IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA
Appeal No. 31286

EMILY BIALOTA,
Appellant,

vs.

LAKOTA LAKES, LLC, a Minnesota Limited
PETER J. TAUNTON, KRISTIN M.
TAUNTON, and all persons unknown,
claiming any legal or equitable right, title, estate,
lien, or interest in the property described in the
complaint adverse to plaintiff's title or a cloud
on Plaintiff's title thereto,

PENNINGTON COUNTY,
Appellees.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

HONORABLE HEIDI L. LINNGREN
Circuit Court Judge

APPELLANT'S OPENING BRIEF

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Notice of Appeal filed on November 4, 2025

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JURISDICTIONAL STATEMENT

Plaintiff-Appellant Emily Bialota, hereinafter referred to as "Bialota," appeals to this Court the Honorable Heidi L. Linngren's, Circuit Court Judge of the Seventh Judicial Circuit, hereinafter referred to as the "Trial Court," Order, dated October 6, 2025, allowing Defendant-Appellee Peter J. Taunton ("Taunton") to redeem certain real property owned by Bialota pursuant to a Tax Deed (the "Order"). Rec. pp. 759-760[1], Appx. 1. In the Order the Trial Court also denied Bialota's motion for Rule 60(b) relief. The Trial Court also denied Bialota's motion for a determination that Bialota was entitled to a judgment and order quieting title in her name. Rec. pp. 467-468.

Bialota commenced a Quiet Title action in the Circuit Court, county of Pennington, South Dakota, File No. 51CIV21-000281, after the Pennington County Treasurer issued a Tax Deed to her on January 11, 2021. Rec. pp. 149-150. The Trial Court issued a Memorandum Decision on the parties' Motion for Summary Judgment on October 6, 2021, which granted summary judgment to Defendant-Appellee Lakota Lakes, LLC, a Minnesota Limited Liability Company, hereinafter referred to as "Lakota Lakes." Rec. pp. 241-253. Judge Mandel signed a Judgment Canceling Instrument on December 1, 2021. Rec. pp. 274-275. Bialota successfully appealed this judgment.

This Court, in *Bialota v. Lakota Lakes, LLC*, 2024 SD 7, determined that Lakota Lakes was validly served with a Notice of Intent to Take Tax Deed ("NITTD"). *Bialota,* 2024 SD at 7, ¶24. This Court also determined that Lakota Lakes failed to redeem the property timely and that Bialota was entitled to a tax deed to the property in

1 "Rec." refers to the record comprised of the pleadings, exhibits and Orders entered in this case, which has been compiled by Ranae Truman, Clerk of Court, Pennington County, South Dakota.

question. *Bialota,* 2024 SD at 7, ¶24. This Court reversed the Trial Court's Judgment cancelling Bialota's tax deed and remanded with directions for further proceedings consistent with its opinion. *Bialota,* 2024 SD at 7, ¶25.

The Trial Court, on October 6, 2025, entered an Order granting Taunton's motion for deposit of funds thereby allowing Taunton to redeem the real property previously owned by Bialota. Rec. pp. 759-760, Appx. 1. A Notice of Entry of this Order was filed by Lakota Lakes and Taunton on October 8, 2025. Rec. pp. 763-764. Bialota filed a Notice of Appeal on November 4, 2025. Rec. pp. 767-769. Bialota's Notice of Appeal was filed timely.

STATEMENT OF LEGAL ISSUES

Bialota raises the following issues in this Appeal:

I. <u>Did the Trial Court act Consistent with this Court's Opinion in Denying Bialota's Motion for a Judgment and Order Quieting Title to the Property in her Name?</u>

The Trial Court denied Bialota's motion for a determination that she is entitled to a judgment quieting title in her name.

List of the most relevant cases and statutory provisions:

SDCL § 23A-32-19; and

State v. Piper, 2014 S.D. 2, ¶11, 842 N.W.2d 338

II. <u>Did the Trial Court Err in Allowing Taunton to Redeem the Property when this Court Determined that Lakota Lakes had Failed to Redeem the Property Timely and that Bialota was entitled to a Tax Deed to the Property?</u>

The Trial Court granted Taunton's Motion for Deposit of Funds (redemption monies) on October 6, 2025.

List of the most relevant cases and statutory provisions:

S.D. Const. art. V, § 2;
SDCL § 23A-32-19;
J. Clancy, Inc. v. Khan Comfort, LLC, 2022 S.D. 68, ¶12; and
State v. Piper, 2014 S.D. 2, ¶11, 842 N.W.2d 338.

III. Did the Trial Court Unconstitutionally Deprive Bialota of Property Rights without Just Compensation?

List of the most relevant cases and statutory provisions:

Hubbard v. City of Pierre, 2010 S.D. 55, ¶10, 784 N.W.2d 499;
Village of Norwood v. Baker, 172 U.S. 269, 279, 19 S. Ct. 187, 190-91, 43 L. Ed. 443 (1898); and
Tyler v. Hennepin County, Minnesota, 143 S.Ct. 1369, 215 L.Ed.2d 564 (2023).

IV. Did the Trial Court Err in Failing to Decide whether Pennington County is an Appropriate Party?

List of the most relevant cases and statutory provisions:

Hall v. Meisner, 51 F.4th 185 (6th Cir. 2022).

V. Did the Trial Court err in denying Bialota's Motion for Relief from the Order under Rule 60(b)(3)?

List of the most relevant cases and statutory provisions:

Rule 60(b)(3); and
Thomas G. Brady, d/b/a Brady Aluminum & Construction Co., v. USA, 877 F. Supp. 444 (CD Ill. 1994).

STATEMENT OF THE CASE AND FACTS

Statement of the Case

This appeal concerns the validity of Taunton's redemption of property owned by Bialota pursuant to a Tax Deed when this Court determined that Bialota was entitled to a tax deed. This Court determined that Lakota Lakes was validly served with a NITTD. *Bialota*, 2024 SD at 7, ¶24. This Court also determined that Lakota Lakes failed to redeem the property timely and that Bialota was entitled to a tax deed to the property in question. *Id.* This Court reversed the Trial Court and remanded with directions for further proceedings consistent with its opinion. *Bialota*, 2024 SD at 7, ¶25.

Instead of upholding this Court's determination that Bialota was entitled to a tax deed, the Trial Court, on September 10, 2024, entered an Order denying Bialota's motion for a determination that Bialota is entitled to a judgment and an order quieting title. Rec. pp. 467-468. The Trial Court entered an Order allowing Taunton to redeem the property on April 30, 2025. Rec. pp. 627-634; Appx. 2. Bialota filed a timely Notice of Appeal regarding this order on May 28, 2025. Rec. pp. 674-676. This Court, on June 4, 2025, entered a show cause order regarding the finality of the Trial Court's Order of April 30, 2025. This Court dismissed Bialota's appeal on August 21, 2025. Rec. pp. 741-742. Bialota filed a third Notice of Appeal on November 4, 2025, appealing the Trial Court's order allowing Taunton to redeem Bialota's property. Rec. pp. 767-769. A Notice of Entry of the Order was filed by Lakota Lakes and Taunton on October 8, 2025. Rec. pp. 763-764. Bialota's third Notice of Appeal was filed timely.

Statement of the Facts

Lakota Lakes acquired certain vacant land located in Pennington County, South Dakota, from Peter J. Taunton and Kristin M. Taunton by Quit Claim Deed, dated June 7, 2009.[2] Rec. pp. 128-129; SUMF p.1, ¶2.[3] Lakota Lakes was a Minnesota Limited

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2 This vacant land is legally described as: the Mt. View Tract Revised of the Lakota Lake Encampment Subdivision, located in a portion of the South One-Half (S½) of the Southeast Quarter (SE¼) of Section Twenty-One (S21), in Township Two South (T2S), Range Six East (R6E), of the Black Hills Meridian, Pennington County, South Dakota, as shown on the plat filed in Plat Book 33, page 170 in the office of the Register of Deeds of said county (the "Property").

3 "SUMF" is Bialota's Statement of Undisputed Material Facts.

Liability Company prior to its dissolution on August 3, 2012. Rec. pp. 136-137. Lakota Lakes failed to pay the property taxes owed on the Property for tax year 2015, payable in 2016, and thereafter. Rec. p. 149; and SUMF p.1, ¶3. The Property was offered for sale by the Pennington County Treasurer at a tax sale held on December 19, 2016. Rec. p. 132; SUMF p.2, ¶4. No bid was received at said tax sale. SUMF p.2, ¶5. The Property was "struck off" to, or purchased by, Pennington County at the tax sale. Rec. p. 132; SUMF p.2, ¶5. The Pennington County Treasurer sent Lakota Lakes a letter notifying it of the County's intent to seek tax deed on May 15, 2019. SUMF p.2, ¶6. Pennington County assigned the Tax Certificate to Bialota on October 27, 2020. Rec. p. 132; SUMF p.2, ¶8. Pennington County issued a tax deed to Bialota on January 11, 2021. Rec. pp. 149-150; SUMF p.5, ¶23.

This Court determined that Lakota Lakes received proper notice of Bialota's intention to take a tax deed. *Bialota*, 2024 SD at 7, ¶24. The Minnesota Secretary of State issued a Service of Process Acknowledgment on November 5, 2020. Rec. p. 146 (Appx. 3.25;) Rec. pp. 155-157; SUMF p.4, ¶20. Lakota Lakes was served personally through the Minnesota Secretary of State. This Court determined that Lakota Lakes failed to redeem the property from the tax sale within the statutory time period after it was served personally with the NITTD. *Bialota*, 2024 SD at 7, ¶24.

ARGUMENT

I. Standard of Review.

The Standard of Review for statutory interpretation and application are questions of law, which are reviewed by this Court under the de novo standard of review. *Kirwan* *v. City of Deadwood*, 2023 S.D. 20, ¶21; and *Dakota Constructors, Inc. v. Hanson Cnty. Bd. of Adjustment*, 2023 S.D. 38, ¶12. The de novo standard of review is also applicable to issues of constitutional interpretation. *Dakota Constructors, Inc.*, 2023 S.D. at 38, ¶12.

II. **The Trial Court Committed Reversible Error in Ignoring this Court's Mandates.**

The Trial Court ignored completely this Court's directives; it committed reversible error in doing so. This Court is the highest court of the state. *J. Clancy, Inc. v. Khan Comfort, LLC*, 2022 S.D. 68, ¶12; S.D. Const. art. V, § 2. This Court is vested with the "authority to mandate the scope of review on limited remand." *J. Clancy, Inc.*, 2022 S.D. 68, ¶12. The scope of the circuit court's jurisdiction on remand must conform to the dictates of this Court's opinion. *Id.* It is a fundamental requirement that a circuit court must comply with all the directives of this Court. South Dakota law clearly compels this result. SDCL § 23A-32-19 reads:

> The Supreme Court by its judgment may reverse, affirm, or modify the judgment or order appealed from, and may direct a new trial . . . .

