2011 IL App (4th) 100947-U

Filed 09/23/11

NO. 4-10-0947

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WILLIAM D. SPENCER,	)	Appeal from
Plaintiff-Appellee and Cross-Appellant,	)	Circuit Court of
v.	)	DeWitt County
CHRISTY LONG, DeWitt County Treasurer and Collector,	)	No. 10CH18
Defendant-Appellant and Cross-Appellee.	)	
	)	Honorable
	)	Michael G. Carroll,
	)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Presiding Justice Knecht and Justice Cook concurred in the judgment.

ORDER

¶ 1 *Held*: Taxpayer's claim fit within unauthorized-by-law exception to common law rule, and thus circuit court had subject matter jurisdiction to rule on the merits of taxpayer's suit; DeWitt County Board could not amend levies where levies were unauthorized by law; and trial court properly granted injunctive relief to all DeWitt County taxpayers.

¶ 2 On March 29, 2010, plaintiff, William D. Spencer, filed a complaint for injunctive relief in the circuit court of DeWitt County against defendant, DeWitt County Treasurer and Collector Christy Long, seeking to enjoin defendant from imposing or collecting property tax levied in seven categories "unauthorized by law." On October 25, 2010, the court entered an order granting plaintiff permanent injunctive relief.

¶ 3 Defendant appeals, arguing (1) the circuit court lacked subject matter jurisdiction over the action, (2) the DeWitt County Board should have been allowed to amend its levy, and (3) the court improperly granted relief to all taxpayers. We affirm.

¶ 4 On November 30, 2009, the DeWitt County Board (Board) passed its budget for the fiscal year beginning December 1, 2009, which included the Board's appropriations ordinance and annual tax levy. The Board's aggregate levy included its general corporate levy and a number of separate levies, including: (1) $15,000 "for the payment of contractual services" for "County Audit Fund purposes," (2) $127,000 "for the payment of election and permanent registration expenses," (3) $35,000 "for the payment of contractual services" for "Supervisor of Assessments Fund purposes," (4) $43,000 for salaries, supplies, publishing, and other costs for "Property Record Cards purposes," (5) $2,000 "for the preparation of assessment maps," (6) $36,000 for "Emergency Services and Disaster Agency purposes," and (7) $27,000 "for the purposes of defraying the costs of extending and collecting tax monies."

¶ 5 On March 29, 2010, plaintiff filed a four-count complaint for injunctive relief. Count I alleged the seven separate levies were unauthorized by law because "[t]here is no statutory authority authorizing DeWitt County to levy for the specific purposes for each of the [seven separate] levies." Counts II, III, and IV raised claims alleging an unlawful accumulation of funds.

¶ 6 On April 28, 2010, defendant filed a motion to dismiss the complaint for injunctive relief. With respect to count I, defendant argued that section 5-1024 of the Counties Code (55 ILCS 5/5-1024 (West 2008)) authorized the Board to levy for general corporate purposes and submitted that, although the budget, appropriation, and levies "may have been inartfully drafted," the Board nonetheless acted pursuant to statutory authority with respect to those seven purposes challenged by plaintiff. Defendant also argued that counts II, III, and IV constituted no more than belated attempts to pursue tax objections.

¶ 7 Following a hearing on May 21, 2010, the circuit court granted defendant's motion to dismiss as to counts II, III, and IV. The court took count I under advisement and directed the parties to submit additional briefs as to count I by June 1, 2010.

¶ 8 On June 1, 2010, defendant filed a response to the court's request for additional information. Defendant characterized count I "as a premature tax objection." Defendant explained, "Tax objections are made after the complaining party has received his tax bill and then pays same under protest. That is not the case here[,] as Mr. Spencer has yet to receive his tax bill from DeWitt County."

¶ 9 On June 1, 2010, defendant also filed a motion to amend the 2009-2010 DeWitt County annual budget, appropriations bill, and tax levies filed with the DeWitt County Recorder on December 28, 2009. Defendant submitted that the seven levies challenged in the complaint, when coupled with the county's levy for general corporate purposes, did not in the aggregate exceed the statutory maximum established by section 5-1024 of the Counties Code. Thus, pursuant to section 23-40 of the Property Tax Code (35 ILCS 200/23-40 (West 2008)), which provides for the correction of an error or informality in a levy by amendment, defendant requested leave to amend the disputed tax levies to place them in the general corporate levy.

