

SUPREME COURT OF ARKANSAS

No. CV-12-829

BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS

APPELLANT

V.

PULASKI COUNTY; JANET WARD,
PULASKI COUNTY TAX ASSESSOR;
AND DEBRA BUCKNER, PULASKI
COUNTY TREASURER AND TAX
COLLECTOR

APPELLEES

Opinion Delivered May 30, 2013APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. 60-CV-2012-350]HONORABLE TIMOTHY DAVIS
FOX, JUDGEAPPEAL DISMISSED.**KAREN R. BAKER, Associate Justice**

This interlocutory appeal arises from a dispute regarding ad valorem property taxes. The Appellees, Pulaski County; Janet Ward, Pulaski County Tax Assessor; and Debra Buckner, Pulaski County Treasurer and Tax Collector (collectively “Pulaski County”) issued an assessment and taxation of property owned by the University of Arkansas for Medical Sciences (“UAMS”). UAMS disagreed with the taxation and pursued relief.

In 2011, after Pulaski County issued its assessment and taxation of the property, on behalf of UAMS, the Appellant, Board of Trustees of the University of Arkansas (“the University”) filed a tax-exemption application with the Pulaski County Assessor’s Office seeking an exemption from ad valorem property taxes. The exemption application was denied, and on August 23, 2011, the Pulaski County Equalization Board also denied the

University's tax-exemption request.¹ The University appealed the denial to the Pulaski County Court, and on January 9, 2012, the Pulaski County Court denied the exemption.

On February 8, 2012, the University continued to seek relief and filed its complaint in the Pulaski County Circuit Court, appealing Pulaski County's denial of the exemption application. On July 6, 2012, the University filed a motion for summary judgment. On August 7, 2012, the circuit court denied the University's motion for summary judgment, and on August 31, 2012, denied the University's motion for reconsideration on its motion for summary judgment.

From the denial of those two motions, the University presents one point on appeal: whether the circuit court erred in denying the University's motions for summary judgment and reconsideration on the issue of immunity from ad valorem taxation by Pulaski County. The University contends that jurisdiction is proper under Ark. R. App. P.–Civ. 2(a)(6) and (10) (2012).

Prior to reviewing the merits, we must first address whether jurisdiction is proper. The University's appeal is an interlocutory appeal filed after the circuit court's denial of its motion for summary judgment and motion for reconsideration. The general rule is that the denial of a motion for summary judgment is neither reviewable nor appealable. Ark. R. App. P.–Civ. 2(a)(1); *Gentry v. Robinson*, 2009 Ark. 634, 361 S.W.3d 788. However, Arkansas Rule of Appellate Procedure–Civil 2(a)(6) permits an appeal based on “[a]n

¹There are two undeveloped properties involved in this action. The tax exemptions were denied on August 23 and August 31, 2011.

interlocutory order by which an injunction is granted, continued, modified, refused, or dissolved, or by which an application to dissolve or modify an injunction is refused.” Additionally, Rule 2(a)(10) of the Arkansas Rules of Appellate Procedure—Civil permits an appeal from an interlocutory “order denying a motion . . . for summary judgment based on the defense of sovereign immunity.”

Here, the University contends that jurisdiction is proper under Rule 2(a)(6) because the relief denied was in the nature of an injunction. However, Pulaski County responds, and the record supports, that there was no request for injunctive relief, nor was there an order demonstrating that injunctive relief was denied. Accordingly, jurisdiction is not proper under Rule 2(a)(6).

Next, the University asserts that jurisdiction is proper based on Rule 2(a)(10) because its motion for summary judgment and motion for reconsideration were denied based on its assertion of freedom from taxation, which is based in sovereign immunity. Pulaski County responds that the University is barred from asserting sovereign immunity from suit and as a basis for jurisdiction for this appeal because the University initiated the lawsuit. Further, Pulaski County contends that the immunity the University asserts is immunity from taxation, not suit, and thus fails to establish jurisdiction.

After a careful review of the record, we agree with Pulaski County that the court lacks jurisdiction. Rule 2(a)(10) permits an appeal from an interlocutory “order denying a motion . . . for summary judgment based on the defense of sovereign immunity.” Sovereign immunity is jurisdictional immunity from suit. *State v. Goss*, 344 Ark. 523, 42 S.W.3d 440

(2001); *Milberg, Weiss, Bershad, Hynes & Lerach, LLP v. State*, 342 Ark. 303, 28 S.W.3d 842 (2000). The rationale for this exception is sound, because the right to immunity from suit is effectively lost if the case is permitted to go to trial. See *Simons v. Marshall*, 369 Ark. 447, 255 S.W.3d 838 (2007); *Goss*, 344 Ark. 523, 42 S.W.3d 440. We have recognized that in very narrow circumstances, a claim of sovereign immunity may be surmounted. One situation is where the State is the moving party seeking specific relief. *Ark. Dep't of Cmty. Corr. v. City of Pine Bluff*, 2013 Ark. 36, ___ S.W.3d ___ (citing *Ark. Game & Fish Comm'n v. Eddings*, 2011 Ark. 47, at 6 n.2, 378 S.W.3d at 698 n.2 (citing *Short v. Westark Cmty. Coll.*, 347 Ark. 497, 504, 65 S.W.3d 440, 445 (2002); *Landsn Pulaski, LLC v. Ark. Dep't of Corr.*, 372 Ark. 40, 42, 269 S.W.3d 793, 795 (2007))).

Here, the circuit court denied the University's motion for summary judgment.² The University contends that the motion was denied based on the University's argument that it has sovereign immunity from taxation and thus creates a proper appeal before the court under Rule 2(a)(10). We disagree with this argument. First, the University is the plaintiff in this action and cannot claim that sovereign immunity creates jurisdiction when it is the party seeking relief. See *Ark. Dep't of Cmty. Corr.*, *supra*. While the court recognizes that the University's only avenue for relief was to file suit, it cannot now use sovereign immunity as

²The circuit court made the following finding in denying the motion for summary judgment: “[The University’s] Cross-Motion for Summary Judgment filed on or about July 6, 2012 is denied.” The circuit court then denied the University’s motion for reconsideration and made the following finding: the University’s “Motion for Reconsideration of Plaintiff’s Cross-Motion for Summary Judgment on the Specific Issue of Sovereign Immunity from Ad Valorem Taxation . . . is denied.”

a basis for jurisdiction of this interlocutory appeal when it initiated the litigation. Second, the record demonstrates that the University is claiming immunity from taxation, not immunity from suit as proscribed in Rule 2(a)(10). Stated differently, sovereign immunity pursuant to Rule 2(a)(10) is a jurisdictional rule that creates immunity from suit, not immunity from taxation and does not establish jurisdiction for this appeal.

Accordingly, we dismiss the appeal because we lack jurisdiction.

Special Justice ANDREW FULKERSON joins in this opinion.

GOODSON, J., not participating.

Fred Harrison, Jeffrey Bell, and Matthew McCoy, University of Arkansas System, for appellant.

Karla M. Burnett, Amanda Mankin Mitchell, and Chastity Scifres, Pulaski County Attorney's Office, for appellees.