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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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**Wilbert of Birmingham, LLC,
Lisa D. Turner, and Marvin Lands**

v.

Jefferson County

**Appeal from Jefferson Circuit Court
(CV-13-904067)**

MENDHEIM, Justice.

Jefferson County ("the county") filed a complaint in the Jefferson Circuit Court against Wilbert of Birmingham, LLC ("Wilbert"), Lisa D.

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Turner, and Marvin Lands ("the taxpayers") seeking an order requiring the taxpayers to pay various taxes and license fees they allegedly owed to the county. The circuit court ruled in favor of the county and ordered the taxpayers to pay to the county \$112,728.96 plus accrued interest and court costs. The taxpayers appealed. We dismiss the appeal.

Facts and Procedural History

The merits of the circuit court's ruling are not actually before us in this appeal. Instead, the issue raised in the taxpayers' brief is whether the circuit court obtained jurisdiction over the matter pursuant to the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, § 40-2A-1 et seq., Ala. Code 1975 ("the TBOR"). Accordingly, our rendition of the facts and procedural history will focus on what is relevant to that narrow issue.

Turner and Lands are the principal owners of Wilbert. Wilbert manufactures and sells funeral caskets and conducts or has conducted business in Jefferson County. The affidavit testimony of Wiley Stoudenmire, a senior auditor with the county's department of revenue, indicates that the taxpayers "had not paid Privilege Tax

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(Licenses), Sales Tax and Educational Sales Tax for the period 8/1/2009-12/31/2012." Accordingly, on April 1, 2013, the county's department of revenue issued to the taxpayers "preliminary assessment[s] of tax[es] due and notice[s] thereof" for the education sales tax in the amount of \$49,047.09, for the sales tax in the amount of \$49,047.01, and for a privilege tax (license fee) in the amount of \$1,150.52.

On April 18, 2013, the taxpayers filed with the county's department of revenue a "petition for review of preliminary assessment," with supporting documentation, challenging the preliminary assessments. The taxpayers requested a conference, but, according to Turner's affidavit testimony, no conference was held. Stoudenmire's affidavit testimony indicates that he reviewed the taxpayers' petition and "determined that the preliminary assessment was correct."

On May 16, 2013, the county's department of revenue issued to the taxpayers "final assessment[s] of tax[es] due and notice[s] thereof" for the educational sales tax in the amount of \$49,779.30 and for the sales tax in the amount of \$49,779.30. The county's department of revenue also issued, on the same day, a "final assessment of state privilege license due

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and notice thereof" in the amount of \$1,159.52 and a "final assessment of county ordinance license^[1] due and notice thereof" in the amount of \$871.32. Each of the final assessments issued to the taxpayers states, in pertinent part: "You have the right to appeal this assessment to the Jefferson County Circuit Court. The appeal must be made within thirty (30) days of the final assessment date and pursuant to the provisions of Act 92-186. See enclosed sheet for additional explanation of your appeal rights." The referenced enclosed sheet states, in pertinent part: "You have the right to receive a written description of how to exercise your right of appeal to the circuit court at or before the issuance of a final assessment." Stoudenmire's affidavit testimony states that he "complied with the law in all notices, including an explanation of [the taxpayers'] appeal rights." However, Turner states in her affidavit testimony that she "do[es] not recall receiving the final assessment[s]." The taxpayers did not appeal the final assessments within 30 days of the date the county's

¹It appears that the "county ordinance license" fee is also referred to as a "consumer tax."

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department of revenue mailed the final assessments, as required by § 40-2A-7(b)(5)a., Ala. Code 1975.

On October 7, 2013, the county filed a complaint against the taxpayers alleging that the taxpayers had not yet paid the delinquent taxes and license fees explained above and requesting that the circuit court

"issue an injunction under the provisions of [Ala. Code] 1975[,] § 40-2-11(4), restraining and enjoining [the taxpayers] and the [taxpayers'] agents, servants and employees while acting within the line and scope of their employment by the [taxpayers], and the [taxpayers'] successors in business, from engaging or continuing to engage within Alabama in any business subject to the provision of the Jefferson County Tax Ordinances."

