IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1310

Filed: 19 November 2019

Graham County, No. 17 CVS 153

REID GOLDSBY MILLER, Plaintiff,

v.

GRAHAM COUNTY, TAJUANA LEDWELL, and ERMA PHILLIPS, Defendants.

Appeal by Plaintiff from order entered 23 May 2018 by Judge Bradley B. Letts in Graham County Superior Court. Heard in the Court of Appeals 10 September 2019.

Reid Goldsby Miller, pro se, for the plaintiff-appellant.

Parker Poe Adams & Bernstein, LLP, by Charles C. Meeker, and Coward, Hicks & Siler, P.A., by J.K. Coward, Jr., for defendants-appellees.

Phillip Jacob Parker, Jr. and Stephen A. Woodson for North Carolina Farm Bureau Federation, Inc., amicus curiae.

MURPHY, Judge.

Our Declaratory Judgment Act enables trial courts to hear actions brought by a party to a written contract for the purpose of declaring that party's rights under the contract. In this case, the parties entered into an agreement to put certain funds into escrow pending the outcome of an action before the North Carolina Property Tax

Commission ("the Commission"). Plaintiff-Appellant, Reid Goldsby Miller ("Miller"), filed a *Complaint* under the Declaratory Judgment Act seeking a judicial declaration as to her rights to the escrowed funds. The trial court had jurisdiction to rule on Miller's *Complaint* under the Declaratory Judgment Act.

In hearing the parties' cross-motions for summary judgment, the trial court erred in granting summary judgment for Graham County and denying summary judgment for Miller. The Commission's Order and operation of the governing statute dictate that certain tracts of Miller's land were to receive present-use value ("PUV") tax treatment effective 2013 and continuing until Graham County took action to disqualify the tracts from receiving PUV tax treatment. Miller is entitled to summary judgment and the return of her escrowed funds.

BACKGROUND

Through the end of 2016, Miller owned five tracts of land in Graham County, all of which had been taxed under Graham County's PUV program ("the Program") for forestland prior to 2013. The Program allows owners of "[l]and that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program" to be taxed at lowered yearly rates in comparison to the otherwise-applicable tax rate, or true value. N.C.G.S. § 105-277.2(2) (2017). Miller's properties were subject to logging requirements under her management program.

During the summer of 2013, the Graham County Board of Equalization and Review ("the Board") removed four of Miller's five tracts from the Program, allegedly for her failure to sufficiently comply with logging requirements pending sale of the properties. Upon their removal from the PUV program, the tracts were to be taxed at their true value, which was significantly higher than the PUV. Miller appealed this removal to the Commission under N.C.G.S. § 105-290(b), arguing the Board erred when it determined that four of her properties no longer qualified for the Program.

On 27 April 2016, the Commission heard Miller's case. In each of the three years between Miller filing her appeal and the hearing before the Commission, Miller received tax assessment notices to which she did not respond.[1] Miller did not reapply to the Program for any of those years. At the conclusion of the April 2016 hearing, the Commission held in favor of Miller, reasoning she had sufficiently complied with her management program in 2013 to remain in the Program. As a result, the Commission remarked in its conclusions of law entered 16 December 2016 that the tracts that had been removed were "entitled to continued deferred taxation on the

[1] Miller did receive a letter from the Department of Revenue that advised her of multiple options regarding the 2014, 2015, and 2016 tax assessments, which included the option to "[p]ay nothing." However, advisements of the Department of Revenue are not binding on the courts of our State, nor are they binding on Graham County as a separate political subdivision. *See, e.g., In re Vanderbilt University*, 252 N.C. 742, 747, 114 S.E.2d 655, 658 (1960) ("Ordinarily, the interpretation given to the provisions of our tax statutes by the Commissioner of Revenue will be held to be prima facie correct and such interpretation will be given due and careful consideration by this Court, though such interpretation is not controlling.").

basis of the value of the land at its [PUV.]" Neither party appealed the Commission's Order.

