IN THE COURT OF APPEALS OF IOWA

No. 0-058 / 09-0403
Filed May 12, 2010

IOWA COAL MINING COMPANY,
Plaintiff-Appellee/Cross-Appellant,

vs.

MONROE COUNTY, IOWA,
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Monroe County, Daniel P. Wilson, Judge.

Defendant appeals, and plaintiff cross-appeals, from the district court's ruling in regard to the assessment of real estate taxes, interest, and penalty against several parcels of land. **REVERSED ON APPEAL; AFFIRMED ON CROSS-APPEAL.**

Steven E. Goodlow, Albia, and Leslie Peters, Avoca, for appellant.

R. Jeffrey Lewis and Kimberly P. Knoshaug of Lewis, Webster, Van Winkle & Knoshaug, L.L.P., Des Moines, for appellee.

Heard by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

Monroe County appeals, and Iowa Coal Mining Company (Iowa Coal) cross-appeals, the district court's ruling in regard to the assessment of real estate taxes, interest, and penalties[1] against several parcels of land in Monroe County. We reverse on appeal and affirm on cross-appeal.

I. Background Facts and Proceedings.

Iowa Coal is a coal mining company with its principal place of business in Monroe County. Iowa Coal began business in 1978. At its peak, Iowa Coal had over 100 employees and saw profits of several million dollars per year. However, as the coal mining industry changed and grew more competitive, Iowa Coal was unable to adapt (in part due to the actions of Monroe County), and ceased active involvement in the coal mining business in 1988.[2] Since that time, and for the majority of the past twenty years, these parties have been embroiled in litigation in some form or another.

In 1984 Iowa Coal sought to combine its coal mining with a solid waste landfill to increase business profitability. From 1984 to 1987 Iowa Coal expended substantial time and money to prepare two of its properties ("Star 6" and "Star 14") to serve as a landfill. Monroe County, however, made it clear it was opposed to the concept of combining strip mining and a landfill. Ultimately, in May 1988 (one day before Iowa Coal received a landfill permit for the grounds

[1] The parties refer to "penalties" as we do; however, in addition to interest, only additional fees and costs accrued.

[2] In 1990 Iowa Coal agreed to convey two of its properties (with landfilling permits on each) to an investment group for $5 million and an estimated $4 million in future royalty payments, but the investment group abandoned the contract because the group could not gain any cooperation from Monroe County.

from the Iowa Department of Natural Resources (DNR)), Monroe County enacted a zoning ordinance aimed at extinguishing all nonconforming uses of land—which included Iowa Coal's coal mining and landfilling operation.

In 1988 Iowa Coal filed suit in district court challenging the validity of the zoning ordinance. The district court entered a ruling determining Monroe County had acted illegally and outside of the scope of its authority in enacting the ordinance. After a separate trial on damages, the court entered a damage award in favor of Iowa Coal in excess of $15 million. On appeal, among other findings, our supreme court reversed the damages award. *See Iowa Coal Mining Co. v. Monroe County*, 494 N.W.2d 664, 670-72 (Iowa 1993) ("*Iowa Coal I*").

Following the supreme court's ruling in *Iowa Coal I*, Iowa Coal filed another suit in district court in 1993. Iowa Coal again sought to defeat the zoning ordinance and also asserted a takings claim and an intentional interference with a business relationship claim. The district court awarded nearly $4 million on the takings and tortious interference claims, and James Huyser (president and sole shareholder of Iowa Coal) was awarded in excess of $1.75 million. On appeal, the supreme court affirmed the award for the tortious interference claim in the amount of approximately $3 million but reversed on the takings claim and the judgment in favor of Huyser. *See Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d 418, 445 (Iowa 1996) ("*Iowa Coal II*").

In 1988, after Monroe County enacted the zoning ordinance, Iowa Coal stopped paying real estate taxes on two of its properties ("Star 10" and the

"Wash Plant").[3] In early 1992, Iowa Coal received delinquent tax notices from Sandra Clark, the Monroe County Treasurer, and notice that a tax sale would occur in June 1992. In May 1992 Iowa Coal filed a petition for injunction against Monroe County and Treasurer Clark. In the petition, Iowa Coal noted the previous litigation between the parties and the pending appeal before the supreme court (*Iowa Coal I*), and it requested the court enjoin Monroe County from taking any action to sell Iowa Coal's property until a final decision had been made in *Iowa Coal I*. However, the petition did not request that the accrual of interest or penalties be enjoined or abated while the injunction was in effect. The district court granted the injunction on June 8, 1992, stating in part:

