IN THE COURT OF APPEALS OF IOWA

No. 2-341 / 11-1501
Filed October 3, 2012

MC HOLDINGS, L.L.C.,
Petitioner-Appellee,

vs.

DAVIS COUNTY BOARD OF REVIEW,
Respondent-Appellant.

Appeal from the Iowa District Court for Davis County, Joel D. Yates, Judge.

The Davis County Board of Review appeals a district court's ruling denying summary judgment in a taxpayer protest. **REVERSED.**

Jamie L. Cox and Frank W. Pechacek Jr. of Willson & Pechacek, P.L.C., Council Bluffs, for appellant.

Steven Gardner of Denefe, Gardner & Zingg, P.C., Ottumwa, for appellee.

Heard by Eisenhauer, C.J., and Doyle and Tabor, JJ.

TABOR, J.

In this appeal, we must determine whether a taxpayer's protest that included a cover letter addressed to the county board of review listing the property at issue, but enclosed a petition involving an unrelated property in another county substantially complied with the filing requirements in Iowa Code section 441.37 (2009). After the board refused its protest, the taxpayer appealed to the district court, which ruled the error was "clerical in nature" and directed the board to consider the late filing.

Because the statute permits late challenges when clerical errors are made by the government but not the taxpayer, the "clerical error" exception does not save the defective filing. Because nothing in the original mailing provided the board with reasonable notice of the grounds for the taxpayer's protest, it did not substantially comply with section 441.37 and was properly denied by the board. Accordingly, the district court should have granted the board's motion for summary judgment.[1]

I. Background Facts and Procedures

In April 2009, the Davis County Assessor assessed property located in Davis County and owned by MC Holdings, L.L.C. MC Holdings intended to protest the tax assessment. Counsel prepared a letter and petition to send to the

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[1] Generally, the denial of summary judgment is interlocutory. *McCubbin Seed Farm, Inc. v. Tri-Mor Sales, Inc.*, 257 N.W.2d 55, 57 (Iowa 1977); *see also Griffin Pipe Prods. Co. v. Bd. of Review*, 789 N.W.2d 769, 770 (Iowa 2010). Here, the board filed a notice of appeal instead of seeking permission to appeal in advance of final judgment. The taxpayer does not challenge the board's right to appeal. We opt to consider the jurisdictional question addressed by the district court under the flexible standard in Iowa Rule of Appellate Procedure 6.108.

Davis County Board of Review on behalf of his client, MC Holdings. He also prepared a similar letter and petition regarding a protest to Van Buren County regarding that county's assessment of property belonging to a separate client, Keo Rental, L.L.C.

Although the cover letters for both taxpayers were sent to the correct counties, the petitions were inadvertently switched. The Davis County board received MC Holdings' letter, but a petition for Keo Rental's property in Van Buren County. The Van Buren County Board of Review received Keo Rental's letter, but a petition for MC Holdings' property. Both petitions were postmarked on May 5, 2009, the statutory deadline for filing a protest. The Van Buren County board sent a letter to MC Holdings' attorney on May 11 explaining that because the relevant property was located in Davis County, the board had no jurisdiction over the property, and therefore could take no action on the protest. On May 19, Davis County denied MC Holdings' protest.

Three days later, MC Holdings filed an "Application for Reconsideration" with the Davis County Board of Review, requesting the board consider the Davis County property petition inadvertently sent to the Van Buren County board. The Davis County Board of Review denied the request on May 28, reasoning that because the filing was beyond the statutory deadline, granting the request "would result in inequity to other property owners that have had other hardships/excuses which resulted in untimely filings."

