IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-TA-239

Southlake Indiana, LLC,
Petitioner,

–v–

Lake County Assessor,
Respondent.

Argued: June 23, 2021 | Decided: September 22, 2021

On Petition for Review from the Indiana Tax Court
No. 18T-TA-30
The Honorable Martha Blood Wentworth, Judge

Opinion by Justice Slaughter

Chief Justice Rush and Justices David, Massa, and Goff concur.

Slaughter, Justice.

This case concerns the assessment of commercial real property in Lake County. In 2014, the assessor increased a mall's property-tax assessment for that tax year and issued notices increasing the assessments for the three prior tax years. The new assessed values were more than double the prior years' assessments. We hold that when a property's assessment increases by more than five percent over the previous year and the Indiana Board of Tax Review finds neither party's assessment correct, a statutory clause requires that the assessment reverts to the assessment for the prior tax year.

I

The Ross Township assessor in Lake County increased the tax assessment for Southlake Mall, owned by Southlake Indiana, LLC, for the 2014 tax year. The assessor also issued notices changing the property-tax assessments for tax years 2011, 2012, and 2013. The new assessed values were about $240 million each year—more than double the 2010 assessment, and the original 2011 through 2013 assessments, of roughly $110 million. Southlake appealed the assessments for tax years 2011 to 2013 to the Lake County Property Tax Assessment Board of Appeals, which denied the appeals. Southlake then appealed to the Indiana Board of Tax Review. While those appeals were pending, Southlake also appealed the 2014 assessment. All four tax-year appeals went before the state board.

The state board held a hearing at which both the Lake County assessor and Southlake presented professional appraisers' testimony. The assessor's appraiser valued the mall in a range from about $239 million to $256 million for the years 2011 to 2014. Southlake's appraiser valued the mall, for the same years, between about $98 million and $146 million. The state board found deficiencies in both experts' assessments. Making the adjustments it found warranted, the state board assessed the mall at the following approximate values:

- Tax year 2011: $173.5 million;
- Tax year 2012: $180.4 million;

- Tax year 2013: $179.4 million; and
- Tax year 2014: $190.6 million.

Southlake appealed to the Indiana Tax Court, which affirmed in part and remanded in part. *Southlake Indiana, LLC v. Lake Cnty. Assessor*, 160 N.E.3d 1156, 1159 (Ind. Tax Ct. 2020). The tax court affirmed the state board in all respects, except for a pair of reimbursements not at issue here. *Id.* at 1178. Southlake sought review, which we granted. *Southlake Indiana, LLC v. Lake Cnty. Assessor*, 168 N.E.3d 738 (Ind. 2021).

II

Southlake argues on review that the tax court (and state board, too) erred by not applying the reversionary clause in Indiana Code section 6-1.1-15-17.2(b). Although the parties agree that section 17.2 governs here, they disagree about whether its reversionary clause was triggered when the state board did not adopt either party's assessed values. Because the tax court's opinion turns upon the plain meaning of an unambiguous statute, we review its decision de novo. *Garner v. Kempf*, 93 N.E.3d 1091, 1094 (Ind. 2018).

Section 17.2(b) begins by setting out the shifting burdens between the assessor and the taxpayer in a tax review or appeal:

> Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court. If a county assessor or township assessor fails to meet the burden of proof under this section, the taxpayer may introduce evidence to prove the correct assessment.

Ind. Code § 6-1.1-15-17.2(b). Relevant here, the subsection concludes by stating what happens when neither party meets its burden: "If neither the assessing official nor the taxpayer meets the burden of proof under this section, the assessment reverts to the assessment for the prior tax year, which is the original assessment for that prior tax year". *Ibid.* The statute "applies to any review or appeal of an assessment under this chapter if the

assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." *Id.* § 6-1.1-15-17.2(a). Here, the parties do not dispute that the assessment's retroactive increases are greater than five percent; the assessor conceded that the mall's assessed value increased more than five percent from 2010 to 2011. *Southlake*, 160 N.E.3d at 1160. The disputed issue is whether the parties failed to meet their burden of proof, thus triggering the reversionary clause in section 17.2(b).

When interpreting a statute, we start with its clear and unambiguous meaning and apply its terms in their plain, ordinary, and usual sense. *City of Carmel v. Steele*, 865 N.E.2d 612, 618 (Ind. 2007). Section 17.2, by its plain terms, imposes the initial burden on the assessor to prove its original assessment was correct. If the assessor fails, the burden shifts to the taxpayer to prove the correct assessment value. If neither party meets its burden, section 17.2's reversionary clause applies, and the assessment reverts to the assessment for the prior tax year.