> At the time of hearing, plaintiffs (Iowa Coal and Huyser) stipulated that they would be willing to assign whatever portion of their judgment is necessary to pay the delinquent taxes, interest and penalty, if their judgment is affirmed on appeal.
>
> . . . .
>
> IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that an injunction issue enjoining the defendants, Treasurer of Monroe County, Iowa and Monroe County, Iowa from selling any real estate of the plaintiffs at a tax sale scheduled for June 15, 1992, or at any time thereafter until 30 days after a final decision by the Iowa Supreme Court on the present pending appeal.
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> . . . .
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment, or so much of the judgment, if affirmed, as is necessary to satisfy the delinquent tax lien plus interest and penalty shall be assigned to Monroe County, Iowa.
>
> IT IS FURTHER ORDERED that the continuing running of the penalty and interest shall not be abated.

[3] Iowa Coal had previously stopped paying taxes on the Wash Plant from 1984 through 1988, in protest of Monroe County's alleged failure to apply the appropriate pollution control tax exemption to the property. However, Iowa Coal paid the delinquent tax payments in 1988, prior to initiating litigation with Monroe County.

The supreme court issued its decision in *Iowa Coal I* on January 20, 1993.[4] According to the district court's June 8, 1992 injunction, any "tax sale [shall] be stayed until thirty days after the final resolution of [*Iowa Coal I*]."

Meanwhile, Iowa Coal filed a petition for writ of certiorari in *Iowa Coal I* to the United States Supreme Court. On April 14, 1993, Iowa Coal filed an amended petition for injunction with the district court, requesting that Monroe County continue to be enjoined from conducting a tax sale until the United States Supreme Court made a decision on the writ of certiorari. On May 5, 1993, after a hearing, the district court denied Iowa Coal's amended petition for injunction and formally lifted the injunction against Monroe County in regard to the county's enforcement of Iowa Coal's real property tax obligations. Accordingly, we believe the injunction terminated thirty days after the supreme court's decision on January 20, 1993, or at least no later than April 14, 1993.

After the supreme court issued its decision in *Iowa Coal I* in January 1993, the Monroe County Attorney instructed Treasurer Clark to proceed with a tax sale on Star 10 and the Wash Plant properties. *See* Iowa Code §§ 445.36(3), 446.7, 446.9 (2007). As Treasurer Clark testified during cross-examination by the Monroe County Attorney:

> Q. . . . And in '93, you were informed again by the County Attorney, were you not? A. Yes.
> Q. And what were you informed at that time? A. To proceed to tax sale.
> Q. Okay. And then so what did you do then? A. That means that the February notice needed to be mailed and they

[4] We have not been apprised of the date that procedendo was issued, but Iowa Coal has not raised this issue and presumably it was issued prior to April 14, 1993, when Iowa Coal filed its amended petition seeking an extension of the injunction.

> were, and the May notices needed to be mailed and they were, and it needed to be advertised in the paper.
>
> Q. Okay. So you know for a fact they were mailed? A. Yes.[5]

The properties were advertised on the delinquent tax list for the annual tax sale in June 1993 in the Albia Union Republic Newspaper.

A bidder purchased the properties in the 1993 tax sale but failed to pay the subsequent taxes, and the sale fell through. Therefore, the properties were offered for public bidder sale in 1994. *See* Iowa Code § 446.18. After giving notice to Iowa Coal, the properties were advertised on the June 1994 delinquent tax list in the Albia Union Republic Newspaper. As Treasurer Clark testified:

> Q. Were there any buyers on any of those properties in June of '93? A. Four of the parcels went to a private individual at the regular sale.
>
> Q. Okay, what happened to the rest? A. Nothing happened to them. They were just carried over and remained delinquent until the next tax year.
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> Q. So then in June of '94, we would publish again, is that accurate? A. That is accurate.

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[5] Although Treasurer Clark indicated such notices were sent to Iowa Coal, she could not verify that they were received because she did not know if the notices were returned to her office, and her office does not keep permanent records of such notices. As Treasurer Clark testified during cross-examination by the Monroe County Attorney:

> Q. Ms. Clark, what is your understanding that the Iowa Code or Iowa Treasurer's Association requires of you in retaining notices that have been sent to tax payers? A. There is no requirement to retain notices.
>
> Q. Okay. What is the Monroe County Treasurer's policy regarding retaining notices? A. I keep them for one year as a courtesy to my customers.
>
> Q. Why do you keep them for a year? A. I keep them for a year in case there is a bad address on them. A customer calls or comes to the counter and inquires about why he didn't get his tax statement. We go into the dead letter file, find it, get an address correction and mail him his statements.
>
> Q. Would it be a fair statement that most of them are not retained because most parcels get sold at tax sale? You wouldn't keep them? A. I keep no notices other than the returned ones for one year.

