Opinion issued December 9, 2021

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00994-CV

THE APOSTOLIC CHURCH AMERICA, INC. FKA THE APOSTOLIC CHURCH INTERNATIONAL, INC., Appellant

V.

HARRIS COUNTY, CITY OF HOUSTON, HOUSTON INDEPENDENT SCHOOL DISTRICT, HOUSTON COMMUNITY COLLEGE SYSTEM, AND HARRIS COUNTY IMPROVEMENT DISTRICT # 05, Appellees

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On Appeal from the 55th District Court
Harris County, Texas
Trial Court Case No. 2018-25624

MEMORANDUM OPINION

In this suit for delinquent ad valorem property taxes, the district court entered a judgment against a church and in favor of several taxing units after a hearing before a tax master. In four issues on appeal, the church contends (1) it did not have notice

of or an opportunity to object to the tax master's report before the district court rendered judgment, (2) the tax master erred by recommending an award for a tax year that was not the subject of any pleading, (3) the church was exempt from taxation as a religious organization, and (4) the church was not required to exhaust administrative remedies before claiming a tax exemption. Because we conclude the church did not receive the required notice, we reverse and remand.

Background

Harris County,[1] the City of Houston, the Houston Independent School District, the Houston Community College System, and the Harris County Improvement District # 05 (collectively, the "taxing units") sued The Apostolic Church America, Inc. fka The Apostolic Church International, Inc. (the "Church") for delinquent ad valorem property taxes for tax years 2016, 2017, and subsequent years which might become due "up to the day of judgment." The Church answered, alleging that it was statutorily exempt from taxation as a religious organization.[2]

The district court referred the matter to a tax master, who conducted an evidentiary hearing on August 7, 2019. The appellate record does not contain a

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1 Harris County sued to "collect[ ] on behalf of itself and certain county-wide taxing authorities which are the Harris County Department of Education, the Port of Houston Authority of Harris County, the Harris County Flood Control District, and the Harris County Hospital District."

2 *See* TEX. TAX CODE § 11.20 (establishing circumstances under which religious organization may be entitled to tax exemption).

transcript of this hearing. However, the tax master's report and the parties' appellate briefing indicate that the tax master did not make a recommendation at the end of the hearing. Instead, the tax master took the matter under advisement so that the parties could submit briefs on whether the Church could claim an exemption as a defense to the taxing units' suit or must adjudicate any exemption with the Harris County Appraisal District ("HCAD") in a separate action. The docket sheet entry for the August 7 hearing states: "[C]ase called judgment and evidence submitted for tax master review. 2 weeks to brief 8.21."

On August 29, the tax master signed a report recommending that the district court enter a final judgment in favor of the taxing units. In the report, the tax master concluded that the Church "must p[u]rsue and exhaust 'exemption' through [HCAD] and district court original action" and thus its "remedies were elsewhere." Based on the evidence presented at the hearing, the tax master found that the Church owed back property taxes, penalties, and interest of more than $63,000 for tax years 2016 to 2018. The report included the following notice of the Church's right to appeal the tax master's findings and recommendation to the district court:

> **TO ALL PARTIES: This constitutes notice under section 33.72(c) of the Texas Property Tax Code of your right to appeal the master's ruling to the judge of the referring court in this case. In order to do so you must follow the deadlines and other applicable requirements set out in the Property Tax Code.**

On September 17, the district court issued a final judgment in accordance with the tax master's report and authorized the foreclosure of the tax liens on the Church's property. The tax master's report was attached to the district court's final judgment.

Referenced several places in the appellate record, including in the affidavit of the Church's counsel discussed below, is a request for a de novo hearing filed by the Church on September 20, three days after the district court rendered judgment. But the appellate record does not include the September 20 request itself. There is no dispute, however, that the trial court did not conduct a de novo hearing.

