

Illinois Official Reports

Appellate Court

Adventure Christian Church v. Blair, 2022 IL App (3d) 210550

Appellate Court
Caption

ADVENTURE CHRISTIAN CHURCH, an Illinois Not-for-Profit Corporation, Plaintiff-Appellant, v. ERICH M. BLAIR, in His Official Capacity as Kankakee County Chief County Assessment Officer; DOUGLAS ANDERSON, in His Official Capacity as Bourbonnais Township Assessor; THE KANKAKEE COUNTY BOARD OF REVIEW; and ST. GEORGE COMMUNITY CONSOLIDATED SCHOOL DISTRICT NO. 258, Defendants-Appellees.

District & No.

Third District
No. 3-21-0550

Filed

November 23, 2022

Decision Under
Review

Appeal from the Circuit Court of Kankakee County, No. 21-MR-18; the Hon. Lindsay Parkhurst, Judge, presiding.

Judgment

Affirmed.

Counsel on
Appeal

Gregory A. Deck, of Deck & Baron, of Kankakee, for appellant.

Scott L. Ginsburg and Kelly M. Lyden, of Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., of Chicago, for appellee St. George Community Consolidated School District No. 258.

Christopher W. Bohlen, of Barmann, Bohlen & Scott, P.C., of Kankakee, for appellee Douglas Anderson.

Jim Rowe, State's Attorney, of Kankakee (John Coghlan, Assistant State's Attorney, of counsel), for other appellees.

Panel JUSTICE PETERSON delivered the judgment of the court, with opinion.
Presiding Justice O'Brien and Justice McDade concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Adventure Christian Church, filed a two-count complaint seeking *mandamus* relief and administrative review. The complaint sought *mandamus* relief against defendants, Erich M. Blair (Kankakee County Chief County Assessment Officer) and Douglas Anderson (Bourbonnais Township Assessor), for removing the tax exemption from plaintiff's property and returning the property to the assessment rolls. The complaint also sought administrative review of the Kankakee County Board of Review's decision denying plaintiff's assessment complaint, which sought to reduce the assessed value of plaintiff's property to \$0 and recognize the property's tax exempt status.¹ On defendants' motion, the trial court dismissed the complaint for lack of subject matter jurisdiction due to plaintiff's failure to exhaust its administrative remedies. We affirm.

¶ 2 I. BACKGROUND

¶ 3 In 2017, plaintiff purchased real estate commonly known as 70 Ken Hayes Drive, Bourbonnais, Illinois, which was improved with a 92,000 square foot building. The property was assessed for property taxes as property index Nos. 17-09-16-201-011 and 17-09-16-200-033. That same year, plaintiff received a religious property tax exemption from the Illinois Department of Revenue for the property pursuant to section 15-40(a) of the Property Tax Code (35 ILCS 200/15-40(a) (West 2020)).

¶ 4 In 2020, the defendants removed the property tax exemption from plaintiff's property and returned the property to the assessment rolls, effective as of January 1, 2020.

¶ 5 In response, plaintiff filed an assessment valuation complaint with the Kankakee County Board of Review (Board of Review). Plaintiff did not challenge the local assessment officials' valuation determination or the assessor's determination that the property was not being used for exempt religious purposes. Instead, plaintiff argued that the local assessment officials lacked the authority to remove the property tax exemptions granted by the Illinois Department of Revenue. Plaintiff contended that the authority to remove the property tax exemption belonged to the Department of Revenue and not local officials. Following a hearing, the Board of Review issued a decision denying the request to reduce the assessed valuation of plaintiff's property.

¹Defendant St. George Community Consolidated School District No. 258 intervened in the proceedings before the Kankakee County Board of Review.

¶ 6 Plaintiff filed a two-count complaint in the circuit court against defendants. Count I of the complaint sought *mandamus* relief requiring the local assessment officials and the Board of Review to reinstate the property tax exemption. Alternatively, count II sought judicial review of the Board of Review’s decision to deny plaintiff’s request to reduce the assessed value of the property to \$0 and recognize the property’s tax exempt status. Attached to the complaint are two notices of property assessment from the Kankakee County Chief County Assessment Office. The first notice provided the reason for the assessment as “new construction, reassessment, class code change, township revalue.” The second notice provided the reason for the assessment as “reassessment, class code change, township revalue.”

