Circuit Court for Baltimore City
Case No. 24C19006240

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 567

September Term, 2022

AL CZERVIK LLC, *ET AL.*

v.

MAYOR & CITY COUNCIL OF BALTIMORE

Nazarian,
Friedman,
Wright, Jr., Alexander
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: February 27, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This appeal requires us to consider whether a tax sale was void or voidable. That distinction matters because it determines whether a tax sale purchaser is entitled to recover interest and expenses from a tax collector, here, the Mayor & City Council of Baltimore ("the City"), under Maryland Code (1985, 2019 Repl. Vol.), § 14-848 of the Tax-Property Article ("TP").[1] In two earlier opinions known colloquially as the *Heartwood* cases,[2] we held that where no tax was owed when a tax sale was instituted, an ensuing sale of that property was "void from its inception" and the purchaser had no right to interest and expenses from the tax collector under the statute.

Thornton Mellon, LLC was the winning bidder in the City's 2019 tax sale for a property located at 4603 Chatford Avenue (the "property"). Thornton Mellon met all of its

[1] TP § 14-848 governs what happens if a court declares a tax sale void and provides:

> If the judgment of the court declares the sale void and sets it aside, the collector shall repay the holder of the certificate of sale the amount paid to the collector on account of the purchase price of the property sold, with interest at the rate provided in the certificate of tax sale, together with all taxes that accrue after the date of sale, which were paid by the holder of the certificate of sale or the predecessor of the holder of the certificate of sale, and all expenses properly incurred in accordance with this subtitle. If the collector paid the claims of any other taxing agency, the collector is entitled to a refund of the claim from the taxing agency with interest. The collector shall proceed to a new sale of the property under this subtitle and shall include in the new sale all taxes that were included in the void sale, and all unpaid taxes that accrued after the date of sale declared void.

[2] These are *Heartwood 88, Inc. v. Montgomery County*, 156 Md. App. 333, 364 (2004) ("*Heartwood I*"), and *Howard County v. Heartwood 88, LLC*, 178 Md. App. 491, 502 (2008) ("*Heartwood II*").

obligations under the tax sale statute and eventually obtained a judgment foreclosing the owner's right of redemption in the Circuit Court for Baltimore City. It turns out, however, that the property owner had paid all of its property taxes and that no property taxes were owing at the time of the sale. The City also acknowledges a separate $200 lien on the property for an "environmental citation," but asserts that it doesn't bring properties with less than $250 in taxes to sale.

The City realized the error within thirty days of the judgment of foreclosure and filed a motion asking the court to vacate the judgment, declare the tax sale void *ab initio*, and dismiss the action. The circuit court found that the *Heartwood* cases controlled, declared the tax sale void *ab initio*, vacated the judgment of foreclosure, ordered the City to refund the purchase lien amount (without interest, expenses, or fees available under TP § 14-848), and dismissed the action. Thornton Mellon and its affiliate, Al Czervik LLC, appeal and we affirm, holding that (1) Thornton Mellon waived the issue of whether the $200 lien made the tax sale voidable rather than void at the inception, (2) the court vacated the judgment properly, and (3) under the *Heartwood* cases, which are consistent with the express language and legislative history of the tax sale statute, the City is not required to pay Thornton Mellon interest, expenses, or fees.

I. BACKGROUND

The City held a tax sale on the property on May 13, 2019 and issued a tax sale certificate to the successful bidder on the property, Thornton Mellon. After waiting the

statutory period,[3] Thornton Mellon filed its complaint to foreclose the right of redemption on November 25, 2019; it later assigned its interest to a subsidiary, Al Czervik. We'll refer to these entities, both of which are appellants here, using the name of the parent company "Thornton Mellon." After two years, on December 3, 2021, the circuit court issued a judgment foreclosing the right of redemption.

Ten days after the court entered judgment, the City filed a motion that asked the court to vacate the judgment, declare the sale void *ab initio*, order the refund of the money Thornton Mellon had paid to the City, and dismiss the action. The City asserted that the property taxes had been paid before the tax sale and were "misapplied and the error was undiscovered." The City conceded that there was a $200 "environmental citation charge" included in the tax sale that "remain[ed]," but the City argued that the amount owed was insufficient under TP § 14-811[4] to include the property in the tax sale. As a result, the City asserted, the tax sale was void *ab initio* "[b]ecause no real property taxes were owed at the time of the tax sale and the amount of the environmental charge alone would not have

[3] Thornton Mellon waited only six months to file its complaint, which is the correct period if the property was not owner-occupied. *See* TP § 14-833(a) (providing that a tax sale purchaser may file its complaint six months from the date of sale, but must wait nine months "from the date of sale of owner-occupied residential property located in Baltimore City"). Thornton Mellon's verified complaint also alleged that "[u]pon information and belief, the property at issue herein is not 'owner occupied' property."

