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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|----------------------------------|---|-------------------------------|
| ALBERT RICK III, |) | Appeal from the Circuit Court |
| |) | of McHenry County. |
| Petitioner-Appellee, |) | |
| |) | |
| v. |) | No. 06-TX-10047 |
| |) | |
| WILLIAM LeFEW, as Trustee of the |) | |
| McHenry County Indemnity Fund, |) | Honorable |
| |) | John D. Bolger, |
| Respondent-Appellant. |) | Judge, Presiding. |

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Burke and Justice Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in granting petitioner’s petition for indemnification of the loss resulting from the issuance of a tax deed, as the court reasonably found that petitioner had justifiably relied on his deceased father’s caretaker to pay the taxes and that petitioner thus sustained the loss without his own fault or negligence.
- ¶ 2 As treasurer of McHenry County, respondent, William LeFew, serves as trustee of a fund maintained to indemnify property owners for loss or damage resulting from the issuance of tax deeds. LeFew (who will hereinafter be referred to as “the Trustee”) appeals from a judgment entered in favor of petitioner, Albert Rick III, indemnifying Rick for the loss resulting from the

issuance of a tax deed to property that Rick and his now-deceased father had theretofore owned as joint tenants. On November 13, 2006, the property, on which a single-family residence stands, was sold for unpaid property taxes. Neither Rick nor his father redeemed the property and the deed was issued in October 2009. The Trustee contends that the indemnification award was error because Rick was not without fault or negligence in allowing the property taxes to go unpaid and failing to redeem the property. We affirm.

¶ 3 When the tax deed was issued, Rick's father had been residing on the property for roughly 40 years. The property had previously belonged to Rick's grandparents. Almost a year after the deed was issued, Rick's father, who was then 78 years of age, filed a petition for an indemnity award. Rick was not a party to that petition, but after Rick's father passed away in July 2011 Rick was permitted to file an amended petition in his own name. Rick alleged that he had entrusted payment of property taxes to his father and that his father "who was blind, diabetic, and house-bound [*sic*], in turn entrusted to a person whom he believed to be a trusted friend the money necessary to pay the real estate taxes and such person failed to pay them." Rick further alleged that he did not learn that the property had been sold for unpaid taxes until after the period for redemption had expired.

¶ 4 The matter proceeded to a bench trial at which Rick testified that he lived in Lily Lake, Wisconsin, and worked as an over-the-road truck driver. In 1995, Rick's father had quadruple bypass surgery. At that time, it was discovered that Rick's father suffered from diabetes. Rick's father lost vision in one eye around 2001. He remained self-sufficient, however, until 2005, when he lost vision in the other eye.

¶ 5 Because Rick was living out of state and spent most of his time on the road as a truck driver, he was unable to personally care for his father, who was essentially housebound after the

loss of his eyesight. Rick's father's primary caregiver was Frank Catena. Catena lived across the street from—and had become a good friend of—Rick's father. When Rick's father was experiencing the symptoms of heart disease that led to his bypass surgery, it was Catena who insisted that he seek treatment. Rick's father credited Catena with saving his life. The tasks that Catena (and sometimes Catena's girlfriend) performed included shopping for Rick's father, helping him take medication, and taking him to medical appointments. Because of his visual impairment, Rick's father needed assistance managing his personal finances. To that end, Rick's father established a joint checking account with Catena. Catena was entrusted with responsibility for paying Rick's father's bills from that account. Before completely losing his vision in 2005, Rick's father had taken care of bills—including property tax bills—himself.

¶ 6 Account statements from Rick's father's joint checking account with Catena were admitted into evidence by stipulation. The statements show numerous debit-card transactions at Home Depot and Auto Zone. Rick testified that Catena earned a substantial portion of his livelihood by purchasing motor vehicles and then repairing and reselling them. Asked if he had ever seen the interior of Catena's home between 2005 and 2010, Rick responded affirmatively. Rick testified that he had observed that Catena “re-did” the basement. Asked to elaborate, Rick responded, “Tiled, bathroom, carpeting throughout the whole thing. Divided it into rooms. Made it like a second apartment down there.”

¶ 7 Rick testified that, between 2005 and 2010, he would speak with his father on the telephone twice a week and would visit his father once every two weeks, on Father's Day, and on holidays such as Easter and Christmas. During these visits, Rick's father appeared to be well cared for. The utilities—gas, water, and electricity—were connected and there was food in the home.

¶ 8 At the close of Rick’s case-in-chief, the Trustee moved for a finding in his favor (see 735 ILCS 5/2-1110 (West 2012)), essentially arguing, *inter alia*, that Rick lost his ownership interest in the property as a result of his own negligence. The trial court took the motion under advisement. In a written decision denying the Trustee’s motion, the trial court found as follows:

“[Rick’s] reliance on his father and Mr. Catena to pay the tax bills was reasonable. The father had paid the taxes himself for 35 years, and when he needed assistance because of her [*sic*] blindness he trusted a man he believed to be his friend. The father had known Mr. Catena for more than 17 years and he had greatly helped him in everything that he needed. There was no evidence that the father ever complained to the son that his needs were not being met. He was getting his injections, keeping his doctor’s appointments, eating well, and all his normal monthly bills were being paid. This would not have raised anyone’s suspicion that the real estate tax bills were not being paid.”

After the trial court ruled on the Trustee’s motion, the Trustee rested without presenting any evidence. The trial court entered judgment for Rick, awarding him \$149,214.75, which represented the fair cash value of the property minus the delinquent taxes for which the property had been sold. This appeal followed.

