

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Gagliardi,	:	
Appellant	:	
	:	
v.	:	No. 2161 C.D. 2007
	:	Submitted: September 5, 2008
Board of Property Assessment	:	
Appeals and Review of	:	
Allegheny County, Pennsylvania	:	
	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE FLAHERTY FILED: November 25, 2008

John Gagliardi (Gagliardi) appeals, *pro se*, from an order of the Court of Common Pleas of Allegheny County (trial court) which ordered Gagliardi’s tax-assessment appeal to be marked as settled and discontinued in accordance with the stipulation of settlement (stipulation), ordered the Board of Property Assessment Appeals and Review (Assessment Board) to enter the assessment as indicated on the stipulation, and ordered that the fair market value (FMV) and total assessed value (TAV) of the tax-assessment appeal carry over into future tax years until the property is reviewed and a change in value is warranted or in accordance with the trial court’s order of January 15, 1998.¹ We grant the motion filed by West

¹ In the stipulation signed and dated October 18, 2007, Gagliardi and the Assessment Board agreed that the FMV and TAV for Gagliardi’s property located in Jefferson at block and lot number 658M50, would be \$140,000.00 for years 2004 through 2007, and that the appeal would be marked settled and discontinued. We also note that the trial court’s order of January 15, 1998 has not been included in the original record of this case.

Jefferson Hills School District (School District) to dismiss and/or quash Gagliardi's appeal.

Gagliardi owns one parcel of property, a 40 plus acre parcel of land which has a 100 by 200 foot metal panel building on it and is designated as 658M50. In 1975, the assessment for 658M50 was \$7,150.00. Adjacent to Gagliardi's property is a parcel known as 658M75, which has two buildings on it and is in the name of McKeesport Industrial Development Authority. In 1976, these properties were allegedly placed together and listed by the County as 658M50. From 1976 through 1982, the assessment of the two properties rose to \$360,200.00, reflecting development of a warehousing complex on parcel 658M75 and the County's misplacement of all of the buildings on both lots into the official County description of parcel 658M50. From 1983 through 1990, the assessment rose to \$480,000.00. Later that year, in proceedings with the County Tax Claim Director, assessments for years 1988, 1989, and 1990 were exonerated and corrected to reflect the original \$40,200.00 valuation. In 2000, the assessment rose to \$40,800.00 and in 2001 to \$41,600.00. In 2002, however, the assessment reached \$286,200.00. In 2003 and 2004, the assessment decreased to \$148,800.00. In 2005, Gagliardi requested an administrative hearing from the Assessment Board challenging years 2000 to 2004.

On September 19, 2005, the Assessment Board recognized 658M50 as having a 100 by 200 foot metal panel warehouse building erected thereon, and increased the TMV amounts for 2004 and 2005 to \$338,000.00. On October 12, 2005, Gagliardi appealed the Assessment Board's dispositions.

On October 18, 2007, a conciliation session was held before a panel of the Allegheny County Board of Viewers (Board of Viewers), at which, legal

representatives for all parties were present.² Counsel represented Gagliardi. This session resulted in the execution of the stipulation between the parties for the tax years in question. No hearing was held.

On October 23, 2007, the Honorable R. Stanton Wettick, Jr. signed an order of court, accepting the stipulation amounts as the proper tax assessment amounts for the subject property and ordered that the case be marked as settled and discontinued. None of the parties filed with the trial court any post-trial motions, any motions to strike, or any objections pursuant to Allegheny County Local Rule (Local Rule) 503(14).³

On November 19, 2007, Gagliardi filed the instant appeal before our court.⁴ The trial court ordered Gagliardi to file a statement of matters complained of on appeal. Gagliardi did so and raised eight issues for review.⁵ On April 9,

² Pursuant to Allegheny County Local Rule 503(10):

(a) All appeals shall be conciliated before a hearing by a panel of the Board of Viewers assigned thereto.

(b) At the time of conciliation, all parties or their counsel shall be present with full authority to effectuate a settlement of the appeal.

³ Allegheny County Local Rule 503(14) provides:

(14) Objections. If the Court accepts the Board of Viewers' Report and Recommendation, the parties may file objections to the Report and Recommendation within ten (10) days of receipt of the Court's Interim Order....

⁴ Our review in a tax assessment appeal case is limited to determining whether the trial court abused its discretion, committed an error of law, or whether its decision is supported by substantial evidence. Westinghouse Electrical Corporation (R & D Center) v. Board of Property Assessment, 539 Pa. 453, 459, 652 A.2d 1306 (1995).

⁵ Before our court, Gagliardi contends that the Assessment Board improperly rendered a decision because Gagliardi was prevented from actually attending the conference convened to determine the case; that the Assessment Board failed to consider evidence of value including the damage to the lot and block 658M50 created by severely strip mining the four-foot red stone coal and severely strip mining and deep mining the six-foot Pittsburgh coal, leaving huge ravines that became a garbage dump; that the subsidence on lot and block 658M50 worsens every year because of locust support posts deteriorating and collapsing causing mine subsidence and

2008, the School District filed a motion to dismiss and/or quash Gagliardi's appeal before our court. The School District contends that our court does not have original or appellate jurisdiction in this case, as there was no factual record established before the trial court and Gagliardi failed to exhaust his appeal remedies in the trial court.

