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EDUARDO CASTILLO, APPELLEE, V. LIBERT LAND HOLDINGS 4 LLC, APPELLANT, AND GUARDIAN TAX PARTNERS, INC., APPELLEE.

___ N.W.3d ___

Filed April 5, 2024. No. S-23-360.

1. **Declaratory Judgments.** An action for declaratory judgment is sui generis; whether such action is to be treated as one at law or one in equity is to be determined by the nature of the dispute.
2. **Equity: Quiet Title.** A quiet title action sounds in equity.
3. **Equity: Appeal and Error.** In an appeal of an equity action, an appellate court tries factual questions de novo on the record and reaches a conclusion independent of the findings of the trial court; provided, where the credible evidence is in conflict on a material issue of fact, the appellate court considers and may give weight to the fact that the trial judge heard and observed the witnesses and accepted one version of the facts rather than another.
4. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
5. **Title: Deeds: Tax Sale.** Actions challenging title obtained via a tax deed are governed by statute.
6. **Title: Deeds: Tax Sale: Jurisdiction: Notice.** Neb. Rev. Stat. § 77-1843 (Reissue 2018) has a jurisdictional component that renders a tax deed void when the tax deed holder failed to comply with the statutory notice requirements prior to acquiring the deed.
7. **Title: Deeds.** Even if title under a tax deed is void or voidable, the conditions precedent set forth in Neb. Rev. Stat. §§ 77-1843 and 77-1844 (Reissue 2018) must be met in order to first question and then defeat title.
8. **Title: Deeds: Tax Sale: Words and Phrases.** The word "paid" in Neb. Rev. Stat. § 77-1844 (Reissue 2018) includes tendering payment.

9. **Title: Deeds: Tax Sale: Notice: Service of Process: Proof.** A strict compliance by the tax sale purchaser with the statutes, not only as to the service of the notice, but also as to the proof of such service, must be reflected by the record before the county treasurer is clothed with authority to issue a tax deed.
10. **Tax Sale: Notice: Service of Process: Words and Phrases.** In Neb. Rev. Stat. § 77-1832(1)(a) (Cum. Supp. 2022), personal service means service made by leaving the notice with the individual to be served and residence service means service made by leaving the notice at the usual place of residence of the individual to be served, with some person of suitable age and discretion residing therein.
11. **Tax Sale: Legislature: Intent: Notice: Service of Process.** Under Neb. Rev. Stat. §§ 77-1831, 77-1832, and 77-1834 (Cum. Supp. 2022), the Legislature intended that notice of intent to apply for a treasurer's tax deed be given by personal or residence service both upon a person in actual possession or occupancy of the real property and upon the person in whose name the title to the real property appears of record who can be found in this state.
12. **Tax Sale: Notice: Service of Process: Words and Phrases.** The word "found" in Neb. Rev. Stat. § 77-1834 (Cum. Supp. 2022) means able to be served.
13. **Statutes: Legislature: Presumptions.** It is to be presumed that the Legislature, in using language in a statute, gave to it the significance that had been previously accorded to it by the pronouncements of this court unless a different meaning has been provided by the context of the statute.
14. **Tax Sale: Notice: Service of Process: Proof: Affidavits.** Under Neb. Rev. Stat. § 77-1833 (Cum. Supp. 2022), to provide proof of notice by another method, proof of attempted personal or residence service must be established by affidavit.
15. **Title: Deeds: Tax Sale: Proof: Presumptions: Evidence.** A county treasurer's tax deed is presumptive evidence that the procedures required by law to make a good and valid tax sale and vest title in the purchaser were done. The presumption is not conclusive and may be rebutted, but the burden is upon the party attacking the validity of such a deed to show by competent evidence some jurisdictional defect voiding the deed.
16. **Affidavits.** It is the general rule that an affidavit should be made by one having actual knowledge of the facts, and its allegations should be of the pertinent facts and circumstances, rather than conclusions, and should be full, certain, and exact.

