TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00092-CV

George Anna Almeter, Appellant

v.

Bastrop Central Appraisal District, Appellee

**FROM THE DISTRICT COURT OF BASTROP COUNTY, 21ST JUDICIAL DISTRICT
NO. 201-21, HONORABLE CARSON TALMADGE CAMPBELL, JUDGE PRESIDING**

MEMORANDUM OPINION

Pro se appellant George Anna Almeter owns about fifty-two acres of land in Bastrop County. She sued appellee Bastrop Central Appraisal District after it denied her application for an open-space agricultural appraisal for the tax years 2015 and 2016. She now appeals from the trial court's order granting summary judgment in favor of the District and its later orders granting the District's plea to the jurisdiction and motion to dismiss. As explained below, we affirm the trial court's granting of summary judgment as to Almeter's claims related to the 2015 tax year. However, in its order granting the District's motion for summary judgment, the court dismissed Almeter's suit as a whole, improperly disposing of Almeter's 2016 claims, which were not addressed by the District's motion for summary judgment. We therefore reverse the trial court's order in part, remanding Almeter's 2016 claims to the trial court for further proceedings.

Procedural Summary and Applicable Statutes and Rules

An "open-space land valuation allows property used for farm or ranch purposes to be valued based upon the property's productive capacity rather than its market value." *Parker Cty. Appraisal Dist. v. Francis*, 436 S.W.3d 845, 849 (Tex. App.—Fort Worth 2014, no pet.). Chapter 23, subchapter D of the tax code,[1] which governs the appraisal of agricultural land, provides that an appraisal district's chief appraiser shall determine the value of "qualified open-space land" based on "the category of the land, using accepted income capitalization methods applied to average net to land." Tex. Tax Code § 23.52(a), (b). "Qualified open-space land" is land that is "currently devoted principally to agricultural use to the degree of intensity generally accepted in the area." *Id*. § 23.51(1). "Agricultural use" includes "raising or keeping livestock," "planting cover crops or leaving land idle for the purpose of participating in a governmental program," and "planting cover crops or leaving land idle in conjunction with normal crop or livestock rotation procedure."[2] *Id*. § 23.51(2). The comptroller is required to develop and distribute "appraisal manuals" that explain how to appraise qualified open-space land, and "each appraisal office shall use the appraisal manuals in appraising qualified open-space land." *Id*. § 23.52(d); *see also* 34 Tex. Admin. Code § 9.4001 (2017) (Comptroller of Pub. Accounts, Valuation of Open-Space & Agric. Lands) (adopting

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[1] Tex. Tax Code §§ 23.51-.60.

[2] "Agricultural use" is also defined to include "the use of land to produce or harvest logs and posts for the use in constructing or repairing fences . . . and other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use." *Id*. § 23.51(2). Almeter points to that provision to argue that her paying to fence the property is statutorily included in "agricultural use." However, section 23.51 does not include the installation of fencing in its definition of "agricultural use"—it includes the use of land to grow logs used in fencing. *See id.*

Comptroller's "Manual for the Appraisal of Agricultural Land"); Tex. State Comptroller of Pub. Accounts, Manual for the Appraisal of Agricultural Land (January 2017) ("the Manual").[3] A district's chief appraiser is made responsible for determining "land use and degree of intensity standards for qualifying land." Manual for the Appraisal of Agricultural Land at 3. The Manual explains that those standards should be determined "according to the agricultural practices in effect in the relevant area" and by reference to instructions in the Manual. *Id.* at 9-10.

The District developed its local "Guidelines for Determination of Intensity of Ag-Use" ("the Guidelines") and set them out in its "Open-Space Valuation Manual," which was produced as summary-judgment evidence. *See* Bastrop Cent. Appraisal Dist., Ag-Use & Open-Space Agricultural/Timberland Qualification Guidelines & Definitions (2014).[4] The Guidelines explain:

> Intensity of agricultural production is the central issue or standard of agricultural use qualification. Intensity of use for our area is based on information gathered from several local sources and statistical data from USDA. A typical livestock operation to the degree of intensity generally accepted in this area, such as grazing cattle or livestock[,] is seven (7) animal units year round. The acreage typically needed to support this operation depends on the type of pasture and the operator's management practices.

