



Fourth Court of Appeals San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00838-CV

Priscilla Beltran **GUTIERREZ**, the Heirs of Carlos Gutierrez,
and the Heirs of Guadalupe Soto Gutierrez,
Appellants

v.

CITY OF LAREDO, Webb County, Laredo Community College,
The United Independent School District,
Appellees

From the 49th Judicial District Court, Webb County, Texas
Trial Court No. 2008-TXA-00706-D1
Honorable Jose A. Lopez, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Rebeca C. Martinez, Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: February 20, 2019

AFFIRMED

Appellants Priscilla Beltran Gutierrez, the Heirs of Carlos Gutierrez, and the Heirs of Guadalupe Soto Gutierrez appeal the trial court's judgment for foreclosure of tax liens against a tract of land owned by appellants. The appellees are the taxing entities who sought to foreclose the tax liens.

Appellants contend the trial court erred in ordering the foreclosure because the taxes were for improvements which the chief appraiser of the Webb County Appraisal District erroneously

determined to be omitted property under section 25.21 of the Texas Tax Code. Acknowledging they did not exhaust their administrative remedies with regard to the change in the appraisal records that was made in adding the improvements as omitted property, the appellants contend an exception to the exhaustion-of-administrative-remedies requirement applies. We affirm the trial court's judgment.

BACKGROUND

In the underlying lawsuit, which was initially filed in 2008, the taxing entities opted to only pursue the foreclosure of their tax liens on the property in question and not to enforce personal liability on the appellants. This is the second appeal from the underlying lawsuit. In the first appeal, the Amarillo court held the judgment for foreclosure of tax liens was void because the property description of the tract of land was insufficient and remanded the cause for further proceedings.¹ *Gutierrez v. City of Laredo*, No. 07-14-00270-CV, 2015 WL 4621132 (Tex. App.—Amarillo Aug 3, 2015, no pet.).

On remand, the trial court held a bench trial at which numerous exhibits were admitted into evidence and the chief appraiser testified as the only witness. Although the trial court initially entered a take nothing judgment against the taxing entities, the trial court subsequently set aside that judgment and entered a judgment in favor of the taxing entities for foreclosure of the tax liens.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

“The [Texas] Tax Code establishes a detailed set of procedures that property owners must abide by to contest the imposition of property taxes.” *Morris v. Hous. Indep. Sch. Dist.*, 388 S.W.3d 310, 313 (Tex. 2012) (citing TEX. TAX CODE ANN. §§ 41.01–43.04); *see* TEX. TAX CODE ANN. § 41.41(a)(9) (requiring property owner to file protest to challenge any action of the chief

¹ The appeal was transferred from this court to the Amarillo court for docket equalization purposes. *See* TEX. GOV'T CODE ANN. § 73.001.

appraiser that applies to and adversely affects the property owner). “Under section 42.09(a) of the Code, those procedures are exclusive and a taxpayer must exhaust the remedies provided in order to raise most grounds of protest in defense of a suit to collect taxes.” *Id.* A taxpayer’s failure to exhaust those remedies “deprives the courts of jurisdiction to decide most matters relating to ad valorem taxes.”² *Cameron Appraisal Dist. v. Rourk*, 194 S.W.3d 501, 502 (Tex. 2006); *see also Brennan v. City of Willow Park*, 376 S.W.3d 910, 916 (Tex. App.—Fort Worth 2012, pet. denied) (“The statutory administrative review requirements of the tax code are mandatory and jurisdictional.”).

“By requiring the agency[, in this case the appraisal review board,] to address the complaints first, the law permits the agency to apply its expertise and exercise its discretion to resolve the issue and to develop a complete factual record if the courts later get involved.” *Clint Indep. Sch. Dist. v. Marquez*, 487 S.W.3d 538, 544 (Tex. 2016); *Piwonka v. SPX Corp.*, No. 14-15-00915-CV, 2017 WL 1181302, at *4 (Tex. App.—Houston [14th Dist.] Mar. 30, 2017, pet. denied) (mem. op.) (“The Tax Code is an example of a pervasive regulatory scheme, evidencing a legislative intent to vest the appraisal review boards with exclusive jurisdiction.”). “A party who obtains relief through the administrative process avoids the expense and delay of litigation.” *Clint Indep. Sch. Dist.*, 487 S.W.3d at 544. “And if the outcome of the administrative process leaves the party dissatisfied, it may file suit and have the courts review the agency’s decision.” *Id.* In order to seek court review of an appraisal review board’s decision, however, the party must file a petition for review with the district court within sixty days after the party receives notice that the appraisal review board has entered a final order. TEX. TAX CODE ANN. § 42.21(a).

