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2015 IL App (3d) 140652-U

Order filed September 15, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

PRADIP C. NAYAK,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois.
	)	
(Bidu L. Nayak,	)	
	)	
Plaintiff)	)	Appeal No. 3-14-0652
	)	Circuit No. 14-SC-3566
v.	)	
	)	
RHONDA NOVAK, Chief County Assessment	)	
Officer,	)	
	)	Honorable John Anderson,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court.  
Justices O'Brien and Wright concurred in the judgment.

**ORDER**

¶ 1 *Held:* In a tax objection case, the trial court improperly ruled against the taxpayers. The trial court's ruling was against the manifest weight of the evidence. The judgment is reversed and remanded with directions.

¶ 2 Plaintiffs, Pradip C. Nayak and Bidu L. Nayak (Taxpayers) filed suit against defendant, the Will County Supervisor of Assessments, seeking approval of claims for a general homestead

exemption (GHE) under section 15-175 of the Illinois Property Tax Code (Tax Code) (35 ILCS 200/15-175 (West 2012)) and a senior citizen homestead (Senior) exemption under section 15-170 (35 ILCS 200/15-170 (West 2012)) for tax year 2013. Defendant claimed Taxpayers were not entitled to the GHE, asserting they had already been granted a GHE from Du Page County for 2013. Following a bench trial, the court found in favor of defendant. Taxpayers appeal.

¶ 3

### BACKGROUND

¶ 4

Taxpayers owned two houses simultaneously: one in Du Page County and one in Will County. Until December 2012 when they moved into a residence they purchased in Naperville (Will County), Taxpayers owned and occupied a residence in Elmhurst (Du Page County). On December 11, 2013, Taxpayers sold their Du Page County property to third parties. The warranty deed from the sale of Taxpayers' Du Page County property was notarized and signed by Taxpayers "releasing and waiving all rights under and by any virtue of the Homestead Exemption Laws of the State of Illinois." Taxpayers listed their current address on the document as their address in Will County.

¶ 5

Taxpayers later applied for a GHE on their Will County property for tax year 2013. The Will County Supervisor of Assessments denied Taxpayers' application. The assessments office concluded that while Taxpayers had established proof of residency in Will County prior to January 1, 2013, they had already received a GHE for 2013 from Du Page County. Defendant advised Taxpayers they were not entitled to a second GHE for the same tax year and needed to provide proof the GHE from Du Page County in 2013 had been "removed."

¶ 6

The record is unclear, but Taxpayers appear to have appealed the Will County Supervisor of Assessment's denial of their claim to the Du Page County board of review rather than the Will County board of review. Taxpayers subsequently had their 2013 tax documents corrected to

reflect that they did not receive a GHE from Du Page County. After which, the Will County Supervisor of Assessments did not change its position in response to Taxpayers' exemption claims.

¶ 7 In May 2014, Taxpayers filed a small claims complaint against Rhonda R. Novak in her capacity as Supervisor of Assessments for Will County. Taxpayers argued, *pro se*, they were entitled to homestead and senior tax exemptions from Will County for 2013 under the Tax Code (35 ILCS 200/1-1 *et seq.* (West 2012)). The case was eventually transferred to the circuit court of Will County, and the parties appeared for a bench trial in August 2014.

¶ 8 At trial, Pradip C. Nayak was the only party present on behalf of Taxpayers. Pradip testified on his own behalf. He claimed Taxpayers are entitled to homestead and senior exemptions for the 2013 tax year. Pradip denied receiving a GHE from Du Page County for 2013. He also stated Taxpayers have resided in Will County since December of 2012. Before resting, Pradip submitted a file to the court, which is part of the record in this case. In that file was a document from the Du Page County treasurer's office stating that Taxpayers did not receive a GHE from Du Page County for tax year 2013.

¶ 9 Defendant called Cindy Harris of the Will County Supervisor of Assessments office as its only witness. Through defense counsel's leading questions, Harris testified that a GHE was granted to Taxpayers from Du Page County in 2013 and that the trigger date for such an exemption is the place of residence on January 1 of every calendar year. Harris further testified that a taxpayer can only receive one GHE per year, the exemptions are attached to the property, and the grantee does not carry the exemption with them when they leave or sell the property.

¶ 10 Defendant submitted into evidence a copy of a deed dated December 11, 2013, from the sale of Taxpayers' former Du Page County property. The deed was notarized, sworn to, and

signed by Taxpayers (specifically, Pradip). Defendant argued the deed establishes that Taxpayers resided in Du Page County on that date.