This Court required a circuit court to follow its directives to the letter in *State v. Piper*, 2014 S.D. 2, ¶11, 842 N.W.2d 338, which reads:

> Where we order reversal without any qualification, as in a general remand, "[t]he mandate . . . nullifies the judgment, findings of fact, and conclusions of law, and leaves the case standing as if no judgment or decree had ever been entered." Citing, *Gluscic v. Avera St. Luke's*, 2002 S.D. 93, ¶ 20, 649 N.W.2d 916, 920 (quoting *Janssen v. Tusha*, 67 S.D. 597, 601, 297 N.W. 119, 120 (1941)). Between these two extremes is the limited remand, for which our instructions must exactly govern. "When the scope of remand is limited, the entire case is not reopened, but rather, the lower tribunal is only authorized to carry out the appellate court's mandate." Citing, *In re Conditional Use Permit Granted to Van Zanten*, 1999 S.D. 79, ¶ 13, 598 N.W.2d 861, 864 (citing 5 Am. Jur. 2d Appellate

> Review § 787 (1995)). This procedure mirrors that performed by the United States Supreme Court: "[W]hen the direction contained in the mandate is precise and unambiguous, it is the duty of the [lower court] to carry it into execution, and not to look elsewhere for authority to change its meaning." *West v. Brashear*, 39 U.S. 51, 54, 10 L. Ed. 350 (1840).

The Trial Court clearly ignored its duty to carry out this Court's mandate. Instead, it looked elsewhere for authority to change the result mandated by this Court, which it may not do. This Court determined that Lakota Lakes was validly served with a NITTD. *Bialota*, 2024 SD at 7, ¶24. This Court determined further that Lakota Lakes failed to redeem the property timely and that Bialota was entitled to a tax deed to the Property. *Id.* This Court remanded this matter to the Trial Court with directions for further proceedings consistent with its opinion. *Bialota*, 2024 SD at 7, ¶25. Such further proceedings should have been limited to the entry of a Judgment and Order Quieting Title. Instead of quieting title in Bialota's name, the Trial Court denied Bialota's motion for the entry of an order quieting title and allowed Taunton to redeem the Property. The Trial Court committed reversible error in doing so.

III. <u>The Trial Court Erred in allowing Taunton to redeem the Property when this Court determined that Lakota Lakes had failed to redeem the property timely and that Bialota was entitled to a tax deed to the property.</u>

Instead of following the directives of this Court, the Trial Court allowed Taunton to redeem the property, under SDCL § 21-42-10. Lakota Lakes cannot redeem property under SDCL § 21-42-10 that was sold at a tax sale, because Lakota Lakes failed to redeem the property timely as determined by this Court and because a Treasurer's Deed issued to Bialota on January 11, 2021. Rec. pp. 149-150. Redemption must be made within the statutory time period and in the manner designated by SDCL § 10-25-8.

SDCL § 10-25-8 reads in pertinent part, "[t]he right of redemption from the sale does not expire until sixty days after the filing of affidavit of completed service of the notice."

The Trial Court's and Taunton's reliance upon SDCL § 21-42-10 as authority for allowing him to redeem the property is misplaced, because he did not have an ownership interest in the property when he attempted to redeem. This Court has stated that:

> [A] quiet title action permits an individual who has an estate or interest in real property, whether in or out of possession of the property and whether such property is vacant or occupied, to test the validity of any adverse claims of ownership of the real property for the purpose of quieting title to the real property."

Healy Ranch, Inc. v. Healy, 2022 S.D. 43, ¶38; citing *Estate of Henderson*, 2012 S.D. 80, ¶ 13, 823 N.W.2d at 367; citing SDCL 21-41-1. Taunton conveyed his interest in the property to Lakota Lakes via a Quit Claim Deed on June 7, 2009. Rec. pp. 128-129. After that date he no longer had an estate or interest in the Property.

Precluding Taunton from redeeming the Property is the only way to harmonize SDCL § 10-25-8 and SDCL § 21-42-10 with SDCL § 21-42-10. SDCL § 21-42-10 provides for redemption of lands in a quiet title action. If SDCL § 21-42-10 allows for redemption after the issuance of tax deed it would be impossible to harmonize the statute with either SDCL § 10-25-8 or SDCL § 10-25-8.1. SDCL § 10-25-8.1 reads in pertinent part:

> [t]he failure of the owner . . . to redeem the tax certificate within sixty days of the date of the filing of the affidavit of completed service of the notice . . . passes all of the right, title, and interest of the owner, mortgagee, lienholder, and the other interested person to the holder of the tax certificate subject to the taxes, liens, and encumbrances as provided by section 10-25-12.

This Court has determined that, "Lakota Lakes failed to redeem the property during this window (during the sixty days after the filing of affidavit of completed service of the notice of intent to take tax deed) and Bialota was entitled to the tax deed to the property." *Bialota*, 2024 S.D. at 7, ¶24. A property owner has sixty (60) days to redeem the tax certificate from the date the NITTD is served. SDCL § 10-25-8.1. Under South Dakota law, particularly SDCL § 10-25-8.1, a property owner's failure to redeem timely passes all right, title, and interest of the prior owner to the holder of the tax certificate. The Trial Court therefore committed reversible error in allowing Taunton to redeem Bialota's property even if it could ignore the clear directives of this Court with impunity.

IV. **The Trial Court Unconstitutionally Deprived Bialota of Property Rights Without Just Compensation by Allowing Taunton to Redeem the Property.**

The Trial Court erroneously deprived Bialota of her property rights to the Property. Both our state and the federal constitution prohibit the government from taking private property without just compensation. *Hubbard v. City of Pierre*, 2010 S.D. 55, ¶10, 784 N.W.2d 499; citing *Village of Norwood v. Baker,* 172 U.S. 269, 279, 19 S. Ct. 187, 190-91, 43 L. Ed. 443 (1898). The Fifth Amendment of the United States Constitution provides that "[n]o person shall be … deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." U.S. Const. amend. V. The South Dakota Constitution provides that "[p]rivate property shall not be taken for public use, or damaged, without just compensation, which will be determined according to legal procedure established by the Legislature." S.D. Const. Art. VI, § 13. Furthermore, the South Dakota Due Process Clause provides that "[n]o person shall be deprived of life, liberty or property without due process of law." S.D. Const. Art. VI, § 2. Because a Treasurer's Deed issued to

Bialota giving her absolute ownership interest in the property, Bialota has a constitutionally protected property interest in the Property. SDCL § 10-25-8 and SDCL § 10-25-8.1. The Trial Court deprived Bialota of her ownership interest in the Property by allowing Taunton to redeem the property even though he had no interest in the Property at the time that he was allowed to redeem it and even though Bialota had absolute ownership interest in the property at the time of the redemption. The Trial Court committed reversible error in doing so.

V. <u>The Trial Court Erred in Failing to Decide Whether Pennington County is an Appropriate Party.</u>

The Trial Court erred in failing to decide whether Pennington County was proper party to this action. The Trial Court denied Pennington County's motion to dismiss as moot. A case is moot if the dispute is no longer embedded in any actual controversy about the plaintiffs' particular legal rights. *Skjonsberg v. Menard, Inc.*, 2019 S.D. 6, ¶14; citing *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91, 133 S. Ct. 721, 727, 184 L. Ed. 2d 553 (2013). Taunton and Lakota Lakes brought a Third-Party Complaint against Pennington County, on January 27, 2025, claiming that Pennington County owed it for taking without just compensation as a result of Pennington County issuing a tax deed to Bialota. Bialota will bring a Third-Party Complaint against Pennington County claiming that Pennington County is legally obligated to pay any damage suffered by Lakota Lakes as result of it losing its equity in the Property, upon the remand of this case to the Trial Court. Pennington County can be held liable even though it did not ultimately profit from the extinguishment of Lakota Lakes interest in the property. *See* the dissenting opinion of Judge Papik in *Continental Resources v. Fair*, 10 N.W.3d 510, 317 Neb. 391 (Neb. 2024), citing *Hall v. Meisner*, 51 F.4th 185 (6th Cir. 2022). The rationale of *Hall*, *Id.*, is that because the county took absolute title from the original owner it was liable to pay just compensation to the original owner. *Hall*, 51 F.4th 185, 196. This happened here absent Taunton's improper redemption.

Pennington County may be the only person or entity legally responsible for any alleged taking if Bialota is determined to not be a state actor. Bialota's use of a state-created remedy does not alone amount to state action. *See*, *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478, 485, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988). For all these reasons, Pennington County's involvement in this case is not moot if this Court remands this case back to the Trial Court for failure to follow its express directives.

VI. The Trial Court Erred in Denying Bialota's Motion for Relief under Rule 60(b)(3).

The Trial Court should have vacated its order allowing Taunton to redeem, because Taunton and Lakota Lakes perpetrated a fraud upon the Trial Court. Rule 60(b)(3) empowers a circuit court to grant relief to a party from an order based upon fraud, misrepresentation, or other misconduct of an adverse party. Taunton and Lakota Lakes have defrauded this Court in two ways. Lakota Lakes attached a document to its Statement of Material Facts in support of its motion for summary judgment, which it filed with the South Dakota Secretary of State to become a foreign entity authorized to do business in the state of South Dakota. Rec. p. 655. In this filing, Taunton, Lakota Lakes' principal and registered agent, stated affirmatively that he resides at 40124 227th Street, Woonsocket, Sanborn County, South Dakota. Rec. p. 655. In fact, Taunton's father William D. Taunton owns this property. Rec. pp. 648-650. Taunton admitted in discovery that he has resided in the state of Florida since 2019. Rec. pp. 751-754. Taunton has also filed numerous fraudulent annual reports with the South Dakota Secretary of State, by and through its legal counsel, indicating that its registered agent Peter Taunton resides in the state of South Dakota, at the above-referenced Woonsocket, South Dakota, address. Rec. pp. 657-664. These filings are fraudulent. Peter Taunton can only reside in one state. Taunton and Lakota Lakes apparently falsified these filings to enhance its legitimacy with this Court. Lakota Lakes also defrauded the Trial Court by claiming that it paid substantially more for the Property than it did. Lakota Lakes stated in oral argument and in its Statement of Material Facts - No. 1 - that it paid $905,000.00 for the property in question. Rec. pp. 175-177. This is false, because Lakota Lakes bought the property in question and another parcel that has an improvement on it for $905,000.00. Lakota Lakes apparently overinflated the property's value to garner sympathy with the Trial Court and to make the Trial Court less inclined to uphold the Treasurer's Deed issued to Bialota. Its deception has apparently worked.

