

2008

Wasatch County v. Utah State Tax Commission, Warren and Tricia Osborn, et al. : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WASATCH COUNTY,

Petitioner/Appellant,

vs.

UTAH STATE TAX COMMISSION,

Respondent/Appellee,

WARREN AND TRICIA OSBORN
et al.,

Respondent/Appellee.

Case No. 20080732-~~CA~~

UTAH STATE TAX COMMISSION'S BRIEF

Appeal from the Order of Third Judicial District Court
Judge Kennedy Dismissing the Petitioner's Petition
for Judicial Review.

The Tax Commission Requests Oral Argument

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JURISDICTION

The Utah Court of Appeals has jurisdiction pursuant to Utah Code Ann. §§ 78A-3-102(3)(j) (West Supp. 2008) and 78A-4-103(2)(j) (West Supp. 2008).

STATEMENT OF THE ISSUE AND STANDARD OF REVIEW

The Tax Commission agrees with the statement of the issue and standard of review as made by the Appellant, Wasatch County, as follows:

Whether the District Court properly found that Wasatch County's protective filing of a cross-petition for review in the Supreme Court deprived the District Court of subject matter jurisdiction to hear the County's petition for review filed in District Court pursuant to Utah Code Ann. §§ 59-1-601 and 59-1-602?

This is an issue of law and the correction of error standard applies. Ameritemps, Inc. v. Labor Comm'n, 2005 Ut. App 491, ¶ 7, 128 P.3d 31.

DETERMINATIVE STATUTORY PROVISIONS

Utah Code Ann. § 59-1-601(1) (West Supp. 2008):

In addition to the jurisdiction granted in Section 63G-4-402, beginning July 1, 1994, the district court shall have jurisdiction to review by trial

de novo all decisions issued by the commission after that date resulting from formal adjudicative proceedings.

Utah Code Ann. § 59-1-602(1)(a) (West Supp. 2008):

Any aggrieved party appearing before the Commission or county whose tax revenues are affected by the decision may at that party's option petition for judicial review in the district court pursuant to this section, or in the Supreme Court or the Court of Appeals pursuant to Section 59-1-610.

STATEMENT OF THE CASE AND FACTS

The Tax Commission agrees with Wasatch County's statement of the case and facts.

SUMMARY OF THE ARGUMENT

The District Court erred in concluding that Wasatch County's filing of a protective cross-petition to the petition filed by the Osborns before the Utah Supreme Court¹ prevents Wasatch County from filing its own petition for judicial review in the district court under Utah Code Ann § 59-1-602(1)(a) (Wes Supp. 2008). Section 59-1-602(1)(a)

¹ The Osborns' petition for judicial review was properly filed with the Utah Supreme Court, which transferred it to the Court of Appeals. For clarity, reference to the Osborns' petition and Wasatch County's cross-petition, currently before the Court of Appeals in appeal no. 20080304-CA, are referenced respectively as the petition or cross-petition to the Supreme Court.

permits any "aggrieved party" to petition for judicial review before the Supreme Court or district court. Wasatch County filed the petition before the district court because it wanted a trial de novo of the Tax Commission's decision. The District Court's decision incorrectly interprets Section 59-1-602(1)(a) because: (i) it deprives Wasatch County the choice under Section 59-1-602(1)(a) to file a district court petition and, (ii) in the case of multiple petitions, it denies the right of all aggrieved parties to fully participate in the petitions by filing cross-petitions.

A reversal of the District Court's decision will result in two petitions of judicial review: the Osborns petition to the Utah Supreme Court and Wasatch County's petition to the district court. Section 59-1-602(1)(a) permits this result.

However, these dual tracks of judicial review may lead to multiple and conflicting decisions based upon different records and standards of review. To avoid this result, the Tax Commission asks the Court to issue a standing order that when conflicting petitions have been filed, the petition filed before the district court proceeds first and the petition before the appellate court is transferred and consolidated with the district court petition.

ARGUMENT

I. WASATCH COUNTY'S CROSS-PETITION TO THE OSBORNS' PETITION IN THE SUPREME COURT DOES NOT PRECLUDE DISTRICT COURT JURISDICTION.

There is no dispute that Utah Code Ann. § 59-1-602(1)(a) permits any aggrieved party, at that party's option, to petition for judicial review of a Tax Commission decision in the district court **or** the Supreme Court. The plain language of Section 59-1-602(1)(a) is clear "Any aggrieved party appearing before the Commission or county whose tax revenues are affected by the decision may at that party's option petition for judicial review in the district court pursuant to this section, or in the Supreme Court. . . ." The interpretation of a statute must "give effect to the legislative intent, as evidenced by the statute's plain language, in light of the purpose the statute was meant to achieve." Summit Water Distribution Co. v. Summit County, 2005 UT 73, ¶ 17, 123 P.3d 437 (citations omitted).

