

FIRST DIVISION
May 13, 2013

No. 1-12-0244

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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| FRED AMOAKOHENE, |) | Appeal from the Circuit Court |
| |) | of Cook County |
| Plaintiff-Appellant, |) | |
| |) | |
| v. |) | No. 11 M1 160576 |
| |) | |
| MARIA PAPPAS, Treasurer of Cook County, |) | Honorable |
| |) | David A. Skryd, |
| Defendant-Appellee. |) | Judge Presiding. |

JUSTICE DELORT delivered the judgment of the court.
Justice Rochford concurred in the judgment.
Justice Cunningham specially concurred.

ORDER

- ¶ 1 *HELD:* The circuit court of Cook County correctly held that plaintiff-appellant's complaint was untimely under subsections (a) and (b) of the Property Tax Code (35 ILCS 200/20-175(a), (b) (West Supp. 2011)).
- ¶ 2 This case involves a taxpayer who unsuccessfully attempted to recover an overpayment of his property taxes but was rebuffed because he sought his refund too late.
- ¶ 3 The circuit court of Cook County dismissed the case on December 22, 2011, granting a motion to dismiss filed by defendant-appellee, Maria Pappas, treasurer of Cook County (the County Treasurer). On appeal, plaintiff-appellant, Fred Amoakohene, who represents himself, argues that

the court erred in granting the County Treasurer's motion to dismiss because his complaint was not barred by the five-year statute of limitations contained in section 20-175(a) of the Property Tax Code (Tax Code) (35 ILCS 200/20-175(a) (West Supp. 2011)). We agree with the circuit court that Amoakohene's claim was untimely and therefore affirm.

¶ 4

BACKGROUND

¶ 5 In 1995, Amoakohene became the owner of a property located at 2170 East 96th Street in Chicago, IL (96th Street property). In 2004, the 96th Street property was mortgaged to Washington Mutual Bank (Washington Mutual). Through his mortgage, Amoakohene had a tax escrow account with Washington Mutual which paid the property taxes on the 96th Street property when due. On October 25, 2005, the escrow account with Washington Mutual was closed. On October 31, 2005, Washington Mutual made a payment for the second installment of the 2004 real estate taxes for the 96th Street property. On April 14, 2006, Amoakohene also made a payment for the second installment of the 2004 real estate taxes for the 96th Street property.

¶ 6 On June 11, 2010, the County Treasurer sent a letter to Amoakohene stating that there was an overpayment of taxes on the 96th Street property and that he may be entitled to a refund. The letter instructed Amoakohene to fill out a refund application and to attach proof-of-payment documentation to show that he was responsible for one of the payments that resulted in an overpayment. The letter also specifically stated that the deadline to file a request with the County Treasurer for a refund was April 14, 2011.

¶ 7 On July 20, 2010, Amoakohene filled out a "Duplicate & Overpayment Refund Application" and submitted it to the County Treasurer. The refund application included the County Treasurer's

record of payment history, which reflected payments for the 2004 tax year made on October 31, 2005 and April 14, 2006. The application also requested that Amoakohene provide proof of payment that corresponded to the payments listed on the application. Specifically, the County Treasurer requested one of the following:

- “1. Copy of the front side of the canceled check(s) used to pay the taxes for the tax year and installment in question. You need to submit only the copy of the check(s) for the installment that has an overpayment or multiple payment.
2. Copies of the teller receipt or receipted tax bill(s) if paid in cash for the tax year and installment in question.
3. A letter from any mortgage company, title company or other third party who submitted payment that includes the following information. (1) Property Index Number, (2) taxpayer’s name, (3) amount(s) paid, and (4) date(s) of payment(s). A copy of your IRS Form 1098 for the corresponding calendar year will be acceptable.”

The application warns that “[i]ncomplete applications or those with insufficient proof of payment may be returned.” No proof of payment, however, is attached to the application included in the record on appeal.

¶ 8 On January 18, 2011, the County Treasurer sent a letter to Amoakohene stating that she was returning his refund application. The letter stated that there was insufficient proof of payment because the County Treasurer’s records showed that Amoakohene’s name did not match the name of the individual on whose behalf one or more of the payments in question were made. Apparently,

to prevent fraudulent claims, the County Treasurer has established certain criteria to ensure that the party claiming a refund is genuinely the same person who made the overpayment in the first instance.