The Trial Court erred in not vacating the Order allowing Lakota Lakes to redeem, striking its counterclaim and quieting title to the property in Bialota's name, as the remedy for Lakota Lakes' deceptive and fraudulent action. Numerous courts have dismissed actions when a litigant has destroyed evidence or relied upon false documents. *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 151 F.R.D. 346, 354 (N.D.Cal. 1993) (dismissing defendant's counterclaim under Fed.R.Civ.P. 37 and under the court's inherent powers to remedy a failure to produce requested documents, violation of court's orders, and perjury). False testimony in a formal proceeding is intolerable." *ABF Freight System, Inc. v. N.L.R.B.,* 114 S.Ct. 835, 839, 127 L.Ed.2d 152 (1994); *see Dakota Meis v. Rockwell Intern. Corp.,* 927 F.2d 486 (9th Cir.1991) (dismissal with prejudice under Federal Rule of Civil Procedure 11 and court's inherent powers appropriate for falsification of deposition). The court in *Thomas G. Brady, d/b/a Brady Aluminum & Construction Co., v.* USA, 877 F. Supp. 444 (CD Ill. 1994,) dismissed the plaintiffs' action when he destroyed evidence and perjured himself. The court reasoned that, "the dismissal of this case will also send a strong message to other litigants who plan to destroy and alter relevant evidence, abuse the discovery process, and then perjure themselves in open court in a continued attempt to slant the facts in their favor. The court in *Thomas G. Brady, d/b/a Brady Aluminum & Construction Co., Id.* indicated that it would not condone such behavior by imposing any lesser sanction than dismissal. The Trial Court erred in not imposing any sanction whatsoever upon either Taunton or Lakota Lakes for their fraud.

CONCLUSION

The Trial Court committed reversible error in ignoring completely this Court's directives. It is a fundamental requirement that a circuit court must follow all directives of this Court. Instead of giving effect to this Court's determination that Bialota was entitled to a Treasurer's Deed, the Trial Court allowed Taunton to redeem the Property thereby stripping Bialota of all of her ownership interest in the Property. In doing so, an unconstitutional taking occurred, because Bialota had absolute ownership of the Property when a tax deed was issued to her under South Dakota law. This tax deed vested all ownership interest in the property in Bialota's name under South Dakota law. Lakota Lakes may or may not have a claim for its equity in the Property, but its claim is against Pennington County rather than Bialota, because Pennington County deprived it of its ownership interest in the Property and because Bialota is not a state actor. Bialota took advantage of a statutory mechanism designed to enhance a county's ability to collect property taxes. Pennington County conveyed absolute ownership of the property to Bialota. Her use of a state-created remedy does not amount to state action. The Trial Court erred in not vacating its order allowing Taunton to redeem when both Taunton and Lakota Lakes defrauded it. This Court should not sanction such acts of malfeasance and fraud as the Trial Court did.

REQUEST FOR ORAL ARGUMENTS

Bialota respectfully requests that oral arguments be held in this appeal.

CERTIFICATION OF VOLUME LIMITATIONS

The undersigned counsel certifies that this Opening Brief was prepared using a Microsoft Word - Version 19 - word processing software. This brief complies with the type-volume limitations imposed by SDCL § 15-26A-66(b)(2). This Opening Brief contains 3,384 words and 16,805 characters. The above-mentioned word processing system was used to count the number of words and characters in this Opening Brief.

Dated this 5th day of January, 2026.

SMOOT & UTZMAN, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of **Appellant's Opening Brief** upon the person(s) designated herein, on the date shown below, by either email or First-Class mail, to-wit:

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which address is the last address of the addressee known to the subscriber.

Dated this 5th day of January 2026.

Brian L. Utzman

APPENDIX

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

51CIV21-000281

EMILY BIALOTA,

Plaintiff,

vs.

LAKOTA LAKES, LLC, a Minnesota limited liability company, PETER J. TAUNTON, KRISTIN M. TAUNTON, and all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title or a cloud on plaintiff's title thereto,

Defendants and
Third-Party Plaintiff,

vs.

PENNINGTON COUNTY acting by and through its Treasurer,

Third-Party Defendant.

ORDER ON SEPTEMBER 29, 2025 MOTIONS HEARING AND JUDGMENT OF DISMISSAL

This matter came before the Court on September 29, 2025, on Defendant's Motion for Deposit of Funds, Defendant's Motion for Summary Judgment, Third-Party Defendant's Motion to Dismiss, and Plaintiff's Motion for Relief from Order under Rule 60(b)(3). Plaintiff was represented by Brian Utzman. Defendant and Third-Party Plaintiff was represented by Nathan Chicoine. Third-Party Defendant was represented by Richard Williams. The Court having reviewed the submissions and considering arguments of counsel and being otherwise fully advised in the premises, it is now hereby

ORDERED ADJUDGED, and DECREED ,that Plaintiff's Motion for Relief from Order under Rule 60(b)(3) is DENIED; and it is further

ORDERED, ADJUDGED, and DECREED that Defendant's Motion for Deposit of Funds is GRANTED, and Defendant Taunton, pursuant to SDCL 15-6-67(a), may deposit with the Court the amount of $27,850.77, and thereafter the Pennington County Clerk of Courts shall issue a check to Emily Bialota in the amount of $27,850.77, which represents funds deposited with the Court due to Plaintiff in redemption of the real property subject to this case; and it is further

ORDERED, ADJUDGED, and DECREED that Defendants' Motion for Summary Judgment is DENIED as moot; and it is further

ORDERED, ADJUDGED, and DECREED that Third-Party Defendant's Motion to Dismiss is DENIED as moot; and it is further

ORDERED, ADJUDGED, AND DECREED that any remaining issues are hereby determined to be moot and this shall serve as a final order regarding any further matters pending;

ORDERED, ADJUDGED, and DECREED that a certificate of redemption shall be issued by the Pennington County Treasurer and Plaintiff's Complaint is hereby dismissed with prejudice, and with each party being responsible for its own costs and disbursements.

10/6/2025

BY THE COURT:

Honorable Heidi Linngren
Circuit Court Judge

UNIFIED JUDICIAL SYSTEM
JUSTICE
STATE OF SOUTH DAKOTA

FILED
Pennington County, SD
IN CIRCUIT COURT

OCT - 6 2025

Amber Watkins, Clerk of Courts
By ______ Deputy

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
)SS
COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

EMILY BIALOTA, Plaintiff,

v.

LAKOTA LAKES, LLC, a Minnesota limited liability company, PETER J. TAUNTON, KRISTIN J. TAUNTON, and all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title or a cloud on plaintiff's title thereto,
Defendants and Third-Party Plaintiff

v.

PENNINGTON COUNTY acting by and through its Treasurer,
Third-Party Defendants,

FILE NO. 51 CIV 21-281

ORDER REGARDING DEFENDANT'S MOTION TO DETERMINE TAX AND MOTION TO MAKE REDEMPTION

This matter came before the Court for hearing on February 20, 2025, before the Honorable Heidi L. Linngren on Defendant's Motions to Determine Tax and to Make Redemption. Having reviewed the motions, notices, and other submissions by parties, having heard arguments by parties, and being otherwise familiar with the record, Defendants' Motions to Determine Tax and to Make Redemption is hereby **GRANTED.**

BACKGROUND

On May 27, 2008, Defendants Peter and Kristin Taunton purchased vacant real property in the Lakota Lake Encampment Subdivision in Pennington County, South Dakota. Following the purchase, they formed Lakota Lakes, LLC, in Minnesota, and contributed the property to Lakota Lakes, LLC, by quit claim deed on June 4, 2009. Lakota Lakes failed to pay the property taxes owed in 2015. Pennington County offered the property for tax sale in December 2016, and when no bid was received, the property was sold to the County for $18,480.01, the amount due for the nonpayment of taxes, penalties, interest, and costs for 2015.

Pennington County attempted to contact Lakota Lakes on three different occasions following the sale. Plaintiff eventually purchased the tax certificate from Pennington County for the outstanding tax debt, and the County assigned the tax certificate to her on October 27, 2020. Plaintiff paid the County the additional unpaid property taxes owed through 2020.

Following the purchase of the tax certificate, Plaintiff's husband, James Bialota, attempted to serve Lakota Lakes with a notice of intent to take tax deed. After failing to locate Lakota Lakes at its business address, Mr. Bialota delivered an "affidavit of not found" and the notice of intent to take tax deed to the Minnesota Secretary of State. The Minnesota Secretary of State issued a "Service of Process Acknowledgement" on November 5, 2020.

Plaintiff then filed an affidavit of completed service with the Pennington County Treasurer, who then issued a tax deed to her on January 11, 2021. Around this time, Defendant Peter Taunton contacted Plaintiff, seeking to repurchase the property. Plaintiff refused the offer and brought a quiet title action on February 15, 2021.

Defendant Lakota Lakes counterclaimed for a declaratory judgment that "the tax deed was void for failure to personally serve Lakota Lakes with the Notice and for cancellation of the deed." *Bialota v. Lakota Lakes, LLC*, 2024 S.D. 7, ¶ 11, 3 N.W.3d 454, 458. Defendant Lakota Lakes then moved for summary judgment on the issue. Plaintiff filed a cross-motion for summary judgment, arguing proper service and that she was entitled to summary judgment quieting title. The Honorable Robert A. Mandel denied Plaintiff's motion for summary judgment and granted Defendant Lakota Lake's motion for summary judgment. Plaintiff appealed.

On October 25, 2023, the South Dakota Supreme Court reversed, holding that Bialota's service was sufficient and that because Lakota Lakes failed to redeem within sixty days as outlined in

SDCL 10-25-8, Bialota was entitled to the tax deed to the property. *Bialota v. Lakota Lakes, LLC*, 2023 S.D. 55, ¶ 24, 997 N.W.2d 376, 383, *opinion withdrawn on reh'g*, No. 29851, 2024 WL 737024 (S.D. Feb. 7, 2024), and *superseded*, 2024 S.D. 7, ¶ 24, 3 N.W.3d 454. The opinion concluded: "We reverse and remand with directions for the circuit court to enter judgment as a matter of law quieting title to the real property in favor of Bialota." *Id.* ¶ 25.

