RENDERED: OCTOBER 31, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000170-MR

JASON EYE — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BRIAN C. EDWARDS, JUDGE
ACTION NO. 12-CI-004536

BOARD OF TAX APPEALS,
COMMONWEALTH OF KENTUCKY;
DEPARTMENT OF REVENUE,
FINANCE AND ADMINISTRATION CABINET,
COMMONWEALTH OF KENTUCKY;
PETER F. ERVIN, GENERAL COUNSEL
TO PUBLIC PROTECTION CABINET,
OFFICE OF LEGAL SERVICES;
BILL BEAM, JR., IN HIS OFFICIAL
CAPACITY AS HEARING OFFICER FOR
KENTUCKY BOARD OF TAX APPEALS;
TONY LINDAUER, IN HIS OFFICIAL
CAPACITY AS JEFFERSON COUNTY
PROPERTY VALUATION ADMINISTRATOR;
LOCAL BOARD OF ASSESSMENT APPEALS,
JEFFERSON COUNTY;
OFFICE OF THE ATTORNEY GENERAL — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, MAZE, AND NICKELL, JUDGES.

NICKELL, JUDGE: Jason Eye (Eye), *pro se*, a Jefferson County taxpayer, petitions for review of an order of the Jefferson Circuit Court dated January 4, 2013. The circuit court dismissed the Kentucky Board of Tax Appeals (KBTA), Public Protection Cabinet attorney Peter Ervin (Ervin), and KBTA hearing officer Bill Beam Jr. (Beam) from Eye's appeal of a property tax assessment. The circuit court also dismissed Eye's complaint seeking declaratory and injunctive relief. Having reviewed the record, we affirm.

This matter arose from Eye's challenge to the Jefferson County Property Value Administrator's (PVA) property tax assessment of his real property of $48,390.00. Following a conference, the PVA reduced this amount. Eye appealed, and the reduced amount was upheld by the Jefferson County Local Board of Assessment Appeals (Local Board). Pursuant to KRS[1] 133.120, establishing the appeals process for challenges to PVA assessments, Eye next appealed to the KBTA.

Prior to the hearing, Eye filed a motion to subpoena witnesses, requesting the PVA and two members of the Local Board to appear to testify as witnesses at the KBTA hearing. On December 15, 2011, the KBTA issued an

[1] Kentucky Revised Statutes.

order denying Eye's motion, finding the KBTA would review the PVA's valuation *de novo* and would not accept any evidence as to what occurred at the Local Board. A hearing was held before the KBTA on March 19, 2012. Eye alleges Beam was combative during the hearing. He claims Beam raised his voice, cut him off when he attempted to argue his case, and threatened to rule against him if he did not sign a settlement agreement. Eye and the PVA entered into a settlement agreement, agreeing to a property assessment of $42,820.00. Eye alleges he was under "extreme duress," and signed the settlement agreement to avoid a "physical confrontation that would have ensued" if he refused. On March 21, 2012, Eye filed a motion to alter, amend, or vacate the settlement agreement. The KBTA denied Eye's motion.

Pursuant to KRS 131.370, Eye then appealed to the Jefferson Circuit Court. He filed a "Petition of Appeal and Complaint, Petition or Declaration for Declaratory and Injunctive Relief," seeking review of the KBTA's decision, and adding an additional complaint requesting declaratory and injunctive relief. Eye sought relief from the KBTA, the Department of Revenue, Ervin, Beam, PVA Tony Lindauer, the Office of the Attorney General, and the Local Board.

The KBTA, Ervin, and Beam jointly filed a motion to dismiss, arguing they should not have been named parties, and requesting dismissal of Eye's complaint seeking declaratory and injunctive relief. The Department of Revenue filed a separate motion to dismiss. Eye responded he had no objection to the Department of Revenue's motion.

The circuit court dismissed the Department of Revenue, citing Eye's lack of objection. Further, the circuit court dismissed the KBTA, Ervin, and Beam because they were not named parties in the action before the KBTA. The circuit court also dismissed Eye's complaint seeking declaratory and injunctive relief, finding it to be superfluous because the relief requested could be obtained within the confines of his appeal of the KBTA's decision.[2] This appeal follows.

KRS Chapter 13B controls judicial review of decisions from the KBTA. The appellate court's standard of review is set forth in KRS 13B.150(2), which states:

> [t]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:
>
> (a) In violation of constitutional or statutory provisions;
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> (b) In excess of the statutory authority of the agency;
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> (c) Without support of substantial evidence on the whole record;
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> (d) Arbitrary, capricious, or characterized by abuse of discretion;
>
> (e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;

[2] The circuit court has not yet rendered a decision on the merits of Eye's property tax appeal.

(f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or

(g) Deficient as otherwise provided by law.

When the outcome of a case turns on an issue of law, appellate review is *de novo*. *Western Kentucky Coca–Cola Bottling Co., Inc. v. Revenue Cabinet*, 80 S.W.3d 787, 790 (Ky. App. 2001).

Initially, Eye argues the circuit court erred in dismissing the KBTA as a party on appeal.[3] Citing *LWD Equipment, Inc. v. Revenue Cabinet*, 136 S.W.3d 472 (Ky. 2004), Eye claims KRS 13B.140(1) requires the administrative agency involved be named in an action. Conversely, the KBTA argues the plain language of KRS 13B.140(1) distinguishes "parties" from "the agency," and asserts the Supreme Court in *LWD Equipment* held the KBTA is not an indispensable party to an appeal to the circuit court. Finally, the KBTA contends there is no basis for its formal participation in the appeal because it will be bound by whatever order the circuit court enters on the merits. We agree with the KBTA.