The letter further provides:

“If you believe one or more payments creating this refund were made on your behalf but in someone else’s name, please either 1) provide a notarized letter of direction from the payer which includes your name, PIN, date of payment(s) and amount(s) paid, and stating that payment was made on your behalf and that the Cook County Treasurer’s Office should refund you, or 2) provide a valid power of attorney stating that you are authorized to receive this refund on the payer’s behalf. Otherwise, if you are not the party who made the payment(s) creating the refund, or you do not believe the payment(s) were made on your behalf, do not resubmit this refund application.”

¶ 9 On March 2, 2011, Amoakohene sent a letter to the County Treasurer stating that sometime in early 2006, he paid the duplicate payment that was submitted for the 2004 tax year. He attached a notarized affidavit stating that he paid the real estate taxes on the 96th Street property since October 25, 2005.

¶ 10 The County Treasurer responded through a March 23, 2011 letter to Amoakohene, stating that there was still insufficient proof of payment and Amoakohene must provide proof in the form of a bank statement, canceled check, or customer receipt, if payment was made by cash. The record contains no other correspondence between Amoakohene and the County Treasurer after March 23, 2011.

¶ 11 Rather than simply complying with the County Treasurer’s request for the required

information, on September 14, 2011, Amoakohene filed this lawsuit against her in the circuit court. The complaint alleged that the County Treasurer was “unlawfully detain[ing]” \$310 that belonged to Amoakohene. On November 9, 2011, the County Treasurer filed a motion to dismiss Amoakohene’s complaint pursuant to section 2-619(a)(5) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5) (West 2010)). The County Treasurer’s motion to dismiss argued that section 20-175(a) of the Tax Code states that a claim for a refund for an overpayment of taxes shall not be allowed unless a petition is filed within five years from the date that the right to a refund arose. The County Treasurer argued because Amoakohene filed his complaint more than five years after his right to a refund arose, section 20-175(a) barred his complaint.

¶ 12 On December 22, 2011, the circuit court entered an order granting the County Treasurer’s motion to dismiss. On January 20, 2012, Amoakohene filed a timely notice of appeal. We have jurisdiction to consider this appeal pursuant to Illinois Supreme Court Rule 303 (Ill. S. Ct. R. 303 (eff. May 30, 2008)).

¶ 13 ANALYSIS

¶ 14 As a preliminary issue, we note that Amoakohene’s appeal brief contains multiple violations of Illinois Supreme Court Rule 341 (Ill. S. Ct. R. 341 (eff. July 1, 2008)). If an appellant’s brief violates the supreme court rules, this court has the authority to dismiss the appeal. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). Rule 341, however, is an admonishment to the parties, not a limitation on the jurisdiction of the reviewing court; and the reviewing court has discretion in order to reach a just result. *Brown v. Brown*, 62 Ill. App. 3d 328, 332 (1978). Thus, we have the authority to dismiss Amoakohene’s appeal. Notwithstanding the deficiencies of Amoakohene’s appeal brief,

the record is not voluminous, and this case presents issues involving the recently amended version of section 20-175 of the Tax Code. See *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001) (addressing an appeal on the merits despite appellant’s “grossly inadequate” statement of facts, because the interests of justice so required).

¶ 15 We review section 2-619 dismissals under a *de novo* standard of review. *Freeman v. Williamson*, 383 Ill. App. 3d 933, 936 (2008). Although the court below, and the parties, have focused their attention on the applicability of section 20-175(a) of the Tax Code, we also believe it prudent to examine the potential applicability of subsection 20-175(b), a newly-enacted statute which provides another mechanism for taxpayer to claim overpayment refunds.