17. ____. Statements in affidavits as to opinion, belief, or conclusions of law are of no effect.
18. **Deeds: Tax Sale: Proof: Notice: Service of Process: Affidavits.** Proof of service of notice under Neb. Rev. Stat. § 77-1833 (Cum. Supp. 2022) must be made by affidavit and filed with the application for a treasurer's tax deed; it cannot be cured or supplemented by evidence presented at trial.
19. **Appeal and Error.** Although an appellate court ordinarily considers only those errors assigned and discussed in the briefs, the appellate court may, at its option, notice plain error.
20. ____. Plain error is error plainly evident from the record and of such a nature that to leave it uncorrected would result in damage to the integrity, reputation, or fairness of the judicial process.
21. **Equity.** The relief ordinarily granted in equity is such as the nature of the case, the law, and the facts demand.
22. **Equity: Quiet Title.** In quiet title actions, one who seeks equity must do equity.
23. **Judgments.** A judgment for money must specify with definiteness and certainty the amount for which it is rendered.

Appeal from the District Court for Douglas County: Marlon A. Polk, Judge. Affirmed and remanded with directions.

Marc Odgaard for appellant Libert Land Holdings 4 LLC and appellee Guardian Tax Partners, Inc.

Alton E. Mitchell Attorney at Law, L.L.C., for appellee Eduardo Castillo.

Heavican, C.J., Miller-Lerman, Cassel, Stacy, Papik, and Freudenberg, JJ.

Cassel, J.

I. INTRODUCTION

Libert Land Holdings 4 LLC (LLH4) appeals from the district court's judgment declaring that its treasurer's tax deed was void for failure to comply with notice and proof requirements under the statutes governing collection of delinquent

real estate taxes by sale of real property.[1] We conclude that LLH4's application for the tax deed was deficient and that the deficiencies could not be cured by evidence adduced at trial. Thus, we agree that the tax deed was void. Because we note plain error in another respect, we remand the cause to the district court with directions, and otherwise affirm the judgment.

II. BACKGROUND

1. Property

According to county assessor records received in evidence, the property at dispute in this appeal is legally described as "Lot 21, Block 10, Clifton Hill, an Addition to the City of Omaha in Douglas County, Nebraska." A street address appears in the evidentiary record. Eduardo Castillo is the record owner of the property.

2. Treasurer's Tax Sale and Deed

In March 2019, LLH4 purchased a tax certificate for $740.81 after Castillo failed to pay delinquent taxes levied upon the property. The tax certificate provided for issuance of a tax deed 3 years thereafter "unless redemption is made" and "on surrender of this Certificate and Compliance with the provisions of the Revenue Law." There is no dispute that Castillo did not redeem the property as allowed by law.

In October 2022, LLH4 filed an application for a treasurer's tax deed after publishing notice in a Douglas County, Nebraska, newspaper for 3 consecutive weeks. We will discuss the application in more detail later in the opinion. The Douglas County treasurer issued a treasurer's tax deed in LLH4's name.

3. Subsequent Attempt to Redeem Property

Shortly after the treasurer's tax deed was issued, Castillo became aware of it and attempted to redeem the property. The

[1] Neb. Rev. Stat. §§ 77-1801 to 77-1863 (Reissue 2018 & Cum. Supp. 2022).

record contains a receipt from the Douglas County treasurer, issued in October 2022, showing that Castillo tendered payment of $3,814.26. Apparently, the treasurer initially accepted the payment but then refunded it, because the tax deed had already been issued.

4. Lawsuit

A few days later, Castillo filed this declaratory judgment action. The suit named both LLH4 and an apparently related party, Guardian Tax Partners, Inc. (Guardian). Guardian is not participating in this appeal. The complaint alleged that the treasurer's tax deed was void due to a failure to comply with statutory notice requirements and sought to quiet title to the property in Castillo's name. LLH4 and Guardian filed an amended answer, affirmative defenses, and a counterclaim, which are not at issue on appeal.

The district court held a bench trial, during which it received evidence and heard the parties' arguments. The evidence included LLH4's application for the treasurer's tax deed, other exhibits, and witnesses' testimony. The testimonial evidence will largely be irrelevant to our disposition.

Following trial, the district court entered a judgment, styled as an order, finding that Castillo had met his burden of proof on his complaint. Without explicitly addressing the claim for quiet title, the court broadly entered judgment in Castillo's favor. It declared the tax deed void due to "[LLH4 and Guardian's] failure to comply with the notice requirements under section 77-1801 et seq. of the Nebraska Revised Statutes" and ordered Castillo to pay taxes on the property and interest. The court also entered judgment for Castillo on the counterclaim.

Regarding Castillo's payment, the judgment required Castillo to pay to LLH4 and Guardian, within 21 days of the date of the judgment, "the amount of any and all the taxes paid for the Treasurer's Tax Deed by [them], with interest thereon at the rate of 14% per annum, together with all other taxes subsequently paid at the same rate." The judgment did not specify a precise amount.

