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**IN THE
COURT OF APPEALS OF INDIANA**

BRIAN DUNN,)

Appellant-Defendant,)

vs.)

MICHIANA CAMPGROUNDS, LLC,)

Appellee-Plaintiff.)

No. 13A05-0603-CV-146

APPEAL FROM THE CRAWFORD CIRCUIT COURT
The Honorable K. Lynn Lopp, Judge
Cause No. 13C01-0504-PL-7

November 30, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Brian Dunn (“Dunn”) appeals the trial court’s grant of Appellee-Plaintiff Michiana Campgrounds, LLC’s (“Michiana”) Motion for Summary Judgment. We affirm.

Issue

Dunn raises two issues which we restate as whether Dunn failed to appeal the trial court order for the issuance of a tax deed, pursuant to Indiana Code Section 6-1.1-25-4.6(h).

Facts and Procedural History

On October 17, 2003, Dunn’s wife, Trish Dunn, paid \$433.15 to the Crawford County treasurer for some of the delinquent taxes, costs, and charges due on a parcel of land owned by Dunn and his mother.¹ Eleven days later, Michiana paid \$500 for the land at a public auction held pursuant to I.C. § 6-1.1-24 and -25. On March 10, 2005, the Crawford County auditor executed a Tax Title Deed conveying the land to Michiana. On April 11, 2005, Michiana filed a “Complaint To Quiet Title Against The World” on this and a second parcel, naming Dunn, his mother, Ford Motor Credit Company (“Ford”), the State of Indiana’s Department of Revenue, Teri R. Vaughn (“Vaughn”), Green Point Credit LLC (“GPC”) and unknown occupants as defendants. The trial court granted Michiana’s Motion for Default Judgment against Ford. Further, the trial court granted Michiana’s Motion to Dismiss all claims regarding the second parcel, including dismissal of Vaughn and GPC.

On June 8, 2005, Michiana filed by mail its Request for Admissions, pursuant to

¹ Dunn’s mother, Dorothy Dunn, is now deceased.

Indiana Trial Rule 36, requesting that Dunn respond within thirty days. There is no evidence in the record that Dunn responded by Monday, July 11, 2005, thirty-three days subsequent to Michiana's request.

On June 9 and October 27, 2005, Michiana moved for summary judgment. On December 27, 2005, Dunn moved to deny Michiana's Motion for Summary Judgment. In a designated affidavit, his wife stated that the treasurer informed her the full amount due was \$433.15, and that she paid that amount.

The trial court heard argument on January 3, 2006, ultimately granting Michiana's Motion for Summary Judgment on January 17, 2006. Dunn now appeals.

Discussion and Decision

When reviewing summary judgment, our standard of review is well settled.

[T]his court views the same matters and issues that were before the trial court and follows the same process. We construe all facts and reasonable inferences to be drawn from those facts in favor of the non-moving party. Summary judgment is appropriate when the designated evidence demonstrates that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.

Swami v. Lee, 841 N.E.2d 1173, 1176 (Ind. Ct. App. 2006) (citations omitted), trans. denied.

Michiana argues that, by failing to appeal the trial court's order for issuance of the tax deed, Dunn did not preserve his opportunity to challenge the issuance of the tax deed. "A tax deed issued under this section is incontestable except by appeal from the order of the court directing the county auditor to issue the tax deed filed not later than sixty (60) days after the date of the court's order." I.C. § 6-1.1-25-4.6(h) (emphasis added). Michiana failed to

provide evidence of the date of the trial court's order.² Nonetheless, we may infer that the order was issued on or before March 10, 2005, the date the county auditor executed the Tax Title Deed. By virtue of I.C. § 6-1.1-25-4.6(h), Dunn was required to appeal the trial court's order within sixty days, that is, by Monday, May 9, 2005. Dunn did not do so. Therefore, he cannot contest Michiana's Tax Title Deed. The trial court did not err in granting Michiana's Motion for Summary Judgment.

We also note the effect of Dunn's failure to respond timely to Michiana's Request for Admissions. Indiana Trial Rule 36 allows parties to request admissions of other parties. The party must respond or the matter is admitted. Ind. Trial Rule 36(A). Any matter admitted is conclusively established. T.R. 36(B). "In a challenge to a tax deed, the tax deed is prima facie evidence of the regularity of the sale, the regularity of all proper proceedings, and valid title in fee simple in the grantee." Swami, 841 N.E.2d at 1177 (citing I.C. § 6-1.1-25-4(d)).

Here, Michiana requested Dunn to admit three things: that the attached Tax Title Deed was a true and correct copy, that Michiana's ownership was based upon the Tax Title Deed, and "that said title to the real estate attached hereto as Exhibit 'B' should be quieted in the name of" Michiana. Supplemental Appellant Appendix at 24. Essentially, Michiana asked Dunn to admit that it should prevail on its claim to the land. Michiana argues that Dunn did not respond. No evidence in the record indicates otherwise.

We may not disregard Dunn's admission that Michiana's title to the land should be quieted. See Kerkhof v. Kerkhof, 703 N.E.2d 1108 (Ind. Ct. App. 1998). "Admission by

² Michiana asserts that the order was dated March 1, 2005. The order, however, was not designated for

operation of T.R. 36 of all facts material to a cause of action by the failure of the admitting party to timely answer requests for admissions leaves nothing more to litigate and will entitle the party who requested the admissions to summary judgment.” Bryant v. County Council of Lake County, 720 N.E.2d 1, 6 (Ind. Ct. App. 1999) (citations omitted). Accordingly, Dunn’s admissions also constitute grounds for affirming the trial court’s order.

Conclusion

In light of Dunn’s failure to appeal the trial court order for the issuance of a tax deed, and alternatively, in light of his admissions, we affirm the trial court’s grant of Michiana’s Motion for Summary Judgment.

Affirmed.

RILEY, J., and MAY, J., concur.

purposes of Michiana’s Motion for Summary Judgment.