

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000792-MR

RITA SPENCER; DONALD
SPENCER; AND FRANK STULL

APPELLANTS

v. APPEAL FROM PENDLETON CIRCUIT COURT
HONORABLE ROBERT W. MCGINNIS, JUDGE
ACTION NO. 08-CI-00336

KENTUCKY TAX BILL SERVICING,
INC.; AND KENTUCKY FORECLOSURE
MANAGEMENT, INC.

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: LAMBERT AND STUMBO, JUDGES; WHITE,¹ SENIOR JUDGE.

WHITE, SENIOR JUDGE: This is an appeal from an order of the Pendleton

Circuit Court which granted a motion for judgment on the pleadings brought by

¹ Senior Judge Edwin M. White sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Kentucky Tax Bill Servicing, Inc. (“KTBS”) and Kentucky Foreclosure Management, Inc. (“KFM”) against the appellants, Rita and Donald Spencer and Frank Stull.² The appellants, who are Pendleton County landowners, filed a complaint alleging that KTBS and KFM had charged illegal and unauthorized fees in connection with delinquent property tax bills.

KTBS purchases delinquent county real estate tax bills and KFM assists in the collection process. KRS 134.452 entitles private purchasers of certificates of delinquency to collect interest, administrative and attorneys’ fees up to certain monetary limits, in addition to the amount actually paid to purchase the certificate. It provides in pertinent part as follows:

(1) Notwithstanding any other provisions of this chapter, a private purchaser of a certificate of delinquency shall be entitled to collect only the following:

(a) The amount actually paid to purchase the certificate of delinquency;

(b) Interest accrued subsequent to the date the certificate of delinquency was purchased as provided in KRS 134.500;

(c) Attorneys’ fees as provided in this paragraph.

1. Attorneys’ fees incurred for collection efforts prior to litigation as follows:

a. If the amount paid for a certificate of delinquency is between five dollars (\$5) and three hundred fifty dollars (\$350), actual reasonable fees incurred up to one hundred percent

² Mike and Greta Kidwell, who were named as appellants in the notice of appeal, were dismissed as appellants on their own motion on November 19, 2009.

(100%) of the amount of the certificate of delinquency, not to exceed three hundred fifty dollars (\$350);

b. If the amount paid for a certificate of delinquency is between three hundred fifty-one dollars (\$351) and seven hundred dollars (\$700), actual reasonable fees incurred up to eighty percent (80%) of the amount of the certificate of delinquency, not to exceed five hundred sixty dollars (\$560); and

c. If the amount paid for a certificate of delinquency is above seven hundred one dollars (\$701), actual reasonable fees incurred up to seventy percent (70%) of the amount of the certificate of delinquency, not to exceed seven hundred dollars (\$700).

...

(d) Administrative fees incurred for preparing, recording, and releasing an assignment of the certificate of delinquency in the county clerk's office, not to exceed one hundred dollars (\$100).

KTBS acquired delinquent tax bills for the Spencer and Stull properties, and demanded payment of \$2,319.81 from the Spencers and \$1,202.40 from Frank Stull. These amounts included attorney and administrative fees which the appellants contend were illegal, unauthorized, and neither actual nor reasonable, although they were not in excess of the statutory limits. Stull has paid his bill; the Spencers have not.

Stull and the Spencers filed suit in the Pendleton Circuit Court seeking class status, and declaratory, injunctive and monetary relief against KTBS and KFM. They alleged that the KTSB and KFM had violated KRS 134.452, *et seq.*; the federal Fair Debt Collections Practices Act, 15 U.S.C. § 1692(e); the Kentucky Consumer Protection Act, KRS 367.170; and the Civil Rights Act, 42 U.S.C. § 1983. They also made common law claims of conversion and fraud and requested a declaratory judgment concerning the assessment and collection of the fees and expenses. Their prayer for relief asked for compensatory and punitive damages and sought temporary and permanent injunctive relief to restrain KTBS and KFM from further violations.

The appellants served interrogatories and requests for production of documents on the appellees, who eventually sought an extension of time to provide the discovery. In the intervening period, the appellees also filed a motion with accompanying memorandum for judgment on the pleadings. The circuit court granted the motion and dismissed the complaint. This appeal followed.