At oral argument, counsel for LLH4 stated that both parties understood the court's broad judgment to quiet title to the property in Castillo's name. We do likewise.[2]

LLH4 filed a timely appeal, which we moved to our docket.[3]

III. ASSIGNMENT OF ERROR

LLH4 assigns only that the district court erred in concluding that the notice requirements of § 77-1801 et seq. were not satisfied and that the tax deed was void.

IV. STANDARD OF REVIEW

[1] An action for declaratory judgment is sui generis; whether such action is to be treated as one at law or one in equity is to be determined by the nature of the dispute.[4]

[2,3] A quiet title action sounds in equity.[5] In an appeal of an equity action, an appellate court tries factual questions de novo on the record and reaches a conclusion independent of the findings of the trial court; provided, where the credible evidence is in conflict on a material issue of fact, the appellate court considers and may give weight to the fact that the trial judge heard and observed the witnesses and accepted one version of the facts rather than another.[6]

V. ANALYSIS

1. JURISDICTION

[4] Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it

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[2] See *Adair Holdings v. Johnson*, 304 Neb. 720, 726, 936 N.W.2d 517, 523 (2020) ("[b]ecause a void tax deed grants color of title in a potential future action, it will always be incumbent upon the original landowner to bring an action to quiet title in his or her name").

[3] See Neb. Rev. Stat. § 24-1106(3) (Cum. Supp. 2022).

[4] *In re Estate of Wiggins*, 314 Neb. 565, 992 N.W.2d 429 (2023).

[5] *Arnold v. Walz*, 306 Neb. 179, 944 N.W.2d 747 (2020).

[6] *Noah's Ark Processors v. UniFirst Corp.*, 310 Neb. 896, 970 N.W.2d 72 (2022).

has jurisdiction over the matter before it.[7] Although neither party challenges this court's jurisdiction, we must briefly consider it.

[5-7] Actions challenging title obtained via a tax deed are governed by statute.[8] We have said that § 77-1843 has a jurisdictional component that renders a tax deed void when the tax deed holder failed to comply with the statutory notice requirements prior to acquiring the deed.[9] But, even if title under a tax deed is void or voidable, the conditions precedent set forth in §§ 77-1843 and 77-1844 must be met in order to first question and then defeat title.[10]

Section 77-1844 provides, in pertinent part, that "[n]o person shall be permitted to question the title acquired by a treasurer's deed without first showing . . . that all taxes due upon the property had been paid by such person."

[8] Our prior decision that the word "paid" in § 77-1844 includes tendering payment[11] applies here. It is undisputed that Castillo tendered payment to the county treasurer, but because the tax deed had already been issued, the treasurer refunded the payment. Castillo's attempt to tender payment complied with § 77-1844 and gave him standing to assert his claims. Therefore, we have jurisdiction of the appeal.

2. Statutory Requirements

[9] The dispositive issue on appeal is whether LLH4 complied with statutory requirements for notice and proof of notice required for the issuance of a treasurer's tax deed. We have long held that a strict compliance by the tax sale purchaser with the statutes, not only as to the service of the notice, but also as to the proof of such service, must be

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[7] *Mathiesen v. Kellogg*, 315 Neb. 840, 1 N.W.3d 888 (2024).

[8] *Adair Holdings v. Johnson, supra* note 2. See §§ 77-1801 to 77-1863.

[9] *Adair Holdings v. Johnson, supra* note 2.

[10] See *Ottaco Acceptance, Inc. v. Larkin*, 273 Neb. 765, 733 N.W.2d 539 (2007).

[11] *Adair Holdings v. Johnson, supra* note 2.

reflected by the record before the county treasurer is clothed with authority to issue a tax deed.[12]

Our cases explain the rationale underlying the requirement of strict compliance. "A tax deed is executed under a naked power which must be strictly complied with."[13] "It is an exercise of the sovereign power of the government by which it appropriates the property of the citizens to the support of the commonwealth."[14] Sale and issuance of a tax deed creates a new title.[15] "When it is sought to divest the owner of his land by a tax deed, it has always been held by this court that the provisions of the statute must be strictly complied with, for such provisions are mandatory."[16]

Our prior cases illustrate the strength of that requirement. In one case, the treasurer's tax deed failed because there was no showing that personal service of notice could not be served upon the person in whose name the land was taxed or some person in possession of the land.[17] The record disclosed that there was no notice other than by publication, and it was "not shown that personal service could not have been made."[18]

