2015 IL App (2d) 150076-U
No. 2-15-0076
Order filed December 24, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CHARLES W. COCOMA Plaintiff-Appellant, v. ILLINOIS PROPERTY TAX APPEAL BOARD, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 13-MR-590 Honorable Eugene G. Doherty, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The PTAB erred in ruling that the Board of Review's decision was nonfinal and thus unappealable: although the Board of Review rejected plaintiff's complaint as untimely rather than on the merits, its decision nevertheless was final; thus, we remanded the cause to the PTAB for a hearing on the merits of plaintiff's appeal of the Board of Review's decision.

¶ 2 This appeal is taken from what the circuit court characterized as a denial of the administrative-review complaint of plaintiff, Charles W. Cocoma. The circuit court ruled that the final decision of defendant, the Property Tax Appeal Board, "did not contain [a tax] assessment to be reviewed." It therefore affirmed the Appeal Board's decision upholding the

decision of the Winnebago County Board of Review: defendant had ruled that the Board of Review had not issued a final decision. Plaintiff argues on appeal that the Board of Review's decision was a final decision subject to review by defendant. We agree, and so we reverse and remand to the Appeal Board for a hearing on the merits.

¶ 3 I. BACKGROUND

¶ 4 The administrative record shows that, on January 3, 2012, plaintiff filed with the Board of Review a request for review of the assessment of the property at 1210 Sequoia Road in Rockford. Along with a claim that the assessment was too high, plaintiff included documents tending to show that the county had sent the relevant notice of assessment to the property's previous owner's new address. Plaintiff conceded that his filing was late, but argued that the mismailed notice required the Board of Review to excuse the late filing and consider the propriety of the assessment on the merits.

¶ 5 The Board of Review entered a decision that stated that the due date for any request for review had passed as of September 19, 2011: "[T]he complaint deadline has passed and no consideration of this complaint will be made by the Winnebago County Board of Review."

¶ 6 Plaintiff filed a request for further review with the Appeal Board that the Appeal Board acknowledged as filed within the 30-day time for an administrative appeal. The Appeal Board ruled that it lacked jurisdiction to review the matter. It cited section 16-160 of the Property Tax Code (Code) (35 ILCS 200/16-160 (West 2012)):

> " '[F]or all property in any county other than a county with 3,000,000 or more inhabitants, any taxpayer dissatisfied with the decision of a board of review … *as such decision pertains to the assessment of his or her property for taxation purposes*… may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written

> notice of the decision of the board of review… appeal the decision to the Property Tax Appeal Board for review.' " (Emphasis added.)

It ruled that the Board of Review had not issued a final decision and that plaintiff's administrative appeal was thus not within 30 days *after* the date of the Board of Review's notice. In other words, it ruled that the appeal was effectively premature.

¶ 7 Plaintiff filed his complaint for administrative review on June 28, 2013. In his brief in support of the complaint, he addressed the finality of the Board of Review's decision. The circuit court "denied" plaintiff's "claim" on the basis that the Board of Review's final decision did not contain an assessment to be reviewed. That is, it appears to have rejected the basis on which the Appeal Board rejected plaintiff's administrative appeal—lack of finality—but affirmed the rejection on a different basis. Plaintiff appealed

¶ 8 II. ANALYSIS

¶ 9 On appeal, plaintiff asserts that the Appeal Board erred in ruling that the Board of Review's decision was nonfinal: he argues that the Board of Review's decision had the effect of ending his litigation of the assessment and thus was definitionally final.

¶ 10 The Appeal Board responds that case law requires a different definition of finality in such a case. It argues, in essence, that only decisions on the merits are final decisions in this context. Alternatively, it argues that the Board of Review's decision did not "pertain to" the assessment of plaintiff's property, so that no administrative appeal to it was available under the Code. On that point, it argues that plaintiff has conceded that the decision did not pertain to an assessment by failing to argue the point on appeal.

¶ 11 Our review of whether an administrative agency had jurisdiction of an administrative appeal is *de novo*. See *Thompson v. Department of Employment Security*, 399 Ill. App. 3d 393,

395 (2010) (noting that standard for the administrative jurisdiction of another administrative-review agency). When we review a decision in an administrative-review case, we review the final decision of the agency—here, the Appeal Board—and not the lower-level administrative decision or the ruling of the circuit court. *Abbott Industries, Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶ 15.

