

NOT DESIGNATED FOR PUBLICATION

No. 124,153

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS, and  
MILUSKA DEL POZO,  
*Appellees,*

v.

JESSE HULSE,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Wyandotte District Court; ROBERT P. BURNS, judge. Opinion filed April 21, 2023.  
Reversed and remanded with directions.

*Cline I. Boone*, of Shawnee, for appellant.

*Wendy M. Green*, senior counsel, of Unified Government of Wyandotte County/Kansas City,  
Kansas, for appellee Unified Government of Wyandotte County/Kansas City, Kansas.

*Barbara B. Liu and Douglas J. Patterson*, of Property Law Firm, LLC, of Leawood, for appellee  
Miluska Del Pozo.

Before BRUNS, P.J., ATCHESON and ISHERWOOD, JJ.

ISHERWOOD, J.: Jesse Hulse appeals the denial of his motion to set aside the sale  
Wyandotte County executed against his property to satisfy multiple years of delinquent  
taxes. Hulse claims the relief was warranted, in part, because the deadline to redeem his  
property was tolled by Kansas Supreme Court Administrative Order 2020-PR-047,

effective May 1, 2020, issued by the Chief Justice of the Kansas Supreme Court to address the COVID-19 pandemic.

Following a review of the record and the applicable law, we conclude the district court erred in finding Hulse's redemption period was not impacted by the administrative order. The order does provide the possibility for an exemption from its suspension of deadlines if specific steps are taken by a district court judge, appellate judicial officer, or hearing officer, but the district court here made no overtures to pursue that exemption. Accordingly, we reverse the district court's denial of Hulse's motion and remand with directions to set aside the sale of his property.

#### FACTUAL AND PROCEDURAL BACKGROUND

From 2011 to 2016 Jesse Hulse failed to pay taxes on two properties he owned in Wyandotte County. In January 2020, Wyandotte County (the County) instituted an action for judicial foreclosure of its tax liens on multiple parcels, and Hulse's two properties were included in the sale as Cause of Action No. 93. Later that month, the Johnson County Sheriff's Office served Hulse at his home in Shawnee by posting the summons on his front door and mailing a postcard to the home the next business day. Hulse's wife and children were at the home when the summons was posted, but Hulse was out of town and claimed no knowledge of the summons. The Wyandotte County Sheriff also served Hulse at one of his businesses in Kansas City, Kansas. In March 2020, the County advertised a notice of the upcoming tax sale in the Wyandotte Echo newspaper. Hulse did not respond to any of these attempts at service so in May 2020, the district court entered a default judgment for delinquent taxes, penalties, and interest on the properties.

Between the service of summons and the court's judgment, the COVID-19 pandemic altered the rhythm of Kansas courts. In March 2020, Chief Justice Marla Luckert issued Kansas Supreme Court Administrative Order 2020-PR-013, effective

March 12, 2020, which allowed chief judges of each judicial district to declare a "legal holiday" under K.S.A. 2019 Supp. 60-206(a) for pandemic-related court closures. Paragraph (10). Then on May 1, 2020, the Chief Justice issued Kansas Supreme Court Administrative Order 2020-PR-047, which declared, "All statutes of limitation and statutory time standards or deadlines applying to the conduct or processing of judicial proceedings are suspended until further order or the termination of this order." Paragraph (1). And on May 27, 2020—one day before the district court entered the default judgment—Chief Justice Luckert issued Kansas Supreme Court Administrative Order 2020-PR-058 which reiterated the suspension. Orders 2020-PR-047 and 2020-PR-058 did allow district courts the authority to exempt a case from the suspension of deadlines provided they entered an order in a case or issued a notice of hearing that imposed a deadline or time requirement *and* specifically stated that such deadline or time requirement was not subject to the suspension of time imposed by the Supreme Court's administrative orders.

In late October 2020, the district court granted the County an Order of Sale for Hulse's property, and two months later the property was sold at a sheriff's sale to Miluska Del Pozo. Ten days after the sale was confirmed Hulse moved to set aside the sale, arguing the County did not properly notify him of the action. He claimed he had the money to pay his back taxes but "inadvertently forgot that he still owed for years 2011 to 2016."

