[Cite as *Campbell v. Carlisle*, 2009-Ohio-6751.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

WALLACE R. CAMPBELL, et al.,	:	
Plaintiffs-Appellants,	:	CASE NO. CA2009-05-053
	:	O P I N I O N
- vs -		12/21/2009
	:	
CITY OF CARLISLE,	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 07CV68153

Ruppert, Bronson & Ruppert, Rupert E. Ruppert, 1063 E. Second Street, P.O. Box 369, Franklin, Ohio 45005, for plaintiffs-appellants, Wallace R. and Helen Y. Campbell

David A. Chicarelli, 614 E. Second Street, Franklin, Ohio 45005, for defendant-appellee

RINGLAND, J.

{¶1} Plaintiffs-appellants, Wallace and Helen Campbell, appeal a decision of the Warren County Court of Common Pleas denying a petition to detach their real estate from the city of Carlisle.

{¶2} Appellants are the owners of approximately 40 acres of farm land located in the city of Carlisle. Each year appellants file an application to value the property for agricultural use (a "CAUV application"). As a result of the CAUV valuation, appellants pay approximately $172 in yearly property taxes. Without the CAUV valuation, appellants' yearly property taxes

would amount to $12,538.99.

{¶3} On March 27, 2007, appellants filed a Petition for Detachment, requesting to detach their property from the city of Carlisle. The city opposed the petition. Following a trial on the matter, the trial court denied the petition. Appellants timely appeal, raising two assignments of error.

{¶4} Assignment of Error No. 1:

{¶5} "THE TRIAL COURT ERRED WHEN IT RENDERED ITS JUDGMENT BASED ON THE AMOUNT OF TAXES THE CAMPBELLS PAID ON THEIR PROPERTY INSTEAD OF THE AMOUNT FOR WHICH THEIR PROPERTY WAS TAXED AS IS REQUIRED BY THE PLAIN MEANING OF THE STATUTE."

{¶6} Petitions for detachment of farm land are governed by R.C. 709.41 and R.C. 709.42. In order to detach land from a municipality, four factual conditions must be satisfied: 1) the lands are farm lands not within the original limits of the municipal corporation; 2) because the lands are in the municipal corporation, the owner of the farm land is taxed and will continue to be taxed thereon for municipal purposes in substantial excess of the benefits conferred on the landowner; 3) detaching the farm lands will not adversely affect the best interests or good government of the municipal corporation; and 4) five years have elapsed from the time the farm land was originally annexed by the municipal corporation and the time the petition for detachment of farm lands was filed. R.C. 709.42; *Griffith v. City of Huron* (Apr. 29, 1988), Erie App. No. E-87-46, 1988 WL 39714, *2.

{¶7} The parties stipulated that the property was not within the original limits of the municipal corporation and at least five years have elapsed since the property was originally annexed into the municipal corporation. Further, the trial court also resolved the third issue in favor of appellants, finding that there is no evidence that detachment of the property will impact the best interests or good government of the city of Carlisle.

{¶8} However, the court concluded that appellants had not satisfied the second condition. The court reasoned that appellants were not and would not continue to be taxed for municipal purposes in excess of the benefits they receive because: 1) appellants pay only $172 in yearly taxes on the property; 2) approximately 80 percent of the taxes go to the local school district; and 3) detachment of the property would not alter the status of the property as agricultural use.

{¶9} In their first assignment of error, appellants argue the trial court considered the wrong tax valuation. Appellants urge that the court should have considered the amount of taxes they would be required to pay without the CAUV application, $12,538.99, instead of the amount of taxes levied yearly on the property pursuant to the CAUV.

{¶10} Our sole issue for determination is which tax valuation should have been considered by the trial court. Specifically, whether "taxed" as used in R.C. 709.42 refers to the amount of taxes levied against an agricultural property after the filing of a CAUV application or the amount that would be levied against the property if no CAUV had been filed by the property owners, i.e., a property's "true value in money." R.C. 5713.01(B). Interpretation of a statute is a matter of law and, thus, an appellate court must apply a de novo standard of review. *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶8.

{¶11} Although R.C. 709.41 and R.C. 709.42 have been in existence since 1953, petitions requesting the detachment of farm land from a municipality are quite uncommon and little precedent exists regarding detachment petitions. Even in the few farm land detachment cases, those courts do not engage in any interpretation relating to the proper tax valuation that must be considered. See *Griffith*, 1988 WL 39714; *Williams v. City of Wilmington* (1960), 85 Ohio Law Abs. 398; *Smetzer v. City of Elyria* (1912), 23 Ohio Dec. 179; *Incorporated Village of Fairview v. Giffee* (1905), 73 Ohio St. 183; *Village of Grover Hill v. McClure* (1905), 17 Ohio C.D. 376. Accordingly, we are left with an issue of first

impression.

