

NO. COA08-635

NORTH CAROLINA COURT OF APPEALS

Filed: 3 February 2009

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OF NORTH CAROLINA

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FILED

IN THE MATTER OF:
APPEAL OF DONALD SULLIVAN
from the decision of the
Pender County Board of
Equalization and Review
concerning the valuation
and taxation of certain
real property.

Property Tax Commission
No. 07 PTC 280

Appeal from Final Decision entered 25 February 2008 by the
North Carolina Property Tax Commission. Heard in the Court of
Appeals 15 January 2009.

Appellant Donald Sullivan, pro se.

Pender County Attorney Carl W. Thurman III for Pender County.

STEPHENS, Judge.

*There is no spoon.*¹

The record in this appeal demonstrates that Donald Sullivan ("Sullivan") owned nine parcels of land in Pender County. For the 2007 tax year, the Pender County Tax Office assessed the parcels at a total value of \$662,918. Sullivan appealed to the County Board of Equalization and Review.² In a Notice of Decision issued on or

¹The Matrix (Warner Bros. Pictures 1999). Sullivan states in his brief that the "endless parade of paradigms which control our every move[,] " including "the paradigm that '[e]verybody has to pay taxes[,]'" reminds him of the artificial reality depicted in The Matrix.

²The basis of Sullivan's appeal to the Board is not apparent from the record. See N.C. Gen. Stat. § 105-322(g)(2) (2007) ("On

about 1 May 2007, the Board stated its decision as follows: "No Change in Value (Board not qualif[ied] to make changes on what was presented[])." "

Sullivan appealed the Board's decision to the North Carolina Property Tax Commission. In his Application for Hearing, Sullivan stated that his "property is not subject to taxation by Pender County or North Carolina. Assessed value for tax should be '0.'" In response to a question on the application as to how he arrived at his "opinion of value[,] " Sullivan stated as follows: "All parcels are non-jurisdictional and not subject to tax. Owner has not consented to tax and is not involved in business, trade, industry, or commerce." The Commission heard Sullivan's appeal on 13 December 2007.³ In a Final Decision entered 25 February 2008, the Commission made a finding that Sullivan "did not challenge Pender County's valuations of [his] properties[]"; concluded that Sullivan "failed to show that the assessments were erroneous[]"; and dismissed the appeal. Sullivan appealed to this Court.

Standard of Review

The standard of review for decisions of the Property Tax Commission, as set forth in N.C. Gen. Stat. § 105-345.2(b) (2007), is as follows:

request, the board of equalization and review shall hear any taxpayer who owns or controls property taxable in the county with respect to the *listing or appraisal* of the taxpayer's property or the property of others.") (emphasis added).

³The transcript of the hearing before the Commission is not part of the record before us.

The court may affirm or reverse the decision of the Commission, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional provisions; or
- (2) In excess of statutory authority or jurisdiction of the Commission; or
- (3) Made upon unlawful proceedings; or
- (4) Affected by other errors of law; or
- (5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

In reviewing decisions under this statute, "the court shall review the whole record or such portions thereof as may be cited by any party[.]" N.C. Gen. Stat. § 105-345.2(c) (2007).

I.

Sullivan first argues that the Commission erred in classifying him as a "taxpayer," which is defined by N.C. Gen. Stat. § 105-273(17) (2007) as "any person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation." Sullivan asserts (1) that he is not a "person" as defined by N.C. Gen. Stat. § 105-273(12) (2007), and (2) that his property is not subject to *ad valorem* taxation because he obtained his property by "bills of sales," not by warranty

deeds.⁴ Sullivan's first assertion is meritless, and we do not address it. See N.C. Gen. Stat. § 105-273(12) (defining "person" in part as "any individual").

Pursuant to the power granted to it by the North Carolina Constitution, our General Assembly has enacted the following legislation:

All property, real and personal, within the jurisdiction of the State shall be subject to taxation unless it is:

- (1) Excluded from the tax base by a statute of statewide application enacted under the classification power accorded the General Assembly by Article V, § 2(2), of the North Carolina Constitution, or
- (2) Exempted from taxation by the Constitution or by a statute of statewide application enacted under

⁴A "warranty deed" is defined as

[a] deed containing one or more covenants of title; esp., a deed that expressly guarantees the grantor's good, clear title and that contains covenants concerning the quality of title, including warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title against all claims.

Black's Law Dictionary 446 (8th ed. 2004). The "bills of sale" recorded by Sullivan in Pender County's Register of Deeds office all contain the following language:

The sellers hereby certify that they are the owners of and have good marketable title to the property herein transferred and that they will hold purchaser harmless from any claims on account of their purchase thereof or for any claims against the property prior to this sale, and that Sellers will warrant and defend the title against the lawful claims of all persons whomsoever.

the authority granted the General Assembly by Article V, § 2(3), of the North Carolina Constitution.

