1-9-2013

Ashton Urban Renewal Agency v Ashton Memorial Appellant's Brief Dckt. 40348

IN THE SUPREME COURT OF THE STATE OF IDAHO

ASHTON URBAN RENEWAL,	)	
	)	**Docket No. 40348-2012**
Petitioner/Respondent,	)	
	)	
v.	)	
	)	
ASHTON MEMORIAL, INC.,	)	
	)	
Respondent/Appellant.	)	
	)	

APPELLANTS' BRIEF

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Fremont

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Honorable Gregory W. Moeller, District Judge, presiding.

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A. Nature of the Case

This is an appeal of a district court decision reversing the Idaho Board of Tax Appeals (BTA) holding that the Ashton Urban Renewal Agency lacked standing to challenge a property tax exemption granted by the Fremont County Board of Equalization because it was not a "person aggrieved" under I.C. § 63-511.

B. The Course of Proceedings Below

On January 19, 2011, Ashton Memorial, Inc. (Ashton Memorial) filed for tax exemptions with the Fremont County Board of Equalization. The Ashton Urban Renewal Agency (hereinafter AURA) opposed that request. On July 8, 2011, the Board of Equalization granted the tax exemption. On August 9, 2012, AURA appealed the tax exemption to the Idaho Board of Tax Appeals (BTA). Ashton Memorial filed an Answer, which included, among other defenses, the assertion that AURA lacked standing to appeal the exemptions. On November 29, 2011, the BTA entered its *Final Order Dismissing Appeals*. (BTA R. p. 22-25) The BTA ruled that AURA lacked standing to appeal the tax exemption as it was not an aggrieved person under I.C. § 63-511. On January 5, 2012, the BTA denied AURA's request for reconsideration. (BTA R. p. 55-56) On February 2, 2012, AURA filed a petition for judicial review with the district court. (R. p. 4-5) The issue was briefed and the district court heard argument. On August 10, 2012, the district court issued its Decision on Review in which it reversed the BTA's decision and remanded the matter to the BTA for consideration on the merits. (R. p. 100-112) On September 18, 2012, Ashton Memorial filed its Notice of Appeal. (R. p. 113-115) The Clerk's Record did

not initially include the BTA's record and the parties stipulated to its inclusion in the record. They subsequently stipulated to paginate the BTA's record for ease of reference.

C. Statement of the Facts

Ashton Memorial Inc. is an Idaho Corporation doing business as Ashton Living Center in Ashton, Idaho. Ashton Memorial provides assisted living services, medical care and nursing care. Ashton Memorial applied for a property tax exemption for the 2011 tax year pursuant to I.C. § 63-602C and was granted an exemption.

The Ashton Urban Renewal Agency (AURA) is an urban renewal agency created pursuant to the Idaho Urban Renewal Law of 1965, title 50, chapter 20, Idaho Code, as amended and the Local Economic Development Act, title 50, chapter 29, Idaho Code, as amended. Ashton Memorial has real and personal property located within the revenue allocation area of AURA. AURA receives funds from levied taxes pursuant to I.C. § 50-2908 and has appealed the tax exemption granted to Ashton Memorial.

D. Standard of Review

When a district court conducts a trial de novo in an appeal of a BTA decision, the Idaho Supreme Court defers to the district court's findings of fact that are supported by substantial evidence, but exercises free review over the district court's conclusions of law. *Kimbrough v. Idaho Bd. of Tax Appeals*, 150 Idaho 417, 419-420, 247 P.3d 644, 646 - 647 (2011). In this case, the district court did not conduct a trial, but rather ruled as a matter of law that AURA was entitled to appeal to the BTA pursuant to I.C. § 63-511(1) as it qualified as a *person aggrieved* and remanded the matter to the BTA for consideration on its merits. The interpretation of a

statute is a question of law which this Court freely reviews. *Id.*

II. Issues of Appeal

A. Is AURA a "person aggrieved" pursuant to I.C. § 63-511 and thus, entitled to appeal the Board of Equalization's decision granting Ashton Memorial tax exempt status?

B. Did the district court have jurisdiction to hear AURA's appeal from the BTA when AURA failed to provide notice of the petition to Fremont County as required by I.R.C.P. 84(b)(1)?

III. Argument

A. AURA is not a "person aggrieved" pursuant to I.C. § 63-511(1) as it is only entitled to receive, pursuant to I.C. § 50-2908, "the balance, if any, of funds from taxes levied on taxable property" and as such, has no interest in unlevied taxes.

