

SUPREME COURT OF ARKANSAS

No. 11-784

CARNEGIE PUBLIC LIBRARY OF
EUREKA SPRINGS; EUREKA SPRINGS
LIBRARY BOARD; LUCILLA
GARRETT; AND DAVID ZIMMERMAN
APPELLANTS

V.

CARROLL COUNTY, ARKANSAS; THE
CARROLL COUNTY QUORUM
COURT; SAM BARR, CARROLL
COUNTY JUDGE; THE CARROLL
COUNTY LIBRARY BOARD, BILL
BROWN, PRESIDENT; THE
BERRYVILLE PUBLIC LIBRARY; AND
THE GREEN FORREST PUBLIC
LIBRARY

APPELLEES

Opinion Delivered MARCH 29, 2012

APPEAL FROM THE CARROLL
COUNTY CIRCUIT COURT,
WESTERN DISTRICT,
[NO. CV 2011-10]

HONORABLE GARY ARNOLD,
JUDGE

APPEAL DISMISSED.

DONALD L. CORBIN, Associate Justice

Appellants Carnegie Public Library of Eureka Springs, Eureka Springs Library Board, Lucilla Garrett, and David Zimmerman appeal the order of the Carroll County Circuit Court dismissing their complaint for failure to state a cause of action for which relief could be granted. On appeal, Appellants argue that the circuit court erred in finding that (1) section 19 of Act 74 of 1883 was unconstitutional, and (2) the Act did nothing more than create two judicial districts. Because jurisdiction was not proper in the circuit court, this court also lacks jurisdiction, and we must dismiss the appeal.

The record reveals the following relevant facts. The Carnegie Public Library is located in Eureka Springs, a city within Carroll County. There are two other public libraries in

Carroll County: one in Green Forrest and one in Berryville. These libraries are maintained through funds generated by a 2-mill ad valorem tax, which typically generates between \$500,000 and \$700,000 in a year. Appellees Carroll County, the Carroll County Quorum Court, and County Judge Sam Barr, the county officials responsible for distribution of the tax proceeds, divide the library tax evenly between the three libraries, with each library receiving 33 1/3% of library-tax revenues.

Appellants filed a complaint on January 24, 2011, alleging that pursuant to Act 74 of 1883, the county was required to divide the tax proceeds based on the division of the county into the Eastern and Western Districts.¹ According to Appellants, the tax proceeds collected in the Western District, which comprise 50% of all tax revenue collected, should be distributed wholly to the Carnegie Library, as the only public library in the Western District. Appellants claimed this constituted an illegal diversion of library-tax funds in violation of Act 74. Appellants sought damages for all prior years in which the tax was unlawfully distributed, as well as injunctive relief, requiring Appellees to abide by the provisions of Act 74, and imposition of an equitable lien, constructive trust, or other appropriate equitable remedy as to the Berryville and Green Forrest Public Libraries due to their unjust enrichment from tax revenue received in excess of what was owed to them under law.²

¹Act 74 was amended by Act 1171 of 2011 and now precludes the division of revenue based on specific districts. While this amendment does moot Appellants' claim as to future tax allocation, it does not affect their claim that they are entitled to damages and equitable relief based on past tax allocations.

²An amended complaint was filed on April 6, 2011, stating that the complaint was a public-funds illegal-exaction suit and adding a request for a declaratory judgment that the tax

On February 14, 2011, Appellees filed a motion to dismiss, alleging that Act 74 was inapplicable and, thus, Appellants had failed to state a claim upon which relief could be granted. Appellees also alleged that the circuit court lacked subject-matter jurisdiction, as all matters related to county taxes must be raised in county court.

A hearing on the motion to dismiss was held on April 8, 2011. Thereafter, on May 2, 2011, the circuit court entered an order dismissing Appellants' complaint. The circuit court found that it was necessary to read Act 74 as a whole in order to ascertain the meaning of section 19 and, in doing so, it was apparent that the Act created two judicial districts and how they function and nothing more. Alternatively, the circuit court found that to the extent section 19 can be construed as requiring the library tax to be distributed per judicial district, it is unconstitutional. From that order, comes the instant appeal.

We must first address the issue of this court's jurisdiction to hear the instant appeal. Although neither party raises the issue of subject-matter jurisdiction, this court may raise it *sua sponte* because if the circuit court lacked jurisdiction, then so does the appellate court. *See, e.g., Ark. State Univ. v. Prof'l Credit Mgmt.*, 2009 Ark. 153, 299 S.W.3d 535. Appellees initially contested subject-matter jurisdiction, asserting that this was a matter related to county taxes and must be raised in county court. Appellants then amended their complaint to assert that their cause of action was a public-funds illegal exaction, which may be raised in circuit

revenues generated from property in the Western District be used for the exclusive benefit of the public libraries in the Western District.

court. Thus, we must determine whether the instant cause of action was in fact a public-funds illegal exaction, such that jurisdiction was proper in the Carroll County Circuit Court.