The Church timely moved for a new trial. In the motion, the Church (1) re-urged its defense that it was a religious organization exempt from taxation and (2) complained that it had not received a copy of the tax master's report or notice of the report's substance before the district court entered the final judgment. On this second point, the Church asserted that it first learned the tax master had signed a report on the date of the final judgment—September 17—when its counsel received an electronic notification of case activity generated by the district clerk ("Case Notification email"). The Case Notification email, which the Church submitted as an exhibit to its motion for new trial, stated: "As requested, the . . . [d]istrict [c]lerk is providing a notice on the case(s) for which changes have been made on 9/17/2019," and it referenced the following case activity:

ORDERS/JUDGMENTS

DATE	ORDER DESCRIPTION
2019-08-30	HOLD FOR JUDGMENT
2019-08-30	JUDGMENT RENDERED BY COURT_AFTER TRIAL (NON-JURY)
2019-09-17	INTERLOCUTORY DEFAULT JUDGMENT
2019-09-17	FINAL JUDGMENT SIGNED FOR PLAINTIFF (NON-JURY)
2019-08-30	ENTRY OF JUDGMENT RECOMMENDED
2019-09-17	DEFENDANT COSTS
2019-09-17	ORDER SGND GRANTING SALE OF PROPERTY

The Case Notification email advised that "some [o]rders and [j]udgments are signed by pen and not by electronic signature," requiring the district clerk to "print the order/judgment onto paper" for the judge's signature and then "image the signed order before it is available for online viewing. Therefore, while [the email recipient] will receive notice that the [o]rder/[j]udgment has been signed, the actual image of the document may not be available online for up to 1-3 days."

The Church elaborated on how it learned of the tax master's report in the affidavit of its counsel, which also was submitted with the motion for new trial. Counsel's affidavit stated:

> After the respective briefs [on the Church's claimed exemption] and while I was waiting for the [tax master's] [r]ecommendation, the referring [district court] signed a final judgment on September 17, 2019.
>
> In reviewing the court's record after September 17, . . . I noticed there was a docket entry on August 30, . . . that there was a judgment rendered and/or recommended; however, [the Church] did not have notice of the substance of the recommendation nor did the [c]ourt file any recommendation.

> On September 20, . . . three (3) days after receiving the notice of [j]udgment, [the Church] filed a Request for De Novo [Hearing].
>
> However, the [c]ourt failed to set a hearing, possibly because a final order was already signed.

The August 30 docket entry referenced in counsel's affidavit reads in its entirety: "Judgment recommended."

The new trial motion was referred to the tax master, who considered the motion by submission and recommended that it be denied. In its report and recommendation on the motion, the tax master addressed the Church's re-urging of its claimed tax exemption:

> Even if a religious exemption could be a legal defense in this suit, . . . the evidence (not previously offered, but now attached to [the Church's] Motion for New Trial) actually establishes that [HCAD] denied [the Church's] request for religious exemption for the years at issue in this suit. [The Church] neither argues nor attaches evidence to suggest that it has made any effort to properly challenge the decision of [HCAD] or otherwise exhaust its administrative remedies. Thus, . . . the [district court] is without jurisdiction to entertain the matters raised here as part of a delinquent property tax suit.

But the tax master did not address or make any findings on the Church's notice complaint.

The district court did not sign an order adopting the tax master's recommendation or denying the Church's motion for new trial. Instead, the motion was overruled by operation of law. This appeal followed.[3]

Notice of Tax Master's Report and Right of Appeal

In its first issue, the Church contends it had no notice of or opportunity to object to the tax master's report before the district court rendered the final judgment. The Church asserts that, due to the lack of notice, its failure to object before the tax master's findings and recommendation were adopted by the district court is not a waiver of its right to a de novo appeal. The taxing units disagree that the Church did not have notice, pointing to the notice of the right of appeal in the tax master's report. They assert that the Church's counsel received notice of case activity via the Case Notification emails generated by the district clerk and, along with the Church itself, should be charged with knowledge of all orders and judgments entered in the case. Finally, the taxing units assert that any error in the rendition of judgment is harmless given the evidence of the delinquent taxes.