Id. at 4. An "animal unit" is defined as "a 1,000 pound cow, five (5) sheep or goats, or two (2) 500 pound calves." *Id*. "Year round means twelve (12) months." *Id*. The Guidelines also provide that "[e]xceptions to the general rule will be handled on a case by case basis." *Id*. The Guidelines explain that for property such as Almeter's, which Almeter designated as "native pasture good" on her

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[3] Located at http://comptroller.texas.gov/taxes/property-tax/docs/96-300.pdf.

[4] Located at http://www.bastropcad.org/wp-content/uploads/2014/08/Bastrop-CAD-Ag-Use-Guidelines-Rev-2017.pdf.

application for an open-space appraisal, “typically, 35 acres of land is required to achieve minimum standard of production to qualify agricultural use given prudent management.” *Id.* at 5. In the portion relating to “typical farming and ranching operations,” the Guidelines state that “Native Pasture Good” land requires a “stocking rate” of “1 animal unit per 5 to 8 acres” and that “standard practices” for such an operation includes weed control, “fences maintained,” stock water, and marketing. *Id.* at 8, 9.

Almeter sued the District after it denied her application for an open-space agricultural designation for the 2015 tax year. She later amended her suit to complain of the denial of her 2016 application. The District filed a traditional and no-evidence motion for summary judgment on her 2015 claims and a partial plea to the jurisdiction related to Almeter’s 2016 claims, asserting that those claims were not ripe because the administrative appeal process was not complete. The District also filed a “Motion to Dismiss or Enter Proposed Agreed Judgment,” asserting that Almeter and the District had reached a settlement agreement, but that Almeter later rejected the agreement, claiming there was no “meeting of the minds.” On January 25, 2017, the trial court held a hearing on the District’s motions and signed an order granting the District’s motion for summary judgment and dismissing Almeter’s suit in its entirety. Almeter filed her notice of appeal on February 6.

On February 15, the trial court signed two additional orders, one purporting to grant the District’s motion to dismiss and one purporting to grant the District’s partial plea to the jurisdiction as to Almeter’s 2016 claims. Almeter did not file a notice of appeal from those later orders. Instead, on May 16, she filed a “Motion to Permit Appeal of Two Non-Final Orders as a Petition for Writ of Mandamus and Consolidate the Appeal with the Present Appeal and Amend

Appellant's Brief." In addition, on July 11, Almeter filed a petition for writ of mandamus, complaining of the February 15 orders, and we docketed that petition in cause number 03-17-00462-CV, which we dispose of by separate opinion today.

Discussion[5]

On appeal, Almeter complains that her land's use was to the degree of intensity accepted in the area, that the District's intensity standard is invalid and violates applicable statutes and the Manual, and that the trial court improperly admitted the District's evidence and excluded Almeter's evidence. We first address Almeter's complaints related to the evidence.

Summary-Judgment Evidence

Rule 166a requires a party seeking summary judgment to file and serve the motion and any supporting affidavits at least twenty-one days before the hearing on the motion. Tex. R. Civ. P. 166a(c). A party opposing a motion for summary judgment must file and serve her response and affidavits at least seven days before the hearing or obtain permission from the trial court to file such documents late. *Id*. If a party intends to use as summary-judgment evidence discovery products that have not been filed with the trial court clerk, that party must file an appendix containing the evidence or a "notice containing specific references to the discovery," along with a statement of intent to use the specified discovery, within the same twenty-one-day and seven-day time frames. *Id*. R. 166a(d). No oral testimony may be presented at the hearing. *Id*. R. 166a(c).

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[5] We review the granting of summary judgment under well-established standards of review that we need not set out here. *See First United Pentecostal Church v. Parker*, 514 S.W.3d 214, 219-20 (Tex. 2017); *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015).

