IN THE COURT OF APPEALS OF IOWA

No. 8-427 / 07-1145
Filed October 1, 2008

GERILYN BALDWIN,
Plaintiff-Appellant,

vs.

BOARD OF REVIEW OF BOONE COUNTY,
Defendant-Appellee.

Appeal from the Iowa District Court for Boone County, David R. Danilson, Judge.

A property owner appeals from a district court order dismissing her appeal from the county assessor and board of review's assessment of her property. **AFFIRMED.**

Loren Nalean of Nalean & Nalean, Boone, for appellant.

M. Brett Ryan, Bruce B. Green, and Frank W. Pechacek of Willson & Pechacek, P.L.C., Council Bluffs, for appellee.

Heard by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

DOYLE, J.

Gerilyn Baldwin appeals from a district court order dismissing her appeal of the board of review's decision, which left the omitted assessment's revaluation and reclassification of her property unchanged. Baldwin contends the district court erred in finding that her appeal to the board of review was improper and untimely, and in failing to find that the assessor's omitted property assessment notice was so defective as to be null, void, and of no legal effect. Upon review, we affirm the district court's order dismissing her appeal.

I. Background Facts and Proceedings.

In 1995 Baldwin and her then husband, both residents of Denver, Colorado, purchased 9.5 acres of property located in Boone County, Iowa. At that time, a house, two barns, granaries, a hog shed, and other miscellaneous structures, all in need of repair, were situated upon the property. The property was classified at that time for assessment purposes as agricultural.

Baldwin and her husband purchased the property to use as a vacation home and family retreat. To that end, they made significant improvements to the property after its purchase until approximately 1998. The improvements cost approximately $800,000 and included extensive renovation of the house, upgrading it to include two kitchens, seven bedrooms, and eight bathrooms, as well as substantial renovation of the barn and demolition of many of the other existing structures. In 1998 Baldwin and her husband divorced, and Baldwin became the sole owner of the Boone County property.

From 1998 to 2001 the assessor assessed the property's land, buildings, and dwelling; however, the assessed valuation did not include any added

valuation that resulted from the property's improvements. In April 2001 the Boone County Assessor became aware that the buildings on the property had been substantially renovated. The assessor's field appraiser visited the property to assess the improvements, but was denied entry into the house by a person (not Baldwin) on the grounds. The field appraiser then attempted to contact Baldwin by letter to make arrangements to inspect the property for valuation purposes, but the letter was not received by Baldwin and was therefore unanswered.[1] Because the assessor was unable to get further information from Baldwin regarding the improvements, the property's 2002 and 2003 total assessed valuations did not include the added valuation of the property's improvements.

In 2004 Baldwin listed the property for sale through a realtor, who advertised the property in the local newspapers and on his company's website. In May 2004 the realtor's website advertising Baldwin's property came to the attention of the assessor. Based upon the website's advertisement of the property as a potential corporate retreat or a bed and breakfast operation, the assessor determined the property needed to be reclassified as commercial rather than agricultural. Additionally, based upon the advertisement's stated sales price of the property and the improvements to the property, the assessor determined her previous assessed valuation of the property needed to be increased. Because the assessor's April 15 deadline for completing assessments had passed, she went before the Boone County Board of Review (Board) for

[1] The letter was not sent certified mail, and it is unclear from the record to what address the letter was sent.

permission to revalue and reclassify the property. There, the assessor asserted the property's improvements should be assessed as omitted property because the improvements' added value had been omitted in the previous assessments of the property, and that the property should be reclassified based upon the advertisements of the property. The Board granted the assessor's request. Subsequently, the property was reclassified and revalued.

On May 17, 2004, the assessor mailed Baldwin a "Notice of Assessment by Auditor or Assessor, of Omitted Property" (notice). The notice stated: "You are hereby notified that certain property, belonging to you . . . was erroneously omitted from assessment for taxation for the year of 2005 . . . ." The notice stated the property was class "C" (commercial) and that the property's total assessment was revalued at $412,291. The notice further stated:

> You are further notified that the Assessor, by authority of section 443.6, will proceed to assess the same and list it for taxation, for the taxes of the year A.D. 2005, at the valuation herein specified, unless you appear at his office at the Court House in Boone, Iowa within ten days from the date of this notice and show good cause why said property should not be so assessed to you at such valuation.