The District Court held that Wasatch County, by filing a cross-petition to the petition for judicial review filed by the Osborns in the Supreme Court, is precluded from seeking judicial review of the Commission's decision in district court. The District Court's conclusion is in

error. The filing of a cross-petition should not be equated with a "petition for judicial review" as the phrase is used in Section 59-1-602(1)(a). The District Court's conclusion is inconsistent with the plain language of Section 59-1-602(1)(a) because it effectively eliminates Wasatch County the opportunity to choose its forum and prevents the parties from fully participating in all petitions filed.

The choice to file a petition before the Utah Supreme Court was made by the Osborns, not Wasatch County. The Osborns' petition for review invoked the jurisdiction of the Supreme Court. The Osborn petition in no way limits Wasatch County, as an "aggrieved party" under Section 59-1-602(1)(a), to file its own petition for judicial review with the district court. This conclusion was acknowledged by the District Court and is consistent with the plain language of the statute. (See District Court Order Granting Warren and Tricia Osborns' Motion to Dismiss, p. 2 and ¶ 4; Exhibit 1).

Wasatch County's cross-petition in the Supreme Court, like the Osborns' petition, does not limit Wasatch County's choice under Section 59-602(1)(a) to seek judicial review in the district court. The cross-petition filed by Wasatch County was not a choice by Wasatch County under Section 59-

1-602(1)(a) to invoke judicial review before the Supreme Court instead of district court review. Jurisdiction in the Supreme Court was already invoked by the Osborns. Wasatch County, as any prudent party should, simply exercised its right to fully participate in the petition initiated by the Osborns. At essentially the same time, Wasatch County exercised its choice under Section § 59-1-602(1)(a) to invoke the jurisdiction of the district Court.²

The premise of the District Court's decision is that a filing of a cross-petition is the same as filing a petition to the forum of choice as permitted by Section 59-1-602. Such a premise results in consequences contrary to the purposes of Section 59-1-602(1)(a) to permit each party the right to appeal to the jurisdiction of their choice. Assuming the District Court is correct, then the filing of a

² The Tax Commission acknowledges that Wasatch County's cross-petition was filed one day before its petition to the district court. However, the filing order of the cross-petition and petition is of no consequence and should not be the basis to sustain the District Court's decision. The basis of the District Court's decision is that the filing of a cross-petition precludes a party from filing its own petition. If that is correct, then the filing of a petition also prevents the subsequent filing of a cross-petition. As argued infra, such a result effectively deprives either party from freely choosing their forum for judicial review as allowed by Section 59-1-602(1)(a) and from fully participating in all petitions that may be filed.

petition also prevents filing of a cross-petition. This conclusion effectively prevents parties from fully participating in circumstances where petitions have been filed in courts of differing jurisdiction.

For example, had Wasatch County only filed a petition for judicial review in the district court, the District Court's conclusion would prevent the Osborns from filing a cross-petition in the district court. The District Court decision prevents such a cross-petition because the Osborns would have already filed a petition for judicial review to the Supreme Court.³ Likewise, Wasatch County could not have filed a cross-petition in the Supreme Court, leaving its issues unaddressed in that forum. Under the District Court's reasoning, neither party could "invoke" jurisdiction by filing cross-petitions, because both parties would have already made their respective choices by filing their original petitions.

In essence, the District Court's decision places

³ District Court petitions for judicial review follow the Utah Rules of Appellate Procedure. Utah Code Ann. § 59-1-602(1)(c) (West Supp. 2008). Presumably, a non-petitioning party having issues with a Commission decision should file a cross-petition under Utah R. App. Procedure, Rule 4(d) if it wishes to have its issues considered in that forum. State v. South, 924 P.2d 354, 355 (Utah 1996) (on remand 932 P.2d 622, cert. denied 940 P.2d 1224).

parties who have the right to appeal a Tax Commission decision in the proverbial "Catch 22" position. Parties must "gamble" on which court will proceed first. The result of the District Court's decision is that both parties will not be permitted to participate in the same petition for judicial review where one party files a petition in the district court and the other party in the Supreme Court. Moreover, the District Court decision encourages a race to the courthouse by practitioners in hopes that the petition filed first will proceed first. Such a result does not support the purpose of Section 59-1-602(1)(a) to provide the parties with their choice of jurisdiction.