In another case, the tax deed was void for want of proper affidavit of proof of service.[19] There, the statute directed that proof of published notice shall be evidenced by the affidavit of the publisher, manager, or foreman of the newspaper, but the affidavit filed with the treasurer designated the affiant

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[12] See, e.g., *id.*; *Ottaco, Inc. v. McHugh*, 263 Neb. 489, 640 N.W.2d 662 (2002); *Brokaw v. Cottrell*, 114 Neb. 858, 211 N.W. 184 (1926); *Peck v. Garfield County*, 88 Neb. 635, 130 N.W. 258 (1911); *Bendexen v. Fenton*, 21 Neb. 184, 31 N.W. 685 (1887).

[13] *Sullivan v. Merriam*, 16 Neb. 157, 160, 20 N.W. 118, 119 (1884).

[14] *Bendexen v. Fenton, supra* note 12, 21 Neb. at 185, 31 N.W. at 686.

[15] See *Leigh v. Green*, 64 Neb. 533, 90 N.W. 255 (1902).

[16] *Howell v. Jordan*, 94 Neb. 264, 266, 143 N.W. 217, 218 (1913).

[17] See *id.*

[18] *Id.*

[19] See *Brokaw v. Cottrell, supra* note 12.

as "editor" of the newspaper. Similarly, in another case, an invalid tax deed resulted from proof of service made not by affidavit, as required by statute, but in the form of an ordinary sheriff's return.[20]

LLH4 conceded, at oral argument, that strict compliance applies. LLH4 maintains that it met all requirements. Castillo contends that LLH4 failed to strictly comply with specific requirements governing service of notice.

Critically, there are statutory requirements both for service of notice and for proof of notice. We first summarize the relevant conditions for service of notice upon record owners and occupants. We then recall the pertinent requirements for proof of service.

(a) Service of Notice

As relevant here, three statutes focus on service of notice. These statutes were most recently amended in 2019.[21] We caution a reader that the applicable statutory requirements at any point in time are driven by the date of issuance of a particular tax deed.[22]

First, § 77-1831 sets forth the general requirement that a tax sale purchaser effectuate service of a sufficient notice at least 3 months prior to applying for a treasurer's tax deed. It demands the purchaser to "*serve*[] *or cause*[] *to be served a notice* that states . . . the tax deed will be applied for."[23]

Section 77-1832 designates the permitted methods of service and identifies those entitled to service of notice. It begins with a new requirement. The section now provides, in pertinent part:

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[20] See *Peck v. Garfield County, supra* note 12.

[21] See 2019 Neb. Laws, L.B. 463.

[22] See, e.g., § 77-1837.01(3) (tax sale certificates sold and issued between January 1, 2017, and September 7, 2019, shall be governed by laws and statutes in effect on September 7, 2019, regarding all matters relating to tax deed proceedings).

[23] § 77-1831 (emphasis supplied).

> (1) Service of the notice provided by section 77-1831 shall be made by:
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> (a) *Personal or residence service* as described in section 25-505.01 upon a person in actual possession or occupancy of the real property and upon the person in whose name the title to the real property appears of record who can be found in this state. If a person in actual possession or occupancy of the real property *cannot be served by personal or residence service*, service of the notice shall be made upon such person by certified mail service or designated delivery service as described in section 25-505.01, and the notice shall be sent to the address of the property. If the person in whose name the title to the real property appears of record *cannot be found in this state or if such person cannot be served by personal or residence service*, service of the notice shall be made upon such person by certified mail service or designated delivery service as described in section 25-505.01, and the notice shall be sent to the name and address to which the property tax statement was mailed[.][24]

As observed in a prior decision,[25] § 77-1832 has been the subject of significant revision since the turn of the century. The current version now explicitly begins with a new requirement of "[p]ersonal or residence service as described in section 25-505.01."[26]

[10] For definitions of personal or residence service, we consult Neb. Rev. Stat. § 25-505.01 (Reissue 2016), which dictates that personal service "shall be made by leaving the summons with the individual to be served" and that residence service "shall be made by leaving the summons at the usual place of residence of the individual to be served, with some

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[24] § 77-1832 (emphasis supplied).

[25] *Wisner v. Vandelay Investments*, 300 Neb. 825, 916 N.W.2d 698 (2018).