On December 22, 2016, the District filed its motion for traditional and no-evidence summary judgment, a plea to the jurisdiction, a motion to dismiss, and a "Notice of Intent to Use Unfiled Discovery." On January 18, 2017, Almeter filed two "Oppositions"—one opposing the District's plea to the jurisdiction and another opposing its motion to dismiss. In her opposition to the motion to dismiss, Almeter referred to a document titled "Plaintiff Attachment A—Well-Fencing & USDA," but according to the clerk's record before us, that document was not filed until January 19.[6] In her opposition to the District's plea, Almeter referred to a document titled, "Plaintiff Attachment B—Discovery Abuse," which was filed on January 18.[7] On January 19, Almeter filed her opposition to the District's motion for summary judgment, referring to both Attachment A and Attachment B. She also stated in her opposition that she had "identified herself as an expert witness in her first March 2016 Disclosure" and complained that the District had not "provided any specific information concerning the content of its expert witnesses' testimony." On January 23, Almeter

[6] Attachment A was filed on January 19, along with Almeter's opposition to the District's motion for summary judgment, and consists of documents related to costs Almeter incurred in installing a well, fencing, and electrical service and in bulldozing, plowing, and planting cover crop and grass on the land. As part of Attachment A, Almeter included May 2016 communications between Almeter and the USDA related to the USDA's providing about $20,000 in federal funds under a "National Resources Conservation Service" contract to assist Almeter in brush management, weed control, and cover crop planting in 2017, 2018, and 2019. Finally, Almeter included emails from early 2016 between herself and Hilary Bravenec, a USDA District Conservationist, who provided Almeter with information and ideas about how to improve her land for cattle grazing.

[7] Attachment B is a copy of the District's answers to two of Almeter's interrogatories (related to the criteria used to classify Almeter's land and the minimum number of cattle required by the District), onto which Almeter inserted a caption stating, "Bastrop has not answered two basic questions from Plaintiff's first mid-February interrogatory and request for production," several emails between Almeter and the District's attorney, the District's responses to some of Almeter's requests for production, and several other documents into which Almeter inserted comments about the District's alleged failure to respond appropriately to her inquiries.

filed a "Notice of Intent to Use Unfiled Discovery and Affidavits, Material, Public Records in Support of Plaintiff's Opposition to Summary Judgment." The hearing was held two days later, on January 25, and at the hearing, Almeter referred to her own affidavit.[8] The District objected, noting that Almeter had not complied with rule 166a(c), and the trial court agreed, denying Almeter's "request to put in [her] affidavit" because it "wasn't filed timely."

Almeter contends that the trial court erred in ruling that she could not testify as an expert and that she should have been allowed to testify about her own property and other property in the area and to dispute the validity of the Guidelines. However, Almeter's responses to the District's discovery requests did not explain that she would testify as an expert, nor did they provide the information required when disclosing an expert witness.[9] *See id.* R. 194.2(f). Almeter has not

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[8] The record does not appear to include the affidavit in question. The only affidavit by Almeter that appears in the record states simply that she had reviewed her opposition to the motion for summary judgment, that her opposition was based on personal knowledge, and that she had personal knowledge of the facts and, if called as a witness, could testify to those facts. There is also a document setting out Almeter's "expert witness qualifications" and a document titled, "Ms. Almeter's Sworn Testimony at Dec. 10, 2015 Protest Hearing," but those two documents are not affidavits, nor were they attached to or referenced by Almeter's affidavit. It is further unclear whether Almeter had attempted to proffer evidence other than her own affidavit, but her appellate complaints are limited to the trial court's rejection of her affidavit.

