IN THE COURT OF APPEALS OF IOWA

No. 3-371 / 12-1377
Filed August 7, 2013

EDWIN ALLEN II and MELISSA D. ALLEN,
Plaintiff-Appellants,

vs.

DALLAS COUNTY BOARD OF REVIEW,
Defendant-Appellee.

Appeal from the Iowa District Court for Dallas County, Terry R. Rickers, Judge.

Property owners appeal a district court ruling on a motion for summary judgment affirming the Dallas County Board of Review's denial of their tax protest. **REVERSED AND REMANDED.**

Edwin Allen, West Des Moines, for appellant, and pro se.

Brett Ryan of Watson & Ryan, P.L.C., Council Bluffs, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

Edwin and Melissa Allen appeal a district court ruling affirming the Dallas County Board of Review's denial of their tax protest.

I. Background Facts and Proceedings

The Allens own real estate in West Des Moines, Iowa. On April 16, 2012, they petitioned the Dallas County Board of Review for review of the "2011" assessment of "$308,750.00." They asserted the property was over-assessed by $8750 and the actual value was $300,000. They did not explicitly challenge a 2012 assessment valuing their property at $316,310, although supporting documents included references to that valuation.

The board held a hearing on May 23, 2012. Following the hearing, the board notified the Allens that their protest only related to the 2011 assessment, and it was untimely.

The Allens filed an appeal with the district court. The board answered and moved for summary judgment on the ground that the protest of the 2011 assessment was untimely and the Allens "failed to invoke the Court's jurisdiction for their [protest to] their 2012 assessment." The Allens resisted the motion and included with their resistance the following attestation by Edwin Allen:

> [The board] then asked me if I was disputing 2011 taxes or 2012 taxes. I told them . . . that if I could still dispute the 2011 taxes and the 2012 that I was there to dispute both of them but if I could only dispute the 2012 then that was the only tax year that I was there for.

The district court granted the board's motion, essentially concluding that the Allens' protest to the 2011 assessment was untimely and the protest could not be

construed as a timely challenge to the 2012 assessment because the document only cited the 2011 assessment. This appeal followed.

Our standard of review is well established:

> This court reviews a district court decision to grant or deny a motion for summary judgment for correction of errors at law. Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. The court reviews the evidence in the light most favorable to the nonmoving party.

Griffin Pipe Prods. *Co*. *v*. *Bd*. *of Review*, 789 N.W.2d 769, 772 (Iowa 2010) (citations omitted).

II. Analysis

Iowa Code section 441.37 (2011) governs protests of tax assessments. "A protest must substantially comply with statutory requirements to authorize the board to grant relief." *MC Holdings*, *L*.*L*.*C*. *v*. *Davis Cnty*. *Bd*. *of Review*, 830 N.W.2d 325, 329 (Iowa 2013). "Three statutory requirements are identified for a protest." *Id.* at 330. "Protests must be written, signed by the protester or protester's agent, and confined to one or more of five specified grounds to protest an assessment." *Id.*

We begin with the Allens' petition as originally submitted. That petition was in writing, was signed, and was confined to the following statutory ground:

> That the property is assessed for more than the value authorized by law, stating the specific amount which the protesting party believes the property to be overassessed, and the amount which the party considers to be its actual value and the amount the party considers a fair assessment.

Iowa Code § 441.37(1)(b).

To the extent the petition sought to challenge the 2011 assessment, it substantially complied with the statutory requirements. However, the petition was untimely because a challenge to the 2011 assessment should have been filed between April 16 and May 5 of 2011, not between April 16 and May 5 of 2012. *See id.* § 441.37(1) ("Any property owner or aggrieved taxpayer who is dissatisfied with the owner's or taxpayer's assessment may file a protest against such assessment with the board of review on or after April 16, to and including May 5, *of the year of the assessment*." (emphasis added)).

We turn to the Allens' assertion that their petition should be construed as a timely-filed challenge to the 2012 assessment. Nothing on the face of their petition would allow us to do so; the petition made no mention of 2012 or the 2012 assessment. To the extent the petition was an attempt to challenge that assessment, we conclude the petition did not substantially comply with the third statutory requirement, specification of a statutory ground for relief.[1]

This does not end our analysis because the Allens alternately contend that, when they appeared at the May 23, 2012 hearing, they asked to amend the petition to incorporate a challenge to the 2012 assessment. The board responds that the Allens "never tried to amend [their] original protest."

Viewing the evidence in the light most favorable to the nonmoving party, we are persuaded that the Allens generated a genuine issue of material fact on

[1] In 2013, the Iowa Legislature amended section 441.37(1)(a)(1) to provide in part: "For odd-numbered assessment years *and for even-numbered assessment years for property that was reassessed in such even-numbered assessment year*," the taxpayer is to "state the specific amount which the protesting party believes the property to be overassessed, and the amount which the party considers to be its actual value and fair assessment." S.F. 295, § 56, 85nd G.A., 1st Sess. (Iowa 2013) (emphasis added).

the question of whether they asked to amend the petition. They attested that the board requested clarification of the year they were challenging and, in response, they expressed their intent to challenge the 2012 assessment. According to Edwin Allen, this type of request for clarification was the rule rather than the exception at the county assessor's office. He attested that he called the tax assessor, who told him that "their own policy [was] to call each tax payer and ask them to clarify if they want to dispute the previous year or the current year" and "9 times out of 10 the tax payer simply filled the form out wrong and they ask permission to correct the form and the dispute continues on." This fact issue precluded summary judgment in favor of the board.

