Dallas Central Appraisal District v. Sears Roebuck And Co.

2000 | Cited 0 times | Court of Appeals of Texas | August 23, 2000

AFFIRMED; and Opinion Filed August 23, 2000

OPINION

This is an appeal from a judgment in an ad valorem tax case entered in favor of appellee, Sears Roebuck and Company (Sears). As plaintiff, Sears filed an action against appellants Dallas Central Appraisal District (Appraisal District) and Dallas County Appraisal Review Board (Review Board) to correct the 1993 tax appraisal roll for inventory held at two warehouse locations. The trial court found that Appraisal District's transposition of account numbers resulted in incorrect appraisal values and entered an order to correct the appraisal values. Appellants bring five issues on appeal, asserting the trial court was not authorized to order a change in the tax appraisal roll, complaining about the inclusion and exclusion of evidence, and requesting a new trial due to alleged bias of the trial judge against them. Sears brings one cross-point, requesting attorney fees which the trial court determined were not authorized by statute. We resolve appellants' issues against them, overrule Sears's cross-point, and affirm the trial court's judgment.

Factual Background

In January 1993, Sears operated two warehouses in Garland, Texas, one on Miller Road, and the other on Grader Street. The Miller Road warehouse was a 1,000,000 square foot facility used by Sears since 1981. It was a "retail replenishment center," used to store merchandise and replenish inventories at Sears retail stores in the region. The Grader Street warehouse was a 20,000 square foot facility which Sears began using in 1991. It was a "cross-docketing center," used for large consumer items not normally kept in inventory that were held briefly before delivery to the purchaser's home.

From 1981 to 1993, the Miller Road warehouse was assigned account number 99820130000192350 (Account No. 350) by the Appraisal District for property tax appraisal purposes. In 1993, Sears filed the personal property rendition form provided by the Appraisal District for Account No. 350 at the Miller Road location. While appraising the Miller Road property, the Appraisal District became aware that no rendition had been submitted for the inventory at the Grader Street warehouse. The appraiser, under the mistaken impression that the Miller Road inventory had been transferred to Grader Street, reassigned Account No. 350 to Grader Street and assigned as the appraised value of the Grader Street inventory the $34,151,000 figure Sears reported as the original cost of inventory for Account No. 350 at the Miller Road location. The Appraisal District then issued the Miller Road inventory a new account number, 99922950000176900 (Account No. 900).

When Sears received the notice of appraised value for Account No. 350, it did not notice the account number reflected the Grader address. Sears filed a timely protest of the $34,151,000 appraised value on Account No. 350 (as the Miller Road location), claiming the market value for appraisal purposes should be lower than the cost of inventory as reported by Sears on the rendition form. After the Review Board denied relief, Sears filed suit in district court appealing the Review Board's decision. That suit was settled, and the district court entered an agreed judgment in February 1994, reducing the value of Account No. 350 at the Miller Road location to $27,320,800. During the protest and appeal process, Sears did not discover the Appraisal District had changed the address for Account No. 350 to the Grader Street location. The Appraisal District erroneously applied the agreed judgment to the inventory value for the Grader Street facility rather than Miller Road, as stated in the judgment.

When Sears received the 1994 rendition forms from the Appraisal District, it discovered Account No. 350 had been assigned to Grader Street and the Grader Street appraised value erroneously reflected the 1993 value of the Miller Road inventory. Sears filed a motion to correct the 1993 appraisal roll for both locations, pursuant to section 25.25(c) of the tax code. See Tex. Tax Code Ann. § 25.25(c) (Vernon 1992). The Review Board held a hearing on the motion and entered an order that no correction was authorized. Sears then filed suit in district court, pursuant to section 25.25(g) and chapter 42 of the tax code. See Tex. Tax Code Ann. §§ 25.25(g), 42.01-.42 (Vernon 1992).

In its petition, Sears alleged, among other things, that the Appraisal District had made clerical errors and multiple appraisals of its property. The district court granted partial summary judgment for the Appraisal District, finding that chapter 42 (providing for appeal from denial of a timely protest of tax appraisal) did not apply to a suit brought under section 25.25(g) (providing for district court review of the denial of a motion to correct tax appraisal roll after the time for normal protest has expired). During the bench trial, Sears made a bill of exceptions regarding attorney fees, which the trial court found it had no jurisdiction to grant. Otherwise, the trial court granted judgment to Sears and made findings of fact and conclusions of law.

Scope of Review

In their second issue, appellants assert the trial court erred in allowing testimony that was not presented at the Review Board hearing. Appellants argue that correction of the tax appraisal roll pursuant to section 25.25(c) is very limited, and the scope of the trial court's review under section 25.25(g) is strictly limited to ascertaining whether the Review Board performed its mandatory responsibilities to hold required hearings, take evidence, and make actual corrections to the appraisal roll. Appellants contend that because the Review Board conducted a hearing, received evidence, and determined that no correction was allowed, the Review Board performed its statutory duty, and there was nothing for the trial court to compel the Review Board to do. We have previously rejected appellants' argument and do so again. See GE Capital Corp. v. Dallas Cent. Appraisal Dist., 971 S.W.2d 591, 593-94 (Tex. App._Dallas 1998, no pet.).