The court held a hearing on the motion at which time Hulse explained that he simply forgot to pay his back taxes and did not see the summons because he was at his residence in Stockton, Kansas at the time. The district court found the County properly followed the statutory procedures ahead of the sale and denied Hulse's motion to set it aside. About a month later, Hulse moved to alter or amend the judgment under K.S.A. 2020 Supp. 60-259(f) and implored the court to revisit the issue and find the sale must be set aside given the Supreme Court's pandemic-related Administrative Orders 2020-PR-

047 and 2020-PR-058. The court conducted a hearing on the matter during which Hulse advanced an argument similar to that laid out in his motion:

"I think that, along with the pandemic, administrative orders and the statutes were changing to put deadlines or delays and the statute of limitations and other statutory deadlines. And I understand that maybe the deadline that was approved by the administrative order as set forth in my motion, 2020-PR-13, on March 12th which made everything a legal holiday which would have delayed filing an answer in some of these cases. . . . I think this Court should have been required by the plaintiff or on its own motion to exempt the default judgment and any further action from the deadlines that were set or the delays that were set by the administrative orders."

The district court determined that the orders did not apply to the sale process and denied Hulse's motion.

Hulse timely brings the matter to us for a determination of whether the district court reached its conclusion in error.

#### LEGAL ANALYSIS

This case comes to us because of two overall claims from Hulse. He first contends the district court abused its discretion when it denied his motion to set aside the tax sale because he successfully established excusable neglect pursuant to K.S.A. 2020 Supp. 60-260(b)(1), as well as a meritorious defense and a lack of prejudice to the County and Del Pozo in accordance with K.S.A. 2020 Supp. 60-260(b)(6). He next asserts the court erred when it declined to declare the sale void under K.S.A. 2020 Supp. 60-260(b)(4). As support he argues the foreclosure sale process impermissibly rolled forward despite administrative orders from the Kansas Supreme Court which suspended various deadlines, including his right to redeem the property, due to the COVID-19 pandemic. He acknowledges those orders also contain an exemption procedure which allowed cases to

progress but highlights that the district court never sought to fulfill the requirements for the exemption.

We agree with Hulse's second claim of error. Without any properly established exemption from the operation of the administrative orders, the deadline for Hulse to redeem his property was tolled. Accordingly, we reverse the district court's denial of Hulse's motion and remand the case with directions to set aside the sale of his property. In light of our reversal on that issue, we decline to analyze his assertions of error related to K.S.A. 2020 Supp. 60-260(b)(1) and (b)(6).

*The district court erred when it determined that the Kansas Supreme Court's suspension of all statutes of limitations, time standards, or deadlines in response to the pandemic did not apply to the judicial foreclosure proceedings which resulted in the sale of Hulse's property.*

Typically, the denial of motions seeking relief from judgment under K.S.A. 2022 Supp. 60-260 are reviewed for an abuse of discretion. But where the judgment at issue is attacked as void under K.S.A. 2022 Supp. 260-260(b)(4), we review the matter independently, with no required deference to the district court's conclusion. This is because the district court has no discretion to exercise when deciding whether a judgment is void. *In re Adoption of A.A.T.*, 287 Kan. 590, Syl. ¶ 1, 196 P.3d 1180 (2008), *cert. denied* 556 U.S. 1184 (2009). Similarly, a district court has no discretion when determining whether a tax sale is void. See *Board of Jefferson County Comm'rs v. Adcox*, 35 Kan. App. 2d 628, 635-36, 132 P.3d 1004 (2006). Our court has previously noted that a motion to set aside a sale as void under K.S.A. 79-2804b presents a similar inquiry as a party's motion for relief from a void judgment under K.S.A. 60-260(b)(4). *Adcox*, 35 Kan. App. 2d at 635.

To the extent that resolution of this issue calls on us to analyze statutes, our interpretation of those provisions is considered a question of law subject to unlimited

review. *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019). Similarly, matters concerning administrative orders from our Supreme Court also present a question of law subject to unlimited review. See *Dawson v. BNSF Railway Co.*, 309 Kan. 446, 451, 437 P.3d 929 (2019) (interpretation of Kansas Supreme Court Rules); see also *Haney v. City of Lawrence*, No. 123,868, 2022 WL 1197468, at \*5-6 (Kan. App. 2022) (unpublished opinion) (collecting cases; noting interpretation of a Kansas Supreme Court administrative order is a question of law).