[4] TP § 14-811 provides, in pertinent part that "the collector may withhold from sale any property, when the total taxes on the property, including interest and penalties, amount to less than $250 in any 1 year." Subsection (b)(2) states that "[i]n Baltimore City, the collector shall withhold from sale owner-occupied residential property, when the total taxes on the property, including interest and penalties, amount to less than $750."

placed the property in the sale, the subject property should not have been included in the tax sale, and the sale of the Tax Sale Certificate to [Thornton Mellon] was void at its inception." The City contended that Thornton Mellon should only be refunded in the amount of its lien, without interest and costs, citing our interpretation of TP § 14-848 in the *Heartwood* cases.

The City attached exhibits that included the property's tax sale receipt, which showed 2016/2017 and 2018/2019 property taxes along with the "other municipal lien[]" of the $200 "environmental charge." The City also provided the same two property tax bills with receipts showing they had been paid; the 2016/2017 bill indicated that the property was a principal residence while the 2018/2019 bill showed that the property was *not* a principal residence. Finally, the City attached an affidavit from the City's "delinquent real property taxes" records custodian that asserted, among other things, that "[a] review of the City's records[] show[ed] that the municipal charges assessed against the property . . . were paid prior to the May 13, 2019 Tax Sale and the environmental charges were in an amount insufficient to be included in the 2019 tax sale."

Thornton Mellon's response conceded that the court had the authority to vacate the judgment but argued *first* that the judgment should be upheld "at a minimum, on the basis of laches." *Second*, Thornton Mellon insisted that it was entitled to "compensation" under TP § 14-848, and sought to distinguish the *Heartwood* cases on the grounds that the City didn't "promptly notif[y] the tax sale buyer regarding the purported defects in the sale[]"

and didn't raise the issue at all until after judgment was entered. Citing TP § 14-842,[5] Thornton Mellon asserted that procedurally, the City needed to raise the invalidity of the sale in its answer to Thornton Mellon's complaint to foreclose. *Finally*, Thornton Mellon argued that the *Heartwood* cases were "wrongly decided and not in accordance with the clear language of the Code."

On April 25, 2022, the court held a hearing on the City's motion to vacate. Thornton Mellon argued again that the motion should be denied on the basis of laches, but focused on pressing the court to award interest and expenses under TP § 14-848. *First*, it argued the *Heartwood* cases were distinguishable and bad law "in clear contravention of the explicit language of Maryland Code 14-848." *Second*, it argued that the City's motion failed procedurally because under TP § 14-842, the City had to assert the invalidity of taxes as a defense in its answer, which had been due on January 14, 2020. *Third*, it argued that

[5] TP § 14-842 provides that tax sales are presumed to be valid unless the defendant (the collector) asserts and proves a defect or invalidity:

> In any proceeding to foreclose the right of redemption, it is not necessary to plead or prove the various steps, procedure and notices for the assessment and imposition of the taxes for which the property was sold or the proceedings taken by the collector to sell the property. The validity of the procedure is conclusively presumed unless a defendant in the proceeding shall, by answer, set up as a defense the invalidity of the taxes or the invalidity of the proceedings to sell or the invalidity of the sale. A defendant alleging any jurisdictional defect or invalidity in the taxes or in the proceeding to sell, or in the sale, must particularly specify in the answer the jurisdictional defect or invalidity and must affirmatively establish the defense.

under TP § 14-845,[6] the court could "only set aside a judgment on account of constructive fraud, which is not present, or lack of jurisdiction, which is not applicable." *Finally*, Thornton Mellon argued as a matter of policy that it should not bear the risk of the City's "gross negligence," namely, the "risk that the City will sit on a tax lien for 721 days after being served with process." Thornton Mellon asked for reimbursement of the lien amount it had paid to the City ($3,240.31) plus interest and costs in the amount of $3,144.42.

The City responded that it received notice of Thornton Mellon's claims to the property, but the tax error "was undiscovered until late in the process, unfortunately . . . [and i]t doesn't negate the fact that the taxes were not due. They were paid." The City contended that the property "should have never been placed in the tax sale," and since Thornton Mellon does not contest that the taxes actually were paid, the *Heartwood* cases control and Thornton Mellon is not entitled to interest on the lien amount and expenses.

