SUPREME COURT OF IOWA

Bill Fennelly, Scott County Treasurer v. A-1 Machine & Tool Co.

Fennelly v. A-1 Machine & Tool Co. · No. No. 73 / 04-1232 · Decided October 6, 2006

SUMMARY

The Iowa Supreme Court considers whether a county treasurer's action to collect delinquent property taxes is subject to the statute of limitations and whether a tax sale certificate is a condition precedent to such an action. The court holds that the action is not barred by the statute of limitations and that a tax sale certificate was not required for the machinery-and-equipment tax claims. The judgment is affirmed in part, reversed in part, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Cady, Justice; Carter, Justice; all remaining justices
JURISDICTION	Iowa
DECIDED	October 6, 2006
DOCKET	No. 73 / 04-1232
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from summary judgment for the taxpayer in an action by the Scott County Treasurer seeking personal judgment for delinquent property taxes.
STANDARD OF REVIEW	Summary-judgment appeals are reviewed for correction of errors at law. Summary judgment is proper only when, viewing the evidence in the light most favorable to the nonmoving party, the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Awards of common-law attorney fees are reviewed de novo.
PRECEDENTIAL VALUE	Published Iowa Supreme Court opinion; precedential.
PARTIES	Bill Fennelly, Scott County Treasurer v. A-1 Machine & Tool Co.

TOPICS

property tax · tax collection · statute of limitations · summary judgment · statutory interpretation

PRACTICE AREAS

property tax · civil procedure · statutory interpretation · municipal law · remedies

QUESTIONS PRESENTED

1. Whether the statute of limitations barred the county treasurer's action to collect delinquent property taxes on behalf of Scott County.
2. Whether a tax sale certificate was a condition precedent to an action for a personal judgment for delinquent taxes on a taxable parcel consisting of machinery and equipment rather than land.
3. Whether the personal-judgment remedy for property taxes could apply to taxes levied before April 1, 1992, the effective date of the statutory amendment creating that remedy.
4. Whether A-1's equitable-estoppel defense was legally available based on the assessor's alleged failure to communicate with A-1.
5. Whether A-1 was entitled to common-law attorney fees.

HOLDINGS

1. The common-law nullum tempus doctrine applies because the county's collection of delinquent property taxes is a public or governmental activity that benefits Iowa's public-school system. Accordingly, the general statute of limitations does not bar the Treasurer's claims.
2. A county treasurer may maintain an action to collect delinquent taxes on a taxable parcel without first obtaining a tax sale certificate when the parcel does not include land.
3. A county treasurer may not obtain personal judgments for taxes levied before April 1, 1992, the effective date of the statutory personal-judgment remedy.
4. A-1's equitable-estoppel defense fails as a matter of law because the assessor's alleged failure to communicate does not constitute a false representation or concealment of material facts or an exceptional circumstance warranting estoppel against the government.
5. A-1 was not entitled to appellate attorney fees, and its request for trial attorney fees was untimely because it was raised for the first time on appeal.

KEY QUOTATIONS

> *"In this light, the county, when collecting delinquent property taxes, is engaged in a public or governmental activity."* (at 17)

> *"We conclude a county treasurer may maintain an action to collect a delinquency on a parcel without first obtaining a certificate of sale when, as in this case, the parcel does not include land."* (at 23)

> *"Thus, today we take the next logical step from Hiskey and hold that a county treasurer may not obtain personal judgments against defendants for taxes levied before the effective date of the personal judgment statute, April 1, 1992."* (at 28)

FACTUAL BACKGROUND

A-1 owned or leased industrial metalworking machinery that the Scott County Assessor treated as a taxable real-property parcel from 1989 through 2001. A-1 did not pay the assessed taxes, and its president asserted that the corporation had not received tax bills or notices. The Treasurer obtained tax sale certificates for taxes from 1989 through 1996 but not for taxes from 1997 through 2001, and filed the collection action in July 2003.