The notice was mailed via certified mail with return receipt to Baldwin at 2494 South Josephine Street, Denver, Colorado. This address was Baldwin's last known address on record with the assessor's office; however, Baldwin had moved from that address in 2003. Baldwin had informed the Boone County Treasurer's Office of her new address in August 2003 when she mailed in her property tax payment for the Boone County property, but neither Baldwin nor the treasurer's office advised the assessor's office of Baldwin's new address, and the assessor did not verify Baldwin's current address with the treasurer's office's

records prior to mailing out the notice.[2] Consequently, Baldwin did not receive the notice. On May 19, 2004, the return receipt was received by the assessor's office signed by someone other than Baldwin, but because the signature was illegible, the assessor's office was not aware that Baldwin did not receive its notice.

In August or September 2005, Baldwin received her 2005 Boone County Tax Bill from the Boone County Treasurer's Office. Baldwin's tax burden increased substantially from her 2004 tax statement based upon the property's commercial reclassification and revaluation. Baldwin contacted her realtor to find out why her taxes had increased, and the realtor obtained a copy of the 2004 notice from the assessor and subsequently advised Baldwin of the notice.

On May 4, 2006, eight or nine months after receiving actual notice of the changed assessment, Baldwin filed a petition to the Board, objecting to the 2004 assessment. Baldwin specifically asserted that her appeal was based upon clerical errors in the assessment and the notification of assessment. Baldwin argued that the notice was untimely because the notice was mailed on May 17, 2004, after the statutory April 15 deadline for assessments and notices of valuation. Additionally, Baldwin argued the assessor mailed the notice to the wrong address, although Baldwin had given the treasurer's office the correct address. Baldwin asserted that these errors were clerical errors, and that she had been damaged as a result of the errors because she was unable to contest the change in classification and valuation within the statutory time frame required

[2] The Boone County Treasurer's Office and Assessor's Office do not share computer systems, so electronically updating an address in the treasurer's office's database does not automatically update the addresses in the assessor's office's database.

for protesting assessments. She further argued that the property was improperly classified as commercial and requested the classification of the property be corrected and restored to residential[3] for the taxes payable in 2005-06. Baldwin further requested that the property's valuation be restored to its previous valuation.

On May 31, 2006, the Board denied Baldwin's petition and left the 2004 omitted assessment unchanged. The Board determined that no clerical or math error had been made. Additionally, the Board found that Baldwin's appeal was not timely filed, stating that a 2004 assessment could not be appealed in 2006.

On June 20, 2006, Baldwin filed her notice of appeal in district court specifically appealing the Board's decision regarding the property's assessed value and classification for the 2004-05 tax year. On July 17, 2006, the Board filed its answer, affirmatively asserting that Baldwin failed to exhaust her administrative remedies and that the district court lacked jurisdiction to address any of the claims raised by Baldwin. The matter proceeded to trial, and Baldwin testified that she thought the amount of the revaluation was fair, and ultimately challenged the reclassification of the property and her lack of notice of the reclassification.

Following trial, the district court entered its decision on May 7, 2007. The district court concluded that Baldwin's appeal should have been filed with the district court, not the Board, and that her appeal was untimely since she did not

[3] The property had previously been classified as agricultural, and not as residential as stated in the petition.

file her appeal within ten days of receiving actual notice of the change in classification and valuation.

Baldwin appeals.

II. Scope and Standards of Review.

The district court hears appeals from decisions of a board of review with reference to protests of assessment in equity. Iowa Code §§ 441.39, 443.11 (2005). We review cases brought in equity de novo. Iowa R. App. P. 6.4; *see Cott v. Board of Rev. of City of Ames*, 442 N.W.2d 78, 80 (Iowa 1989). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*).