¶ 10 In plaintiff's response to the motion to amend, plaintiff acknowledged that the contested levies were made for "legitimate purposes" but argued that they should have been included as items under the heading of the county's general corporate levy. Plaintiff disagreed that the amendment of the general corporate levy was appropriate because it would cause the aggregate amount or rate of the original corporate levy to increase. Hence, plaintiff claimed that section 23-40 of the Property Tax Code did not provide a remedy for the county's "inartfully

drafted" levies.

¶ 11 On June 2, 2010, plaintiff filed a motion for summary judgment as to count I of the complaint. Plaintiff argued that taxing authorities do not have the right to levy taxes for expenses not authorized by statute. Defendant responded that the seven levies complained of were actually part of the general corporate fund.

¶ 12 On June 10, 2010, the circuit court entered an order and a letter ruling, each granting plaintiff's request for a preliminary injunction. The court found it "uncontroverted" that the Board had no authority to levy for those seven challenged items. The court rejected defendant's argument that levying for those seven purposes separately instead of including them within the general corporate levy constituted minor errors of draftsmanship. The court found "the mere potential for mischief justifies labeling this practice more than minor or a matter of poor draftsmanship."

¶ 13 Further, the circuit court denied defendant's request to amend the general corporate levy stating that section 23-40 of the Property Tax Code "states quite clearly that 'the aggregate amount of rate of the original levy shall not be increased by an action taken under this section.' " Finally, the court noted that although plaintiff was not representing all taxpayers, "the practical effect is to affect all taxpayers."

¶ 14 On June 25, 2010, defendant recreated the real estate tax bills for properties in DeWitt County by removing the taxes for the seven challenged items, and thereafter mailed the bills to DeWitt County taxpayers.

¶ 15 On October 25, 2010, the circuit court entered an order granting plaintiff a permanent injunction. In a separate letter ruling, also entered on October 25, 2010, the court

opined that count I of the complaint was moot because the tax bills had been regenerated to comply with the preliminary injunction and mailed to DeWitt County taxpayers. According to the court:

> "Defendant indicated they simply had run out of time and felt compelled to modify the tax bill. That being the case, the allegations in Count I are moot insofar as the tax year in question is not longer subject to the objections of the Plaintiff, and, further, it is premature to inquire as to future tax bills."

¶ 16 However, the court stated it would "issue the ruling that would have been issued had the matter not been moot." In the letter ruling, the court found that "levying for taxes for a specific item without statutory authority [is] 'unauthorized by law' under any definition." Further, the court found the seven unauthorized funds to be more than "a minor irregularity *** [i]t is a fundamental, seminal, fatal budgeting error." Although the court acknowledged that "any curative amending is severely problematic," it simply was not possible for the Board to increase a stated levy after the deadline (approximately December 2009) had passed.

¶ 17 This appeal followed.

¶ 18 Before this court, defendant argues the circuit court lacked subject matter jurisdiction to consider count I of plaintiff's complaint and grant injunctive relief. Although plaintiff argues this appeal is moot, a reviewing court has an obligation to take notice of matters which go to the jurisdiction of the circuit court in the case before it. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334, 770 N.E.2d 177, 184 (2002).

> " '[S]ubject matter jurisdiction' refers to the power of a court to

> hear and determine cases of the general class to which the proceeding in question belongs. [Citations.] With the exception of the circuit court's power to review administrative action, which is conferred by statute, a circuit court's subject matter jurisdiction is conferred entirely by our state constitution. *** Thus, in order to invoke the subject matter jurisdiction of the circuit court, a plaintiff's case, as framed by the complaint or petition, must present a justiciable matter." *Belleville Toyota*, 199 Ill. 2d at 334-35, 770 N.E.2d at 184.

¶ 19 A "justiciable matter" is a controversy appropriate for review by the this court, in that it is definite or concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse interests. *Belleville Toyota*, 199 Ill. 2d at 335, 770 N.E.2d at 185. Therefore, we consider the jurisdictional issue raised by defendant.

