

[Cite as *Spencer Trust v. Summit Cty. Bd. of Revision*, 2015-Ohio-4010.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF SUMMIT    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

SPENCER TRUST, et al.

Appellees

v.

SUMMIT COUNTY BOARD OF  
REVISION

Appellant

C.A. Nos.    27373  
                  27374  
                  27375

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE Nos.    CV 2013-09-4640  
                  CV 2013-08-4059  
                  CV 2013-08-4058

DECISION AND JOURNAL ENTRY

Dated: September 30, 2015

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CARR, Judge.

{¶1} Appellant, the Summit County Board of Revision, appeals orders by the Summit County Court of Common Pleas. This Court reverses and remands.

I.

{¶2} The Spencer Trust, Steven and Ythamar Chaney, and Bruce and Donna Henretty filed administrative appeals from decisions of the Summit County Board of Revision. Each of their notices of appeal indicated that the appeal was taken pursuant to R.C. Chapter 2506. Each named the Board of Revision as the appellee, and service was made only upon the Board of Revision. The Board of Revision moved to dismiss each case, maintaining that the proper parties had not been either named or served.

{¶3} While that motion was pending, the Board of Revision requested several extensions of time to transmit the record due to what it characterized as a “catastrophic malfunction of its computer system which resulted in the loss of many hearing tapes.” The trial court finally issued an order that proceeded under R.C. Chapter 2506, concluding that it did not have the authority to take additional evidence and lacked jurisdiction to consider the appeal without a transcript. Despite having concluded that it lacked jurisdiction to consider the appeals, the trial court then remanded the cases to the Board of Revision and ordered new hearings.

{¶4} The Board of Revision appealed, and this Court consolidated the appeals for purposes of oral argument and disposition.<sup>1</sup>

## II.

### **ASSIGNMENT OF ERROR I**

THE TRIAL COURT ERRED IN APPLYING SECTION 2506 OF THE REV. CODE TO THIS APPEAL INSTEAD OF SECTION 5717.05 OF THE REV. CODE.

{¶5} The Board of Revision’s first assignment of error is that the trial court erred by applying R.C. Chapter 2506 to these administrative appeals instead of R.C. 5717.05. We agree.

{¶6} R.C. 5717.01 provides for an appeal directly from decisions made by county boards of revision to the Ohio Board of Tax Appeals. As an alternative, however, R.C. 5717.05 provides that such orders may be appealed directly to the appropriate court of common pleas. R.C. 5717.05 sets forth requirements for perfecting the notice of appeal and for service, provides timelines for when the record from the board of revision must be transmitted, and describes when

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<sup>1</sup> The appellees moved to dismiss the appeals for lack of jurisdiction. This Court denied the motions, and we need not revisit that determination at this time. *See, e.g., Douglas v. Williams*, 9th Dist. Summit No. 27459, 2015-Ohio-1721 (addressing the merits of an order that had the effect of dismissing a case for lack of subject matter jurisdiction, but that also continued to a disposition on the merits of the case).

a court of common pleas may consider additional evidence. Although the court of common pleas acts in an appellate capacity for purposes of R.C. 5717.05, the statute also requires the court to “determine the taxable value of the property whose valuation or assessment for taxation by the county board of revision is complained of[.]”

{¶7} In each of these respects, R.C. 5717.05 is distinct from the provisions of R.C. Chapter 2506 as they relate to administrative appeals generally. *See, e.g.*, R.C. 2506.02 (perfection of appeal and transmission of the record); R.C. 2506.03 (restrictions on when a trial court may consider additional evidence); R.C. 2506.04 (describing the dispositions available to a trial court acting in an appellate capacity). In accordance with the “cardinal principle of statutory construction that a specific provision shall prevail over one that is only general,” *State v. Farren*, 140 Ohio St. 473, 476 (1942), R.C. 5717.05 governs appeals from a county board of revision at least to the extent that the provisions of the statute diverge from the provisions of R.C. Chapter 2506. *See Lockhart Dev. Co. v. Summit Cty. Bd. of Revision*, 9th Dist. Summit No. 25728, 2011-Ohio-5000, ¶ 5-8.

{¶8} In this case, the trial court determined that it lacked jurisdiction and proceeded under R.C. Chapter 2506 instead of R.C. 5717.05. This was error, and the Board of Revision’s first assignment of error is sustained.

#### **ASSIGNMENT OF ERROR II**

THE TRIAL COURT ERRED BY NOT GRANTING THE MOTION TO DISMISS OF APPELLANT SUMMIT COUNTY BOARD OF REVISION FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF REV. CODE SECTION 5717.05.

#### **ASSIGNMENT OF ERROR III**

THE TRIAL COURT ERRED BY REMANDING THIS CASE BACK TO THE SUMMIT COUNTY BOARD OF REVISION FOR REHEARING BASED ON

THE INABILITY OF THE APPELLANT TO PROVIDE A TRANSCRIPT OF  
THE ORIGINAL HEARING.

{¶9} The Board of Revision's remaining assignments of error are premature, and we decline to address them.

III.

{¶10} The Board of Revision's first assignment of error is sustained. The judgments of the Summit County Court of Common Pleas are reversed, and these matters are remanded to the trial court to apply R.C. 5717.05 in the first instance.

Judgment reversed  
and cause remanded.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellees.

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DONNA J. CARR  
FOR THE COURT

HENSAL, P. J.  
MOORE, J.  
CONCUR.

APPEARANCES:

SHERRI BEVAN WALSH, Prosecuting Attorney, and REGINA M. VANVOROUS, Assistant Prosecuting Attorney, for Appellant.

WILLIAM H. CORGAN, III, Attorney at Law, for Appellee.

KARRIE M. KALAIL, Attorney at Law, for Appellee.

GEORGE J. EMERSHAW, Attorney at Law, for Appellees.

JACQUENETTE S. CORGAN, Attorney at Law, for Appellee.