{¶12} The statutory timeline is particularly illuminative of this question. As noted above, Ohio's current statutory procedures for detachment of agricultural land were enacted in 1953. The provisions of the Ohio Tax Code creating the separate CAUV valuations and procedures were first enacted in 1974.

{¶13} When the detachment provisions were enacted, CAUV tax valuations were never contemplated since the CAUV valuations were not in existence at the time. Accordingly, when evaluating a detachment petition before the enactment of the CAUV provisions, a court would have been required to consider the property's true valuation. When the CAUV provisions were enacted, the Ohio legislature neither incorporated nor referenced the detachment statute, nor did the legislature modify R.C. 709.42 to require the CAUV tax valuation to be the controlling tax amount in a detachment proceeding. See *Thomas v. Freeman*, 79 Ohio St.3d 221, 224-225, 1997-Ohio-395.

{¶14} By failing to reference or modify the detachment statute when enacting the CAUV provisions, the legislature by implication expressed an intent not to change the tax valuation that a court must consider in a detachment proceeding. *Henderson v. City of Cincinnati* (1909), 81 Ohio St. 27, syllabus (later act contained no provision that either expressly or by implication amended the former legislation).

{¶15} If the legislature wished for a property's CAUV valuation to be controlling in a detachment proceeding, that intent should have been reflected in the CAUV provisions or through modification of R.C. 709.42. As they were written, the CAUV provisions of the Ohio Tax Code have no effect or application to a detachment action.[1] See *Estate of Roberts v. Zaino* (Oct. 13, 2000), Miami App. No. 2000 CA 15, 2000 WL 1514084, *5; *Wade v. Savings*

1. The detachment statute as written is additionally problematic due to the absence of guidelines for determining the value of various municipal benefits. Courts are given no guidance regarding which municipal benefits should be considered and how to determine the valuation for the specific benefits.

& Trust Co. (June 17, 1998), Wayne App. No. 97CA0063, 1998 WL 318465, *5. Accordingly, when reviewing a petition for detachment of farm land, a court must consider the property's non-CAUV tax valuation.

{¶16} Appellants' first assignment of error is sustained.

{¶17} Assignment of Error No. 2:

{¶18} "THE TRIAL COURT WRONGFULLY TOOK JUDICIAL NOTICE OF FACTS NOT PRESENTED AT TRIAL AND SUBJECT TO REASONABLE DISPUTE."

{¶19} In the second assignment of error, appellants argue that the trial court wrongfully took judicial notice that approximately 80 percent of the paid property tax goes to the local school system. Appellants argue that the trial court must inform the parties of the taking of judicial notice and provide the parties with an opportunity to be heard. Appellants argue the trial court failed to provide them prior notice or an opportunity to be heard.

{¶20} Judicial notice is governed by Evid.R. 201. "A court may take judicial notice, whether requested or not." Evid.R. 201(C). Further, "[j]udicial notice may be taken at any stage of the proceeding. Evid.R. 201(F).

{¶21} Once judicial notice of a fact is taken, a "party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken." Evid.R. 201(E).

{¶22} As provided clearly in the rule, a court taking judicial notice has no obligation to provide prior notice to the parties of its intentions to take judicial notice due to the safeguard provided in the rule requiring the court to conduct a hearing if requested. See Fed.R.Evid. 201(e), Advisory Committee Notes.[2]

2. Fed.R.Evid. 201(e) mirrors Ohio's Evid.R. 201(E). The principles and purposes underlying the federal rule apply equally to its Ohio counterpart. *State v. Knox* (1983), 18 Ohio St.3d 36, 37.

{¶23} Under such circumstances, it is the adversely affected party's obligation to object and request a hearing. *Ohio St. Assn. of United Assn. of Journeymen and Apprentices v. Johnson Controls, Inc.* (1997), 123 Ohio App.3d 190, 196. The judicial notice in this case appeared in the trial court's final decision and entry. Appellants failed to object or request a hearing at the trial level. If appellants wished to challenge the trial court's finding, they could have filed a Civ.R. 60(B) motion, requesting a mandatory hearing. By failing to request a hearing, appellants waived or forfeited any challenge to the judicially-noticed facts. Id. See, also, *Guarino v. Farinacci*, Lake App. No. 2001-L-158, 2003-Ohio-5980, ¶49; *In re Estate of Hunter*, Mahoning App. No. 00 CA 107, 2003-Ohio-1435, ¶45; *Shaker Heights v. Coustillac* (2001), 141 Ohio App.3d 349, 352.

{¶24} Appellant's second assignment of error is overruled.

{¶25} Judgment affirmed in part and reversed in part. This matter is remanded to the trial court with instructions to determine under R.C. 709.42 whether, in the absence of the CAUV valuation, a tax assessment of $12,538.99 on appellants' property for municipal purposes is in substantial excess of the benefits conferred upon appellants by reason of their land being with the city of Carlisle.

BRESSLER, P.J., and YOUNG, J., concur.

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