

SUPREME COURT OF ARKANSAS

Wilkins & Associates, Inc. v. Vimy Ridge Municipal Water
Improvement District No. 139, 373 Ark. 580

285 S.W.3d 193 (2008) · No. No. 07-690 · Decided May 29, 2008

SUMMARY

The Arkansas Supreme Court considered whether a foreclosure action for unpaid municipal improvement district assessments was barred by the applicable three-year statute of limitations. It held that the special improvement taxes became delinquent under the specific statute governing improvement districts, rather than under the general tax-delinquency provisions, and that the foreclosure complaint was untimely. The court reversed the circuit court's summary judgment in favor of Vimy Ridge Municipal Water Improvement District No. 139.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Jim Gunter
JURISDICTION	Arkansas
DECIDED	May 29, 2008
DOCKET	No. 07-690
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from an order of the Pulaski County Circuit Court granting summary judgment to Vimy Ridge in a foreclosure action for unpaid municipal improvement district assessments.
STANDARD OF REVIEW	The court reviews a circuit court's decision in a tax case de novo, although it will not disturb factual findings unless they are clearly erroneous. Issues of statutory construction are reviewed de novo.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential
PARTIES	Wilkins & Associates, Inc. v. Vimy Ridge Municipal Water Improvement District No. 139, The Bank of New York Trust Company, N.A.

TOPICS

- municipal law
- tax statute of limitations
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

municipal law

tax law

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the foreclosure action for the 2001 municipal improvement district assessment was barred by the applicable three-year statute of limitations.
2. Whether the general-tax delinquency provisions in Ark. Code Ann. § 26-36-201 applied to the special taxes of the municipal improvement district.

HOLDINGS

1. The general-tax provisions of Title 26 do not apply to municipal improvement district special taxes unless the district specifically adopts the applicable installment scheme by ordinance; absent such adoption, the specific delinquency provision in Ark. Code Ann. § 14-86-1204 governs.
2. Vimy Ridge's October 1, 2004 foreclosure complaint was barred by the three-year statute of limitations because the 2001 assessment became delinquent more than three years before the complaint was filed.

KEY QUOTATIONS

“Without such adoption, and without specifying the date the special taxes are delinquent, the specific statute dealing with when special improvement taxes become delinquent applies (§ 14-86-1204), and the delinquency date is ninety days after the special taxes are due and payable.” (285 S.W.3d at 195)

FACTUAL BACKGROUND

Vimy Ridge filed a foreclosure action on October 1, 2004, seeking unpaid municipal improvement district assessments for 2001, 2002, and 2003. Wilkins argued that the 2001 assessment became delinquent ninety days after it was due and payable and that the three-year limitations period therefore expired before the complaint was filed. The circuit court applied the general-tax delinquency provisions and ruled that the action was timely.

PROCEDURAL HISTORY

Vimy Ridge filed a foreclosure complaint against Wilkins and others for nonpayment of 2001, 2002, and 2003 improvement-district assessments. The circuit court held that the assessments were not delinquent until after October 10, 2004, concluded that the foreclosure action was timely, and granted Vimy Ridge summary judgment. Wilkins appealed.

DISPOSITION

reversed

CASES CITED

- Vimy Ridge Mun. Water Improvement Dist. No. 139 of Little Rock v. Ryles, 373 Ark. 366, 284 S.W.3d 70 (2008)

- City of Maumelle v. Jeffrey Sand Co., 353 Ark. 686, 120 S.W.3d 55 (2003)
- Barclay v. First Paris Holding Co., 344 Ark. 711, 42 S.W.3d 496 (2001)
- Quapaw Central Business Improvement Dist. v. Bond-Kinman, Inc., 315 Ark. 703, 870 S.W.2d 390 (1994)

OPINION

Wilkins & Associates, Inc. v. Vimy Ridge Municipal Water Improvement District No. 139 285 S.W.3d 193

GUNTER, J.

285 S.W.3d 193 (2008) WILKINS & ASSOCIATES, INC., Appellant, v. VIMY RIDGE MUNICIPAL WATER IMPROVEMENT DISTRICT NO. 139, Appellee. No. 07-690. Supreme Court of Arkansas. May 29, 2008. Ralph Washington, for appellant. Riable & Crabtree, Little Rock, by: Mark Riable, for appellee Vimy Ridge Municipal Water Improvement Dist. No. 139. Friday, Eldredge & Clark, LLP, Little Rock, by: Larry W. Burks, for appellee The Bank of New York Trust Company, N.A. JIM GUNTER, Justice. This appeal arises from an order of the Pulaski County Circuit Court awarding summary judgment to Appellee Vimy Ridge Municipal Water Improvement District No. 139 ("Vimy Ridge"). For the reasons set forth in Vimy Ridge Mun. Water Improvement Dist. No. 139 of Little Rock v. Ryles, 373 Ark. 366, 284 S.W.3d 70 (2008), we reverse the order of the circuit court. On October 1, 2004, Vimy Ridge filed a complaint for foreclosure against Appellant Wilkins and Associates, Inc. ("Wilkins") and others for the non-payment of improvement district assessments for the years 2001, 2002, and 2003. On August 1, *194 2005, Vimy Ridge filed a motion for summary judgment. Wilkins filed its response on September 20, 2005. On January 6, 2006, a hearing was held on the motion for summary judgment where Wilkins argued that the foreclosure complaint filed on October 1, 2004, was barred by the three-year statute of limitations under Ark.Code Ann. § 14-86-1208 (Repl.1998). Wilkins asserted that, pursuant to Ark.Code Ann. § 14-86-1204 (Repl.1998), the special improvement taxes are due on March 1, and are considered delinquent ninety days after that date. Wilkins argued that the complaint for the 2001 taxes should have been filed by June 1, 2004, and was therefore barred by the statute of limitations. The circuit court ruled that Ark.Code Ann. § 26-35-501 (Supp.2007) includes special district taxes and that the 2001 taxes were not delinquent until after October 10, 2004. The circuit court ruled that the foreclosure complaint was timely and granted Vimy Ridge's motion for summary judgment. Wilkins now brings this appeal. For its sole point on appeal, Wilkins argues that the circuit court erred in granting Vimy Ridge's motion for summary judgment because the statute of limitations had expired regarding the special improvement district assessment for 2001. Specifically, Wilkins asserts that assessments become due and payable on March 1, pursuant to Ark.Code Ann. § 26-35-501 and become delinquent 90 days later pursuant to § 14-86-1204. Therefore, Wilkins contends that the 2001 assessment in this case became delinquent on June 1, 2001, and Vimy Ridge's October 1, 2004 foreclosure complaint is barred by the three-year statute of limitations. Vimy Ridge responds, asserting that, because §

