2016 IL App (2d) 160349-U
No. 2-16-0349
Order filed December 22, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CRAIG A. BROWN, Plaintiff-Appellant, v. MELISA HAMMER in her capacity as JO DAVIESS COUNTY TREASURER, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Jo Daviess County. No. 15-MR-17 Honorable William A. Kelly, Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Plaintiff forfeited review of trial court order dismissing his original complaint by failing to follow procedure to preserve claims therein in his amended complaint; and (2) trial court properly granted summary judgment in defendant's favor as plaintiff failed to establish that there exists a genuine issue of material fact as to whether defendant violated the Property Tax Extension Limitation Law.

¶ 2 Plaintiff, Craig A. Brown, appeals *pro se* from orders of the circuit court of Jo Daviess County (1) dismissing his initial complaint for injunctive and declaratory relief and (2) granting summary judgment in favor of defendant, Melisa Hammer, in her capacity as Jo Daviess County

Treasurer, on his amended complaint for statutory tax objection. For the reasons set forth below, we affirm.

¶ 3 II. BACKGROUND

¶ 4 Both of plaintiff's complaints charged a violation of the Property Tax Extension Limitation Law (PTELL) (35 ILCS 200/18-185 *et seq*. (West 2014)). The PTELL limits increases in property tax extensions and amounts levied by taxing districts in non-home-rule counties in which the PTELL is applicable. *Board of Education of Auburn Community School District No. 10 v. Department of Revenue*, 242 Ill. 2d 272, 275 (2011) (citing 35 ILCS 200/18-195 (West 2006)). This is accomplished through various mechanisms, including an "extension limitation" (35 ILCS 200/18-185, 18-205 (West 2014)) and a "limiting rate" (35 ILCS 200/18-185, 18-195 (West 2014)), both of which are discussed more thoroughly in the analysis section of our decision. As a general rule, a taxing district subject to PTELL may not ordinarily extend taxes at a rate that exceeds the previous year's extension by more than 5%, or the percentage increase in the Consumer Price Index (CPI), whichever is less, without referendum approval. 35 ILCS 200/18-185, 18-205 (West 2014). At all times relevant herein, the PTELL was applicable to Jo Daviess County. See http://tax.illinois.gov/LocalGovernment/PropertyTax/PTELLcounties.pdf (last visited December 12, 2016) (noting that the voters of Jo Daviess County approved a PTELL referendum in November 1997).

¶ 5 On April 1, 2015, plaintiff filed a complaint for injunctive and declaratory relief against Melisa Hammer (Hammer or defendant) in her capacity as Jo Daviess County Treasurer and Jean Dimke (Dimke) in her capacity as Jo Daviess County Clerk. Plaintiff's complaint alleged, in pertinent part, as follows. Plaintiff is the co-owner of real property in Galena, Jo Daviess County, Illinois (Subject Property). Plaintiff paid his 2012 property-tax obligation in full.

Midwest Medical Center (Hospital) is also located in Galena, Jo Daviess County, Illinois. Both the Subject Property and the Hospital lie within the boundaries of some of the same taxing districts (Applicable Taxing Districts). In or about 2008, the Hospital applied for a tax exemption. Each year between 2008 and 2011, Jo Daviess County determined the equalized assessed value (EAV) of the Hospital, the applicable tax rate, and the Hospital's property-tax obligation. It then added the Hospital's "EAV and the corresponding property tax to the tax rolls of the county pending a determination of [the Hospital's] exempt or non-exempt status." During this time, the Hospital never paid any property taxes. In 2013, following a four-year appeal process, the Illinois Department of Revenue (Department) declared the Hospital exempt from its obligation to pay property taxes beginning from the Hospital's inception in 2008.