¶ 9 Section 21-305(a) of the Property Tax Code (35 ILCS 200/21-305(a) (West 2012)) provides, in pertinent part:

“(a) Any owner of property sold under any provision of this Code who sustains loss or damage by reason of the issuance of a tax deed under Section 21-445 or 22-40 and who is barred or is in any way precluded from bringing an action for the recovery of the property shall have the right to indemnity for the loss or damage sustained, limited as follows:

(1) An owner who resided on property that contained 4 or less dwelling units on the last day of the period of redemption and who is equitably entitled to compensation for the loss or damage sustained has the right to indemnity. An equitable indemnity award shall be limited to the fair cash value of the property as of the date the tax deed was issued less any mortgages or liens on the property, and the award will not exceed \$99,000. The Court shall liberally construe this equitable entitlement standard to provide compensation wherever, in the discretion of the Court, the equities warrant the action.

An owner of a property that contained 4 or less dwelling units who requests an award in excess of \$99,000 must prove that the loss of his or her property was not attributable to his or her own fault or negligence before an award in excess of \$99,000 will be granted.

(2) An owner who sustains the loss or damage of any property occasioned by reason of the issuance of a tax deed, without fault or negligence of his or her own, has the right to indemnity limited to the fair cash value of the property less any mortgages or liens on the property. In determining the existence of fault or negligence, the court shall consider whether the owner exercised ordinary reasonable diligence under all of the relevant circumstances.

(3) In determining the fair cash value of property less any mortgages or liens on the property, the fair cash value shall be reduced by the principal amount of all taxes paid by the tax purchaser or his or her assignee before the issuance of the tax deed.”

The abuse-of-discretion standard governs review of the trial court’s decision to grant or deny a petition for indemnification under this section. “An abuse of discretion occurs only where ‘no reasonable man would take the view adopted by the trial court.’ ” *Greater Pleasant Valley Church in Christ v. Pappas*, 2012 IL App (1st) 111853, ¶ 23 (quoting *McClandon v. Rosewell*, 299 Ill. App. 3d 563, 567 (2005)).

¶ 10 Because petitioner sought and received an award in excess of \$99,000 as indemnification for the loss of the property, he was required to prove that he was without fault or negligence. As observed in *Greater Pleasant Valley Church in Christ*:

“In construing the meaning of ‘without fault or negligence’ under section 21-305 we will not give it the broadest legal interpretation. [Citation.] ‘To do so would make the section meaningless, as any owner who has lost his or her property by the issuance of a tax deed is to some extent at fault.’ [Citation.] The phrase, in this context, cannot be taken to mean ‘blameless,’ but, instead, is taken to mean that the petitioner ‘ “must not have purposefully failed in a duty or engaged in conduct that materially contributed to the problem complained of.” ’ [Citation.]” *Id.* ¶ 24

¶ 11 In arguing that the trial court abused its discretion, the Trustee initially challenges the trial court’s finding in its written opinion that “[i]t was obvious that Mr. Catena was using [Rick’s] father’s money to pay his house remodeling and auto repair business.” The Trustee contends that the trial court “relied on bank statements that reflect various ‘merchant purchase,’ or debit card transactions, to the Home Depot in order to make a showing of malfeasance on the part of Catena.” The Trustee maintains that there was insufficient evidence of what the transactions were for—and whether Rick’s father authorized or benefited from them—to establish that Catena was guilty of malfeasance. The evidence was certainly sufficient to show

that Catena was guilty at least of nonfeasance, if not misfeasance. Regardless of whether there was enough evidence to show that Catena misappropriated funds from Rick's father, the evidence supported the conclusion that Catena was entrusted with the responsibility to pay the tax bills and that, for whatever reason, Catena failed to do so. The salient question here is not whether Catena's failure to pay the tax bills represents "malfeasance," but whether by relying on Catena to pay the tax bills, and failing to verify that they were in fact paid, Rick "purposefully failed in a duty or engaged in conduct that materially contributed to the problem complained of. [Citation.]" (Internal quotation marks omitted.) *Id.* In this regard, although the trial court found that Catena had been misappropriating money from Rick's father, the trial court further found that "both the father and son reasonably relied that Mr. Catena was faithfully and honestly handling the father's financial affairs and paying his bills *including the real estate tax bills and that they had no reason to believe that he was using some of the father's money for his own purposes and has not paid the real estate taxes.*" (Emphasis added.) If, as the Trustee argues, the evidence did *not* show that Catena was guilty of misappropriation, then Rick and his father's reliance on Catena would be all the more reasonable.

¶ 12 The Trustee also argues that, because joint tenants such as Rick and his father are equally liable for property taxes, "any justifications for nonpayment that [Rick's] father may have had should not be imputed to [Rick]." We find nothing to indicate, however, that the trial court "imputed" any justification to Rick. Although Rick's father might have had a greater need (as compared with Rick) for assistance paying property tax bills, it does not necessarily follow that it was unreasonable for Rick to rely on Catena as well.

¶ 13 The trial court concluded that Rick did not purposefully fail in a duty or engage in conduct that materially contributed to the loss of the property for unpaid taxes. Under the highly

deferential abuse-of-discretion standard of review that applies here, we may not disturb the trial court's decision merely because we might we have decided the case differently had the decision been ours in the first instance. Rather, as noted, reversal is proper only when "no reasonable man would take the view adopted by the trial court. [Citation.]" (Internal quotation marks omitted.) *Id.* ¶ 23. The court found that Catena was a trusted friend of Rick's father and that from all appearances Rick's father, was well cared for, and that there was no reason to suspect real-estate taxes were not being paid. The court essentially found that, under these circumstances, there was no duty on Rick's part to independently verify that the taxes had been paid. We cannot say that no reasonable person would take this view.

¶ 14 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 15 Affirmed.