

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA03-162

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2003

In The Matter Of:

The Appeal of Thomas Tilley,
Trustee, from the Appraisal
of Real Property By The Wake
County Board of Equalization
and Review for 2000

North Carolina
Property Tax Commission
No. 00 PTC 131

Appeal by taxpayer Thomas Tilley, individually and as Trustee, from order dated 20 September 2002 by the North Carolina Property Tax Commission, sitting as the State Board of Equalization and Review. Heard in the Court of Appeals 29 October 2003.

Thomas E. Tilley, taxpayer-appellant, pro se.

Deputy County Attorney Shelley T. Eason for Wake County, respondent-appellee.

BRYANT, Judge.

Thomas Tilley (taxpayer), individually and as Trustee, appeals an order of the North Carolina Property Tax Commission (the Commission), sitting as the State Board of Equalization and Review, dated 20 September 2002 dismissing his appeal to the Commission.

Taxpayer owned the Riverview Mobile Home Park (Park) in Wake County, North Carolina. In July 2000, taxpayer appealed to the Commission for review of a decision by the Wake County Board of Equalization and Review concerning the valuation of the Park.

While the appeal was pending, taxpayer sold the Park in 2001.

In its 20 March 2002 "Interrogatories and Requests for Production of Documents," Wake County (the County) requested information and documentation for the 2001 sales price and the income and expenses associated with the Park for the years 1998 to 2000. In his responses, taxpayer refused to provide the requested information and documentation, stating that the interrogatories were irrelevant and asserting his Fifth Amendment privilege against self-incrimination. The County filed a motion to compel taxpayer to respond. After a hearing, the Commission ordered taxpayer to produce the requested information by 14 July 2002. The County filed a motion to dismiss dated 26 July 2002, alleging taxpayer failed to comply with the order compelling discovery. Taxpayer filed a response to the County's motion to dismiss dated 7 August 2002. In its 20 September 2002 order, the Commission dismissed taxpayer's appeal for failure "to respond or to present any viable legal defense to production of information requested by the County."

The sole issue is whether the Commission erred in dismissing taxpayer's appeal. Taxpayer argues the Commission's dismissal of his appeal is erroneous because the Commission's order compelling discovery violates his privilege against self-incrimination under the Fifth Amendment to the United States Constitution.

"[T]he [F]ifth [A]mendment privilege against compulsory testimonial self-incrimination . . . extends to civil proceedings

where a party may be subjected to imprisonment." *Lowder v. Mills, Inc.*, 301 N.C. 561, 584, 273 S.E.2d 247, 260 (1981) (citing *McCarthy v. Arndstein*, 266 U.S. 34, 69 L. Ed. 158 (1924) and *Allred v. Graves*, 261 N.C. 31, 134 S.E.2d 186 (1964)). The Fifth Amendment does not protect the disclosure of "the contents of subpoenaed documents . . . unless . . . physical or moral force was exerted at the time the documents were prepared thereby making their preparation involuntary." *Id.* at 588, 273 S.E.2d at 262 (holding the trial court's order requiring the defendant to produce his income tax returns did not violate his Fifth Amendment privilege against self-incrimination because the evidence did not show that the defendant was under any physical or mental coercion when he prepared his tax returns).

In the instant case, taxpayer did not present any evidence indicating he might be subjected to imprisonment for disclosing the requested information, nor that he was under coercion at the time he prepared the tax returns. *See id.*; *see also Stone v. Martin*, 56 N.C. App. 473, 476, 289 S.E.2d 898, 901 (1982) (a "witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself"). Further, taxpayer claims the North Carolina Department of Revenue has alleged that he failed to file state and federal income tax returns "for numerous tax periods." However, nowhere in the record on appeal does taxpayer provide evidence to support his claim. *See N.C.R. App. 9(a)* (appellate review is "solely upon the record on appeal and the verbatim transcript of proceedings").

The Commission's rules permit issuance of an order compelling discovery. 17 NCAC 11.0218 (June 2001); see also N.C.G.S. § 105-288(b) (2001) (authorizing the Commission to "adopt rules needed to fulfill its duties"). "[T]he Commission has an obligation and an implied power to enforce its rules." *In re Appeal of Fayetteville Hotel Assoc.*, 117 N.C. App. 285, 288, 450 S.E.2d 568, 570 (1994), *aff'd*, 342 N.C. 405, 464 S.E.2d 298 (1995). In this case, taxpayer failed to comply with the Commission's order compelling discovery. Therefore, the Commission acted within its authority in dismissing taxpayer's appeal. See *In re Phillips*, --- N.C. App. ---, ---, --- S.E.2d ---, --- 2003 N.C. App. LEXIS 1992, at *3-*5 (Nov. 4, 2003) (No. COA03-46) (affirming the Commission's order dismissing the taxpayer's appeal because he failed to enter into a pre-hearing order and furnish the Commission six copies of the documentary evidence, as required by the Commission's rules); *Fayetteville*, 117 N.C. App. at 288, 450 S.E.2d at 570-71 (affirming the Commission's order dismissing the taxpayer's appeal because it failed to enter into a pre-hearing order and submit the requested documents, as required by the Commission's rules).

Because we have held the Commission acted within its authority in dismissing taxpayer's appeal, we do not address taxpayer's remaining assignments of error.

Affirmed.

Judges McCULLOUGH and TYSON concur.

Report per Rule 30(e).