Between the April hearing and December order—in July 2016—Graham County garnished $31,429.68 in back taxes from Miller. This garnishment was for tax years 2014, 2015, and 2016 on the basis that, despite the unresolved matter of the tracts' later-determined improper removal from the Program in 2013, Miller's tax assessments for those years were properly based on the tracts' (higher) true value rather than their PUV. On 22 December 2016—six days after the Commission released its decision—the parties agreed to hold the garnished $31,429.68 and an additional $13,879.99 Graham County alleged Miller owed for the 2016 tax year in escrow to be disbursed according to the final decision of a court of competent jurisdiction.[2]

Miller filed a *Complaint* in Graham County Superior Court on 17 October 2017. She argued she was entitled to declaratory judgment under our Declaratory Judgment Act on the bases that (1) Graham County failed to remove her properties from the Program for 2014, 2015, and 2016, which meant she was entitled to the lower tax rate in all three years; and (2) Graham County failed to release the garnished funds. She also argued that the garnishment violated Due Process

[2] Holding the $45,309.57 in escrow was designed to allow Miller to close the sale of the tracts, which she was able to accomplish on 22 December 2016.

according to Article 1, § 19 of the North Carolina Constitution. Miller and Graham County both filed motions for summary judgment on the basis that no issue of material fact existed and they were entitled to judgment as a matter of law. The Superior Court granted Graham County's motion, and denied Miller's, ordering that the entire amount in escrow be distributed to Graham County. Miller timely appealed.

ANALYSIS

A. Due Process and Attorney's Fees Claims

As an initial matter, Miller argued in her *Complaint* that Graham County violated her Due Process rights when it garnished $31,429.68. Additionally, Miller's *Complaint* sought to recover attorney's fees. However, because Miller raised no issues on appeal in connection with the Due Process or attorney's fees claims, any arguments regarding those claims are deemed abandoned. N.C. R. App. P. 28(a) (2019). To the extent our decision might impact those claims, Miller's appeal is dismissed.

B. Jurisdiction

Before we address the substantive issue on appeal, we must address whether we have—and the trial court had—jurisdiction to hear this case. Graham County contends that the Commission, not the trial court, had the sole authority to hear Miller's complaint and, as a result, we do not have competent jurisdiction to hear this

appeal. Miller disagrees and asserts the trial court—and our court—is a proper venue for her *Complaint*. We hold the trial court had jurisdiction over Miller's claim, and we have jurisdiction over her appeal.

1. The Declaratory Judgment Act

The *Complaint* in this case seeks a declaratory judgment that Graham County erred by (1) failing to revise its tax records for the years 2014, 2015, and 2016, and (2) failing to release Miller's escrowed funds. Such actions are governed by our Declaratory Judgment Act. N.C.G.S. § 1-253 *et seq*. (2017).

Under N.C.G.S. § 1-254:

> Any person interested under a . . . written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder.

N.C.G.S. § 1-254 (2017). The written contract or writing at issue here is the *Agreement for Reserve Fund As Escrow Account* entered into by Miller and Graham County on 22 December 2016. In her *Complaint*, Miller seeks a declaration of her rights under that agreement, which is a valid exercise of her rights under the Declaratory Judgment Act. Consequently, the trial court had jurisdiction over Miller's *Complaint* and we have jurisdiction to hear her timely appeal.

In contrast to our jurisdictional analysis, Graham County's argument against the trial court having jurisdiction over Miller's *Complaint* is premised on two other statutes: N.C.G.S. § 105-290 ("Appeals to [the] Commission") and N.C.G.S. § 105-381 ("Taxpayer's [R]emedies"). However, Miller's suit, as an action seeking declaratory judgment regarding a written contract, does not fall under either statute.

2. Statute Regarding Appeals to the Commission

Under N.C.G.S. § 105-290, "[a]ny property owner of the county may except to an order of the county board of equalization and review . . . concerning the listing, appraisal, or assessment of property and appeal the order to the Property Tax Commission." N.C.G.S. § 105-290(b) (2017). Such an appeal must be filed "within 30 days after the date the board mailed a notice[3] of its decision to the property owner." N.C.G.S. § 105-290(e) (2017).