[6] TP § 14-845(a) defines the terms under which a court can reopen a judgment foreclosing a right of redemption:

> A court in the State may not reopen a judgment rendered in a tax sale foreclosure proceeding except on the ground of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose; however, no reopening of any judgment on the ground of constructive fraud in the conduct of the proceedings to foreclose shall be entertained by any court unless an application to reopen a judgment rendered is filed within 1 year from the date of the judgment.

This statute, however, doesn't affect the court's general revisory power under Maryland Code (1973, 2020 Repl. Vol.), § 6-408 of the Courts and Judicial Proceedings Article ("CJ"). *See Smith v. Lawler*, 93 Md. App. 540, 551 (1992); *see also* Md. Rule 2-535(a) ("On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment . . . .").

The circuit court took the motion under advisement and on May 6, 2022 issued a written memorandum granting the City's motion. The court found that "[a]ccording to the City's records," the real property taxes for 2016/2017 and 2018/2019 for the property "had been paid prior to the tax sale and misapplied by the City." The court agreed that "[t]he unpaid environmental citation by itself was insufficient to allow the Property to go to tax sale" under TP § 14-811. The court noted that it "retains revisory power over a judgment foreclosing right of redemption for 30 days after the judgment is issued" under CJ § 6-408 and Maryland Rule 2-535(a). The court acknowledged that "[i]t is undisputed that the City made an error in applying the real property tax payments" and "[t]he taxes had been paid prior to the Property's inclusion in the 2019 tax sale." As a result, the court declared the sale void *ab initio*, citing *Heartwood 88, Inc. v. Montgomery County*, 156 Md. App. 333, 356 (2004) ("*Heartwood I*"), and found the only remaining issue to be "the appropriate remedy available" to Thornton Mellon. The circuit court then examined *Howard County v. Heartwood 88, LLC*, 178 Md. App. 491 (2008) ("*Heartwood II*"), concluded that its reasoning applied, and found that Thornton Mellon was entitled only to reimbursement for the amount of the lien:

> The plain language of TP § 14-848 cannot apply to the circumstances of this case as there are no unpaid taxes on the Property for a new tax sale to be conducted on the Property. The plain language of TP § 14-848 means that it only applies where the tax sale collector is proceeding to a new sale of the

> property. The only available remedy under the law is the reimbursement of the purchase lien amount.

The court entered an order vacating the judgment, declaring the sale of the property void *ab initio*, and directing the City to refund Thornton Mellon the purchase lien amount without interest and expenses. Thornton Mellon filed a timely appeal.

II. DISCUSSION

To determine whether the circuit court abused its discretion in granting the City's motion to vacate, we consider three questions:[7] *first*, whether Thornton Mellon preserved

[7] Thornton Mellon phrased the Questions Presented in its brief as:

> 1. Whether the trial court erred and abused its discretion in granting the City's Motion, where (1) the tax sale included a validly-assessed lien for an unpaid environmental citation which the City was not required to withhold from the tax sale; (2) the City waited until 946 days after the tax sale and 721 days after being served with process to raise any issue regarding the validity of the sale; and (3) [Thornton Mellon] was entitled to receive interests and costs pursuant to TP § 14-848 in the event the sale was voided.
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> 2. Assuming, arguendo, that the trial court acted within its discretion in vacating the judgment, did the trial court err in declaring the tax sale void *ab initio* and refusing to grant Appellant interest and expenses as provided by TP § 14-848, where the City failed to raise any issue regarding the validity of the sale until after judgment was entered and the sale, in fact, included an unpaid lien for an environmental citation for which a tax sale could be held?
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> 3. Whether this Court should revisit its decisions in *Howard County v. Heartwood 88, LLC*, 178 Md. App. 491 (2008) and *Heartwood 88, Inc. v. Montgomery County*, 156 Md. App. 333 (2004) and clarify that a tax sale certificate holder, who files a complaint to foreclose right of redemption

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its argument that the admittedly outstanding $200 environmental citation lien on the property rendered the property eligible for tax sale and, therefore, voidable rather than void; *second*, whether the circuit court misapplied the *Heartwood* cases to declare the tax sale void *ab initio*; and *third*, whether this Court should overrule the *Heartwood* cases as inconsistent with TP § 14-848 and the tax sale statute. We find no error in the circuit court's resolution of this case and affirm.