26-36-201(a)(2) (Supp.2007) fixes October 10 as the time at which all unpaid taxes become delinquent, § 14-86-1204 does not apply in this situation. It asserts that § 26-36-201 includes the improvement taxes at issue in this case, and therefore, the 2001 taxes did not become delinquent until October 11, 2001. Because the complaint for foreclosure was filed on October 1, 2004, Vimy Ridge contends that it was filed within the three-year statute of limitations. We review a circuit court's decision in a tax case de novo, but will not disturb the circuit court's findings of fact unless they are clearly erroneous. See *Vimy Ridge v. Ryles*, supra. We also review issues of statutory construction de novo, because it is for this court to decide what a statute means. *Id.* (citing *City of Maumelle v. Jeffrey Sand Co.*, 353 Ark. 686, 120 S.W.3d 55 (2003)). While we are not bound by the decision of the circuit court, in the absence of a showing that the circuit court erred in its interpretation of the law, that interpretation will be accepted as correct on appeal. *Vimy Ridge v. Ryles*, supra (citing *Barclay v. First Paris Holding Co.*, 344 Ark. 711, 42 S.W.3d 496 (2001)). We previously addressed the issue of when special taxes of municipal improvement districts become delinquent in *Vimy Ridge v. Ryles*, supra. In that case, Vimy Ridge filed a foreclosure action against Ryles, claiming that municipal improvement district taxes were delinquent. Ryles argued that Vimy Ridge's foreclosure action was barred by the three-year statute of limitations. The circuit court granted Ryles's motion for summary judgment, holding that Ark.Code Ann. § 26-36-201(a) was not applicable to the improvement district's special taxes at issue. Citing *Quapaw Central Business Improvement Dist. v. Bond-Kinman, Inc.*, 315 Ark. 703, 706, 870 S.W.2d 390, 391-92 (1994), where we pointed out that municipal improvement districts "constitute a separate and distinct species of taxing districts *195 as contradistinguished from counties, municipal corporations and school districts," we rejected Vimy Ridge's arguments because they attempted to apply provisions for the payment of general taxes found in Title 26 of the Arkansas Code to the special taxes of improvement districts under Title 14. *Id.* We held that, while the general taxes do not become delinquent until October 10, pursuant to § 26-36-201(a), "these provisions for general taxes under Title 26 would only apply to municipal improvement district taxes if they specifically adopted the installment scheme by ordinance" pursuant to Ark. Code Ann. § 14-90-801(b)(2) (Repl.1998), stating: Although the Little Rock ordinance [15-513] did specify that the special taxes were to be collected "annually with the first installment of general taxes," the ordinance did not adopt the subsequent quarterly installment provisions for general taxes under Title 26, which improvement districts "may" adopt by ordinance as provided by § 14-90-801(b)(2). Without such adoption, and without specifying the date the special taxes are delinquent, the specific statute dealing with when special improvement taxes become delinquent applies (§ 14-86-1204), and the delinquency date is ninety days after the special taxes are due and payable. Therefore, because the Little Rock ordinance specifies that the special districts are to be collected annually, "with the first installment of general taxes," and § 26-35-501(a) specifies that the first installment of the general taxes "shall be payable on and from the third Monday in February to and including the third Monday in April," the three-year statute of limitations began to run ninety days after the third

Monday in April, 2001, well before Vimy Ridge filed its foreclosure action on October 1, 2004. Accordingly, the trial court did not err in holding that the statute of limitations barred Vimy Ridge's foreclosure action for the 2001 delinquent improvement district taxes. *Id.* We affirmed the circuit court's ruling that the statute of limitations barred Vimy Ridge's foreclosure action for the 2001 delinquent improvement district taxes. For the reasons stated in *Vimy Ridge v. Ryles*, *supra*, we hold that Vimy Ridge's October 1, 2004 complaint for foreclosure against Wilkins in this case is also barred by the statute of limitations. Accordingly, we reverse the order of the circuit court. Reversed.