¶ 12 We will first consider the question of whether the Board of Review's decision was final. We will hold that, because it terminated the matter, it was indeed final. In so doing, we will address and reject the Board of Review's arguments that special conditions for finality apply in cases such as this. We will then address whether the Board of Review's decision pertained to a tax assessment. We will conclude that it did. We note at this time that, contrary to what the Board of Review argues, plaintiff has not conceded that the Board of Review's decision did not pertain to an assessment. This is so because the decision we review here—the Appeal Board's decision—was based on lack of finality. Plaintiff thus had no cause to address the circuit court's reasoning before the Appeal Board raised it as an alternative basis for affirmance.

¶ 13 Based on the Appeal Board's decision, the central issue here is the finality of the Board of Review's decision that plaintiff's review request to it was too late. We start with the observation that, although plaintiff, as the appellant, has the burden of showing error (see, *e.g.*, *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976)), plaintiff here starts with an advantage of prior plausibility. This is so because the general rule is that a decision by a tribunal is final when it rules that, because of untimeliness or lack of jurisdiction, it will not address a particular claim on the merits. For a trial court, an "order is final and appealable if it terminates the litigation between the parties on the merits *or* disposes of the rights of the parties, either on the entire controversy or a separate part thereof." (Emphasis

added and internal quotation marks omitted.) *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008). Thus, the class of final decisions includes dismissals of claims under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)), which includes dismissals on statute-of-limitations grounds. See, *e.g.*, *People ex rel. Department of Labor v. Tri State Tours, Inc.*, 342 Ill. App. 3d 842, 844 (2003) (exemplifying the noncontroversial practice of recognizing a statute-of-limitations dismissal as final). Similarly, a dismissal for want of jurisdiction, which implies a finding by the court that it lacks power to decide a claim, is also final. *E.g.*, *Krause v. USA DocuFinish*, 2015 IL App (3d) 130585, ¶ 16.

¶ 14 Here, the Board of Review's decision was analogous to other final decisions other than on the merits. The Board of Review declined to address plaintiff's claim either because it deemed the filing too late or because it deemed itself to lack the power to address late-filed claims.

¶ 15 The Appeal Board's arguments share a common theme of skepticism that a decision other than on the merits should be treated as final. That skepticism is misdirected. Although decisions on the merits are perhaps the norm in administrative-review cases, nothing in the law suggests that *only* such decisions are final. On this point, we find informative the discussion in *Pinkerton Security & Investigation Services v. Department of Human Rights*, 309 Ill. App. 3d 48, 55 (1999). The *Pinkerton* court noted that "[g]enerally, a final agency determination follows some sort of adversarial process involving the parties affected, a hearing on controverted facts, and ultimately a disposition rendered by an impartial fact finder." *Pinkerton*, 309 Ill. App. 3d at 55. However, it recognized that that would not always be the case. In particular, it recognized that civil definitions of finality are appropriate in an administrative case. *Pinkerton*, 309 Ill. App. 3d at 55. The *Pinkerton* court treated the definition of finality found in the classic case of *Brauer*

Machine & Supply Co. v. Parkhill Truck Co., 383 Ill. 569 (1943), to be applicable to deciding the merits of an administrative decision not on the merits. *Pinkerton*, 309 Ill. App. 3d at 55-56. *Brauer* teaches that, to be final, a decision need not address the merits of the matter:

> "['Final'] may, with equal propriety, refer to the final determination of a collateral matter, distinct from the general subject of the litigation, but which, as between the parties to the particular issue, settles the rights of the parties. *** A final judgment is one which finally disposes of the rights of the parties, either upon the entire controversy or upon some definite and separate branch thereof." *Brauer*, 383 Ill. at 574-75.

We share the *Pinkerton* court's view that finality in administrative matters should, at least as a default, follow the principles of finality applicable in civil cases.

¶ 16 Plaintiff has relied on the general principles of finality to argue that the Board of Review's decision was final. However, he has also cited section 3-101 of the Code's provision on administrative review (the Administrative Review Law) (735 ILCS 5/3-101 (West 2012)) for the proposition that a "decision" means "any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency." (The Administrative Review Law does not define "*final* administrative decision.") Plaintiff argues that, under either standard, the Board of Review's decision was intended to end its involvement with the controversy and was thus final.

