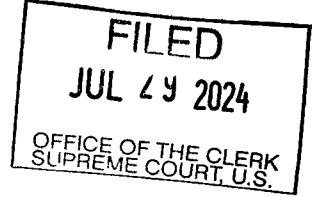


No. 24-272

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



THOMAS DE COLA,
Petitioner,

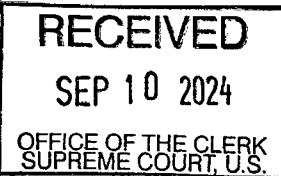
v.

MATT H. & ANNE L. SHEAFER,
Respondents.

On Petition for a Writ of Certiorari
to the Indiana Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Thomas DeCola
Pro se, Petitioner
7410 W. 250 S.
North Judson, IN 46366
574-249-3556
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QUESTION ON REVIEW

Whether the court of last resort, the Ind. Supreme Court erred by failing to uphold governing precedents of controlling law and equity over the issue of Petitioner challenging two (2) *ab initio* void tax deeds for non-compliance with the statutory service of process and attorney mandate rules – thus depriving Petitioner unconstitutionally of property?

LIST OF RESPONDENTS

1. Matt H. Sheaffer
2. Anne L. Sheaffer

LIST OF ALL RELATED PROCEEDINGS

1. Jasper Circuit Court, 37C01-1709-TS-807, *In Re: Tax Sale*, Date of Entry of Judgment: September 18, 2017.
2. Jasper Circuit Court, 37C01-1810-TP-934, *In Re the Verified Petition for Issuance of a Tax Deed to: Argento LLC*, Date of Entry of Judgment: October 5, 2018.
3. Jasper Circuit Court, 37C01-1810-TP-939, *In Re the Verified Petition for Issuance of a Tax Deed to:ARGENTO LLC*, Date of Entry of Judgment: October 5, 2018.
4. Jasper Superior Court, 37D01-2112-PL-1121, *Thomas DeCola v. Matt H. & Anne L. Sheaffer, Argento, LLC*, Date of Entry of Judgment: June 8, 2023.
5. Ind. Supreme Court, 22S-SJ-380, *Thomas DeCola v. Matt H. & Anne L. Sheaffer, et al.*, Date of Entry of Judgment: November 17, 2022.
6. Ind. Supreme Court, 23S-OR-185, *State of Indiana ex rel. Thomas DeCola v. Jasper Superior Court, et al.*, Date of Entry of Judgment: July 18, 2023.
7. Ind. Court of Appeals, 23A-PL-2071, *Thomas DeCola v. Matt H. & Anne L. Sheaffer, trans. denied May 6, 2024*, Date of Entry of Judgment: May 13, 2024.

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JURISDICTIONAL STATEMENT

This petition for a writ of certiorari seeks review of the court of last resort, the Ind. Supreme Court's denial of transfer and related Ind. Court of Appeals' certified opinion thereto, which were entered respectively on May 6 & 13, 2024 within case 23A-PL-2071. See App. pp. 1a – 9a. U.S. Const. Art(s). III § 1 & VI § 2, and 28 U.S.C. § 1254(1) confer appellate jurisdiction to the Supreme Court for reviewing the brought federal question issue herein, which arose from the aforesaid proceedings of the court of first instance, the Jasper Superior Court, ("the Trial Court"), by a clear violation of U.S. Const. amend. XIV § 1 – deprivation of Petitioner's property rights within their judgment. See App. pp. 10a – 16a. The court of last resort's aforesaid orders on petition herein stand in respective conflict with the Ind. Court of Appeals and the United States Court of Appeals for the Seventh Circuit's decisions upon the statutory and case law established attorney mandate rule precedents that require corporate persons to be represented by counsel in a judicial proceeding.

STATEMENT OF CASE

Petitioner, Thomas DeCola, ("DeCola"), *pro se*, hereby brings a petition for a writ of certiorari to the Ind. Supreme Court to reverse a comity of Indiana judicial action which was adverse to the governing precedents of controlling law and equity over the issue of DeCola challenging the Respondents, Matt H. & Anne L. Sheafers', ("the Sheafers"), represented by counsel within the Indiana judicial proceeding, two (2) *ab initio* void tax deeds for non-compliance with the service of process and attorney mandate rules; the Indiana comity of courts have violated DeCola's U.S. Const. amend. XIV § 1 right of protection against

deprivation of property within the above stated Indiana judicial proceeding.¹

The Sheafers' two (2) *ab initio* void tax deeds were purchased from Argento, LLC, ("Argento"), and represent vested in-possession interest over two (2) tracts of land located in the State of Indiana, County of Jasper, Township of Kankakee stated herein to wit: ²

Property IDs: 37-17-26-000-003.000-023 (Tax ID: 006-00064-00) & 37-17-25-000-004.000-023 (Tax ID: 006-00063-00).

