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Village League v. State Bd. of Equalization, 133 Nev., Adv. Op. 1 (January 26, 2017)

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PROPERTY: EQUALIZING PROPERTY REAPPRAISALS

Summary

The Court determined that (1) NRS 361.395 does not provide the State Board with authority to order reappraisals; and (2) the 2010 regulation purporting to provide the State Board with such authority does not apply retroactively to the tax years at issue in this case.

Background

In 2003, Village League to Save Incline Assets, Inc, filed a class action complaint against the Nevada State Board of Equalization, Washoe County, Washoe County Treasurer, and Washoe County Assessor (“Washoe County”). However, Village League failed to administratively challenge the property valuations before filing the complaint, and the district court dismissed the complaint. In 2004, Village League appealed the district court’s decision. Appellant alleged the State Board failed to carry out its constitutional obligation to equalize property valuations in Incline Village and Crystal Bay. Prior to the 2004 appeal, this court determined that assessment methods used previously were unconstitutional.² Therefore, the taxable values for the unconstitutionally appraised properties were void for the tax years 2003-04 up until 2007-08;³ and property taxes between those years were to be based on the taxable values previously established for the 2002-03 tax year.

On the 2004 appeal, this court reversed in part the district court’s dismissal. Thereafter, Village League filed an amended complaint and petition for a writ of mandamus alleging that the State Board was required to ensure a uniform and equal rate of assessment statewide. The district Court denied the petition, and Village League appealed this case once again. On appeal, this court again reversed in part the district court’s decision, and on remand the district court issued a writ of mandamus ordering the State Board to hold a hearing and equalize the tax years in which unconstitutional methodologies were used. The district court also requested that the State Board report back with its compliance with the writ.

Village League argued to the State Board that “all property owners in the Incline Village and Crystal Bay areas were entitled to the same remedy provided to the taxpayers in *Bakst* and *Barta*.” The State Board agreed as to the regional equalization, and relying on a 2010 regulation issued an interlocutory administrative order directing reappraisals of all properties in Incline Village and Crystal Bay where unconstitutional valuations were used.

¹ By Yolanda Carapia.

² See *State ex rel. State Bd. of Equalization v. Barta*, 188 P.3d 1092, 1102 (2008).

³ *Id.* at 1100.

The State Board the submitted its report to the district court in compliance with the writ. However, Village League objected to the report and filed a petition for judicial review in the district court to challenge the Equalization Order and the State Board's power to order reappraisals of properties for the 2003-04, 2004-05, and 2005-06 tax years. The taxpayers from the *Bakst* and *Barta* cases filed a motion to intervene because the Equalization Order directing reappraisal of their properties threatened the former final judgment on their case.

The district court granted the State Board's motion to dismiss the petition for judicial review because it concluded that the Equalization Order was interlocutory. Village League appeals the dismissal of the petition for judicial review and argues that the State does not have the authority to order reappraisals. The Bakst intervenors also appeal making additional issue and claim preclusion arguments.

Discussion

I.

The State Board argued that the district court rightly dismissed petition to review the Equalization Order because it was not an adjudicative action. Furthermore, the State Board and Washoe County argue that this court lacks jurisdiction to hear this appeal since the district court did not enter a final judgment on this matter. Lastly, they argue that neither Village League nor the Bakst intervenors are aggrieved parties in this case.

A.

In *Barta*, the court held that “the State Board has two separate functions: equalizing property valuations throughout the state and hearing appeals from the county board.”⁴ However, it was not until *Marvin* that the courts distinguished the engaging between legislative or quasi-judicial function.⁵ Yet, the Court in *Marvin* considered the equalization process entirely, not a specific appeal from a county board. In addition, “NRS Chapter 361 clearly demonstrates the Legislature's intent that the equalization process be open to the public and that the individual taxpayer be given notice of and the opportunity to participate in the State Board's valuation of his or her property.”⁶ After considering the fact that hearings in front the State Board were held for the public, the Court concluded that the State Board was engaged in a quasi-judicial function.

