

FILED
May 26, 2022

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

HAF Real Estate West, LLC,
Defendant Below, Petitioner,

vs.) **No. 21-0360** (Berkeley County 20-C-141)

Sheriff Nathan Harman, in his official
capacity as Sheriff of Berkeley County,
Plaintiff Below, Respondent

MEMORANDUM DECISION

Petitioner HAF Real Estate West, LLC (“HAF”), by counsel Floyd McKinley Sayre, III, appeals the Circuit Court of Berkeley County’s April 5, 2021, order awarding summary judgment to respondent. Respondent Sheriff Nathan Harman, in his official capacity as Sheriff of Berkeley County, by counsel Anthony J. Delligatti and Jeffery T. Mauzy, filed a response in support of the circuit court’s order.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court’s order is appropriate under Rule 21 of the Rules of Appellate Procedure.

Petitioner is the owner of a commercial business property located in Martinsburg, Berkeley County, West Virginia, known as Eagle Run Pointe Townhouse Rentals. As the owner of said property, petitioner is the entity responsible for paying ad valorem taxes on that property. There is no dispute that petitioner failed to file an annual listing or report of its property with the Berkeley County Assessor in tax years 2015, 2016, 2017, and 2018.¹ Further, there is no dispute that

¹ *See generally* West Virginia Code §§ 11-3-12(a) and 11-3-15(a), which require that every incorporated or unincorporated company, foreign or domestic, and limited liability company subject to taxation, make a report of its property in writing to the assessor. Throughout the record, this report is referred to as a “business personal property return” and a “business property tax return.”

petitioner failed to pay personal property taxes in Berkeley County for years 2015, 2016, 2017, 2018, and 2019, totaling \$111,720.20, with penalties and interest.

In June of 2020, respondent filed the underlying civil action against petitioner to recover the delinquent taxes. During discovery, petitioner acknowledged that it failed to file any reports with respect to the subject property with the Berkeley County Assessor for tax years 2015, 2016, 2017, and 2018. Further, petitioner admitted that it failed to contest the assessment of its property before the Board of Equalization and Review or the Board of Assessment Appeals for tax years 2015, 2016, 2017, 2018, and 2019. Petitioner also acknowledged that it failed to respond to certified letters it received in 2015, 2016, 2017, 2018, and 2019, notifying it of the delinquent taxes owed and giving it notice that unless petitioner's report was filed with the assessor within fifteen days of receipt of the notice, any request for correction of the assessment would be denied.²

Upon the completion of discovery, respondent filed a motion for summary judgment. By order entered on April 5, 2021, the circuit court awarded judgment in favor of respondent. Specifically, the court found that

[s]tate law clearly established the sheriff's right and duty to collect taxes and to do so through a civil action if necessary. As to whether the [petitioner's] personal property in Berkeley County is subject to *ad valorem* taxation, the West Virginia Code provides that it is. Therefore, [respondent] is entitled to judgment as a matter of law.

The court noted that petitioner offered no evidence of any disputed issue of material fact, but, instead, claimed that the 2015-2018 assessments were unfair "because the 2019 assessment was much lower than prior years."³ While the disparity in the assessed value of petitioner's property between 2015-2018 is significant, the same is ultimately of no consequence. West Virginia Code § 11-3-10, provides, in pertinent part that

[i]f any person, firm or corporation . . . willfully fails to furnish a proper list of real estate or personal property for taxation . . . such person, firm or corporation shall be denied all remedy provided by law for the correction of any assessment made by

² In the responses to respondent's request for admissions, petitioner admits that it "failed to respond to certified letters every year for the past five years notifying it of the delinquent taxes owe[d]." However, in his motion for summary judgment, respondent, citing to petitioner's request for admission responses, alleges that petitioner failed to respond to the certified letters every year for the past five years notifying it of the delinquent taxes owed "and giving it notice that unless it filed within 15 days after receipt of notice that any request for correction of the assessment would be denied." While copies of the certified letters are not a part of the appendix record, there is no indication in the record (which was provided by petitioner's counsel) that this statement was inaccurate.