¶ 20 An argument challenging the subject matter jurisdiction of the circuit court presents a question of law that this court will review *de novo*. *Blount v. Stroud*, 232 Ill. 2d 302, 308-09, 904 N.E.2d 1, 6 (2009). Moreover, the arguments of the parties present an issue of statutory construction, which is also a matter that this court reviews *de novo*. *In re Donald A.G.*, 221 Ill. 2d 234, 246, 850 N.E.2d 172, 179 (2006).

¶ 21 Both parties acknowledge the "unauthorized by law" doctrine as one exception to the general common law rule that in the field of taxation and revenue cases, equity will not assume jurisdiction to grant relief where a "complete and adequate remedy" at law exists. *Lackey v. Pulaski Drainage District*, 4 Ill. 2d 72, 78, 122 N.E.2d 257, 260 (1954); see also

Clarendon Associates v. Korzen, 56 Ill. 2d 101, 107, 306 N.E.2d 299, 301 (1973). The parties disagree, however, as to whether the doctrine is applicable under the particular circumstances of the present case.

¶ 22 Public officials have no taxing power except that which is delegated to them by the legislature. *Santiago v. Kusper*, 133 Ill. 2d 318, 325, 549 N.E.2d 1251, 1254 (1990). The obligation of citizens to pay taxes is purely a statutory creation, and taxes can be levied, assessed and collected only in the manner expressly spelled out by statute. *People ex rel. Eitel v. Lindheimer*, 371 Ill. 367, 371, 21 N.E.2d 318, 319 (1939). A tax is therefore "unauthorized" when the taxing body has no statutory power to tax. See, *e.g.*, *Wood River Township v. Wood River Township Hospital*, 331 Ill. App. 3d 599, 606, 772 N.E.2d 308, 315 (2002).

¶ 23 Generally, a taxpayer is limited to first exhausting administrative remedies provided by statute before seeking relief in the circuit court. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 295, 948 N.E.2d 1, 10 (2010). The Property Tax Code (35 ILCS 200/1--1 through 1-155 (West 2008). is a comprehensive statute regulating the assessment and collection of taxes. *In re Application of the County Treasurer*, 214 Ill. 2d 253, 262, 824 N.E.2d 614, 619 (2005). Sections 16–95 and 16–120 together provide that the Board of Review may revise or correct an assessment as appears to be just on complaint by a taxpayer that "any property is overassessed, underassessed, or exempt." 35 ILCS 200/16--95, 16-120 (West 2008). The taxpayer then has the option of either appealing to the Property Tax Appeal Board (35 ILCS 200/16--160 (West 2008)) or filing a tax objection complaint in circuit court specifying "any objections *** to the taxes in question" (35 ILCS 200/23–15 (West 2008)). Thus, the adequate remedy at law is to pay the taxes under protest and file a statutory objection. *North Pier*

Terminal Co. v. Tully, 62 Ill. 2d 540, 546, 343 N.E.2d 507, 510 (1976).

¶ 24 However, this general rule is subject to two exceptions. See *Clarendon Associates*, 56 Ill. 2d at 111, 306 N.E.2d at 301. A taxpayer need not look to the remedy at law but may seek relief by way of injunction (1) where the tax is unauthorized by law or (2) where it is levied upon property exempt from taxation. *Clarendon Associates*, 56 Ill. 2d at 111, 306 N.E.2d at 301. These two situations constitute independent grounds for equitable relief and in such cases it is not necessary that the remedy at law be inadequate; the taxpayer may elect to pursue either injunction or remedy at law. *Clarendon Associates*, 56 Ill. 2d at 111, 306 N.E.2d at 301.

¶ 25 Defendant argues that the seven challenged levies were authorized in this case based on the authority given to the Board under section 5-1024 of the Counties Code (55 ILCS 5/5--1024 (West 2008)). Specifically, that section provides as follows:

> "A county board may cause to be levied and collected annually, except as hereinafter provided, taxes for county purposes, including all purposes for which money may be raised by the county by taxation *** in counties with less than 80,000 but more than 15,000 inhabitants at a rate not exceeding .27% of the value as equalized or assessed by the Department of Revenue *** except taxes levied under Section 5-1025 to pay the expenses of elections, *** and except taxes levied under Section 3a of the Revenue Act of 1939 for the purposes of helping to pay for the expenses of the assessor's office, *** and except taxes levied pursuant to Section

19 of 'The Illinois Emergency Services and Disaster Agency Act of 1975', as now or hereafter amended ***." 55 ILCS 5/5--1024 (West 2008).