¶ 6 Plaintiff further alleged that as a result of the Hospital's tax-exempt status, the Hospital's 2012 property-tax obligation, billable in 2013, was not assessed against the Hospital. At that time, Dimke "eliminated the EAV caused by the Hospital from the tax rolls of the county," but she "never eliminated the corresponding property tax" from the tax rolls. Thus, "the Hospital's property tax obligation, remaining as part of the total property tax revenue levied by the county in each of the previous four years, even though never collected, was effectively distributed to the remaining non-exempt property owners in the Applicable Taxing Districts." As a result, plaintiff alleged that Jo Daviess County "illegally billed" "the non-exempt property owners in the Applicable Taxing Districts *** pro rata for the Hospital's exempt property tax obligation in 2013 for the Hospital's 2012 tax," thereby "exceed[ing] the legally permissible property tax extension limitation in 2013 for the 2012 property tax year." Plaintiff made a similar allegation with respect to the Hospital's property-tax obligation billed in 2014 for the 2013 tax year. Further, he alleged that the non-exempt property owners will be "illegally billed pro rata for the

Hospital's exempt property tax obligation in 2015 for the Hospital's 2014 exempt property tax obligation." Plaintiff sought a preliminary injunction enjoining Hammer from "levying the property tax attributable to the Hospital to the other non-exempt property owners in the Applicable Taxing Districts in 2015 with respect to 2014 property taxes" and a permanent injunction enjoining Dimke and Hammer from "levying or collecting any property tax which arises from the exempt property tax amount attributable to the Hospital." In addition, plaintiff asked that the excess taxes be refunded to the non-exempt property owners for the 2012 and 2013 tax years.

¶ 7 On April 29, 2015, Hammer and Dimke filed a motion to dismiss plaintiff's complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2014)). They argued that the statutory tax-objection procedure set forth in the Property Tax Code (Code) (see 35 ILCS 200/23-5 *et seq*. (West 2014)) was the exclusive remedy available to claimant and that, because plaintiff failed to pursue that remedy, he lost his right to proceed. Hammer and Dimke also alleged that the voluntary-payment doctrine barred plaintiff's claims. See *Leafblad v. Skidmore*, 343 Ill. App. 3d 640, 643 (2003) (noting that a taxpayer may not recover taxes that have been paid voluntarily—even if the taxing body lacked the authority to impose the tax in question—unless a statute allows such recovery). Finally, Hammer and Dimke contended that plaintiff improperly sought class-wide relief. See 35 ILCS 200/23-15 (West 2012) (providing that no tax-objection complaint shall be filed as a class action). Plaintiff filed a "Resistance" to Hammer's and Dimke's motion to dismiss in which he disputed their positions. On October 14, 2015, the trial court held a hearing on the motion to dismiss. Following arguments by the parties, the trial court granted the motion. However, the court allowed plaintiff's request for leave to amend his complaint.

¶ 8 On November 12 2015, plaintiff filed an amended complaint, labeled as a "Statutory Tax Objection" pursuant to section 23-10 of the Code (35 ILCS 200/23-10 (West 2014)). The sole defendant named in the amended complaint was Hammer in her capacity as Jo Daviess County Treasurer. In the amended complaint, plaintiff alleged in relevant part as follows. The Subject Property and the Hospital lie within the boundaries of various taxing districts, including the "Affected Taxing Districts," Galena Unit School District No. 120 (School District) and Highland Community College District No. 519 (College District). In 2013, the Department declared the Hospital exempt from the payment of property taxes from its inception after a four-year appeal process. Plaintiff paid his entire 2014 property-tax obligation on the Subject Property. Plaintiff asserted that the Hospital's "property tax obligation, remaining as part of the total property tax revenue charged by the county Treasurer in each of the previous six years, even though never collected from the Hospital, was effectively distributed to the remaining non-exempt property owners in the [Affected] Taxing Districts for tax years 2012, 2013 and 2014." Plaintiff further asserted that the exempt property-tax obligation of the Hospital "should have been removed by the County Clerk for the purposes of calculating the statutory limitation beginning in tax year 2012," but that "[t]he exempt property tax continues to be charged to the remaining non-exempt properties in the [Affected] Taxing Districts." Plaintiff therefore contended that Jo Daviess County "exceeded the legally permissible property tax extension limitation in 2013 for the 2012 property tax year, in 2014 for the 2013 property tax year and in 2015 for the 2014 property tax year." Plaintiff claimed that the portion of his property-tax obligation related to the Hospital constitutes "an illegal tax charged to the Subject Property." In his prayer for relief, plaintiff requested: (1) an order declaring that a portion of plaintiff's 2014 property-tax obligation to Jo Daviess County regarding the Subject Property "is an illegal amount as proven at trial" and (2)

an order directing the Jo Daviess County Treasurer to refund to plaintiff any illegal property tax attributable to the Subject Property paid by him.

