

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Frank and Athena Sarris, husband	:	
and wife,	:	
	:	
Appellants	:	
	:	
v.	:	No. 385 C.D. 2008
	:	Argued: October 14, 2008
Washington County Tax Revenue	:	
Department, (Formerly Washington	:	
County Board of Assessment Appeals)	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER

FILED: December 19, 2008

Frank and Athena Sarris, husband and wife, (Taxpayers), appeal from the order of the Washington County Court of Common Pleas (trial court) denying their request for mandamus relief. The Taxpayers alleged that they paid excess taxes over a six-year period because of a mathematical or clerical error of the Washington County Tax Revenue Department (Department) in assessing the fair market value of the building on their property. The Taxpayers contend the trial court erred in denying them mandamus relief as a mathematical error existed, and the trial court abused its discretion in ceasing the testimony of a witness while the Taxpayers were questioning him as on cross-examination.

In 1996, the Department assessed the fair market value of the building on the property at \$572,318. On March 17, 2004, the Taxpayers purchased a residential property in Washington County. The Department maintains a residential property record or “property report card,” containing information about the Taxpayers’ property. The property report card uses a grade and percentage to help assess the property’s fair market value; the report card for the Taxpayers’ property recorded a grade of A+99, the highest value that the Department’s computer program allows. The report card also included the value of the building’s total floor area, finished basement, and garage.

On July 19, 2007, the Taxpayers wrote the Department a letter stating that the Department made a mathematical error on the property report card in adding the value of the total floor area, finished basement and garage and that the building’s fair market value should be assessed at \$497,777. Ironically, the Taxpayers made a mathematical error in their calculation as the three items on the property report card are listed as \$419,268 (total floor area), \$57,710 (finished basement), and \$17,799 (garage), totaling \$494,777 (the Taxpayers listed \$494,777 as the total in their appellate brief). In the letter, the Taxpayers sought a refund of excess taxes paid for a period of six years prior to the date of the letter, although they allegedly purchased the property on March 17, 2004.

On August 7, 2007, the Taxpayers filed a complaint in mandamus against the Department seeking a refund of excess taxes paid over the six-year period based on the alleged mathematical or clerical error. The Department filed an answer, asserting that it assessed the building’s value using forced or overriding values and the assessor’s opinion. In other words, the Department felt their computer program could not accurately assess the value of the building; thus, it

used a value that would override the maximum grading of A+99. The Department asserted that no mathematical error occurred as it simply did not add the numbers listed for the total floor area, finished basement, and garage in determining the building's fair market value. The Department further asserted the Taxpayers had an adequate remedy available outside of mandamus, *i.e.*, an appeal of their assessment.

At a bench trial, the court, without objection from the parties, stated that the only issue to be resolved was whether there was a mathematical error on the property report card in assessing the building's fair market value or whether the Department determined the fair market value without using an arithmetic formula. Further, only the value of the building, not the value of the property's land, was disputed.

The Taxpayers called Paul Chicone, a Washington County assessor, to testify as on cross-examination. The Department asked the Taxpayers to make an offer of proof concerning Chicone's testimony, as Chicone did not assess the Taxpayers' property and does not assess any property in the Taxpayers' township. After some discussion with counsel, the court stated, "I want to hear from any witness who is going to testify as to how generally [a property assessment] is done, and why in this case it doesn't matter that the numbers [on the property report card] were added up incorrectly." February 14, 2008 Trial, N.T. at 6; Reproduced Record (R.R.) at 23a. The court noted that the report card "by means of addition only" showed an inaccurate fair market value. February 14, 2008 Trial, N.T. at 7; R.R. at 24a. The Department did not concede existence of an arithmetic error because there was another reason why the addition appeared inaccurate.

Chicone, who had been assessing buildings for 28 years at the time of trial, testified that he did not know if the Department was required to follow the 21st Century Appraisers' guidelines for assessing the fair market value of the building. The Department objected to this line of questioning. After some discussion with counsel, the court asked Chicone if he ever changed the fair market value of a property to an amount different from the sum of the numerical values on the property report card. Chicone testified that he has so changed a fair market value of a property.