¶ 7 Defendants filed a motion to dismiss pursuant to section 2-619(a)(1) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(1) (West 2020)). The motion contended that defendants had discretionary authority to remove the property tax exemption pursuant to sections 15-10 and 15-15 of the Property Tax Code, where the exempt property changes use and is made for profit. Further, the motion alleged that plaintiff failed to exhaust its administrative remedies by failing to make a new application for a property tax exemption. Therefore, defendants contended that the trial court lacked subject matter jurisdiction to consider plaintiff’s complaint.

¶ 8 Ultimately, the trial court granted defendants’ motion to dismiss. The court found that it lacked jurisdiction to consider the complaint based on plaintiff’s failure to exhaust administrative remedies.

¶ 9 **II. ANALYSIS**

¶ 10 On appeal, plaintiff contends that the trial court erred when it dismissed plaintiff’s complaint for lack of subject matter jurisdiction. Specifically, plaintiff contends that the trial court erred when it found that plaintiff failed to exhaust its administrative remedies. Alternatively, plaintiff contends that it was not required to exhaust its administrative remedies where it alleged that defendants’ decision was unauthorized by law. Upon review, we find that the Property Tax Code provides a remedy at law, which plaintiff failed to pursue before filing its complaint in the trial court. Therefore, the trial court correctly determined that it lacked subject matter jurisdiction. We also find that defendants’ decision was authorized by the Property Tax Code and the recognized exception to the exhaustion of remedies rule does not apply to this case.

¶ 11 A motion to dismiss under section 2-619 of the Code (*id.* § 2-619) admits the legal sufficiency of the complaint but asserts that some affirmative matter defeats the plaintiff’s claim. When reviewing whether a motion to dismiss under section 2-619 should have been granted, we may consider all facts presented in the pleadings, affidavits, and depositions found in the record. *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 396 (2009). All well-pleaded facts, along with all reasonable inferences that can be drawn from those facts, are deemed admitted and all pleadings and supporting documents must be interpreted in the light most favorable to the nonmoving party. *Bjork v. O’Meara*, 2013 IL 114044, ¶ 21. Because section 2-619 motions present a question of law, we give no deference to the determinations by the lower courts. Our review is *de novo*. *Doe A.*, 234 Ill. 2d at 396. Further this appeal involves a question of the circuit court’s jurisdiction and the interpretation of a statute, which are also reviewed *de novo*. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294 (2010).

¶ 12 Defendants filed a motion pursuant to section 2-619(a)(1) and sought dismissal on the grounds that the trial court lacked subject matter jurisdiction. Subject matter jurisdiction refers to a court’s power to hear and decide cases of a general class. *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2015 IL 117443, ¶ 15. Trial courts have original jurisdiction over all justiciable matters pursuant to the Illinois Constitution, except in administrative review actions and certain cases for which the Illinois Supreme Court has exclusive jurisdiction. *Id.* In this case, defendants claimed the trial court lacked subject matter jurisdiction over plaintiff’s claims because the Property Tax Code provides plaintiff with a complete and adequate remedy at law through the exhaustion of administrative remedies.

¶ 13 “In the field of taxation the general rule applies that equity will not assume jurisdiction to grant relief where an adequate remedy at law exists.” *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 105 (1973); see also *Millennium Park*, 241 Ill. 2d at 295. “[T]he Property Tax Code is a comprehensive statute regulating the assessment and collection of taxes.” *Millennium Park*, 241 Ill. 2d at 295. Thus, a taxpayer is generally limited to first exhausting administrative remedies provided by the statute before seeking relief in the trial court, beginning with the Board of Review. *Id.* The taxpayer then has the option of either appealing to the Illinois Property Tax Appeal Board (PTAB) or filing a tax objection complaint in the trial court. *Id.* at 296. “Thus, the adequate remedy at law is to pay the taxes under protest and file a statutory objection.” *Id.*