A. Standards of review

The Church presented its notice complaint in a motion for new trial, which was overruled by operation of law. TEX. R. CIV. P. 329b(c). We generally review a

[3] "The failure to appeal to the referring court, by waiver or otherwise, a master's report that is approved by the referring court does not deprive any party of the right to appeal to or request other relief from a court of appeals or the supreme court." TEX. TAX CODE § 33.74(i).

trial court's ruling on a motion for new trial for an abuse of discretion.[4] *See In re R.R.*, 209 S.W.3d 112, 114 (Tex. 2006). Because the Church's notice complaint requires us to construe provisions of the Tax Code, however, we also consider the de novo standard of review for issues of statutory interpretation. *See Loaisiga v. Cerda*, 379 S.W.3d 248, 254–55 (Tex. 2012); *see also Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) ("A trial court has no 'discretion' in determining what the law is or applying the law to the facts.").

B. Law on notice of substance of master's report and right of appeal

In delinquent tax suits, the district court may appoint a master in chancery to perform the duties required of the court. *See* TEX. TAX CODE § 33.71(a). Section 33.72 of the Tax Code assigns the tax master certain responsibilities:

> (a) At the conclusion of any hearing conducted by a master that results in a recommendation of a final judgment or on the request of the referring court, the master shall transmit to the referring court all papers relating to the case, with master's signed and dated report.
>
> (b) After the master's report has been signed, the master shall give to the parties participating in the hearing notice of the substance of the report. The master's report may contain the master's findings, conclusions, or recommendations. The master's report must be in writing in a form as the referring court may direct. The form may be a notation on the referring court's docket sheet.

[4] "This standard of review applies regardless of whether the motion for new trial was denied by an express ruling or overruled by operation of law." *In re G.P.*, No. 01-16-00346-CV, 2016 WL 6216192, at *22 n.64 (Tex. App.—Houston [1st Dist.] Oct. 25, 2016, no pet.) (mem. op.).

> (c) If the master's report recommends a final judgment, notice of the right of appeal to the judge of the referring court shall be given to all parties.

Id. § 33.72. The notice of the right of appeal "may be given in open court or may be given by first class mail." *Id.* § 33.74(b).

Although there is little authority construing this provision—or the other provisions governing tax master adjudications—courts have looked to "almost identical" statutory language authorizing adjudications by masters in chancery or associate judges in the family law context as interpretative aids and concluded the "almost identical" language requires notice of both the substance of the master's report and of the right of appeal to the referring court. *See Hebisen v. Clear Creek Indep. Sch. Dist.*, 217 S.W.3d 527, 532 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (construing Tax Code with reference to "almost identical" Family Code provisions); *Robles v. Robles*, 965 S.W.2d 605, 611 (Tex. App.—Houston [1st Dist.] 1998, pet. denied) (construing almost identical language in former TEX. GOV'T CODE § 54.010 as requiring such notice); *Godwin v. Aldine Indep. Sch. Dist.*, 961 S.W.2d 219, 221 (Tex. App.—Houston [1st Dist.] 1997, pet. denied) (same).

"Any party is entitled to a hearing by the judge of the referring court, if within 10 days . . . after the master gives the notice [of the right of appeal] required by Section 33.72(c), an appeal of the master's report is filed with the referring court." TEX. TAX CODE § 33.74(a). If no party appeals, the referring court "may confirm,

modify, correct, reject, reverse, or recommit the report as the court may deem proper and necessary in the particular circumstances of the case." *Id.* § 33.73(a); *City of Hou. v. Alief Indep. Sch. Dist.*, 117 S.W.3d 913, 915 (Tex. App.—Houston [14th Dist.] 2003, no pet.). Generally, a master's findings become conclusive on the issues considered by the master if a proper objection is not filed *before* the master's findings are adopted by the referring court. *See Robles*, 965 S.W.2d at 612–13 (holding party waived any error by failing to file notice of appeal from master's findings until after district court adopted them).