Graham County argues the requests for declaratory judgment in Miller's *Complaint* constitute an appeal from the Board's assessment of her properties in 2014, 2015, and 2016. However, Miller's claims at the trial court were not founded on those years' assessments; rather, her *Complaint* argues Graham County "*failed to revise* its tax records" in accordance with the Commission's Order, which placed the

[3] Graham County maintains that the 2014, 2015, and 2016 true-value tax assessments, mailed to Appellant in their respective years, constitute notice. Miller's claims in the trial court were not based on those year's assessments, those mailed assessments would have met the statutory definition of "notice" if they were the foundation for her claims. Not only do they communicate the value assessment and tax rates for the properties, but they also contain sufficient information to communicate the properties' status with respect to the Program.

tracts back into the Program effective tax year 2013. As a result, Miller does not appeal the Board's annual assessments from 2014, 2015, or 2016. She instead seeks declaratory judgment that the Board failed to sufficiently revise its tax records in light of the Commission's 2016 decision, which led to an improper garnishment of her funds. This argument is properly raised under the Declaratory Judgment Act, as is discussed above.

3. Taxpayer's Remedies Statute

Graham County next contends taxpayers seeking relief from a tax assessment "must exhaust this administrative remedy before [they] can resort to the courts." *King v. Baldwin*, 276 N.C. 316, 326, 172 S.E.2d 12, 18 (1970). Also, under N.C.G.S. § 105-381(a)(1), a taxpayer may file suit directly in superior court after making a demand on an appropriate governing body only when the claim concerns "[a] tax imposed through clerical error[, a]n illegal tax[, or a] tax levied for an illegal purpose." N.C.G.S. § 105-381(a)(1) (2017). Graham County concludes that, because Miller's claim was not one of the three types specified in N.C.G.S. § 105-381(a)(1), the trial court did not have jurisdiction to hear this case. We disagree.

Miller's *Complaint* does not seek relief from a tax assessment, but a declaration as to her rights under the escrow agreement she entered into with Graham County prior to the Commission's Order. Such an action is clearly within the scope of the

trial court's jurisdiction to hear complaints arising under our Declaratory Judgment Act.

In conclusion, we do not, as Graham County asks, interpret Miller's *Complaint* as an appeal from a decision of the Commission under N.C.G.S. § 105-290. Nor do we view it as a taxpayer's defense to the enforcement of tax collection under N.C.G.S. § 105-381. Instead, we construe Miller's *Complaint* according to its plain meaning: as an action seeking declaratory judgment as to her rights under the *Agreement for Reserve Fund As Escrow Account* she entered into with Graham County in 2016.

C. Summary Judgment Motions

The sole substantive issue on appeal is whether the trial court erred in granting Graham County's *Motion for Summary Judgment*. "Our standard of review of an appeal from summary judgment is de novo." *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008). "When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the nonmoving party." *Dalton v. Camp,* 353 N.C. 647, 651, 548 S.E.2d 704, 707 (2001). Because there are few disputed issues of fact, the core question is whether, as a matter of law, Miller's 2014, 2015, and 2016 taxes should have been adjusted to the PUV when the Commission's Order reinstated the tracts into the Program for the 2013 tax year.

N.C.G.S. § 105-277.3 identifies "special classes of property" which "must be appraised, assessed, and taxed" differently than property outside of those classes. N.C.G.S. § 105-277.3(a) (2017). One such category is "[i]ndividually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit." N.C.G.S. § 105-277.3(a)(3) (2017). Forestland, for statutory purposes, is defined as "[l]and that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program." N.C.G.S. § 105-277.2(2) (2017). When property is determined to be forestland, it "must be taxed on the basis of the value of the land for its present use." N.C.G.S. § 105-277.4(c) (2017). The Board determines whether property is classified as forestland and "adhere[s] to the [Department of Revenue's annual] PUV] program guide" ("Guide") in making that determination. N.C.G.S. § 105-277.4(f) (2017).