The School District contends that, pursuant to Pennsylvania Rule of Appellate Procedure (Pa. R.A.P.) 1972(3), (5) & (7), our court should dismiss Gagliardi's appeal. Pa. R.A.P. 1972 provides in pertinent part as follows:

Rule 1972. Dispositions on Motion

Subject to Rule 123 (applications for relief), any party may move:

(3) To dismiss for want of jurisdiction in the unified judicial system of this Commonwealth.

(5) To dismiss for failure to preserve the question below, or because the right to an appeal has been otherwise waived. See Rule 302 (requisites for reviewable issue) and Rule 1551(a) (review of quasijudicial orders).

methane gas to escape; that the Assessment Board failed to take into account that lot and block 658M50 was caused to become a garbage dump; that reclamation costs to correct the subsidence increased every year and thus devalued the realty; that the Assessment Board was structurally biased in favor of municipal government decisions to an extent rendering it incapable of correcting realty mis-description problems that came before it; that the Assessment Board failed to hear pertinent evidence of past and improper collaboration of governments with the AT&T/Bell system companies which obscured activities upon the parcel in question in order to fraudulently conceal their monopolistic corporate activities there; and that the Assessment Board failed to hear pertinent evidence that the municipal governments maintained some of their own records in a less than true and correct manner, records which would otherwise reflect a more accurate depiction of the realty. See Gagliardi's Statement of Matters Complained of on Appeal, December 4, 2007, at 1-2.

(7) To quash for any other reason appearing on the record.

Appeals taken from the trial court to our court are governed by the Judicial Code, 42 Pa. C.S. §762.⁶ The School District contends that Gagliardi failed to raise before the trial court all of the issues complained of on appeal and, thus, waived all of his issues on appeal. The School District states that, in so waiving all of his issues, our court does not have jurisdiction to hear his appeal and the matter must be dismissed.

Pursuant to Pa. R.A.P. 302(a), “issues not raised in the lower court are waived and cannot be raised for the first time on appeal.” In the present controversy, as there was no hearing before the trial court, the issues Gagliardi raised before our court on appeal have never been raised before the trial court. Thus, all of Gagliardi’s issues are waived, pursuant to Pa. R.A.P. 302(a).

As stated previously, all of the legal representatives present at the conciliation appeared with apparent authority to settle the matter pursuant to Local Rule 503(10)(b), which provides that “[a]t the time of conciliation, all parties or their counsel shall be present with full authority to effectuate a settlement of the

⁶ 42 Pa. C.S. §762(a)(1) and (3) states in pertinent part as follows:

- (1) Commonwealth civil cases. – All civil actions or proceedings:
 - (i) Original jurisdiction of which is vested in another tribunal by virtue of any of the exceptions to section 761(a)(1)(relating to original jurisdiction)....
 - (ii) By the Commonwealth government, including any officer thereof acting in his official capacity.
- ***
- (3) Secondary review of certain appeals from Commonwealth agencies.- All appeals from Commonwealth agencies which may be taken initially to the courts of common pleas under section 933 (relating to appeals from government agencies).

appeal.” Pursuant to Local Rule 503(10), hearings are only held when a conciliation session is unable to effectuate a settlement of the appeal. Here, the stipulation was executed on behalf of Gagliardi by his attorney following the conciliation and the Board of Viewers then forwarded the stipulation to the trial court to execute the proper order implementing the terms therein. As the current controversy was settled by a stipulation made at the conciliation session, no hearing was held.

If a party is dissatisfied with a conciliation result, however, once the trial court issues the interim order, the parties in accordance with Local Rule 503(14), may file objections within ten (10) days of the issuance of such order. If no party files objections to the interim order, such order then becomes final. Gagliardi did not file objections within ten days of the issuance of such order so that order became final. Thus, Gagliardi waived his right to raise his objections on appeal. “Having made no objection to the chancellor’s adjudication implementing the settlement, appellant is now bound by it, since having never objected below to the plan which was finally adopted, appellant cannot raise her objections for the first time on this appeal.” Daly v. Darby Township School District, 434 Pa. 286, 289, 252 A.2d 638, 640 (1969).

The conflict regarding the assessed value of Gagliardi’s property was resolved by a conciliation and stipulation, without a hearing before the Board of Viewers or the trial court in accordance with Local Rule 503. Gagliardi failed to preserve any issues for our review by not raising objections or exceptions before the trial court. Pa. R.A.P. 302 (a).

In accordance with Pa. R.A.P. 1972, we grant the School District’s

motion to dismiss and/or quash Gagliardi's appeal.

JIM FLAHERTY, Senior Judge

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ORDER

AND NOW, this 25th day of November, 2008 the motion filed by West Jefferson Hills School District in the above-captioned matter, to dismiss and/or quash John Gagliardi's appeal is granted.

JIM FLAHERTY, Senior Judge