In their amended complaint, Appellants alleged in relevant part as follows:

5. This Complaint is a public funds illegal exaction lawsuit containing claims relating to the distribution, appropriation, division and/or allocation of Carroll County Library tax proceeds by the Defendants to the three Carroll County public libraries. Specifically, this lawsuit challenges the allocation and the division of library tax proceeds paid on property in the Western Judicial District of Carroll County, Arkansas. This complaint seeks redress and remedies for the failure of the defendants to follow the provisions of Act 74 of 1883 in dividing, appropriating and distributing tax funds in an inadequate and illegal amount to the Carnegie Public Library of Eureka Springs.

Thus, the crux of Appellants' complaint is that the division of the library tax among the county's three libraries is invalid.

Article 16, section 13 of the Arkansas Constitution provides as follows: "Any citizen of any county, city, or town may institute suit in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever." Under article 16, section 13, citizens of a county have standing to pursue an illegal-exaction claim. *Brewer v. Carter*, 365 Ark. 531, 231 S.W.3d 707 (2006). An illegal exaction is defined as any exaction that either is not authorized by law or is contrary to law. *Id.* Two types of illegal-exaction cases can arise under article 16, section 13: "public funds" cases, where the plaintiff contends that public funds generated from tax dollars are being misapplied or illegally spent, and "illegal-tax" cases, where the plaintiff asserts that the tax itself is illegal. *McGhee v. Ark. State Bd. of Collection Agencies*, 360 Ark. 363, 201 S.W.3d 375 (2005). As a general rule, we have explained that citizens have standing to bring a "public funds" case because they

have a vested interest in ensuring that the tax money they have contributed to a state or local government treasury is lawfully spent. *Ghegan & Ghegan, Inc. v. Weiss*, 338 Ark. 9, 991 S.W.2d 536 (1999). This court has stated that “a misapplication by a public official of funds arising from taxation constitutes an exaction from the taxpayers and empowers any citizen to maintain a suit to prevent such misapplication of funds.” *Farrell v. Oliver*, 146 Ark. 599, 602, 226 S.W. 529, 530 (1921). Jurisdiction in both the circuit court and this court rests on whether a party properly stated a cause of action in illegal exaction. *Robinson v. Villines*, 2009 Ark. 632, ___ S.W.3d ___.

This court has previously addressed and rejected a claim that an action challenging the distribution of penalty payments from delinquent taxes was a proper illegal-exaction suit. *Villines v. Pulaski Cnty. Bd. of Educ.*, 341 Ark. 125, 14 S.W.3d 510 (2000). There, the Pulaski County treasurer had previously divided the collected penalties between the Pulaski County General Fund and the common school fund. Then, in 1997, after passage of an act designating how the penalties were to be split, the Pulaski County judge signed an executive order removing all funds placed in the common school fund for the first three months of 1997 and transferring them to the county’s general fund. The Pulaski County Board of Education filed suit in circuit court alleging that the county judge’s order violated the law and that the removal of the funds was illegal. On appeal, Pulaski County argued that the circuit court lacked jurisdiction to hear the matter, as it was related to a county tax and should have been brought in county court. This court agreed.

Article 7, § 28, of the Arkansas Constitution provides that county courts shall have exclusive original jurisdiction over all matters relating to county taxes. This

jurisdictional rule is also set out in Ark. Code Ann. § 14-14-1105(b)(1) (Repl. 1998). It provides in relevant part:

Jurisdiction shall include all real and personal ad valorem taxes collected by a county government, including all related administrative processes, assessment of property, equalization of assessments on appeal, tax levies, tax collection, and distribution of tax proceeds.

Moreover, this court has repeatedly held that county courts have exclusive jurisdiction in all matters relating to county taxes. *Pockrus v. Bella Vista Village Property Owners Ass'n*, 316 Ark. 468, 872 S.W.2d 416 (1994); *McIntosh v. Southwestern Truck Sales*, 304 Ark. 224, 800 S.W.2d 431 (1990). Even though the present matter does not involve a county tax, it certainly involves a matter relating to a county tax, namely, the assessment of a penalty resulting from the delinquent payment of county taxes.

Id. at 127, 14 S.W.3d at 511–12.

Here, it is undisputed that we are dealing with a county ad valorem tax. In rejecting the *Villines* appellees' contention that the suit was one for illegal exaction, this court noted that the issue was one "involving a procedural matter, namely, how to distribute collected penalties." *Id.* at 127, 14 S.W.3d at 512. This court noted that the issue was more analogous to those cases where a party challenged an assessment procedure or erroneous collection proceeding, issues which are properly raised in county court. *Id.* (citing *Foster v. Jefferson Cnty. Quorum Court*, 321 Ark. 105, 901 S.W.2d 809, *reh'g granted on other grounds*, 321 Ark. 116-A, 901 S.W.2d 809 (1995)). Thus, this court reversed the order of the circuit court and dismissed the appeal because of lack of subject-matter jurisdiction.

The present case is analogous to *Villines*. The crux of Appellants' complaint is a challenge to how the county is distributing the proceeds collected from the library tax, i.e., whether all the money collected in the Western District of Carroll County should be distributed to the Carnegie Library while the money collected in the Eastern District should

be divided between the two libraries in that district. Based on our holding in *Villines*, such a challenge to the distribution of the tax proceeds should have been raised in county court. Because the circuit court lacked jurisdiction, so does this court.

Appeal dismissed.

DANIELSON, J., not participating.