SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re Tax Assessment Against Purple Turtle, LLC v. Gooden, 223 W. Va. 755

679 S.E.2d 587 (2009) · No. No. 34276 · Decided March 31, 2009

SUMMARY

The Supreme Court of Appeals of West Virginia reviewed property tax assessments imposed on lots in the Broomgrass subdivision for the 2006 and 2007 tax years. The court held that the taxpayers failed to perfect their circuit-court appeals because they did not timely file the record of the Board of Equalization and Review proceedings, a mandatory jurisdictional requirement. The court reversed the circuit court and remanded for reinstatement of the assessments made by the assessor.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Benjamin; Justice McHugh, Senior Status Justice, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	March 31, 2009
DOCKET	No. 34276
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Assessor appealed the Berkeley County Circuit Court's order granting the taxpayers summary judgment, reversing the Board of Equalization and Review's property-tax assessments, and reducing the assessed value of the lots. The Supreme Court of Appeals considered whether the taxpayers' circuit-court appeals were properly perfected when the administrative record was not filed within the statutory thirty-day period.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Legal questions and statutory interpretation are reviewed de novo; factual findings are reviewed under the clearly erroneous standard; and the circuit court's final order and ultimate disposition are reviewed for abuse of discretion under the multifaceted standard stated in Walker v. West Virginia Ethics Commission.
PRECEDENTIAL VALUE	Published precedential opinion

PARTIES	Preston Gooden, Assessor of Berkeley County, West Virginia v. Purple Turtle, LLC, et al.

TOPICS

property tax · tax court procedure · appellate procedure · summary judgment · subject matter jurisdiction

PRACTICE AREAS

property tax · appellate procedure · civil procedure · summary judgment

QUESTIONS PRESENTED

1. Whether the taxpayers' appeals from the property-tax assessments were properly perfected when the petitions were not accompanied by, and the administrative records were not filed in the circuit court within, the statutory thirty-day period.
2. Whether the circuit court properly granted summary judgment to the taxpayers and reduced the assessments.

HOLDINGS

1. The statutory requirements governing appeals from a county commission's property-tax assessment, including filing the petition within thirty days and accompanying it with the original administrative record or filing that record within the statutory period, are mandatory. When the record is not timely filed, the appeal is not properly perfected and must be refused.

KEY QUOTATIONS

> *"Where the petition for appeal, though presented during the designated thirty-day period, is not accompanied by the record from the proceedings below and such record is not provided within thirty days, the appeal has not been properly perfected and must be refused."* (593)

> *"For the foregoing reasons, the order of the Circuit Court of Berkeley County is hereby reversed, and this matter is remanded for entry of an order reinstating the assessments initially rendered by the Assessor."* (594)

FACTUAL BACKGROUND

Purple Turtle acquired a 320-acre tract in Berkeley County and later subdivided sixteen one-acre lots for the Broomgrass subdivision. The Assessor valued each lot at $192,000 based primarily on comparable sales within the subdivision, while the taxpayers presented an appraisal valuing the lots at approximately $40,000 each. After the Board affirmed the assessments, the taxpayers appealed to circuit court but failed to file the Board proceedings' records within thirty days.

PROCEDURAL HISTORY

The Berkeley County Assessor valued sixteen one-acre subdivision lots at $192,000 per lot for the 2006 and 2007 tax years. The taxpayers protested before the Berkeley County Commission sitting as the Board of

Equalization and Review, which affirmed the assessments. The taxpayers appealed to the circuit court but did not timely file the Board records; the circuit court denied the Assessor's motion to dismiss, later granted the taxpayers summary judgment, and reduced the assessments to $40,000 per lot. The Supreme Court reversed and remanded for reinstatement of the Assessor's original assessments.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must enter an order reinstating the assessments initially rendered by the Assessor.

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- Burnside v. Burnside, 194 W. Va. 263, 460 S.E.2d 264 (1995)
- Walker v. West Virginia Ethics Comm'n, 201 W. Va. 108, 492 S.E.2d 167 (1997)
- Rawl Sales & Processing Co. v. County Comm'n, 191 W. Va. 127, 443 S.E.2d 595 (1994)
- In re Stonestreet, 147 W. Va. 719, 131 S.E.2d 52 (1963)
- Helton v. Reed, 219 W. Va. 557, 638 S.E.2d 160 (2006)
- Concept Mining, Inc. v. Helton, 217 W. Va. 298, 617 S.E.2d 845 (2005)
- Solution One Mortg., LLC v. Helton, 216 W. Va. 740, 613 S.E.2d 601 (2005)
- State ex rel. Clark v. Blue Cross Blue Shield of W. Va., Inc., 195 W. Va. 537, 466 S.E.2d 388 (1995)
- Bradley v. Williams, 195 W. Va. 180, 465 S.E.2d 180 (1995)
- Kline v. McCloud, 174 W. Va. 369, 326 S.E.2d 715 (1984)
- In re Tax Assessment of Foster Foundation's Woodlands Retirement Community, 223 W. Va. 14, 672 S.E.2d 150 (2008)
- Bayer MaterialScience, LLC v. State Tax Comm'r, 223 W. Va. 38, 672 S.E.2d 174 (2008)