Section 42.01 of the tax code was amended effective January 1, 1998, to specifically apply chapter 42 to appeals of determinations made pursuant to section 25.25. See Tex. Tax Code Ann. § 42.01 (Vernon Supp. 2000). District court review under chapter 42 is by trial de novo. See id. § 42.23. However, the amended version of the tax code did not apply to the tax appraisal at issue. See Act of June 19, 1997, 75th Leg., R.S., ch. 1039, § 50(b), 1997 Tex. Gen. Laws 3919 (stating that changes in law do not apply to ad valorem taxes imposed before the effective date of the Act). The trial court, therefore, was limited to a substantial evidence de novo review. See G.E. Am. Communication v. Galveston Cent. Appraisal Dist., 979 S.W.2d 761, 767 (Tex. App._Houston [14th Dist.] 1998, no pet.).

In reviewing the record, we conclude the trial court conducted the hearing using the substantial evidence de novo review. See id at 766. Under that standard, the reviewing court may hear any evidence in existence at the time of the administrative hearing regardless of whether it was introduced at the administrative hearing. See Nueces Canyon Consol. Indep. Sch. Dist. v. Central Educ. Agency, 917 S.W.2d 773, 776 (Tex. 1996). We resolve appellants' second issue against them.

Correction of the Tax Appraisal Roll

In their first issue, appellants assert the trial court erred in ordering valuation of property at the Grader Street facility changed on the tax appraisal roll. Appellants do not contest the valuation of the Miller Road facility. As stated earlier, Sears timely filed a protest of the 1993 appraised value for the Miller Road inventory. An agreed judgment was entered in the district court on the appeal of that protest.

Under a substantial evidence de novo review standard, a district court must review an appraisal review board's order to ensure the board reached a reasonable decision. See G.E. Am. Communication, 979 S.W.2d at 767. The administrative order being reviewed will be set aside only if it is arbitrary, capricious, unlawful, or not reasonably supported by substantial evidence. Id. at 765. A court abuses its discretion if it exercises a vested power in a manner that is contrary to law or reason. See Landon v. Jean-Paul Budinger, Inc., 724 S.W.2d 931, 935 (Tex. App._Austin 1987, no writ).

A party wishing to contest the appraised value of property must normally file a timely "protest"of the appraisal pursuant to chapter 41 of the tax code. See Tex. Tax Code Ann. § 41.41- .70 (Vernon 1992). Section 42.41 of the tax code requires the chief appraiser to correct the appraisal roll "as necessary to reflect the final determination of an appeal" from such a protest. See id. § 42.41. In limited circumstances, a party may file a motion to correct the tax appraisal roll after the time for a normal protest has expired. See id. § 25.25. Section 25.25(c) of the tax code provides:

(c) At any time before the end of five years after January 1 of a tax year, the appraisal review board, on motion of the chief appraiser or of a property owner, may direct by written order changes in the appraisal roll to correct:

(1) clerical errors that affect a property owner's liability for a tax imposed in that tax year;

(2) multiple appraisals of a property in that tax year; or

(3) the inclusion of property that does not exist in the form or at the location described in the appraisal roll. Id. § 25.25(c).

Appellants contend that Sears was not allowed to use a motion to correct the appraisal roll to change the valuation of property at the Grader Street facility because Sears failed to file a timely "protest"of the Grader Street appraisal pursuant to chapter 41 of the tax code. See id. § 41.41-.70. We disagree in this case. The trial court correctly concluded the Review Board had abused its discretion and that its decision was supported neither by the law nor the evidence. The uncontroverted evidence shows that the Appraisal District made a clerical error when it recorded the February 1994 judgment of the suit on the protest of Account No. 350, because it failed to enter the judgment data. See id. § 25.25(c)(1). [2] Moreover, the trial court expressly found in its findings of facts filed in our record that appellants' transposition of account numbers was a result of clerical error, which in turn "prevented the appraisal roll and tax rolls from accurately reflecting a finding or determination made by the chief appraiser, the appraisal review board or the assessor." These findings are unchallenged. As a matter of law, the Review Board was required to correct the tax appraisal roll to reflect the Miller Road warehouse as Account No. 350 and to assign it a value of $27,320,800. See id. § 42.41.