¶ 9 On January 4, 2016, in response to the amended complaint, defendant filed a motion for summary judgment, which was accompanied by an affidavit from Dimke. Initially, defendant asserted that the College District is not subject to the PTELL because it is a multi-county taxing district and not all of the counties in which the College District lies have adopted the PTELL. See 35 ILCS 200/18-213(e), (f) (West 2014) (providing referendum procedure for taxing districts that do not have all of their EAV in a single county). Defendant also argued that there was no violation of the PTELL by the School District as alleged by plaintiff because the 2014 property-tax extension did not result in an unlawful increase in excess of the CPI from 2013 to 2014. In support of her position, defendant relied on Dimke's affidavit. According to defendant, Dimke performed her statutory duty to ensure that the School District's property tax extension was within statutory limits consistent with the limitations imposed by the PTELL. Dimke attached to her affidavit the worksheets used for her calculations.

¶ 10 On March 7, 2016, plaintiff filed his response to defendant's motion for summary judgment. In his response, plaintiff stated that he was "unaware" that the PTELL does not apply to the College District. He also asserted that defendant's PTELL calculation "includes an amount attributable to the tax exempt [Hospital] beginning in property tax year 2008" and continuing through 2014 "even though [the Hospital] never paid any portion of such tax." Plaintiff further asserted that to defeat the claim set forth in his amended complaint, defendant was required to show that (1) the tax-exempt amount is not included in the PTELL calculation or (2) the inclusion of the tax-exempt amount is legally permissible. According to plaintiff, however, defendant failed to address the factual assertions in his amended complaint and Dimke

never references the inclusion of the tax-exempt amount in her PTELL calculation. Instead, she simply claims that she calculated the property-tax extension correctly for all relevant years. Attached to plaintiff's response was an affidavit from plaintiff. In the affidavit, plaintiff stated that based on information obtained during his tenure on the School District's budget subcommittee, he determined that the Hospital's property-tax obligation was added to the taxes extended in 2008, but not removed for the 2012 tax year when it was declared tax exempt in 2013.

¶ 11 On March 23, 2016, defendant filed a reply to plaintiff's response to the motion for summary judgment. Defendant argued that: (1) only the School District's property-tax extensions were at issue because the College District is not subject to the PTELL; (2) only the 2014 property-tax extensions were at issue because any claim by plaintiff with respect to prior years were both untimely and barred by the voluntary-payment doctrine; and (3) plaintiff has not presented any disputed material facts on the issue of whether the School District's property-tax extension violated the PTELL. Defendant also claimed that whether the Hospital was placed on the tax rolls or paid its property taxes were irrelevant because: (1) the Hospital was required to be placed on the tax rolls; (2) the Hospital's failure to pay its property taxes was consistent with the provisions of the Code and pursuant to an order of the circuit court; (3) plaintiff's characterization of the issue served to defeat his claim because inclusion of the Hospital in the PTELL calculations was legally required; and (4) plaintiff's arguments relating to the county clerk's responsibilities following the Department's exemption decision regarding the Hospital were contrary to law.

¶ 12 A hearing on defendant's motion for summary judgment was held on April 13, 2016. Following argument by the parties, the court ruled on the motion for summary judgment. The

court agreed that once the Hospital was declared tax exempt, the property tax attributable to the Hospital "shouldn't be on the books anymore and the taxpayers shouldn't get hit with the [Hospital's] property [tax]." However, the court explained that the PTELL operates "counter to what we've always had in the past" and that "the County Officials have in fact complied with the statute." Accordingly, the court granted defendant's motion for summary judgment. Nevertheless, the court remarked that "[t]here should be some fix in the legislation because there's something wrong with the idea" that property remains "on the books" after it is declared tax exempt from its inception. On May 9, 2016, plaintiff filed a notice of appeal, challenging (1) the April 13, 2016, order granting summary judgment in defendant's favor and (2) the October 14, 2015, order granting defendant's motion to dismiss.

