IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

BRUCE DUPONT aka BRUCE BENNETT, a single man; BRAD BARDING, a single man, Plaintiffs/Appellants, v. FRANCIS WOODWARD REUTER, a widow, Defendant/Appellee.	)	1 CA-CV 07-0299 DEPARTMENT B **OPINION** **FILED 9-11-08**

Appeal from the Superior Court in Coconino County

Cause No. CV2004-0713

The Honorable Dan R. Slayton, Judge

REVERSED

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J O H N S E N, Judge

¶1 Arizona Revised Statutes ("A.R.S.") section 42-18202(A) requires that before a tax lienholder may sue to foreclose the property owner's right to redeem the lien, the lienholder must send the property owner *by certified mail* a notice of intent to foreclose. In this case, the lienholder sent the notice but did so

by regular mail. Later, after the property owner failed to respond to service of a complaint, the lienholder obtained a default judgment. The superior court vacated the judgment on the ground that the lienholder's failure to strictly comply with section 42-18202(A) deprived the court of jurisdiction. We conclude the court did not lack jurisdiction over the foreclosure complaint and reverse the order vacating the judgment.

FACTS AND PROCEDURAL BACKGROUND

¶2 According to the complaint, Bruce Dupont (also known as Bruce Bennett) and Brad Barding (together, "Dupont") hold a certificate of purchase of a tax lien on an abandoned school property in Williams. The lien represents some $240,000 in taxes owing for 1989 and 13 years thereafter.[1]

¶3 Pursuant to A.R.S. §§ 42-18201 *et seq.*, more than three years after purchasing the tax lien, Dupont sought to foreclose the owner's right to redeem the property. On November 10, 2004, his lawyer mailed by first-class mail two copies of the required Notice of Intent to Foreclose to the addresses of record of Francis Woodward Reuter, the owner of the property. Neither of the notices was returned as undeliverable. On December 15, 2004, Dupont filed a foreclosure complaint, which was served on Reuter on January 31, 2005, by hand-delivery to an authorized person at her residence in

[1] According to the record, the original amount of tax liability was reduced by an unspecified amount based on Dupont's "application for an abatement based on the dilapidated condition of the property."

California. Service also was effected by publication. After Reuter failed to respond to the complaint, Dupont filed a Notice of Application for Entry of Default and an Application for Entry of Default on March 16, 2005. Default was entered that same day. Although the Notice of Application for Entry of Default was served on Reuter by mail, the record contains no evidence that she responded. On May 9, 2005, Dupont moved for entry of default judgment, which was entered on May 12, 2005. The record shows that after Dupont commenced a separate forcible detainer action, Reuter agreed to a stipulated judgment. The parties' stipulation, however, expressly provided that it did not constitute a waiver of Reuter's "right to pursue post-judgment remedies in any other case or action."

¶4 On November 10, 2005, a full year after Dupont's Notice of Intent to Foreclose was mailed to her, Reuter filed a "Motion to Vacate Default Judgment Pursuant to Rule 60(c), A.R.C.P." Reuter argued the default judgment was void because the superior court lacked jurisdiction. Jurisdiction was lacking, she asserted, because the foreclosure complaint failed to allege that Dupont had served the Notice of Intent to Foreclose by certified mail, as required by A.R.S. § 42-18202(A).[2] The superior court granted

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[2] Because Reuter failed to answer Dupont's foreclosure complaint, she had not raised his failure to comply with A.R.S. § 42-18202 as an affirmative defense. In her Rule 60(c) motion, Reuter argued only that the court lacked jurisdiction to enter the

Reuter's motion to vacate. Dupont moved for reconsideration, and while that motion was pending, Reuter moved to dismiss the complaint for lack of jurisdiction. The court denied Dupont's motion for reconsideration and a later motion for new trial. It granted Reuter's motion to dismiss and ordered the Coconino County Treasurer to rescind, withdraw and cancel the treasurer's deed issued pursuant to the default judgment. Dupont's timely appeal followed.

