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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2249**

Patrick Fish,
Appellant,

vs.

Roseau County,
Respondent.

**Filed September 10, 2012
Affirmed
Stauber, Judge**

Roseau County District Court
File No. 68CV11282

Patrick Fish, Seattle, Washington (pro se appellant)

Karen M. Foss, Roseau County Attorney, Roseau, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Cleary, Judge; and Muehlberg, Judge.*

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from a grant of summary judgment in favor of respondent-county, appellant-property owner argues that the district court erred by concluding that the county properly followed Minn. Stat. § 273.13, subd. 23(c) (2010), in reclassifying appellant's

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

property for tax purposes, and that appellant had proper notice of the reclassification. Appellant also contends that the district court abused its discretion by denying his motion to strike. We affirm.

FACTS

Appellant Patrick Fish is the owner of 113.90 acres of real property in Roseau County. In November 2009, appellant received a property tax statement that reclassified 103.90 acres of his 113.90 acre parcel as rural property according to Minn. Stat. § 273.13, subd. 23(c). Appellant subsequently appealed the reclassification to the Roseau County Assessor and a Roseau County Commissioner. According to appellant, neither the county assessor nor the county commissioner responded to his written appeal.

On April 30, 2010, appellant received a property tax statement declaring the amount of taxes due in accordance with the reclassification notice previously sent to him. Two weeks later, Roseau County Assessor Allen Heim sent appellant a letter explaining the changes to the property classification system and how those changes were applied to the reclassification of appellant's property. Appellant then sent an official notice of appeal of his property reclassification to the Roseau County Board of Appeal and Equalization (the board).

Appellant appeared before the board on June 15, 2010, and the board voted that there be no change to the reclassification of appellant's property and the amount of property taxes due. The board sent appellant a letter denying his appeal. Thereafter, appellant requested information from the county, including an explanation as to why his property tax statement was not mailed by the March 31, 2010 deadline. The county sent

appellant the requested information and explained that the property tax statement was not mailed by the deadline because the county experienced problems with tax calculation in its new tax system.

On April 7, 2011, appellant brought suit against respondent Roseau County alleging that the county improperly reclassified 103.90 acres of his property as rural property and that the county failed to properly notify him of the reclassification. Both parties subsequently moved for summary judgment. Thereafter, appellant moved to strike “the affidavits and exhibits in support of . . . the [county’s] [m]otion for [s]ummary [j]udgment and . . . specific parts of the [county’s] [m]emorandum in [s]upport [of the motion for summary judgment] for cause.”

At the hearing on the parties’ motions for summary judgment, the district court denied appellant’s motion to strike. The district court then filed an order concluding that appellant received proper notice of the reclassification of his property and that appellant took the proper steps to appeal his property tax reclassification. The district court also concluded that Minn. Stat. § 273.13, subd. 23(c), “clearly states the guidelines for property tax classification, and these guidelines were properly followed by the [county] in reclassifying [appellant’s] property.” Thus, the district court granted the county’s motion for summary judgment and denied appellant’s motion for summary judgment. This appeal from the resulting judgment follows.

DECISION

I.

When reviewing a grant of summary judgment, an appellate court determines whether there are genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 56.03). The reviewing court “view[s] the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). Whether a genuine issue of material fact exists and whether the district court erred in its application of the law is reviewed de novo. *Id.* at 77.

Appellant challenges the district court’s grant of summary judgment in favor of the county, arguing that (1) the county failed to properly classify appellant’s entire 113.90 acre parcel as homestead property under Minn. Stat. § 273.13, subd. 23(c); (2) he was not given adequate notice of the valuation and classification of his property for his 2010 taxes; and (3) the provisions of Minn. R. Gen. Pract. 115.10 were not properly followed.

A. Reclassification of appellant’s property under Minn. Stat. § 273.13, subd. 23(c)

In 2008, the legislature amended Minn. Stat. § 273.13, subd. 23(c), “effective for taxes payable in 2009 and thereafter.” 2008 Minn. Laws ch. 366, art. 6, § 26, at 2152–53.