¶ 13 II. ANALYSIS

¶ 14 Prior to addressing the issues raised in this appeal, we note that plaintiff's brief fails to comply with Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016). That rule provides that the appellant's brief shall include a statement of facts which shall contain "the facts necessary to an understanding of the case * * * with appropriate reference to the pages of the record on appeal." In this case, plaintiff's statement of facts is not sufficient to allow for an understanding of the case. Plaintiff's statement of facts consists of three short paragraphs followed by a section entitled "Simplification and Explanation of Illegal Calculation" in which plaintiff sets forth a hypothetical example of how the PTELL was allegedly violated in this case. Further, plaintiff's statement of facts does not contain either (1) a description of the parties' pleadings or the claims raised therein or (2) a description of the procedural history of the case. Plaintiff's failure to provide an adequate statement of facts is compounded by his failure to cite to the record anyplace in his brief. See Ill. S. Ct. R. 341(h)(6), (h)(7) (eff. Jan. 1, 2016) (requiring the

appellant's statement of facts and argument section, respectively, to refer to the pages of the record where the evidence relied on may be found). The supreme court rules governing appellate practice are mandatory, not merely suggestive. *Perona v. Volkswagen of America, Inc.*, 2014 IL App (1st) 130748, ¶ 21. This court has the discretion to strike an appellant's brief and dismiss an appeal for failure to comply with the rules of our supreme court. See *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77. Given that the record in this case is not lengthy, we opt not to take such drastic action in this case. Nevertheless, we admonish plaintiff (who, although *pro se*, is an attorney) to comply with the supreme court rules in all future submissions to this court.

¶ 15 A. Motion to Dismiss

¶ 16 We first address plaintiff's challenge to the October 14, 2015, order granting the motion to dismiss plaintiff's initial complaint, which requested injunctive and declaratory relief. Plaintiff acknowledges that there is a strong preference in the Code for the resolution of tax disputes using the statutory tax-objection procedure. See 35 ILCS 200/23-5 *et seq*. (West 2014). Plaintiff suggests, however, that, under the circumstances of this case, he was entitled to seek injunctive and declaratory relief outside of the statutory tax-contest process. We find that plaintiff has forfeited review of this issue.

¶ 17 In *Foxcroft Townhome Ass'n v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 153 (1983), the supreme court set forth the circumstances under which a party who files an amended complaint forfeits any objection to the trial court's ruling on any former complaints. The court explained that " '[w]here an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be part of the record for most purposes, being in effect abandoned and withdrawn.' " *Foxcroft*, 96 Ill. 2d at 154, quoting *Bowman v. County of Lake*, 29 Ill. 2d 268, 272 (1963). There are several methods by which a plaintiff may avoid the

consequences of the *Foxcroft* rule (*Childs v. Pinnacle Health Care, LLC*, 399 Ill. App. 3d 167, 176 (2010)): (1) stand on the dismissed pleading and file an appeal (*Du Page Aviation Corp., Flight Services, Inc. v. Du Page Airport Authority*, 229 Ill. App. 3d 793, 800 (1992)); (2) file an amended complaint realleging, incorporating by reference, or referring to the claims set forth in the prior complaint (*Doe v. Roe*, 289 Ill. App. 3d 116, 119 (1997)); or (3) appeal from the dismissal order prior to filing an amended pleading that neither refers to nor adopts the dismissed counts (*Brown Leasing, Inc. v. Stone*, 284 Ill. App. 3d 1035, 1043-44 (1996)). In this case, plaintiff did not invoke any of these methods. He did not stand on the dismissed pleading and file an appeal. Instead, he requested permission to file an amended complaint. Further, his amended complaint does not refer to or adopt the prior pleading. See *Tabora v. Gottlieb Memorial Hospital*, 279 Ill. App. 3d 108, 114 (1996) (noting that "[a] simple paragraph or footnote in the amended pleadings notifying defendants and the court that plaintiff was preserving the dismissed portions of his former complaints for appeal" is sufficient to protect against forfeiture under *Foxcroft*). Additionally, plaintiff did not appeal from the dismissal order prior to filing an amended pleading that neither refers to nor adopts the dismissed counts. Rather, he appealed the order dismissing his initial complaint after the trial court ruled on the amended complaint. Given these circumstances, we find that plaintiff has forfeited his claim that relief outside the statutory tax-objection procedure is appropriate in this case.