DISCUSSION

A. Standard of Review.

¶5 This court will not reverse a decision to vacate a default judgment absent a clear abuse of discretion. *Daou v. Harris*, 139 Ariz. 353, 359, 678 P.2d 934, 940 (1984). Whenever doubt exists as to the merits of a default judgment, it should be set aside. *Sloan v. Florida-Vanderbilt Dev. Corp.*, 22 Ariz. App. 572, 574, 529 P.2d 726, 728 (1974) (setting aside a default judgment under Rule 60(c)(6)). Likewise, we will not disturb a denial of a motion for new trial absent a manifest abuse of discretion, *Larsen v. Decker*, 196 Ariz. 239, 244, ¶ 27, 995 P.2d 281, 286 (App. 2000), and we apply the abuse of discretion standard to a ruling on a motion to dismiss, *Appels-Meehan v. Appels*, 167 Ariz. 182, 183, 805 P.2d 415, 416 (App. 1991) (citation omitted).

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default judgment; she did not argue good cause for setting aside the default pursuant to Arizona Rule of Civil Procedure 55(c).

¶6 We review issues of law, however, *de novo*. *Bentley v. Building Our Future*, 217 Ariz. 265, 270, ¶ 11, 172 P.3d 860, 865 (App. 2007). A court abuses its discretion if it commits a legal error. *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 190, ¶ 64, 181 P.3d 219, 237 (App. 2008).

B. Tax Lien Foreclosures.

¶7 The law requires the county treasurer to mail notice on or before September 1 of each year to the owner of each property on which delinquent taxes are owed. A.R.S. § 42-18103 (2006).[3] On or before December 31, the treasurer must prepare a list of all properties on which taxes for prior tax years are delinquent and a notice that a tax lien is to be sold on each such property. A.R.S. § 42-18106 (2006). That notice of intent to sell is mailed to the last known address of each affected property owner and also is published and posted. A.R.S. §§ 42-18108, -18109 (2006). At the sale, which is held in February, one may purchase a tax lien by paying the entire amount of delinquent taxes owed on the property, plus interest and penalties. A.R.S. § 42-18114 (2006). If more than one prospective purchaser bids on the lien, it is sold to the one who "offers to accept the lowest rate of interest on the amount so paid to redeem the property from the sale." *Id.*

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[3] Except where noted, we cite the current version of the applicable statute because no revisions material to this decision have since occurred.

¶8 Pursuant to A.R.S. § 42-18201 (2006), one who has purchased a tax lien may bring an action to foreclose the property owner's right to redeem at any time beginning three years after the sale of the lien. Section 42-18202 (2006) describes the content and manner of the notice of intent to foreclose that the lienholder must serve before filing suit. At the time of the entry of default judgment in this case, that section provided:

> A. At least thirty days before filing an action to foreclose the right to redeem under this article, . . . the purchaser shall send notice of intent to file the foreclosure action by certified mail to:
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> 1. The property owner of record according to the records of the county recorder . . .
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> B. The notice shall include:
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> 1. The property owner's name.
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> 2. The real property tax parcel identification number.
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> 3. The legal description of the real property.
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> 4. The certificate of purchase number.
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> 5. The proposed date of filing the action.

¶9 Relevant to the issue before us is A.R.S. § 42-18101 (2006), which provides:

> A. The county treasurer shall secure the payment of unpaid delinquent taxes by using the provisions of this article and articles 4, 5 and 6 of this chapter to sell the tax liens provided for in § 42-17154 and to foreclose the right to redeem.

> B. An insubstantial failure to comply with these provisions does not affect the validity of: . . .
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> 3. The sale of a tax lien or the foreclosure of the right to redeem by which tax collection is enforced.

A footnote to this statute explains that the references in subpart A are to sections 42-18151 *et seq.* (redemption of tax liens) and, significantly for our purposes, 42-18201 *et seq.* (judicial foreclosure of right of redemption).