The statute now provides:

Class 2b rural vacant land consists of parcels of property, or portions thereof, that are unplatted real estate, rural in character and not used for agricultural purposes, including land used for growing trees for timber, lumber, and wood and wood products, that is not improved with a structure. The presence of a minor, ancillary nonresidential structure as defined by the commissioner of revenue does not disqualify the property from classification under this paragraph. Any parcel of 20 acres or more improved with a structure that is not a minor, ancillary nonresidential structure must be split-classified, and ten acres must be assigned to the split parcel containing the structure.

Minn. Stat. § 273.13, subd. 23(c).

Appellant argues that because his 113.90 acre parcel is his homestead property, the county improperly classified 103.90 acres of the parcel as rural property. But the statute is unambiguous. It provides that “[a]ny parcel of 20 acres or more improved with a structure that is not a minor, ancillary nonresidential structure must be split-classified, and ten acres must be assigned to the split parcel containing the structure.” *Id.*; see Minn. Stat. § 645.44, subd. 15(a) (2010) (stating that “[m]ust’ is mandatory”). Here, appellant owns 113.90 acres of property. Because the parcel is more than 20 acres, the county split-classified the parcel. The county then assigned ten acres to the split parcel containing appellant’s home, and this parcel was classified as appellant’s homestead property. The remaining 103.90 acres were then classified as rural property under section

273.13, subdivision 23(c). Therefore, appellant is unable to establish that the county improperly reclassified his property.

B. Notice requirements

Appellant argues that the county failed to provide him with the proper notice of the reclassification of his property. Specifically, appellant contends that the county failed to comply with the notice requirements contained in Minn. Stat. §§ 273.121, 276.04, and 275.065, subd. 3 (2010). Thus, appellant claims that he was denied due process because he did not have “a meaningful opportunity to be heard.”

We disagree. The record reflects that the county complied with the applicable statutory notice requirements. Moreover, the crux of appellant’s claim is that he was deprived of his due-process rights because the alleged lack of adequate notice deprived him of his right to appear, be heard, and appeal the reclassification of his property. But appellant’s argument is refuted by the record. It is well-settled that due process guarantees reasonable notice and an opportunity to be heard at a meaningful time and in a meaningful manner before a fair tribunal. *Nexus v. Swift*, 785 N.W.2d 771, 779 (Minn. App. 2010). Here, the record reflects that appellant was notified of the reclassification of his property. The record also reflects that he challenged the reclassification, appeared before the board, and argued his case to the board, which denied his appeal. The record further reflects that appellant challenged the denial of his appeal before the district court and now challenges the district court’s decision in this appeal. Therefore, appellant has not established that he was denied due process of law.

C. Settlement provisions of Minn. R. Gen. Pract. 115.10

Appellant argues that the district court erred by granting the county's motion for summary judgment because the county failed to comply with the settlement provisions contained in Minn. R. Gen. Pract. 115.10 by not attempting to settle the case. We disagree. The rule provides that it is the "moving party" that "shall initiate the [settlement] conference." Minn. R. Gen. Pract. 115.10. Here, the record reflects that because both parties moved for summary judgment, both parties had an obligation to initiate a settlement conference under rule 115.10. But even if appellant is correct that the county failed to initiate a settlement conference, appellant cites no precedent stating that the failure to initiate a settlement conference precludes a grant of summary judgment. And, our research also fails to reveal any precedent establishing such a rule. Accordingly, appellant fails to establish that the district court erred by granting the county's motion for summary judgment.

II.

Appellant argues that the district court abused its discretion by denying his motion to strike because the county's summary judgment motion contained an untimely new and unlawful defense and introduced new issues, facts, and information into the record. This court reviews a district court's decision to grant or deny a motion to strike material from a pleading for an abuse of discretion. *Haug v. Haugan*, 51 Minn. 558, 561, 53 N.W. 874, 875 (1892); *see also Black's Law Dictionary* 1271 (9th ed. 2009) (defining "pleading" as "[a] system of defining and narrowing the issues in a lawsuit whereby the parties file formal documents alleging their respective positions").

Here, the record reflects that the county filed the necessary documents in its answer and amended answer and that all the documents were timely filed. The record also reflects that there were no new defenses raised in the summary judgment motion. Accordingly, the district court did not abuse its discretion by denying appellant's motion to strike.

Affirmed.