Location Addresses: 1248 N. 500 E. & 1248 N. 600 E. Wheatfield, IN 46392 (Abandoned RR).

Brief Legal Descriptions: PT E1/2 26 32 5, 5.14A & PT E1/2 25 32 5, 3A.

Legal Descriptions: Two (2) non-contiguous parcels or tracts of real property in the Part of the East 1/2 of Section 26, Township 32 North, Range 5 West, containing 5.14 acres, more or less and in the Part of the East 1/2 Section 25, Township 32 North, Range 5 West, containing 3 acres, more or less. *Metes and bounds description omitted for brevity*. See App. pp. 17a – 25a.

DeCola claims fee simple ownership right to the above stated property which is superior to the Sheafers' two (2) *ab initio* void tax deeds via a bone fide purchase from the grantor U.S. Railroad Vest Corporation, ("USRVC"), not a party to the suit.³ See App. pp. 26a – 30a. DeCola filed suit against the Sheafers on December 10, 2021, in the Jasper Circuit Court,

¹ See App. p. 89 under ¶Orig Act. R. 3(A)(5).

² Argento is a duly registered corporate entity of the Ind. Secretary of State (INSOS). See online business entity search.

³ USRVC is a duly registered corporate entity of the INSOS. See online business entity search.

(“the Trial Court”), under Ind. Trial Rule 60(B)(6). See App. pp. 26a – 30a.

The Sheafers answered adversely to DeCola’s suit on February 4, 2022, and countersued Argento, not represented by counsel within the Indiana judicial proceeding. See App. pp. 31a – 47a. Argento answered adversely to the Sheafers’ countersuit and countersued the Sheafers on March 28, 2022. See App. pp. 48a – 55a. DeCola filed an adverse answer to the Sheafers’ countersuit on March 28, 2022, whereby he included a motion to dismiss. See App. pp. 56a – 62a.

The Trial Court held a status hearing on January 31, 2023, and a bench trial on May 2, 2023. See App. pp. 63a – 65a. Plaintiff’s Exhibits 1 thru 7 were admitted at the bench trial, as well as Defendant’s Exhibits A thru D. See App. pp. 66a – 72a. After bench trial argument, the Trial Court allotted the parties thirty (30) days to file proposed findings of fact and conclusions of law. See App. p. 65a. The Trial Court then issued an order on June 8, 2023, which was appealed to the court of last resort, the Ind. Court of Appeals whereby DeCola objected by filing a dual motion to set aside the judgment and motion to correct error on July 10, 2023. See App. pp. 73a – 84a. DeCola also filed on July 20, 2023, an additional exhibit, the Ind. Sales Disclosure Form (SDF), upon which DeCola proves in supplement and in addition to his duly recorded grantee deed his vested in-possession real estate in suit. See App. pp. 85a – 86a.

On September 5, 2023, DeCola sought an appellate review in whole from the Trial Court’s order entitled FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT entered on June 8, 2023, within case 37D01-2112-PL-1121. See App. pp. 10a – 16a, 87a – 114a. In adverse contention to the Trial Court’s aforesaid order, DeCola filed an original action with the Ind. Supreme Court within related case 23S-OR-185, which was denied on July 18, 2023. See App. pp. 87a – 102a. DeCola also filed a motion entitled MOTION TO SET ASIDE THE JUDGMENT – A

MOTION TO CORRECT ERROR on July 10, 2023, which was deemed denied on August 10, 2023. See App. pp. 73a – 84a. On September 5, 2023, DeCola appealed the Trial Court's above stated order to the Ind. Court of Appeals in related case 23A-PL-2071. See App. pp. 103a – 115a.

On October 31, 2023, DeCola filed his brief within the court of last resort within case 23A-PL-2071. See App. pp. 103a – 115a. Whereby, the Sheafers responded untimely on December 1, 2023, and DeCola replied thereto on December 27, 2023. See App. pp. 116a – 134a. The Ind. Court of Appeals upheld the Trial Court's final judgment, which caused DeCola to seek transfer to the Ind. Supreme Court on March 18, 2024; the Sheafers did not respond. See App. pp. 135a – 151a. The Ind. Supreme Court denied transfer on May 6, 2024, and seven (7) days thereafter, the Ind. Court of Appeals certified their opinion on review herein. See App. pp. 1a – 9a.