The purpose of Kentucky Civil Rules of Procedure (CR) 12.03, which provides that a party may file a motion for a “judgment on the pleadings,” is

to expedite the termination of a controversy where the ultimate and controlling facts are not in dispute. It is designed to provide a method of disposing of cases where the allegations of the pleadings are admitted and only a question of law is to be decided. . . . The judgment should be granted if it appears beyond doubt that the nonmoving party cannot prove any set of facts that would entitle him/her to relief.

City of Pioneer Village v. Bullitt County ex rel. Bullitt Fiscal Court, 104 S.W.3d 757, 759 (Ky. 2003). Whether the dismissal was proper is a question of law; therefore, our review is *de novo*. *Benningfield v. Pettit Envtl., Inc.*, 183 S.W.3d 567, 570 (Ky. App. 2005).

The trial court's order dismissing the complaint states only that it based its decision on the rationale contained in the appellees' memorandum. The primary argument advanced by the appellees in that memorandum was that the circuit court lacked subject matter jurisdiction over the appellants' claims. "The Circuit Court is a court of general jurisdiction; it has original jurisdiction of all justiciable causes not exclusively vested in some other court." KRS 23A.010(1). The district court has exclusive jurisdiction in "[c]ivil cases in which the amount in controversy does not exceed four thousand dollars (\$4,000), exclusive of interest and costs, except matters affecting title to real estate and matters of equity[.]" KRS 24A.120(1). Thus, the three potential bases of circuit court jurisdiction in this case are: 1) if the amount in controversy exceeds \$4,000; 2) if the claim affects title to real estate; or 3) if the claim is equitable.

The appellants argue that their claims for injunctive and declaratory relief invoked the circuit court's exclusive jurisdiction over matters of equity. They contend that they seek not only to recover the alleged overpayments they have made, but to declare the actions of the appellees invalid, and to enjoin future violations, for the benefit of future class members. They argue that the only method by which the putative class can achieve this end is to invoke the equity

jurisdiction of the circuit court pursuant to the Declaratory Judgment Act, KRS 418.040.

The fact that the appellants seek class certification is not sufficient to invoke the equitable jurisdiction of the circuit court. There must be a separate, independent source of equitable jurisdiction apart from any class claims. The Pennsylvania Supreme Court has aptly delineated this distinction:

The class action . . . is a procedural device designed to promote efficiency and fairness in the handling of large numbers of similar claims; class status or the lack of it is irrelevant to the question whether an action is to be heard in equity or at law With no independent basis for equity jurisdiction appellants cannot generate it simply by alleging class status.

Lilian v. Commonwealth, 354 A.2d 250, 253-54 (Pa. 1976) (citations omitted).

The primary claim of the appellants is that the attorneys' and administrative fees, while admittedly within the statutory limits, were neither "actual" nor "reasonable" as required under the statute. Under KRS 134.490, a private person owning a certificate of delinquency may after the expiration of one year institute an action to enforce the lien provided in KRS 134.420(1). KRS 134.420(1)(c) provides that such tax lien "shall have priority over any other obligation or liability for which the property is liable[,]" and notice of such a lien is to be recorded with the county clerk. KRS 134.420(1)(f). The appellants were faced with the choice of paying the disputed fees in order to clear their title, or refusing to pay and allowing the lien to encumber the property. Hence, we hold that the circuit court does have jurisdiction pursuant to KRS 24A.120(1), which

excludes matters affecting title to real property from the jurisdiction of the district court.

The appellants and appellees have both raised numerous additional arguments disputing the viability of the claims in the complaint. The circuit court did not specify the grounds on which it granted judgment on the pleadings, stating only that it adopted the rationale of the appellees' memorandum. We must therefore conclude that it agreed with the appellees that it did not have subject matter jurisdiction. Operating under this assumption, it would not have been necessary or appropriate for the circuit court further to consider the substantive claims of the complaint. "It is a matter of fundamental law that the trial court should be given an opportunity to consider an issue, so an appellate court will not review an issue not previously raised in the trial court." *Marksberry v. Chandler*, 126 S.W.3d 747, 753 (Ky. App. 2003). We therefore reverse the trial court's order and remand for further proceedings in accordance with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Charles T. Lester, Jr.
Independence, Kentucky

BRIEF FOR APPELLEES:

Gary J. Sergent
Christopher J. Arlinghaus
Covington, Kentucky