¶ 11 On cross-examination, Harris testified that Taxpayers received the GHE from Du Page County for 2013 because they were the owners of the property on January 1, 2013. Somehow, she also possessed the requisite knowledge to further assert that Taxpayers received a credit for that GHE when the sale of Taxpayers' Du Page County property was finalized at closing. Harris restated that Taxpayers would get the GHE for their Will County property once they proved they resided there in 2013 and had the GHE from Du Page County for that year "removed."

¶ 12 In closing arguments, Pradip reiterated that Taxpayers did not live in Du Page County in 2013 but Will County, and that they have not received a GHE for 2013 from either county. Defendant reasserted they were relying on the December 11, 2013, deed in which, they claim, Pradip himself stated Taxpayers resided in Du Page County on that date. The trial court entered a judgment in favor of the defendant—ruling that they were not required to give Taxpayers the GHE for 2013.

¶ 13 On appeal, Taxpayers argue defendant was negligent by not complying with section 15-75 of the Tax Code (35 ILCS 200/15-175 (West 2012)) and granting them a GHE for 2013. Taxpayers also argue they are further entitled to a Senior exemption for 2013 under section 15-170 of the Tax Code (35 ILCS 15-170 (West 2012)). Defendant counters that since Taxpayers received a GHE in 2013 for their Du Page County property and swore they resided in Du Page County on December 11, 2013, they are legally mandated to deny Taxpayers a second GHE in Will County for 2013. Defendant did not address Taxpayers' claim for a Senior exemption.

¶ 14 As an appellate court, we will not substitute our judgment for that of the trial court in a bench trial unless we find that judgment is against the manifest weight of the evidence.

*Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Limited, USA*, 384 Ill. App. 3d 849, 859 (2008). “When a challenge is made to a trial court’s ruling following a bench trial, the proper standard of review is whether the trial court’s judgment is against the manifest weight of the evidence.” *Carey v. American Family Brokerage, Inc.*, 391 Ill. App. 3d 273, 277 (2009) (citing *Fox v. Heimann*, 375 Ill. App. 3d 35, 46 (2007)).

¶ 15 ANALYSIS

¶ 16 I. Jurisdiction

¶ 17 “A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue.” *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009) (citing *People v. Smith*, 228 Ill. 2d 95, 106 (2008) and *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998)). In this case, the notice of appeal was timely, however, “[i]f [the] trial court did not have jurisdiction, the parties cannot confer jurisdiction on a reviewing court merely by taking an appeal.” (Internal quotation marks omitted.) *KT Winneburg, LLC v. Calhoun County Board of Review*, 403 Ill. App. 3d 744, 747 (2010) (quoting *Greer v. Illinois Liquor Comm'n*, 185 Ill. App. 3d 219, 221 (1989)).

¶ 18 The Tax Code states, “[a]n objection to an assessment for any year shall not be allowed by the court \*\*\* if an administrative remedy was available by complaint to the board of appeals or board of review under Section 16-55 or Section 16-115, unless that remedy was exhausted prior to the filing of the tax objection complaint.” 35 ILCS 200/23-10 (West 2012); see also *Mathers v. County of Mason*, 232 Ill. App. 3d 1095 (1992) (holding that a circuit court can only proceed with an objection to a real estate assessment if a complaining taxpayer has pursued their statutory remedies before the county board of review). Before a taxpayer may resort to courts for relief from improperly assessed real estate, he must show that he has been diligent in

pursuing a remedy to have the assessment corrected by the county board of review or that he was prevented from pursuing such remedy by fraud, accident or mistake. *Critton v. Gurrola*, 139 Ill. App. 3d 719, 722-23 (1985). “Assessments can be held to be constructively fraudulent if shown to be based upon an assessor’s lack of knowledge or when so obviously excessive as to require such a construction. [Citation.]” *Application of the County Collector of Pike County v. Carpenter*, 133 Ill. App. 3d 142, 143-44 (1985).

¶ 19 Before proceeding further in our analysis, we note Taxpayers, although litigating *pro se*, are held to the same standard as those represented by legal counsel. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). An exemption is equal to an assessment of \$0. *Geneva Community Unit School District No. 304 v. Property Tax Appeal Board*, 296 Ill. App. 3d 630, 634 (1998). We further note that, pursuant to section 16-160, “any taxpayer not satisfied with the decision of the board of review or board of appeals \*\*\*\* need not appeal the decision to the Property Tax Appeal Board before seeking relief in the courts.” 35 ILCS 200/16-160 (West 2012).

¶ 20 Taxpayers in this case appear to have appealed defendant’s determination to the county board of review in DuPage County, in accordance with section 16-55 (35 ILCS 200/16-55 (West 2012)). The proper procedure, however, would have been to appeal the tax objection to the *Will County* board of review, and do so within 30 days. 35 ILCS 200/16-55(d) (West 2012).

