

**IN THE COURT OF APPEALS OF IOWA**

No. 2-601 / 11-1583  
Filed October 31, 2012

**JAMES P. GENGLER,**  
Plaintiff-Appellee,

**vs.**

**ALEJANDRO OROZCO,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Woodbury County, Jeffrey L. Poulson, Judge.

Alejandro Orozco appeals the district court's order granting James Gengler possession of property in Woodbury County in a forcible entry and detainer action. **AFFIRMED.**

Ian A. McConeghey of Corbett, Anderson, Corbett, Vellinga & Irvin, L.L.P.,  
Sioux City, for appellant.

Tod J. Deck of Deck Law, L.L.P., Sioux City, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

**VOGEL, P.J.**

Alejandro Orozco appeals the district court's ruling granting James Gengler possession of property located in Woodbury County after the property was sold at a tax sale and the statutory redemption period expired. Orozco claims the district court erred in finding he was served with the required notice of the expiration of the right of redemption. He also claims the district court erred in holding the notice provisions of Iowa Code chapter 447 (2007)<sup>1</sup> are constitutional and do not violate his due process rights. We affirm.

The property at issue here was sold at a tax sale on June 16, 2008, to Tiger 107 Partnership (Tiger), and a tax sale certificate was issued. On February 2, 2011, Tiger sent a notice to redeem from the tax sale to Alejandro Orozco and "persons in possession" by certified and regular mail. The notice advised Orozco that the property was sold at the tax sale and his right of redemption would expire in ninety days. The undisputed evidence at trial indicated both the certified and regularly mailed notices for both Orozco and "persons in possession" were delivered to Orozco's address on February 4, 2011. Orozco's fifteen-year-old son signed for the certified letters but apparently failed to bring the letters to his father's attention when his father returned from a trip.

Orozco testified at trial that he discovered the letters in late March or possibly late April of 2011. The right to redeem expired on May 5, 2011. Orozco also asserted that immediately after discovering the letter, he attempted to pay

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<sup>1</sup> Pursuant to Iowa Code section 447.14, "The law in effect at the time of tax sale governs redemption." The tax sale in this case occurred on June 16, 2008; therefore, the 2007 Code is applicable to this case.

the taxes owed in order to redeem the property but was told the time to redeem had expired.

Tiger assigned the tax sale certificate to James P. Gengler on May 25, 2011, and the county treasurer issued a tax sale deed to Gengler on May 26, 2011. Gengler then filed a lawsuit against Orozco on June 3, 2011, for forcible entry and detainer. As a defense to the lawsuit, Orozco asserted he was not properly served with the notice of the right of redemption.<sup>2</sup> He therefore challenged the validity of the tax deed under which Gengler filed the forcible entry and detainer action. Orozco alleged at the district court the same claims he now makes on appeal: notice was improper and, assuming the notice was proper, the notice provisions in chapter 447 violate his due process rights. The district court rejected both of these claims in a thorough and well-reasoned opinion. Because we agree with the district court, we affirm pursuant to Iowa Court Rule 21.29(d).

**AFFIRMED.**

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<sup>2</sup> The district court assumed without deciding that Orozco could allege a deficiency in the service of the notice of the right of redemption as a defense in a forcible entry and detainer action. Under Iowa Code section 447.8, a person who is entitled to redeem a parcel sold at a tax sale can attempt to redeem the property after the treasurer's deed has been issued only by filing an equitable action in the district court. Gengler on appeal asserts Orozco failed to preserve the issue of the sufficiency of the notice by failing to follow the proper procedures under section 447.8 to challenge the tax deed. Because we agree with the district court that proper notice of the right of redemption was provided to Orozco and that notice statutes in chapter 447 are constitutional, we need not address this error preservation issue. Like the district court we assume without deciding that Orozco could challenge the notice sufficiency in the forcible-entry-and-detainer action. See *Steele v. Northup*, 168 N.W.2d 785, 788 (Iowa 1969) (finding the issue of title is a justiciable issue in a forcible-entry-and-detainer action).