No. 1-10-0240

Third Division
June 29, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SEARS HOLDINGS CORPORATION,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	05 COCE 00064
MARIA PAPPAS, COUNTY TREASURER	)	
and *EX-0FFICIO* COUNTY COLLECTOR OF	)	
COOK COUNTY, ILLINOIS,	)	Honorable
	)	Alfred J. Paul,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Murphy and Steele concurred in the judgment.

ORDER

HELD: When the supreme court states that the appellate court has erred, the appellate court is bound by the supreme court's decision and its prior decision is no longer the law of the case.

This case, which comes before us for a second time, involves the law of the case doctrine. The trial court entered a judgment directing the Cook County treasurer to refund to a taxpayer the amount the taxpayer overpaid for property taxes, plus interest. On the first appeal we affirmed the

award with prejudgment interest, but we vacated the award of interest on the judgment, which the trial court awarded under section 2-1303 of the Code of Civil Procedure. 735 ILCS 5/2-1303 (West 2006). Following the entry of our mandate, the trial court entered judgment for the amount of the refund plus prejudgment interest, and once again the trial court added to the award judgment interest under section 2-1303. The treasurer appeals, arguing that the award conflicts with the law of the case. Our supreme court, in a different case, expressly overruled our decision in the first appeal, and held that taxpayers awarded judgments for property tax refunds should also receive judgment interest under section 2-1303. Thus, we now apply the supreme court's ruling to the case before us, so we affirm the trial court's judgment.

BACKGROUND

In 2003, the Cook County Assessor recognized that it overcharged Sears Holdings Corporation for its 2001 property taxes. On December 20, 2005, the trial court entered a judgment ordering the treasurer to refund to Sears Holdings the amount overpaid, plus statutory interest owed under section 20-178 of the Property Tax Code (35 ILCS 200/20-178 (West 2006)). The treasurer issued a check for the refund plus interest at the statutory rate for the period from the date of the 2005 judgment to the date on which it issued the refund.

Sears Holdings moved for an order compelling the treasurer to pay interest from a date in 2003, based on the assessor's recognition of the overpayment at that time. In an order dated April 2, 2008, the trial court ordered the treasurer to pay interest to Sears Holdings from 2003 to the date of the refund. The treasurer filed a timely appeal from the April 2 order. After this court acquired jurisdiction over the case, the trial court entered an order, dated July 9, 2008, requiring the treasurer

to pay Sears Holding an additional amount as judgment interest under section 2-1303.

In our opinion on the initial appeal, *Sears Holdings Corp. v. Pappas*, 391 Ill. App. 3d 147 (2009), we affirmed the order directing the treasurer to pay interest from 2003 to the date of the refund, but we found that the trial court lacked jurisdiction to enter the order dated July 9, 2008, for judgment interest. We said:

> "The trial court was divested of subject matter jurisdiction when the notice of appeal was filed on April 28, 2008. Because the trial court altered the judgment when it awarded judgment interest after the notice of appeal was filed in the appellate court and the trial court had been divested of subject matter jurisdiction, the provision in the July 9, 2008, order awarding judgment interest is void. ***
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> Next, we must determine whether Sears Holdings is entitled to judgment interest. ***
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> *** [T]he taxpayer is only entitled to statutory interest 'up to the date of the refund' because the certificate of error statutory procedure is a creature of statute, and we must strictly construe the provisions of that statute. [Citation.] In light of the preceding, we reject Sears Holdings' claim of entitlement to judgment interest pursuant to section 2-1303 of the Code of Civil Procedure. Accordingly, we hold that the trial court was correct when it awarded statutory interest pursuant to section 20-178 of the Property Tax Code, but lacked subject matter jurisdiction to award

> judgment interest pursuant to section 2-1303." *Sears Holdings*, 391 Ill. App. 3d at 159-60.

After we issued our decision, another panel of this court reached conflicting conclusions in a similar case. In *General Motors Corp. v. Pappas*, 393 Ill. App. 3d 60 (2009), the appellate court held that taxpayers could receive judgment interest under section 2-1303, in addition to statutory prejudgment interest, on tax refunds for overpaid property taxes.

Our mandate revested the trial court with jurisdiction. The trial court decided that we only held that the trial court had lacked jurisdiction to order judgment interest after the treasurer filed the notice of appeal. The trial court adopted the reasoning of *General Motors* instead of the reasoning we presented in the initial appeal. The court explained:

> "Although the Appellate Court did state that it rejected Sears Holdings' claim to judgment interest pursuant to section 2-1303 ***, the Appellate Court's conclusion only states the lack of subject matter jurisdiction as the reasoning for the vacation of the Section 2-1303 post-judgment interest award."

The trial court found that it had jurisdiction to decide whether to award judgment interest. On October 1, 2009, the trial court ordered the treasurer to pay Sears Holdings the statutory interest pursuant to section 20-178, plus judgment interest pursuant to section 2-1303. The treasurer now appeals.

