

2019 IL App (2d) 180909-U
No. 2-18-0909
Order filed September 16, 2019

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re APPLICATION OF THE COUNTY) Appeal from the Circuit Court
TREASURER AND EX-OFFICIO COUNTY) of Du Page County.
COLLECTOR OF DU PAGE COUNTY, FOR)
JUDGMENT AND ORDER OF SALE)
AGAINST REAL ESTATE RETURNED)
DELINQUENT FOR THE NON-PAYMENT) No. 17-TD-123
OF GENERAL TAXES AND SPECIAL)
ASSESSMENTS FOR THE YEAR 2013 AND)
PRIOR YEARS) Honorable
) Anne Therieau Hayes
(Petition of ZHY Investments, LLC for Tax) and
Deed, Petitioner-Appellee v. Victor C. Hsing,) Brian J. Diamond,
Objector-Appellant).) Judges, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Where the tax purchaser failed to present an affirmative matter that defeated objector's claim, the appellate court reversed the trial court's order granting the tax purchaser's motion to dismiss, and remanded the case for further proceedings.

¶ 2 Objector, Victor Hsing, filed a petition pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2016)) to vacate a judgment issuing a tax deed on real property in Naperville, Illinois. The tax purchaser, ZHY Investments, LLC (ZHY), filed a motion to dismiss the petition pursuant to section 2-619 of the Code. 735 ILCS 5/2-619 (West

2016). After a hearing, the trial court granted the motion to dismiss. We reverse and remand for further proceedings.

¶ 3

I. BACKGROUND

¶ 4 On November 20, 2014, at the Du Page County annual tax sale, ZHY purchased the delinquent 2013 property taxes on a property belonging to Hsing at 2751 Stockton Road (Stockton property) in Naperville.

¶ 5 The redemption period for Hsing to reclaim the Stockton property ran, as extended, until November 17, 2017. Subsequent to the tax sale but prior to the expiration of the redemption period, ZHY paid the taxes on the Stockton property for the 2014 and 2016 tax years. Hsing paid the taxes for the 2015 tax year with two personal checks written in August 2016.

¶ 6 On August 8, 2017, ZHY filed a petition for tax deed. In it, ZHY represented that it would serve notice upon all occupants, owners, and interested parties during the notice period, which ran from May 17 to August 17, 2017, as required by section 22-10 of the Property Tax Code (35 ILCS 200/22-10 (West 2016)). The “Take Notice” (notice) form mandated by section 22-10 advises occupants, owners, and interested parties of the tax sale and the upcoming expiration of the redemption period. Between August 8 and 17, 2017, Mathew Uthe of Uthe Investigations¹ attempted to personally serve notice on Hsing at the Stockton property and at 2707 Flagstone Circle (Flagstone property) in Naperville, which is an address that was handwritten next to Hsing’s name on his original warranty deed for the Stockton property. Both attempts were unsuccessful. Uthe later averred in his affidavit that the Stockton property was an

¹ In its verified application for tax deed and again at the prove-up hearing, ZHY’s attorneys attested that ZHY employed Michael Kinnerk of K’s Investigations to serve notice, but the affidavits in the record indicate that Mathew Uthe of Uthe Investigations attempted service.

“empty house” and that Hsing did not live at the Flagstone property. As directed by ZHY’s attorney, Uthe additionally sent notice addressed to Hsing at both properties via certified mail with return receipt requested. Neither mailing was successfully delivered: “not deliverable as addressed” at the Stockton property, and “unclaimed” at the Flagstone property. ZHY also served Hsing by publishing notice directed to Hsing and others in the Daily Herald on August 13, 14, and 15, 2017.

¶ 7 According to its verified application for tax deed, ZHY determined that Hsing was the only party entitled to notice by section 22-10 of the Property Tax Code. Nevertheless, ZHY, in what it later represented to the court was an “abundance of caution” and “our attempt to be as diligent as possible,” attempted service on several parties that had no current interest in the Stockton property. The additional parties that ZHY attempted service upon were: Pinnacle Corporation, the original owner that built the subdivision and sold the Stockton property to Hsing; Peter Brennan, the registered agent for Pinnacle Corporation at the time of the sale; JP Morgan Chase Bank, the successor to American National Bank, which held the original construction mortgage on the subdivision; Anna Figueiredo, a former occupant of the Stockton property; Pedro Figueiredo, another former occupant of the Stockton property; and “occupant” of the Stockton property.