The issue we are tasked with resolving does not challenge the legitimacy of any one technical aspect of the foreclosure proceeding that occurred here pursuant to the authority of K.S.A. 79-2801 as cases in this context often do. Rather, the question we face is what impact, if any, did Supreme Court Administrative Order 2020-PR-047 have on the option for Hulse to redeem his property under K.S.A. 79-2803.

The first paragraph of that administrative order states:

"All statutes of limitation and statutory time standards or deadlines applying to the conduct or processing of judicial proceedings are suspended until further order or the termination of this order under the terms of H. Sub. for S.B. 102."

The order also allows for an exemption from its operation under narrow circumstances:

"Except as to a statute of limitations or any proceeding covered by Governor Laura Kelly's Executive Order No. 20-10 temporarily prohibiting certain foreclosures and evictions, any district court judge, appellate judicial officer, or hearing officer may exempt a case from the suspension of a statutory or other deadline by (a) entering an order in a case or issuing a notice of hearing that imposes a deadline or time requirement and (b) specifically stating that the deadline or time requirement is not subject to the suspension of time in this order." Paragraph (3).

Hulse argues that his redemption deadline was suspended by the order and therefore any steps that are part of the overall action such as foreclosure, order of sale, or notice of sale could not occur without the district court first specifically ordering an exemption as required by the administrative order. The County takes the position that the only time potentially impacted by the administrative order is the timeframe in which a defendant has to file an answer to the initial petition but otherwise, tax sales carried out under K.S.A. 79-2804 are beyond the reach of the orders because the statute does not contain any statute of limitations or statutory time standards as contemplated by the order.

According to K.S.A. 79-2803:

"Issues may be joined in said action as in other civil actions, but after such issues are so joined said actions shall stand for trial and . . . it shall be the duty of such district court . . . to decide what taxes, charges, interest, and penalty thereon, to the date of the filing of the petition, shall have been legally assessed and charged . . . together with the interest, charges and penalty thereon, as provided by law, together with and including in such judgment any taxes, interest charges and penalties which became a lien . . . after the filing of the petition . . . together with the cost and expenses of the proceeding and sale and to charge the same as a first and prior lien . . . whether the holder thereof appears or not, and to order the sale of the said real estate for the payment of such taxes, charges, interest and penalty and the costs, and expense of such proceedings and sale; which sale shall be made and conducted as hereinafter provided: Provided, That any person interested in any tract, lot or piece of real estate as owner or holder of the record title . . . may *before the day of sale* hereinafter provided for, make redemption in the following manner . . ." (Emphasis added.)

While the timeframe that afforded Hulse until the day before the sale to redeem his property is not properly classified as a statute of limitations, it nevertheless falls within the ambit of the administrative order because it constitutes a deadline. Black's Law Dictionary 500 (11th ed. 2019) defines "deadline" as "[a] cutoff date for taking some

action." The time period in question clearly meets this definition because it operates as the cutoff date for when a party may pursue redemption. See *Board of Johnson County Comm'rs v. Roberts*, 231 Kan. 135, 142, 643 P.2d 138 (1982) ("It should be noted that the proviso in the first paragraph of K.S.A. 79-2803 provides, in substance, that any person interested in the real estate as owner or holder of the record title, or any mortgagee may make redemption of the property before the sale."); *Sumner County Comm'rs v. Avis*, 163 Kan. 388, 393, 183 P.2d 462 (1947) ("The only statutory right Mitchell had to redeem the property is found in G.S.1945 Supp. 79-2803, which fixes the time for redemption as before the sale . . ."); *Sherman County Comm'rs v. Demaree*, 157 Kan. 478, 481, 142 P.2d 722, 724 (1943) ("The statute, G.S.1941 Supp. 79-2803, only authorizes defendants to pay before the day of sale, which in this case was April 13, 1942."). Accordingly, the period in K.S.A. 79-2803 was affected by the suspension.