ANALYSIS

The treasurer argues that the law of the case required the trial court to deny Sears Holdings' request for judgment interest under section 2-1303. We review the decision on an issue of law, with

no contested facts, *de novo*. *Corral v. Mervis Industries*, 217 Ill. 2d 144, 153-54 (2005).

After the treasurer filed its brief on appeal, our supreme court decided *General Motors Corp. v. Pappas*, No. 108893 (May 19, 2011). The *General Motors* court held that, even after an appellant files a notice of appeal, the trial court retains jurisdiction to order judgment interest under section 2-1303. *General Motors*, No. 108893, slip op. at 8. The court expressly overruled our contrary holding. The court then addressed the merits of the award of judgment interest:

> "[A]t the time the refunds were paid, the interest due was a calculable sum certain—a money judgment to be paid. *** [I]f the statutory interest on the tax refund is not paid in full, judgment interest under section 2-1303 is allowed on the set amount of outstanding interest that is owed as a result of the judgment. Consequently, we disagree with the conclusion of *Sears Holdings* that where statutory interest is provided under the Code up until the date of full refund, and no more, judgment interest may not be awarded under section 2-1303 on the set amount of interest that is owed to the taxpayer." *General Motors*, No. 108893, slip op. at 16-17.

Thus, we must now decide whether our prior decision in this case operates as the law of the case, foreclosing us from affirming the award of judgment interest, when our supreme court has clarified that taxpayers like Sears Holdings have the right to collect judgment interest under section 2-1303 on judgments for unpaid interest on property tax refunds.

Generally, under the law of the case doctrine, this court should not reconsider in a second appeal an issue it has already decided in the case on an earlier appeal. See *Relph v. Board of Education of De Pue Unit School District No. 103*, 84 Ill. 2d 436, 443 (1981). "The rule of the law

of the case is a rule of practice, based on sound policy that, where an issue is once litigated and decided, that should be the end of the matter and the unreserved decision of a question of law or fact made during the course of litigation settles that question for all subsequent stages of the suit." *Continental Insurance Co. v. Skidmore, Owings & Merrill*, 271 Ill. App. 3d 692, 696-97 (1995). However, the law of the case cannot relieve us of our obligation to follow the decisions of our supreme court. Our supreme court explained:

> "Where the Appellate Court or this court, on the first appeal to it, announces a particular view of the law governing the case and reverses and remands the case for further proceedings in accordance with the views announced, if the case is again brought before such court for review the former decision is binding on the court making it, and the questions decided and determined by it on the first appeal are not open for re-consideration on the second appeal. But while the determination of a question of law by the Appellate Court on the first appeal may, as a general rule, be binding upon it on the second appeal, it certainly cannot be binding on this court. Nor would the Appellate Court on the second appeal, we apprehend, be obliged to adhere to a proposition of law laid down on the first appeal, when this court had, since the first appeal, decided the precise question contrary to the rule announced by the Appellate Court." *Zerulla v. Supreme Lodge Order of Mutual Protection*, 223 Ill. 518, 520 (1906).

Because the supreme court decided the precise question presented in this case contrary to the rule we announced in our appellate court decision, we must abandon the rule in our previous decision and

follow the rule in the supreme court's decision. See *Relph*, 84 Ill. 2d at 443-44.

We note that applicable authority supports the trial court's interpretation of our opinion in the initial appeal. We unequivocally held (erroneously) that the trial court lacked jurisdiction to enter the July 9, 2008, order directing the treasurer to pay judgment interest pursuant to section 2-1303. *Sears Holdings*, 391 Ill. App. 3d at 159. If the trial court lacked jurisdiction to enter the order, we lacked jurisdiction to consider the merits of the order. As the court said in *Kyles v. Maryville Academy*, 359 Ill. App. 3d 423, 431-32 (2005), "[t]he lack of jurisdiction in the circuit court, in turn, affects our own jurisdiction in that we are then limited to considering only the lack of jurisdiction below, and we may not consider the substantive merit of the circuit court's unauthorized actions." See *People v. Flowers*, 208 Ill. 2d 291, 307 (2004)("Because the circuit court had no jurisdiction to consider Flowers' Rule 604(d) motion, the appellate court, in turn, had no authority to consider the merits of her appeal from the circuit court's judgment denying her motion. The only matter properly before the appellate court was the circuit court's lack of jurisdiction over Flowers' untimely Rule 604(d) motion"); *Department of Central Management Services v. American Federation of State, County & Municipal Employees*, 182 Ill. 2d 234, 238 (1998) ("Where an appellate court has considered the merits of case where it had no jurisdiction to do so, we must vacate that court's judgment and dismiss the appeal"). Accordingly, because we held that the trial court's order was void for lack of subject matter jurisdiction, our views on the merits of that order qualify not as judicial *dicta* or *obiter dicta*, but as void pronouncements on matters not properly before this court. See *Flowers*, 208 Ill. 2d at 307.

Therefore, following *General Motors*, we hold that Sears Holdings has a right to section 2-1303 interest on the judgment entered on April 2, 2008. Accordingly, we affirm the judgment of the trial court.

Affirmed.