[9] In her first response to the District's discovery requests, sent in April 2016, Almeter did not list herself as a witness, expert or otherwise, but named Bravenec as an expert witness and reiterated Bravenec's recommendations and the facts and arguments put forth in Almeter's petitions. Almeter first identified herself as a potential witness in her August 2016 supplemental discovery responses, stating that she might testify as to "condition of the land; intensity of agricultural use test; inputs; discussions with Leslie Muller, [District] Deputy Chief appraiser with respect to plaintiff's 2015 and 2016 applications for open-space appraisal and USDA agreements and conservation plan." Almeter did not specify that she would testify as an expert or include the information required of a testifying expert. *See* Tex. R. Civ. P. 194.2(f) (requiring disclosure of testifying expert to include explanations of subject matter on which expert will testify and general substance of and basis for expert's opinions).

shown that she was qualified to testify as an expert, *see id*.; Tex. R. Evid. 702, 703, and she cites to a rule that governs lay testimony, not expert testimony, *see* Tex. R. Evid. 701 (non-expert testimony is limited to opinions rationally related to witness's perception and helpful to understanding witness's testimony or determining fact in issue). Almeter cites to *Natural Gas Pipeline Co. of America v. Justiss*, 397 S.W.3d 150 (Tex. 2012), to support her assertion that she was qualified to testify "regarding her own property, other properties and to dispute the validity of the Guidelines." However, *Justiss* states that "while the Property Owner Rule establishes that an owner is *qualified* to testify to [her] property value, we insist that the testimony meet the 'same requirements as any other opinion evidence,'" which means an owner must provide a factual basis for her opinion and may not merely present a conclusory or speculative opinion. *Id*. at 156, 159 (quoting *Porras v. Craig*, 675 S.W.2d 503, 504 (Tex. 1984)); *see also id.* at 155-59 (discussing Property Owner Rule and stating that owner's valuation must be judged by same standards applied to expert's testimony and may not be based solely on "echo [of] the phrase 'market value'"). Thus, Almeter was, at best, qualified to provide evidence of her lay opinion of her property's value—she was not, simply by virtue of owning land in the area, qualified to testify as an expert about the validity and appropriateness of the District's standards for agricultural use or about whether those standards had been met.

Further, in a summary-judgment proceeding, no oral testimony may be received, all evidence must be in affidavit or other written form, and a party defending against summary judgment must file her response and give notice of her intention to use discovery not on file with the court at least seven days before the hearing. *See* Tex. R. Civ. P. 166a(c), (d), (f). Almeter's response to the

motion for summary judgment was filed six days before the hearing, and she did not provide notice of an intention to rely on unfiled evidence until two days before the hearing. Thus, Almeter has not shown that the trial court erred in refusing to consider her late-produced affidavit.

Finally, Almeter makes various other arguments related to the trial court's evidentiary decisions, asserting that it failed in its duty as a gatekeeper, *see E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 558 (Tex. 1995), in considering unreliable, incompetent, or conclusory expert testimony, and allowing the District to impugn Almeter's truthfulness. However, a careful review of the record shows that the trial court did not abuse its discretion in making its decisions related to the evidence or in its conduct of the hearing.[10] *See Fairfield Fin. Grp., Inc. v. Synnott*, 300 S.W.3d 316, 319 (Tex. App.—Austin 2009, no pet.). Almeter has not shown error in any of the court's decisions related to the evidence. We overrule Almeter's complaints related to the evidence considered or excluded by the trial court.

Granting of Summary Judgment

We next consider Almeter's arguments related to the propriety of the trial court's granting of the District's motion for summary judgment.

In the portion of its motion seeking a no-evidence summary judgment, the District contended that there was no evidence that the "intensity standards" it applied, as set out in its Guidelines, were not an adequate representation of the degree of intensity generally accepted in the

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[10] Almeter also asserts that the District's attorney testified as a "legal expert witness" despite not having been designated and being unqualified as such an expert, but a review of the reporter's record from the hearing shows that the attorney did not testify but instead summarized and explained the District's legal arguments and the evidence presented in the motion for summary judgment.