The right to appeal a decision of a county Board of Equalization is described in I.C. § 63-511(1) which reads as follows:

> Any time within thirty (30) days after mailing of notice of a decision of the board of equalization, or pronouncement of a decision announced at a hearing, an appeal of any act, order or proceeding of the board of equalization, or the failure of the board of equalization to act may be taken to the board of tax appeals. *Such appeal may only be filed by the property owner, the assessor, the state tax commission or by a person aggrieved when he deems such action illegal or prejudicial to the public interest.* Nothing in this section shall be construed so as to suspend the payment of property taxes pending said appeal.

(Emphasis added). AURA is not the property owner, assessor, or state tax commissioner, and has asserted that it is a *person aggrieved* under the statute. The statute does not define *person*

aggrieved.[1] Both BTA and the district court relied on Idaho Supreme Court cases interpreting similar language in other statutes. In 1898, the Idaho Supreme Court addressed the issue of when a party is aggrieved and entitled to appeal in *State v. Eves*, 6 Idaho 144, 53 P. 543 (1898). In *Eves*, the state brought an action to enforce a statute that allowed the state to receive damages when a suit was brought on a contract in which the rate of interest was higher than allowed by statute. *Id.* 6 Idaho at 144-145, 53 P. 543 -544. Idaho brought the suit nearly three years after Eves had received a judgment on a contract whose interest rate exceeded that allowed by statute. *Id.* The Idaho Supreme Court ruled that the statute authorizing the penalty did not authorize a separate suit and dismissed the appeal. *Id.* In doing so, it explained the procedure the state should have followed to enforce the penalty. *Id.* The Court explained that when the state sought to enforce the penalty in a case in which a judgment had already been granted on a contract with a rate greater than allowed that the "correct practice is for the state on behalf of the county to make a proper showing upon notice to all parties to the record, and move to have such judgment modified so as to make it conform to the provisions of [the statute]; and, if the court denies such motion, to appeal from the order denying the same." *Id.* The Court then went on to explain that the state would be entitled to appeal even though it was not a party of record to the original case. The Court stated as follows:

> Section 4802, Rev. St., provides that any party aggrieved may appeal in the cases prescribed in the Code; and, when it is made to appear, as provided by said section 1266, that a suit is brought on a usurious contract, it then becomes the duty of the

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[1]The phrase *person aggrieved* or similar language appears in at least eleven other locations in Title 63 in reference to the right to appeal or seek reconsideration: I.C. §§ 63-409, 63-711(4), 63-1006(4), 63-1404(5), 63-2516, 63-2563, 63-2708, 63-3074, 63-3812, 63-4208(b), 63-4208(c).

> court to render a judgment as therein directed. If the court refuses to do so, the state, on behalf of the county in which the suit is brought, is an aggrieved party, and is entitled to an appeal, the same as any party to the suit. But we think the better practice is to make the proper motion to correct or modify the erroneous judgment, and, in case such motion be denied, appeal from the order denying the same. This method of procedure calls the matter directly to the attention of the court, and would, no doubt, in many cases prevent the costs and delay of an appeal. Section 4802, Rev. St., is the same as section 938, Code Civ. Proc. Cal., and under that section the supreme court of that state have held in *Adams v. Woods*, 8 Cal. 306, that a party aggrieved by a judgment has the right of appeal although he is not a party to the record; and it is laid down as a general rule that no one who is not a party or privy to a judgment or prejudiced thereby has the right of appeal. The test as to whether a party is aggrieved or not is: "Would the party have had the thing if the erroneous judgment had not been entered? If the answer be yea, he is a party aggrieved." In the case at bar, had not an erroneous judgment been entered, judgment in favor of the state would have been entered for the amount of the penalty provided.

Id. After having explained how the matter should have been handled, the Court dismissed the state's appeal and awarded costs to Eves. *Id.*

In the other case cited by the BTA and the district court, *Application of Fernan Lake Village*, 80 Idaho 412, 331 P.2d 278 (1958), the city of Coeur d'Alene appealed a decision by the Kootenai County Commission incorporating Fernan Lake Village. The appeal was taken pursuant to I.C. § 31-1509 which at the time read in relevant part, as follows:

> Any time within twenty days after the first publication or posting of the statement, as required by section 31-819, an appeal may be taken from any act, order or proceeding of the board, by any person aggrieved thereby, or by any taxpayer of the county when any demand is allowed against the county or when he deems any such act, order or proceeding illegal or prejudicial to the public interests[.]