¶10 By amendment effective August 12, 2005, after the events at issue here, the legislature added the following subpart to section 42-18202:

> C. If the purchaser fails to send the notice required by this section, the purchaser is considered to have substantially failed to comply with this section. A court shall not enter any action to foreclose the right to redeem under this article until the purchaser sends the notice required by this section.

¶11 The holder of the lien may file an action to foreclose the lien no sooner than 30 days but no longer than 180 days after service of the notice of intent to foreclose. A.R.S. § 42-18202(A). The Rules of Civil Procedure control such a proceeding. A.R.S. § 42-18203(A) (2006). The owner of the property may redeem the tax lien at any time before judgment is entered. A.R.S. § 42-18206 (2006).

C. The Superior Court Had Jurisdiction Over the Foreclosure Complaint.

¶12 The basis of the superior court's conclusion that it lacked jurisdiction over the foreclosure complaint was its finding that, pursuant to A.R.S. § 42-18202, one seeking to foreclose a tax lien has a mandatory duty to serve the notice of intent to foreclose by certified mail. Because Dupont's foreclosure complaint did not and could not allege he had served his notice of intent to foreclose by certified mail, the court held jurisdiction was absent. For the following reasons, we disagree that the requirement to serve the notice of intent to foreclose by certified mail is jurisdictional and reverse the court's orders and judgment on that ground.[4]

¶13 Statutory duties relating to tax liens may be either mandatory (and therefore jurisdictional) or directory. *See Kincannon v. Irwin*, 64 Ariz. 307, 310, 169 P.2d 861, 863 (1946) (treasurer's duty to give notice of tax lien sale held to be mandatory); *see also Dep't of Revenue v. S. Union Gas Co.*, 119 Ariz. 512, 514, 582 P.2d 158, 160 (1978) ("A provision is mandatory when failure to follow it renders the proceeding to which it relates illegal and void; it is directory when the failure to follow it does not invalidate the proceedings." (quoting *Pleasant*

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[4] Reuter does not dispute that Dupont mailed the notice to her by regular mail; nor does she assert she failed to receive the notice.

Hills Borough v. Carroll, 125 A.2d 466, 469 (Pa. Super. Ct. 1956))). As our supreme court said in *Kincannon*:

> Speaking broadly, it may be said that provisions in tax laws intended to promote dispatch, method, system and uniformity in modes of proceeding, or [designed] merely for the information of administrative officers, are usually deemed to be directory; but those intended for the protection of the taxpayer and to prevent a sacrifice of his property are mandatory, and they must be followed, or the acts done under them will be invalid.

64 Ariz. at 310, 169 P.2d at 863 (citation omitted).

¶14 Reuter cites *Kincannon* and other cases for the proposition that a breach of a notice provision relating to a property tax lien deprives the court of jurisdiction to foreclose the owner's right of redemption.[5] But none of the cases on which Reuter relies addresses the issue presented here, which is whether the statutory requirement that the holder of a tax lien send the notice of intent to foreclose *by certified mail* is mandatory, rather than merely directory. We do not think it necessarily follows from *Kincannon* or the other cases Reuter cites that a breach of the requirement at issue here deprives the court of jurisdiction to foreclose the owner's right to redeem.

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[5] *Schmitt v. Sapp*, 71 Ariz. 48, 223 P.2d 403 (1950) (treasurer's notice of tax lien purchaser's application for a treasurer's deed); *Stoltz v. Maloney*, 129 Ariz. 264, 630 P.2d 560 (App. 1981) (treasurer's notice of sale); *see also Yuma County v. Ariz. Edison Co.*, 65 Ariz. 332, 180 P.2d 868 (1947) (county's duty to give notice to taxpayers of intent to increase assessments).