C. Analysis

Here, the district court referred the matter of the Church's delinquent taxes to a tax master for an evidentiary hearing. The tax master did not make any findings or recommend a judgment at the conclusion of the hearing, and instead held the matter under advisement until the parties prepared briefs on whether the Church could assert its claimed tax exemption as a defense or was required to pursue any administrative remedies first. The tax master later signed her report on August 29, 2019, finding the Church owed back taxes, penalties, and interest and recommending a final judgment for the taxing units. Because the report recommended a final judgment, Section 33.72(c) required that the parties be given notice of the right of appeal to the district court. TEX. TAX CODE § 33.72(c) ("If the master's report recommends a final judgment, notice of the right of appeal to the judge of the

referring court *shall* be given to all parties." (emphasis added)); *see also* TEX. GOV'T CODE § 311.016(2) (when used in a statute, "'[s]hall' imposes a duty"); *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (noting that "shall" has been construed to mean "mandatory, creating a duty or obligation"). The Section 33.72(c) notice was included in the report. But the report did not indicate that this notice was given in open court or by first class mail. *See* TEX. TAX CODE § 33.74(b).

Although the tax master's report included the Section 33.72(c) notice of the right of appeal, the Church did not seek de novo review in the district court within the ten-day appeal period. The Church's counsel explained in his affidavit the reason for the missed deadline. He stated that the Church did not have notice of the tax master's report until after the trial court rendered its final judgment on September 17. He further stated that when he reviewed the district court's record after receiving notice of the final judgment, he discovered the August 30 docket entry for a "[j]udgment recommended" but the recommendation had not been filed. It follows that because the Church did not have notice of the report until after the rendition of judgment, the Church also did not have the notice of the right of appeal contained in the report until after the rendition of judgment.

The Tax Code provisions, read together and in accordance with their plain language, require that notice must be given to the parties of the right of appeal to the district court and specify a ten-day period between when the master gives the notice

of the right of appeal and when the district court may adopt the master's findings and recommendations. *See* TEX. TAX CODE §§ 33.73(a) ("After the master's report is filed, *and unless a party has filed a written notice of appeal to the referring court*, the court may confirm . . . the report[.]" (emphasis added)), 33.74(a) ("Any party is *entitled* to a hearing by the judge of the referring court, if within 10 days . . . after the master gives the notice required by Section 33.72(c), an appeal of the master's report is filed with the referring court." (emphasis added)); *see also City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003) (noting courts must interpret statute according to plain meaning of language used and must read statute as whole). However here, counsel's affidavit indicates these two events happened simultaneously, thus leaving the Church without an opportunity to object and file a notice of appeal from the tax master's report before the district court adopted the findings and recommendations therein.

The taxing units did not respond to the motion for new trial or otherwise dispute counsel's testimony about the lack of notice in the district court, and they acknowledge in their appellate brief that the tax master's report was attached to the district court's final judgment. Pointing to the Case Notification email generated by the district clerk, they suggest the Church should be charged with notice of the tax master's report because its counsel requested to, and did, receive the electronic notices of case activity from the district clerk. But the Case Notification email to

which the taxing units point was generated on September 17, the same day the district court signed the final judgment. And it warns that some of the orders and judgments referenced may require signature by pen on paper and electronic imaging, and thus may not be available for online viewing for a period of one to three days. It thus does not establish that the Church had the Section 33.72(c) notice of the right of appeal before the final judgment was signed.

Still according to the taxing units, both the Church and its counsel "are charged by law with knowledge of all orders and judgments rendered in the case." In support of this contention, they cite a handful of cases. *See Lindley v. Johnson*, 936 S.W.2d 53, 56 (Tex. App.—Tyler 1996, writ denied); *Ex parte Bowers*, 886 S.W.2d 346, 349 (Tex. App.—Houston [1st Dist.] 1994, writ dism'd w.o.j.); *K & S Interests, Inc. v. Tex. Am. Bank/Dall.*, 749 S.W.2d 887, 892 (Tex. App.—Dallas 1988, writ denied); *Mayad v. Rizk*, 554 S.W.2d 835, 838–39 (Tex. App.—Houston [14th Dist.] 1977, writ ref'd n.r.e.); *Pentikis v. Tex. Elec. Serv. Co.*, 470 S.W.2d 387, 390 (Tex. App.—Fort Worth 1971, writ ref'd n.r.e.). While these cases generally acknowledge the proposition asserted by the taxing units—that knowledge of orders and judgments rendered in a case may be imputed to parties and their counsel in certain circumstances—they are distinguishable. First, we note that in at least one of these cases, the court of appeals set aside a judgment based on the appellants' contention that they had no notice of a docket control order and, thus, no notice of

the deadline for designating expert witnesses. *See Lindley*, 936 S.W.2d at 56. In concluding that the trial court should have held a hearing to determine whether good cause existed for allowing the appellants' late-designated witnesses to testify, the court observed: "The [appellants'] lack of notice is precisely the reason for a good cause exception to mandatory exclusion [of late-designated witnesses]. Lack of notice is an issue of constitutional significance." *Id.* In another case, the appellate court stated it would have granted relief based on lack of notice of a dismissal for want of prosecution but deferred to the district court's contrary ruling because the evidence of compliance with the mandatory notice requirements was disputed. *See Mayad*, 554 S.W.2d at 838–39. These cases thus do not stand for the proposition that a lack of notice is inconsequential. And in none of the other cases was the court addressing the lack of notice of a ruling that was not in the court's file or otherwise made available before the time for challenging the ruling expired. *See Ex parte Bowers*, 886 S.W.2d at 349; *K & S Interests*, 749 S.W.2d at 892; *Pentikis*, 470 S.W.2d at 390.

The Section 33.72(c) notice serves the important function of triggering the deadline for exercising the right of appeal to the district court, and as noted above, is expressed using mandatory language. *See* TEX. TAX CODE §§ 33.73(a), 33.74(a); *see also* TEX. GOV'T CODE § 311.016(2); *Helena Chem.*, 47 S.W.3d at 493. Thus, the question here is when did the Church receive notice of the right of appeal. And

the answer is: too late. Because the Church did not receive the Section 33.72(c) notice of the right to appeal before the district court rendered its final judgment adopting the tax master's findings and recommendations, the Church effectively was denied the opportunity to appeal the tax master's ruling. This was error.

Citing Rule of Appellate Procedure 44.1, the taxing units argue that reversal of the district court's judgment is not required because they presented a prima facie case to the tax master for the recovery of back taxes and, thus, any error that prevented the Church from objecting to the tax master's ruling in an appeal to the district court was harmless. *See* TEX. R. APP. P. 44.1(a) (stating judgment is not reversible because of error of law unless court of appeals concludes complained-of error "(1) probably caused the rendition of an improper judgment; or (2) probably prevented the appellant from properly presenting the case to the court of appeals"). The taxing units have not cited, nor have we found, any authority that would allow us to predetermine the outcome of a de novo hearing that was not held. *See Godwin*, 961 S.W.2d at 221 ("Judicial review by trial de novo is not a traditional appeal, but rather a new and independent action characterized by all the attributes of an original civil action."). In other cases, courts have presumed harm from a district court's failure to hold a de novo hearing when a party appeals a master's report. *See, e.g.*, *Alief Indep. Sch. Dist.*, 117 S.W.3d at 916 (presuming harm where district court erred by rendering judgment without holding de novo hearing on party's appeal); *Attorney*

General v. Orr, 989 S.W.2d 464, 469 (Tex. App.—Austin 1999, no pet.) (same); *Young v. Young*, 854 S.W.2d 698, 703 (Tex. App.—Dallas 1993, writ denied) (when party timely and formally objects to master's ruling, party's right to de novo hearing is "automatic" and "not subject to a harmless error analysis"). Although the cause of the harm in these cases—the failure to hold a hearing upon a properly filed appeal versus the denial of the opportunity to take an appeal—is different, the injury is the same. Therefore, we find these authorities persuasive, and we apply them here. *See, e.g.*, *Alief Indep. Sch. Dist.*, 117 S.W.3d at 916; *Orr*, 989 S.W.2d at 469; *Young*, 854 S.W.2d at 703.

Having concluded that the record establishes error that requires reversal, we sustain the Church's first issue.[5]

Conclusion

We reverse the judgment of the district court and remand the cause to that court for further proceedings consistent with this opinion.

Amparo Guerra
Justice

Panel consists of Chief Justice Radack and Justices Rivas-Molloy and Guerra.

[5] Given our disposition of the Church's first issue, we do not reach the Church's remaining issues. *See* TEX. R. APP. P. 47.1.