The county amended its complaint several times and filed its fourth amended complaint on August 18, 2014. On September 15, 2014, the taxpayers filed their answer. Among other things, the taxpayers specifically argued that they had not been provided a conference on the preliminary assessments and that the notices provided by the county's department of revenue allegedly failed to "correctly" notify the taxpayers of their rights.

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On November 27, 2018, the county filed a motion for a summary judgment; including interest that had continued to accrue on the assessments, the total amount allegedly owed by the taxpayers at that time was \$112,728.96. On May 11, 2020, following a period of discovery, the taxpayers filed a response to the county's summary-judgment motion. The taxpayers argued that the circuit court lacked subject-matter jurisdiction over the dispute because, they asserted, the county's department of revenue had failed to follow the procedural requirements of the TBOR. Specifically, the taxpayers argued that the county's department of revenue had failed to conduct a conference concerning the preliminary assessments and had failed to provide notice of the final assessments in the manner required by the TBOR. On May 24, 2020, the county filed a reply to the taxpayers' response.²

²The county's reply included additional evidentiary material, which the taxpayers moved to strike. The circuit court denied the taxpayers' motion to strike.

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On July 8, 2020, the circuit court entered an order granting the county's summary-judgment motion. The circuit court's order states, in pertinent part:

"The court finds that Lisa D. Turner and Marvin Lands are the responsible parties of Wilbert of Birmingham, LLC. The [taxpayers] are currently engaged in and operating a business in Jefferson County, Alabama and failed to purchase a business license, to pay Sales Tax and Educational Sales Tax due for the period of August, 2009 through May, 2013. The [taxpayers] did not file a notice of appeal within the statutory time allowed by law and did not post appropriate bond with the Clerk of Circuit Court, Jefferson County.

"The Court is [of] the opinion that the following order should be entered, and accordingly, it is hereby, ORDERED, ADJUDGED and DECREED, as follows:

"Judgment is entered against [the taxpayers] in the amount of \$112,728.96, plus accrued [interest] and court costs. The injunction requested by the [county] is hereby denied as [the taxpayers] have purchased the appropriate business license and paid Sales Tax and Educational Sales Tax due since the filing of this action."

(Capitalization in original.)

On August 3, 2020, the taxpayers filed a motion for a new trial or, in the alternative, to alter, amend, or vacate the circuit court's order. On August 19, 2020, the county filed a response to the taxpayers'

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postjudgment motion. On August 28, 2020, the circuit court denied the taxpayers' postjudgment motion. The taxpayers appealed.

Standard of Review

The question before this Court is whether the circuit court had subject-matter jurisdiction over the county's action against the taxpayers, which presents a question of law. See Ex parte Terry, 957 So. 2d 455 (Ala. 2006). This Court reviews questions of law de novo. BT Sec. Corp. v. W.R. Huff Asset Mgmt. Co., 891 So. 2d 310, 312 (Ala. 2004).

Discussion

The taxpayers argue that the circuit court lacked subject-matter jurisdiction over this case based on the alleged failure of the county's department of revenue to comply with the procedural requirements of the TBOR.³ Initially, we note that this Court has established that compliance

³There is no dispute that the TBOR applies to the county. This Court stated the following in Ex parte Tellabs Operations, Inc., 84 So. 3d 53, 56 (Ala. 2011):

"In General Motors Acceptance Corp. v. City of Red Bay, 894 So. 2d 650 (Ala. 2004), this Court concluded that, although '[t]he requirements of the TBOR were directed initially to the [Alabama] Department [of Revenue],' 'the Local Tax

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with the procedures set forth in the TBOR is a jurisdictional matter. See Bonedaddy's of Lee Branch, LLC v. City of Birmingham, 192 So. 3d 1151, 1161 (Ala. 2015) ("Consistent with this Court's decision in Russell Petroleum[, Inc. v. City of Wetumpka, 976 So. 2d 428 (Ala. 2007)], we hold that the [tax authority's] failure to comply with provisions of the TBOR before it filed its complaint seeking to collect the sales taxes from [the taxpayer] deprived the trial court of jurisdiction over the [tax authority's] claim for sales taxes against [the taxpayer]."); and State v. Amerada Hess

