TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00781-CV

Larry G. Schneider, Appellant

v.

Williamson Central Appraisal District, Appellee

FROM THE DISTRICT COURT OF WILLIAMSON COUNTY, 368TH JUDICIAL DISTRICT NO. 15-0892-C368, HONORABLE RICK J. KENNON, JUDGE PRESIDING

MEMORANDUM OPINION

In this ad valorem tax case, Larry G. Schneider appeals the trial court's final judgment dismissing his claims against the Williamson Central Appraisal District (the District) complaining of the valuation of his property and of the manner in which the District performs mass appraisals in Williamson County. The trial court granted the District's plea to the jurisdiction and no-evidence motion for summary judgment. For the following reasons, we will affirm.

BACKGROUND[1]

After unsuccessfully protesting the taxes assessed on his property by the District, Schneider filed this pro se lawsuit alleging that a recent change in the District's appraisal methods

[1] The parties are familiar with the facts, procedural history, and applicable standards of review and we, accordingly, dispense with a lengthy recitation of them except as necessary to explain the basic reasons for our determination. *See* Tex. R. App. P. 47.4.

is unconstitutional and illegal and seeking injunctive relief prohibiting the District from using its new appraisal method, known as ANSI Z765, which allegedly calculates square footage of a home using outside rather than inside dimensions. The District filed a plea to the jurisdiction and a no-evidence motion for summary judgment, both of which the trial court granted, and Schneider appeals.

DISCUSSION

On appeal, Schneider contends that the trial court erred in dismissing his claims because (1) sufficient evidence supports his claim that the District unequally appraised his property; (2) the District does not have the statutory authority to "redefine" a square foot of living area; and (3) the District's use of ANSI Z765 is in violation of the Texas Constitution. We will address each issue in turn.

Appraisal challenge

Schneider's petition seeks de novo review of the District's appraisal of his property as upheld by the appraisal review board, contending that he is entitled to an adjustment to his 2015 appraised value because his property was not appraised equally and uniformly. *See* Tex. Tax Code §§ 42.23 (providing for de novo review of order of appraisal review board), .26 (providing remedies for property that is appraised unequally). In his response to the District's no-evidence motion on this claim, Schneider submitted various attachments purporting to create a fact issue, including his pleadings and various non-authenticated documents, which the District contends are not admissible due to this authentication defect; Schneider submitted no affidavits, either from himself or any other party. *See Blanche v. First Nationwide Mortg. Corp.*, 74 S.W.3d 444, 451 (Tex. App.—Dallas 2002,

no pet.) ("A complete absence of authentication is a defect of substance that is not waived by a party failing to object and may be urged for the first time on appeal."). The District contends that, nonetheless, the entirety of the "evidence" submitted by Schneider in response to its motion does not amount to more than a scintilla to create a fact issue on whether the District unequally appraised his property. We agree with the District.

The Tax Code provides for three means by which a property owner may show that his property has been unequally appraised. *See* Tex. Tax Code § 42.26(a)(1) (requiring showing that appraisal ratio of property exceeds by 10 percent the median level of appraisal of reasonable and representative sample of other properties in district), (a)(2) (requiring showing that appraisal ratio of property exceeds by at least 10 percent the median level of appraisal of sample of properties in district consisting of reasonable number of properties similarly situated to, or of same general kind of character as, property subject to appeal), (a)(3) (requiring showing that appraised value of property exceeds the median appraised value of reasonable number of comparable properties appropriately adjusted). Schneider's summary-judgment evidence wholly fails to address the issue of the median appraisal values as required by these statutory means to demonstrate an unequal appraisal. Accordingly, he did not present any evidence amounting to more than a scintilla to create a fact issue on his claim, and the trial court properly granted summary judgment on his unequal-appraisal claim. *See* Tex. R. Civ. P. 166a(i); *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004).

Ultra-vires claims

Schneider's petition seeks a declaration that the District acted outside its statutory authority by "changing the definition" of a square foot of living area, which essentially is an ultra-

vires claim. *See Texas Dep't of Ins. v. Reconveyance Servs., Inc.*, 306 S.W.3d 256, 258–59 (Tex. 2010) (determining that party's claims were, in substance, ultra-vires claims because they were based on allegations that agency acted beyond its statutory authority). Ultra-vires claims must be brought against individual state actors in their official capacities, not against the state agency itself, because state agencies are immune from suit. *See University Interscholastic League v. Southwest Officials Ass'n, Inc.*, 319 S.W.3d 952, 965 (Tex. App.—Austin 2010, no pet.) (holding that jurisdictional defect in form of sole defendant being immune state agency in plaintiff's pleadings could not be cured by amendment to substitute state actor acting in official capacity for state entity); *see also Reconveyance Servs.*, 306 S.W.3d 259 (dismissing ultra-vires suit for want of jurisdiction where state entity, rather than state official, was sole defendant).