In June 2009, MC Holdings appealed the 2009 assessment to the Davis County district court. The Davis County Board of Review ("the board") filed a

motion for summary judgment in April 2011, again contending it lacked jurisdiction to consider MC Holdings' challenge. The district court held hearings on the board's motion, which it consolidated with a similar suit initiated by Keo Rental against the Van Buren County Board of Review. It denied the Davis County board's motion on August 17, 2011, prompting this appeal.[2]

II. Scope and Standard of Review

Because a property tax assessment appeal is a claim in equity, our review of the district court's decision is de novo. Iowa R. App. P. 6.907; *Soifer v. Floyd Cnty. Bd. of Review.*, 759 N.W.2d 775, 782 (Iowa 2009); *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996). But despite the nature of these causes of action, we cannot find facts de novo on appeal from summary judgment. *Baratta v. Polk Cnty. Health Servs.*, 588 N.W.2d 107, 109 (Iowa 1999). We accordingly review the ruling for correction of errors of law. *Freedom Fin. Bank v. Estate of Bosen*, 805 N.W.2d 802, 806 (Iowa 2011).

Summary judgment is properly granted when no genuine issue exists as to any material fact and the moving party is "entitled to judgment as a matter of law." Iowa R. App. P. 1.981(3). A fact is considered "material" only if its determination would affect the outcome of the case. *Keokuk Junction Ry. Co. v. IES Indus.*, 618 N.W.2d 352, 355 (Iowa 2000). The moving party holds the burden to show the evidence is undisputed. *Kolarik v. Cory Int'l Corp.*, 721 N.W.2d 159, 162 (Iowa 2006). We view the facts in the light most favorable to

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[2] In a separate appeal also decided this date, the Van Buren County Board of Review challenges a similar ruling rendered in the Van Buren County district court denying that board's motion for summary judgment against Keo Rental.

the resisting party. *Robinson v. Allied Prop. & Cas. Ins. Co.*, 816 N.W.2d 398, 401 (Iowa 2012). Every legitimate inference that can be reasonably deduced from the evidence is afforded to the nonmoving party. *Tetzlaff v. Camp*, 715 N.W.2d 256, 258 (Iowa 2006). Therefore, our review consists of determining whether any disputed material fact exists, and if not, whether the trial court correctly applied the law. *Shriver v. City of Okoboji*, 567 N.W.2d 397, 400 (Iowa 1997).

III. Analysis

The board argues because the May 5 cover letter and enclosures it received from MC Holdings do not meet the statutory requirements for appeal, the matter was not properly raised before the board, and it lacked jurisdiction to consider the protest. Specifically, it argues although MC Holdings listed the property location, because its notice did not include grounds for protest, the Iowa Administrative Code forbids the board's review. It asserts the district court lacked jurisdiction as well.

MC Holdings contends because the enclosure of the wrong petition was nothing more than a clerical mistake, it substantially complied with the statutory requirements for appeal. It maintains the board wrongfully denied the protest and the district court had jurisdiction to review the appeal.

A taxpayer may protest a property tax assessment by means of the board of review. *Compiano v. Bd. of Review*, 771 N.W.2d 392, 396 (Iowa 2009). The board hears the protest and is authorized to modify the assessment. *Id.*

Grounds for protesting an assessment are limited by Iowa Code section 441.37(1)(a) (2009), which reads in part:

> Any property owner or aggrieved taxpayer who is dissatisfied with the owner's or taxpayer's assessment may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment . . . . Said protest shall be in writing and signed by the one protesting or by the protester's authorized agent . . . . Said protest must be confined to one or more of the following grounds:
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> (1) That said assessment is not equitable . . . .
> (2) That the property is assessed for more than the value authorized by law . . . .
> (3) That the property is not assessable . . . .
> (4) That there is an error in the assessment . . . .
> (5) That there is fraud in the assessment . . . .

Our case law reinforces a taxpayer's limitation to these five grounds as the bases of protest. *Eagle Food Ctrs., Inc. v. Bd. of Review*, 497 N.W.2d 860, 862 (Iowa 1993). The administrative code provides further parameters regarding appeals to the board of review: "A board of review may act only upon written protests which have been filed with the board of review between April 16 and May 5, inclusive." Iowa Admin. Code r. 701-71.20(4)(a).

The taxpayer may then appeal the board decision to the district court. *See* Iowa Code § 441.38; *Compiano*, 771 N.W.2d at 396. The court hears the case in equity and reviews anew the assessment issues previously before the board. Iowa Code § 441.39; *Friendship Haven, Inc. v. Webster Cnty. Bd. of Review*, 542 N.W.2d 837, 840 (Iowa 1996).