The Taxpayers asked the court to indulge their line of questioning because they believed that the Department had to follow the same procedures as the 21st Century Appraisers did during the last county-wide reassessment. The court reiterated it was focused on whether a mathematical error of one kind or another occurred. The Taxpayers then continued questioning Chicone, mentioning information concerning the 21st Century Appraisers and general assessment procedure from 1980. The Department objected, arguing the trial was only to determine if a mathematical error existed, not whether the Department's assessment practices are proper. The Taxpayers argued that they wanted to establish that the Department could not have used a forced or overriding value to assess the property; thus, it was a mathematical error. The court then told the Taxpayers that they could ask Chicone if a mathematical error existed. The Taxpayers continued questioning Chicone and presented the court with a court opinion allegedly discussing assessment methodology. The trial court informed the

Taxpayers that the case they presented did not apply to the instant mandamus action, as it was an assessment appeal.¹

Chicone testified that sometimes his assessments are beyond the maximum property grading of A+99 and that he enters a forced value to assess certain homes. The court asked Chicone if it appeared the property in question was appraised using an approved procedure of the Department or if it appeared that the Department made a mathematical error. Chicone stated that on larger homes such as the building in question, he would go beyond the A+99 grade and would not use a mathematical formula to determine the fair market value. The trial court then told Chicone to step down from the witness stand. The Taxpayers said, “Your Honor,” and the court stated, “I said he may step down.” February 14, 2008 Trial, N.T. at 29, R.R. at 46a. The Taxpayers responded, “[We] would like to be able to try [our] case.” *Id.* The court then stated, “If you don’t like it, file an appeal.” *Id.* The Taxpayers did not call any other witnesses.

The Department called Robert Neil, the Washington County Chief Assessor. Neil conceded that the three values on the property report card did not add up to \$572,318, and that he felt that a forced or overriding value was used to assess the Taxpayers’ building. Neil stated that the 21st Century Appraisers’ computer program had an overriding application. He stated that the assessor who assessed the Taxpayers’ property was now deceased. Neil reviewed relevant information and thought that the building would be rated above A+99. Neil

¹ Specifically, the court stated, “[the case] has nothing to do with the case that I am supposed to be hearing in mandamus that I have narrowed down the issues. You just don’t get it. Listen to me once. You are not a good listener.” February 14, 2008 Trial, N.T. at 21; R.R. at 38a. The court then indicated it was running out of patience and it was not concerned with methodology. The court allowed more questioning, stating, “Ask your next question. And start objecting.” February 14, 2008 Trial, N.T. at 22; R.R. at 39a.

testified that the Department uses the forced or overriding value method on occasion. Neil ultimately stated that there was no mathematical error and that based on his 28-year experience, the assessment was fair. On cross-examination, Neil stated that when a forced value was placed on the property, there will appear to be a mathematical error on the property report card. After trial, the trial court ruled in the Department's favor, determining that there was no mathematical error. The court denied mandamus relief and dismissed the action. The Taxpayers appealed.

The Taxpayers first contend the trial court erred in denying mandamus relief and in determining that the property report card did not contain a mathematical error. Mandamus is appropriate only to compel official performance of a ministerial act or mandatory duty where the plaintiff has a clear legal right, the defendant has a corresponding duty, and there is no other appropriate or adequate remedy. *Chanceford Aviation Props., L.L.P. v. Chanceford Twp. Bd. of Supervisors*, 592 Pa. 100, 923 A.2d 1099 (2007). Mandamus may be used to compel action in a case involving judgment or discretion. *Id.* Mandamus, however, cannot be used to order the exercise of judgment or discretion in a particular direction, but may compel a tribunal or administrative agency to act when it has been sitting on its hands. *Id.*

As this Court has recently held, “remedies exist for overpayment of taxes[, including] three county assessment and tax collection laws.” *Lutes v. Fayette County Bd. of Assessment Appeals*, 936 A.2d 573, 576 (Pa. Cmwlth. 2007). A statutory remedy exists for alleged mathematical or clerical errors under Section 703.3 of The Fourth to Eighth Class County Assessment Law (Assessment Law),

Act of May 21, 1943, P.L. 571, added by Section 2 of the Act of September 28, 1965, P.L. 550, *as amended*, 72 P.S. § 5453.703c, which provides:

Whenever through mathematical or clerical error an assessment is made more than it should have been, and taxes are paid on such incorrect assessment, the board, upon discovery of such error and correction of the assessment shall so inform the appropriate taxing district or districts, which shall make a refund to the taxpayer or taxpayers for a period not in excess of six years from the date of application for refund or discovery of such error by the board.