The South Dakota Supreme Court granted rehearing and withdrew its 2023 opinion on February 7, 2024. The Court then issued an amended opinion on February 7, 2024. *See Bialota*, 2024 S.D. 7, 3 N.W.3d 454. Of note, the Court did not entitle Plaintiff to a judgment of quiet title or grant Bialota summary judgment. Instead, the Court "reverse[d] and remand[ed] with directions for further proceedings consistent with this opinion[,]" omitting the language directing this Court to enter a judgment as a matter of law quieting title to Plaintiff. *Id.* ¶ 25, 3 N.W.2d at 462. "Of final note, while Bialota filed a motion for summary judgment quieting title to the property in her name, she did not appeal the circuit court's denial of her motion. Therefore, as the majority opinion has directed, further proceedings are to be held on remand." *Id.* ¶ 38, 3 N.W.3d at 465 (Kern, J., concurring in part and dissenting in part).

Following the issuance of the remanded opinion, Plaintiff filed a Motion for a Determination that Bialota is Entitled to a Judgment and Order Quieting Title. On September 10, 2024, this Court denied Plaintiff's motion and informed the parties that the Court previously found the statutory scheme codified in SDCL 10-25-8.1 and 10-25-1 to be unconstitutional in *Tres Ag Services LLC, A South Dakota Limited Liability Co., v. Charles Irvine, Derrick Schwenn, and all persons unknown, who have or claim to have interest or estate in or lien or encumbrance upon the premises described in the complaint* (16CIV23-43). Defendants filed their Motion to Make Redemption on the same day.

DISCUSSION

Defendants argue that Peter Taunton is entitled to redeem the property at issue under SDCL 21-42-10. The statute provides, in pertinent part, that:

> Any defendant to an action may make redemption of the lands from tax sales by paying the total amount of delinquent taxes, penalties and interest thereon at the Category D rate of interest as established in § 54-3-16, which shall have been paid by the plaintiff or which is due the county, if the county is plaintiff, together with costs of the action. Upon payment, a certificate of redemption shall be issued by the county treasurer of the county to the defendant and the action shall be dismissed.

Id. The Court agrees.

Plaintiff largely argues in her brief and at the February 24, 2025, motions hearing that Lakota Lakes cannot and should not be allowed to redeem the property pursuant to SDCL 10-25-8 and 10-25-8.1. Plaintiff highlights that the South Dakota Supreme Court agreed with her assertion, relying on the holding that "Lakota Lakes failed to redeem the property during this window, and Bialota was entitled to the tax deed to the property." *Bialota*, 2024 S.D. 7, ¶ 24, 3 N.W.3d at 462.

However, it is uncontested that Peter Taunton is a defendant to this action and that Plaintiff named him as a party when she first filed the Complaint. A review of the record shows that Mr. Taunton was never served with a notice of intention to take tax deed as contemplated by SDCL 10-25-1 through SDCL 10-25-8.1. While Plaintiff is correct that Defendant Lakota Lakes failed to redeem within the statutory window outlined in SDCL 10-25-8, Defendant Peter J. Taunton was never served; therefore, under SDCL 21-42-10, he is entitled to redeem the property.

In their briefing and during their arguments at the February 24, 2025, hearing, both parties referenced this Court's finding that the statutory scheme codified in SDCL 10-25-8.1 and 10-25-1 was unconstitutional. While Defendants filed a Notice of Constitutional Challenge on December 26, 2024, that issue is not currently before the Court. Therefore, the Court declines to address the constitutionality of the statutes at this time. However, the Court does find that Plaintiff's argument that the holdings of *Tyler v. Hennepin Cnty., Minnesota*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023) and *257-261 20th Ave. Realty, LLC v. Roberto*, 256 N.J. 535, 310 A.3d 1255 (2024) are inapplicable because Plaintiff's case was not in the "pipeline," meaning that Bialota received the tax deed prior to the *Tyler* decision, to be incorrect. This case is still pending, and as explained by the New Jersey Supreme Court:

> In *Harper v. Virginia Department of Taxation*, 509 U.S. 86, 97, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993), the [United States] Supreme Court explained that when it
>
> applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.
>
> *Tyler* thus applies to pending federal cases on direct review.
>
> *Tyler* likewise applies to cases on direct review in state court. The Supreme Court made that clear in *Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749, 115 S.Ct. 1745, 131 L.Ed.2d 820 (1995).

257-261 20th Ave., Realty, LLC, 259 N.J. 417 at 440 (2025).

Because Defendant Peter Taunton has a right to redeem under SDCL 21-42-10, the Court must next determine the redemption amount. SDCL 10-25-13 provides, in pertinent part, that "the tax deed is prima facie evidence of … the amount due for nonpayment of taxes, penalties, interest, and costs[.]" The January 11, 2021, treasurer's deed provided that the amount due was $18,480.01. Interest thereon at 10% per annum[1] through the motions hearing on January 23, 2025, amounts to $9,300.76. In adding a filing fee of $70.00, the total redemption amount should be $27,850.77.

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[1] SDCL 54-3-16.

ORDER

Considering the foregoing, it is hereby

ORDERED that Defendants' Motion is **GRANTED**.

Dated this 30th day of ~~March~~ April 2025

BY THE COURT

The Honorable Heidi Linngren
Circuit Court Judge
Seventh Judicial Circuit

ATTEST:

AMBER WATKINS
CLERK OF COURTS

By:
Deputy
(SEAL)

FILED
Pennington County, SD
IN CIRCUIT COURT

APR 30 2025

Amber Watkins, Clerk of Courts
By__________Deputy

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 31286

Emily Bialota,
Plaintiff/Appellant,

vs.

Lakota Lakes, LLC, Peter J. Taunton, and Kristin M. Taunton
Defendant and Third-Party Plaintiff/Appellees,

and

Pennington County, acting by and through its Treasurer,
Third-Party Defendant/Appellee.

APPELLEES LAKOTA LAKES, LLC, PETER J. TAUNTON AND KRISTIN M. TAUNTON'S BRIEF

Appeal from the Circuit Court, Seventh Judicial Circuit,
Pennington County, South Dakota,
The Honorable Heidi Linngren, presiding

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Notice of Appeal filed November 4, 2025

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PRELIMINARY STATEMENT

Appellant Emily Bialota will be referenced as "Bialota," and Appellee Lakota Lakes LLC will be referenced as "Lakota Lakes." Appellee Peter J. Taunton will be referenced as "Taunton." Appellees will collectively be referenced as "Appellees." The Settled Record will be referenced as "SR." Appellant's Appendix will be referenced as "App."

JURISDICTIONAL STATEMENT

This Court has jurisdiction under SDCL § 15-26A-3 to consider the Order on September 29, 2025 Motions Hearing and Judgment of Dismissal entered October 6, 2025, dismissing Plaintiff's Complaint. (SR 759; App. 1). This Court lacks jurisdiction to review Bialota's constitutional challenge brought in Appellant's Brief. Appellant filed a timely Notice of Appeal from the Judgment on November 4, 2025. (SR 767).

LEGAL ISSUES

I. Did the Circuit Court err in denying judgment in favor of Bialota?

Comment: The Circuit Court considered this case anew and denied Bialota's motion for a determination that Bialota was entitled to a judgment quieting title.

Most Relevant Authorities:

J. Clancy, Inc. v. Khan Comfort, LLC, 2022 S.D. 68, 982 N.W.2d 35

II. Was Taunton entitled to redeem the tax deed?

Comment: The Circuit Court allowed Taunton to redeem the tax deed.

Most Relevant Authorities:

SDCL § 21-42-10
257-261 20th Ave., Realty, LLC v. Roberto, 259 N.J. 417, 327 A.3d 1177 (2025)

III. Did Bialota bring a reviewable constitutional violation claim?

Comment: Bialota did not assert a constitutional violation claim before the Circuit Court, and the Circuit Court did not issue a ruling on constitutional challenges.

Most Relevant Authorities:

> *SDCL § 15-26A-7*
> Tyler v. Hennepin County, 598 U.S. 631 (2023)

IV. Did the Circuit Court abuse its discretion in denying Bialota's Motion for Relief Under Rule 60(b)(3)?

Comment: The Circuit Court denied Bialota's claim for relief.

Most Relevant Authorities:

> SDCL § 15-6-60(b)
> In re Ibanez, 2013 S.D. 45, 834 N.W.2d 306

STATEMENT OF THE CASE

Bialota commenced this action to quiet title to certain real property which had been subject to tax deed proceedings. (SR 2). Lakota Lakes LLC filed counterclaims for declaratory relief to void the tax deed and return the property to Lakota Lakes LLC. (SR 35). Bialota previously appealed the Circuit Court's December 1, 2021, Judgment, which Court granted Lakota Lakes's motion for summary judgment on its Counterclaim and declared the tax deed invalid. (SR 288). Upon rehearing, this Supreme Court reversed and remanded to the circuit court. (SR 390).

On remand, Bialota moved for a determination that Bialota was entitled to a judgment quieting title. (SR 394). On September 10, 2024, the Circuit Court denied Bialota's motion and issued an Order. (SR 467). Taunton moved to make redemption. (SR 463). Lakota Lakes and Tauntons gave notice of a constitutional challenge and moved to add Pennington County as a third-party defendant. (SR 487). Bialota stipulated to Lakota Lakes asserting a third-party complaint against

Pennington County. (SR 515). Pennington County then moved to dismiss the third-party complaint. (SR 615). Lakota Lakes also moved for summary judgment seeking a declaration that South Dakota's tax deed statutory scheme is unconstitutional and Bialota is not entitled to quiet title. (SR 520). On April 30, 2025, the Circuit Court granted Taunton's motion to make redemption and issued an Order Regarding Defendant's Motion to Determine Tax and Motion to Make Redemption. (App. 2). Taunton then moved to deposit redemption funds. (SR 641). Bialota moved for relief under Rule 60(b). (SR 644). The Circuit Court entered a Judgment on October 6, 2025, which denied Bialota's motion for relief under Rule 60(b), granted Taunton's motion for deposit of funds, denied Lakota Lakes's motion for summary judgment as moot, denied Pennington County's motion to dismiss as moot, and dismissed Bialota's Complaint. (App. 1). Bialota appealed the Judgment. (SR 767).

STATEMENT OF FACTS

Peter and Kristin Taunton conveyed the property that is the subject of this quiet title action to Lakota Lakes LLC on June 4, 2009. (SR 241). Real estate taxes assessed for the property in 2015 and due in 2016 were not paid. (SR 241). On December 19, 2016, the Pennington County Treasurer conducted a tax sale and acquired a treasurer's certificate of tax sale for the property. (SR 241). On October 27, 2020, Pennington County assigned the treasurer's certificate of tax sale to Bialota in exchange for Bialota's payment of the real estate taxes for 2015 through 2020. (SR 241). The Pennington County Treasurer issued a Treasurer's Deed to Bialota on January 11, 2021. (SR 241). The Pennington County Treasurer issued a Certificate of Redemption to Taunton on October 10, 2025. (SR 780).