In its denial of summary judgment, the district court narrowed the question to "whether the contents of [MC Holdings'] mailing meet the requirement of reasonable notice." It held because the cover letter alerted the board to the

relevant party and property, and "made it obvious that the wrong petition had therefore been enclosed," the error was merely clerical and did not frustrate the board's right to reasonable notice of the protest. The district court concluded because the mistake was "clearly clerical in nature," MC Holdings substantially complied with the legislative requirements to provide the board with adequate notice.

The board contends because the provision in section 441.37(2) permits appeals for clerical errors only on behalf of an assessor and not a taxpayer, the court misapplied the statute in its denial of summary judgment. That subsection reads, in part:

> (a) A property owner or aggrieved tax payer who finds that a clerical or mathematical error has been made in the assessment of the owner's or taxpayer's property may file a protest against that assessment in the same manner as provided in this section, except that the protest may be filed for previous years. The board may correct clerical or mathematical errors for any assessment year in which the taxes have not been fully paid or otherwise legally discharged.
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> (b) Upon the determination of the board that a clerical or mathematical error has been made the board shall take appropriate action to correct the error and notify the county auditor of the change in the assessment as a result of the error and the county auditor shall make the correction in the assessment and the tax list in the same manner as provided in section 443.6.

Iowa Code § 441.37(2).

We believe the language permitting protests for errors "made in the assessment of the owner's or taxpayer's property" allows for protests of only clerical errors made by the board, rather than a taxpayer's own oversights. In the context of section 441.37, our supreme court construes "clerical error" to mean error made by the assessor. *See Am. Legion, Hanford Post 5 v. Cedar Rapids*

Bd. of Review, 646 N.W.2d 433, 438–40 (Iowa 2002) (defining clerical error as "a mistake in writing or copying," recognizing other jurisdictions' application of the term to assessor actions, and examining other definitions of clerical error, all of which apply to assessor). Because the "clerical error" challenge cannot excuse the swapped petitions, we turn to whether the mailing substantially compiled with the statutory requirements.

A taxpayer need only substantially comply with the statutory requirements set out in our tax protest procedures. *Metro. Jacobson Dev. Venture v. Bd. of Review*, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991). "Substantial compliance" in this regard is "compliance in respect to essential matters necessary to assure the reasonable objectives of the statute." *Id.* (internal quotations omitted).

In *Metropolitan*, our supreme court responded to a board of review's argument that errors and omissions in the taxpayer's form should defeat the taxpayer's protest, holding: "The obvious purpose of [section 441.37] is to provide the assessor's office with reasonable notice of the basis of the taxpayer's protest and the location of the properties." *Id.* at 729–30;[3] *see also Burnam v. Bd. of Review*, 501 N.W.2d 553, 554 (Iowa 1993) (holding taxpayer's filing petition rather than a notice of appeal to district court substantially complied with procedurally similar section 441.38 because "it put the board on notice that the

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[3] The district court held the taxpayer substantially complied in protesting under one of the five grounds in section 441.37 by writing in the space provided for the legal description of comparable properties:

> There are 3 buildings located on this Industrial Tract that are all alike. The other 2 buildings are taxed at about $.33 per square foot, and this one is taxed at $.55 per square foot. I feel it should also be taxed at .33 per square foot like the other 2 bldgs.

Metropolitan, 476 N.W.2d at 730.

[taxpayers] were appealing" and "also put the board on notice of the alleged errors in the assessment").