Here, the state board found that both parties' assessments were lacking, *Southlake*, 160 N.E.3d at 1165–66, meaning that neither party met its burden of proof. Because neither party met its burden, section 17.2 required the tax court to hold that the assessment reverts to the assessment for the prior tax year. Accord *Blesich v. Lake Cnty. Assessor*, 46 N.E.3d 14, 15–16 (Ind. Tax Ct. 2015) (upholding state board's final determination that assessments reverted to the assessment for the prior tax year under section 17.2 where neither party met its burden). Here, this means that the 2011 assessment reverts to the 2010 assessment, the 2012 assessment reverts to the 2011 assessment, and so on. By failing to apply the reversionary clause, the tax court erred as a matter of law.

In the tax court's view, applying section 17.2's plain language would mean the state board could not resolve conflicting probative evidence, an outcome the tax court viewed as improper: "To require the Indiana Board to determine weight and credibility subject to the rigid and formulaic approach advocated by Southlake (i.e., that it should have examined [the assessor's] appraisal on a 'stand-alone' basis) would actually remove the Indiana Board's ability to resolve any issues arising from conflicting

evidence." *Southlake*, 160 N.E.3d at 1169–70. How the tax court described the state board's limited discretion may be correct. But that result, whatever its policy merits, is the legislature's call and not ours. We apply the statute as written and do not second guess the legislature's decision to limit the state board's flexibility when assessed values increase by more than the five-percent threshold.

We also reject the tax court's view that section 17.2 requires only that the parties submit probative evidence of assessment to avoid the reversionary clause. As the tax court saw things, the statutory "burden of proof" is only a "burden of production". *Id.* at 1169. Thus, it reasoned, because the parties met their respective burdens of production, the reversionary clause does not apply. But this reading contradicts the statute's plain terms. "Burden of proof" and "burden of production" are different terms with different meanings. "Burden of proof" is a "party's duty to prove a disputed assertion or charge"; it includes both the burden of persuasion and the burden of production. Burden of Proof, Black's Law Dictionary (11th ed. 2019). "Burden of production", in contrast, is a "party's duty to introduce enough evidence on an issue to have the issue decided by the fact-finder". Burden of Production, Black's Law Dictionary (11th ed. 2019). The legislature used "burden of proof" in section 17.2 and not "burden of production", and we hold that difference is dispositive.

The tax court also erred by rendering two of the statute's phrases meaningless: "proving that the assessment is correct" (as to the assessor's burden) and "prove the correct assessment" (as to the taxpayer's burden). These terms require the parties not only to present probative evidence of the assessment but also to prove that their proffered assessment is correct. Again, the tax court's view ignored the unambiguous meaning of the statute's plain terms.

Finally, we reject the tax court's contention that *Orange County Assessor v. Stout*, 996 N.E.2d 871 (Ind. Tax Ct. 2013), supports its view that the legislature used "burden of proof" to mean "burden of production". See *Southlake*, 160 N.E.3d at 1169. *Stout* explained in dicta that while the burden of proof includes burdens of both production and persuasion, only the burden of production shifts between parties. 996 N.E.2d at 873 n.3. The

tax court's view of *Stout* has superficial appeal, but *Stout* spoke only to a taxpayer's general burden, *id.* at 873, and did not address the reversionary clause, which was not in effect then. See I.C. § 6-1.1-15-1(p) (effective July 1, 2009, to June 30, 2011); *id.* § 6-1.1-15-17 (effective July 1, 2011, to February 21, 2012); *id.* § 6-1.1-15-17.2 (effective February 22, 2012, to March 24, 2014). Moreover, *Stout*'s reasoning purportedly relied on *Peabody Coal Company v. Ralston*, 578 N.E.2d 751 (Ind. Ct. App. 1991). *Stout*, 996 N.E.2d at 873 n.3. But *Peabody* held only that it would be unfair to shift the burden of persuasion to the accused party when the relevant statute places that burden on the complaining party. 578 N.E.2d at 754. Section 17.2 operates differently. Even assuming that *Peabody* were decided correctly, it would not trump the plain terms of section 17.2. Thus, we decline to adopt *Stout*'s reasoning.

* * *

Because neither party met its burden of proof, section 17.2's reversionary clause controls. Under that clause, the assessments revert to the assessment for each prior tax year—ending here with the 2010 assessment. We thus reverse the tax court's judgment with instructions to remand to the state board, which must enter assessments for tax years 2011 to 2014 in the amount of Southlake Mall's 2010 assessment.

Rush, C.J., and David, Massa, and Goff, JJ., concur.

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