¶ 14 In this case, plaintiff filed an assessment valuation complaint with the Board of Review seeking to reduce the assessed value to \$0 after it learned that the exemption had been terminated. Under section 16-55, plaintiff may file a “written complaint that any property is overassessed or underassessed,” and, “the board shall review the assessment, and correct it, as appears to be just.” 35 ILCS 200/16-55(a) (West 2020). The Board of Review found that the property’s fair cash value, or, “[t]he amount for which a property can be sold in the due course of business and trade,” was more than \$0, so the Board of Review denied plaintiff’s valuation appeal. See *id.* § 1-50.

¶ 15 The Board of Review’s decision, however, is not a final administrative decision. *Id.* § 16-70 (“[T]he decision of the board shall not be final, except as to homestead exemptions.”) Plaintiff’s recourse was to either appeal the Board of Review’s valuation determination to PTAB (*id.* § 16-160) or pay the taxes under protest and proceed directly to the trial court (*id.* § 23-5). See *Millennium Park*, 241 Ill. 2d at 296. Plaintiff did not appeal to the PTAB. Instead, plaintiff filed its complaint with the trial court but did not pay the taxes under protest. Since the Board of Review’s decision was not final and plaintiff had other administrative remedies available, the trial court did not have jurisdiction over the complaint.

¶ 16 In reaching this conclusion, we reject plaintiff’s argument that no further administrative remedies were available to it and the Board of Review’s decision effectively terminated the proceedings. We acknowledge that the “Property Tax Appeal Board is without jurisdiction to determine *** the exemption of real property from taxation.” 86 Ill. Adm. Code 1910.10(f) (1997). Thus, an appeal to the PTAB would have been futile. Further, if plaintiff paid the taxes under protest and filed a tax objection complaint, the trial court would not have jurisdiction to consider plaintiff’s claim that the property is exempt. See 35 ILCS 200/23-5 (West 2020) (allowing the filing of a tax objection complaint under protest, “for any reason other than that the property is exempt from taxation”). On its face, it appears that plaintiff exhausted all available remedies at law. However, this is because plaintiff pursued the incorrect avenue to

challenge the exemption removal. Plaintiff's decision to pursue the incorrect avenue for relief does not mean that it exhausted its administrative remedies. As we will explain, rather than filing an assessment *valuation* complaint, plaintiff should have submitted a new property tax exemption application.

¶ 17 To begin exemption proceedings, the taxpayer must complete an application. An application for religious exemption must include pictures of the property, an affidavit of use, articles of incorporation, and bylaws of the applicant and a completed patronage/convent questionnaire. 86 Ill. Adm. Code 110.115(a) (1996). The application is submitted to the Board of Review for consideration. *Id.* § 110.115(b)-(c). The Board of Review makes a determination then sends the file to the Department of Revenue. *Id.* § 110.115(d). This process applies not only to first-time exemption applications, but also when “there has been a change in ownership, leasehold estate or use of such property since the last such previous determination.” *Id.* After the Department of Revenue considers the Board of Review's decision, it makes a determination as to the property's exempt status. *Id.* § 110.115(h). A party may request a hearing on the Department of Revenue's decision if it has any objection. *Id.* § 110.115(i). Only the decisions of the Department of Revenue following a hearing are subject to judicial review. *Id.* § 110.115(a).

¶ 18 Here, plaintiff should have made a new application for a religious property exemption. However, plaintiff failed to make a new exemption application. Had plaintiff made an application, the Board of Review would have made a decision and transmitted that decision to the Department of Revenue. The Board of Review's decision, however, is not a final decision for purposes of judicial review. 35 ILCS 200/16-70 (West 2020). Rather, the Department of Revenue must make its decision, and plaintiff could have requested a hearing. Only then would the Department of Revenue's decision be subject to judicial review. Thus, plaintiff had administrative remedies available and plaintiff's failure to exhaust those remedies deprived the trial court of jurisdiction over the complaint.² Following this process would have developed a record for the reasoning as to why the property should or should not be exempt from taxation and would have facilitated judicial review of plaintiff's contentions.