STANDARD OF REVIEW

The standard of review on the Circuit Court's legal conclusions are reviewed de novo. A decision to grant or deny relief from a judgment based on Rule 60(b) is reviewed under the abuse of discretion standard. "An abuse of discretion consists of 'a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence.' " Schwartz v. Palachuk, 1999 SD 100, ¶ 16, 597 N.W.2d 442, 446 (quoting Hrachovec v. Kaarup, 516 N.W.2d 309, 311 (S.D.1994)). The test for finding an abuse of discretion is " 'whether we believe a judicial mind, in view of the law and the circumstances, could reasonably have reached the conclusion.' " Glover v. Krambeck, 2007 S.D. 11, ¶ 9, 727 N.W.2d 801, 804. (quoting Hrachovec, 516 N.W.2d at 311; Dacy v. Gors, 471 N.W.2d 576, 580 (S.D.1991)). Whether a court abused its discretion remains contextual with the nature of the case, and an abuse of discretion is generally understood as "a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable." In re Ibanez, 2013 S.D. 45, ¶ 20, 834 N.W.2d 306, 311–12 (quoting Arneson v. Arneson, 2003 S.D. 125, ¶ 14, 670 N.W.2d 904, 910).

ARGUMENT

I. The Circuit Court properly considered this case anew.

This Court should first consider whether the Circuit Court was obligated to perfect title in Bialota. Bialota argues that the trial court committed reversible error by ignoring this Supreme Court. She argues that the lower court was mandated to award quiet title to Bialota after this Supreme Court found that Lakota Lakes LLC was properly served and failed to redeem and that Bialota was entitled to a tax deed. This Court has held, "[t]he mandate of this court ordering a reversal of a judgment without other direction nullifies the judgment, findings of facts, and conclusions of law, and leaves the case standing as if no judgment or decree had ever been entered.'" J. Clancy, Inc. v. Khan Comfort, LLC, 2022 S.D. 68, ¶ 12, 982 N.W.2d 35, 41 (quoting Gluscic v. Avera St. Luke's, 2002 S.D. 93, ¶ 20, 649 N.W.2d 916, 920). Upon a reversal and remand, this Supreme Court's mandate "clearly permitted and indeed required the circuit court to reconsider its factual findings and legal conclusions in light of [the] holding." Id. ¶11. After this case was decided on appeal in February of 2024, all questions of fact were reopened, and this case was given a fresh start. The opinion of this Supreme Court simply reversed Judge Mandel's cancellation of the tax deed instrument and ordered further proceedings consistent with the opinion that Lakota Lakes was served with notice of Bialota's intention to take a tax deed and that Lakota Lakes failed to redeem.

Bialota's argument fails to identify specifically the mandate she seeks to enforce. This Supreme Court did not mandate that judgment be entered in favor of Bialota. As the Circuit Court aptly noted in its April 30, 2025 Order, although the South Dakota Supreme Court issued an opinion on October 25, 2023, reversing and remanding "with directions for the circuit court to enter judgment as a matter of law quieting title to the real property in favor of Bialota," the South Dakota Supreme Court later granted rehearing and withdrew its 2023 opinion on February 7, 2024. (SR 627). The amended opinion did not conclude that Bialota was entitled to a judgment of quiet title or summary judgment, but instead, this Court "reverse[d] and remand[ed] with directions for further proceedings consistent with this opinion[,]" omitting any directive to enter judgment for quiet title to

Bialota. (SR 629). This reversal and remand "le[ft] the case standing as if no judgment or decree had ever been entered." J. Clancy, 2022 S.D. 68, ¶ 16, 982 N.W.2d at 42.

Contrary to the assertion by Bialota, this Supreme Court clearly declined to order judgment in favor of plaintiff when it granted rehearing and amended its initial opinion which would have granted a quiet title judgment to plaintiff. This Court specifically changed its opinion to omit such a mandate and simply ordered further proceedings on remand. In arguing the circuit court was required to enter judgment in favor of plaintiff, Bialota conflates a tax deed with quiet title. The mere fact of holding a tax deed does not automatically entitle Bialota to a quiet title judgment. If merely having a tax deed was sufficient to quiet title in favor of the tax deed holder, Bialota's action would have been unnecessary. By bringing the action, Bialota implies that a quiet title judgment requires more than holding a tax deed. There was no mandate to quiet title in favor of Bialota, and the Circuit Court was within its authority to consider other defenses and all questions of fact as if no judgment or decree had ever been entered. After an adjudication that the plaintiff held a tax deed, other statutory proceedings and remedies were made available, including the requirements for proving a quiet title judgment, to conduct an auction in accordance with SDCL 10-25-39.2, and to allow redemption under SDCL 21-42-10. The circuit court's rulings on remand were not inconsistent with Lakota Lakes failing to redeem a tax sale certificate. No determination was made that the defendants could not redeem the tax deed during these pending proceedings. Allowing redemption by a separate defendant in a pending action was consistent with the February 2024 Supreme Court opinion. Thus, the circuit court was not mandated to quiet title to Plaintiff.

II. The Circuit Court correctly allowed Taunton to redeem

The central issue in this appeal is whether the redemption statute is valid and applicable. Following remand, Taunton moved for an Order determining the amount which should have been legally paid for tax relating to the subject tax sale certificate, pursuant to SDCL § 10-27-5, and Taunton further moved to make redemption pursuant to SDCL § 21-42-10. This statute provides in pertinent part:

> Any defendant to an action may make redemption of the lands from tax sales by paying the total amount of delinquent taxes, penalties and interest thereon at the Category D rate of interest as established in § 54-3-16, which shall have been paid by the plaintiff or which is due the county, if the county is plaintiff, together with costs of the action. Upon payment, a certificate of redemption shall be issued by the county treasurer of the county to the defendant and the action shall be dismissed. ...

The legislature has spoken that any defendant in a quiet title action relating to a tax deed or tax sale certificate is entitled to redeem. This statutory right is unqualified. Taunton is a defendant to this action. Bialota named Taunton as a party. Taunton had an unqualified right to make redemption, and upon the county treasurer issuing a certificate of redemption, this action and all claims under it would have been resolved and dismissed. The Circuit Court correctly applied the law and allowed Taunton to redeem.

Plaintiff argues that SDCL § 10-25-8.1 precludes redemption. When Bialota made this argument to the Circuit Court, it was rejected because the Circuit Court, armed with precedent of <u>Tyler v. Hennepin County</u>, 598 U.S. 631 (2023), had found SDCL § 10-25-8.1 to be unconstitutional in another circuit court action <u>Tres Ag Services, LLC v. Irvine</u>, (Custer County, 16CIV23-00043). (App 2). Although this Supreme Court determined that Lakota Lakes LLC had in fact failed to redeem, service on Lakota Lakes LLC and its failure to redeem in the tax sale certificate proceedings prior to issuance of a deed is inconsequential to other defendants in light of SDCL § 21-42-10. No determination was made with regard to the other named defendants who had not previously had an opportunity to redeem. Prior to issuance of the tax deed, Taunton was not afforded an opportunity to redeem until Plaintiff named them in a quiet title action. SDCL § 10-25-8.1 would have only applied to Lakota Lakes who had been provided notice of Bialota's intention to take a tax deed. Taunton had not been served with Bialota's notice to take tax deed, and under SDCL § 21-42-10, as a defendant in a pending action, Taunton was able to redeem and properly made redemption. SDCL § 10-25-8.1 should not be interpreted as limiting the application of SDCL § 21-42-10, and Taunton had a right to redeem.

This Supreme Court can look to similar cases in other jurisdictions for guidance on the right to redeem. In New Jersey, the state Supreme Court encountered strikingly similar case posture and comparable state law. In 257-261 20th Ave., Realty, LLC v. Roberto, 259 N.J. 417, 327 A.3d 1177 (2025), the New Jersey Supreme Court upheld the owner's right to redeem on a second round in the trial court after a judgment foreclosing redemption was vacated. Id. at 449. The tax lienholder obtained a judgment, which was vacated, and during subsequent proceedings, the taxpayer was able to redeem. Id. at 430. The Court affirmed the application of state statute which provided that the owner can still redeem at any time before the right to redeem is cut off or final judgment is entered. Id. at 433 (citing N.J.S.A. 54:5-54; R. 4:64-6). Like the Court in Roberto, this Court should affirm application of the state redemption statute.

Further, Bialota argues that Taunton could not redeem because he did not hold an ownership interest, relying upon Healy Ranch Inc. v. Healy, 2022 S.D. 43, 978 N.W.2d 786. The Healy decision, however, is in applicable. The facts are distinguishable, and the legal authorities center around South Dakota Marketable Title Act and principles of res judicata and do not relate to tax deed proceedings. Bialota suggests that SDCL § 21-42-10 can only apply before a tax deed is issued. Contrary to Bialota's suggestion, the statute applies both to quiet title proceedings involving a tax sale certificate and after a tax deed is issued. The chapter is premised on the principle that " any purchaser of property at tax sale, desiring a tax deed for any such property *or desiring to quiet the title to property already covered by tax deeds* may bring an action in the circuit court for the county within which such real property is situated." SDCL § 21-42-1 (emphasis added). Clearly, the legislature contemplated situations in which a purchaser obtained a tax deed, filed a quiet title action, and any defendant would be able to redeem under SDCL § 21-42-10. Bialota sought to quiet title against Lakota Lakes, Tauntons, and "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property." (SR 1). Taunton claims an interest in the property. Taunton's taxpayer status appears in the record on a receipt produced by Bialota. (SR 478). Additionally, Taunton or Lakota Lakes has paid subsequent taxes and HOA dues and assessments. Taunton has an interest in the real property having contributed the property to Lakota Lakes LLC. Bialota named Taunton in the action and thereby alleged that Taunton has an interest in the real property that ought to be adjudicated. Thus, the Circuit Court did not err when it concluded Taunton could redeem.