We review a judge's decision to grant or deny a Rule 2-535 motion for abuse of discretion, *Turner v. Hastings*, 432 Md. 499, 513 (2013), but an abuse of discretion occurs when a court "makes a decision based on an incorrect legal premise." *Guidash v. Tome*, 211 Md. App. 725, 735 (2013); *see also Brockington v. Grimstead*, 176 Md. App. 327, 359

> without any notice of circumstances that would render the tax sale void, is entitled to interest and expenses pursuant to TP § 14-848?

The City phrased the Questions Presented as follows:

> 1. Did the circuit court err by adhering to the binding precedents of this Court in *Heartwood I* and *Heartwood II*?
> 2. Did the circuit court incorrectly apply those precedents? Specifically:
>
> a. Was the *Heartwood* cases' rationale inapplicable because the City brought the error to the circuit court's attention too late?
>
> b. Did the LLCs preserve the issue of the effect of the $200 environmental charge?
>
> c. If preserved, was the *Heartwood* cases' rationale inapplicable because a $200 lien for an environmental charge was listed on the property?

(2007) ("an exercise of discretion based upon an error of law is an abuse of discretion"). Thornton Mellon contends here that the circuit court erred as to matters of law, namely the circuit court's interpretation and application of the *Heartwood* cases, and we review those contentions *de novo*. *See Mayor & City Council of Balt. v. Thornton Mellon, LLC*, 478 Md. 396, 410 (2022) ("'Where an order involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court's conclusions are "legally correct" under a *de novo* standard of review.'" (*quoting Schisler v. State*, 394 Md. 519, 535 (2006)).

A. The Effect Of The $200 Environmental Charge Lien On The Property Was Not Raised In Or Decided By The Trial Court And Therefore Not Preserved For Appellate Review.

We consider *first* Thornton Mellon's argument that the circuit court erred in finding the sale void *ab initio* because the City could have held a second tax sale on the property for failure to pay the remaining $200 environmental citation lien. This argument would have had some merit had it been raised and litigated, although on this record, it could not have worked in the manner the statute intends. But the effect of this lien was not, in fact, raised and litigated by Thornton Mellon in the circuit court, and therefore is not preserved for appellate review. This particular theory must await another day.

We start with some background on tax sales. The City has the authority to issue an "environmental citation" to property owners who commit violations involving "the sanitation, environmental, health, safety, and other quality-of-life provisions of law" found

in the Baltimore City Code.[8] When citations go unpaid, the City takes a lien against the property for the unpaid amount, and that lien is considered a tax under TP § 14-801(d)(1), which defines a "[t]ax" as "any tax, or charge of any kind due to the State or any of its political subdivisions, or to any other taxing agency, that by law is a lien against the real property on which it is imposed or assessed." The City concedes that the $200 "environmental charge" assessed against this property (the record doesn't reflect the nature of the violation) remained as a lien on the property in the City's favor.

Generally speaking, the City is required to bring certain delinquent properties to tax sale within a specified time frame. *See* TP § 14-808. But the status of the property defines the City's authority and obligation to do so. For non-owner-occupied properties with total taxes of "less than $250 in any 1 year," the City has *discretion* over whether to bring the property to tax sale. TP § 14-811(a). The statute precludes the City, however, from selling owner-occupied residential properties when the total taxes on the property are less than $750 or if the taxes are only for unpaid water and sewer services. TP § 14-811(b)(1)(2)–(3).

[8] *See generally* Baltimore City Code, Art. 1, § 40-14(e), https://legislativereference.baltimorecity.gov/sites/default/files/Art%2001%20-%20MayorCouncil%20(rev%202022.08.20).pdf (last visited Feb. 8, 2023), *archived at* https://perma.cc/YU87-N5U2 (listing the Code violations that lead to environmental citations); "Environmental Control Board Rules and Regulations," City of Baltimore, https://ecb.baltimorecity.gov/sites/default/files/Envrnmntl%20Cntrl%20-%20Rules%20and%20Regs%20Updated%208.18.2020.pdf (last visited Feb. 8, 2023), *archived at* https://perma.cc/AZ35-9T58 (involving the process for citations becoming liens on real property).