¶ 18 B. Motion for Summary Judgment

¶ 19 Plaintiff also appeals from the trial court's order of April 13, 2016, granting summary judgment in defendant's favor. Summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." 735

ILCS 5/2-1005(c) (West 2012). A "material fact" is one that might affect the outcome of the case. *Bank of America National Ass'n v. Bassman FBT, LLC*, 2012 IL App (2d) 110729, ¶ 3. In reviewing whether a genuine issue of material fact exists, a court must construe the materials of record strictly against the movant and liberally in favor of the nonmoving party. *St. Martin v. First Hospitality Group, Inc.*, 2014 IL App (2d) 130505, ¶ 9. Although the nonmovant need not prove his case, he must present a factual basis that would arguably entitle him to a judgment in his favor. *Churkey v. Rustia*, 329 Ill. App. 3d 239, 245 (2002). However, a plaintiff "may not resist a motion for summary judgment, on an issue on which he has the burden of proof, by arguing that it is up to the movant to negate his case." *Benner v. Bell*, 236 Ill. App. 3d 761, 769 (1992). We review *de novo* a grant of summary judgment and may affirm on any basis in the record, irrespective of whether the trial court relied on that ground or whether its reasoning was correct. *Allianz Insurance Co. v. Guidant Corp.*, 387 Ill. App. 3d 1008, 1026 (2008).

¶ 20 As noted above, the PTELL limits increases in property tax extensions and amounts levied by taxing districts in non-home-rule counties in which the PTELL is applicable. See *Board of Education of Auburn Community School District No. 10*, 242 Ill. 2d at 275 (citing 35 ILCS 200/18-195 (West 2006)). "The purpose of [the] PTELL 'is to provide citizens greater control over the levy of taxes they are required to pay.' " *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 42 (2009) (quoting *Acme Markets, Inc. v. Callanan*, 378 Ill. App. 3d 676, 684 (2008) (McDade, P.J., dissenting)). In general, taxing districts subject to the PTELL cannot extend taxes at a rate that exceeds the "extension limitation" without referendum approval. *Board of Education of Auburn Community School District No. 10*, 242 Ill. 2d 272 at 275-76 (citing 35 ILCS 200/18-195 (West 2006)). Relevant here, the PTELL defines "extension limitation" as "the lesser of 5% or the percentage increase in the Consumer Price Index during the 12-month

calendar year preceding the levy year." 35 ILCS 200/18-185 (West 2014); see also 35 ILCS 200/18-205 (West 2014). A taxing district subject to the PTELL is also permitted an additional allowance for new property in the taxing district. See 35 ILCS 200/18-185 (West 2014) (defining "new property"); Illinois Department of Revenue, Property Tax Extension Limitation Law: Technical Manual, at 19-20 (December 2013).

¶ 21 The PTELL also imposes a "limiting rate," which is defined in relevant part as:

> "[A] fraction the numerator of which is the last preceding aggregate extension base times an amount equal to one plus the extension limitation defined in this Section and the denominator of which is the current year's equalized assessed value of all real property in the territory under the jurisdiction of the taxing district during the prior levy year. *** The denominator shall not include new property or the recovered tax increment value." 35 ILCS 200/18-185 (West 2014).

The PTELL defines "aggregate extension base" as "the taxing district's last preceding aggregate extension as adjusted under [various sections of the Code]." 35 ILCS 200/18-185 (West 2014). The term "aggregate extension" under the PTELL means "the annual corporate extension for the taxing district and those special purposes extensions that are made annually for the taxing district, excluding special purpose extensions [thereafter listed]." 35 ILCS 200/18-185 (West 2014).