By arguing that the Circuit Court should not have allowed Taunton to redeem, Bialota urges this Court to amend SDCL § 21-42-10 and insert language that a defendant's right to redeem in a quiet title action is limited by SDCL § 10-25-8.1. The South Dakota Supreme Court has held that "It is not the task of this court to revise or amend statutes, or to 'liberally construe a statute to avoid a seemingly harsh result where such action would do violence to the plain meaning of the statute under construction.'" Moore v. Michelin Tire Co., 1999 SD 152, ¶ 21, 603 N.W.2d 513, 519. "[T]he legislature is best suited to make policy decisions." Hagemann ex rel. Est. of Hagemann v. NJS Eng'g, Inc., 2001 S.D. 102, 632 N.W.2d 840, 846 n9. The Court "'should not speculate or second guess the legislature in its exercise of this constitutional prerogative.' This Court cannot supplant its own agenda for that of the Legislature." Id. at n7 (quoting Baatz v. Arrow Bar, 426 N.W.2d 298, 309 (S.D.1988) (C.J. Miller, dissenting).

> The intent of a statute is determined from what the legislature said, rather than what the courts think it should have said, and the court must confine itself to the language used. Words and phrases in a statute must be given their plain meaning and effect. When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the Court's only function is to declare the meaning of the statute as clearly expressed.

MGA Ins. Co., Inc. v. Goodsell, 2005 S.D. 118, ¶ 9, 707 N.W.2d 483 (quoting State v. Myrl & Roy's Paving, Inc., 2004 S.D. 98, ¶ 6, 686 N.W.2d 651, 653-54). In this case, statute is clear and unambiguous that any defendant in such an action may redeem. The legislature could have written the statute to provide otherwise but presumably intended to allow redemption from a tax deed in a pending action. The plain meaning and effect of the statute entitles Taunton to redeem, and the judgment dismissing the action should be affirmed.

III. Bialota has not sufficiently brought a constitutional claim that is reviewable.

Bialota's constitutional claim is not properly before this Supreme Court. Bialota did not bring a constitutional claim before the circuit court. Bialota only asserts a sandbag claim that she "will bring a Third-Party Complaint against Pennington County." There was no issue before the circuit court, and no ruling to review. Appellate procedure statute provides in pertinent part, "On appeal from a judgment the Supreme Court may review any order, ruling, or determination of the trial court … and whether any such order, ruling, or determination is made before or after judgment involving the merits and necessarily affecting the judgment and appearing upon the record. SDCL § 15-26A-7. This Supreme Court has adopted the policy that it will not address unpreserved claims on appeal. See J. Clancy,, 2021 S.D. 9, ¶41, 955 N.W.2d at 396 ("J. Clancy did not present the argument to the circuit court that Khan Comfort converted its property. It is our policy not to address unpreserved claims on appeal.") (citing People in Interest of M.S., 2014 S.D. 17, ¶ 17 n.4, 845 N.W.2d. 366, 371 n.4). The only constitutional claim brought to the circuit court was Lakota Lakes's unconstitutional taking claim brought against Pennington County, which was deemed moot after Taunton's redemption. Bialota has flipped the constitutional claim on its head. Following the Supreme Court of the United States' decision in Tyler v. Hennepin County and its progeny, Lakota Lakes brought constitutional violation claims against Pennington County. Defendants' claims were made moot when Taunton redeemed. Bialota was not deprived of property without just compensation. She was paid back her investment with interest and costs. Bialota does not have a constitutional violation claim.

IV. Pennington County is a party to this action.

Bialota next argues that the circuit court erred in failing to decide whether Pennington County was a proper party to this action. Bialota stipulated to Lakota Lakes asserting a third-party complaint against Pennington County. (SR 515). Pennington County thereafter became a party to this action. After Taunton redeemed, the action was dismissed, and Lakota Lakes's claim against Pennington County was deemed moot. Bialota suggests that Pennington County needs to remain involved to resolve the constitutional claims and pay Bialota just compensation if Bialota does not ultimately own the property and is not a state actor. As argued above, Bialota did not bring compensation claims against Pennington County and cannot assert them now. The circuit court was not presented with the question of determining whether Pennington County was a proper party. Nonetheless, Pennington County is still a party in this pending appeal. Bialota is not aggrieved, and there is no issue to review.

V. The Circuit Court did not abuse its discretion in denying Bialota's Rule 60(b) relief.

Bialota's rule 60(b) claim for relief is a diversion from the real issues in this case. After the Circuit Court had determined that Taunton could redeem, Bialota moved for relief from the ruling based on SDCL 15-6-60(b)(3), arguing Defendants had defrauded the circuit court. The rule upon which Bialota relies provides that "the court may relieve a party or his legal representative from a final judgment, order, or proceeding for … Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party. …" SDCL § 15-6-60(b). When the circuit court's decision involves disputed facts, "[t]he decision to grant or deny a Rule 60(b) motion rests within the sound discretion of the [trial] court and will not be disturbed on appeal except for an abuse of discretion." Corcoran v. McCarthy, 2010 S.D. 7, ¶ 13, 778 N.W.2d 141, 146; but, see Rabo Agrifinance, Inc. v. Rock Creek Farms, 2013 S.D. 64, ¶ 11, 836 N.W.2d 631, 636 (quoting Lowry v. McDonnell Douglas Corp., 211 F.3d 457, 460 (8th Cir.2000); Spinar v. S.D. Bd. of Regents, 796 F.2d 1060, 1062 (8th Cir.1986) (stating that "'we review the district court's power to entertain a motion for relief' in the first instance de novo"). "The purpose of Rule 60(b) is to preserve the delicate balance between the sanctity of final judgments and the incessant command of a court's conscious [sic] that justice be done in light of all of the facts." Glover v. Krambeck, 2007 S.D. 11, ¶ 10, 727 N.W.2d 801, 804 (quoting Reaser v. Reaser, 2004 S.D. 116, ¶ 16, 688 N.W.2d 429, 434).

Bialota's fraud argument in this case in an effort to prevent Taunton's redemption misses the point. Bialota argued that Taunton testified falsely about his residency and represented an inflated purchase price of the property at issue to sway the circuit court. Both issues – Taunton's place of residence and the price Tauntons paid for the property – have no bearing on the validity of the tax deed proceedings, the ability to redeem, or the issues before the Circuit Court. Taunton never claimed to be a resident of South Dakota and did not rely on being a resident of South Dakota to seek redemption. Lakota Lakes's identification of a registered agent did not equate to a residency representation to the Court. Taunton could redeem the property as a resident of any state. Likewise, Tauntons' purchase price for the property was not relied upon as grounds for redemption. The purchase price was represented by an affidavit in August of 2021 to provide the circuit court with context for how he acquired the property, the amenities that were included with the property, and his active listing to sell the property at the time the tax deed was issued. (SR 180). The representation was corroborated by public records showing a transfer fee for Taunton's purchase. (SR 105). This affidavit was presented to Hon. Robert Mandel; it was not argued to Hon. Heidi Linngren in Taunton's recent motion to allow redemption of the property. Still, Bialota has not presented reliable evidence to dispute the purchase price represented by Taunton and reflected in public records, and this fact was not established as false testimony. The arguments of deception and misrepresentation are not pertinent to the issues before the circuit court or this Court.

In seeking relief based on fraud to the circuit court, Bialota bears a steep burden that she has not met. Relief under SDCL 15–6–60(b) is extraordinary, warranted only in exceptional circumstances. In re Ibanez, 2013 S.D. 45, ¶ 35, 834 N.W.2d 306, 316. "[T]o set aside a judgment or order because of fraud upon the court under Rule 60(b), ... it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision." Gifford v. Bowling, 86 S.D. 615, 625, 200 N.W.2d 379, 384 (1972) (alteration in original). "Such fraud must involve egregious conduct causing injury to more than a single litigant and must seriously affect the integrity of the judicial process." Ibanez, 2013 S.D. 45, ¶ 21, 834 N.W.2d at 312 (citing 12 James Wm. Moore et al., MOORE'S FEDERAL PRACTICE § 60.21(4)(a) (3d ed. 2013). "Examples are bribery of judges, employment of counsel to 'influence' the court, bribery of the jury, and the involvement of an attorney (an officer of the court) in the perpetration of fraud." Id. (quoting Gifford, 86 S.D. at 625, 200 N.W.2d at 384). Here, there is no showing of a scheme or plan to improperly influence the circuit court, and Bialota has not shown a class of fraud that defiled the circuit court. Taunton did not defraud the Circuit Court or misrepresent the price paid for the property at issue. By denying Bialota relief, the Circuit Court impliedly did not find that Taunton testified falsely or deceived the Court. The Circuit Court did not abuse its discretion in denying Bialota Rule 60(b) relief.

CONCLUSION

Based on the foregoing, the Circuit Court's Judgment allowing redemption and dismissing the Complaint was not erroneous. Bialota has not presented reviewable constitutional violation claims. The Circuit Court reasonably denied Rule 60(b) relief and appropriately dismissed the action after Taunton redeemed. Appellees respectfully request this Court affirm the Circuit Court.

REQUEST FOR ORAL ARGUMENT

Appellees respectfully request oral argument.

Dated this 19th day of February, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Nathan R. Chicoine of DeMersseman Jensen Tellinghuisen & Huffman, LLP hereby certifies that on the 19th day of February, 2026, he served an electronic copy of the foregoing Appellees Lakota Lakes, LLC, Peter J. Taunton, and Kristin M. Taunton's Brief in the above-captioned action on the following:

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CERTIFICATE OF COMPLIANCE

This brief is submitted under SDCL § 15-26A-66(b). I certify that the brief complies with the type volume limitation. In reliance upon the document properties provided by Microsoft Word, in which this brief was prepared, the brief contains 4,017 words and 20,367 characters, excluding the table of contents, table of cases, preliminary statement, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel.

DATED this 19th day of February, 2026.

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CERTIFICATE OF PROOF OF FILING

The undersigned hereby certifies that pursuant to SDCL § 15-26C-3 he served an electronic copy via eFileSD, and the original of the above and foregoing Appellees Lakota Lakes, LLC, Peter J. Taunton, and Kristin M. Taunton's Brief on the Clerk of the Supreme Court by mailing the same this date to the following address:

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DATED this 19th day of February, 2026.

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA
Appeal No. 31286

EMILY BIALOTA,
Appellant,

vs.

