

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JOANNE BONIME,)	
)	
Plaintiff,)	TC-MD 120484C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss this case for lack of prosecution. Defendant, by and through its representative Lindsay Kandra, Assistant County Attorney, made that request to the court on the morning of trial 20 minutes after the time the trial was scheduled to begin because Plaintiff had not appeared for the proceeding.

Trial in the matter was scheduled to be held at the Oregon Tax Court in Salem at 9:30 a.m. on March 18, 2013, to consider Plaintiff’s appeal. The court sent Plaintiff’s authorized representative, D. P. Stanford (Stanford), written notice of the trial by both e-mail and regular mail on September 19, 2012, roughly six months before the scheduled date of trial. The notice included the date and time of the trial, as well as the location: “TAX COURT, 1241 STATE STREET NE, 4TH FLOOR, SALEM.”

The notices were sent to the addresses appearing on Plaintiff’s Authorization To Represent form, executed by both Plaintiff and Stanford, and filed with the court September 10, 2012. The trial notice the court transmitted to Stanford by mail was not returned as undeliverable. Moreover, Plaintiff Joanne Bonime (Bonime) contacted the court by telephone on September 24, 2012, acknowledging that trial had been set and advising the court that Stanford could communicate with the court on her behalf regarding the appeal (which is standard procedure for represented parties).

The court's trial notices advised Plaintiff (technically her representative Stanford) of the date and time of trial, as well as the location, that it was important to participate in the scheduled trial, and that "[f]ailure to be available at this trial may result in a decision against you in this case."

On the morning of trial two individuals appeared for Defendant: Kandra and an appraiser with the assessor's office. No one appeared for Plaintiff. The court waited roughly 20 minutes and Plaintiff still did not appear. Defendant's representative Kandra asked the court to dismiss the appeal because Plaintiff had failed to appear. The court orally granted the motion.

At approximately 10:00 a.m. on the morning of trial Plaintiff contacted the court by telephone, explaining that she was across the street. Plaintiff and her representative Stanford appeared at the court shortly thereafter and, after speaking with court staff, submitted a written request to reschedule. (Ptf's Ltr, Mar 18, 2013.) The request, signed by Stanford, is untimely and unwarranted. Plaintiff's request was not made until more than 30 minutes after the trial was scheduled to commence. It was, therefore, untimely. The rules of the Magistrate Division of the Oregon Tax Court provide that "[t]he court * * * expects that [the] authorized representative[] [will] be available for all scheduled proceedings." Tax Court Rule-Magistrate Division (TCR-MD) 2 D. Timeliness is presumed.

Plaintiff's rescheduling request is unwarranted because TCR-MD 2 D provides that requests for the rescheduling of the trial "will not be granted except in exceptional circumstances." Stanford's rescheduling request states that Stanford "was informed that [the] hearing * * * was at 9:30 a.m. at 1163 State Street." (Ptf's Ltr, Mar 18, 2013.) It is not clear to the court why Stanford says he was informed that the "hearing" would be at 1163 State Street. Stanford does not state who informed him that the location of the trial would be 1163 State Street. The court's trial notices stated that the trial would be held at 1241 State Street, not 1163

State Street. Stanford's request goes on to state that when he arrived at 1163 State Street he "was directed to 1162 Court St.," and upon arriving there "was directed to a building across 12th St." (*Id.*) Bonime then telephoned the court and ultimately arrived at the correct address.

However, Plaintiff and Stanford initially went to the wrong address. That error caused them to be more than 30 minutes late in arriving at the court. Had Bonime and Stanford correctly read the court's trial notice, they presumably would have gone to the correct address and, assuming they were on time, there would have been a trial. Ignoring the court's written instructions as to the location of the trial and appearing at an incorrect location is not an "exceptional circumstance[]," as required by TCR-MD 2 D for the rescheduling of the trial. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's request to dismiss Plaintiff's appeal for lack of prosecution is granted for the reasons set forth above. Plaintiff's Complaint is hereby dismissed.

Dated this ____ day of March 2013.

DAN ROBINSON
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

This Decision of Dismissal was signed by Magistrate Dan Robinson on March 19, 2013. The Court filed and entered this Decision of Dismissal on March 19, 2013.