[26] § 77-1832(1)(a).

person of suitable age and discretion residing therein." We hold that in § 77-1832(1)(a), personal service means service made by leaving the notice with the individual to be served and residence service means service made by leaving the notice at the usual place of residence of the individual to be served, with some person of suitable age and discretion residing therein.

[11] Finally, § 77-1834, in relevant part, has consistently permitted published notice if a person entitled to notice "cannot, upon diligent inquiry, be found." Although the personal and residence service requirements of § 77-1832 are new and have not been interpreted in any of our previous decisions, the potential alternative of published notice remains in place. What differed in the amendment to § 77-1834 was the specific reference to the new requirement of § 77-1832: "If *any* person . . . *who is entitled to notice under subsection (1) of section 77-1832* cannot, upon diligent inquiry, be found . . . ." (Emphasis supplied.) Thus, under §§ 77-1831, 77-1832, and 77-1834, the Legislature intended that notice of intent to apply for a treasurer's tax deed be given by personal or residence service both upon a person in actual possession or occupancy of the real property and upon the person in whose name the title to the real property appears of record who can be found in this state.

If such persons "cannot be served by personal or residence service," or "cannot be found in this state," § 77-1832 permits service by certified mail or designated delivery. Notice by publication is permitted under § 77-1834 only if such persons "cannot, upon diligent inquiry, be found."

[12,13] The meaning of "found" is settled. The word "found" in § 77-1834 means able to be served.[27] It is to be presumed that the Legislature, in using language in a statute, gave to it the significance that had been previously accorded to it by the pronouncements of this court unless a different

[27] *Wisner v. Vandelay Investments, supra* note 25.

meaning has been provided by the context of the statute.[28] The most recent amendment to § 77-1834 gave no indication of any intention to change that meaning.[29]

LLH4 relies upon a purported failed attempt to serve Castillo. Before considering whether its affidavit and supporting documentation satisfied the requirements for proof of service, we outline those statutory requirements.

(b) Proof of Service of Notice

In this situation, two statutes govern requirements of proof of service of notice that must be provided to a county treasurer being requested to issue a tax deed. Although these statutes contain numerous requirements, we focus only on the aspects driving our decision here.

First, § 77-1833 provides, in part, that "[*t*]*he service of notice provided by section 77-1832 shall be proved by affidavit*." (Emphasis supplied.) Thus, we must examine the affidavit that LLH4 filed with the county treasurer.

[14] Second, § 77-1833 requires that the affidavit be filed with supporting documents. For personal or residence service, "the receipt or returns provided by the person authorized in subsection (2) of section 77-1832 to carry out such service shall be filed with and accompany the affidavit."[30] Under § 77-1833, to provide proof of notice by another method, proof of attempted personal or residence service must be established by affidavit.

Finally, § 77-1837(1) enumerates the items that must be included in the application for a treasurer's tax deed. We recognize that the Legislature amended § 77-1837 in 2023,[31] but that amendment does not apply here. The controlling version of § 77-1837(1) (Cum. Supp. 2022) required LLH4 to

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[28] *Durfee v. Keiffer*, 168 Neb. 272, 95 N.W.2d 618 (1959).

[29] See 2019 Neb. Laws, L.B. 463.

[30] § 77-1833.

[31] See 2023 Neb. Laws, L.B. 727, § 55.

provide, among other things, "(c) [f]or any notice provided pursuant to section 77-1832, the affidavit proving service of notice . . . ." With these statutes in mind, we turn to the parties' arguments.

3. Parties' Arguments

Importantly, LLH4 does not dispute that it failed to effectuate personal or residence service upon Castillo, even though he was a "person . . . who is entitled to notice under subsection (1) of section 77-1832."[32] Citing two prior cases,[33] LLH4 contends that it was permitted to provide notice by publication and did so.

Castillo makes several counterarguments based on the plain language of §§ 77-1832 and 77-1834 and relying on the evidence presented by LLH4 at trial. First, Castillo contends that he was entitled to "[p]ersonal or residence service."[34] He further argues that service by certified mail was not permitted because "[LLH4's] efforts were insufficient"[35] to establish that he "cannot be served by personal or residence service."[36] Finally, Castillo argues that notice by publication was not permitted because the facts did not support a conclusion that he "cannot, upon diligent inquiry, be found."[37]

4. Resolution

[15] A county treasurer's tax deed is presumptive evidence that the procedures required by law to make a good and valid tax sale and vest title in the purchaser were done.[38] The presumption is not conclusive and may be rebutted, but the

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[32] § 77-1834.