¶ 16 When construing a statute, our primary objective is to ascertain and give effect to the intent of the legislature. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). All other rules of statutory construction are subordinate. *Paszkowski v. Metropolitan Water Reclamation District of Greater Chicago*, 213 Ill. 2d 1, 6 (2004). Our supreme court has recently interpreted the specific statute at issue here, noting that to determine legislative intent, we should first examine the language of the statute, which is the most reliable indicator of the legislature’s objectives in enacting a particular law. *Alvarez v. Pappas*, 229 Ill. 2d 217, 228 (2008). The statutory language must be given its plain, ordinary, and popularly understood meaning. *Id.* Clear and unambiguous statutory language must be given effect as written without resort to further aids of construction. *Id.*

¶ 17 When the wording of a statute is allegedly in conflict, a court has the duty to interpret the statute in a manner that avoids inconsistency and gives effect to the statute as intended by the legislature where such an interpretation is reasonably possible. *Ferguson v. McKenzie*, 202 Ill. 2d

304, 311-12 (2001). “In construing a statute, we presume that the legislature did not intend absurdity, inconvenience or injustice.” *Alvarez*, 229 Ill. 2d at 228 (citing *Burger v. Lutheran General Hospital*, 198 Ill. 2d 21, 40 (2001)).

¶ 18 Section 20-175 of the Tax Code as it existed prior to an August 23, 2011 amendment, provided in pertinent part:

“If any property is twice assessed for the same year, or assessed before it becomes taxable, and the erroneously assessed taxes have been paid either at sale or otherwise, or have been overpaid by the same claimant or by different claimants, the County Collector, upon being satisfied of the facts in the case, shall refund the taxes to the proper claimant. *When the County Collector is unable to determine the proper claimant, the circuit court, on petition of the person paying the taxes, or his or her agent, and being satisfied of the facts in this case, shall direct the county collector to refund the taxes and deduct the amount thereof, pro rata, from the moneys due to taxing bodies which received the taxes erroneously paid, or their legal successors.*

* * * A claim for refund shall not be allowed unless a petition is filed within 5 years from the date the right to a refund arose.” (Emphasis added.) 35 ILCS 200/20-175 (West 2010).

Significantly, this is how the statute read when Amoakohene’s five-year time period to claim a refund for overpayment expired on April 14, 2011. Following the amendment to the statute, this provision was renumbered as subsection (a) of section 20-175.

¶ 19 Our supreme court has held that under section 20-175 of the Tax Code, the term

“overpayment” includes situations in which a tax was paid twice by two different entities when only one payment was due. *Alvarez*, 229 Ill. 2d at 229-33¹. The five-year statute of limitations begins to run on the date the duplicate payments are made. *Id.* at 234. The latest one in this case was made on April 14, 2006. Because Amoakohene’s lawsuit was not filed until September 14, 2011, the circuit court correctly dismissed Amoakohene’s lawsuit on that basis.

¶ 20 We also look to new subsection (b) of section 20-175 of the Tax Code to determine if it might provide a viable refund option for Amoakohene. This subsection, not even added to the law until after Amoakohene’s five-year time period to claim a refund for overpayment had expired, provides in pertinent part:

“Notwithstanding any other provision of law, in Cook County a claim for refund under this Section is also allowed if the application therefor is filed between September 1, 2011 and September 1, 2012 and the right to a refund arose more than 5 years prior to the date the application is filed but not earlier than January 1, 2000.”

35 ILCS 200/20-175(b) (West Supp. 2011).

Subsection (b) also states that refunds shall not be issued if it “would cause the aggregate total of taxes and interest refunded for all claims under this subsection to exceed \$350,000.” *Id.* In other words, a claim for refund due to an overpayment is allowed under subsection (b) and paid from a

¹ In *Alvarez*, the property owners claiming a refund for overpayment initiated their case by the filing of a lawsuit and not by an administrative claim. We rely on *Alvarez* for its holding in its application of the five-year statute of limitations under section 20-175 of the Tax Code and note the supreme court did not have occasion to address the specific statutory mechanism required to initiate a refund request, as that issue was not raised by the *Alvarez* parties.

special, dedicated fund if: (1) the claim is filed between September 1, 2011 and September 1, 2012; (2) more than five years have passed since the right to a refund arose; and (3) the right to a refund did not arise earlier than January 1, 2000. 35 ILCS 200/20-175(b) (West Supp. 2011).

¶ 21 Unlike subsection (a), whose limitation period hinges on the filing of a lawsuit, subsection (b) establishes an administrative process for filing claims directly with the county treasurer. Subsection (b) specifically provides, “For the purposes of this subsection, the Cook County Treasurer shall accept a claim for refund by mail or in person.” 35 ILCS 200/20-175(b) (West Supp. 2011). Although Amoakohene filed this lawsuit on September 14, 2011, during the window provided by subsection 20-175(b), he filed it with the circuit court and he never filed a subsection 20-175(b) claim with the treasurer during the specified window of time.