¶ 8 Additionally, as required by section 22-25 of the Property Tax Code (35 ILCS 200/22-25 (West 2016)), ZHY delivered the notice to the clerk of the circuit court along with a notice list advising the clerk to mail notice to Hsing at the Stockton and Flagstone properties. The section 22-25 notice sent by the clerk is identical to the notice served by the petitioner, except that it bears the signature of the clerk and designates the parties to whom it is to be mailed. The clerk’s 22-25 notice to Hsing at the Stockton property came back as “unclaimed.” The notice sent to the

Flagstone property, however, was delivered and signed for with a signature that was almost entirely illegible, except that the first letter resembled a “V” as reproduced below:

Signature of Recipient :



Hsing averred in his affidavit that this was not his signature, that he never resided at the Flagstone property, and that he never received notice of the tax sale.

¶ 9 Hsing did not redeem the Stockton property by the expiration of the redemption period. On January 2, 2018, ZHY filed a verified application for tax deed, wherein ZHY averred that it made diligent inquiries as to the identity, address, and location of all persons entitled to notice, including that it reviewed:

“relevant documents recorded with the Du Page County Recorder of Deeds; property tax records maintained by the Du Page County Clerk and the Du Page County Treasurer; directories, Internet searches; a Tract Search provided by Fidelity National Title; and other documents and resources all aimed at identifying parties having any discernible interest in the Property.”

¶ 10 On January 3, 2018, the court, Judge Hayes presiding, conducted a prove-up hearing on ZHY’s petition for tax deed and verified application for tax deed. ZHY was the only party present. ZHY’s attorney, Christine Perakis, of the Law Offices of Joseph D. Ryan, P.C., tendered various exhibits to the court to support its petition and application. Perakis informed the court that ZHY made diligent inquiry as to the identity, address, and location of all persons entitled to notice. As a result of that inquiry, ZHY determined that Hsing was the record owner and the last tax assessee. ZHY found no other liens, mortgages, or interested parties. Thus,

according to Perakis, ZHY engaged a process server to serve notice on Hsing by personal service at the Stockton and the Flagstone properties and to send notice by certified mail at both properties. Perakis paraphrased the sworn statements from Uthe's affidavits, recounting that he averred that the Stockton property was vacant and that Hsing no longer lived at the Flagstone property: "[T]he person who lived there indicated that Mr. Hsing is no longer there, that he actually had moved out in 2004." Uthe did not state in his affidavit that the person told him Hsing once lived at the Flagstone property. Instead, the averment indicates only that the current occupant has lived there since 2004: "Moved out, spoke with Mrs. Adnabathula per ID. She has lived there since 2004."

¶ 11 Perakis continued, indicating that "we" sent service by certified mail, and that it came back unclaimed from the Stockton property but that it was successfully delivered at the Flagstone property. The record indicates that both of ZHY's certified mailings were returned undelivered. Documents in the record specify that it was the section 22-25 notice letter sent by the Du Page County Clerk, not the notice sent by ZHY, that was delivered at the Flagstone property. Regardless of whose notice it was, Perakis argued that it was likely Hsing who signed the delivery confirmation.

¶ 12 Perakis later tendered receipts for what she said was "proof of payments" for the tax years 2014, 2015, and 2016. Upon inspecting the documents, the court found no proof of payment for the 2015 tax year. Perakis stated that she was "almost positive" that ZHY paid the 2015 taxes, but that she would have to check. The court passed the case to allow Perakis to research the 2015 taxes. When it recalled the case, Perakis told the court: "It appears somebody paid the 2015 [*sic*]." She added: "My client went in in September to pay them, and somebody

paid this particular parcel in August.” After a brief colloquy, the court stated: “but you don’t know who paid those.” Perakis answered: “Correct.”