Simplification Act of 1998, Act No. 98-192, Ala. Acts 1998 ("the LTSA"), made the TBOR equally applicable to tax assessments and tax-collection procedures by local taxing authorities.' 894 So. 2d at 653. See also Russell Petroleum, Inc. v. City of Wetumpka, 976 So. 2d 428, 437 (Ala. 2007) (noting that, '[c]onsidering the TBOR (including a 1998 amendment thereto now codified at [Ala. Code 1975,] § 40-2A-13) and the LTSA in their entirety,' the Red Bay Court held that ' "[the LTSA] made the TBOR equally applicable to tax assessments and tax-collection procedures by local taxing authorities such as [municipalities and counties]" ' (quoting Red Bay, 894 So. 2d at 653)); Pittsburg & Midway Coal Mining Co. v. Tuscaloosa County, 994 So. 2d 250, 258 (Ala. 2008) (observing that '[t]his Court in Red Bay held that the LTSA made the administrative-appeal procedures in the TBOR "equally applicable to tax assessments and tax-collection procedures by local taxing authorities" ')."

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Corp., 788 So. 2d 179, 185 (Ala. Civ. App. 2000) (affirming a trial court's dismissal of a lawsuit filed by the Alabama Department of Revenue against a taxpayer "based on [the trial court's] lack of subject-matter jurisdiction resulting from the [Alabama] Department [of Revenue]'s failure to follow the procedures mandated by the [TBOR]"). This Court has further stated that "the requirements of the TBOR are to be strictly complied with." Ex parte Jefferson Smurfit Corp. (U.S.), 951 So. 2d 659, 665 (Ala. 2006) (citing Patterson v. Gladwin Corp., 835 So. 2d 137, 151 (Ala. 2002)); see also Board of Equalization & Adjustment of Shelby Cnty. v. Shelby 39, LLC, 140 So. 3d 941, 943 (Ala. 2013) (noting that strict compliance with the TBOR is required for a circuit court to obtain jurisdiction over a tax appeal).⁴ In other words, the circuit court's subject-

⁴We note that the strict-compliance language used by this Court in Board of Equalization & Adjustment of Shelby County, *supra*, Ex parte Jefferson Smurfit, *supra*, and Patterson, *supra*, referred to the burden on a taxpayer to strictly comply with the applicable provisions of the TBOR to properly appeal to the circuit court a final assessment by a taxing authority. Of course, if a taxpayer must strictly comply with the TBOR to imbue the circuit court with jurisdiction over the appeal of a final assessment, clearly, then, a taxing authority must also strictly comply with the TBOR to imbue the circuit court with jurisdiction over an action to collect on a final assessment. Nothing in the TBOR indicates that a

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matter jurisdiction over the county's action seeking to collect the unpaid taxes allegedly owed by the taxpayers is dependent upon the county's department of revenue having strictly complied with the procedural requirements of the TBOR. If the taxpayers demonstrate that the county's department of revenue failed to strictly comply with the procedural requirements of the TBOR, then we must conclude that the circuit court lacked subject-matter jurisdiction over the county's action against the taxpayers, which would render the circuit court's order void, and dismiss the appeal, because a void order will not support an appeal. See Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008) ("A judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment. Hunt Transition & Inaugural Fund, Inc. v. Grenier, 782 So. 2d 270, 274 (Ala. 2000).").

The taxpayers argue that the county's department of revenue failed to comply with the TBOR by not holding a conference on the taxpayers'

taxing authority has a lesser burden than a taxpayer in seeking to have its day in court.

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petition for review of the preliminary assessments issued to the taxpayers.

Section 40-2A-7(b)(4)a., Ala. Code 1975, provides:

"If a taxpayer disagrees with a preliminary assessment as entered by the department, the taxpayer may file a written petition for review with the department within 30 days from the date of mailing or personal service, whichever occurs earlier, of the preliminary assessment setting out the specific objections to the preliminary assessment. If a petition for review is timely filed, or if the department otherwise deems it necessary, the department shall schedule a conference with the taxpayer for the purpose of allowing the taxpayer and the department to present their respective positions, discuss any omissions or errors, and to attempt to agree upon any changes or modifications to their respective positions."

(Emphasis added.) It is undisputed in the present case that the taxpayers timely filed a written petition for review with the county's department of revenue within 30 days of receiving notice of the preliminary assessments, that the taxpayers requested a conference with the county's department of revenue, and that the county's department of revenue did not schedule a conference with the taxpayers. Stoudenmire's affidavit testimony indicates that, without scheduling the requested conference with the taxpayers, he reviewed the taxpayers' submissions and "determined that the preliminary assessment was correct."