Del Pozo joins the County's argument that the suspension order does not apply to K.S.A. 79-2803 or K.S.A. 79-2804 and directs us to language in K.S.A. 79-2804b which expressly clarifies that certain temporal restrictions shall not be interpreted as a statute of limitations. That provision states, in part:

"Legal or equitable actions or proceedings may be brought to open, vacate, modify or set aside any judgment rendered for taxes, interest and costs or any order of sale made under the provisions of K.S.A. 79-2803, or amendments thereto, or any sale made under the provisions of K.S.A. 79-2804, or any amendments thereof, *but every such action or proceeding . . . must be commenced within twelve months after the date the sale of the real estate . . . was confirmed by the court. The time limitation herein fixed for the bringing of any such action or proceeding shall be construed as a condition precedent to the bringing of any such action or proceeding and shall not be construed as a statute of limitations.*" (Emphasis added.) K.S.A. 79-2804b.

First, this argument does not necessarily inform the issue before us. Hulse seeks clarification of whether his right to redemption was tolled. If the answer is an affirmative



one, then his property was insulated from further disposition by operation of the Supreme Court's administrative order. By contrast, K.S.A. 79-2804b speaks to a later step in the overall foreclosure process, when an affected party may seek to "open, vacate, modify or set aside" an order of sale already confirmed by the court. See *Board of McPherson County Comm'rs v. Anderson*, No. 121,886, 2020 WL 6685542, at \*3 (Kan. App. 2020) (unpublished opinion) (outlining the content and timeline of the statute). The provision indicates that the window to commence such an action closes 12 months after the order of sale or sale is confirmed by the court. Such confirmation occurred here on December 21, 2020, and Hulse sought to set it aside 10 days later. There is no dispute that he acted within the parameters of the statute. But the question before us is whether he should have ever even been required to do so. To the more general point, while the 12-month period Del Pozo highlights from K.S.A. 79-2804b may be expressly excluded from classification as a statute of limitations, it is nevertheless properly considered a time standard, which places it within the reach of the administrative order.

As a final matter, we note that Del Pozo briefly advances the added argument that the cause of action involving Hulse's property invoked the exception set forth in Paragraph (3) of Executive Order No. 20-10 issued by Governor Laura Kelly on March 23, 2020. The executive order was instituted as an effort to insulate Kansans from foreclosures and evictions during the tumult and uncertainty of the COVID-19 pandemic. The section of that order which Del Pozo's argument emanates from states: "This order does not prohibit the continuation of any judicial foreclosure or judicial eviction proceedings filed before [March 23, 2020]." Paragraph (3) of Order No. 20-10. According to Del Pozo, because the County began foreclosure proceedings against Hulse in January 2020, the action is essentially a qualified exception to the suspension of time limits in the Supreme Court's administrative order.

Our review of the plain and unambiguous language of the two orders and analysis of their interplay yields a different conclusion. The executive order states that pending

foreclosures and evictions are not affected by "*this* order." (Emphasis added.) See Paragraph (6) of Order No. 20-10. That language does not correspondingly convey those causes of action are also insulated from operation of Supreme Court Administrative Order 2020-PR-047 which directed suspension of "[a]ll statutes of limitation and statutory time standards or deadlines applying to the conduct or processing of judicial proceedings . . . ." Paragraph (1). Thus, to the extent that such cases remained open and active at the time of the issuance of the administrative order they were subject to suspension of their respective time limitations and the executive order contributes nothing meaningful toward resolution of the issue about Hulse's period of redemption.

Wyandotte County initiated proceedings against Hulse's property in accordance with the judicial foreclosure act outlined at K.S.A. 79-2801 et seq. That act contains a provision which enabled Hulse to pursue a redemption of his property up until the day before its assigned sheriff's sale. When the Supreme Court issued Administrative Order 2020-PR-047 to suspend "[a]ll statutes of limitation and statutory time standards or deadlines applying to the conduct or processing of judicial proceedings" Hulse's redemption deadline was tolled. See Paragraph (1). Because the district court failed to pursue an exemption to remove Hulse's property from application of that order, the property was not subject to purchase at the time of the sale in December 2020. The district court erred when it reached a contrary conclusion and denied Hulse's motion to set aside the sale. Accordingly, we reverse that decision and remand Hulse's case with directions to set aside the sale of his property.

Reversed and remanded with directions.