¶ 22 In sum, Amoakohene’s eligibility to claim a refund for overpayment has expired under both subsections (a) and (b) of section 20-175 of the Tax Code. Accordingly, the circuit court properly granted the County Treasurer’s motion to dismiss pursuant to section 2-619(a)(5) of the Code.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, we affirm the decision of the circuit court of Cook County dismissing the case as untimely.

¶ 25 Affirmed.

¶ 26 JUSTICE CUNNINGHAM, specially concurring.

¶ 27 I respectfully add my special concurrence to the majority's order. To my knowledge, this is the first time that this court has had the occasion to interpret subsection (b) of the statute in question.

Notwithstanding that the holding in this case is correct based on the statutory interpretation and the specific facts, I feel compelled to comment on the manner in which the Treasurer handled the taxpayer's request for a refund. I believe that Amoakohene met his burden of establishing his right to the refund by the material which he provided to the Treasurer. Thus, he substantially complied with subsection (a) of the statute and established that he is entitled to the refund which the Treasurer acknowledges is due based on an overpayment by the taxpayer. In my view, if the Treasurer had behaved in a reasonable manner, this matter would never have become a lawsuit. In other words, if the Treasurer had treated the taxpayer fairly, there would have been no reason for him to sue.

¶ 28 This case is about whether the taxpayer in question is entitled to a refund of the acknowledged overpayment of property taxes when he has shown that he is and was the sole owner and taxpayer for the property at the time of the overpayment and further established that there are no other parties in interest. This case is also about bureaucratic disregard of the taxpayer's rights and completely exalting form over substance in a situation where the taxpayer is at the mercy of the Treasurer's bureaucracy. While the amount of the refund is relatively small, the rights of the taxpayer are no less important than if there was a significant sum at stake. The following facts are undisputed. There was an overpayment of taxes on the 96th Street property for the 2004 tax year; Washington Mutual made a tax payment for the 2004 tax year *before* Amoakohene made a tax payment for the 2004 tax year; Amoakohene was the sole owner and taxpayer for the property at the time of the overpayment; a refund is due to the taxpayer, property owner; the Treasurer's office notified Amoakohene that a refund was due; the only other possible party in interest was Washington Mutual; and documents submitted to the Treasurer by Amoakohene showed that Washington Mutual

no longer had an interest in the property at the time the refund was due. Amoakohene was the sole taxpayer for the property at the time the refund was due.

¶ 29 In my opinion, this is a clear example of bureaucratic insensitivity regarding a taxpayer's rights. The outcome in this case belies the principle of fundamental fairness. It is unquestioned that there was an overpayment of the 2004 real estate taxes for the 96th Street property. Subsequently, on June 11, 2010, the Treasurer initiated correspondence with Amoakohene when it contacted him by letter and advised him that he may be entitled to the refund. The Treasurer stated that the deadline to file a request for the refund was April 14, 2011. The seminal question which underpinned Amoakohene's application for the refund after receiving the Treasurer's notice that the refund was due; was whether *he* was entitled to receive the refund or whether there was *some other party* to whom it was properly due.

¶ 30 On July 20, 2010, Amoakohene completed an application for the refund and submitted it to the Treasurer. The application requested that Amoakohene attach proof of payment that corresponded to the payments listed in the application. The application provided a list of documents that the Treasurer would accept as proof of payment. Although Amoakohene did not attach the specific proof of payment requested by the Treasurer to his initial request for refund, his refund application included the Treasurer's record of the tax payment history for the 96th Street property. That record reflected the two payments made for the 2004 tax year. The application also included Amoakohene's name, address, telephone number and e-mail address. In the application, Amoakohene stated that he lived at the 96th Street property.

¶ 31 On January 18, 2011, the Treasurer sent another letter to Amoakohene stating that his

application was being returned because the Treasurer was unable to determine if Amoakohene had made the payment in question. The question which the Treasurer *should* have asked at that point was not whether Amoakohene could provide proof that he had made the payment, but rather, *to whom* is the refund due? The Treasurer had already determined that a refund was due since the Treasurer's office contacted Amoakohene advising that a refund was due. The Treasurer's letter of January 18, 2011, stated that Amoakohene could resubmit his application with proof of payment. The letter outlined a list of documents which the Treasurer would accept as proof of payment in support of the application.