> Q. And why would we publish the second year then? A. Prescribed by Code. This time they would be listed as public bidder since they had been advertised twice.

Monroe County received no bidders on the properties in the June 1994 public bidder sale. Monroe County then bid an amount equal to the total sum due on the properties and acquired the tax sale certificates to Star 10 and the Wash Plant. *See* Iowa Code § 446.19. Taxes and interest continued to accrue on the properties from the date of the sales. Interest on delinquent taxes accrued at eighteen percent per annum, and post-tax sale interest accrued at twenty-four percent per annum.[6]

Although Iowa Coal received notice of the sale scheduled in 1992, Iowa Coal maintains it never received notice of the tax sale of the properties in 1993 after the injunction was dissolved or of the public bidder sale in 1994. Iowa Coal further alleges it never received notice from Monroe County that the properties were sold.

Monroe County took no further action until 2005. At that time, the county moved forward to obtain a treasurer's tax deed for the properties. In February 2005 Monroe County served Iowa Coal with a ninety-day notice of redemption to notify Iowa Coal that it was taking a treasurer's tax deed to the properties. Iowa Coal maintains it first learned of the tax sales in early May 2005, when it received a "Notice of Expiration—Public Bidder."[7]

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[6] Post-tax sale interest is charged on both delinquent taxes and the eighteen percent pre-tax sale accumulated interest. *See* Iowa Code §§ 445.39, 447.1.

[7] "A Notice of Expiration—Public Bidder" is served to the person in whose name real estate is taxed, notifying the person that a tax sale has been conducted of the property and further notifying of the deadline for the ninety-day right of redemption to the property.

At that time, Iowa Coal was in negotiations to complete a sale of the Star 10 property to the DNR. Although Iowa Coal now disputes by this action the amount in interest and penalties that accrued on the Star 10 property over the past eleven years, Iowa Coal made the decision to redeem Star 10 in order to preserve its right to sell the property to the DNR. To redeem Star 10, Iowa Coal paid interest and penalties in the amount of $79,485, in addition to approximately $40,000 in taxes.[8]

Iowa Coal understood that Monroe County intended to issue itself a treasurer's deed to the Wash Plant property. In November 2006 Iowa Coal filed the instant petition and application for temporary and permanent injunction against Monroe County, relying in part upon the theory of unjust enrichment. Iowa Coal requested that (1) Monroe County be prevented from issuing itself a treasurer's deed to the Wash Plant property; (2) the court adjudicate the rights of the parties and relieve Iowa Coal of the excessive and unfair redemption amount Monroe County sought to redeem the Wash Plant property; and (3) the court order reimbursement to Iowa Coal for overpayment of interest and penalties that Iowa Coal made to Monroe County to redeem Star 10.

The district court entered a temporary injunction on December 7, 2006. Monroe County filed a motion for summary judgment on December 13, 2007, which was resisted by Iowa Coal. A hearing was held on the motion, and the court entered a ruling denying the motion on May 8, 2008. Trial on Iowa Coal's petition took place on September 16 and October 7, 2008. The court entered its ruling on January 10, 2009, finding (1) Monroe County would be unjustly

[8] Iowa Coal later sold Star 10 to the DNR for $750,000.

enriched if allowed to collect interest and penalties from 1993 to 2008 for the Wash Plant property,[9] but (2) Iowa Coal should not be reimbursed for the payment of the interest and penalties for the redemption of the Star 10 property. Monroe County filed a motion to enlarge and amend the court's findings, which was denied. Monroe County now appeals, and Iowa Coal cross-appeals, from the ruling of the district court.

II. Standard of Review.

When an action is tried in equity, our review is de novo. Iowa R. App. P. 6.907; *see Orr v. Mortvedt*, 735 N.W.2d 610, 613 (Iowa 2007). We give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.904(3)(*g*); *Owens v. Brownlie*, 610 N.W.2d 860, 865 (Iowa 2000). In regard to Iowa Coal's claims involving statutory interpretation, our review is for corrections of errors at law. *Day v. Finley Hosp.*, 769 N.W.2d 898, 900 (Iowa Ct. App. 2009).

III. Issue on Appeal.

Monroe County contends the district court erred in finding the principles of unjust enrichment applied to the dispute between Monroe County and Iowa Coal. As the district court determined:

> The court finds that Iowa Coal is entitled to some relief on the property tax question under the doctrine of unjust enrichment. Under this doctrine, principles of equity require that one party should not be unjustly enriched, at the expense of another. *West Branch State Bank v. Gates*, 477 N.W.2d 848 (Iowa 1991).
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> Pre tax sale interest on real estate taxes is 18% per annum. Post tax sale interest is 24% per annum. Given the extraordinary circumstances and previous litigation between Monroe County and

[9] The court determined Iowa Coal was obligated to pay past taxes for tax years 1989-90 through 2007-08, totaling $64,292.