Thornton Mellon argues in this Court that this property was not owner-occupied, and as such that the City had the authority to sell it in the 2019 tax sale; it may not have been required to do so, but it could. Because the sale was legally allowable under this theory, it was not "void at its inception" under the *Heartwood* cases—it was "erroneous but correctable." *Heartwood II*, 178 Md. App. at 502. The *Heartwood* cases depend, Thornton Mellon argues, on the fact that the property owners never owed any taxes, whereas this property owner did, just not as much as the City thought. And as such, in Thornton Mellon's view, the City could have deducted the paid real property taxes from the amount owed and sold the property in a new tax sale grounded in the unpaid environmental citation lien, as TP § 14-848 contemplates.

The problem, however, is that these issues were never raised by Thornton Mellon nor decided by the trial court. Maryland Rule 8-131(a) provides that, apart from jurisdictional challenges, this Court ordinarily "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ." "The Court's prerogative to review an unpreserved claim of error is to be rarely exercised and only when doing so furthers, rather than undermines the purposes of the rule, which are to ensure fairness for the parties involved and to promote orderly judicial administration." *Miller-Phoenix v. Balt. City Bd. of Sch. Comm'rs*, 246 Md. App. 286, 307 (2020) (cleaned up). And although the initial premise of Thornton Mellon's theory does appear in its complaint—it did allege that the property wasn't owner-occupied—and the second of the

City's tax bills supports that allegation, Thornton Mellon never actually made this argument, and the circuit court never had an opportunity to address and decide it.

Indeed, Thornton Mellon effectively conceded the opposite premise. The City's motion to vacate and supporting affidavit asserted that the property could not be brought to a new tax sale based solely on the environmental citation lien. That may have been factually incorrect, but Thornton Mellon never said so, and the circuit court viewed the property's erroneous inclusion in the 2019 tax sale as "undisputed" leaving the only "issue" as "the appropriate remedy available to [Thornton Mellon] under these circumstances." The court's application of the *Heartwood* cases proceeded from Thornton Mellon's concession that the original tax sale was invalid. And in both *Heartwood* cases, "there was no dispute that the tax sales were invalid, as no taxes were owed when the properties were sold for taxes . . . ." *Heartwood II*, 178 Md. App. at 499 (discussing *Heartwood I*); *see also id.* at 496 (stating that "[t]he material first-level facts are not in dispute").

Although Thornton Mellon referred vaguely to the City's procedural burden to assert the defense of the invalidity of taxes under TP § 14-842, it never connected the analytical dots between the statutory presumption that tax sales are valid with the $200 lien and the court's application of TP § 14-848. To the contrary, Thornton Mellon pointed to the statutory presumption only in its argument that the *Heartwood* cases are factually distinguishable on timing grounds. It never argued that the statutory presumption wasn't overcome by the City by its motion to vacate, only that the City should be required to reimburse interest and costs because of the passage of time, *i.e.*, because the City "failed

to research and uncover the fact that the taxes may or may not have been auctioned off invalidly in January of 2020." In other words, Thornton Mellon seems to have viewed this case as an opportunity to challenge the *Heartwood* cases, and didn't try to win in the circuit court on the narrower issue of whether the $200 lien made the sale valid here. Although we remain puzzled at the City's professed inability, even at this juncture, to know whether the property was owner-occupied at the time of the sale, we agree with the City that deciding this issue for the first time on appeal would be unfair to the City. Had Thornton Mellon made these arguments, the City and the circuit court could have "delv[ed] deeper into the issue" and "provid[ed] more factual information or alternative theories as to why the charge was insufficient," and the circuit court could have determined in the first instance whether the property was owner-occupied or whether the City's policy for not bringing properties with less than $250 in liens is sufficient evidence that a sale is void *ab initio* under the *Heartwood* cases.[9]

Thornton Mellon may have been correct here,[10] but the issue of whether the outstanding environmental certificate could have authorized a new tax sale of the property

[9] The City asked us to infer such a policy from a conclusory statement in an affidavit it filed in support of its motion to vacate, but no such policy appears in the record in this case. Such a policy could perhaps be implied, but no policy is cited or mentioned, and we decline to read that deeply below the surface of the record.

[10] It may well not be right either. There is some analytical appeal to Thornton Mellon's theory—we can see a difference between the circumstances of the *Heartwood* cases, where the collector lacked authority to sell a property for which no taxes were owed, and a situation where taxes remain owing after an error is collected and the collector

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doesn't "plainly appear[] by the record to have been raised in or decided by the trial court . . . ." Md. Rule 8-131(a). We decline, therefore, to consider the merits of the effect of the $200 lien on whether the tax sale was void *ab initio*, and we consider the issue of the property's erroneous inclusion in the 2019 tax sale as "undisputed" for purposes of our remaining analysis.