In concluding that the board could have construed the Allens' oral request as a request to amend the petition, we rely on *MC Holdings* and its characterization of a taxpayer's request to correct a petition as a motion to amend. *See* 830 N.W.2d at 330. We also note that, as in *MC Holdings*, the Allens' request was made within the statutory time frame for the board to act. *See id.*; *see also* Iowa Code § 441.33 ("The board of review shall be in session from May 1 through the period of time necessary to act on all protests filed under section 441.37 but not later than May 31 each year and for an additional period as required under section 441.37 . . . .").

This brings us to the crux of the appeal: whether the board could address the Allens' motion to amend. *MC Holdings* unequivocally answered this question, holding that the board possessed the authority to act on the taxpayer's motion to amend. 830 N.W.2d at 329–30 ("Normally, power granted by an administrative agency to decide claims includes authority to permit deficiencies in

the pleadings pertaining to the claims to be cured," and stating "amendments to pleadings are freely permitted when prejudice does not result").

According to the Allens' resistance, the board did not act on the request to amend but elected to rely on the statements in the original petition. In Edwin's words, an employee of the assessor's office said "the form says 2011 so that's the year they are going with." This was error. As the court stated in *MC Holdings*, "the Board . . . was authorized to consider the application filed by the protester to amend the protest due to the inadvertent mistake." *Id.* at 331.

We recognize that the mistake in *MC Holdings* differed from the mistake here. There, two petitions were filed in different counties, and the underlying documentation was accidentally switched. *Id.* at 327–28. Here, the petition did not mention the correct assessment year and assessment amount. While the mistake in *MC Holdings* was arguably more innocuous than the mistake here, both involved "procedural matters that accompany the process" rather than untimely filings. *See id*. at 330. The court summarized this distinction as follows:

> [T]his case is not one in which a protester missed a filing deadline, ignored the filing deadline, or filed a late protest. This case is also not one about excusing taxpayers from the requirement to timely file protests. Instead, it is a case about the jurisdiction and authority of a board of review to exercise discretion to carry out justice by allowing a taxpayer to amend a timely filed protest to correct an inadvertent error in communicating the specific grounds for the protest. The Board believed it had no jurisdiction to allow MC Holdings to correct its inadvertent error and denied any relief. This conclusion was incorrect.

Id. Based on this language, we conclude the board had authority to rule on the Allens' motion to amend their petition to assert a challenge to the 2012 property tax assessment.

The Allens next assert that any amendment would relate back to the date they filed the petition, which was within the statutorily-prescribed timeframe for filing protests to 2012 assessments. The court addressed this issue in *MC Holdings*, stating:

> An amendment to a protest would not conflict with the relation-back doctrine. Consistent with our strong policy of deciding cases on the merits instead of on procedural errors, amendments to pleadings normally relate back to the date the pleading was filed as long as the original pleading provided adequate notice of the claim so as to satisfy the countervailing objective to protect persons from having to defend stale claims. Here, the Board was given timely notice of a protest, and the amendment to clarify the grounds for the protest was sought during a time period that would have enabled the Board to act. This situation does not implicate the difficulty of defending stale claims or any other concern addressed in the doctrine.

Id. at 330 n.2.[2] Again, based on the language of *MC Holdings*, we conclude the Allens' motion to amend, if granted, would relate back to the date the petition was filed.

III. Disposition

The Allens generated a genuine issue of material fact as to whether they moved to amend the petition to challenge the 2012 assessment. That genuine issue of material fact precluded the grant of summary judgment in favor of the board. We reverse the summary judgment ruling and remand to the district court for further proceedings.

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[2] This language calls into question that portion of our unpublished opinion in *Western Iowa Coop. v. Woodbury Cnty. Bd. of Review*, No. 05-0989, 2006 WL 1229940, at *3 (Iowa Ct. App. Apr. 26, 2006) holding the "alleged oral amendment did not relate back to the original filing." Neither the board nor the district court had the benefit of *MC Holdings* when they made their decisions and understandably relied on *Western*, which, under virtually identical facts, steered them in a different direction.

In light of our conclusion that the board possessed authority to act on a motion to amend the petition and our further conclusion that any amendment would relate back to the date the petition was filed, we find it unnecessary to address the Allens' contention that "[i]f [they are] not allowed to amend [their] initial pleading and have that amendment relate back to the date of the initial pleading, then [they are] denied [their] fundamental right to be heard on the value of their property."

REVERSED AND REMANDED.