area; that Almeter had not produced any timely reports for a designated testifying expert; and that Almeter's lay testimony was not admissible on the issue of the District's standards. In its motion for traditional summary judgment, the District asserted that, as a matter of law, the evidence established that Almeter did not in 2015 have sufficient livestock on her land to satisfy the degree of intensity generally accepted in the area necessary to support the open-space appraisal and that Almeter's land was not used for livestock year-round in 2015. In response to the District's motion, Almeter asserted that the District's degree-of-intensity standard was met by her "2015 installation of major AG-USE facilities and the grazing of four head of cattle weighing less than 1,000 pounds each." She disputed the District's required minimum of seven animal units and argued that the District did not consistently apply its Guidelines and that her use of her land qualified her for the open-space appraisal. She insisted that her investing more than $45,000 in improvements into the land—installing electrical service, drilling two wells, and installing 3,000 feet of fencing—"must be considered when evaluating intensity of agricultural use and productivity." As support, Almeter cited to the Manual, in essence disputing the validity and appropriateness of the District's seven-animal-unit stocking requirement, asserting that a better rate for the area would be two animal units, and arguing that her preparation of the land for cattle grazing should be considered "agricultural activity." On appeal, Almeter argues that the District's refusal to view her improvements as "AG-USES" in determining whether her land met the requisite degree of intensity was improper, that the District's "year-round" requirement violates the Manual and section 23.51, that there was a genuine question of fact as to whether she satisfied the required degree of intensity, and that the District's Guidelines are invalid.

Validity of the Guidelines

The District moved for no-evidence summary judgment on the issue of the validity of its Guidelines. Almeter concedes that the District's chief appraiser had the authority to create the Guidelines but argues that the District's "guidelines and practices are unreasonable and so inconsistent with the law and Manual, they are invalid." She asserts that the intensity standard contravenes the tax code by: excluding activities that should be considered an "Ag-Use" under section 23.51; discouraging land owners from developing, cultivating, or otherwise maintaining agricultural land; requiring a year-round livestock presence in contravention of the Manual, which allows for "more than six months at any time for the bulk of the year and allows customary rotation"; and requiring at least seven animal units regardless of the land's condition, in opposition of the Manual's directive to balance a tract's carrying capacity against "the need to conserve land for long-range forage." However, in response to the District's no-evidence motion, Almeter did not provide competent evidence to raise an issue as to the validity or appropriateness of the District's requirement that pastureland carry seven animal units year-round.

As discussed by our sister court, the District's chief appraisal is authorized to create "the degree of intensity Standards" in Bastrop County. *Moers v. Harris Cty. Appraisal Dist.*, 469 S.W.3d 655, 663 (Tex. App.—Houston [1st Dist.] 2015, pet. denied); *see* Tex. Tax Code § 23.52(d) (comptroller shall develop manuals setting forth appraisal method used for qualified open-space land); Manual at 9 (chief appraiser sets standards for qualifying degrees of intensity). We treat the Comptroller's Manual and an appraisal district's standards as agency rules, which carry a presumption of validity, and defer to such rules as long as they are reasonable and do not contradict the plain meaning of a statute. *See Moers*, 469 S.W.3d at 663-64. In reviewing a challenge

to "a rule promulgated by a Chief Appraiser who has legislative authority to determine applications for open-space land appraisal, we are limited to evaluating whether the Chief Appraiser acted contrary to the authorizing statute." *Id.* Thus, Almeter was required to raise a fact issue as to whether the District's standards contravene specific statutory language, are counter to a statute's general objectives, or impose additional burdens, conditions, or restrictions that exceed or are inconsistent with relevant statutory provisions. *See id.* at 664 (quoting *State v. Public Util. Comm'n,* 131 S.W.3d 314, 331 (Tex. App.—Austin 2004, pet. denied)). Merely making such assertions is insufficient—Almeter was required to raise a genuine issue of fact calling the validity of the District's Guidelines into question. *See KPMG Peat Marwick v. Harrison Cty. Hous. Fin. Corp.*, 988 S.W.2d 746, 749-50 (Tex. 1999); *Schulz v. State Farm Mut. Auto. Ins. Co.*, 930 S.W.2d 872, 876 (Tex. App.—Houston [1st Dist.] 1996, no writ) (pleadings are not summary-judgment evidence and nonmovant must raise fact issue with evidence—"mere assertions are not enough"). She did not do so, and thus the trial court did not err in granting the District's motion for no-evidence summary judgment on the issue of the validity and appropriateness of the District's Guidelines, including its intensity standards requiring seven animal units year-round.