¶ 21 Taxpayers in this case have been diligent in pursuing a correction of their tax assessment and have appeared before this court by way of a mixture of mistake and constructive fraud.

Thus, this court has jurisdiction over the issues before us on appeal in this case.

¶ 22 II. The Tax Code

¶ 23 The Tax Code (35 ILCS 200/15–175 *et seq.* (West 2012)) sets forth the criteria for a GHE. See also Ill. Const. 1970, art. 9, § 6 (providing that the General Assembly may grant homestead exemptions). Pursuant to subsection (b) of the Tax Code, the maximum reduction for a taxable year after 2012 is \$6,000 in counties with less than 3,000,000 inhabitants. 35 ILCS 200/15-175(b) (West 2012). We take judicial notice that the population of Will and Du Page Counties are each under 3,000,000. *DiModica v. Department of Employment Security*, 164 Ill. App. 3d 445, 448 (1987) (courts may judicially notice population).

¶ 24 Subsection (f) of the Tax Code specifies that “ ‘Homestead property’ under this Section includes residential property that is occupied by its owner or owners as his or their principal dwelling place \*\*\* and on which the person is liable for the payment of property taxes.” 35 ILCS 200/15–175(f) (West 2012). The parties in this case do not directly dispute that Taxpayers were residents of Will County as of January 1, 2013. Defendant conceded Taxpayers proved they were residents of Will County on that date via Bidu Nayak’s proof of residency.

¶ 25 The Tax Code also sets forth criteria for grant of a Senior exemption. 35 ILCS 200/15-170 *et seq.* (West 2012). The maximum reduction for taxable year 2013 and thereafter is \$5,000 in all counties. 35 ILCS 200/15–170 (West 2012). This section of the Tax Code specifies that “[a] person who will be 65 years of age during the current assessment year shall be eligible to apply for the homestead exemption during that assessment year.” 35 ILCS 200/15-170 (West 2012). Defendant does not dispute Taxpayers’ entire claim for a Senior exemption, conceding at trial they are entitled to a partial exemption.

¶ 26 III. The Record

¶ 27 As defendant frames the argument, at issue in this case is: (1) whether Taxpayers resided in Du Page County on December 11, 2013; and (2) whether Taxpayers retained the GHE they

allegedly received from Du Page County for tax year 2013. Thus, if Taxpayers resided in Will County on or before January 1, 2013, and have not received or retained a GHE from Du Page County for tax year 2013, Taxpayers are entitled to a GHE and a full Senior exemption from Will County for tax year 2013.

¶ 28 Based on the record before us, the trial court’s ruling that plaintiffs obtained a GHE from Du Page County in 2013—and therefore are not entitled to a GHE from Will County for that year—was against the manifest weight of the evidence. Defendant concedes that Taxpayers have proof they resided in Will County prior to January 2013 and subsequently transferred their interest in the Du Page County property, including tax liabilities and benefits, in December 2013.

¶ 29 Contrary to defendant’s assertions, the December 11, 2013, deed does not establish that Taxpayers resided in Du Page County on that date. Taxpayers are listed on the deed as “\*\*\*of the City of Elmhurst, County of Du Page\*\*\*” but this sentence should not be construed as a declaration of Taxpayer’s residency on that date. Rather, it is clearly boilerplate language applied to the more common scenario whereby the seller of a home resides in the house until sale, which is not the case here. Taxpayers listed their address on the deed as their Will County property. On its face, the document establishes that Taxpayers resided in Will County on that date. Furthermore, Taxpayers’ place of residence in December is irrelevant to a GHE determination. Pursuant to subsection (i) of the Tax Code, a GHE is determined by the taxpayer’s “principal dwelling place \*\*\* on January 1 of the taxable year.” 35 ILCS 200/15-175(i) (West 2012).

¶ 30 The warranty deed relied upon by defendant also “releas[es] and waiv[es] all rights [of Taxpayers] under and by any virtue of the Homestead Exemption Laws of the State of Illinois.” The Du Page County Treasurer’s office itself confirmed that Taxpayers did not receive a GHE



from Du Page County for tax year 2013. A letter from the Du Page County Treasurer unequivocally states that the new owners of Taxpayers' former Du Page County property "had the full Illinois Residential Homestead Exemption" stemming from that property for the 2013 tax year.

¶ 31 Given the record before us, it is clear the trial court's ruling was against the manifest weight of the evidence. The evidence submitted at trial demonstrates that Taxpayers qualify as residents of Will County before January 1, 2013, and they were not granted a GHE by Du Page County in 2013. The trial court is therefore directed to enter an order awarding Taxpayers GHE and Senior exemptions for 2013 by the Will County Supervisor of Assessments.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Will County is reversed.

¶ 34 Reversed and remanded with directions.