¶ 13 After reviewing the documents and listening to Perakis’s arguments, the court gave its ruling from the bench:

“We did have a prove-up. I do find that all the subsequent taxes that have—are due and owing have been paid by written receipts this morning as well as a verification through the county treasurer’s website that all notice provisions have been complied with. So I do find it’s appropriate to issue a tax deed, and that will be the order of the Court.”

In its written order of the same day, the court reiterated that it found that “all notices” were given in the time and manner required by law, and it ordered that ZHY be allowed to take immediate possession of the property.

¶ 14 Hsing averred in his affidavit that he first learned of the court’s orders on February 25, 2018, when he received a call from a friend who was taking care of the property and that person discovered that the locks had been changed. Hsing additionally averred that since 2001 his primary residence had been in Rowland Heights, California, and that he was unaware that his mailing information was not updated with the Du Page County treasurer. Had he received notice, according to his affidavit, he had sufficient funds, and he would have redeemed the property.

¶ 15 On March 13, 2018, Hsing filed a petition under section 2-1401 of the Code to vacate the judgment awarding the tax deed to ZHY. The petition was later amended. In the petition, Hsing alleged that ZHY procured the tax deed through “fraud or deception” under section 22-45(3) of the Property Tax Code (35 ILCS 22-45(3) (West 2016)), that ZHY failed to serve required parties under section 22-45(4) of the Property Tax Code (35 ILCS 22-45(4) (West 2016)), and

that ZHY violated his constitutional due process right to notice (Ill. Const. 1970, art. IX, § 8(e)). Hsing specifically alleged that (1) ZHY concealed the fact that it was aware of his California address by not including evidence of his payment of the 2015 property taxes in its submission of tax receipts, (2) ZHY omitted evidence of Hsing's contact information from its Whitepages.com search, or alternatively, purposely failed to search for his address, (3) ZHY misrepresented to the court that the Whitepages.com search indicated that Hsing had resided at the Flagstone property, (4) ZHY misrepresented to the court that it thought it was Hsing's signature on the certified mailing's return receipt when it was aware, or should have been aware, that it was not Hsing's signature, (5) ZHY attempted service via certified mail at the Stockton property even though it knew that the property was vacant, and (6) ZHY failed to notify Hsing's attorney when it was aware of that attorney's contact information and knew that he represented Hsing regarding the Stockton property.

¶ 16 On July 30, 2018, ZHY filed a section 2-619 motion to dismiss Hsing's petition to vacate the judgment. ZHY asserted that it made "reasonable efforts to ascertain Hsing's location and serve him with notice," and that it did not commit fraud upon the court to obtain the tax deed.

¶ 17 On or about August 23, 2018, the court transferred this case to Judge Diamond, who presided over all proceedings thereafter.

¶ 18 On October 3, 2018, the court heard arguments on the motion to dismiss the section 2-1401 petition. ZHY repeated that it made diligent and reasonable efforts to serve Hsing at the Stockton and Flagstone properties, and that it was not obligated to continue searching for Hsing at other addresses. Moreover, argued ZHY, in considering the motion to dismiss, the trial court was only obliged to consider whether ZHY's actions constituted fraud or deceit upon the court,

not whether its efforts to serve notice were reasonable. According to ZHY, Hsing's petition failed to meet the fraud or deception standard and should be dismissed.

¶ 19 Hsing responded that ZHY was required to search property tax records as part of its petition and verified application for tax deed. According to Hsing, those records contained copies of the canceled checks that he used to pay the 2015 taxes, and those checks, which ZHY should have discovered, revealed his California address. Moreover, ZHY obtained Hsing's original warranty deed for his purchase of the Stockton property, which listed Tony Shu as Hsing's attorney. Hsing argued that ZHY should have notified Shu per guidance from the Illinois Institute for Continuing Legal Education (IICLE):

“Typically, diligent inquiry to obtain the names and addresses of interested parties consists of the following acts, although not all are always required and others occasionally may be necessary: (1) ordering an opinion of title from a title company; (2) searching relevant documents in the recorder's office for names and addresses of parties *or their attorneys or agents* (Emphasis added.); (3) searching relevant court cases such as probate or housing court cases; (4) consulting telephone directories; (5) searching relevant directories and websites on the Internet; (6) inspecting the premises; and (7) interviewing occupants and neighbors. In each case, the scope of the diligent inquiry will be determined by the facts.” Jeffrey S. Blumenthal, *A Guide to Tax Deed and Indemnity Fund Proceedings*, in *Real Estate Taxation*, § 11.6(n) (Ill. Inst. For Cont. Legal Educ. 2012).