The choice permitted by Section 59-1-602(1)(a) is best met by a holding of this Court that the filing of a cross-petition does not preclude the filing of a petition for judicial review under Section 59-1-602(1)(a) to the jurisdiction of choice as made by each party. This would ensure that all parties could participate in all petitions, regardless of which petition proceeds first. The District Courts's decision should be reversed.

II. THE JURISDICTION OPTIONS PERMITTED BY SECTION 59-1-602(1) (a) CREATE UNCERTAINTY THAT SHOULD BE CLARIFIED.

A reversal of the District Court's decision still leaves unaddressed the dilemma created when multiple appeals to courts of differing jurisdictions have been made under Section 59-1-602(1)(a). The reversal only ensures that all parties will be able to fully participate in both petitions for judicial review.

If left unaddressed, these dual tracks of judicial review can result in multiple decisions by the appellate courts based upon two different records. The appellate review is limited to the facts and evidence submitted before the Commission. The district court review permits a "trial de novo."⁴ A different factual record may be developed through this trial de novo. Assuming that both tracks reach the appellate level for decision, the appellate court will have to make a decision as to which record it will follow or risk the possibility of conflicting orders based upon different records or standards of review.

To avoid this problem, the Commission asks for a

⁴ Although not relevant here, the "trial de novo" permitted by Section 59-1-601 is limited by the Utah const. art XII sec § 6(4) to "matters decided by the Commission."

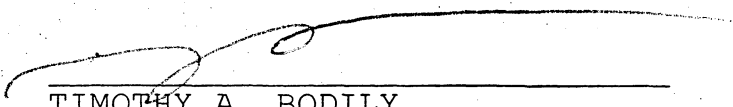
standing order that the appellate courts defer to the district court for judicial review when conflicting jurisdictions have been invoked, unless, a party can show under Utah Appellate Rule 8A that emergency relief is required. Further, in such instances, the appellate court should transfer petitions before it to the district court to be consolidated with the district court petition. Such transfer will result in one record for appellate review and ensure that all parties have full access to the Courts.

The Tax Commission recognizes that this procedure affects the right of the Osborns to seek judicial review first before the Utah Supreme Court. However, the Tax Commission knows of no way that the Court can reconcile both choices permitted under Section 59-1-602. Deferral to the district court is the alternative that will best preserve the aggrieved parties' rights under Section 59-1-602. By proceeding first in the district court, a more complete record will be created and neither party will lose the rights to have their issues addressed in both forums as permitted under Section 59-1-602(1)(a).

CONCLUSION

The District Court's decision should be reversed. The Osborns' petition should be transferred and consolidated with Wasatch County's appeal before the district court.

DATED this 15 day of December, 2008.



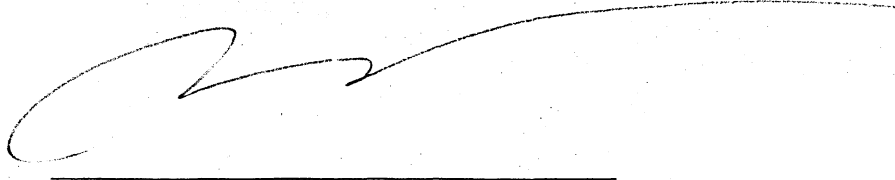
TIMOTHY A. BODILY
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of December, 2008, that I caused two (2) copies of the foregoing UTAH STATE TAX COMMISSION'S BRIEF was mailed, postage prepaid, to the following:

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A handwritten signature in dark ink, appearing to be 'T. Low', is written over a horizontal line.

ADDENDUM A

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FILED DISTRICT COURT
Third Judicial District

AUG 04 2008

SALT LAKE COUNTY

By _____
Deputy Clerk

**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

WASATCH COUNTY,

Petitioner,

vs.

UTAH STATE TAX COMMISSION,

Respondent.

**ORDER GRANTING WARREN AND
TRICIA OSBORNS' MOTION TO
DISMISS**

Case No. 080907392

Judge John Paul Kennedy

Tax Commission Appeals Nos.: 06-1504,
06-1505, 06-1506, 06-1507, 06-1508, 06-
1509, 06-1510

This matter came before the Court for oral argument on: (1) Warren and Tricia Osborns' Motion to Intervene ("Motion to Intervene") and (2) Warren and Tricia Osborns' Motion to Dismiss for Failure to Include Multiple Indispensable Parties ("Motion to Dismiss") on July 14, 2008, the Honorable John Paul Kennedy presiding. Appearing on behalf of Petitioner Wasatch County was Wasatch County Attorney Thomas L. Lowe. Appearing on behalf on the Utah State Tax Commission was Assistant Utah Attorney General Timothy A. Bodily. Appearing on behalf

of the Osborns were Maxwell A. Miller and Matthew D. Cook of Parsons Behle & Latimer. Neither Wasatch County nor the Utah State Tax Commission objected to the Osborns' participation in the proceeding.