LAKOTA LAKES, LLC, a Minnesota Limited
PETER J. TAUNTON, KRISTIN M.
TAUNTON, and all persons unknown,
claiming any legal or equitable right, title, estate,
lien, or interest in the property described in the
complaint adverse to plaintiff's title or a cloud
on Plaintiff's title thereto,

PENNINGTON COUNTY,
Appellees.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

HONORABLE HEIDI L. LINNGREN
Circuit Court Judge

APPELLANT'S REPLY BRIEF

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Notice of Appeal filed on November 4, 2025

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JURISDICTIONAL STATEMENT

Plaintiff-Appellant Emily Bialota, hereinafter referred to as "Bialota," adamantly opposes Defendants-Appellees Lakota Lakes LLC,'s a Minnesota Liability Limited Liability Company ("Lakota Lakes,") Peter J. Taunton's ("Taunton") and Kristin M. Taunton's ("Kristin") Jurisdicional Statement. For the reasons stated in the argument portion of this brief, the Trial Court violated the edicts and directives of this Court by granting Taunton's motion to redeem the property and by dismissing Bialota's quiet title complaint. Lakota Lakes filed a petition for rehearing on November 14, 2023 alleging the service of process acknowledgment did not constitute adequate proof of service or delivery. This Court entered an order granting a rehearing on February 7, 2024, withdrew its opinion of October 25, 2023 and rendered its opinion of February 7, 2024. *Bialota v. Lakota Lakes, LLC*, 2024 S.D. 7. In both its original and revised opinions, this Court determined that Lakota Lakes failed to redeem the property timely and that Bialota was entitled to a tax deed to the property. *Bialota*, 2024 S.D. at 7, ¶24. This Court reversed the Trial Court's Order canceling Bialota's tax deed and remand with directions for further proceedings consistent with its opinion. *Bialota*, 2024 S.D. at 7, ¶¶24-25. This Court did not allow the Trial Court to consider the case anew as Appellees contend. For the reasons stated in the argument portion of this brief, Bialota also takes issue with Appellees' statement that this Court lacks jurisdiction to review Bialota's constitutional claim, because Bialota is not challenging the constitutionality of the statute, rather she argued to the Trial Court that she would be deprived of a property right without due process if Taunton is allowed to redeem the property.

STATEMENT OF THE LEGAL ISSUES

Bialota does not take issue with Appellees' Statement of the Legal Issues.

STATEMENT OF THE CASE

Bialota does not take issue with Appellees' Statement of the Case.

STATEMENT OF THE FACTS

Bialota does not take issue with Appellees' Statement of the Facts.

ARGUMENT - STANDARD OF REVIEW

Bialota does not take issue with Appellees' Standard of Review.

ARGUMENT

I. **The Trial Court Committed Clear Error in Ignoring this Court's Edicts and in Considered This Case Anew**.

Contrary to Appellees' contention, this Court did not allow the Trial Court to consider the case anew. The Trial Court committed reversible error in doing so. This Court in its opinion of February 7, 2024 determined that, "Lakota Lakes failed to redeem the property during this window (within the redemption time period) and that Bialota was entitled to the tax deed to the property." *Bialota*, 2024 S.D. at 7, ¶24. Both Appellees and the Trial Court completely ignored this Court's determination that Bialota was entitled to a tax deed to the property. Appellees also ignore Bialota's recitation of legal authority requiring a Trial Court to follow the edicts and directives of this Court. This Court requires a circuit court to follow its directives to the letter. *State v. Piper*, 2014 S.D. 2, ¶11, 842 N.W.2d 338. The Trial Court's allowing Taunton to redeem notwithstanding this Court's determination that Bialota was entitled to a tax deed is in direct conflict with this Court's opinions of both October 25, 2023 and February 7, 2024.

Appellees argue that because this Court eliminated its reference to an order quieting title in its opinion of February 7, 2024, that existed in its opinion of October 25, 2023, that "all questions of fact were reopened, and this case was given a fresh start." Appellees' Brief p. 9. Appellees rely upon *J. Clancy, Inc. v. Khan Comfort, LLC*, 2022 S.D. 68, ¶11, as authority for this contention. *J. Clancy, Inc.*, Id., is not authority for the proposition that a Trial Court can ignore directions and edicts of this Court. Quiet the opposite, this Court stated in *J. Clancy, Inc.*, Id. ¶11, that, "[o]ur mandate clearly permitted and indeed required the circuit court to reconsider its factual findings and legal conclusions in light of our holding that the provisions of the contract controlled as a matter of law. The issue raised by appellant in *J. Clancy, Inc.*, Id., was that, "the initial findings of fact were supported by the evidence, and therefore the findings of fact on remand that depart from the original findings are clearly erroneous." *J. Clancy, Inc.*, Id., ¶11. In *J. Clancy, Inc.*, Id., ¶11, this Court stated that, "[w]e need not compare findings of fact on remand to the vacated initial findings of fact to decide which most closely align with what a fact finder could have reasonably determined from the evidence." Moreover, in *J. Clancy, Inc.*, Id. ¶12, this Court stated that:

> [t]his Court is the highest court of the state," S.D. Const. art. V, § 2, and vested with the "authority to mandate the scope of review on limited remand." State v. Berget, 2014 S.D. 61, ¶ 17, 853 N.W.2d 45, 52. Thus, "the scope of the circuit court's jurisdiction [on remand] must conform to the dictates of our opinion." State v. Piper, 2014 S.D. 2, ¶ 10, 842 N.W.2d 338, 343. This protects "the defined roles of our tiered judicial system . . . and the judicial certainty and efficiency they foster.

This case is distinguishable from *J. Clancy, Inc.*, Id., because this Court reversed without direction in *J. Clancy, Inc.*, Id. ¶12. This Court did not order reversal of a judgment without directions here, as Appellees suggests. Here this Court reversed with directions; it determined that Bialota was entitled to a tax deed and it reversed requiring the Trial Court to conduct further proceedings consistent with its opinion. *Bialota*, 2024 S.D. at 7, ¶25. Here, the Trial Court did not make inconsistent factual findings, rather it ignored the edicts and directives of this Court. It commited reversible error in doing so. Both Appellees and the Trial Court ignored this Court's limited remand.

Contrary to Appellees' contention Bialota has identified the mandate she seeks to enforce. Bialota seeks enforcement of this Court's determination that Lakota Lakes failed to redeem timely and that Bialota is entitled to a tax deed. Bialota seeks a mandate from this Court that title to the property be quieted in her name. In her first appeal, this Court reversed the Trial Court's cancellation of Bialota's tax deed. In this appeal this Court should reverse the Trial Court's allowing Taunton to redeem and dismissing Bialota's quiet title complaint. The Trial Court has conducted further proceedings inconsistent with this Court's opinion by entering an order dismissing Bialota's quiet title complaint and invalidating her tax deed. If the Trial Court's actions are allowed to stand, this Court's determination that Lakota Lakes did not redeem timely and that Bialota was entitled to a tax deed would be of no legal effect, because Taunton has been allowed to redeem the property thereby stripping Bialota of her absolute ownership of the property.

Contrary to Appellee's contention, this Court, has at least implicitly, mandated that the Trial Court issue an order quieting title in Bialota's name. As discussed further infra, the issuance of a tax deed conveys an absolute estate in fee simple to the property. SDCL § 10-25-12. This statute has the same effect as an order quieting title. Bialota commenced her quiet title action to make her property more marketable by making title insurance available to a potential buyer.

Taunton cannot redeem the property, because he lacked an ownership interest in the property when he redeemed it, as discussed further infra. SDCL § 10-25-8.1 and SDCL § 10-25-12. For this reason, the Trial Court's allowing redemption is wholly inconsistent with this Court's February 7, 2024 opinion, because this Court determined Bialota was is entitled to a tax deed.

Appellees reference to the current requirement under our tax deed statutes that an auction be held in accordance with SDCL § 10-25-39.2. This statute is of no import here. SDCL § 10-25-39.2 was not enacted until well after the property was conveyed to Bialota by tax deed. Appellees cite no authority for the proposition that SDCL § 10-25-39.2 is to be applied retroactively, nor is any such authority known to exist.

II. The Trial Court Committed clear Error in Allowing Taunton to Redeem.

Contrary to Appellees' contention, the Trial Court committed clear error in allowing Taunton to redeem the property. As indicated supra, this Court determined that Bialota is entitled to a tax deed. Appellees have ignored completely Bialota's contention that SDCL § 21-42-10 is wholly inconsistent with SDCL § 10-25-8, SDCL § 10-25-8.1 and SDCL § 10-25-12. Both the Trial Court and Appellees have ignored entirely the effect of SDCL § 10-25-8.1, which is to pass all right, title, and interest of the prior owner of real property to the holder of the tax certificate. South Dakota law also provides that a deed acquired pursuant to SDCL § 10-25-39.1 or SDCL §10-25-39.2 vests the grantee an absolute estate in fee simple in the real property. SDCL § 10-25-12. Instead of giving effect to SDCL § 10-25-12, the Trial Court stripped Bialota of her absolute estate in fee simple in the property by allowing Taunton to redeem it in violation of the clear edicts of this Court that she was entitled to a tax deed. The Trial Court committed reversible error in doing so.

Appellees cite no legal authority for the contention that a Trial Court may ignore the directives and edicts of this Court if a change in law has occurred after this Court's opinion was entered. Instead, Appellees argue that, SDCL § 10-25-8.1 does not preclude redemption, because, "... (the Trial Court) was armed with the president of *Tyler v. Hennepin County*, 598 U.S. 631, 143 S.Ct. 1369, 215 L.Ed.2d 564 (2023)." The Trial Court's order being appealed from, which allowed Taunton to redeem, makes no mention of either *Tyler*, Id., or *Tres Ag Services, LLC v. Irvine* (16CIV23-000043). Similarly, no other order entered by the Trial Court in this case references either *Tyler*, Id., its progeny or the *Tres Ag Services, LLC* case. Moreover, the *Tres Ag Services, LLC*, Id., case is a circuit court case and is therefore not binding legal authority. The constitutionality of our tax deed statutes was not decided by the Trial Court; it therefore is not pertinent to the issues before this Court.

Contrary to Appellees' contention, Bialota has not argued that SDCL § 21-42-10 is only applicable prior to the issuance of a tax deed. Such an argument would make no sense. A tax certificate holder would not bring a quiet title action prior to the issuance of a tax deed, because it would not have "record" title to the property until the tax deed is issued. SDCL § 10-25-12. Bialota's position is that SDCL § 21-42-10 is wholly inconsistent with both SDCL § 10-25-8.1 and SDCL § 10-25-12, which clearly states that a tax certificate holder has an absolute fee to the property and that tax deed conveys absolute estate in fee simple to the grantee. It would be impossible for a redemption to restore title to a third party, such as Taunton, in a quiet title action when there is no ownership interest in property remaining to reconvey. The fact that Taunton was named as a defendant in this Quiet Title action does not impact this analysis. For this reason, Taunton does not have an unqualified right to make redemption as Appellees contend. Bialota had an absolute estate in fee simple to the property when Taunton redeemed it. SDCL § 10-25-12. Taunton was a stranger to the title to the property.