Hsing argued that ZHY committed fraud upon the court when it (1) ignored information that it discovered regarding his whereabouts and (2) failed to notify his known attorney, yet (3) attested that it conducted a diligent inquiry to ascertain Hsing's location.

¶ 20 ZHY countered by conceding that it did state that it searched government records, but that it did not aver that it searched “every single record that is possibly located anywhere in the recorder’s office, the treasurer’s office, the county clerk’s office, or any other governmental office,” because that would be an impossible open-ended search. Additionally, ZHY argued that Hsing’s interpretation of the IICLE was incorrect; diligent service does not require service to attorneys, and there was “no basis whatsoever” for vacating the order.

¶ 21 In determining whether to grant ZHY’s section 2-619 motion to dismiss, the court concluded that ZHY’s averment that it had reviewed tax records did not include that it had examined the checks in question or that it was required to send notice to an attorney named on a 20-year-old tax deed:

“Is there clear and convincing evidence? Has Hsing met his burden of showing clear and convincing evidence of fraud and deceit based on those two uncontested facts and the facts that in this case there was an averment that [ZHY] had examined the records? Are you required when you examine the record and present to the Court that you have examined the records that you go that far?”

I find that that’s not the case. *** [T]he 2-619 motion will be granted.”

The court made no mention in its ruling from the bench or in its written order of Hsing’s assertions in his petition that (1) ZHY omitted Hsing’s information from its exhibit documenting its Internet search, (2) ZHY misrepresented that the Internet search identified Hsing as a resident at the Flagstone property, (3) ZHY misrepresented that it thought the signature on the return receipt was that of Hsing, or (4) ZHY sent notice by certified mail to an address it knew to be vacant. The trial court also made no mention of Hsing’s constitutional due process claim contained in his petition.

¶ 22 On October 4, 2018, ZHY moved to supplement the record with a “release of mortgage” that was originally recorded on April 4, 2014. The court granted the motion over Hsing’s objection. Hsing timely appealed.

¶ 23

II. ANALYSIS

¶ 24 Before addressing the arguments of the parties, we note that the primary purpose of the tax sale provisions of the Property Tax Code is to “encourage property owners to pay their taxes, not to assist tax deed petitioners in depriving actual owners of the property.” *In re Application of Douglas County Treasurer*, 2014 IL App (4th) 130261, ¶ 31. The Supreme Court of the United States has said that successfully providing notice of an impending tax sale is often the most efficient manner to collect unpaid taxes. See *Jones v. Flowers*, 547 U.S. 220, 236 (2006). We read the relevant provisions of the Property Tax Code with these overarching principles in mind.

¶ 25 Hsing argues that the trial court erred by (1) granting ZHY’s motion to dismiss his section 2-1401 petition, (2) not definitively disposing of his due process claim, and (3) granting ZHY’s postjudgment motion to supplement the record. ZHY responds that (1) the petition to vacate was an impermissible attack on the trial court’s due diligence findings at the prove-up hearing, (2) the court correctly determined that Hsing could produce no clear and convincing evidence that the tax deed was procured through fraud, (3) Hsing’s due process rights were not violated, and (4) dismissal was proper, whether the motion was brought under section 2-619 or section 2-615 (735 ILCS 5/2-615 (West 2016)) of the Code. ZHY does not address Hsing’s argument that the court should not have granted its motion to supplement the record.

¶ 26 The purpose of a section 2-1401 petition to vacate is to bring facts not in the record before the court, which, if known at the time of the judgment, would have prevented the judgment. *BMO Harris Bank National Association v. LaRosa*, 2017 IL App (1st) 161159, ¶ 17.

The grounds for relief in a section 2-1401 petition involving a contested tax deed are limited by section 22-45 of the Property Tax Code: (1) proof that the taxes were paid prior to the tax sale, (2) proof that the property was exempt from taxation, (3) clear and convincing evidence of fraud or deceit in the procurement of the tax deed, and (4) proof by an owner or interested party that he or she was not named in the publication notice and that the tax purchaser did not make diligent inquiry and effort to serve that person or party with required notices. 35 ILCS 200/22-45 (West 2016).