I. Jurisdictional Statement of Court of First Instance

The court of first instance, the Trial Court's original jurisdiction over DeCola's Ind. Trial Rule 60(B)(6) cause of action for relief against the Sheafers' two (2) *ab initio* void tax deeds representing vested in-possession interest over two (2) non-contiguous tracts of land located in the State of Indiana, County of Jasper, Township of Kankakee is provided within Ind. Const. Art. 7 § 8 provided thereto by Ind. Code §§ 6-1.1-24-4.6(b), -4.7(f), Ind. Trial Rule 75(A)(2), and *Farmers Mut. Ins. Co. v. M Jewell, LLC*, 992 NE 2d 751, 754 – 755 – (Ind. Ct. App. 2013), which stemmed from the related two (2) petition for tax deed cases 37C01-1810-TP-934 & 939 grounded upon the related tax sale case 37C01-1709-TS-807. See App. pp. 66a – 72a.

DeCola also provides in support of the above statement that the venue of the Trial Court was changed by order of the Jasper Circuit Court to the Jasper Superior

Court pursuant to Ind. Trial Rule 79(M) and Jasper County Local Rule LR37-AR01-03(A)(B) after a special judge was appointed and accepted jurisdiction. See App. pp. 152a – 154a. The aforesaid referenced judge thenceforth failed to timely proceed within the case. Thereafter, DeCola initiated a request for a special judge to the Ind. Supreme Court within case 22S-SJ-380, whereby the special judge whom entered the order on appeal herein was appointed by order therein and forthwith accepted jurisdiction over the suit. See App. pp. 155a – 157a.

DeCola raised the federal question presented over the premise of this petition herein by asserting that his substantive rights guaranteed under U.S. Const. amend. XIV § 1 were violated within the Indiana judicial proceeding; this was stated in his original action petition to the Ind. Supreme Court filed on July 13, 2023, under case 23S-OR-185, and thereafter filed on July 17, 2023, in the Trial Court, the court of first instance under related case 37D01-2112-PL-1121. See App. pp. 87a – 102a, specifically App. p. 89 under ¶Orig. Act. R. 3(A)(5).

ARGUMENT

DeCola clearly shows that the Trial Court, the Ind. Court of Appeals, and the Ind. Supreme Court, the respective courts of first instance and last resort abused their discretions and exceeded their jurisdictions by respectively granting judgment in favor of the Sheafers and affirming and denying review thereon on two (2) points of law by negatively deciding DeCola's T.R. 60(B)(6) petition to defeat tax deed(s). The two (2) *ab initio* void tax deeds in suit herein contained intrinsic and extrinsic fatal flaws to find establish their voidness within the above stated courts of competent jurisdiction. The failure of the aforesaid courts of competent jurisdiction to uphold the law over the issue in suit has produced an equitable consideration for relief that constitutes a violation of DeCola's U.S. Const. amend. XIV §

1 right to be protected against State deprivation to lawfully obtained property.

The Trial Court exceeded their jurisdiction by not enforcing the statutory and case law rule(s), found under Ind. Code § 6-1.1-25-16(7) and *Farmers Mut. Ins. Co.*, 992 N.E.2d at 754 – 755 over DeCola’s T.R. 60(B)(6) petition for defeating the Sheafers’ two (2) *ab initio* void tax deed interests. DeCola hereby shows the governing law over T.R. 60(B)(6) motions to defeat tax deeds as provided by I.C. § 6-1.1-25-16(7), which states in *toto*,

“A person may, upon appeal, defeat the title conveyed by a tax deed executed under this chapter only if: the notices required by IC 6-1.1-24-2, IC 6-1.1-24-4, and sections 4.5 and 4.6 of this chapter were not in substantial compliance with the manner prescribed in those sections.”,

and similarly found within *Farmers Mut. Ins. Co.*, 992 NE2d at 754 – 755, as stated in pertinent part,

“A person may defeat a tax deed only by proving one of the seven defects set forth in Ind. Code Ann. § 6-1.1-25-16 (West, Westlaw current through June 29, 2013, excluding P.L. 205-2013). *Swami, Inc. v. Lee*, 841 N.E.2d 1173 (Ind. Ct. App. 2006), *trans. denied*. I.C. § 6-1.1-25-16 provides, in pertinent part, that a person may defeat a tax deed if “the notices required by ... IC 6-1.1-24-4 ... were not in substantial compliance with the manner prescribed in those sections.” This court has noted that “the proper procedure for appealing the issuance of a tax deed is found in Ind. Trial Rule 60[.]” *Kessen v. Graft*, 694 N.E.2d 317, 320 (Ind. Ct. App. 1998), *trans. denied*. Accordingly, although not expressly styled as such, Farmers Mutual’s motion to set aside the tax deed is a motion for relief from judgment pursuant to T.R. 60(B). See *Lindsey v.*