Contrary to Appellees' contention, Bialota is not asking this Court to either make a policy decision or supplant its own agenda for that of the legislature in interpreting the interplay of SDCL § 21-42-10, SDCL § 10-25-8.1 and SDCL § 10-25-12. Rather, Bialota is contending that SDCL § 21-42-10 is wholly inconsistent with both SDCL § 10-25-8.1 and SDCL § 10-25-12. These statutes cannot be harmonized. This Court certainly has the authority to interperte conflicting statutes to determine if the statutes can be harmonize and thereby giving effect to both statutes. See, *Thurman v. Zandstra Construction*, 2010 S.D. 46, 785 N.W.2d 268. In this context SDCL § 21-42-10 is of no import, because Appellees lacked any ownership interest in the property to redeem once a tax deed has issued.

Contrary to Appellees' contention, Bialota was not required to serve Taunton with a notice of intent to take tax deed. The requirements for the issuance of a tax deed are:

> The notice of intention to take a tax deed shall be served on the owner of record of the real property, the person in possession of the real property, the person in whose name the real property is taxed, and the mortgagee named in any unsatisfied mortgage in force on the real property of record in the office of the register of deeds of the county where the real property is located. . . . The notice of intention to take a tax deed shall also be served on any lienholder, any creditor of record, and other interested person as may appear from the records in the office of the register of deeds, the treasurer, or the clerk of courts. . . .

SDCL § 10-25-3. Lakota Lakes was the only person or entity that had to be served personally with a copy of the Notice of Intent to Take Tax Deed ("NITTD,") dated

October 27, 2020. Lakota Lakes was the only owner of record of the Property when Bialota acquired the tax certificate. Rec. p. 135. The property was and is still vacant land. Rec. pp. 153-154. No person was possessing it when Bialota served the NITTD. Rec. pp. 153-154. No mortgage was recorded against the Property. Rec. pp. 153-154. No liens were filed against the Property. Rec. p. 135. In short, Taunton was not entitled to notice of the NITTD under SDCL § 10-25-3.

III. <u>**Bialota has Preserved Her Deprivation of Property Claim.**</u>

Contrary to Appellees' contention, Bialota has preserved her deprivation of property without due process claim by arguing this claim to the Trial Court. See, *State v. Willingham*, 2019 S.D. 55, ¶25. This issue was brought before the Trial Court. See, *Robinson-Podoll v. Harmelink, Fox, & Ravnsborg Law Office*, 2020 S.D. 5, ¶30. Bialota argued to the Trial Court that it would be a deprivation of property without due process if it invalidated her tax deed based upon *Tyler*, at 598 U.S. 631, and its progeny. Specifically, Bialota argued in her reply to Appellees' response to her motion for a determination that she is entitled to a judgment and order quieting title, filed May 3, 2024, that:

> Both our state and the federal constitution prohibit the government from taking private property without just compensation. *Hubbard v. City of Pierre*, 2010 S.D. 55, ¶10, 784 N.W.2d 499; citing *Village of Norwood v. Baker*, 172 U.S. 269, 279, 19 S. Ct. 187, 190-91, 43 L. Ed. 443 (1898). The Fifth Amendment of the United States Constitution provides that "[n]o person shall be … deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." U.S. Const. amend. V. The South Dakota Constitution provides that "[p]rivate property shall not be taken for public use, or damaged, without just compensation, which will be determined according to legal procedure established by the Legislature[.]" S.D. Const. Art. VI, § 13. Furthermore, the South Dakota Due Process Clause provides that "[n]o person shall be deprived of life, liberty or property without due process of law." S.D. Const. Art. VI, § 2.

Moreover, Bialota is not challenging the constitutionality of SDCL § 21-42-10 or any other South Dakota statute. Furthermore, the Trial Court did not address this issue. As indicated supra, the Trial Court made no determination whatsoever concerning the effect of *Tyler*, at 598 U.S. 631, case or its progeny.

Contrary to Appellee's contention, Bialota certainly is not made whole by Taunton paying the redemption monies to her. Bialota acquired absolute ownership of the property when she was issued a Treasurer's deed. SDCL § 10-25-12. It is uncontroverted that the property is worth much more than the taxes owed against it when the Treasurer's Deed was issued to Bialota.

IV. <u>The Issue of Whether Pennington County is a Proper Party is not Moot.</u>

Appellees failed to address Bialota's contention that the issue of whether Pennington County is a proper party to this case is not moot. The fact that Bialota stipulated to Appellees bringing a third-party claim against Pennington County is not determinative of the issue whether she was deprived of a property right without due process or whether Pennington County should be liable for any damages suffered by Appellees. See, *Nieveen v. Tax 106*, 317 Neb. 425, 10 N.W.3d 365 (Neb. 2024). Instead of determining these issues, the Trial Court determined that the issues are moot. Appellees do not cite any legal authority for the proposition that this issue is moot. Furthermore, Bialota would have the right to bring a third-party action against Pennington County upon the Trial Court's denial of Pennington County's motion to dismiss. The Trial Court therefore erred in determining that these issues were moot.

V. <u>The Trial Court Abused its Discretion in Denying Bialota Rule 60(B) Relief.</u>

Appellees do not contest Bialota's contention that Lakota Lakes and Taunton committed fraud by filing false documents with the South Dakota Secretary of State. Contrary to Taunton's contention, he has claimed to be a resident of South Dakota in stating that he resides at 40124 227th St., Woonsocket, SD 57385, by and through his attorney Nathan R. Chicone, in Lakota Lakes' annual corporate reports. Appellees do not dispute Bialota's contention that the Woonsocket address is Taunton's father's address. Instead, Appellees argue that Taunton's identification of his address, as the registered agent for Lakota Lakes in a corporate filing with the South Dakota Secretary of State, is not a representation concerning residency. Appellees cite no legal authority for this proposition; no legal authority is known to exist.

Appellees are apparently arguing that Taunton has made no representation concerning his residency, because their attorney has made the representation concerning Taunton's residency in completing the annual report for Lakota Lakes. This argument is wholly without merit, because a party is bound by the representations of their attorney. See, *Zahn v. Musick*, 2000 S.D. 26, ¶27, 605 N.W.2d 823; *Federal Land Bank of Omaha v. Sullivan*, 430 N.W.2d 700 (S.D. 1988); and *Pioneer Press Co. v. Gossage*, 13 S.D. 624, 84 N.W. 195 (1900). Generally, a principal is bound by the actions of his agent acting within the agent's authority. SDCL § 59-6-1 provides that, "[a]ll rights and liabilities which would accrue to an agent from transactions within the scope of his actual or ostensible authority if they had been entered into on his own account, accrue to the principal.

Appellee should not be heard to argue that, "deception and misrepresentation are not pertinent to the issues before the circuit court," especially when they have not denied that misrepresentations have occurred. Moreover, Rule 60(b)(3) relief is not limited to a fraud upon a court as Appellees intimate. See, *Corcoran v. McCarthy*, 2010 S.D. 7, ¶¶16-19, 778 N.W.2d 141.

The impetus for Lakota Lakes fraudulent corporate filings was to satisfy the residency requirements for corporations and limited liability companies. South Dakota law clearly requires a registered agent to be a resident of this state. South Dakota law requires that, "[e]ach corporation shall have and continuously maintain in this state a registered agent, . . . whose business office is identical with such registered office . . . , a domestic limited liability company, . . . having a business office identical with such registered office. SDCL § 47-20-16. A non-commercial registered agent filing must state, . . . the name and address of the entity's registered agent. SDCL § 59-11-6. Filing a false annual report is a Class 6 felony. SDCL § 47-20-12.1. The Trial Court committed reversible error in denying Bialota Rule 60(b) relief.

CONCLUSION

Contrary to Appellees' contention, this Court in its decision of February 7, 2024, on rehearing, did not authorize the Trial Court to ignore its determination that Bialota was entitled to a tax deed. This Court certainly did not invite the Trial Court to consider the case anew and allow Taunton to redeem the property thereby stripping Bialota of her property rights this Court determined she had. Under South Dakota law Bialota had an absolute estate in fee simple to the property. SDCL § 10-25-12. Appellees completely ignore this Court's determination that Bialota was entitled to a Tax Deed and the legal effect of the Tax Deed. In short, this Court did not authorize the Trial Court to consider the matter in anew as Appellees contend. It required the Trial Court to conduct further proceedings consistent with its opinion. *Bialota*, 2024 S.D. at 7, ¶25.

Contrary to Appellee's contention, the Trial Court committed clear error in allowing Taunton to redeem. Appellees have ignored completely Bialota's argument that the statute under which the Trial Court allowed redemption (SDCL § 21-42-10) is entirely and wholly inconsistent with SDCL § 10-25-8, SDCL § 10-25-8.1 and SDCL § 10-25-12. Under South Dakota law, Lakota Lakes' failure to redeem the tax certificate within the redemption time period (sixty days) passes all of the right, title, and interest in the property to Bialota as the holder of the tax certificate. SDCL § 10-25-8.1. A tax deed has the same effect. SDCL § 10-25-12. Therefore, neither Lakota Lakes or Taunton had any interest in the property that could be redeemed when Lakota Lakes failed to redeem the tax certificate timely.

Bialota has preserved the claim that she made to the Trial Court that allowing Taunton to redeem the property would deprive her of a property interest without due process. Bialota made this argument to the Trial Court. Moreover, Bialota is not challenging the constitutionality of SDCL § 21-42-10 or any other South Dakota statute. Bialota has argued to the Trial Court that it would be a deprivation of a property interest without due process if it invalidated her Tax Deed based upon the *Tyler*, at 598 U.S. 631, and/or its progeny. The Trial Court did not decide this issue.

The Trial Court should have decided whether Pennington County was a proper party. Pennington County could be liable for any damages that Appellees suffered. Contrary to the Trial Court's determination this issue is not moot.

The Trial Court abused its discretion in denying Bialota relief from its order under Rule 60(b)(3). Appellees have not contested Bialota's contention that Taunton filed false documents with the South Dakota Secretary of State through their attorney. Appellees argue instead that Lakota Lakes identification of its registered agent's address in an annual report filed with by Lakota Lakes is not a representation concerning residency. Appellees cite no legal authority for this proposition nor does the argument make any sense.

REQUEST FOR ORAL ARGUMENT

Bialota respectfully requests that oral argument be held in this appeal.

CERTIFICATE OF COMPLIANCE

This brief conforms with the type volume limitation of SDCL § 15-26A-66(b)(2). As determined by Microsoft Word 19 software, this brief contains 3,516 words and 17,671 characters, excluding the table of contents, table of cases, preliminary statement, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel.

Dated this 23rd day of March, 2026.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of **Appellant's Reply Brief** upon the person(s) designated herein, on the date shown below, by either email or First-Class mail, to-wit:

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