> Iowa Coal over a term of many years, it would be inequitable and Monroe County would be unjustly enriched if it was permitted to collect interest and penalty on the unpaid taxes. The court is not inclined to reward the county for waiting 12 to 14 years to take the steps necessary to collect the taxes due on the Wash Plant property. However, equity and justice require that Monroe County be paid for the tax due for the years in question.[10]

Monroe County contends the district court's finding that the county would be unjustly enriched if it were permitted to collect the interest and penalties on the unpaid taxes "ignores both the statutory framework for collecting property tax and the basic principles of unjust enrichment."[11] For the reasons to follow, we agree.

A. Unjust Enrichment.

According to the equity doctrine of unjust enrichment, a person should not be unjustly enriched at the expense of another or receive property or benefits without paying just compensation. *Credit Bureau Enters., Inc. v. Pelo*, 608 N.W.2d 20, 25 (Iowa 2000), *superseded by statute on other grounds*, Iowa Code § 230.1(3) (Supp.1999), *as recognized in Tama County v. Grundy County*, 648 N.W.2d 83, 84 (Iowa 2002). To recover under the doctrine, Iowa Coal had to prove "(1) [Monroe County] was enriched by the receipt of a benefit; (2) the enrichment was at the expense of [Iowa Coal]; and (3) it is unjust to allow [Monroe County] to retain the benefit under the circumstances."[12] *See*

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[10] The court proceeded to calculate the taxes owed by Iowa Coal on the Wash Plant property to be $64,292.

[11] Monroe County also raises the doctrine of avoidable consequences in support of its argument on this issue. However, because we find that no relief should be granted to Iowa Coal for unjust enrichment, we need not discuss the applicability of the doctrine of avoidable consequences.

[12] In *Iowa Waste Systems, Inc. v. Buchanan County*, 617 N.W.2d 23, 30 (Iowa Ct. App. 2000), this court cited a fourth "element": the absence of an at-law remedy that can appropriately address the claim. Our supreme court clarified that this is not a required element of proof, but a "general limitation on the exercise of equity jurisdiction . . . ." *Dep't of Human Servs. ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 155 n.2

Department of Human Servs. ex rel. Palmer v. Unisys Corp., 637 N.W.2d 142, 154-55 (Iowa 2001). As a part of its unjust enrichment argument, Iowa Coal lumps together claims that it was not given a pollution control tax credit; was not given proper notice of the tax sale; and the inequity regarding the sheer passage of time along with the substantial amount of interest imposed.

The first two elements of unjust enrichment are essentially undisputed.[13] Therefore, the question is whether it would be unjust to allow Monroe County to obtain the benefit of Iowa Coal's payment of interest and penalties on the Wash Plant property under the circumstances in this case.

The fact that these parties have been involved in nearly continuous litigation with one another for more than twenty years makes this case more difficult on its face. However, while we consider the record in its entirety, most pertinent here are the specific facts in regard to Iowa Coal's failure to pay taxes on the properties, the resulting tax sale of the property, and the accruing taxes, interest, and penalties that occurred thereafter. The other history between the parties has been more than adequately addressed in *Iowa Coal I* and *Iowa Coal II*, and the historic facts have little impact on whether Monroe County would be unjustly enriched by receiving payment of interest and penalties.

In 1988 Iowa Coal stopped paying property taxes on the properties, although Iowa Coal's testimony indicates it was aware that taxes would continue to accrue on the property. In early 1992 Iowa Coal received delinquent tax

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(Iowa 2001). The court stated, "[N]o independent principle exists that restricts restitution to cases where alternative remedies are inadequate." *Id.* (citation omitted).

[13] We note that Monroe County has been paid the redemption sum for the Star 10 property, but has not yet received any sum to redeem the Wash Plant property.

notices stating that a tax sale would occur in June 1992. In May 1992 Iowa Coal filed for an injunction (due to the ongoing litigation in *Iowa Coal I*) against the pending tax sale and introduced into evidence a number of the notices it had received from the Monroe County notifying of the tax sale. The district court entered an injunction, stating in part, "plaintiffs (Iowa Coal and Huyser) stipulated that they would be willing to assign whatever portion of their judgment is necessary to pay the delinquent taxes, interest and penalty, if their judgment [in *Iowa Coal I*] is affirmed on appeal."