¶ 32 On March 2, 2011, Amoakohene sent a detailed letter to the Treasurer which explained how the overpayment had occurred. Attached to the March 2, 2011 letter was a sworn affidavit executed by Amoakohene which stated that he had been paying taxes on the 96th Street property since before the overpayment was made, and that he was entitled to the refund for the overpayment. Also attached to the March 2, 2011 letter was a letter from Washington Mutual which had originally held the mortgage on the 96th Street property and had been responsible for paying the taxes on behalf of Amoakohene during the pendency of the mortgage. The letter from Washington Mutual stated that Amoakohene had paid off the mortgage in full as of October 25, 2005 (before the overpayment was made), and that Amoakohene was responsible for all subsequent real estate taxes after October 25, 2005. The letter and accompanying documents established that Amoakohene was the sole owner of the 96th Street property from a date before the overpayment was made; the prior mortgage on the property had been paid off by Amoakohene; Washington Mutual was the prior mortgage holder, but no longer had an interest in the property; and the overpayment of the taxes had been made after

Amoakohene became solely responsible for all tax obligations related to the property. There is no mention in any of the documents of any third party who could be entitled to the refund which the Treasurer knew was due. Only two possibilities existed, Amoakohene or Washington Mutual. The documents submitted by Amoakohene to the Treasurer make it clear that Washington Mutual was no longer a party in interest and therefore could not be entitled to the refund. The only remaining possibility was Amoakohene. In other words, Amoakohene was the owner of the property for all purposes, including taxes prior to the time that the Treasurer acknowledged that the refund became due.

¶ 33 On March 23, 2011, the Treasurer sent another letter to Amoakohene stating that there was still insufficient proof that he was entitled to the refund. In classic bureaucratic style, the letter listed yet another list of documents which Amoakohene was required to provide in order to establish that he was entitled to the refund. It can be inferred from the Treasurer's March 23, 2011 letter that no one in the Treasurer's office had read Amoakohene's March 2, 2011 letter or the accompanying documents. Instead of continuing to correspond with the Treasurer, Amoakohene filed a *pro se* petition against the Treasurer in the circuit court on September 14, 2011, seeking the court's help in recovering his refund.

¶ 34 In my view, it is clear that Amoakohene provided substantially sufficient proof that *he* and not some third party was entitled to the refund of the tax overpayment. When the Treasurer returned Amoakohene's application after he initially applied for the refund, he responded by sending the Treasurer the March 2, 2011 letter accompanied by two definitive documents which when read together, clearly answered the seminal question of whether he or some other party was entitled to the

refund. His letter explained how the overpayment occurred and his affidavit showed that as the property owner and taxpayer, he had paid the taxes on the property since October 25, 2005, and was therefore entitled to the refund. The letter from Washington Mutual, the former mortgage holder on the property, stated that Amoakohene had paid off the mortgage in full and was therefore responsible for all taxes after October 25, 2005. The documents, the completed application for the refund as well as the Treasurer's own records show that the overpayment in question occurred *after* Amoakohene had assumed the entirety of the tax obligation for the property. These documents clearly show that Amoakohene is the person who is entitled to the refund of the tax overpayment. One can infer that upon receiving the documents from Amoakohene which clearly substantiated his claim to the refund, the Treasurer rejected his application simply because he did not provide proof in the specific form that the Treasurer demanded.

¶ 35 I do not believe that the purpose of the specific documents demanded by the Treasurer was to prevent fraudulent claims. The Treasurer's demands in this case seem to be driven solely by bureaucratic inflexibility and strict compliance with its rules, rather than seeking to aid the taxpayer and pay the refund to which he is rightfully entitled.

¶ 36 I believe Amoakohene acted diligently in responding quickly and completing the application for the refund and providing substantial information consistent with subsection (a) of the statute. After providing substantial proof to the Treasurer to no avail, that he was the party entitled to the refund, he filed a complaint in the circuit court on September 14, 2011. Because Amoakohene's complaint was filed more than five years after his right to a refund arose, his complaint was correctly dismissed. However, as discussed, in my view, it is the Treasurer's bureaucratic inflexibility which

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was the catalyst for this lawsuit, which has ended to the taxpayer's detriment.