III. Discussion.

Iowa Code chapter 441, titled "Assessment and Valuation of Property," charges assessors with "[causing] to be assessed, in accordance with section 441.21, all the property in the assessor's county . . . ." Iowa Code § 441.17(2) (2003).[4] "Assessment" is generally defined as the "[o]fficial valuation of property for purposes of taxation." Black's Law Dictionary 112 (7th ed. 1999). The assessment is to "be completed not later than April 15 each year." Iowa Code § 441.28. When the assessor increases or decreases the valuation of a property:

> [T]he assessor shall, at the time of making the assessment, inform the person assessed, in writing, of the valuation put upon the taxpayer's property, and notify the person, that if the person feels aggrieved, to appear before the board of review and show why the

[4] We cite the 2003 Iowa Code because it was the relevant code in force at the time the assessor completed her omitted property assessment in 2004. *See Kolb v. City of Storm Lake*, 736 N.W.2d 546, 553 n.6 (Iowa 2007). All citations in this opinion are to the 2003 Iowa Code unless otherwise indicated.

> assessment should be changed . . . . The owners of real property shall be notified not later than April 15 of any adjustment of the real property assessment.

Id. § 441.23.

Despite the April 15 assessment and notice deadlines, changes may be made to the assessment roll after April 15 by order of the board of review or by decree of court. *Id*. § 441.28. When the assessor makes a change in an assessment after already entering the assessment on the assessor's rolls:

> [T]he assessor shall note on said roll, together with the original assessment, the new assessment and the reason for the change . . . . Provided, however, in the event the assessor increases any assessment the assessor shall give notice in writing thereof to the taxpayer by mail prior to the meeting of the board of review.

Id.[5] If the board increases the value of any specific property or the entire assessment, or adds new property, the clerk is to "give immediate notice thereof by mail to [the property owner] at the post-office address shown on the assessment rolls . . . ." *Id*. § 441.36.

All property subject to assessment for purposes of taxation is required to be classified by the assessor. Iowa Admin. Code r. 701-71.1(1) (2003). The property's classification controls how the property's "actual value" is determined, as well as whether an "assessment limitation," commonly referred to as a "rollback," will be applied to the valuation. *See* Iowa Code § 441.21; Iowa Admin. Code rs. 701-71.1(3) to -.7; *see also Sperflsage v. Ames City Bd. of Rev*., 480

[5] Effective July 1, 2005, section 441.28 was amended to provide that "in the event the assessor increases any assessment the assessor shall give notice *of the increase* in writing to the taxpayer by mail *postmarked no later than April 15*." 2005 Iowa Acts ch. 150, § 126 (codified at Iowa Code § 441.28 (Supp. 2005)) (emphasis added). Nevertheless, the statute still provides than an assessment may be changed after April 15 by order of the board of review or by decree of the district court. Iowa Code § 441.28 (Supp. 2005).

N.W.2d 47, 48 (Iowa 1992) (explaining the "rollback" concept). A property's classification is to be based upon "the status of the real estate as of January 1 of the year in which the assessment is made." Iowa Admin. Code r. 701-71.1. However, neither the Iowa Code nor the Iowa Administrative Code sets forth procedures for an assessor's reclassification of property. Additionally, neither explicitly provides that property owners are entitled to notice upon an assessor's reclassification of their property.

A property owner who is dissatisfied with the "assessment" can file a protest against the "assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment." *Id*. § 441.37(1). A protest of the current assessment is confined to the grounds stated in section 441.37(1), which includes protesting an assessment based upon an alleged misclassification of property. *Id*. § 441.37(1)(c). However, prior years' assessments may only be protested if the property owner finds that a clerical or mathematical error had been made in the assessment and the taxes have not been fully paid by the property owner. *Id*. § 441.37(2). Assessments resulting from action of the board of review may be appealed "to the district court of the county in which the board holds its sessions within twenty days after its adjournment or May 31, whichever date is later." *Id*. § 441.38.

When land or a building's valuation was not included in the original assessment, the assessor may assess the land or building, called "omitted property," by an omitted assessment.[6] Iowa Code § 443.6; Iowa Admin. Code rs.