¶ 19 Despite this, plaintiff attempts to invoke one of the recognized exceptions to the general rule that it must exhaust its administrative remedies. Specifically, even if the Property Tax Code procedures provide an adequate remedy at law in a particular case, a property owner may “seek injunctive or declaratory relief in [the] circuit court where the tax or assessment is unauthorized by law.” *Millennium Park*, 241 Ill. 2d at 296. This exception applies where “the taxing body has no statutory power to tax” or where the assessor “acts with respect to property over which he has not been given any jurisdiction by statute.” *Id.* at 295. The exception does not apply, however, where a plaintiff's complaint “merely alleges procedural errors or irregularities in the taxing process.” *Id.* at 307. In such a case, the tax would be “incorrect or illegal” as opposed to “unauthorized by law” (internal quotation marks omitted) (*id.*), and it would need to be challenged in a statutory tax-objection proceeding.

²We recognize that the time has passed for plaintiff to file a new tax exemption application for the 2020 tax year. See 86 Ill. Adm. Code 110.115(c)(1) (1996). However, this does not change the fact that plaintiff had an administrative remedy available at the time it received the 2020 tax assessment notice. Plaintiff's failure to exhaust this remedy deprived the trial court of jurisdiction.

¶ 20 Plaintiff asserts that local assessment officials were not authorized by law to remove the property tax exemption. Defendants counter by noting that the local assessment officials' decision to remove the tax exemption from plaintiff's property is authorized based on the authority given to the assessors under sections 15-10 and 15-15 of the Property Tax Code. Section 15-10 provides, in relevant part:

"In order to maintain that exempt status, the titleholder or the owner of the beneficial interest of any property that is exempt must file with the chief county assessment officer, on or before January 31 of each year ***, an affidavit stating whether there has been any change in the ownership or use of the property ***. The nature of any change shall be stated in the affidavit. Failure to file an affidavit shall, in the discretion of the assessment officer, constitute cause to terminate the exemption of that property, notwithstanding any other provision of this Code." 35 ILCS 200/15-10(a) (West 2020).

¶ 21 Similarly, section 15-15 provides:

"If any property listed as exempt by the chief county assessment officer is leased, loaned or otherwise made available for profit, the titleholder or the owner of the beneficial interest shall file with the assessment officer a copy of all such leases or agreements and a complete description of the premises, so the chief county assessment officer can ascertain the exact size and location of the premises in order to create a tax parcel. Failure to file such leases, agreements or descriptions shall, in the discretion of the chief county assessment officer, constitute cause to terminate the exemption, notwithstanding any other provision of this Code." *Id.* § 15-15.

¶ 22 The plain language of these provisions requires a taxpayer to notify local assessment officials of a change in use of the property that impacts a property's religious exemption status. If the taxpayer fails to do so, these provisions provide local assessment officials with the discretion to remove the exemption if there has been a change in use of the property. Therefore, the local assessment officials did have the authority to remove the exemption from plaintiff's property. Consequently, plaintiff's claim does not fall within the unauthorized by law exception to the general requirement that plaintiff must exhaust administrative remedies.

¶ 23 In reaching this conclusion, we reject plaintiff's argument that dismissal is improper because defendants did not support their motion with any affidavits showing a change in use of the property. Plaintiff contends that dismissal is improper where there is no evidence that it leased, loaned, or otherwise made its property available for profit. First, our analysis is focused on whether the local assessment officials had authority to remove the exemption, not whether the assessors correctly determined that the property changed use. Second, the notices of assessments attached to plaintiff's complaint show that local assessment officials removed the exemption and assessed the property due to "new construction, reassessment, class code change, township revalue" and "reassessment, class code change, township revalue." It can be inferred that the "class code change" meant that defendants determined the property changed from being used exclusively for religious purpose to profit and defendants removed the exemption for that reason. The only method to challenge the decision of the local assessment officers to remove the exemption under the Property Tax Code is to reapply for the property exemption.

III. CONCLUSION

¶ 24

¶ 25

The judgment of the circuit court of Kankakee County is affirmed.

¶ 26

Affirmed.