B. The Procedural Posture Of A Tax Sale Foreclosure Case Has No Bearing On Whether A Tax Sale Was Void *Ab Initio*.

Next, we consider Thornton Mellon's contention that the trial court "[m]isapplied" the *Heartwood* cases because the circuit court had entered a final judgment foreclosing the property owner's right of redemption. Thornton Mellon distinguishes *Heartwood I* because there, "the sale was voided prior to a complaint being filed, and the tax sale purchaser knew that the sale was void." And *Heartwood II*, it argues, is distinguishable because the court noted there that the tax collector "had substantially complied with the requirements of TP § 14-842 by filing a motion to dismiss promptly after it was served with process." These differences, however, have no bearing on whether a tax sale was or was not void at its inception. What matters is whether taxes were owing or not at the time of the sale, and

chooses, as a matter of policy, not to proceed. At the same time, it is far from obvious that the General Assembly intended to force collectors to proceed with second tax sales every time there was an error, especially where, as here, the result is that City taxpayers would end up paying Thornton Mellon out of the public fisc the difference between the interest and fees on the first sale ($3,144.42) and the amount it would recover from the second sale ($200). This structural disconnect in the application of a statute designed to *collect* revenue for taxing authorities provides all the more reason that we should not attempt to address this theory for the first time on appeal with no trial court record on the question.

based on Thornton Mellon's concession that the properties went to tax sale erroneously, the circuit court was right to treat the *Heartwood* cases as indistinguishable from this case.

A tax sale purchaser benefits from the refund provisions of TP § 14-848 when a court declares a tax sale void and "sets it aside":

> If the judgment of the court declares the sale void and sets it aside, the collector shall repay the holder of the certificate of sale the amount paid to the collector on account of the purchase price of the property sold, with interest at the rate provided in the certificate of tax sale, together with all taxes that accrue after the date of sale, which were paid by the holder of the certificate of sale or the predecessor of the holder of the certificate of sale, and all expenses properly incurred in accordance with this subtitle. If the collector paid the claims of any other taxing agency, the collector is entitled to a refund of the claim from the taxing agency with interest. The collector shall proceed to a new sale of the property under this subtitle and shall include in the new sale all taxes that were included in the void sale, and all unpaid taxes that accrued after the date of sale declared void.

But the statute applies when the collector voids an otherwise viable sale. In the *Heartwood* cases, we held that TP § 14-848 doesn't apply when a tax sale is "void from its inception" because no tax was owed when the tax sales were instituted, and the property is not subject to sale for taxes at all. *Heartwood I*, 156 Md. App. at 364; *Heartwood II*, 178 Md. App. at 501–02. If a sale was authorized but messed up, the collector assumes the risk of its mistake and refunds the lost interest and costs; if the sale was never authorized in the first place, the purchaser assumes that risk.

This case falls squarely into the latter category, and Thornton Mellon's attempts to jam it into the former are unavailing. It's true that in *Heartwood I*, the tax collector argued

that TP § 14-848 "was never triggered" because the tax sale purchaser hadn't filed an action, and thus "there was no basis for the owners to redeem their properties . . . ." 156 Md. App. at 356. That tax collector conceded that it had sold 331 properties mistakenly "even though the taxes had been paid." *Id.* at 341. Before the purchaser could file a complaint to foreclose the right to redeem, the County refunded the purchase price for the properties. *Id.* at 342. The purchaser filed a declaratory judgment action asking the circuit court to declare the sale void so that it could recover interest and expenses under TP § 14-848. We held that the purchaser didn't qualify for the remedies in TP § 14-848 because it had no grounds to file a complaint to foreclose the right of redemption. *Id.* And importantly, the court in *Heartwood I* didn't decide whether TP § 14-848 would have applied if the property owners sought a judicial determination declaring the sales void in an action to foreclose their right of redemption. *Id.* n.7.