KRS 13B.140(1) reads, in relevant part, as follows:

> [a]ll final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. . . . Copies of the petition shall be served by the petitioner upon the agency and all parties of record. *The petition shall include the names and addresses of all parties to the proceeding and the agency involved,* and a statement of the grounds on which the review is requested.

[3] Eye concedes the circuit court did not err in dismissing Ervin and the Department of Revenue.

(Emphasis added). The plain language of the statute does not specifically require an agency be named as a party on appeal to the circuit court. Rather, it requires a petition for review to include the "names" of the parties and the administrative agency. The Supreme Court further clarified this requirement in *LWD Equipment*. The appellee therein argued the Court of Appeals should have dismissed the appellant's appeal for failing to name the KBTA as an indispensible party. In affirming, the Supreme Court agreed the appellant—pursuant to KRS 13B.140(1)—had sufficiently satisfied KRS 13B.140(1) by naming the KBTA in its petition of appeal to the circuit court not once, but twice; had dutifully included the KBTA's address; and had correctly provided the KBTA with a copy of its petition for review. *LWD Equipment*, 136 S.W.3d at 477. The Supreme Court did not require or deem appropriate an agency's inclusion as a party; it merely held a reviewing court has jurisdiction when the petition names the agency in some capacity. *Id*.

In the instant case, Eye satisfied the requirement of KRS 13B.140(1) by including the KBTA's address and providing it with a copy of the petition. Neither KRS 13B.140(1) nor *LWD Equipment* require anything more. Further, we agree with the KBTA that naming the agency as a party on appeal is unnecessary, as it, like a lower court in a non-administrative case, is bound by the decision of a reviewing court. As such, we hold the circuit court did not err in dismissing the KBTA.

In his next argument, Eye alleges the circuit court erred by dismissing Beam as a party. However, we agree with Beam that a hearing officer need not be

a party on appeal because the court's holding with regard to an administrative agency applies equally to the hearing officer.

In *Fitzgerald v. McFall*, 290 S.W.3d 666 (Ky. App. 2009), this Court addressed whether a hearing officer should be a named party on appeal. Because the hearing officer would necessarily be required to follow the mandates of an appellate court, we held it was "not necessary or proper to name the hearing officer as a party on appeal." *Id*. at 670-71. The sound reasoning expressed in *Fitzgerald* resonates equally in the instant matter. Any mandate from the circuit court directing the KBTA to take action will necessarily apply to Beam.

Even so, Eye argues *Fitzgerald* does not apply to situations where an administrative official acts with malice, fraud, or corruption. He argues state officials should be liable for deliberate wrongdoing, even when acting within the scope of their authority, and should not be entitled to official immunity when they exceed, ignore, or disregard the limits of their authority. In support, Eye cites *Carr v. Wright*, 423 S.W.2d 521 (Ky. 1968), and *Upchurch v. Clinton County*, 330 S.W.2d 428 (Ky. 1959).

However, the cases cited by Eye do not apply to the instant matter because they address whether state officials may avoid tort liability for damages due to governmental immunity. In the present case, Eye does not allege tort liability against Beam. Therefore, governmental immunity is irrelevant. Rather, the question before us is whether Beam is a necessary party to the appeal of an

administrative decision by the KBTA. Pursuant to *Fitzgerald*, we hold Beam was not a necessary party, and the circuit court did not err in dismissing him.

Next, though he does not argue the circuit court erred in dismissing the Attorney General, Eye asserts CR[4] 4.04(6) requires service on the Attorney General when an agency of the Commonwealth is named as a party. Had Eye questioned the Attorney General's dismissal on this point, however, we would have affirmed the circuit court's action because CR 4.04(6) merely requires service upon the Attorney General—it does not require that he be named in an action involving an agency.

Finally, Eye argues the circuit court erred in dismissing his separate complaint for declaratory and injunctive relief, claiming such relief is necessary because the issues raised in his complaint cannot be addressed within the confines of his property tax appeal. Specifically, Eye argues the KBTA has deliberately evaded the subpoena provisions of KRS 133.120(10) and denied his opportunity to a fair hearing. Eye cites *Blair v. City of Winchester*, 743 S.W.2d 28 (Ky. 1987), which held an appellant did not violate appellate procedure by combining an appeal from an administrative agency decision with a complaint alleging civil rights violations. However, Eye misapprehends the trial court's reasoning for dismissal of the separate complaint, and his reliance on Blair is misplaced.

In dismissing Eye's complaint requesting declaratory and injunctive relief, the circuit court found such relief unnecessary because it could grant the

[4] Kentucky Rules of Civil Procedure.

relief requested by Eye in adjudicating the merits of his appeal of the KBTA's finding. Specifically, the circuit court determined it could direct the KBTA to grant these rights at a hearing on remand—particularly instructing the KBTA to allow Eye to subpoena witnesses. We agree, and hold Eye has not articulated a need for declaratory and injunctive relief, as the relief requested could be granted by the circuit court within the confines of his appeal of the KBTA's decision.

Based on the foregoing, the opinion of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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