Neher, 988 N.E.2d 1207 (Ind. Ct. App. 2013). T.R. 60(B)(6) provides that a trial court may relieve a party from the entry of judgment if the judgment is void. "Failure to comply substantially with statutes governing tax sales renders void subsequent tax deeds which deprive owners of their property." *Lindsey v. Neher*, 988 N.E.2d at 1210 (quoting *Kessen v. Graft*, 694 N.E.2d at 320). As a general matter, a trial court's ruling on a T.R. 60(B) motion is reviewed for an abuse of discretion. *Rice v. Comm'r, Ind. Dep't of Envtl. Mgmt.*, 782 N.E.2d 1000 (Ind. Ct. App. 2003). A ruling under T.R. 60(B)(6), however, "requires no discretion on the part of the trial court because either the judgment is void or it is valid." *Id.* at 1003 (quoting *Hotmix & Bituminous Equip. Inc. v. Hardrock Equip. Corp.*, 719 N.E.2d 824, 826 (Ind. Ct. App. 1999)).".

The two (2) *ab initio* void tax deeds are rested upon intrinsic fatal flaws provided hereto. The proof of notice mandated under Ind. Code §§ 6-1.1-24-2, -4 were not shown in case 37C01-1709-TS-807; the CCS does not show proof of service upon USRVC, see App. p. 70a. The proof of notice mandated under Ind. Code § 6-1.1-25-4.6 has not been shown in cases 37C01-1810-TP-934 & 939; the CCS(s) do not show proof of service upon USRVC, see App. pp. 71a – 72a. Substantial and strict compliance has not been proofed under the Ind. Code § 6-1.1-25-16(7) mandate to uphold the Sheafers' two (2) *ab initio* void tax deed interests, see *Lindsey v. Neher*, 988 NE2d 1207, 1210 – (Ind. Ct. App. 2013) citing *Mennonite Bd. Of Missions v. Adams*, 462 U.S. 791, 795, 103 S. Ct. 2706, 77 L.Ed.2d 180 (1983), as provided in pertinent part,

"Tax sale proceedings must satisfy the due process requirements of the United States Constitution; accordingly, notice must be given before one is deprived of a property interest. *Smith v. Breeding*, 586

N.E.2d 932, 936 (Ind. Ct. App.1992). "The United States Supreme Court has held that a state must provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action' prior to taking steps which will affect a protected interest in life, liberty, or property." *Id.* (quoting *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 795, 103 S. Ct. 2706, 77 L.Ed.2d 180 (1983)). Notice is constitutionally adequate when "the practicalities and peculiarities of the case . . . are reasonably met." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15, 70 S. Ct. 652, 94 L. Ed. 865 (1950).

In accordance with due process, our Legislature has enacted a statutory scheme found in Indiana Code sections 6-1.1-24-1 to 6-1.1-24-15 (governing sales when taxes or special assessments become delinquent), and Indiana Code sections 6-1.1-25-1 to 6-1.1-25-19 (governing redemption and tax deeds). "A tax sale is purely a statutory creation, and material compliance with each step of the statute is required." *Swami, Inc. v. Lee*, 841 N.E.2d 1173, 1178 (Ind. Ct. App. 2006), *trans. denied.*".

In addition, the two (2) *ab initio* void tax deeds are rested upon an extrinsic fatal flaw provided hereto. The Trial Court lacked jurisdiction to entertain Argento's petition(s) for issuance of tax deed(s) because Argento was not represented by counsel as shown by the CCS(s) of case(s) 37C01-1810-TP-934 & 939. See App. pp. 71a – 72a. The CCS(s) clearly show that DeCola was the *pro se* representor of Argento; DeCola is not a licensed attorney. Wherefore, under the statutory law found under Ind. Code § 34-9-1-1(c), as provided in *toto*,

"A corporation and any organization required to make application to the secretary of state under IC 25-11-1-3 must appear by attorney in all cases.".