³ Petitioner based its inequity argument on the fact that the assessor accepted the value of the property listed within the report filed by petitioner in 2019 of \$26,800, when the prior years were valued by the assessor (because a report was not provided to the assessor) at \$766,297 (2018), \$696,634 (2017), \$633,303 (2016), and \$575,730 (2015).

the assessor . . . *Provided*, That no person, firm or corporation shall be denied the remedy provided by law to contest any assessment unless the assessor . . . has notified such person, firm or corporation in writing that this penalty will be asserted and the requested information is not provided within fifteen days of the date of receipt of the notice.

Here, there is no dispute that petitioner received annual notices of the assessments from respondent and notices from respondent advising that petitioner had fifteen days to respond to the assessed value. However, it is also undisputed that petitioner still chose not to file any of the necessary reports to the assessor for four consecutive tax years. Petitioner cannot now contest the tax assessments, given the application of West Virginia Code § 11-3-10. Accordingly, the circuit court reasoned that because petitioner cannot contest the assessments of the assessor, there is no genuine issue of material fact in dispute, entitling respondent to summary judgment. It is from the circuit court's April 5, 2021, order that petitioner now appeals.

Petitioner raises one assignment of error on appeal, that the circuit court was clearly wrong in granting the respondent's motion for summary judgment, as the same was a denial of petitioner's constitutional rights to due process and equal protection. This Court has held that "[a] circuit court's entry of summary judgment is reviewed *de novo*." Syl. Pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994).

On appeal, petitioner argues that summary judgment was improper as petitioner now contests the assessor's valuation of petitioner's property. Petitioner predicates its argument on "historical information from the prior owners and the return filed in 2019, [which put] the actual value of the personal property [at] 10% of the value that was estimated by the assessor." Specifically, petitioner argues that the fact the assessor accepted the 2019 return valuing the property at issue at only \$26,800, as opposed to the previous valuation of \$766,297 in 2018, was a "compelling indicator" that the 2015-2018 assessed values were unsubstantiated. Petitioner generally argues that the circuit court's denial of its challenge of the assessments from 2015-2018 was a denial of petitioner's constitutional rights to due process and equal protection.

Based upon our review of the record, we find no merit in the argument advanced by petitioner. This court has long espoused the general presumption that the valuations for taxation purposes fixed by the assessor are correct.

As a general rule, there is a presumption that valuations for taxation purposes fixed by an assessor are correct. Thus, a tax assessment of coal property will be presumed to be correct when the assessor, in assessing the coal property: (1) relies upon the legislative rules prescribing the methods by which property is to be assessed; and (2) uses, as a guide, information furnished by the tax department, such as a list of comparable sales of similar property. The burden is on the taxpayer challenging the assessment to demonstrate by clear and convincing evidence that the tax assessment is erroneous.

Syl. Pt. 2, *Western Pocahontas Props., Ltd. v. County Comm'n of Wetzel Cnty.*, 189 W. Va. 322, 431 S.E.2d 661 (1993).

Accordingly, the taxpayer must establish that an error in assessment has been made. Here, petitioner proffered no such proof. In fact, the circuit court established, as referenced above, that petitioner cannot now contest its tax assessments, given the application of West Virginia Code § 11-3-10.

In addition to the issues pursuant to West Virginia Code § 11-3-10, respondent contends that petitioner cannot establish that an error in assessment has been made because petitioner provided “no evidence of any kind” and conducted “no discovery below.” Rather, petitioner relied on its assumption that the assessor’s 2015-2018 assessments were too high simply because a later substantially lower assessment (presented by petitioner for year 2019 in the written report format) was accepted by the assessor. Such assumptions are not evidence. There is simply no evidence that the court below “made any erroneous findings of fact or abused its discretion by awarding judgment in favor of” respondent. Accordingly, we find that the circuit court did not err in awarding summary judgment to respondent.

For the foregoing reasons, we affirm the circuit court’s April 5, 2021, order awarding summary judgment to respondent.

Affirmed.

ISSUED: May 26, 2022

CONCURRED IN BY:

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice William R. Wooton

NOT PARTICIPATING:

Justice C. Haley Bunn