The district court's injunction order stated that any "tax sale [shall] be stayed until thirty days after the final resolution of [*Iowa Coal I*]." On January 20, 1993, the supreme court released its decision in *Iowa Coal I.* On April 14, 1993, Iowa Coal filed an amended petition for injunction with the district court (presumably after the issuance of the procendendo), requesting that Monroe County continue to be enjoined from conducting a tax sale on the properties, which the district court denied. Therefore, the 1992 injunction terminated thirty days after the supreme court's decision on January 20, 1993, or at least no later than April 14, 1993.

Monroe County proceeded to offer the Star 10 and Wash Plant properties for tax sale in 1993 and public bidder sale in 1994. A bidder purchased some of the properties in 1993, but failed to pay the subsequent taxes and the sale fell through. Monroe County purchased the properties in 1994. Monroe County Treasurer Sandra Clark testified that the requisite notices of these pending sales (and the purchases) were sent to Iowa Coal; however, Iowa Coal maintained that it never received the notices. Iowa Coal contended it first learned of the tax sale

in 2005 when it received a "Notice of Expiration—Public Bidder" from the Monroe County Attorney. Iowa Coal alleges the county failed to provide Iowa Coal with appropriate notice of the tax sale from 1993 to 2005.

However, the district court considered the record, including the evidence offered by the parties, and in particular the testimony of Monroe County Treasurer Sandra Clark, in determining the appropriate notices were sent to Iowa Coal. As the court stated:

> Based on the credible record in this case, the court finds that the Monroe County Treasurer sent to Iowa Coal the appropriate notices concerning the Star 10 and Wash Plant property regarding tax sale. This is true, except for those periods during which Monroe County was enjoined by the court from going forward with the tax sale process.

We agree. Iowa Coal consciously decided to stop paying property taxes in 1988; was aware that taxes would continue to accrue on the properties; received notice the properties were going for tax sale in 1992; successfully filed for an injunction to stop the pending tax sale in 1992; and was aware the injunction was lifted in 1993. Moreover, the Monroe County Treasurer's Office retains notices it sends to taxpayers for one year; Iowa Coal certainly had numerous opportunities to approach the treasurer within one year after it allegedly failed to receive annual tax statements to question why it had not received the statements.[14]

[14] During the years Iowa Coal was in active operation up until it allegedly stopped receiving notices from Monroe County, Iowa Coal had a business address of Route 1, Box 27, Lovilia, Iowa. This was the address Monroe County had on file for Iowa Coal, and was also the address of Dan Toll, a key employee of Iowa Coal. Iowa Coal contends that after Toll moved to St. Louis, Missouri, Monroe County began to send mail directed to Iowa Coal to P.O. Box 515199, St. Louis, Missouri. However, Toll's move to St. Louis did not occur until 1997 or 1998, well after the 1994 tax sale.

As of the time this case was filed, Iowa Coal had not paid any taxes on the Wash Plant property since 1988. The property was advertised in the Albia Union Republic Newspaper on the delinquent tax list for annual tax sale in June 1993 and for public bidder sale in June 1994. *See* Iowa Code §§ 446.9(2) (noting that the county must publish the date, time, and place of the annual tax sale in at least one official newspaper "at least one week, but not more than three weeks, before the day of sale"); 446.18 (stating notice of a public bidder sale "shall be given at the same time and in the same manner as that given of the regular Annual Tax Sale parcels"). Treasurer Clark testified that mailing proper notices to landowners was a prerequisite for advertising in the newspaper. *See* §§ 445.36(2) (1991), 445.36(2) (1993) (current version at 445.36(3) (2009)); 446.9; 446.18. The district court found Treasurer Clark's testimony to be credible, and we agree.

However, even if we accept Iowa Coal's contention that it did not receive notices[15] in February 1993 or 1994, failure to receive such a notice is not a defense. *See* §§ 445.36(2) (1991), 445.36(2) (1993) (current version at 445.36(3) (2009)). Similarly, Iowa Coal's failure to receive notices in May 1993 or 1994 is not a defense. *See* § 446.9(4); *Fennelly v. A-1 Mach. & Tool Co.*, 728 N.W.2d 181, 187 (Iowa 2007). Iowa Code chapters 445 and 446 only require that the notices were properly mailed by Monroe County. *Fennelly*, 728 N.W.2d

[15] Iowa Coal contends it did not receive notice of a tax sale in February 1993 or 1994. We note that Monroe County was not required to mail notice of a *tax sale* in February—this is only required in May. In February Monroe County was merely required to notify property owners if taxes are *delinquent*. *See* Iowa Code §§ 445.36(2) (1991), 445.36(2) (1993) (current version at 445.36(3) (2009)).

at 187. Upon our review, we agree with the district court that there is credible evidence in the record to indicate Iowa Coal was properly notified of the tax sale.