The Trial Court exceeded their jurisdiction by entering void orders for the issuance of tax deeds within the aforesaid cases, upon which tax deeds were issued to Argento and subsequently conveyed to the Sheafers. See App. pp. 66a – 69a; 17a – 25a. The above statutory mandate is similarly supported by prevailing case law as shown within *Simmons v. Carter*, 576 NE2d 1278 – 1279 – (Ind. Ct. App. 1991), *Yogi Bear Membership Corp. v. Stalnaker*, 571 NE2d 331, 333 – (Ind. Ct. App. 1991) citing *State ex rel. Western Parks, Inc. v. Bartholomew County Court*, 383 N.E.2d 290, 293 – (Ind. Sup. Ct. 1978) and *United States v. Hagerman*, 545 F. 3d 579, 581 – (7th Cir. 2008) citing *Lattanzio v. Comta*, 481 F.3d 137, 140 – (2nd Cir. 2007), which in paraphrase all require entities registered with the their respective secretary of state to appear by licensed attorneys or suffer legal nullity without, see *People of Conviction, Inc. v. Neighborhood Code Enforcement*, Case: 02A03-1704-MI1138 – (Ind. Ct. App. 2018) *unpublished*. In effect the Trial Court lacked personal jurisdiction over Argento asserting petition(s) for issuance of tax deed(s) due to non-compliance with the above stated rule, thus the Trial Court's order(s) for issuance of tax deed(s), the Auditor and Treasurer's tax deeds, and Argento's subsequent conveyance(s) thereof are void from the beginning as a matter of law, see *Trook v. Lafayette Bank and Trust Company*, 581 N.E.2d 941, 944 – (Ind. Ct. App. 1991), which states in pertinent part,

"Into this analysis we inject the term "void *ab initio*," which means literally "void from the beginning" and denotes an act or action that never had any legal existence at all because of some infirmity in the action or process. It is readily apparent that "void *ab initio*" has essentially the same meaning as "void." In fact,

"void *ab initio*" is perhaps preferable because it more vividly underscores that concept which represents the significance of the difference between the term "voidable" and the terms "void" and "void *ab initio*": the former describes an act or subject matter that, although flawed in some respect, is not beyond retrieval; the latter describe an act whose flaw renders the act irretrievable and without effect.

Nowhere is the distinction between "void" and "voidable" more clearly brought into focus than in the area of jurisdiction. There are three jurisdictional elements in every action: jurisdiction of the subject matter; jurisdiction of the person; and jurisdiction of a particular case. State ex rel. Public Service Commission v. Johnson Circuit Court (1953) 232 Ind. 501, 112 N.E.2d 429. A judgment rendered by a court without jurisdiction to hear that particular case is voidable because the jurisdictional defect is waivable if not attacked by a timely appeal. D.L.M. v. V.E.M. (1982) 1st Dist. Ind. App., 438 N.E.2d 1023".

The above intrinsic and extrinsic fatal flaws over the two (2) *ab initio* tax deeds represent an infirmity which has been upheld by the judgments of the courts of first instance and last resort under review herein that has violated DeCola's U.S. Const. amend. XIV § 1 right. See App. pp. 1a – 16a. DeCola asserts that the above facts and conclusions thereon represent his cause for seeking equity before this Honorable Court. Wherefore, DeCola provides the equitable case law rule for defending his U.S. Const. amend. XIV § 1 rights found within *Yick Wo v. Hopkins*, 118 US 356, 369 – (Sup. Ct. 1886), as provided in pertinent part,

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: "Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws." These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. It is accordingly enacted by § 1977 of the Revised Statutes, that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." The questions we have to consider and decide in these cases, therefore, are to be treated as involving the rights of every citizen of the United States equally with those of the strangers and aliens who now invoke the jurisdiction of the court.".

The above equitable mandate was not applied by the courts of first instance and last resort within their judgments under review herein to effectuate proper due process as shown by DeCola's original action writ which was filed in the Ind. Supreme Court and clearly provided DeCola's cause of action therein, an asserted violation of his U.S. Const. amend. XIV § 1 right. See App. pp. 87a – 102a, specifically p. 89a under **¶Orig. Act. R. 3(A)(5)**.

CONCLUSION

Wherefore, DeCola asks this Supreme Court as a matter of equity to provide a writ of certiorari to the Ind. Supreme Court to acknowledge the Sheafers' two (2) *ab initio* void tax deeds, which were shown within DeCola's pleadings

therein to be fatally flawed for non-compliance with the service of process and attorney mandate rules.

VERIFICATION STATEMENT

I, the undersigned, certify under the penalty of perjury that the foregoing representation(s) is (are) true.

Respectfully submitted,
/s/ Thomas DeCola
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