¶15 At issue in *Kincannon* and other cases such as *Stoltz v. Maloney*, 129 Ariz. 264, 630 P.2d 560 (App. 1981), was the county treasurer's failure to strictly comply with his obligation to give the property owner notice of a planned sale of a tax lien on the property. As seen from the sequence described above, the treasurer's notice to the property owner is the first critical step in the process by which the county may grant an interest in real property to a third party without the consent of the owner. In *Kincannon*, because the treasurer's notice stated the wrong date of the tax sale, the court concluded, "We are of the opinion that the original sale is void because the published notice of sale specified a day for the commencement of sale not provided by law." 64 Ariz. at 309, 169 P.2d at 862. In *Stoltz*, there was no evidence that the treasurer mailed a proper delinquent tax notice to the owner; moreover, the treasurer did not file evidence that the sale notice had been posted or published, as the statute required. 129 Ariz. at 268, 630 P.2d at 564. Citing *Kincannon*, the court concluded, "The provision requiring notice of a tax sale by publication is mandatory. . . . Improper notice of a tax sale as required by statutory provisions is a defect which invalidates all subsequent proceedings." *Id.*

¶16 By contrast to the notice of sale at issue in those cases, by statute a notice of intent to foreclose is sent, at the earliest, three years after the treasurer's notice of sale has been mailed to the property owner, posted and published, and after a

lien on the property has already been sold. As the holder of a certificate of purchase, Dupont already had acquired a valid interest in Reuter's property. Moreover, the notice of intent to foreclose could have no legal effect by itself; Dupont could foreclose Reuter's right of redemption only by way of a properly filed foreclosure complaint, served and prosecuted pursuant to the Rules of Civil Procedure.

¶17 More broadly, the legislature has made clear that not every tax lien requirement is a mandatory duty, the breach of which deprives the court of jurisdiction to foreclose the owner's right to redeem. As noted above, A.R.S. § 42-18101(B), enacted in 1984, expressly provides that an "insubstantial failure to comply" with the statutes "does not affect the validity of" a tax lien foreclosure. We agree with Dupont that by enacting section 42-18101(B), the legislature disapproved the notion that each duty specified in the tax lien sale and redemption statutes is a mandatory obligation required to establish jurisdiction. To the extent that *Kincannon* and the other cases Reuter relies on could be read to support that proposition, the legislature since has specified otherwise.

¶18 In *Lavidas v. Smith*, 195 Ariz. 250, 987 P.2d 212 (App. 1999), the court addressed the meaning of section 42-18101(B) in the context of a defective notice of an application for a treasurer's deed filed in an administrative foreclosure pursuant to

former A.R.S. §§ 42-18251 *et seq.*[6] The statute in effect at the time provided that upon application by the holder of a tax lien, the county treasurer "shall publish" a notice containing, *inter alia*, a description of the property, the date on which the tax lien was sold, the amount for which the tax lien was sold and the last date for redeeming the tax lien. 1996 Ariz. Sess. Laws, ch. 166, § 37 (2nd Reg. Sess.). Although the treasurer in *Lavidas* published a notice, the notice failed to state the amount of taxes, interest, penalties and charges for which the lien was sold. 195 Ariz. at 252, ¶ 10, 987 P.2d at 214.

¶19 As here, the property owner argued that the failure of the notice to strictly comply with the statute rendered the foreclosure invalid. The court rejected that argument, concluding that pursuant to A.R.S. § 42-18101(B), the breach was an "insubstantial failure to comply" that did not void the treasurer's deed. *Id.* at 255, ¶ 21, 987 P.2d at 217. In support of his contention that the notice statute established a mandatory duty, the property owner cited several authorities in which treasurer's

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[6] Administrative foreclosure, a procedure no longer available, was an alternative means by which the holder of a tax lien could foreclose the owner's right of redemption. Upon application by the owner of the tax lien, the county treasurer was required to provide 90 days' notice of the application to the property owner by certified mail. 1997 Ariz. Sess. Laws, ch. 150, § 172 (1st Reg. Sess.). The treasurer also was required to publish and post the notice. *Id.* If the owner did not redeem the lien within the statutory period, a treasurer's deed was issued to the holder of the tax lien. *Id.*