² Although a taxpayer who fails to exhaust his administrative remedies is allowed to defend against the foreclosure of a tax lien on the basis that the taxes were paid or the property was not located in the taxing unit’s boundaries, neither of those defenses are presented as issues in this appeal. *See* TEX. TAX CODE ANN. §§ 33.47, 42.09(b)(2).

The courts have recognized several exceptions to the exhaustion-of-administrative-remedies doctrine, including when the issue presented is purely a question of law and when an administrative agency purports to act outside its statutory powers. *Clint Indep. Sch. Dist.*, 487 S.W.3d at 557; *Brennan*, 376 S.W.3d at 916. When a claim involves questions of historic fact or mixed questions of law and fact, however, the claim does not involve a pure question of law. *Clint Indep. Sch. Dist.*, 487 S.W.3d at 557-58.

DISCUSSION

Section 25.21(a) authorizes a chief appraiser to take the following actions with regard to omitted property:

If the chief appraiser discovers that real property was omitted from an appraisal roll in any one of the five preceding years or that personal property was omitted from an appraisal roll in one of the two preceding years, he shall appraise the property as of January 1 of each year that it was omitted and enter the property and its appraised value in the appraisal records.

TEX. TAX CODE ANN. § 25.21(a). In this case, in June of 2007, the chief appraiser determined improvements on the property in question had been omitted from the appraisal roll; therefore, pursuant to section 25.21, the chief appraiser appraised the improvements and entered the improvements and their appraised value for each of the five preceding years (2002-2006) in the appraisal records as permitted by the statute. *See Atascosa Cty. v. Atascosa Cty. Appraisal Dist.*, 990 S.W.2d 255, 258 (Tex. 1999) (“[U]nder section 25.21, the omitted property is added to the current year’s appraisal records, and the current appraisal can include an appraisal for each year the property was omitted from the appraisal records for up to the five preceding years.”). Proper notices were sent advising the property had been reappraised to add the value of the improvements. *See id.* (“[A] taxpayer owes a continuing obligation to pay taxes on its property.”).

Section 41.44(a)(2) of the Code requires a protest of a change in the appraisal records under Chapter 25 to be filed not later than the 30th day after the date notice of the change is delivered to

the property owner. TEX. TAX CODE ANN. § 41.44(a)(2). Thus, the Code expressly provides for a protest to be filed in this context when the appraisal records are changed under section 25.21.

Although a protest was filed, the appraisal review board determined the protest was filed after the applicable deadline, and no petition for review was filed with the district court to review that decision. Therefore, it is undisputed that the appellants failed to exhaust their administrative remedies.

Appellants contend the trial court still had jurisdiction to consider their defense because they presented a pure question of law or the chief appraiser acted outside his statutory powers. The appellants hinge their reliance on these exceptions to the exhaustion-of-administrative-remedies doctrine on their contention that the chief appraiser's testimony at the bench trial conclusively established the improvements added to the appraisal records were already included in the appraisal records under a different account which was deleted on March 9, 2006. We disagree that an exception applies because section 25.21 statutorily empowers the chief appraiser to enter omitted property in the appraisal records, and determining whether the improvements in this case were omitted property presents factual issues that were required to first be resolved by the appraisal review board through the administrative review procedures. Although appellants contend they conclusively established the improvements were on the appraisal roll under the deleted account, that issue was still a factual issue requiring the presentation of evidence. Furthermore, although the evidence established the other account was deleted, a fact issue still remains regarding the effect of that deletion. If the deletion removed the improvements from the appraisal rolls for the prior years, then the improvements would still be omitted property. These are all fact issues the appraisal review board needed to apply its expertise in resolving through the development of a complete factual record. Therefore, whether the improvements in question were omitted property was a fact issue that needed to be resolved in the administrative process. *See*

Escamilla v. City of Laredo, 9 S.W.3d 416, 418, 421-22 (Tex. App.—San Antonio 1999, pet. denied) (holding taxpayer failed to exhaust administrative remedies required to challenge supplemental appraisals adding omitted property pursuant to section 25.21). Because the appellants failed to exhaust those administrative remedies, the trial court properly granted judgment in favor of the taxing entities.

CONCLUSION

The trial court's judgment is affirmed.

Rebeca C. Martinez, Justice