At the end of the July 14, 2008 argument, the Court granted Wasatch County and the Utah State Tax Commission the opportunity to file supplemental briefs addressing the argument asserted by Warren and Tricia Osborn (the "Osborns") that once an aggrieved party has exercised its statutory option to appeal a decision of the Tax Commission pursuant to Utah Code Ann. § 59-1-602(1)(a) by invoking the jurisdiction of the court of its choice, the court wherein a subsequent attempt to invoke jurisdiction is made lacks jurisdiction to adjudicate the matter. The parties, respectively, each filed supplemental briefs on the issue of the election of remedies. Oral argument on the supplemental pleadings was held before the Court on July 28, 2008.

Upon consideration of the record, memoranda, arguments made, and being fully advised in the premises, the Court enters the following Order granting the Osborns' Motion to Dismiss as follows:

1. The Osborns have standing to file a Motion to Dismiss.
2. The Osborns and other property owners who were parties in the Tax Commission proceeding, *Warren and Tricia Osborn et al v. Board of Equalization of Salt Lake County, Utah*, Appeal Nos. 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1510, filed a Petition for Review of the Tax Commission's Findings of Fact, Conclusions of Law, and Final Decision dated April 1, 2008 (the "Final Decision"), with the Utah Supreme Court on April 10, 2008, as Case No. 2008034 SC.

3. On April 24, 2008, Wasatch County filed its Cross-Petition for Review of the Utah State Tax Commission's Final Decision with the Utah Supreme Court in the same case, Case No. 20080304 SC. Subsequently, on April 25, 2008, Wasatch County filed its Petition for Review of the Decision in this Court, as Case No. 080907392

4. Utah Code Ann. § 59-1-602 provides that "any aggrieved party appearing before the commission or county whose tax revenues are affected by the decision," including Wasatch County, has the "option" of filing a petition for review in the district court "or" in the Supreme Court. Wasatch County exercised its statutory option pursuant to Utah Code Ann. § 59-1-602(a)(1) by invoking the jurisdiction of the court of its choice, the Utah Supreme Court, by filing its Cross-Petition for Review with the Utah Supreme Court on April 24, 2008. Consequently, Wasatch County's subsequent attempt to invoke the jurisdiction of this Court by filing its Petition for Review on April 25, 2008 failed to invoke this Court's jurisdiction and was in violation of Utah Code Ann. § 59-1-602(a)(1). Because this Court lacks jurisdiction to adjudicate Wasatch County's subsequently filed appeal with this Court, it retains jurisdiction only to dismiss Wasatch County's Petition for Review. For the reasons stated above, the Osborns' Motion to Dismiss is hereby granted and Wasatch County's Petition for Review filed in this Court on April 25, 2008 is hereby dismissed.

5. The Court further cites to *Salt Lake County v. Tax Commission*, which provides:

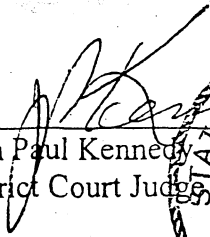
Salt Lake County did not expressly waive (as our statute contemplates that it should) its right of access to the Third Judicial District Court for the relief it seeks here. We treat the omission as a pleading deficiency of the kind to which the pleader's adversary must make timely objection or the right to object is waived. (fn6) In this connection, it is significant that the County's power to tax is

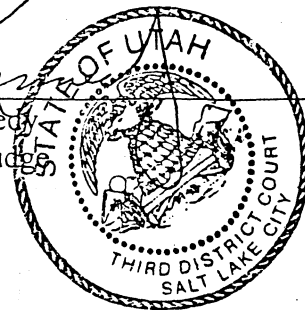
not dependent on the above cited statute; the statute merely regulates the exercise of that power. The statute does not undertake to remove the review of Commission decisions from the jurisdiction of this Court; it merely states a condition which an applicant for review is obligated to satisfy.

Salt Lake County v. Tax Commission, 596 P.2d 641, 644 (Utah 1979).

The Court finds, pursuant to the above cited case, that Osborns have timely objected to Wasatch County's filing of duplicative appeals; therefore their right to object has not been waived.

So ordered this 1 day of August, 2008.


John Paul Kennedy
District Court Judge



Approved as to form:

Timothy A. Bodily, Utah Assistant Attorney General

Thomas L. Lowe, Wasatch County Attorney

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2008, I mailed a true and correct copy of the foregoing
**ORDER GRANTING WARREN AND TRICIA OSBORNS' MOTION TO INTERVENE
AND MOTION TO DISMISS** to the following parties:

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