deeds were voided for failure to comply with the statute, including *Schmitt v. Sapp*, 71 Ariz. 48, 223 P.2d 403 (1950); *Stoltz*; *Brandt v. City of Yuma*, 124 Ariz. 29, 601 P.2d 1065 (App. 1979); and *Olsen v. Goss*, 26 Ariz. App. 172, 174, 547 P.2d 24, 26 (1976). The court concluded those cases did not apply, however, in part because each predated the legislature's enactment of A.R.S. § 42-18101(B). *Lavidas*, 195 Ariz. at 254, ¶ 17, 987 P.2d at 216 (when legislature enacts a statute that applies to a preexisting statute, "we presume [the legislature] intended some change in existing law") (citation omitted).[7]

¶20 The court further rejected the argument that the foreclosure statute's provision that notice of intent to foreclose "shall" be given necessarily meant that strict compliance with the statute was jurisdictional. A statute's use of "shall" may be directory rather than mandatory. *Id.* at ¶ 18. "[T]o the extent the cases . . . arguably suggest that any defect in the form or content of a treasurer's published notice, no matter how inconsequential, automatically voids a related treasurer's deed or necessarily invalidates the foreclosure of redemption rights, the legislature's enactment of [§ 42-18101(B)] changed the law in that

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[7] The court also distinguished one of the cited cases, *Schmitt*, on the ground that the breach there was that the county treasurer's posted notice of application for foreclosure incorrectly stated the required period within which the property owner could redeem the property. *Lavidas*, 195 Ariz. at 254, ¶ 15, 987 P.2d at 216. *See Schmitt*, 71 Ariz. at 52, 223 P.2d at 406 ("Any notice which gives less time than required by statute is void. Such a statutory requirement is jurisdictional and cannot be waived.")

regard." *Id.* at ¶ 17. Moreover, the court observed, "to conclude otherwise essentially would render the '[i]nsubstantial failure to comply' language . . . meaningless and of no effect." *Id.* at 255, ¶ 18, 987 P.2d at 217. Accordingly, the court held, a failure to "strictly comply" with the notice statute "does not automatically void a subsequently issued treasurer's deed." *Id.*[8]

¶21 Because we have held that not every breach of the tax lien statutes deprives the court of jurisdiction over a foreclosure action, we must determine whether the use of regular U.S. mail rather than certified mail to serve a notice of intent to foreclose is a breach of a mandatory duty that would deprive the court of jurisdiction or instead is a breach of a directory duty that would be of no jurisdictional effect. We conclude that Dupont's service of the notice by regular mail rather than by certified mail was an "insubstantial failure" to comply with the statute that did not deprive the court of jurisdiction to hear his foreclosure complaint. *See Mohave County v. James R. Brathovde Family Trust*, 187 Ariz. 318, 928 P.2d 1247 (App. 1996) (breach of requirement that tax-lien foreclosure action be commenced in the county in

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[8] The court noted that its conclusion that a "failure to strictly comply" with the notice provision "does not automatically void a subsequently issued treasurer's deed" supported the legislature's "stated purpose and objective to 'secure the payment of unpaid delinquent taxes' by preserving and enhancing the marketability of tax liens and treasurer's deeds. . . ." *Lavidas*, 195 Ariz. at 255, ¶ 18, 987 P.2d at 217 (quoting *Consolidated Motors, Inc. v. Skousen*, 56 Ariz. 481, 488, 109 P.2d 41, 44 (1941)).

which the property is located is "insubstantial failure to comply" with the statute).