A taxpayer may appeal an assessment under Section 511 of The General County Assessment Law (General County Assessment Law), Act of May 22, 1933, P.L. 853, *as amended*, 72 P.S. § 5020-511 and Section 701 of the Assessment Law, 72 P.S. § 5453.701(b). If a taxpayer's assessment appeal is successful, the assessment board may "grant such relief as to them shall appear just and reasonable" Section 511 of the General County Assessment Law, 72 P.S. § 5020-511(a). A taxpayer may also seek a refund of excess taxes by bringing an action in assumpsit before the court of common pleas. Section 2 of the Act of May 21, 1943, P.L. 349, (Tax Refund Law), *as amended*, 72 P.S. § 5566c. However, Section 2 of the Refund Law does not apply if another statute provides a remedy to the taxpayer. Section 1 of the Tax Refund Law, 72 P.S. § 5566b(b). Recently, this court has concluded that where the Assessment Law provides complete relief that is the same as the relief a party seeks under the Tax Refund Law, that party cannot invoke the Tax Refund Law. *Locust Lake Vill. Prop. Owners Ass'n, Inc. v. Monroe County Bd. of Assessment Appeals*, 940 A.2d 591 (Pa. Cmwlth. 2008).

Turning to the circumstances here, the Taxpayers' mandamus complaint only averred that a mathematical or clerical error existed on the property

report card. The alleged error, if considered clerical, would be that the building's fair market value should have been entered as \$494,777 on the property report card, not \$572,318. A mathematical error would mean the assessor's arithmetic was incorrect and the building's fair market value should have been \$494,777.²

The testimony clearly shows that there was no mathematical or clerical error; instead, the actual dispute was over the Department's assessment of the building by means other than adding the values of the total floor area, finished basement, and garage together. The Department used a forced or overriding value to determine the assessed value. Chicone and Neil, the only witnesses at trial, stated that consideration of such value was an appropriate and accepted methodology. The Taxpayers presented no witnesses contradicting that testimony. Once it was clear the Taxpayers could not show existence of a mathematical or clerical error that the Department had a ministerial duty to correct, they could not obtain relief via mandamus. The Taxpayers may raise the issue of the Department's methodology and judgment in assessing the building's fair market value in an assessment appeal, not in a mandamus action. Since a successful assessment appeal would provide the Taxpayers with an adequate remedy concerning their challenge to the Department's assessment of the fair market value

² One commentator described a clear distinction between clerical, mathematical, and judgment errors. See Bert M. Goodman, *Assessment Law & Procedure in Pennsylvania*, 617-18 (2008 ed.). A clerical error is one a clerical employee makes "in the copying or transcription of records or accounts." *Id.* at 617. He describes a mathematical error as an arithmetic mistake, such as where an assessor comes to an incorrect result to a mathematical equation. *Id.* at 618. He states clerical and mathematical mistakes are clearly different from judgmental mistakes. *Id.* Goodman believes that an assessor's judgmental mistake occurs when he or she incorrectly determines a property's fair market value or a component contributing to its fair market value. *Id.* He believes that an assessment appeal would be the proper avenue to challenge a judgmental error of a property assessment.

of their building, the trial court properly restricted the evidence related to the issue of whether the Department made an undisputed mathematical or clerical error.³ Since the undisputed evidence established that no such mathematical or clerical error existed, the trial court correctly denied mandamus relief and dismissed the action. *See Jackson v. Vaughn*, 565 Pa. 601, 604, 777 A.2d 436, 438 (2001) (denial of mandamus relief may be reversed “only for abuse of discretion.”) [citing *Renziehausen v. Twp. of Robinson*, 531 Pa. 154, 158, 611 A.2d 706, 709 (Pa. 1992)].

For the same reasons, the trial court did not err in restricting the scope of Chicone’s testimony. *See Dep’t of Gen. Servs. v. U.S. Mineral Prods. Co.*, ___ Pa. ___, 956 A.2d 967 (2008) (admission of evidence in trial court’s discretion). Specifically, the trial court has considerable discretion in determining the scope of witness questioning; those rulings are only reversed if a clear abuse of discretion or error of law occurred. *Commonwealth v. Boxley*, 575 Pa. 611, 838 A.2d 608 (2003). A trial court shall exercise reasonable control over the interrogation of witnesses to “1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time and (3) protect witnesses from harassment or undue embarrassment.” Pa.R.E. 611. Given that the only issue properly before the court in the mandamus action was whether a mathematical error had, in fact, occurred, not whether the use of forced or overriding values was proper, the trial court did not abuse its discretion in limiting

³ Since a successful assessment appeal could provide the taxpayers with an adequate remedy, the taxpayers could not seek relief under the Tax Refund Law. *See Locust Lake Vill. Prop. Owners Ass’n, Inc.*, 940 A.2d at 596.

the witness to the issue before the court and concluding the witness's testimony after allowing Taxpayers' counsel considerable leeway.

For the foregoing reasons, the order of the Board is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

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Washington County Tax Revenue	:	
Department, (Formerly Washington	:	
County Board of Assessment Appeals)	:	

ORDER

AND NOW, this 19th day of December, 2008, the order of the Court of Common Pleas of Washington County in the above captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge