

Affirmed and Memorandum Opinion filed April 25, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00590-CV

MOUNT VERNON UNITED METHODIST CHURCH, Appellant

V.

HARRIS COUNTY, TEXAS, Appellee

**On Appeal from the 127th District Court
Harris County, Texas
Trial Court Cause No. 2015-65353**

M E M O R A N D U M O P I N I O N

Mount Vernon United Methodist Church appeals from an order authorizing Harris County, on behalf of itself and countywide taxing authorities¹ (collectively, the “Taxing Authorities”), to withdraw monies from Mount Vernon’s condemnation award on deposit in the trial court’s registry. The Taxing Authorities sought to recover the values of ad valorem taxes, and a demolition lien, concerning

¹ Namely, the following countywide taxing authorities: Harris County Education Department; Port of Houston Authority; Harris County Flood Control District; Harris County Hospital District; Houston Community College System; City of Houston; and Houston Independent School District.

condemned real property (the “Property”). In its first issue, Mount Vernon argues that “the order”² should be reversed because the preexisting demolition lien was extinguished and not subject to collection. In its second issue, Mount Vernon asserts that it is exempt from paying taxes on the Property. We affirm.

I. BACKGROUND

Harris County petitioned to condemn the Property. Special Commissioners awarded Harris County fee simple title to the Property and awarded the sum of \$401,751.00 to Mount Vernon. Harris County deposited an amount equal to the award into the trial court’s registry. Mount Vernon filed a statement of no objection to the award. The Taxing Authorities subsequently intervened and moved to withdraw a portion of the award from the registry to recover two debts concerning the Property. The debts, arising from two separate Harris County Appraisal District (“HCAD”) accounts, are: (1) \$16.88 for delinquent ad valorem taxes on the account ending in 0015; and (2) \$6,283.86 for a demolition lien on the account ending in 0002. The HCAD account ending in 0015 has no HCAD-approved tax exemption. Mount Vernon accordingly paid taxes for the Property on the 0015 account in 2014 and 2015.

The City of Houston, an Intervenor, is the lienholder of the demolition lien. The demolition lien is perfected and recorded. The lien attached to the Property in 1985, before the County commenced the condemnation proceedings. Mount Vernon purchased the Property subject to the demolition lien in 1987.

The trial court granted the Taxing Authorities’ motion to withdraw in an order dated May 20, 2016. Mount Vernon moved for reconsideration, and the trial

² Mount Vernon requests that we reverse one order but appeals two orders (the second of which denied its motion for reconsideration). Mount Vernon discusses only the Order to Withdraw Funds in the body of its brief. Accordingly, we construe Mount Vernon’s two issues as challenging the trial court’s Order to Withdraw Funds.

court denied the motion in an order dated July 25, 2016. Mount Vernon appealed both orders on July 26, 2016. The trial court signed its Final Judgment on Award on August 15, 2016.

II. ANALYSIS

The Taxing Authorities argue as a threshold matter that Mount Vernon waives its right to allege error regarding the reconsideration order because Mount Vernon's brief "does not contain any [i]ssue [p]resented, or any legal analysis or argument, regarding the Reconsideration Order." We agree. Mount Vernon waives any alleged error regarding the trial court's denial of the reconsideration order.

A. The trial court did not abuse its discretion by granting the Taxing Authorities' motion to withdraw funds to recover the value of its demolition lien.

Mount Vernon appeals the order to withdraw funds and argues in its first issue that the Taxing Authorities could not withdraw funds on deposit in the trial court's registry to recover the value of the demolition lien because the lien was extinguished by virtue of Harris County taking title to the Property. We review a trial court's order to withdraw funds from or return funds to the court registry for an abuse of discretion. *See Sommers v. Concepcion*, 20 S.W.3d 27, 36 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) ("[W]e find that the decision whether to order return of funds [to the trial court's registry] is discretionary"); *see also Burns v. Bishop*, 48 S.W.3d 459, 467 (Tex. App.—Houston [14th Dist.] 2001, no pet.) ("Funds on deposit in the registry of a trial court are always subject to the control and order of the trial court, and the court enjoys great latitude in dealing with them."). Under an abuse of discretion standard, a trial court abuses its discretion if its decision is arbitrary, unreasonable, or made without reference to any guiding principles. *Cire v. Cummings*, 134 S.W.3d 835, 839 (Tex. 2004). "A

trial court does not abuse its discretion if it bases its decision on conflicting evidence and some evidence supports its decision.” *In re Barber*, 982 S.W.2d 364, 366 (Tex. 1998). We view the evidence in the light most favorable to the trial court’s ruling and indulge every presumption in its favor. *Aqueduct, L.L.C. v. McElhenie*, 116 S.W.3d 438, 444 (Tex. App.—Houston [14th Dist.] 2003, no pet.).

In a condemnation proceeding, a condemnor may take constructive possession of the condemned property when it deposits the condemnation award, to order of condemnee, into the trial court’s registry. *See* Tex. Prop. Code Ann. § 21.021 (West 2014); *Hooks v. Fourth Court of Appeals*, 808 S.W.2d 56, 60–61 (Tex. 1991) (orig. proceeding). Upon condemnor’s deposit, “the interest of each condemnee is established in and attaches to [the award] as security for any possible damage suffered by reason of his dispossession.” *Fort Worth Concrete Co. v. State*, 400 S.W.2d 314, 317 (Tex. 1966). Additionally, upon condemnor’s deposit, a lienholder’s security interest in the condemned property vests in the condemnation award so that he is compensated for the destruction of the lien. *Olivares v. Birdie L. Nix Tr.*, 126 S.W.3d 242, 250 (Tex. App.—San Antonio 2003, pet. denied). Accordingly, the lienholder is “entitled to participate in the condemnation proceedings” and “may, under appropriate circumstances, recover a portion of the condemnation [award].” *Wynnewood Bank & Trust v. State*, 767 S.W.2d 491, 493 (Tex. App.—Dallas 1989, no writ).

We reject Mount Vernon’s contention that the demolition lien was “extinguished” and not subject to collection following Harris County’s acquisition of title to the Property. Mount Vernon relies on *State v. City of San Antonio*, 209 S.W.2d 756, 757 (Tex. 1948), and *Lubbock I.S.D. v. Owens*, 217 S.W.2d 186, 188 (Tex. Civ. App.—Amarillo 1949, writ ref’d), and states that those cases stand for the proposition that any proceeding to collect any lien on government-owned

property is void. We disagree. *City of San Antonio* and *Owens* held that any proceeding to collect a *tax* lien against government-owned property is void because Article XI, Section 9, of the Texas Constitution exempts government-owned property from forced sale and taxation. *City of San Antonio*, 209 S.W.2d at 757; *Owens*, 217 S.W.2d at 188. *City of San Antonio* and *Owens* are entirely distinguishable because the issue under review involves the Taxing Authorities' collection of a demolition lien—not a tax lien—from Mount Vernon's condemnation award—not government property—during a condemnation proceeding.³

Here, the parties do not dispute, and the evidence shows, that the Taxing Authorities had a perfected and recorded demolition lien on the Property before the taking. Their interest vested in the condemnation award upon its deposit. *See Olivares*, 126 S.W.3d at 250. Therefore, the trial court did not abuse its discretion in authorizing the Taxing Authorities to recover the value of the demolition lien from the award. *Wynnewood*, 767 S.W.2d at 493.

Accordingly, we overrule Mount Vernon's first issue.

B. We do not have jurisdiction to determine whether Mount Vernon is entitled to a tax exemption on the 0015 account concerning the Property.

In its second issue, Mount Vernon contests the 2016 ad valorem taxes, concerning the Property and levied on the 0015 account (pro-rated and accrued before the condemnation), by asserting that as a religious organization, it is exempt

³ For instance, in *City of San Antonio*, the city acquired title to a property by foreclosing on its tax lien and held the property until it could be resold. 209 S.W.2d at 757. In a subsequent suit, the trial court permitted the State to enforce its tax lien on the city's property for taxes owed when the property was privately held. *Id.* at 756. On appeal, the *San Antonio* court reversed, holding that, because the city currently held the property for a public purpose as contemplated by Article XI of the Texas Constitution, it was not subject to sale to satisfy the State's tax lien. *Id.* at 757–58.

from paying property taxes. *See* Tex. Tax Code Ann. § 11.20 (West 2015). We do not have jurisdiction to determine whether Mount Vernon is entitled to a tax exemption because Mount Vernon failed to pursue the exclusive administrative remedies under the tax code.

All real property in Texas is taxable unless it is exempt by law. *Id.* § 11.01 (West 2015). To obtain a property-tax exemption, a property owner “must” file an application with the chief appraiser of the appraisal district. *Id.* § 11.43(a) (West 2015 & Supp. 2016). The chief appraiser determines the taxpayer’s right to the exemption, and if the chief appraiser denies the taxpayer’s application, the taxpayer may protest the denial to the appraisal review board. *See id.* § 41.41(a)(4) (West 2015).

The tax code is an example of a pervasive regulatory scheme, evidencing a legislative intent to vest the appraisal review boards with exclusive jurisdiction. *See Jim Wells Cty. v. El Paso Prod. Oil & Gas Co.*, 189 S.W.3d 861, 871 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). Any ground of protest to the appraisal review board that is authorized by the tax code can be adjudicated only by the procedures it prescribes. *See* Tex. Tax Code Ann. § 42.09 (West 2015). These administrative-review procedures are intended to resolve the majority of tax protests, relieving the burden on the courts to do so. *Webb Cty. Appraisal Dist. v. New Laredo Hotel, Inc.*, 792 S.W.2d 952, 954 (Tex. 1990). Consequently, and with exceptions not applicable here, a property owner that can raise a defense administratively must do so, or it will be barred from raising that ground in a suit, either as defense to the taxes’ collection or as an affirmative claim for relief. *See* Tex. Tax Code Ann. § 42.09(a). If the property owner fails to seek available relief before the administrative review board, the courts lack “jurisdiction to decide most matters relating to [the property owner’s] ad valorem taxes.” *Cameron Appraisal*

Dist. v. Rourk, 194 S.W.3d 501, 502 (Tex. 2006) (per curiam); *Houston Indep. Sch. Dist. v. 1615 Corp.*, 217 S.W.3d 631, 637 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (holding that taxpayer’s failure to follow the tax code’s exclusive administrative remedies deprived the trial court of jurisdiction to hear taxpayer’s complaint that the taxing authority improperly removed its homestead exemption).

Under the tax code’s administrative procedures outlined above, and because it is asserting a religious-organization exemption, Mount Vernon’s remedy was to first apply for a tax-exemption and then protest the denial of its application. *See* Tex. Tax Code Ann. §§ 11.43(a), 41.41(a)(4), 42.09(a). Mount Vernon failed to, and does not allege that it could not, do so. Mount Vernon failed to follow the tax code’s administrative procedures and exhaust its administrative relief. *See, e.g., Daughtry v. Atascosa Cty. Appraisal Dist.*, 307 S.W.3d 343, 346 (Tex. App.—San Antonio 2009, no pet.) (property owners’ failure to apply for tax exemption with chief appraiser was a failure to exhaust their administrative relief). Accordingly, this court does not have jurisdiction to decide whether Mount Vernon is entitled to a tax exemption. *See* Tex. Tax Code Ann. § 42.09(a); *Rourk*, 194 S.W.3d at 502; *1615 Corp.*, 217 S.W.3d at 637.

We overrule Mount Vernon’s second issue.

III. CONCLUSION

Having overruled Mount Vernon’s two issues, we affirm the judgment of the trial court.

/s/ Marc W. Brown
Justice

Panel consists of Justices Boyce, Jamison, and Brown.