<u>Did Almeter Raise a Fact Issue as to Whether She Satisfied Intensity Standard in 2015?</u>

Finally, we consider Almeter's complaints that her land's use was to the degree of intensity accepted in the area, that the District should have considered her installation of improvements as an agricultural use, and that the District improperly imposed a year-round requirement for grazing, failed to employ an appraisal method set out by the Comptroller, used a stocking rate contrary to its Manual, and improperly construed the applicable standards against her.

In its motion for traditional summary judgment, the District asserted that in 2015, Almeter did not have sufficient livestock on her land to satisfy the degree of intensity generally accepted in the area necessary to support the open-space designation and that Almeter's land was not used for livestock year-round in 2015. As evidence, the District attached the Guidelines; Almeter's July 2015 application for an open-space agricultural use appraisal, in which she stated she had five cows and two calves on her land; a District worksheet from a field inspection on August 19, 2015, in which the inspectors found "no cow trails or manure" and "no evidence of livestock on the property"; Almeter's initial answers to the District's interrogatories, in which she stated that there were two "period[s] of ag-use" in 2015—the time in which construction was done to prepare the land for cattle grazing, including fence installation, the drilling of two wells in July and August 2015, and the installation of electrical service for a water pump, and mid-September 2015 through mid-December 2015, when "four head of cattle" were grazed on the land—and that those "three months of cattle-grazing together with the seven-plus months of costly construction activities more than met [the District's] 'intensity of use' standard"; and Almeter's supplemental responses to the District's interrogatories, in which she stated that Brosch would testify about "miscommunications about cattle arrival on land in 2015; three head of cattle on land in 2016." Finally, the District produced a letter from Almeter dated September 16, 2015, in which she stated that as of August 6, she had "believed Mr. Brosch [the owner of the cattle] would be moving his cattle onto the property that weekend," but that she had since learned that Brosch "had not transported the animals for fear of respiratory problems in the extreme heat at the time." Almeter stated that Brosch has since "moved the cattle onto the land, I believe two days ago" and enclosed receipts for improvements made to the land—primarily costs incurred drilling the well and installing fencing.

For her part, Almeter attached to her opposition the following: an affidavit by Brosch stating that he was not able to move cattle onto Almeter's property "until sometime in September" and that the animals broke through the fence and went onto a neighbor's land, where they remained at the time Brosch wrote the affidavit in early 2017; copies of Brosch's receipts for hay; checks and receipts for bulldozing to prepare for fencing, installation of fencing, and drilling a well, which took place in July and August 2015, and an earlier installation of electrical service; photos of several animals on the land in mid-September 2015, photos of the well, and photos of some bulldozer work; a diagram of fencing apparently of the type installed on the property in August 2016; aerial photos of the property and two neighbors' properties; Almeter's tax history from 2007 through 2016 and a comparison with her neighbors' tax valuations; a document purporting to set out Almeter's qualifications as an expert witness; Almeter's "Sworn Testimony at Dec. 10, 2015 Protest Hearing"; a table setting out statistics related to cattle farming in Bastrop in 2012 and 2007; copies of Harris County's and Austin County's webpages addressing agricultural use; various documents related to Almeter's communications with the USDA throughout 2016 seeking financial assistance to improve the land for cattle ranching; and several emails between herself and Hillary Bravenec, a USDA District Conservationist who Almeter had named as an expert witness. The first email from Bravenec, sent in January 2016, stated that Bravenec had recently gone to view the land for the first time. Bravenec said that the land did not have "a whole lot of grass" and that there "would not be enough grass to support 7 head of cattle year round"; explained that Bravenec thought seven animal units was the District's "ag requirement"; suggested that Almeter run goats instead of cattle; and said that if Almeter wanted to run cattle, she should clear some cedar and plant grass.