¶ 22 The crux of plaintiff's claim is that the county clerk neglected her statutory responsibilities following the Department's exemption decision regarding the Hospital. According to plaintiff, the county clerk placed the Hospital on the tax rolls on a "provisional basis" pending the Department's exemption decision. Plaintiff asserts, however, that the county clerk was required to *remove* the Hospital's property-tax obligation from the aggregated

extension base after the Hospital was declared tax exempt. Plaintiff claims that the county clerk failed to do so.

¶ 23 Initially, we note that plaintiff presents no specific facts to support his assertion that the county clerk failed to remove the Hospital's property-tax obligation from the aggregated extension base after the Hospital was declared tax exempt. However, even accepting this allegation as true, we do not find that it created a dispute regarding a material fact that would preclude summary judgment in defendant's favor. Plaintiff does not cite any legal authority that would require the county clerk to remove the property-tax allocable to the Hospital from the aggregate extension base once it was declared tax exempt. Thus, plaintiff does not explain how the county clerk's failure to remove the Hospital's property-tax obligation from the aggregate extension base constitutes a factual basis that would arguably entitle him to a judgment in his favor. Instead, plaintiff would have defendant "show that neither the tax exempt amount is not included in the PTELL calculation or the inclusion of the tax exempt amount is legally permissible." However, plaintiff, as the allegedly aggrieved taxpayer, carries the burden of proof in a statutory tax objection proceeding. 35 ILCS 200/23-15(b)(2) (West 2014) (providing that the plaintiff in a tax-objection proceeding "has the burden of proving any contested matter of fact by clear and convincing evidence"). As noted above, a plaintiff "may not resist a motion for summary judgment, on an issue on which he has the burden of proof, by arguing that it is up to the movant to negate his case." *Benner*, 236 Ill. App. 3d at 769. This is what plaintiff attempts to do here.

¶ 24 Moreover, the record shows that the county clerk complied with the PTELL. In support of her motion for summary judgment, defendant attached the affidavit of Dimke, the Jo Daviess County clerk. In the affidavit, Dimke stated that she complied with the necessary procedural

aspects of extending a levy on real property, including the PTELL for the 2014 tax year. Dimke's affidavit provides that the School District requested a levy for 2014 of $9,359,872.[1] Dimke noted that the extension limitation for 2014 was 1.5% and the aggregate extension base for 2013 was $9,081,032.05. Dimke multiplied the aggregate extension base for 2013 by 1.015 to provide a resulting value of $9,217,248. This value became the numerator in Dimke's calculation of the limiting rate. Next, Dimke took the adjusted EAV for all real property within the jurisdiction of the School District ($197,124,715) and subtracted the assessed value of new property ($1,579,125), resulting in a value of $195,545,590. This value became the denominator in Dimke's calculation of the limiting rate. Dimke then divided the numerator ($9,217,248) by the denominator ($195,545,590), resulting in a limiting rate of 4.71361 for the School District's 2014 extension. Dimke noted that the School District's requested levy for 2014 in the amount of $9,359,872 resulted in a limiting rate of 4.748250. This was in excess of the maximum limiting rate calculated by Dimke. Accordingly, she reduced *pro rata* the line items included within the School District's levy so that the extension would comply with the limits imposed by the PTELL. See 35 ILCS 200/18-195 (West 2014) ("If the county clerk is required to reduce the aggregate extension of a taxing district by provisions of this Law, the county clerk shall proportionally reduce the extension for each fund unless otherwise requested by the taxing district."). Dimke attached to her affidavit the worksheets she used to calculate these figures. Thus, the record establishes that the taxes extended in 2014 did not exceed the extension limitation provided for in the PTELL. There being no disputed issue of material fact, defendant was entitled to summary judgment as a matter of law.

[1] In this appeal, plaintiff does not expressly raise the issue of the PTELL's applicability to the College District. Thus, we limit our discussion to the School District.

¶ 25 III. CONCLUSION

¶ 26 For the reasons set forth above, we affirm the judgment of the circuit court of Jo Daviess County, which granted defendant's motion for summary judgment.

¶ 27 Affirmed.