[33] *HBI, L.L.C. v. Barnette*, 305 Neb. 457, 941 N.W.2d 158 (2020); *Wisner v. Vandelay Investments, supra* note 25.

[34] § 77-1832(1)(a).

[35] Brief for appellee at 6.

[36] § 77-1832(1)(a).

[37] § 77-1834.

[38] *Wisner v. Vandelay Investments, supra* note 25. See § 77-1842.

burden is upon the party attacking the validity of such a deed to show by competent evidence some jurisdictional defect voiding the deed.[39] We conclude that Castillo has met his burden of rebutting the statutory presumption that LLH4's notice and proof were sufficient.

(a) Additional Background

At trial, Castillo testified that he was not aware of any issue with his ownership of the property until after the tax deed was issued. He introduced several exhibits, including his deed for the property and a certified copy of LLH4's application for the treasurer's tax deed. The application consisted of 22 pages and included several documents. We discuss the pertinent documents in detail.

First, the application included the affidavit of LLH4's attorney. The affidavit set forth 12 enumerated paragraphs. Paragraphs 1 through 5 recounted basic information regarding the attorney, the property, the tax certificate, and the title search. Paragraphs 6 through 11 pertained to service of notice. In this regard, the affidavit stated:

> 6. [LLH4], as purchaser of Tax Sale Certificate, served, or caused to be served the Notice of Application for Tax Deed pursuant to Neb. Rev. Stat. §§ 77-1831, 77-1832, 77-1834, and/or 77-1835 to all persons and entities who were entitled to notice, as described below. The Notice of Application for Tax Deed was served more than three (3) months prior to the application for treasurer's tax deed. The Notice of Application for Tax Deed is attached hereto as Exhibit "C" and incorporated herein pursuant to Neb. Rev. Stat. § 77-1833.
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> 7. [LLH4] served, or caused to be served, the Notice of Application for Tax Deed by personal or residential service as described in Neb. Rev. Stat. § 25-505.01 upon a person in actual possession or occupancy of the Real Estate and upon the person in whose name the title to

[39] *Wisner v. Vandelay Investments, supra* note 25.

the Real Estate appears of record who could be found in this state. Copies of the service returns are attached hereto as Exhibit "D" and incorporated herein pursuant to Neb. Rev. Stat. § 77-1833.

8. If the person in actual possession or occupancy of the Real Estate could not be served by personal or residential service, then the Notice of Application for Tax Deed was served or caused to be served by certified mail service, as described in Neb. Rev. Stat. § 25-505.01, to the address of the property, if any.

9. If the person in whose name the title to the Real Estate appears of record could not be found in this state or could not be served by personal or residential service, then the Notice of Application for Tax Deed was served or caused to be served by certified mail service, as described in Section 25-505.01, to the address to which the property tax statement was mailed.

10. [LLH4] served, or caused to be served, the Notice of Application for Tax Deed by certified mail service, as described in Neb. Rev. Stat. § 25-505.01, upon every encumbrancer of record found by the title search of the Real Estate pursuant to Neb. Rev. Stat. § 77-1832. Copies of all original certified mail return receipts and envelopes are attached hereto as Exhibit "E" and incorporated herein pursuant to Neb. Rev. Stat. § 77-1833.

11. Because one or more of the encumbrancers of record, persons in possession or occupancy, or title holders of record could not be served pursuant to Neb. Rev. Stat. § 77-1832, [LLH4] caused the Notice of Application for Tax Deed to be served by publication in accordance with Neb. Rev. Stat. §§ 77-1834 and 77-1835 The Daily Record, a newspaper published in Douglas County, and having a general circulation in Douglas County, which notice was published for three consecutive weeks, with the last publication not being less than three months prior to the application for the tax deed.

> Proof of publication by affidavit of the publisher, manager or other employee of The Daily Record is attached hereto as Exhibit "F" and incorporated herein.

Second, the application contained two documents signed by an unnamed constable, indicating that the constable was unable to serve Castillo with the notice. The first document stated: "I received this Document on the 24th Day of May, 2022. I was unable to locate Any Persons at [the property's street address.] I am returning the document unserved." The second document contained the same statement with one exception; it referred to "Eduardo D T Castillo" rather than "Any Persons."

Below the statements, the two documents contained blank spaces labeled "Constable," "Service Cost," "Mileage," and "TOTAL." There were handwritten signatures above the word "Constable" and handwritten numbers above the remaining blank spaces. The two documents were unsworn and contained no other information.