PROCEDURAL HISTORY

The Treasurer filed a district court petition on July 18, 2003, under Iowa Code section 445.3 to collect delinquent taxes assessed against A-1's machinery and equipment. The Iowa District Court for Scott County granted A-1 summary judgment, holding that claims for taxes before 1997 were barred by the statute of limitations and that claims for later taxes failed because the Treasurer had not obtained a tax sale certificate. The Supreme Court of Iowa affirmed in part, reversed in part, and remanded for further proceedings, including determination of which taxes were levied before April 1, 1992 and consideration of remaining defenses.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The district court must proceed consistently with the opinion, including determining which tax claims were levied before April 1, 1992 and entering judgment accordingly. The court may also address remaining defenses and other proceedings not resolved by the Supreme Court's decision.

CASES CITED

- Stewart v. Sisson, 711 N.W.2d 713, 715 (Iowa 2006)
- Otterberg v. Farm Bureau Mutual Insurance Co., 696 N.W.2d 24, 27 (Iowa 2005)
- Wernimont v. Wernimont, 686 N.W.2d 186, 189 (Iowa 2004)
- United States v. Thompson, 98 U.S. 486, 489-90 (1878)
- Des Moines County v. Harker, 34 Iowa 84, 85-87 (1871)
- In re Peers' Estate, 234 Iowa 403, 411, 12 N.W.2d 894, 898 (1944)
- State ex rel. Weede v. Iowa Southern Utilities Co., 231 Iowa 784, 838, 2 N.W.2d 372, 400 (1942)
- Perley v. Heath, 201 Iowa 1163, 1165, 208 N.W. 721, 722 (1926)
- Payette v. Marshall County, 180 Iowa 660, 662-64, 163 N.W. 592, 593 (1917)
- Schaer v. Webster County, 644 N.W.2d 327, 336 (Iowa 2002)
- Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 750 (Iowa 2002)
- State v. Carter, 618 N.W.2d 374, 377 (Iowa 2000)
- State v. Pace, 602 N.W.2d 764, 771 (Iowa 1999)
- Rieff v. Evans, 630 N.W.2d 278, 285 (Iowa 2001)
- Woodbury County v. City of Sioux City, 475 N.W.2d 203, 205 (Iowa 1991)
- State ex rel. Schlegel v. Munn, 216 Iowa 1232, 1237-38, 250 N.W. 471, 473 (1933)

- Great Western Insurance Co. v. Saunders, 223 Iowa 926, 932, 274 N.W. 28, 31-32 (1937)
- State v. Henderson, 40 Iowa 242, 245 (1875)
- City of Burlington v. B. & M. R.R., 41 Iowa 134, 138, 141 (1875)
- Fitzgerald v. Sioux City, 125 Iowa 396, 403, 101 N.W. 268, 271 (1904)
- Hiskey v. Maloney, 580 N.W.2d 797, 797, 799 (Iowa 1998)
- Teamsters Local Union No. 421 v. City of Dubuque, 706 N.W.2d 709, 713 (Iowa 2005)
- DeVoss v. State, 648 N.W.2d 56, 61 (Iowa 2002)
- Markey v. Carney, 705 N.W.2d 13, 21 (Iowa 2005)
- ABC Disposal Systems, Inc. v. Department of Natural Resources, 681 N.W.2d 596, 606-07 (Iowa 2004)
- Bailiff v. Adams County Conference Board, 650 N.W.2d 621, 627 (Iowa 2002)
- Capital Fund 85 Ltd. Partnership v. Priority Systems, LLC, 670 N.W.2d 154, 160 (Iowa 2003)
- Hockenberg Equipment Co. v. Hockenberg's Equipment & Supply Co. of Des Moines, Inc., 510 N.W.2d 153, 158-60 (Iowa 1993)
- Wolf v. Wolf, 690 N.W.2d 887, 896 (Iowa 2005)
- Meier v. Senecaut III, 641 N.W.2d 532, 537 (Iowa 2002)
- Reynolds v. Sims, 377 U.S. 533, 575, 84 S. Ct. 1362, 1388, 12 L. Ed. 2d 506, 535 (1964)
- Mandicino v. Kelly, 158 N.W.2d 754, 758 (Iowa 1968)