Heartwood II decided that next case and held again that the sale was void at its inception. The purchaser's action to foreclose the right of redemption was pending in *Heartwood II* "and the local government that held the tax sale then learn[ed] that the unpaid taxes for which the property was sold at tax sale never were assessable . . . ." 178 Md. App. at 493. And in fact, Heartwood, the tax sale purchaser, was notified "more than three years after Heartwood filed the action to foreclose right of redemption in the Property," even though before a final judgment was entered. *Id.* at 494. We held that although the action to foreclose was pending, the tax collector did not owe the purchaser interest and expenses

under TP § 14-848 for the same reason none were owed in *Heartwood I*—no taxes were owed on the property:

> TP [§] 14-848 . . . prescribes what happens when, in an action to foreclose right of redemption in property sold for taxes, the circuit court declares the tax sale void and sets it aside. In mandatory terms, it dictates that, upon entry of such a judgment, the tax collector: 1) shall repay the tax certificate holder, as further specified; 2) is entitled to be refunded the amount of any claims paid to other taxing agencies; and 3) "shall proceed to a new sale of the property under this subtitle and shall include in the new sale all taxes that were included in the void sale, and all unpaid taxes that accrued after the date of the sale declared void."
>
> For a new tax sale of the same property to be conducted by the tax collector, there must be properly assessed unpaid taxes on the property. If taxes improperly were assessed against the property, so none are owed, or if taxes properly were assessed and were paid, so none are owed, the property is not subject to sale for taxes. By its plain language, therefore, TP [§] 14-848 cannot cover a tax sale that is void from its inception due to an error in assessing any tax to begin with or due to there not being any tax arrearage for which to sell the property. It only can cover a tax sale that was procedurally invalid or erroneous but correctable.

Id. at 501–02. To be sure, we noted there that "as soon as the County was served, it filed a motion to dismiss the tax sale foreclosure action against it . . . alleging that [the tax collector] erroneously assessed taxes on the Property and, in fact, when the Property was sold for taxes . . . , no taxes were owed." *Id.* at 503. But that holding didn't turn on the passage of time or the precise posture of the action to foreclose—what mattered was "that there was no basis for that sale of the Property and there was no right of redemption in the Property to foreclose." *Id.*

The fact that the *Heartwood II* tax collector hadn't yet obtained a judgment doesn't change the analysis here. Yes, judgment had been entered, but the City invoked the circuit court's revisory power under Rule 2-535(a), and did so properly and in time. *See Maryland Bd. of Nursing v. Nechay*, 347 Md. 396, 408 (1997) ("'[F]or a period of thirty days from the entry of a law or equity judgment a circuit court shall have unrestricted discretion to revise it.'" (*quoting Platt v. Platt*, 302 Md. 9, 13 (1984)); *see also id.* (stating "the discretion reposed in the trial court is a discretion which must be exercised liberally, lest technicality triumph over justice." (cleaned up)).[11] Nor did the court err in declaring the sale void even though the City didn't notify the court of the error "promptly after being served" as in *Heartwood II*. We mentioned in a footnote in *Heartwood II* that the County had "substantially complied with the requirements of TP [§] 14-842" by raising the defense of the invalidity of the sale in its motion to dismiss upon being served, 178 Md. App. at 503 n.5, but that fact didn't change our core holding "that there was no basis for that sale of the Property and there was no right of redemption in the Property to foreclose." *Id.* at 503.

The *Heartwood* cases assert a jurisdictional defect in the judgment, and nothing about the passage of time changes the analysis. Reading the two cases together, we held that when there was no basis for the sale and no tax debt for the property owner to redeem, the tax sale purchaser has no right to file a complaint. Although the City received notice of

[11] The next interesting question might arise in a case where the tax collector fails to discover the error until more than thirty days after entry of judgment, when the circuit court can revise a judgment only for fraud, mistake, or irregularity. Md. Rule 2-535. In this case, though, the City caught the error in time to file its motion inside the thirty-day revisory window.

Thornton Mellon's complaint to foreclose, the fact that it "was undiscovered until late in the process" that the taxes were paid doesn't change the fact that the property "should have never been placed in the tax sale." As the circuit court found, "[t]he plain language of TP § 14-848 means that it only applies where the tax sale collector is proceeding to a new sale of the property." We discussed such a scenario in *Taxi, LLC v. Mayor & City Council of Baltimore City*, 171 Md. App. 430, 439 (2006), when we analyzed *Kaylor v. Wilson*, 260 Md. 707 (1971). *Taxi, LLC* noted that in *Kaylor*, the Supreme Court of Maryland[12] "assumed, without deciding" that in a vacated judgment where the taxes had been fully paid on a property, the tax collector had no authority to sell the property for unpaid taxes and, consequently, the court had no subject matter jurisdiction to ratify the unauthorized sale of the property. 171 Md. App. at 439. This case stands in the same posture. Because Thornton Mellon never challenged the City's assertion that the property's taxes had been paid, this case is resolved by *Heartwood II* and the circuit court granted the City's motion to vacate the judgment correctly.