All indications in both N.C.G.S. § 105-277.4 and the associated Guide suggest that properties remain enrolled in the Program until specifically removed. Neither the statute governing the Program nor the Guide explicitly addresses whether a Commission decision affects the entire timeframe between a year at issue and the year of the decision. However, N.C.G.S. § 105-277.4(a) states that "[a] new application is not required to be submitted unless the property is transferred or becomes ineligible for use-value appraisal because of a change in use or acreage" once

enrolled. N.C.G.S. § 105-277.4(a) (2017). Further, classification of property within one of the Program's protected categories remains intact, and determines that property's tax rate, unless and until a "disqualifying event" occurs. N.C.G.S. § 105-277.4(c) (2017). The taxpayer who owns the property—or at least pays its taxes—is entrusted with reporting any changes affecting classification outside of a review year. TONY SIMPSON, N.C. DEP'T OF REVENUE, *Present-Use Value Program Guide* 123 (2019).[4] "Failure to meet sound management requirements for the property" was listed among examples of disqualifying events in the 2014, 2015, and 2016 Guides. *Present-Use Value Program Guide* at 124.

N.C.G.S. § 105-296(j) also supports Miller's interpretation of how the Program's enrollment operates. Discussing an assessor's duties, it enumerates the duty "to verify that [a] property continues to qualify" for the Program during its annual review of at least one-eighth of enrolled properties. N.C.G.S. § 105-296(j) (2017). Further, although the bulk of N.C.G.S. § 105-296(j) concerns Program disqualification for failure to provide requested information to an assessor, the statute's discussion of standards and practices surrounding disqualification from the

[4] All references are to the 2019 Guide, which is available on the Department of Revenue's website (https://files.nc.gov/ncdor/documents/files/2019_puv_program_guide.pdf) at the time of filing. We take judicial notice of the 2014, 2015, and 2016 guides simply to state that each of those guides contains the same language we cite in this opinion. *See Lineberger v. N.C. Dep't of Corr.*, 189 N.C. App. 1, 6, 657 S.E.2d 673, 677 (2008) ("Appellate courts may take judicial notice *ex mero motu* on 'any occasion where the existence of a particular fact is important . . . .' Facts which are . . . 'capable of demonstration by readily accessible sources of indisputable accuracy' are subject to judicial notice." (quoting *West v. Reddick*, *Inc.*, 302 N.C. 201, 202, 274 S.E.2d 221, 223 (1981))).

program, as well as its hesitancy to remove enrolled properties, speaks to the expectation that a property will remain in the Program once it has qualified. *Id.* (providing for retroactive reinstatement to the Program after disqualification for failure to produce information if the property owner provides the requested information within 60 days). Thus, the assessor's duties described in N.C.G.S. § 105-296(j) are manifestly framed around the expectation of continued enrollment implied in both N.C.G.S. § 105-277.4 and the Guide.

To the extent these statutes communicate that properties are to remain in the program until specifically removed, they also demonstrate the General Assembly's intent that reinstatement to the Program should be fully retroactive unless an independent disqualification occurs between the original disqualification and the decision reinstating the properties' enrollment. Here, the record does not indicate that Graham County removed the tracts in question from the Program between 2013 and 2016, or that there was an adjudicated disqualifying event that occurred within that timeframe. The Commission's Order and operation of law determine that Miller's tracts were placed back into the Program effective 2013 and were to remain in the program unless and until a disqualifying event occurred thereafter. Without a disqualifying event or any notice that Miller's tracts were being taken out of the program, those tracts must be taxed at the PUV in tax years 2014, 2015, and 2016.

We reverse the trial court's order granting Graham County summary judgment, and remand with instruction to enter summary judgment in Miller's favor instead.

CONCLUSION

The trial court had jurisdiction to hear Miller's *Complaint* under the Declaratory Judgment Act. In hearing the parties' cross-motions for summary judgment, the trial court erred in granting summary judgment for Graham County and denying summary judgment for Miller. The Commission's Order and operation of law make it clear that the tracts in question were to be reinstated in the Program in 2013 and—without any disqualifying event arising thereafter—receive PUV tax treatment indefinitely, including tax years 2014, 2015, and 2016. Miller is entitled to summary judgment and the return of her escrowed funds.

DISMISSED IN PART; REVERSED IN PART.

Judges DIETZ and COLLINS concur.

Report per Rule 30(e).