Fourth, the application included documentation of various attempts at certified mail service. It appears that on June 16, 2022, Guardian sent notice by certified mail, return receipt requested, to the property's street address. Although Castillo resided there, the notice was returned as "unclaimed." Handwriting and date stamps on the certified mail envelopes sent to the property suggest that the post office made three attempts—on June 16, June 28, and July 3—to deliver the notice prior to returning it as unclaimed.

Finally, the application included a copy of the proof of published notice in The Daily Record, a legal newspaper in Douglas County, on June 29, July 6, and July 13, 2022.

LLH4 adduced the testimony of two witnesses at trial, the constable and an employee of Guardian who filed the application on LLH4's behalf. As relevant here, the constable testified that on May 25, 2022, he attempted to serve Castillo with notice at the property but "nobody was available." The constable further testified that he left a "card" with his name

and contact information at the property so that Castillo could call him, but he did not receive a call from Castillo.

(b) Discussion

(i) Purported Proof Under § 77-1833

Upon our review, LLH4's application for the treasurer's tax deed failed to provide proof of service in the manner required under § 77-1833. As noted above, "The service of notice provided by section 77-1832 shall be proved by affidavit."[40] Although LLH4's application included the affidavit of its attorney, the affidavit was deficient.

[16,17] We recall basic principles. As defined by statute, "An affidavit is a written declaration under oath, made without notice to the adverse party."[41] It is the general rule that an affidavit should be made by one having actual knowledge of the facts, and its allegations should be of the pertinent facts and circumstances, rather than conclusions, and should be full, certain, and exact.[42] Stated differently, statements in affidavits as to opinion, belief, or conclusions of law are of no effect.[43]

Here, to the extent that LLH4's affidavit purported to provide proof of attempted personal or residence service, it was not made by one having actual knowledge of the facts. The affidavit also failed to set forth pertinent facts and circumstances proving the necessity of serving or providing notice by another method. The allegations were mere conclusions of law.

The sixth paragraph of the affidavit vaguely stated that LLH4 "served, or caused to be served the Notice of Application for Tax Deed pursuant to Neb. Rev. Stat. §§ 77-1831, 77-1832,

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[40] § 77-1833.

[41] Neb. Rev. Stat. § 25-1241 (Reissue 2016).

[42] *Caha v. Nelson*, 195 Neb. 333, 237 N.W.2d 870 (1976).

[43] *Cullinane v. Beverly Enters. - Neb.*, 300 Neb. 210, 912 N.W.2d 774 (2018).

77-1834, and/or 77-1835 to all persons and entities who were entitled to notice, as described below." This language is imprecise and does not set forth any facts proving service of notice. And while paragraph 11 vaguely referred to an inability to effectuate service, it did not set forth facts supporting that conclusion.

Nor was the affidavit "full, certain, and exact."[44] Notably, several paragraphs contradicted LLH4's representations at trial and on appeal that service was not effectuated. Some paragraphs consisted entirely of "if-then" statements, rather than facts.

These vague recitations of statutory language peppered with conditional statements are not facts proving valid service of notice. The affidavit failed to set forth the who, what, when, where, and how regarding the efforts made to accomplish personal or residence service. In the absence of any such specific facts, the affidavit of LLH4's attorney failed to show that Castillo "cannot be served by personal or residence service,"[45] that he "cannot be found in this state,"[46] or that he "cannot, upon diligent inquiry, be found."[47] In sum, the affidavit failed to set forth the purported circumstances permitting notice other than by personal or residence service. It needed to do so.

Finally, to the extent that LLH4 relied on the documents signed by the constable—or the constable's testimony—as proof of attempted service, it failed to provide proof in the manner required under § 77-1833. While the documents signed by the constable stated the date upon which *the constable* received the notice, they did not set forth any information regarding the purported attempt to serve the notice upon *Castillo*. They did not include, for example, the date, time,

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[44] *Caha v. Nelson, supra* note 42, 195 Neb. at 338, 237 N.W.2d at 873.

[45] § 77-1832(1)(a).

[46] *Id.*

[47] § 77-1834.

location, or manner of the attempted service. More importantly, they were not affidavits. This court has rejected proof of service made solely by an ordinary form return.[48]

[18] Further, the deficiencies in LLH4's application could not be cured by presenting the constable's testimony at trial. LLH4 called the constable to testify regarding the attempted personal or residence service. But the validity of the treasurer's tax deed depends upon compliance with the statutory requirements.[49] We therefore hold that proof of service of notice under § 77-1833 must be made by affidavit and filed with the application for a treasurer's tax deed; it cannot be cured or supplemented by evidence presented at trial.