¶ 17 The Appeal Board responds with two arguments. One, it asserts that the Administrative Review Law's definition of "decision" is inapplicable. It notes that the Administrative Review Law applies only where the agency in question has explicitly adopted it (see 735 ILCS 5/3-102 (2012)) and that the Code has adopted the Administrative Review Law only as to final decisions

of the Department of Revenue and final decisions of the Appeal Board. Two, relying on *Williams v. Tazewell County State's Attorney's Office*, 348 Ill. App. 3d 655, 660 (2004), it argues that, even if one accepts the Administrative Review Law's definition, a choice not to consider a claim is nonfinal because it is not the same as a decision on a claim. We do not agree with either argument. On the first point, we note that plaintiff, in reasoning paralleling that of the *Pinkerton* court, relies on our case law's definition of finality and not merely on the Administrative Review Law definition. On the second point, we find *Williams* unpersuasive. Initially, the part of *Williams* on which the Appeals Board relies is arguably *dicta*, as the primary holding in that case is that the decision was nonfinal due to the availability of further administrative review (*Williams*, 348 Ill. App. 3d at 660). Further, we do not accept the *Williams* court's conclusion that a permanent decision not to address a claim is distinguishable from other kinds of conclusive rejections of claims. The idea of a permanent decision not to make a decision contradicts itself.

¶ 18 The Appeal Board argues that a specific statutory definition of finality applies in cases such as this. In particular, it asserts that section 12-50 of the Code (35 ILCS 200/12-50 (West 2012)) lays out specific requirements for final decisions of boards of review. Section 12-50 requires that a final decision of a board of review contain information including the dollar amount of the relevant assessment. Because the Board of Review letter to plaintiff here lacked that required information, the Appeals Board argues that the letter was thus, under section 12-50, not a final decision. We do not agree that section 12-50 should be read as implying a *definition* of a final decision. Rather, the section is clearly a *directive* to the relevant agencies as to the information to be contained in decisions, and not a limitation on what orders are in fact final. Beyond the Appeal Board's unpersuasive interpretation of the section, the further problem is that its argument suggests that review can be had only of *properly formed* final decisions. That

interpretation makes unreviewable formally flawed decisions, a result that strikes us as problematic.

¶ 19 The Appeal Board argues that the decision of the Board of Review was not, as section 16-160 of the Code (35 ILCS 200/16-160 (West 2012)) requires for an appeal, a decision *pertaining to* the assessment of the property for taxation purposes. We do not think that that argument is consistent with the plain meaning of that portion of section 16-160. Section 16-160 provides:

> "[A]ny taxpayer dissatisfied with the decision of a board of review or board of appeals *as such decision pertains to the assessment of his or her property for taxation purposes*, *** may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review *** appeal the decision to the Property Tax Appeal Board for review." (Emphasis added.) 35 ILCS 200/16-160 (West 2012).

Of the words or phrases that can be used to describe a tie or relationship, "pertains to" is among the most general. "Relates to," "connects to," and "is relevant to" are all potential synonyms for "pertains to." If the legislature intended to limit the Appeal Board's review to decisions on the merits of tax assessments, it could have said that. At the least, it could have avoided the broadening language of "pertains to." The Board of Review decision here related to, was connected to, and was relevant to the assessment of plaintiff's property in that the decision stated that the Board of Review would not consider plaintiff's request to change the assessment. Thus, the decision here pertained to the assessment of plaintiff's property for taxation.

¶ 20 The Appeal Board argues that our holding in *Geneva Community Unit School District No. v. Property Tax Appeal Board*, 296 Ill. App. 3d 630 (1998), mandates a construction of

"pertains to" that excluded the Board of Review decision under the circumstances here. We deem *District No. 304* to be distinguishable. At issue in *District No. 304* was whether a property-tax *exemption* was appealable to the Appeal Board. In our decision, we recognized that some authority had considered an exemption as being the equivalent of an assessment of "$0." *District No. 304*, 296 Ill. App. 3d at 634 (citing *Highland Park Women's Club v. Department of Revenue*, 206 Ill. App. 3d 447, 461 (1990)). However, *we* held that an exemption is not a zero-value determination but is instead a determination of the lack of a taxable interest. *District No. 304*, 296 Ill. App. 3d at 635. Thus, although we may speak of an exemption as an assessment of zero, a decision about an exemption properly considered pertains to the existence of a taxable interest and is independent of any assessment. In short, we held that exemption and assessment are not the same issue. The case here does not concern an exemption; it concerns a decision that allowed an assessment to stand unchallenged because the review request was untimely. That decision was final.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we hold that the Appeal Board erred in rejecting plaintiff's administrative appeal as premature. We further hold that the appeal pertained to an assessment, so that its not pertaining to an assessment is not an alternative basis for affirming the decision of the Appeal Board. We therefore reverse the decision of the circuit court and remand to the Appeal Board for decision on the merits.

¶ 23 Circuit court reversed; case remanded to the Appeal Board.