Because the MC Holdings cover letter correctly listed the parcel number of the property, notwithstanding the contradictory listing on Keo Rental's petition, the board could have ascertained the location of the property. *See Metropolitan*, 476 N.W.2d at 730. But nothing in the mailing provided the board with reasonable notice of the grounds for MC Holdings' specific protest, as required in section 441.37. *Id.* at 729; *cf. Camp Foster YMCA v. Dickinson Cnty. Bd. of Review*, 503 N.W.2d 409, 410 (Iowa 1993) (finding taxpayer's protest to board and petition to court substantially complied with sections 441.37 and 441.38 despite failing to "designate the proper statutes in its claim for exemption" because "the Board was undoubtedly aware that the property owner was seeking to invoke [an exemption] pertaining to charitable, benevolent, religious, and educational institutions and societies"). Accordingly, MC Holdings' May 5 mailing did not substantially comply with the requirements set out in section 441.37.[4]

The board argues this noncompliance deprives the board of any jurisdiction to review the petition, regardless of the "application for reconsideration," and that the district court in its appellate review did not have jurisdiction over the matter. It is true the district court generally does not hold general jurisdiction over assessment cases. *Caudil v. Shelby Cnty.*, 519 N.W.2d

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[4] Although the inadvertently swapped petitions appear to be an oversight by the filing party, the board as the receiving party would be required to conduct further investigation and communication to ascertain the grounds for the protest. This added burden goes beyond what is required for a petition's nonconformity to satisfy the test for substantial compliance. *See, e.g.*, *Metropolitan*, 476 N.W.2d at 730.

423, 424 (Iowa Ct. App. 1994). Its jurisdiction over appeals from the review board "is wholly statutory and depends for its existence upon substantial compliance by the appealing party with statutory prerequisites." *Economy Forms Corp. v. Potts*, 259 N.W.2d 787, 788 (Iowa 1977); *see Equitable Life Ins. Co. v. Bd. of Rev.*, 281 N.W.2d 821, 823 (Iowa 1979) ("Only those matters raised in protest before the board of review may be asserted on appeal to the district court.").

While MC Holdings' May 22 application for reconsideration clarified the inadvertence, our administrative code restricts the board's review to protests postmarked by May 5 of the relevant year. *See* Iowa Admin. Code r. 701-71.20(4)(a). Even if the district court correctly charged the board with knowledge of the mistake, the board's knowledge does not change the fact that as of the statutory cut-off date, MC Holdings' communication lacked information to substantially comply with section 441.37.[5] Although the swapped petitions are an unfortunate bar to the taxpayers' protests, our legislation and case law provide no avenue to forgive such a defect in filing.

As the board points out "[J]urisdiction does not attach, nor is it lost, on equitable principles[; it] is purely a matter of statute." *BHC Co. v. Bd. of Review*, 351 N.W.2d 523, 524 (Iowa 1984). In that case, the taxpayer went to great lengths to serve the chairman of the board notice of its intent to appeal the board's decision to district court, but was unable to do so within the statutory

[5] The board acknowledges it would have had discretion to notify the taxpayer of the error had the petition been filed before the statutory deadline. We believe by waiting until the last day to have the petition postmarked, MC Holdings took the risk that a defect in filing would statutorily preclude the board's jurisdiction.

deadline of section 441.38. *Id.* We believe the *BHC* court's reasoning for adhering to procedural rules is equally applicable to protests under section 441.37:

> It is not for us to regret that we have been compelled to follow a strict and technical line in our decision set out above. The so-called technicalities of the law are not always what they seem. When they establish an orderly process of procedure, they serve a definite purpose and are more than technical; they have substance, in that they lay down definite rules which are essential in court proceedings so that those involved may know what may and may not be done and confusion, even chaos, may be avoided. They are necessary; without them litigants would be adrift without rudder or compass. We have, and should have, no compunction in following them when they are clear and definite.

Id. at 526; *see also Waterloo Civic Ctr. Hotel Co. v. Bd of Review*, 451 N.W.2d 489, 491 (Iowa 1990) (noting statutory framework rather than rules of civil procedure govern assessment appeal and holding "although some latitude exists for upholding jurisdiction in this type of proceeding if substantial compliance with the statutory procedures is shown, we have recognized that this principle does not permit a court to extend the time within which an appeal may be taken").

Because the information received by the board postmarked on May 5 did not substantially comply with section 441.37, the board did not have jurisdiction over the assessment protest. Because the protest was not properly before the board, the district court could not review the matter. Therefore, the district court committed legal error in failing to grant the board's motion for summary judgment.

REVERSED.