The evidence shows that, at most, Almeter had four head of cattle on her land, each weighing less than 1,000 pounds, and that those animals were not on the land until sometime in September 2015 (they later broke a fence and went onto a neighbor's land sometime between their arrival and January 2016). The District's Guidelines, however, require seven animal units year-round and define an "animal unit" as "a 1,000 pound cow . . . or two (2) 500 pound calves." Ag-Use & Open-Space Agricultural/Timberland Qualification Guidelines & Definitions at 4.

Almeter contends that her installation of improvements, mostly occurring in July and August 2015, should be considered ag-uses, and the District states in its briefing that it "considers many factors such as fencing, stock water, number of cattle, and time the cattle is on the land," citing to its Guidelines. *See id.* at 7. The District notes, however, that the tax code requires a property that seeks an open-space appraisal to be "currently devoted principally to agricultural use to the degree of intensity generally accepted in the area" and to have been "devoted principally to agricultural use" for five of the preceding seven years. *See* Tex. Tax Code § 23.51(1). The District explains that the five-year historical use does not include an "intensity" requirement, thus setting a standard that "is fairly low" and allowing the property to "simply be used primarily for agricultural purposes," whereas the current year's requirement does impose the intensity requirement, "pos[ing] a higher standard for the year for which the special appraisal is sought." *See id.* Almeter's mid-2015 installation of fencing and other improvements in anticipation for placing cattle on the land would likely be considered by the District in its assessment of the five-year historical requirements, but under the applicable standards, they do not satisfy the requirement that the land was being used year-round in 2015 for agricultural purposes "to the degree of intensity generally accepted in the area."

See id.; Ag-Use & Open-Space Agricultural/Timberland Qualification Guidelines & Definitions at 4, 7. Almeter did not raise a genuine issue of material fact as to whether her property satisfied the Guidelines and the tax code in 2015. We overrule Almeter's claims related to the trial court's granting of summary judgment related to her 2015 application for an open-space appraisal.

2016 Claims

In its order granting the District's motion for summary judgment, the trial court dismissed Almeter's suit in its entirety, including her claims related to the 2016 tax year. In doing so, the trial court erroneously granted more relief than requested by the District's motion for summary judgment, which addressed only the 2015 claims. *See G&H Towing Co. v. Magee*, 347 S.W.3d 293, 298 (Tex. 2011) (if trial court grants more relief than requested, it "makes an otherwise partial summary judgment final, [and] that judgment, although erroneous, is final and appealable"); *Trudy's Tex. Star, Inc. v. City of Austin*, 307 S.W.3d 894, 915-16 (Tex. App.—Austin 2010, no pet.) (motion for summary judgment did not address certain claims, and trial court erred in granting summary judgment on those claims). On February 15, the court signed two additional orders purporting to grant the District's motion to dismiss and its partial plea to the jurisdiction, both of which pertained to Almeter's 2016 claims. However, because the court had not withdrawn or corrected its order granting summary judgment, the 2016 claims had already been dismissed, and those later orders were of no effect. We therefore reverse the portion of the trial court's order dismissing Almeter's 2016 claims and remand those claims to the trial court for further proceedings. We express no opinion as to the ripeness or merits of Almeter's claims related to her 2016 application.

Conclusion

We affirm the trial court's granting of summary judgment on Almeter's claims related to the 2015 tax year. We reverse the portion of the trial court's order dismissing Almeter's 2016 claims and remand those claims to the trial court for further proceedings.

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David Puryear, Justice

Before Justices Puryear, Field, and Bourland

Affirmed in Part, Reversed and Remanded in Part

Filed: October 5, 2017