Because Schneider did not sue any state actors in their official capacities and sued only the District, which is immune from suit, his pleadings contain a jurisdictional defect that cannot be cured. *See University Interscholastic League*, 319 S.W.3d at 965. Accordingly, the trial court properly granted the District's plea to the jurisdiction with respect to Schneider's ultra-vires claims.

Constitutional claims

Schneider's contention that his property was unequally appraised stems from his broader allegation that the District is in violation of the Texas Constitution by using ANSI Z765 to reappraise homes in his neighborhood. *See* Tex. Const. art. VIII, § 1(a) ("Taxation shall be equal and uniform."). As contended in its plea to the jurisdiction, the District responds that chapter 42 of the Tax Code "bestows exclusive original jurisdiction in ad valorem tax cases on appraisal review boards," *Cameron Appraisal Dist. v. Rourk*, 194 S.W.3d 501, 502 (Tex. 2006), and that the "rights,

procedure and remedies set forth in section 42.21 [providing for review of an order of the appraisal district] are exclusive and supplant and supersede a property owner's common law rights and remedies." *Poly-America, Inc. v. Dallas Cty. Appraisal Dist.*, 704 S.W.2d 936, 936 (Tex. App.—Waco 1986, no writ); *see* Tex. Tax Code § 42.09 ("[P]rocedures prescribed by this title for adjudication of the grounds of protest authorized by this title are exclusive, and a property owner may not raise any of those grounds . . . as a basis of a claim for relief in a suit by the property owner to arrest or prevent the tax collection process or to obtain a refund of taxes paid.").

Based on the Tax Code's "systematic scheme of administrative review," this Court and several of our sister courts have held that trial courts do not have jurisdiction over claims for declaratory and injunctive relief in ad valorem tax disputes, including those based on alleged constitutional violations. *See Valero Transmission Co. v. Hays Consol. Indep. Sch. Dist.*, 704 S.W.2d 857, 861 (Tex. App.—Austin 1985, writ ref'd n.r.e.) (holding that property tax code's scheme for administrative and judicial review of appraisal review board decisions is taxpayer's exclusive remedy, including for taxpayer's contentions of unconstitutional taxation); *Texas Architectural Aggregate, Inc. v. Adams*, 690 S.W.2d 640, 642 (Tex. App.—Austin 1985, no writ) (holding that legislature intended to supplant common-law causes of action and equitable remedies with provisions in property tax code for administrative and judicial review of assessments made by taxing authorities); *see also Parra Furniture & Appliance Ctr., Inc. v. Cameron Appraisal Dist.*, No. 13-09-00211-CV, 2010 WL 672882, at *4 (Tex. App.—Corpus Christi-Edinburg Feb. 25, 2010, no pet.) (mem. op.) (holding that non-statutory claims and those for injunctive relief fall outside of relief of chapter 42 of Tax Code and are barred by immunity); *Bexar Appraisal Dist. v. John William*

Fine Furniture & Interiors, Inc., No. 04-08-00873-CV, 2009 WL 1956385, at *4 (Tex. App.—San Antonio July 8, 2009, pet. denied) (mem. op.) (same); *Brazoria Cty. Appraisal Dist. v. Notlef, Inc.*, 721 S.W.2d 391, 393 (Tex. App.—Corpus Christi 1986, no writ) (holding that claims for injunctive relief seeking to enjoin illegal taxing procedures are prohibited by comprehensive tax-code scheme). In light of this line of cases, we agree with the District and hold that the trial court properly granted the District's plea to the jurisdiction on Schneider's constitutional claims. Accordingly, we overrule Schneider's final issue on appeal.

CONCLUSION

For the foregoing reasons, we affirm the trial court's final judgment granting the District's plea to the jurisdiction and motion for summary judgment and dismissing the entirety of Schneider's claims.

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David Puryear, Justice

Before Justices Puryear, Pemberton, and Goodwin

Affirmed

Filed: May 31, 2017