

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
MADISON COUNTY

WILLIAM M. STIDHAM, Treasurer,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-10-012
- vs -	:	<u>OPINION</u>
	:	5/14/2012
WILLIAM P. WALLACE, et al.,	:	
Defendants-Appellants.	:	

CIVIL APPEAL FROM MADISON COUNTY COURT OF COMMON PLEAS
Case No. CVE 20110076

Kirsten J. Gross, 59 North Main Street, London, Ohio 43130, for plaintiff-appellee

William P. and Lori A. Wallace, 185 Thorn Locust Lane, London, Ohio 43140, defendants-appellants, pro se

Choctaw Lake Property Owners, 2875 Oneida Drive, London, Ohio 43140, defendant, pro se

Citibank, 11800 Spectrum Center Drive, Reston, VA 20190-3327, defendant, pro se

RINGLAND, J.

{¶ 1} Defendant-appellant, William Wallace, appeals a decision of the Madison County Court of Common Pleas granting summary judgment to plaintiff-appellee, the Madison County Treasurer.

{¶ 2} The undisputed facts of the case are as follows. In September 2002, Wallace granted the Madison County Board of Commissioners ("the Board") a sewer easement for the purpose of installing a grinder sewage pump, which would convey wastewater from Wallace's property to a new public sewer system. Several years passed without additional activity until August 2005, when the Board certified a special assessment to the Madison County Auditor in order to recoup the costs of constructing the sewer. Starting in 2006, each property assessed would owe \$721.18 per year for a period of 25 years. Wallace's property was among those subject to the special assessment.

{¶ 3} From 2006 to 2010, Wallace continually refused to pay the assessment. As a result, the county deducted the cost of the assessment from Wallace's property tax payments, which caused significant arrearages in his tax record. In March 2011, the Treasurer filed a tax foreclosure complaint against Wallace's property. At the time of the complaint, Wallace owed \$6,226.05 in assessment fees, plus accrued taxes, penalties, and interest.

{¶ 4} Wallace timely answered, arguing, among other things, that the Treasurer acted in "bad faith and with unclean hands" in filing for foreclosure, and that the assessment was an unconstitutional taking of property.

{¶ 5} The Treasurer subsequently moved for summary judgment, claiming there were no genuine issues of material fact to be litigated, where Wallace had not paid the assessment, Wallace's taxes were certified delinquent, and the county had the best and first lien on the property. In the motion, the Treasurer described the manner in which the county levied the assessment, stating, in pertinent part:

On August 31, 2005, the Madison County Commissioners certified the special assessment to the County Auditor. * * * In accordance with section 727.30, the assessment was certified to the County Treasurer's office in 2005 to be collected on the 2006 tax bill.

{¶ 6} The trial court subsequently awarded summary judgment, finding that the Treasurer had attempted to collect Wallace's unpaid assessment "as authorized by law," and that the county had a valid tax lien on the property. Wallace's property was sold at auction on October 7, 2011.

{¶ 7} Wallace timely appeals, raising one assignment of error for review:

{¶ 8} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANTS BY GRANTING APPELLEE SUMMARY JUDGMENT WHEN APPELLEE WAS NOT ENTITLED TO THE SAME AS A MATTER OF LAW.

{¶ 9} In his sole assignment of error, Wallace argues the trial court erred in granting summary judgment to the Treasurer, where various issues of material fact remained, including (1) whether the Treasurer levied the assessment in "bad faith," and (2) whether the assessment was an unconstitutional taking of Wallace's property.

{¶ 10} On appeal, a trial court's decision granting summary judgment is reviewed de novo. See *Moody v. Pilot Travel Ctrs., L.L.C.*, 12th Dist. No. CA2011-07-141, 2012-Ohio-1478, ¶ 7. Summary judgment is proper when there is no genuine issue of material fact remaining for trial, the moving party is entitled to judgment as a matter of law, and reasonable minds can only come to a conclusion adverse to the nonmoving party, construing the evidence most strongly in that party's favor. *Id.*; Civ.R. 56(C). The movant bears the initial burden of informing the court of the basis for the motion and demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). Once this burden is met, the nonmoving party has a reciprocal burden to set forth specific facts showing a genuine issue for trial. *Id.*

{¶ 11} Rather than addressing Wallace's specific claims as to summary judgment, we are compelled to recognize, *sua sponte*, a plain error not raised by either party in this case.