N.C. Gen. Stat. § 105-274(a) (2007). See also N.C. Const. art I, § 8; N.C. Const. art. V, § 2(1); N.C. Const. art. V, § 2(2); N.C. Const. art. V, § 2(3). "The general rule established by the Constitution is that all property in this State is liable to taxation, and shall be taxed in accordance with a uniform rule." *Salisbury Hosp. v. Rowan Cty.*, 205 N.C. 8, 10, 169 S.E. 805, 806 (1933) (quoting *Latta v. Jenkins*, 200 N.C. 255, 258, 156 S.E. 857, 858 (1931)). "Exemption of specific property, because of its ownership by the State or by municipal corporations, or because of the purposes for which it is held and used, is exceptional." *Id.* (quoting *Latta*, 200 N.C. at 258, 156 S.E.2d at 858-59).

Nothing in our Constitution or our General Statutes supports Sullivan's argument that property conveyed by bill of sale is not subject to *ad valorem* taxation. All privately held real property in this State is subject to *ad valorem* taxation unless exempted from taxation by the General Assembly. Sullivan's property is not exempt. This assignment of error is overruled.

II.

Sullivan next argues that the Commission erred in finding as a fact that he "did not challenge Pender County's valuations of [his] propert[ies][.]" This argument is meritless.

Because the transcript of the hearing before the Commission is not part of the record before us, we are unable to determine the specific grounds upon which Sullivan challenged Pender County's

action. Nevertheless, it is clear to this Court that Sullivan's appeal is premised on the argument that his property is exempt from taxation. Sullivan acknowledges as much in his brief when he states that his challenge was "based upon [his] insistence that the taxing statute itself exempts [him] and [his] property from ad valorem taxation[.]" (Emphasis added.) Although in Sullivan's opinion his properties have "zero values[.]" Sullivan does not argue that "the means adopted by the tax supervisor was illegal or arbitrary" or that "the valuation was unreasonably high[.]" as he must were he challenging the County's appraisal of his property's value. *In re Appeal of Greens of Pine Glen Ltd.*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003) ("[A] taxpayer who is challenging an ad valorem tax assessment must satisfy a two-prong test by demonstrating that the means adopted by the tax supervisor was illegal or arbitrary and also that the valuation was unreasonably high.") (citing *In re Appeal of AMP, Inc.*, 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975)). Rather, Sullivan repeatedly argues that the County is without authority to tax his property, regardless of the County's appraisal. The record supports the Commission's finding. This assignment of error is overruled.

III.

Next, Sullivan argues that the Commission erred by concluding that Pender County properly moved for dismissal of the appeal. Sullivan contends that the Commission improperly "prompt[ed]" the County's attorney to move for dismissal and that this prompting "exhibits improper procedure and a bias on the part of the

Commission[.]” We are unable to review the merits of this argument because the transcript of the hearing before the Commission is not part of the record before us, and the record does not otherwise support Sullivan’s assertion. “It is the appellant’s responsibility to make sure that the record on appeal is complete and in proper form.” *Miller v. Miller*, 92 N.C. App. 351, 353, 374 S.E.2d 467, 468 (1988) (citing *Fortis Corp. v. Northeast Forest Prods.*, 68 N.C. App. 752, 315 S.E.2d 537 (1984)). This assignment of error is dismissed.

IV.

Finally, Sullivan argues that the Commission erred by concluding that he was making a constitutional challenge to the taxation of his property. As stated above, Sullivan asserts that his challenge was “based upon [his] insistence that the taxing statute itself exempts [him] and [his] property from *ad valorem* taxation[.]” (Emphasis added.) We further note, however, that Sullivan also states in his brief that we must “overrule the Property Tax Commission in this instant matter, and overturn the obvious violation of [his] federal and state constitutional rights to [his] private property.” (Emphasis added.) To the extent that the Commission considered constitutional challenges advanced by Sullivan, the Commission properly determined that it is not empowered to rule on such challenges.

The Property Tax Commission is an administrative and quasi-judicial body which functions “as the State board of equalization and review[.]” N.C. Gen. Stat. § 105-290(a) (2007). As an

administrative agency created by the General Assembly, the Commission does not have jurisdiction to determine the constitutionality of legislative enactments. See *State ex rel. Utilities Comm'n v. Carolina Util. Customers Ass'n*, 336 N.C. 657, 673-74, 446 S.E.2d 332, 343 (1994) (holding that the Utilities Commission did not have jurisdiction to determine the constitutionality of legislative enactments). See also *In re Consol. Appeals of Certain Timber Companies*, 98 N.C. App. 412, 415, 391 S.E.2d 503, 505 (1990) ("The Property Tax Commission is without authority to rule on the constitutionality of [statutes].") (citing *Johnston v. Gaston Cty.*, 71 N.C. App. 707, 323 S.E.2d 381 (1984), *disc. review denied*, 313 N.C. 508, 329 S.E.2d 392 (1985)). This assignment of error is overruled.

The Final Decision of the Property Tax Commission in this matter is

AFFIRMED.

Judges STEELMAN and GEER concur.

Report per Rule 30(e).

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OF NORTH CAROLINA

BY *Patricia P. Barber*
DEPUTY CLERK

February 23, 2009