[6] "However, the failure to consider the value added as a result of an improvement made does not constitute an omission for which an omitted assessment can be made if the

701-71.25(1), .25(2)(b). Omitted assessments are not the same as original assessments completed under Iowa Code chapter 441. *See Laubersheimer v. Huiskamp*, 260 Iowa 1340, 1345, 152 N.W.2d 625, 628 (Iowa 1967) (holding that the grounds for protesting original assessments set forth in Iowa Code section 441.37 have no application to the procedure by which omitted property is assessed and appealed); *see also* Iowa Code §§ 443.6-.8, .11; Iowa Admin. Code r. 701-71.25. There is no deadline stated for assessing omitted property pursuant to section 443.6; however, before assessing any omitted property, the assessor is to notify the property owner by mail "to appear before the assessor . . . within ten days from the date of the notice and show cause, if any, why the correction or assessment should not be made." Iowa Code §§ 443.6, .7. If a property owner feels aggrieved by an omitted property assessment, the property owner may file an appeal of that assessment to the district court. *Id*. § 443.8. The appeal is to be filed "within ten days from the time of the final action of the assessor . . . ." *Id*. § 443.11.

A. Appeal to the Board.

Baldwin argues that the district court erred in finding that she improperly appealed the omitted assessment to the Board. Baldwin contends she was not required to file her appeal to the district court because the omitted assessment did not truly assess omitted property and the assessor improperly reclassified her property via an omitted assessment. Consequently, she asserts she was permitted to appeal the assessment to the Board under Iowa Code section

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building or land to which the improvement was made has been listed and assessed." Iowa Admin. Code r. 701-71.25(1)(a).

441.37(1)(c), because she was challenging the classification of the property. We disagree.

It is undisputed that the assessor revalued and reclassified Baldwin's property and its improvements via an omitted assessment. Whether the property and its improvements were properly assessed as omitted property is a determination for the district court. *Id*. § 443.8; *see also Okland v. Bilyeu*, 359 N.W.2d 412, 413 (Iowa 1984) (appealing an assessor's omitted assessments as not constituting "omitted property" to the district court pursuant to section 443.8). Consequently, even if the property was not truly omitted property within the meaning of the law and therefore should not have been revalued and reclassified by way of an omitted assessment, Baldwin's only recourse for challenging the omitted assessment was to follow the procedures set forth in chapter 443, not by appeal to the Board. Although Baldwin asserts that to require her to file her appeal to the district court rewards form over substance, the district court, not the Board, has jurisdiction to review omitted assessments once entered, and it is the district court that must determine whether the property is truly omitted property within the meaning of the statutes and rules. Consequently, we agree with the district court that Baldwin's appeal was incorrectly appealed to the Board.

B. Timeliness of Appeal.

Additionally, Baldwin argues the district court erred in finding that her appeal was untimely because her appeal was not filed within ten days of receiving actual notice of the omitted assessment. Ultimately, Baldwin contends she was unable to comply with the ten-day appeal requirement because the

assessor mailed the notice to the wrong address and she did not receive actual notice of the omitted assessment until August or September 2005.

Generally, the statute of limitations begins to run at a time when a complete cause of action has accrued. *See Sandbulte v. Farm Bureau Mut. Ins*. Co., 343 N.W.2d 457, 462 (Iowa 1984). The discovery rule provides that a cause of action does not accrue until a plaintiff has in fact discovered that an injury has been suffered or, by the exercise of reasonable diligence, should have been discovered. *Franzen v. Deere and Co*., 334 N.W.2d 730, 732 (Iowa 1983). While we do not determine that the discovery rule is applicable to an assessment appeal, we believe the general principles of the doctrine aid us in interpreting this statute. Consequently, where a property owner was provided a late omitted assessment notice, we interpret the starting period of section 443.7 to occur when the property owner received actual notice of the omitted assessment.

It is undisputed that Baldwin had actual notice of the omitted assessment's revaluation and reclassification of her property in August or September 2005. Baldwin did not file her appeal to the Board until May 2006. Because Baldwin failed to take any action within ten days of receiving actual notice, we concur with the district court's conclusion that Baldwin's appeal was untimely.[7]

IV. Conclusion.

Because we conclude Baldwin improperly and untimely appealed the omitted assessment, we affirm the decision of the district court.

AFFIRMED.

[7] We therefore need not and do not address the remaining grounds urged by Baldwin for reversal of the court's ruling.