(ii) Prior Cases

We also reject LLH4's argument based upon *Wisner v. Vandelay Investments*[50] and *HBI, L.L.C. v. Barnette*.[51] In those cases, we held that § 77-1834 authorized the holder of a tax certificate to provide notice by publication *if the record owner was unable to be served by certified mail* at the address where the property tax statement was mailed, upon proof of compliance with § 77-1832, if the owner in fact lived at such address. Similarly, LLH4 relies upon the unclaimed certified mail envelopes.

But the version of § 77-1832 governing those prior cases designated certified mail as the required method of service.[52] It then provided, in relevant part, that "[s]ervice of the notice provided by section 77-1831 *shall be made by certified mail*, return receipt requested, upon the person in whose name the title to the real property appears of record to the address where the property tax statement was mailed . . . ."[53]

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[48] See *Peck v. Garfield County, supra* note 12.

[49] See *Brokaw v. Cottrell, supra* note 12.

[50] *Wisner v. Vandelay Investments, supra* note 25.

[51] *HBI, L.L.C. v. Barnette, supra* note 33.

[52] See § 77-1832 (Reissue 2009).

[53] *Id.* (emphasis supplied).

By contrast, the current version of § 77-1832 (Cum. Supp. 2022) requires "[*p*]*ersonal or residence service* as described in section 25-505.01" upon a person in actual possession or occupancy of the real property and upon the person in whose name the title to the real property appears of record who can be found in this state. (Emphasis supplied.) Section 77-1832 permits certified mail service only if such persons "cannot be served by personal or residence service" or if the record owner "cannot be found in this state."

Because § 77-1832 now requires "[p]ersonal or residence service" and permits certified mail service only in limited circumstances, LLH4's reliance on our prior interpretation of § 77-1834 is misplaced. As we have long cautioned purchasers, "'"When the statute, under which land is sold for taxes, directs an act to be done, or prescribes the form, time and manner of doing any act, such act must be done, and in the form, time and manner prescribed, or the title is invalid . . . ."'"[54] That applies here.

In sum, we conclude that LLH4's treasurer's tax deed was void for failure to strictly comply with statutory notice and proof requirements. We affirm the district court's judgment.

5. Plain Error

[19,20] As a final matter, we exercise our discretion to notice plain error. Although an appellate court ordinarily considers only those errors assigned and discussed in the briefs, the appellate court may, at its option, notice plain error.[55] Plain error is error plainly evident from the record and of such a nature that to leave it uncorrected would result in damage to the integrity, reputation, or fairness of the judicial process.[56]

[21-23] We note plain error in the failure to determine the precise payment due from Castillo. The relief ordinarily

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[54] *Brokaw v. Cottrell, supra* note 12, 114 Neb. at 863, 211 N.W. at 186.

[55] *Cain v. Custer Cty. Bd. of Equal.*, 291 Neb. 730, 868 N.W.2d 334 (2015).

[56] *Noland v. Yost*, 315 Neb. 568, 998 N.W.2d 57 (2023).

granted in equity is such as the nature of the case, the law, and the facts demand.[57] In quiet title actions, one who seeks equity must do equity.[58] Here, the judgment properly quieted title in Castillo and directed him to reimburse LLH4 and Guardian for any delinquent taxes paid by them, with interest. But, the court did not determine the precise amount of payment due from Castillo. A judgment for money must specify with definiteness and certainty the amount for which it is rendered.[59] We must remand the cause with directions to cure that error.

VI. CONCLUSION

The district court properly declared that the treasurer's tax deed was void due to LLH4's failure to comply with statutory notice and proof requirements. We remand the cause to the district court with directions to specify the precise amount of taxes and accrued interest at a rate of 14 percent per annum, to be paid by a date certain into the registry of the court, for disbursement by the court to LLH4 and/or Guardian. We affirm the court's decree in all other respects.

AFFIRMED AND REMANDED WITH DIRECTIONS.

FUNKE, J., participating on briefs.

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[57] *Adair Holdings v. Johnson, supra* note 2.

[58] *Id.*

[59] *Lenz v. Lenz*, 222 Neb. 85, 382 N.W.2d 323 (1986).