Id. 80 Idaho at 414, 331 P.2d at 279. The city asserted that the proposed village abutted the boundary of Coeur d'Alene, that the village was shaped in a bizarre and irregular manner, that its shape was created for the sole purpose of meeting the resident requirements, that the creation of

the village would hamper the natural growth of the city, and that, by creating a precedent, it would strangle the natural growth of the city. *Id.* Despite the city's assertion that it would be harmed by the incorporation of the proposed village, the Idaho Supreme Court determined that the city was not a person aggrieved and not entitled to bring an appeal.

AURA's position in this matter is similar to the city in *Fernan Lake*. Like the city, it alleges that another governmental entity has taken an action that will do it harm and seeks to prevent the action. Also, like the city in *Fernan Lake*, it can point to no statute that authorizes its participation in the matter and must rely on its assertion that it is a *person aggrieved.* In *Fernan Lake*, the Supreme Court stated that "a party or person is aggrieved . . . when, and only when, it operates directly and injuriously upon his personal, pecuniary, or property rights[.]" In this case, AURA cannot be aggrieved by the Board of Equalization's decisions regarding tax exemptions or appraisals because, pursuant to the Idaho Code, urban renewal agencies have no right to unlevied taxes.

An urban renewal agency's right to receive tax revenue is controlled by I..C. § 50-2908(2). It makes clear that the urban renewal agencies do not have the right to a specific amount of funds, but rather, receive whatever funds are available after taxes are levied and after the taxing district, has received its allotment. Subsection (2) of I.C. § 50-2908 reads as follows:

> (2) With respect to each such taxing district, the tax rate calculated under subsection (1) of this section shall be applied to the current equalized assessed valuation of all taxable property in the taxing district, including the taxable property in the revenue allocation area. The tax revenues thereby produced shall be allocated as follows:
>
> (a) To the taxing district shall be allocated and shall be paid by the county treasurer:
>
> (i) All taxes levied by the taxing district or on its behalf on taxable

property located within the taxing district but outside the revenue allocation area;
(ii) A portion of the taxes levied by the taxing district or on its behalf on the taxable property located within the revenue allocation area, which portion is the amount produced by applying the taxing district's tax rate determined under subsection (1) of this section to the equalized assessed valuation, as shown on the base assessment roll, of the taxable property located within the revenue allocation area; and
(iii) All taxes levied by the taxing district to satisfy obligations specified in subsection (1)(a) through (e) of this section.

(b) *To the urban renewal agency shall be allocated the balance, if any, of the taxes levied on the taxable property located within the revenue allocation area.*

(Emphasis added). The statute makes clear urban renewal agencies are to receive only the available balance after the taxing district has received its allocations. It also specifically anticipates that there may be no available balance and urban renewal agencies may receive no allocation. AURA cannot be aggrieved when it has no right to the property it was supposedly deprived of.

The district court and AURA err in asserting that AURA has some interest in the tax revenues generated from Ashton Memorial's property distinct from that of all other citizens or governmental subdivisions whose budgets or allocations may be diminished due to the Board of Equalization's grant of an exemption. AURA's interest in these funds is identical to that of all other governmental entities that receive some portion of the tax money paid by Ashton Memorial. If AURA is entitled to challenge a tax exemption or appraisal on the basis that it deprives it of expected funds, the same can be said for a library district, cemetery district, school district, or any other governmental entity to whom funds flow. The district court recognized this would be the logical consequence of its decision, but determined that this concern was

outweighed by the need to protect AURA given its "unique and vulnerable funding status" as an urban renewal district. (R. p. 110) However, if the legislature intended for all governmental agencies to have the right to appeal tax decisions that affect them, it would have so stated. As shown in the district court's discussion of decisions relating to Missouri and North Dakota decisions, other states have done so. (R. p. 107-108). In addition, the Idaho Legislature has done so in other similar situations. For example, county assessors are expressly authorized to appeal assessments by the state tax commission on operating property in the assessor's county. I.C. § 63-409. However, this court has determined that the assessor's right to appeal is limited to assessments only and does not extend to the right to appeal a state tax commission decision classifying property as operating or non-operating. *Union Pacific Land Resources Corp. v. Shoshone County Assessor*, 140 Idaho 528, 96 P.3d 629 (2004). Idaho Code section 63-511 specifically authorizes appeals by a county assessor and the state tax commission. If the legislature had intended other governmental entities to have the right to appeal exemption and valuation decisions of county boards of equalization, it would have so stated.

B. The district court erred in ruling that denying AURA the right to appeal the Board of Equalization's decision would violate the principles of due process and equal protection because AURA has no right to tax monies until such time as the taxes are levied and allocated to other public entities and because it is a subdivision of the state to whom these constitutional protections do not apply.

