Claim for Attorney's Fees & Costs Pursuant to I.C. 6-1.1-25-2(e)," in which he requested an order on the fifteen claims for reimbursement of attorney fees and costs for tax sale clients, including Shammah "and other prospective clients." Appellants' App. at 9. Attached to the petition was a form prescribed by the State Board of Accounts, entitled "Statement of Costs Paid on Tax Sale Property," certifying attorney fees of \$350.00 and costs of title search of \$150.00. Appellants' App. at 15. A copy of this form was attached for a number of properties, with each form claiming the maximum amount for fees and costs. Also attached were orders from twenty-nine Indiana counties establishing fees and costs under the reimbursement statute. In addition, attached to the petition was an affidavit from Greeson stating that the fees and costs were "a flat fee not determined by an hourly rate with record of time being spent and that flat fee in Steuben County is Five Hundred Dollars (\$500) per the schedule of fees established by the court." Appellants' App. at 14.

A hearing was held on Greeson's petition, and the trial court subsequently issued an order denying the petition. In its order, under the caption "In Re: The Matter Of Certain Properties Being Sold For Delinquent Taxes," the trial court stated that the "provisions regarding documentation of attorney fees and costs do not interfere with the ability to recover reasonable fees and costs and is therefore clearly within the sound discretion of the Court." Appellants' App. at 117. The trial court further stated, "In implementing this order, the Court anticipates that so long as the required documentation

is present, the Auditor shall approve the request, so long as the maximum amounts are not exceeded.” *Id.*

DISCUSSION AND DECISION

The parties agree that this case is premised upon statutory interpretation, which is a question of law reserved for the courts. *See Shaffer v. State*, 795 N.E.2d 1072, 1076 (Ind. Ct. App. 2003), *trans. denied*. We review questions of law under a *de novo* standard and owe no deference to a trial court’s conclusions. *Id.* The foremost objective in interpreting a statute is to determine and give effect to the intent of the legislature. *MDM Investments v. City of Carmel*, 740 N.E.2d 929, 933 (Ind. Ct. App. 2000). Words and phrases are taken in their plain, ordinary, and usual meaning unless a different purpose is manifested by the statute. *Id.*

Indiana Code section 6-1.1-25-2(e) provides:

Except as provided in [subsections not related to the issue before us], the total amount required for redemption [of real property] includes the following costs, if certified before redemption and not earlier than thirty (30) days after the date of sale of the property being redeemed by the payor to the county auditor on a form prescribed by the state board of accounts, that were incurred and paid by the purchaser, the purchaser’s assignee, or the county, before redemption:

- (1) The attorney fees and costs of giving notice under section 4.5 of this chapter.
- (2) The costs of a title search or of examining and updating the abstract of title for the tract or item of real property.

Indiana Code section 6-1.1-25-2.5 provides:

- (a) A county auditor may petition a court issuing judgments and orders for sale in the county under IC 6-1.1-24 [the chapter governing sale of real property when taxes or special assessments become delinquent] to establish

a schedule of reasonable and customary attorney fees and costs that apply to a:

- (1) purchaser;
- (2) purchaser's assignee; or
- (3) purchaser of the certificate of sale under 6-1.1-24;

who submits a claim for reimbursement upon redemption.

(b) When a court provides a schedule as described in subsection (a), the county auditor may not reimburse attorney fees and costs in an amount higher than the attorney fees and costs provided in the schedule, except as provided in subsection (c).

(c) A

- (1) purchaser;
- (2) purchaser's assignee; or
- (3) purchaser of the certificate of sale under IC 6-1.1-24;

may petition the court for a higher rate of reimbursement than the rate found on a schedule provided under subsection (a). The court shall grant the petition if the court finds that the claim is based on reasonable and customary attorney fees and costs.

Greeson and Shammah contend that the trial court and the county auditor have misinterpreted Indiana Code section 6-1.1-25-2(e) and Indiana Code section 6-1.1-25-2.5(b). Specifically, Greeson and Shammah contend that the statutes require the trial court to set a flat fee which can be added, in full, to all redemption sums and that the statutes do not allow the trial court to require attorneys and tax sale clients to document how the attorney fees and costs were earned.

Contrary to Greeson and Shammah's contention, neither statute addresses whether the trial court has the authority to establish a method by which reasonable attorney fees and costs may be measured. Indiana Code section 6-1.1-25-2(e) mandates the method by which a purchaser, purchaser's assignee, or purchaser of the certificate of sale (collectively, "a party") must make a claim for attorney fees and costs, i.e., on a form prescribed by the state board of accounts. The statute puts no limitation on a trial court's exercise of discretion, including its insistence that documentation show how the fees and costs were actually incurred.

Indiana Code section 6-1.1-25-2.5 allows the county auditor to request that the trial court establish a schedule of "reasonable and customary attorney fees and costs" that apply to a party's claim for reimbursement upon redemption of a property. Greeson and Shammah place emphasis on the word "schedule" in Indiana Code section 6-1.1-25-2.5(a), presuming that the word authorizes the trial court to set flat reasonable and customary fees and costs while limiting the court's authority to make sure that the fees and costs claimed were actually incurred by the purchaser of the property. Greeson and Shammah's understanding of the statute is illustrated by the fact that each of the fifteen "Statement of Costs Paid On Tax Sale Property" forms filed by them claim the highest amount (\$500.00) allowed by the schedule.

Greeson and Shammah's emphasis on the word "schedule" in subsection (a) of the statute overlooks the qualifying phrase "reasonable and customary attorney fees and costs" that is used in both subsections (a) and (c). Subsection (c) allows the party to petition for a higher rate of reimbursement than the rate found on the schedule "if the

court finds that the claim is based on reasonable and customary attorney fees and costs,” thus establishing that the reasonableness of fees and costs is measured by something other than the upper limit provided in the schedule. Stated differently, the statute does not bar the trial court from measuring “reasonable and customary attorney fees and costs” by some other manner than by reference to a schedule listing flat fees and costs. Indeed, all of the twenty-nine orders establishing fee schedules provided as evidence by Greeson and Shammah include a caveat similar to that found in Exhibit 1 (an order from Bartholomew County) that a “schedule of reasonable and customary fees is hereby established, *to be reimbursed for the actual cost incurred*, but not to exceed the stated amount, to purchaser *when supported by bills or other similar documentation presented to the Auditor.*” Appellants’ App. at 16; 70. (Emphasis supplied).

We conclude that the trial court and the county auditor have not misinterpreted Indiana Code section 6-1.1-25-2 and Indiana Code section 6-1.1-25-2.5.

Affirmed.

BARNES, J., and VAIDIK, J., concur.