¶22 As noted above, the notice of intent to foreclose that Dupont was required to mail to Reuter was one of several required notices, each of which alerts an owner that her property interests may be at risk for failure to pay property taxes. The county treasurer each September 1 is required by law to send a notice to the owner of each property whose taxes are delinquent. A.R.S. § 42-18103. Before the end of the year, the treasurer prepares a list of all such properties and sends to each owner a notice of intent to sell. A.R.S. § 42-18106. In addition to mailing that notice to the property owner, the county treasurer is required by law to post and publish the notice. A.R.S. § 42-18109.[9] By statute, the purchaser of a tax lien may not move immediately to foreclose the owner's right of redemption; the purchaser must wait at least three years before commencing foreclosure. A.R.S. § 42-18201(A). Finally, even if, as here, the property owner does nothing to redeem her right in the property during the three years subsequent to the tax lien sale, her redemption rights may be foreclosed only by way of a complaint filed and prosecuted pursuant

[9] Although not relevant to our interpretation of the statute, we note that by the time Dupont purchased the tax lien on the property, Reuter owed 14 years' of unpaid taxes on it. Presumably she received notices from the Coconino County treasurer each fall and winter during those 14 years that her property taxes were delinquent and that a tax lien on the property would be offered for sale.

to the Arizona Rules of Civil Procedure. A.R.S. § 42-18203(A). The foreclosure litigation is commenced, of course, by service of a complaint upon the owner.

¶23 In this procedural sequence, the tax lienholder's notice of intent to foreclose is sent to the property owner only after the owner has received multiple notices from the county treasurer that taxes are delinquent and that the treasurer intends to sell a lien on the property to recover the amount owed. Moreover, and unlike the notice of application for administrative foreclosure at issue in *Lavidas*, the property owner's redemption rights are not foreclosed simply by virtue of the notice; judicial foreclosure requires further notice and that other due process be afforded the property owner.

¶24 We are aware of the reasoning of *Kincannon* and other cases to the effect that provisions intended for the protection of the property owner are more likely to be held to be mandatory, a breach of which is jurisdictional, rather than directory, a breach of which may be, in the language of section 18-42101(B), "insubstantial." *See Kincannon*, 64 Ariz. at 310, 169 P.2d at 863; *cf. Brathovde Family Trust*, 187 Ariz. at 321-24, 928 P.2d at 1250-53 (deciding whether failure to comply with venue requirement was "insubstantial failure" without analyzing whether the requirement was intended to protect the property owner). While the requirement that the lienholder must send the property owner a notice of intent to foreclose is of course for the owner's benefit, we are not

persuaded that the requirement that such notice be sent *by certified mail* is necessarily intended for the property owner's protection. Because certified mail produces a receipt of mailing, the requirement just as well might be intended to protect the tax lienholder, who, by statute, must prove the notice of intent to foreclose was sent. *See also Blue v. Boss*, 781 P.2d 128, 130 (Colo. App. 1989) (purpose of requirement that claim be sent by registered mail is "to ensure that there is documentation that service had occurred"); *Sevigny v. Dowd*, 178 N.E.2d 23, 24 (Mass. 1961) (purpose of requirement that insurance claim be sent by registered mail was "to facilitate proof, and in effect place[] the risk of transmission by regular mail upon the sender"). At the same time, of course, the certified-mail requirement also simplifies the judicial fact-finding that must occur in the event of a dispute over whether the notice was mailed.[10]

¶25 Reuter, however, argues that subsection C of A.R.S. § 42-18202, which, as noted above, was added in 2005, after the events at issue here, compels the conclusion that Dupont's failure to send

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[10] Reuter cites to a number of Arizona cases addressing the state-law requirement that one who wishes to sue a county must first file a notice of claim. A.R.S. § 11-622 (2001); *see, e.g., Am. Credit Bureau v. Pima County*, 122 Ariz. 545, 596 P.2d 380 (App. 1979); *Norcor of Am. v. S. Ariz. Int'l Livestock Ass'n*, 122 Ariz. 542, 596 P.2d 377 (App. 1979). But the county notice-of-claim statute does not require that such a claim be mailed or filed in a certain manner, so we find the cases on which Reuter relies not persuasive. *Cf. Pritchard v. State*, 163 Ariz. 427, 433, 788 P.2d 1178, 1184 (1990) (compliance with general public entity notice-of-claim statute, A.R.S. § 12-821.01, is not jurisdictional).