The district court erred when it ruled that denying AURA standing would violate the principles of due process and equal protections. R. p. 109-110. The first step in an analysis of due process is to determine if the person has a threatened property or liberty interest. *Smith v. Meridian Joint School Dist. No. 2*, 128 Idaho 714, 722, 918 P.2d 583, 591 (1996). AURA cannot

be entitled to due process regarding Ashton Memorial's tax exemption unless it has a property interest in the nonlevied taxes. Idaho Code section 50-2908 makes clear that urban renewal agencies are to receive funds from taxes actually levied and only after the taxing district has received its allocation. The statute anticipates that the urban renewal agency may receive no allocation whatsoever. Given I.C. § 50-2908, the district court erred in relying on the due process and equal protection because AURA had no property or liberty interest in the taxes not levied.

In addition, the district court erred in ruling that AURA is entitled to due process and equal protection guarantees as against the state of Idaho. AURA and all urban renewal agencies are subdivisions of the state created to exercise powers held by the state and as such, state actions in relation to urban renewal agencies are not restrained by due process or equal protections concerns. I.C. § 50-2002; *Morial v. Smith & Wesson Corp.*, 785 So.2d 1, 12-13, (La.. 2001) *(citing Risty v. Chicago, R.I. & P. Ry. Co.*, 270 U.S. 378, 390, 46 S.Ct. 236, 240 (1926) ("The power of the state and its agencies over municipal corporations within its territory is not restrained by the provisions of the Fourteenth Amendment.")); *Avon Lake City Sch. Dist. v. Limbach*, 35 Ohio St. 3d 118, 121, 518 N.E.2d 1190, 1192 (1988) (citing *Hunter v. Pittsburgh*, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907).

C. The district court did not have jurisdiction to consider the appeal as AURA failed to properly appeal by failing to provide notice of the appeal to Fremont County.

The district court did not have jurisdiction to consider the appeal because AURA failed to perfect its appeal as required by I.C. § 63-3812(a) and I.R.C.P. 84. Compliance with the

procedure for perfecting an appeal is a jurisdictional requirement. *Briggs v. Golden Valley Land & Cattle Co.*, 97 Idaho 427, 433, 546 P.2d 382, 388 (1976) (*citing Blinzler v. Andrews*, 95 Idaho 769, 519 P.2d 438 (1973)). This requirement is applicable in appeals to the district court as well as in appeals to the Supreme Court. *Id.*

The process of appealing from the BTA to the district court is set out in I.C. § 63-3812(a) of which reads as follows:

> The appeal shall be taken and perfected in accordance with rule 84 of the Idaho rules of civil procedure.

Rule 84 of the Idaho Rules of Civil Procedure is a lengthy rule that sets out procedures and standards applicable to juridical review of state agency and local government actions. One of the requirements in filing of an appeal is providing notice to other parties to the proceeding. Rule 84(b)(1) includes the following:

> Judicial review is commenced by filing a petition for judicial review with the district court, and *the petitioner shall concurrently serve copies of the notice of petition for judicial review upon the agency whose action will be reviewed and all other parties to the proceeding before the agency* (if there were parties to the proceeding). Proof of service on the agency and all parties shall be filed with the court in the form required by Rule 5(f).

(Emphasis added). In this case, AURA failed to serve copies of its notice of petition for judicial review on Fremont County, who had been a party to the proceeding before the BTA. (R. p. 9-10.) AURA served the BTA and counsel for Ashton Memorial. *Id.* Neither Fremont County, nor the Fremont County Board of Equalization was given notice or an opportunity to participate in the proceedings before the district court. Fremont County was a party to the proceeding before the BTA. It was listed on the proof of service on all documents filed by Ashton Memorial,

AURA, and the BTA. (BTA R. 18, 20, 25, 27, 34, 38, 44, 53, 56.) AURA did not include the Fremont County assessor, the Fremont County Board of Equalization, nor the Fremont County prosecuting attorney, as parties to the appeal to the district court, nor provide them notice of the appeal. (R. p. 9-10.) Because Fremont County failed to property perfect its appeal pursuant to I.R.C.P. 64(b)(1), the district court did not have jurisdiction to hear the appeal.

IV. Conclusion

Because AURA is not a person aggrieved pursuant to I.C. § 63-511 and because AURA did not properly perfect its appeal, the Court should reverse the district court's decision and dismiss AURA's appeal.

RESPECTFULLY SUBMITTED this 8th day of January, 2013.

Hyrum Erickson

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 8th day of January, 2013.

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