¶ 27 Here, Hsing's section 2-1401 petition sought relief pursuant to sections 22-45(3) and 22-45(4). Hsing also argued that ZHY's failure to notify him violated his due process rights guaranteed by the Illinois Constitution ("Owners, occupants, and parties interested shall be given reasonable notice of the sale and the date of expiration of the period of redemption as the General Assembly provides by law."). Ill. Const. 1970, art. IX, § 8(e).

¶ 28 Under section 22-45(3), Hsing asserted that ZHY fraudulently or deceptively procured the tax deed by inaccurately averring that it diligently searched the tax records and used Internet searches to ascertain his whereabouts. Alternatively, Hsing argued that ZHY did review the records but concealed from the court material facts that it discovered during that review. For example, Hsing contended that a Whitepages.com search of the Stockton property, which ZHY attested to conducting, would have identified Hsing as an owner and provided a hyperlink to his personal information, including his California address. Therefore, according to Hsing, ZHY either discovered his address and concealed that fact from the court or willfully avoided discovering Hsing's address so that it would not have to attempt service at that address.

¶ 29 Under section 22-45(4), Hsing alleged that ZHY failed to serve any notice on his attorney, Tony Shu, or to include Shu in the publication notice. Shu averred in his affidavit that,

had he been notified, he would have forwarded the notification to Hsing. Hsing presented no argument under section 22-45(4) as to why Shu had a “recorded interest,” and thus, was required to be given notice. See *In re Application of Douglas County Treasurer*, 2014 IL App (4th) 130261, ¶ 34 (section 22-45 “allows any person or party with an ownership or other interest ascertainable from the public records” to challenge the tax purchaser’s failure to notify him or her).

¶ 30 ZHY responded to Hsing’s petition by filing a section 2-619 motion to dismiss.² ZHY argued that (1) its reasonable due diligence barred any relief under section 22-45(4) of the Property Tax Code, (2) it exercised reasonable due diligence to ascertain and locate the interested parties, and (3) there were insufficient facts to establish that it obtained the tax deed through fraud or deception.

¶ 31 The purpose of a motion to dismiss under section 2-619 is to dispose of issues of law and easily proved issues of fact at the outset of the litigation. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). In considering a section 2-619 motion to dismiss, the court construes all pleadings and supporting documents in the light most favorable to the nonmoving party. *Van Meter*, 207 Ill. 2d at 367-68. We review *de novo* an involuntary dismissal under section 2-619. *Van Meter*, 207 Ill. 2d at 368.

¶ 32 Specifically, section 2-619(a)(9) of the Code permits dismissal where the claim asserted is barred by an affirmative matter that avoids the legal effect or defeats the claim. *Van Meter*,

² ZHY did not specify a subsection of section 2-619. Hsing argued, without objection, and the court included in its order, that the motion was brought under section 2-619(a)(9). We conclude, therefore, that notwithstanding its lack of specificity, ZHY brought its motion under section 2-619(a)(9) of the Code.

207 Ill. 2d at 367. The effect of filing a section 2-619(a)(9) motion is that the moving party admits the legal sufficiency of the complaint, but asserts an affirmative matter outside the complaint that defeats the cause of action. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 31. The movant is essentially saying, “ ‘Yes, the complaint was legally sufficient, but an affirmative matter exists that defeats the claim.’ ” *Winters v. Wangler*, 386 Ill. App. 3d 788, 792 (2008). Our supreme court described an affirmative matter in relation to a section 2-619(a)(9) motion to dismiss as “some kind of defense other than a negation of the essential allegations of the plaintiff’s cause of action.” (Internal quotation marks omitted.) *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 120-21 (2008). Likewise, “[e]vidence which merely refutes a well-pled fact in the complaint is not an ‘affirmative matter’ within the meaning of [section 2-619(a)(9)].” *Malanowski v. Jabamoni*, 293 Ill. App. 3d 720, 723 (1997). Instead, it must be something that completely negates the cause of action, such as tort immunity (*Smith*, 231 Ill. 2d at 121), standing (*In re Application for Tax Deed*, 2018 IL App (5th) 170354, ¶ 51), or subject-matter jurisdiction (See *In re Application of the County Collector*, 2016 IL App (3d) 150712, ¶¶ 21-25).