B1.

The Court disagreed with the State Board and Washoe county's argument that this court lacks jurisdiction. The district court's dismissal of the petition was a final judgement because it ended the parties' ability to challenge the State Board's power. Therefore, where “a final

⁴ *Barta*, 188 P.3d at 1102.

⁵ *Marvin v. Fitch*, 232 P.3d 425(2010).

⁶ *Id.* at 432.

judgment entered into an action or proceeding commenced in the court in which the judgment is rendered” constitutes an appealable order.⁷ The Court found that it had jurisdiction to consider this appeal.

B2.

NRS 233B.130(1) allows an aggrieved party to seek judicial review of an agency ruling “in a contested case” when the agency’s review “would not provide an adequate remedy.”⁸ Since both the Village League and the Bakst intervenor’s “raised questions . . . over remedies already obtained in prior litigation,” the Court concluded that all parties were aggrieved and it had jurisdiction to consider the appeal.

C.

The State Board’s Equalization order required the Washoe County assessor “to reappraise all residential properties located in Incline Village and Crystal Bay to which an unconstitutional methodology was applied to derive taxable value during the tax years 2003-2004, 2004-2005, and 2005-2006.” The order also required the Washoe County Assessor to notify the State Board of any parcels which the reappraised taxable value increased in order to notify said taxpayer of such increase. However, only taxpayers whose property valuations increased as a result of the reappraisal are entitled to a hearing,⁹ and, thus, the remedy does not take into account the remedies provided to the *Bakst* intervenors and those remedies effect on the equalization process for the region. In addition, *Bakst* intervenors would not be allowed a hearing on their issue or claim preclusion arguments. This court concludes that review of the State Board’s decision is an inadequate remedy for both Village League and the *Bakst* intervenors, and that the district court erred by not reviewing the Equalization Order.

II.

On appeal, Village League argues that NRS 361.395 does not give the State Board power to order reappraisals, and that that the State Board erroneously relied upon regulations adopted in 2010.¹⁰ The issue of the scope of NRS 361.395 is one which this court must review de novo.¹¹

A.

NRS 361.395(1)(a) provides the State Board with authority to equalize property valuations, and in order to do so NRS 361.395(b) requires the board to review tax rolls, and raise

⁷ NEV. R. APP. P. 3A(b)(1).

⁸ NEV. REV. STAT. § 233B.130(1); see also NEV. REV. STAT. § 233B.032 (defining “contested case” as “a proceeding . . . in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.”).

⁹ § 361.395(2)(a).

¹⁰ § 361.395.

¹¹ *J.D. Constr., Inc. v. IBEX Int’l Grp., LLC*, 240 P.3d 1033, 1039 (2010).

or lower them to equalize the taxable values of the property.¹² The equalization process consists of a judgment of the value of property assessed to match its real value.¹³ In 2010, the State Board adopted a regulation that stated that they had authority to “require[e] the reappraisal by the county assessor of a class or group of properties in a county.”¹⁴ The Court found that NRS 361.395 did not confer to the State Board any authority to order reappraisals of property values. Therefore, State Board’s interpretation was unreasonable and excessive and there was no basis in applying the 2010 regulation to the tax years that preceded its enactment.

Conclusion

This Court found that in accordance with NRS 361.395, the State Board does not have authority to order reappraisals. Additionally, the 2010 regulation does not retroactively provide the State Board with such authority either. This Court also found that the district court had jurisdiction. Therefore, this Court concludes that the State Board’s Equalization Order exceeded its statutory authority, and reversed the district court’s order dismissing the petition for judicial review remanding matter to the district court to conduct further proceedings to satisfy the requirements of NRS 361.395.

¹² NEV. REV. STAT. § 361.395(b).

¹³ 84 C.J.S. Taxation § 701 (2010) (emphasis added) (footnote omitted).

¹⁴ NEV. ADMIN. C. 361.665(1)(c).