¶ 26 Defendant admits that following amendments to the Counties Code, effective January 1, 1986, the maximum rate at which counties could collect general-purpose taxes more than doubled. See *Board of Election Commissioners of City of Peoria v. County of Peoria*, 182 Ill. App. 3d 567, 568, 539 N.E.2d 753, 754 (1989). At the same time, the amendments abolished a number of special-purpose tax levies, including the seven challenged levies in this case. Defendant offers that "[o]nce upon a time, Illinois statutes provided for separate levies and separate tax rate caps for these purposes. Thus, it appears that the County's practice of preparing separate levy documents for these seven items that Taxpayer has challenged is largely a holdover from earlier law."

¶ 27 We find defendant's arguments unpersuasive. There is no statutory authority for the seven challenged levies. This court cannot condone a practice based on law that no longer exists. The Board was not authorized by law to assess the seven challenged levies. Thus, plaintiff's claim that the seven challenged levies were not authorized fits squarely within the unauthorized-by-law exception, which allows challenges to be brought directly in circuit court without resort to any statutory remedy that might be applicable. The circuit court had subject matter jurisdiction to rule on the merits of plaintiff's suit for injunctive relief.

¶ 28 Citing section 23-40 of the Property Tax Code (35 ILCS 200/23--40 (West 2008)), defendant next argues the Board should have been allowed to amend its levy. Defendant suggests the aggregate of the general corporate levy and the seven challenged levies was within

statutory parameters. Further, defendant characterizes the inclusion of the seven levies as "merely a procedural error or an irregularity on the part of the County and taxing officials."

¶ 29 In this case, the circuit court expressed concern that "the segregated levies, when combined with the corporate general levy, might, in fact, exceed the cap limits for corporate general." The court noted that plaintiff alleged the limits were exceeded in eight of the last ten fiscal years. Further, the court opined:

> "[T]he mere potential for mischief justifies labeling this practice as more than minor or a matter of poor draftsmanship. Secondly, this practice might be used to circumvent the Truth in Taxation Rules of alerting citizens that tax officials have increased taxes more than 105% from the previous year. These potentials, plus the fact that the law does not authorize levies for the seven funds in question, renders the practice as serious and not inconsequential."

¶ 30 Section 23-40 of the Property Tax Code provides:

> "In all judicial proceedings concerning the levying and collection of taxes, an error or informality of any officer or officers in making any tax levy or in certifying or filing the levy not affecting the substantial justice of the levy itself, shall not vitiate or void the levy or affect the tax. When the error or informality in a levy, its certification, filing or publication can be corrected by amendment, or a levy can be sufficiently itemized, the purpose defined and made certain by amendment, made prior to the entry of any order

> of court affecting the levy or the collection of taxes thereon, an amendment or amendments, certification, filing or publication may be made by the taxing bodies affected. The ordinance, resolution, publication or certificate, as amended, certified, filed or published, shall, upon proof of such amendment or amendments, certification, filing or publication being made to the court, have the same force and effect as though originally adopted, published, filed and certified in the amended form. The aggregate amount or rate of the original levy shall not be increased by an action taken under this Section. A statute terminating the time within which appropriations or tax levies may be made, published, certified or filed, shall not apply to any republication, recertification or refiling, or to any amendment or revision authorized or permitted by this Section." 35 ILCS 200/23--40 (West 2008).

¶ 31 We note the "error or informality" referenced by section 23-40 must not affect the substantial justice of the levy itself. 35 ILCS 200/23--40 (West 2008). In this case, the Board was not authorized by law to assess the seven challenged levies, clearly affecting the substantial justice of the assessment of taxpayer property and the levies themselves. Further, the section provides that "[t]he aggregate amount or rate of the original levy shall not be increased by an action taken under this Section." 35 ILCS 200/23-40 (West 2008). The aggregate of the eight separate levies clearly increases the original general corporate levy in violation of section 23-40 of the Property Tax Code. In this case, allowing the amendments provides the Board an

opportunity to impose a tax which it had no power to impose.