¶ 33 The movant bears the burden of proof, as well as the concomitant burden of going forward on the motion. *Reynolds*, 2013 IL App (4th) 120139, ¶ 37. The affirmative matter must be apparent on the face of the complaint or otherwise supported by affidavits or other evidentiary materials. *Reynolds*, 2013 IL App (4th) 120139, ¶ 37. If the movant carries the initial burden of going forward, the burden then shifts to the nonmovant, who must establish that the affirmative matter is unfounded or rests on the resolution of a material fact. *Reynolds*, 2013 IL App (4th) 120139, ¶ 37.

¶ 34 ZHY's section 2-619(a)(9) motion to dismiss does not properly assert an affirmative matter. ZHY attached evidence that it acted with reasonable diligence, including a copy of the publication notice and Internet searches, which were nothing more than attempts to contradict Hsing's well-pled allegations. The gist of Hsing's claims was that ZHY assured the court that it had acted with reasonable diligence in its attempts to notify Hsing when it had not done so. In its section 2-619 motion, ZHY argued that Hsing's allegations were untrue because the evidence it presented demonstrated that it reasonably attempted to notify Hsing. It was ZHY's burden to prove the existence of an affirmative matter that completely barred Hsing's cause of action. Presenting evidence that it was contesting Hsing's factual allegations was not an affirmative matter, as section 2-619(a)(9) is not a proper vehicle to contest factual allegations. *Reynolds*, 2013 IL App (4th) 120139, ¶ 42.

¶ 35 ZHY cites *O'Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 18, which determined that an affirmative matter that might otherwise be raised in a section 2-619 motion could also be considered in a motion that was purportedly filed under section 2-615. ZHY concludes, based on *O'Callaghan*, that it did not matter if it titled its motion under section 2-619 or section 2-615, because Hsing was aware of the basis of its claim and was not prejudiced. ZHY's argument misses the mark. When it elected to bring a motion to dismiss under section 2-619, ZHY obligated itself to present an affirmative matter that defeated Hsing's claim. It failed to do so.

¶ 36 The trial court improperly placed the burden on Hsing when it found that Hsing had not met his burden of showing clear and convincing evidence of fraud and deceit. As the movant, it was ZHY's burden to first demonstrate that an affirmative matter barred Hsing's claim. *Reynolds*, 2013 IL App (4th) 120139, ¶ 37. The trial court made no such finding, and we see no basis in the record that would support such a finding. Even assuming, *arguendo*, that ZHY had

met its burden of going forward, Hsing would still not be required to prove fraud and deceit at this stage—only that the affirmative matter was either unfounded or rested on the resolution of a material fact. *Reynolds*, 2013 IL App (4th) 120139, ¶ 37. Hsing raised several issues of material fact in relation to ZHY’s attempts to serve notice, including the alleged insufficient scope of ZHY’s review of government records relating to the Stockton property. Due diligence requires that a tax purchaser conduct a “thorough examination” of the public records, particularly the tax records (*Payne v. Williams*, 91 Ill App. 3d 336, 341 (1980)), and the Supreme Court has said that the means employed when a person is due notice “must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.” *Jones*, 547 U.S. at 238. The scope of ZHY’s review was clearly a material issue of fact that would have required resolution. ZHY did not meet its burden of presenting an affirmative matter that defeated the claim. Even if it had, Hsing presented facts regarding ZHY’s attempts at service of notice that would require resolution before the matter could be decided. Therefore, the trial court erred in granting ZHY’s section 2-619(a)(9) motion to dismiss.

¶ 37 Because we determined that the trial court erred in granting the section 2-619(a)(9) motion to dismiss, we need not reach the questions of whether ZHY violated Hsing’s due process rights or whether the court erred in granting ZHY’s postjudgment motion to supplement the record.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we reverse the judgment of the circuit court of Du Page County and remand the matter for further proceedings consistent with this judgment.

¶ 40 Reversed and remanded.