the notice by certified mail is a jurisdictional bar to his foreclosure action. Pursuant to that provision, "[i]f the purchaser fails to send the notice required by this section, the purchaser is considered to have substantially failed to comply with this section," and the owner's right to redeem may not be foreclosed. A.R.S. § 42-18202(C). Reuter relies on a Final Amended Senate Fact Sheet that stated that the bill "clarifies the procedure for the lienholder's notice of intent to file foreclosure."[11] Reuter argues that Dupont's failure to send the required notice by certified mail constitutes a "fail[ure] to send the [required] notice," and therefore, pursuant to section 42-18202(C), Dupont "substantially failed to comply" with the statute. For his part, Dupont argues that the provision must have been intended to change existing law, and infers that as a consequence, prior to 2005, a tax lien purchaser's failure to send the notice must have been a mere insubstantial failure to comply.

¶26 We do not need to decide whether the fact sheet Reuter relies on accurately characterized the legislature's understanding of the law at the time of the events here because we conclude the addition of subpart C to section 42-18202 does not bear on the question before us. Subpart C states that one who "fails to send

[11] Reuter's interpretation of the fact sheet is undercut by another provision in the fact sheet that describes the bill as "[p]rohibit[ing] the courts from entering into any action to foreclose the right to redeem if the purchaser of the action does not *submit* the notice of intent to foreclose the right to redeem." (Emphasis added.)

the notice required by this section" has not substantially complied. It is uncontested that Dupont sent the notice and that the notice contained the information required by law. The question is whether his failure to send it by certified mail is an insubstantial failure that does not affect the validity of his foreclosure action, pursuant to A.R.S. § 42-18101.

¶27 A statute's terms are the best and most reliable indicator of its meaning. *Ariz. Sec. Ctr., Inc. v. State*, 142 Ariz. 242, 244, 689 P.2d 185, 187 (App. 1984). Unambiguous language is normally conclusive, unless a clearly expressed legislative intent is to the contrary. *Mail Boxes v. Indus. Comm'n of Ariz.*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). Applying those principles, we note that the statute says simply that a purchaser who "fails to send the notice required by this section" may not foreclose the owner's right to redeem. The statute does not bar foreclosure by a purchaser who "fails to send the notice required by *and in the manner provided by* this section"; nor does it state more broadly that a purchaser who "fails in any manner to comply with this section" may not foreclose the owner's redemption rights. Instead, it states simply that one may not foreclose if he has "fail[ed] to send the notice required by this statute." Because Dupont indisputedly *sent* the notice, which is what section 42-18202(C) requires, that provision does not invalidate his foreclosure complaint.

¶28 In sum, we hold that *Kincannon* and its progeny do not compel the conclusion that the superior court lacks jurisdiction over a foreclosure complaint by a lienholder who has not strictly complied with each and every element of the tax lien and foreclosure statutes. This is particularly so after the legislature's enactment of A.R.S. § 48-18101(B), which provides that an "insubstantial failure to comply" with the statutes does not preclude foreclosure. The technical violation that occurred here is in our view an "insubstantial failure" that did not deprive the superior court of jurisdiction to hear the foreclosure complaint.

¶29 As noted above, the sole argument Reuter made in her motion to vacate the default judgment was that the superior court lacked jurisdiction over Dupont's foreclosure complaint because Dupont did not (and could not) allege that he had served the notice of intent to foreclose by certified mail. Because we conclude the court had jurisdiction over Dupont's complaint, Reuter presented no valid grounds on which to vacate the default judgment against her.[12]

[12] Our decision to reverse the order vacating the judgment moots Reuter's motion to dismiss, which we do not address.

CONCLUSION

¶30 For the reasons set forth above, we reverse the superior court's orders vacating the default judgment, dismissing the complaint and awarding fees to Reuter. We remand the matter for further proceedings consistent with this decision. We grant Appellants their costs on appeal, upon their compliance with Arizona Rule of Civil Appellate Procedure 21.

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DIANE M. JOHNSEN, Judge

CONCURRING:

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DANIEL A. BAKER, Presiding Judge

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PATRICK IRVINE, Judge