¶ 32 Finally, defendant argues the circuit court improperly granted "class-wide relief" which is expressly prohibited by the Property Tax Code. Initially, we note defendant is correct that the Property Tax Code expressly precludes class actions in tax objection proceedings. See 35 ILCS 200/23-15(a) ("no [tax objection] complaint shall be filed as a class action"). However, plaintiff did not file a tax objection complaint and did not seek class-action certification. Instead, plaintiff filed a complaint for injunctive relief alleging the seven challenged levies were unauthorized by law.

¶ 33 In enjoining defendant from levying taxes for the 2009-2010 fiscal year for the seven challenged funds, the circuit court stated:

> "[T]he court sees no procedure whereby it can limit the injunction to just the tax the Plaintiff has paid or will pay under the theory that the Plaintiff is not representing all taxpayers. Plaintiff has sought injunctive relief and Plaintiff can receive injunctive relief even though a legal remedy may exist. The injunctive relief is clear: preventing the County from issuing illegal levies. The practical effect is to affect all taxpayers. "

Under the circumstances of this case, the trial court properly granted the injunctive relief to all DeWitt County taxpayers.

¶ 34 For the reasons stated, we affirm the trial court's grant of injunctive relief in favor of plaintiff.

¶ 35 Affirmed.

NO. 4-10-0947

Supplemental Order filed
October 24, 2011

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WILLIAM D. SPENCER,	)	Appeal from
Plaintiff-Appellee and Cross-Appellant,	)	Circuit Court of
v.	)	DeWitt County
CHRISTY LONG, DeWitt County Treasurer and Collector,	)	No. 10CH18
Defendant-Appellant and Cross-Appellee.	)	
	)	Honorable
	)	Michael G. Carroll,
	)	Judge Presiding.

JUSTICE McCULLOUGH delivered the supplemental judgment of the court.
Presiding Justice Knecht and Justice Cook concurred in the supplemental judgment.

SUPPLEMENTAL ORDER

¶ 36 Following oral argument on September 20, 2011, this court issued an order filed on September 23, 2011. See *Spencer v. Long*, 2011 IL App (4th) 100947-U.

¶ 37 On October 3, 2011, plaintiff, William D. Spencer, filed a motion for rehearing in which he states he filed "a Cross Notice of Appeal" on November 19, 2010, from the entry of the trial court's order on June 8, 2010. Plaintiff admits that "for some unknown reason *** he did not file his Cross Appeal Appellant Brief." Plaintiff requests to "file his brief immediately" and that this court then "issue a revised Order or oral argument as the Court deems fit."

¶ 38 Illinois Supreme Court Rule 343(b)(1) (eff. July 1, 2008)) states, in relevant part, that "[a] cross-appellant shall file a *single* brief as appellee and cross-appellant at the time his brief as appellee is due." (Emphasis added.) Illinois Supreme Court Rule 341(h)(7) (eff. July 1,

2008) requires an appellant, or in this case a cross-appellant, to provide citations to relevant authority supporting arguments advanced on appeal. See *People v. Manoharan*, 394 Ill. App. 3d 762, 772, 916 N.E.2d 134, 143 (2009).

¶ 39 In the present case, plaintiff's brief only contains arguments in response to defendant's brief; plaintiff's brief failed to make any argument, or, consequently, cite authority regarding issues raised in his cross-appeal relative to the order set forth in his notice of appeal. "[T]he failure to argue a point in the appellant's opening brief results in forfeiture of the issue." *Vancura v. Katris*, 238 Ill. 2d 352, 369, 939 N.E.2d 328, 340 (2010). Both argument and citation to relevant authority in the brief are required. *Vancura*, 238 Ill. 2d at 370, 939 N.E.2d at 340. Although plaintiff's counsel made some reference at oral argument, this does not cure the failure to address these points in his opening and reply briefs. We therefore dismiss plaintiff's cross-appeal based on his failure to comply with Supreme Court Rules 341 and 343. See *People v. Kraft*, 277 Ill. App. 3d 221, 660 N.E.2d 114 (1995).

¶ 40 For the reasons stated, we deny plaintiff's motion for rehearing and dismiss plaintiff's cross-appeal for failure to comply with Illinois Supreme Court Rules 341 and 343.

¶ 41 Motion for rehearing denied; cross-appeal dismissed.