{¶ 12} We recognize that applying the doctrine of plain error in civil cases is not

avored, and that we must limit our application to those "extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus. See also *Gevedon v. Gevedon*, 167 Ohio App.3d 450, 2006-Ohio-3195, ¶ 20 (2nd Dist.).

{¶ 13} Here, a pivotal part of the trial court's decision to grant summary judgment on the Treasurer's foreclosure claim was its finding that the Treasurer had attempted to collect Wallace's unpaid assessment charges "as authorized by law * * *." Upon review of the record, the only authority the Treasurer cited in support of the county's authority was R.C. 727.30. However, any actions taken pursuant to R.C. Chapter 727 were invalid, as the county was not authorized to act under this statute. Thus, because there is a genuine issue of material fact as to whether the Treasurer was authorized to collect the assessment, we find the trial court's decision rises to the level of plain error.

{¶ 14} R.C. Title 7 governs municipal corporations, and R.C. Chapter 727 concerns the making and levying of assessments by a municipality. Pursuant to R.C. 727.01, municipalities may levy assessments to pay the costs of "constructing * * * sewers, sewage disposal works and treatment plants and sewage pumping stations * * *." R.C. 727.02 through R.C.727.30 provide the procedure a municipality must follow in order to properly levy an assessment. R.C. 727.30, as specifically cited by the Treasurer, outlines the assessment certification process.

{¶ 15} Here, the Treasurer, an elected county official, is defending a sewer assessment levied by the Madison County Board of Commissioners. Madison County is a county, not a municipal corporation, therefore R.C. Title 7 does not govern the assessment rendered herein. See, e.g., *Hunter v. Commrs. of Mercer Cty.*, 10 Ohio St. 515, 520 (1860)

("[t]he county is not a corporation"). Instead, Madison County officials were required to operate in accordance with R.C. Chapter 6117, which governs county sewer districts and assessment procedures. See R.C. 6117.30; *Drillex, Inc. v. Lake Cty. Bd. of Commrs.*, 145 Ohio App.3d 384 (11th Dist.2001); *Caddell v. Columbiana Cty. Bd. of Commrs.*, 112 Ohio App.3d 10, 14-15 (7th Dist.1996).

{¶ 16} This court has previously found a clear distinction must be made between an assessment levied by a municipality and one levied by a board of county commissioners. *McCann v. Madison Cty. Commrs.*, 12th Dist. No. CA99-12-032, 2000 WL 1725413 (Nov. 20, 2000). In *McCann*, the trial court issued an order prohibiting the Madison County Board of Commissioners from levying a sewer assessment, based upon its finding that the assessment violated R.C. 727.34. *Id.* at * 1. When the Board levied a second resolution pursuant to R.C. Chapter 6117, the trial court declined landowners' requests to find the Board in contempt of the prior court order. On appeal, we found that the county derived its authority to act from R.C. Chapter 6117, not R.C. Title 7. *Id.* at * 2. Thus, because the second resolution was clearly levied in accordance with R.C. Chapter 6117, we found no abuse in the trial court's refusal to make a contempt finding. *Id.*

{¶ 17} Unlike *McCann*, the record here is silent as to what statutory authority the county relied on in levying the assessment, other than the Treasurer's passing reference to R.C. 727.30. Thus, relying on the Treasurer's statements throughout, we have no choice but to conclude there is a genuine issue of material fact as to whether the Treasurer was authorized to collect the assessment, and even more fundamentally, whether the assessment was valid and enforceable. Accordingly, the trial court's decision granting summary judgment to the Treasurer constitutes plain error. See *Goldfuss*, 79 Ohio St.3d at syllabus.

{¶ 18} For the foregoing reasons, Wallace's single assignment of error is sustained.

{¶ 19} Judgment reversed and remanded for further proceedings consistent with this opinion.

HENDRICKSON, P.J., and PIPER, J., concur.