We are unable to agree, however, with the district court's determination that "Iowa Coal is entitled to some relief on the property tax question under the doctrine of unjust enrichment." The district court made this conclusion regarding the Wash Plant property after considering "the extraordinary circumstances and previous litigation" between the parties "over a term of many years." Although the court determined Iowa Coal was required to pay the taxes due for the years in question, the court stated it was "not inclined to reward the county for waiting 12 to 14 years to take the steps necessary to collect the taxes due on the Wash Plant property" by making Iowa Coal pay the accrued interest and penalties on the post-sale taxes.[16]

Monroe County issued itself a tax sale certificate to the properties in 1994 after no bids were received at the tax sale. A county is required to bid at a tax sale for a parcel in the amount due when no bid is received. *See* Iowa Code § 446.19. A tax sale certificate held by a county does not expire. *See* § 446.37; *Hemphill v. Montgomery*, 548 N.W.2d 579, 581 (Iowa 1996). Further, a county is not required to take a tax deed to property for which it holds a tax sale certificate. *See* Iowa Code §§ 447.9, 446.37.

Monroe County was not required to take any action to obtain a tax deed to the properties within a particular amount of time. *See Hemphill*, 548 N.W.2d at

[16] We observe that a county's failure to collect a tax deed immediately is not limited to Monroe County. In a recent unpublished decision, our court noted a similar situation in which Jasper County bid on a property in 1956, but did not take the tax deed to the property until 1967. *See Tool v. Nolin*, No. 07-0813 (Iowa Ct. App. Feb. 27, 2008).

581. In fact, a county's decision to delay in obtaining a tax deed appears to be a relatively normal practice. *See id*. In this case, the Monroe County Assessor testified that the county has waited or chosen not to obtain a tax deed for several other properties in the past few years as well, including an old gas station and an old hospital. As the assessor explained, the county would wait to take a tax deed to certain property (such as the case with the Wash Plant) due to environmental or liability concerns.[17]

Furthermore, throughout this time, Iowa Coal did nothing to question the status of the Wash Plant property, and more importantly, Iowa Coal did not even attempt to bring current the taxes it owed on the property. The delinquent taxes, interest, and penalties were only paid on the Star 10 property when it was redeemed in 2005. We find it somewhat remarkable for Iowa Coal to believe it could refuse to pay taxes on land it thought it owned and the status of the property would not change, particularly when it knew that Monroe County was attempting to conduct a tax sale on the property as early as 1992. At the very least, Iowa Coal was aware that taxes, interest, and penalties would continue to accrue on the Wash Plant property.

In 2005 property taxes owed by Iowa Coal on the Wash Plant totaled $64,292. Interest and penalties totaled $191,896. Under the circumstances in this case, we do not find that Monroe County would be unjustly enriched by requiring payment of the entire amount (taxes, interest, and penalties) of

[17] In its brief, Iowa Coal states that "there is no contamination or risk of reclamation liability for the wash plant property." It is not necessary for us to determine whether a mining reclamation risk exists on the property, because the fact remains that the county is entitled to make its own determination as to what potential liabilities exist on a property prior to deciding when (or whether) to take a tax deed to the property.

$256,188 in order for Iowa Coal to redeem the Wash Plant property. We therefore reverse the decision of the district court in regard to this issue.

B. Equity Follows the Law.

Even if we could conclude that Monroe County was unjustly enriched for the reasons suggested by Iowa Coal, "courts are . . . bound by statute, and in absence of fraud or mistake, equity must follow the law." *Kuehl v. Eckhart*, 608 N.W.2d 475, 477 (Iowa 2000) (*citing First Nat'l Bank in Humboldt v. Iowa Growthland Fin. Corp.*, 523 N.W.2d 591, 596 (Iowa 1994)).

Our supreme court has stated relative to claims seeking equity relief from statutorily imposed tax penalties:

> In purely equitable claims equity will grant or refuse relief at its discretion, but when the claim is a legal claim or when the penalty is mandatorily fixed by statute, equity will as a rule apply the requirement of the statute and not relieve the claimant. The rule is well stated in 85 C.J.S. Taxation § 1031c, p. 599: "Although it has been held that the courts may, in the exercise of their equitable powers, abate or remit tax penalties under meritorious conditions, the more general rule is that, in the absence of statutory authorization, the courts have no power to relieve delinquent taxpayers from penalties incurred by violations of the statutes providing therefor." In 51 Am. Jur., Taxation, § 975, p. 852, it is stated: "The penalty is imposed for failure to pay taxes when due, and the rule in most jurisdictions is that even though one in good faith litigates his liability to a tax until after it is due and payable, he is liable for the penalty or interest imposed upon delinquent taxpayers if the decision is adverse to him."
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> We ourselves have discussed the problem of jurisdiction as recent as *Fischer, etc., Storage Co. v. Iowa State Tax Comm.*, 248 Iowa 497, 507, 81 N.W.2d 437, 443-44 (1957). Therein we compared our former decisions in *Cedar Rapids & M. R. Co. and I. R. L. Co. v. Carroll County*, 41 Iowa 153, 191-92 (1875) and *Lamont Savings Bank v. Luther*, 200 Iowa 180, 185, 204 N.W. 430, 431-32 (1925), and *State v. Woodbury County*, 222 Iowa 488, 492, 269 N.W. 449, 450-51 (1936), relied upon by plaintiff. The penalty in the first two cases, we said, was mandatory and the statutes conferred no authority to waive it. However, in the *Woodbury County* case, although the court did not discuss the proposition, it

> did find under the circumstances the penalty should be waived. In the *Fischer* case we found the statutes more similar to those in the *Woodbury* case and voided the penalty.
>
> Although the question is troublesome, we think the better rule is that where the penalty, as here, is by statute made a part of the tax, and there is no authority given to rebate or waive the penalty, courts have no power to forgive the same. Some jurisdictions require specific legislative authorization for the courts to relieve. Others seem to hold if there is power granted anyone to review and relieve from penalty, then courts of equity will review that decision. It appears we have recently been following the latter rule. Although a statute providing a mandatory penalty without waiver discretion in anyone cannot be remitted even by a court of equity, it is not so clear where some official is given discretion to review and waive the penalty. Perhaps equity should review that discretion, at least to determine whether it was abused.

Miller Oil Co. v. Abramson, 109 N.W.2d 610, 613-14 (Iowa 1961) (internal citations omitted).

In respect to property taxes, interest, fees and costs, the county through the board of supervisors has the authority to abate or compromise the amount due. *See* Iowa Code §§ 445.16, 445.18. However, no such abatement or compromise has occurred, and the failure of the board of supervisors to exercise such discretion has not been raised either at trial or on appeal. No statutory provision exists granting the court authority to compromise or abate the amount due. *See id*. Additionally, if this court had such authority, for the reasons previously explained in regard to Iowa Coal's claim of unjust enrichment, we find no reason disturb the amount the county has demanded to redeem.

Our supreme court has also stated:

> Before equity will grant relief in cases involving the fixing by a statute of a penalty for failure to comply with . . . requirements, it usually must appear that the one claiming equity by his own diligence or foresight could have prevented the alleged prejudicial situation.

Miller Oil Co., 109 N.W.2d at 614 (citation omitted). Here, Iowa Coal could have avoided all interest, fees, and costs by diligently paying its property taxes.

We also find Iowa Coal's circumstance similar to the plaintiff contesting the imposition of taxes and penalties in *Cedar Rapids & M. R. Co. v. Carroll County*, 41 Iowa 153, 191-92 (1875) (ruling on reh'g) wherein our supreme court stated:

> It is urged that the penalties are onerous, inequitable and oppressive; that they have accrued, while plaintiffs were, in good faith, contesting the rights of defendant to enforce them and that the questions of law involved were doubtful, and justified plaintiffs in resisting the payment of the taxes. That plaintiffs will suffer a hardship in the payment of these heavy penalties is very apparent; that the questions involved in the cause were doubtful, and the litigation has been prosecuted in good faith, may be conceded, but these things give us no authority to annul a statute and remit a penalty explicitly provided for, and in which defendant has a vested right.
>
> The delay incident to the progress of this cause, especially in this court, has been great, and plaintiff has been subject thereby to suffer from the enormous increase of the penalties. This is no ground for relief; it is an incident of litigation, the risk of which parties are required to assume. None of these considerations will authorize us, without law or precedent, to abate any part of the sum to which defendant is entitled under the law. With the hardships of the law, or with those resulting fortuitous circumstances connected with its administration, we have nothing to do. When the rule is admitted that equity will not relieve against penalties imposed by statute, arguments based upon hardships furnish us no avenue of escape from its operation. The relief asked upon the application under consideration is refused.

Notwithstanding Monroe County's delay in initiating Iowa Coal's redemption period to obtain a tax deed, and the heavy penalties by the imposition of interest, fees, and costs, we can find no basis to grant the relief requested. Equity must follow the law and the Iowa statutory scheme for the collection of property taxes, including the imposition of interest, fees, and costs.