[12] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

C. We Will Not Set Aside Our Decisions In The *Heartwood* Cases, And We Reaffirm That Tax Sales That Are Declared Void *Ab Initio* Do Not Trigger TP § 14-848 Remedies.

Finally, and perhaps where the real heart of this case lies, Thornton Mellon argues that the *Heartwood* cases were wrongly decided, are "contrary to the plain language of the statute as well as its remedial purpose," and asks us to set them aside. Specifically, Thornton Mellon argues that the legislative history demonstrates that the *Heartwood* cases were decided wrongly. From 1902 to 1943, it says, the statute provided that where property was sold erroneously "for any . . . reason," the tax sale purchaser was entitled to interest. In 1943, the General Assembly added language directing the collector to proceed to a new sale of the property. However, Thornton Mellon argues that "[t]he statute still provided unequivocally—as it does now—that if the court declares the sale void and sets it aside, the holder of the certificate is entitled to interest and costs. There is no indication that the Legislature intended to curtail the relief afforded to tax sale purchasers who purchased tax liens at sales that were later declared void."

"The doctrine of *stare decisis* recognizes that 'precedent should not be lightly set aside.'" *State v. Henry*, 256 Md. App. 156, 175 (2022) (*quoting State v. Frazier*, 469 Md. 627, 651 (2020)). We can set aside precedent when "(1) the prior decision is clearly wrong and contrary to established principles or (2) the precedent has been superseded by significant changes in the law." *Id.* (cleaned up). Thornton Mellon seeks to invoke the second prong by arguing that the *Heartwood* cases are "clearly wrong and contrary to established principles," *i.e.*, the plain language of the statute and its legislative history and

intent. But as we noted in a recent opinion analyzing the plain meaning of the tax sale statute, "we 'assume that the legislature's intent is expressed in the statutory language and thus our statutory interpretation focuses primarily on the language of the statute to determine the purposes and intent of the General Assembly.'" *Al Czervik LLC v. Mayor & City Council of Balt.*, ___ Md. App. ___, No. 2026, Sept. Term 2021, No. 144, Sept. Term 2022, slip op. at 11 (filed Jan. 3, 2023) (*quoting Phillips v. State*, 451 Md. 180, 196 (2017)). And "'[o]ur canons of statutory interpretation forbid us to construe a statute so that a word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless, or nugatory.'" *Id.* at 14 (*quoting Mayor & City Council v. Thornton Mellon, LLC*, 478 Md. 396, 431 (2022)). The only way to interpret TP § 14-848 without rendering the final sentence meaningless is to require a new sale whether or not taxes were in fact owed at the time of the original sale and regardless of the amount that might be owing at the time the first sale is found to be void. In this case, Thornton Mellon's reading would require the taxpayers of Baltimore City not only to proceed to a new tax sale on a property that had paid its taxes, but also to pay interest and fees to Thornton Mellon from the public fisc. In other words, Thornton Mellon would have the taxpayers bear the risk of errors in the tax sale process rather than the tax sale purchasers.

This case might provide a better than usual opportunity for Thornton Mellon to argue the equities of such a theory, but its reading runs directly contrary to the broader purpose of the tax sale statutes—to provide the tax collector a mechanism to collect unpaid property and other taxes—and to the specific purpose of TP § 14-848. The plain language

of TP § 14-848 indicates that the General Assembly's 1943 change to the statute sought in fact to *reduce* the tax collector's exposure to liability from errors by requiring that the collector "shall proceed to a new sale of the property" to recover the costs paid under TP § 14-848 in a subsequent sale. As we explained in *Heartwood I*, after analyzing the statutory history of TP § 14-848, that change makes sense in the context of the broader statutory scheme:

> [C]onsidering that tax sale purchasers are regarded as performing a public service, it is hard to reconcile how appellant's position would comport with the public interest; the municipality that is meant to benefit from the tax sale would have to bear a hefty cost, ultimately at taxpayer expense. Moreover, we see no statutory or historical basis that would lead us to conclude that the legislature sought to protect or favor tax sale purchasers in the way that appellant suggests, by eliminating the risk associated with an error committed by the municipality.

156 Md. App. at 364. The City's negligence in offering the property for tax sale mistakenly and in failing to discover the error until after judgment was entered, while frustrating, is a risk that tax sale purchasers bear in exchange for the opportunity to charge property owners higher-than-market interest rates and fees under Maryland's tax sale scheme. We discern no basis to conclude that the principles underlying the *Heartwood* cases are unsound or that we should revisit those precedents here.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY COSTS.