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The county argues that, based on Stoudenmire's review of the taxpayers' petition for review, the county's department of revenue was not required to schedule a conference before issuing the final assessments. In support of its argument, the county cites § 40-2A-7(b)(4)b.2., Ala. Code 1975, which states:

"If a written petition for review ... [i]s properly filed, and upon further review the department determines the preliminary assessment is due to be upheld in whole or in part, the department may make the assessment final in the amount of tax due as computed by the department, with applicable interest and penalty computed to the date of entry of the final assessment."

The county offers no analysis of this provision of the TBOR and offers no explanation as to why it believes that a review of the taxpayers' petition for review under § 40-2A-7(b)(4)b.2. negates the requirement in § 40-2A-7(b)(4)a. that the county's department of revenue schedule a conference with the taxpayers before issuing the final assessments.

Section 40-2A-7(b)(4)a. provides, in pertinent part, that, "[i]f a petition for review is timely filed, ... the department shall schedule a conference with the taxpayer." (Emphasis added.) The legislature's use of the word "shall" indicates that there is no discretion in scheduling a

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conference with a taxpayer when the taxpayer has timely filed a written petition for review of a preliminary assessment. See Ex parte Prudential Ins. Co. of America, 721 So. 2d 1135, 1138 (Ala. 1998) ("The word 'shall' is clear and unambiguous and is imperative and mandatory."). The plain language of § 40-2A-7(b)(4)a. indicates that the taxpayers were entitled to a conference in this case; the county's department of revenue did not have the discretion to deny such a conference. Nothing in § 40-2A-7(b)(4)b.2. indicates otherwise. That section simply states that "the department," which in this case is the county's department of revenue, must review the taxpayers' petition for review and determine whether the preliminary assessments are correct. There is no language indicating, as the county suggests, that the requirement of holding a conference is obviated if the county's department of revenue completes its review of a preliminary assessment before such a conference is scheduled. Such a reading of § 40-2A-7(b)(4)b.2. would render the requirement of holding a conference in § 40-2A-7(b)(4)a., as evidenced by the legislature's use of the word "shall," meaningless. This Court has stated that "[i]t will not be presumed that the Legislature has employed 'meaningless words.'" Reed v. Board of Trs.

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for Alabama State Univ., 778 So. 2d 791, 794 (Ala. 2000) (quoting Elder v. State, 162 Ala. 41, 45, 50 So. 370, 371 (1909)). We do not find the county's argument convincing; § 40-2A-7(b)(4)a. clearly required the county's department of revenue to schedule a conference with the taxpayers, and the county's department of revenue failed to do so.

Conclusion

The taxpayers have demonstrated that, by failing to schedule a conference with the taxpayers concerning the preliminary assessments, the county's department of revenue did not strictly comply with the procedural requirements of the TBOR. That failure to strictly comply with the procedural requirements of the TBOR deprived the circuit court of jurisdiction over the county's action against the taxpayers, and, thus, the order entered in favor of the county is void. A void judgment will not support an appeal. See Vann v. Cook, *supra*. Therefore, we dismiss the taxpayers' appeal and instruct the circuit court to vacate its judgment in

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favor of the county and to dismiss the case. See State Dep't of Revenue v. Garner, 812 So. 2d 380, 385 (Ala. Civ. App. 2001).⁵

APPEAL DISMISSED WITH INSTRUCTIONS.

Parker, C.J., and Shaw, Wise, Bryan, Sellers, Stewart, and Mitchell, JJ., concur.

⁵We note that the taxpayers also argue that the county's department of revenue failed to comply with the procedural requirements of the TBOR by failing "to produce competent evidence of a certified mailing of the final assesement against the taxpayers as required by TBOR § 40-2A-7[(b)](4)d., Ala. Code 1975." The taxpayers' brief at p. 22. However, based on our conclusion that the circuit court lacks subject-matter jurisdiction over the county's action based on the failure of the county's department of revenue to conduct a conference concerning the preliminary assessments issued to the taxpayers, we pretermitt discussion of this issue.