IV. Issues on Cross-Appeal.

A. Overpayment for Star 10.

Iowa Coal contends the district court erred in failing to order Monroe County to refund Iowa Coal's overpayment of interest and penalties paid to redeem Star 10. To support its claim, Iowa Coal seeks relief under the theory of unjust enrichment and the doctrine of equitable estoppel. The district court determined the Star 10 redemption was conducted properly, and stated:

> The court finds that Iowa Coal appropriately redeemed the Star 10 property and that Iowa Coal and Monroe County's actions in this respect should not now be disturbed by the court. Accordingly, past due tax, penalty and interest that were paid by Iowa Coal to redeem the Star 10 site will not be ordered refunded by Monroe County. In effect, the resolution of the Star 10 property as it now exists between Iowa Coal and Monroe County will not be changed by the court.

Upon our de novo review, we agree with the district court's decision on this issue. For the reasons previously stated, we similarly find that Iowa Coal is not entitled to a refund of the delinquent taxes, interest, and fees and costs to redeem Star 10. We affirm on this issue.

B. Overpayment for the Wash Plant.

Iowa Coal argues the district court erred in failing to order Monroe County to refund Iowa Coal's overpayment of taxes for the Wash Plant property. Iowa Coal alleges Monroe County failed to allow a pollution control tax exemption for the Wash Plant property for a number of years, and as a result, Iowa Coal overpaid taxes on the Wash Plant by $114,277.85.[18] The district court found

[18] Iowa Coal alleges that by applying simple interest to this amount for a period of twenty-six years, Monroe County owes Iowa Coal $274,043.32.

Monroe County appropriately credited Iowa Coal with the pollution control tax exemption, stating:

> The Wash Plant property consisting of approximately 80 acres and buildings has not been redeemed by Iowa Coal. The court finds that Iowa Coal is entitled to a pollution control tax exemption but, based upon the record and credible evidence, Iowa Coal was appropriately credited with this pollution control tax exemption.
>
> At such time as Iowa Coal's application for non-assessment or for an exemption of the Wash Plant improvements was properly filed with Monroe County and/or other appropriate governmental authorities, Monroe County granted and applied the exemption/credit. Iowa Coal is entitled to no additional relief in this respect.

We have reviewed the record, particularly including the testimony of the Monroe County Assessor, Karen Fontinel. The credible evidence indicates that Iowa Coal submitted an application for the pollution control tax exemption (along with the required certification by the DNR) to the Monroe County Assessor's office in 1985, and the exemption was properly applied by Monroe County beginning in that year. The record includes no credible evidence that Iowa Coal is entitled to a refund for its payment of taxes on the Wash Plant property prior to 1985.[19] We affirm on this issue.

V. Conclusion.

We reverse the decision of the district court as to the issue of the proper redemption payment for the Wash Plant and conclude Monroe County would not be unjustly enriched by the amount they demand. We affirm the decisions of the

[19] We further note that Iowa Coal's remedy to appeal the county's decision regarding the pollution control tax exemption is through the Monroe County Board of Review. Iowa Coal utilized this remedy in 1992 when it submitted a tax protest on a separate tax issue and attended oral hearings with the board of review.

district court regarding the proper redemption payment for Star 10 and the issue relating to the pollution control tax exemption.

REVERSED ON APPEAL; AFFIRMED ON CROSS-APPEAL.

Sackett, C.J., concurs; Doyle, J., concurs and writes separately.

DOYLE. J. (writing separately)

I concur, but I write separately to address one issue: formatting errors in the parties' appendix. I do not single out these parties, but direct my comments to the appellate bar as the rules infractions observed here are not uncommon. An appendix that complies with the rules of appellate procedure is of valuable assistance to this court. One that does not is, at best, a source of frustration.

The most typical error encountered by this court is that the names of the witnesses were not inserted at the top of each page where the witnesses' testimony appeared.[20] Iowa R. App. P. 6.905(7)(*c*). Omitted pages of transcript were not indicated by a set of three asterisks. Iowa R. App. P. 6.905(7)(*e*). The appendix was lacking a list of relevant docket entries. Iowa R. App. P. 6.905(2)(*b*)(2). Other parts of the record of proceedings included in the appendix were not set forth in the order prescribed. Iowa R. App. P. 6.905(6). Although the appendix included a copy of the notice of cross-appeal, it was not a file-stamped copy, and a file-stamped copy of the notice of appeal was not included. Iowa R. App. P. 6.905(2)(*b*)(5).

These infractions may seem trivial, but it is easier to navigate an appendix that follows the rules. Compliance with the rules promotes judicial efficiency and aids this court in meeting its mandate to achieve maximum productivity in deciding a high volume of cases. *See* Iowa Ct. R. 21.30(1).

[20] Although not required by the rules, an indication placed at the top of each page as to whether the testimony is direct, cross, redirect, or recross, would be helpful.