

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001241-MR

WAL-MART REAL ESTATE BUSINESS TRUST

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 13-CI-00474

CAMPBELL COUNTY PROPERTY
VALUATION ADMINISTRATOR
AND KENTUCKY BOARD OF TAX APPEALS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, CLAYTON, AND NICKELL, JUDGES.

NICKELL, JUDGE: Wal-Mart Real Estate Business Trust (Wal-Mart) has appealed from the Campbell Circuit Court's dismissal of its appeal from an adverse decision of the Kentucky Board of Tax Appeals (KBTA) as having been untimely filed. Following a careful review, we affirm.

Wal-Mart owns three parcels of real estate located on Alexandria Pike in Alexandria, Campbell County, Kentucky, which are the subject of this appeal. In 2011 and 2012, the Campbell County Property Valuation Administrator (PVA) assessed these three properties for property tax purposes. Wal-Mart disagreed with the assessments—believing them to be inflated and not in accordance with the actual cash value of the properties—and complained to the PVA. When the PVA refused to alter the assessments, Wal-Mart separately appealed the valuations to the Campbell County Board of Assessment Appeals (BAA). In separate orders, the BAA upheld two of the assessments and reduced the third by approximately twelve percent. Wal-Mart appealed the BAA’s rulings to the KBTA. The three appeals were consolidated on Wal-Mart’s motion, and a hearing before the full KBTA was conducted on September 19, 2012. On March 27, 2013, the KBTA entered a final order upholding the BAA’s rulings, noting the order was mailed to the parties that same date.

Pursuant to KRS¹ 131.370 and KRS Chapter 13B, on April 30, 2013, Wal-Mart filed a petition of appeal from the decision of the KBTA in the Campbell Circuit Court. On May 10, 2013, the PVA moved to dismiss the action pursuant to

CR² 12.02, alleging the petition was not timely filed and therefore, the trial court was without jurisdiction to adjudicate the matter. Citing KRS 13B.141(1), the

¹ Kentucky Revised Statutes.

² Kentucky Rules of Civil Procedure.

PVA averred an aggrieved party is required to appeal from an adverse decision of the KBTA within thirty days after the final order is mailed. In the instant matter, the thirty-day window would thus expire on April 26, 2013—four days before Wal-Mart actually filed its petition.

In its response, Wal-Mart asserted it had timely mailed the petition to the Campbell County Circuit Clerk and that it was received in that office on April 25, 2013. However, the petition was returned without being filed because no filing fee or summons fee had been tendered. Wal-Mart received the rejected petition on April 29, 2013, issued a check for the required fees, and returned the petition to the Clerk's Office by overnight courier. Upon receipt the following day, the Clerk filed the petition. Wal-Mart contended it had fully complied with the statutory requirements of KRS 131.170 and KRS Chapter 13B when it tendered its petition on April 25, 2013, because nothing in those statutory provisions "requires an aggrieved taxpayer to accompany its petition of appeal with a 'filing fee' or any other payment." Further, Wal-Mart argued this action constituted a "special statutory proceeding" and therefore, pursuant to the plain language of CR 1(2), "the procedural requirements of the statute shall prevail over any inconsistent procedures set forth in the [Civil] Rules." Thus, it contended no filing or summons fee is required when filing an appeal pursuant to KRS 13B.140(1) and the Clerk acted erroneously in failing to file the petition on April 25, 2013.

On June 19, 2013, the trial court entered an order dismissing the action. The trial court found statutory appeals from administrative agencies

constitute original actions, thereby rejecting Wal-Mart's assertion that the case *sub judice* was a "special statutory proceeding" and the civil rules were inapplicable pursuant to CR 1(2). Citing CR 3.02, the trial court held filing fees are mandatory in original actions. Therefore, the trial court determined the Clerk had acted correctly in refusing to file Wal-Mart's petition until the appropriate filing fee was remitted. Because Wal-Mart did not do so before the thirty-day time limit had lapsed, the trial court found it was untimely filed and dismissal was appropriate. This appeal followed.

Before this Court, Wal-Mart continues to assert it was not required under KRS 131.370(1) or KRS Chapter 13B to pay a filing fee or any other payment. It argues that since it fully complied with the requirements of 13B.140(1) by tendering its petition to the Clerk on April 25, 2013, and mailing the required copies to the PVA and KBTA on April 23, 2013, the action should have been permitted to proceed. Wal-Mart takes issue with the trial court's reliance on CR 3.02 for the proposition that payment of the filing fee is mandatory for original actions, apparently believing the instant action should not be so classified. Wal-Mart then cites numerous opinions of this Court and the Supreme Court of Kentucky for the proposition that the payment of a filing fee is not jurisdictional nor is the failure to tender such payment fatal to an appeal. It contends the dismissal was inappropriate and requests reversal. Our review indicates Wal-Mart's assertions are incorrect and it is not entitled to the relief sought.

The right to appeal the decision of an administrative agency is not a right, but rather is a matter of legislative grace. *Nickell v. Diversicare Management Services*, 336 S.W.3d 454, 456 (Ky. 2011). In such cases, the failure to strictly comply with the statutory guidelines is fatal to an appeal. *See Louisville Gas & Electric v. Hardin & Meade*, 319 S.W.3d 397 (Ky. 2011); *Gallien v. Kentucky Board of Medical Licensure*, 336 S.W.3d 924 (Ky. App. 2011); *Harrison v. Park Hills Board of Adjustment*, 330 S.W.3d 89 (Ky. App. 2011).

Here, it is undisputed Wal-Mart had thirty days from the date of mailing of the KBTA's final order in which to perfect its appeal and that the time limit expired on April 26, 2013. It is conceded for purposes of this appeal that Wal-Mart tendered its petition—*sans* filing fee—to the Clerk on April 25, 2013, and that the Clerk refused to file same without payment of the appropriate fee. It is further undisputed that Wal-Mart's petition was not actually filed until four days after the time limit had elapsed. We are now tasked with determining whether the trial court correctly found this matter to constitute an original action, thereby invoking the requirements of CR 3.02, and further, that the Clerk was justified in refusing to file Wal-Mart's petition based on the failure to tender a filing fee. We believe the trial court was correct on all counts.

First, it is well-settled that circuit courts may be statutorily endowed with jurisdiction to review decisions of an administrative agency. Pursuant to KRS 23A.010(4), “[s]uch review shall not constitute an appeal but an original action.” Thus, as the trial court correctly determined, CR 3.02 is controlling and Wal-

Mart's reliance on judicial interpretations of CR 73.02 and other rules related to appeals is misplaced. Although this matter is an appeal from an administrative agency, the appellate rules are inapplicable because it is considered an original action, as stated above, and the mandates for such actions are controlling.

Next, CR 3.01 states a civil action is commenced with "the filing of a complaint with the court and the issuance of a summons or warning order thereon in good faith." CR 3.02(1) instructs the Clerk to collect the filing fee at the time of filing suit in circuit court. The language of the rule is mandatory and specifically references "original actions of administrative agencies, special districts or boards." Thus, Wal-Mart's assertion that it was not required to tender a filing fee rings hollow. As the trial court correctly held, the Clerk was required to collect a filing fee *prior* to filing Wal-Mart's action and acted appropriately in refusing to do so without receipt of the applicable fee. When the fee was received, the matter was filed. However, Wal-Mart was four days tardy in tendering the filing fee, thereby rendering the action untimely. The trial court was correct to dismiss Wal-Mart's petition on this basis.

For the foregoing reasons, the order of the Campbell Circuit Court is affirmed.

ALL CONCUR.

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No brief filed.