The trial court also expressly concluded based on its findings that the Appraisal District "included in the 1993 appraisal roll multiple appraisals of the Miller inventory. . . ." Because clerical error resulted in multiple appraisals for the Miller Road location (Account No. 350 and Account No. 900), the Review Board was required to remove the Account No. 900 appraisal from the Miller Road location. See id. § 25.25(c)(2). Merely changing the Grader Street account number to Account No. 900 would not be corrective, because the uncontroverted evidence showed the appraisal on the tax roll for the Grader Street location was for inventory located at the Miller Road warehouse. Furthermore, we do not agree with appellants that the tax appraisal roll for the Grader Street could have been corrected by merely removing erroneous inventory figures from the underlying commercial worksheets used to conduct the original appraisal. Correction of errors on the tax appraisal roll under section 25.25 does not mean correction of errors on the underlying worksheets. See Dallas Cent. Appraisal Dist. v. G.T.E. Directories Corp., 905 S.W.2d 318, 322 (Tex. App._Dallas 1995, writ denied).

Since the tax appraisal roll value for the Grader Street location was clearly wrong, directly resulting from clerical errors, the Review Board was required to correct the appraised value. See See Tex. Tax Code Ann. § 25.25(c)(2)(3) (Vernon 1992). The only competent evidence before the court concerning the value of inventory existing at the Grader Street warehouse in January 1, 1993, was the business record from Sears's general ledger. It showed $1,011,804 as the cost of inventory. The trial court's judgment reflected this amount.

We disagree that section 25.25(c) will not allow a change in the appraised value of property. While section 25.25(c) precludes disputes based solely on property valuation, it allows a correction of the tax appraisal roll when there has been a clerical error, multiple appraisals of property, or an appraisal of property that does not exist in the form or at the location described in the appraisal role. Relief granted under section 25.25(c) may necessitate a change in the value of the property reflected on the appraisal roll. To interpret the statute to preclude such corrections would eliminate a remedy the legislature obviously created to avoid such injustices. Taxing statutes are construed strictly against the taxing authority and liberally for the taxpayor. See Wilson Communications, Inc. v. Calvert, 450 S.W.2d 842, 844 (Tex. 1970); Dallas Cent. Appraisal Dist. v. Tech Data Corp., 930 S.W.2d 119, 122 (Tex. App._Dallas 1996, writ denied). If a statute is curative or remedial in its nature, it will generally be given the most comprehensive and liberal construction possible. Burch v. City of San Antonio, 518 S.W.2d 540, 544 (Tex. 1975); see also Jim Sowell Constr. Co., Inc. v. Dallas Cent. Appraisal Dist., 900 S.W.2d 82, 84-85 (Tex. App._Dallas 1995, writ denied). We conclude, therefore, that the trial court did not err in ordering the change to the tax appraisal roll. We resolve the first issue against appellants.

Exclusion of Testimony

In their third issue, appellants contend the trial court improperly excluded the testimony of their key witness, Elizabeth Soliz, who was not identified in response to interrogatories. Appellants' response to Sears's request to identify persons with knowledge of relevant facts listed two other witnesses and made a general reference to other members of the Appraisal District and Review Board, too numerous to mention, but whose identity, address, and phone numbers were easily obtainable from documents provided in response to Sears's request for production and/or Appraisal District records which would be made available for inspection.

At the time of trial, the applicable procedural rule provided that a party who fails to identify a witness in response to interrogatories may not offer that witness's testimony unless the trial court finds good cause for admission of the evidence. See Tex. R. Civ. P. 215(5) (former rules); [3] Alvarado v. Farah Mfg. Co., Inc., 830 S.W.2d 911, 914 (Tex. 1992). The application of the rule was mandatory. See Alvarado, 830 S.W.2d at 914. Under rule 215(5), the fact that a witness's identity is known to all parties is not itself good cause for failing to supplement discovery. See Sharp v. Broadway Nat'l Bank, 784 S.W.2d 669, 671 (Tex. 1990). A party is entitled to prepare for trial assured that a witness will not be called because opposing counsel has not identified him or her in response to a proper interrogatory. Id. Even the fact that a witness has been deposed is not enough to show good cause for admitting the evidence when the witness was not identified in response to discovery. Id.

Appellants contend that their response satisfied their duty to disclose under rule 168(2)(a) of the Texas Rules of Civil Procedure. See Tex. R. Civ. P. 168(2)(a) (former rules). [4] We find no case authority supporting appellants' contention that a reference to other documents satisfies the requirement to identify persons with knowledge of relevant facts in response to a proper interrogatory. Moreover, even if rule 168(2)(a) did apply, appellants' response was wholly inadequate. Rule 168(2)(a) required a

balancing analysis of the relative burden imposed upon the party seeking and the party responding to discovery by the assertion that the information sought is a matter of public record. See State Farm Mut. Auto. Ins. Co. v. Engelke, 824 S.W.2d 747, 752 (Tex. App._Houston [1st Dist.] 1992, no writ). Appellants' statement that the identity of persons with knowledge of relevant facts could be obtained from "documents provided in response to plaintiff's request for production and/or the Appraisal District records" was too vague and did not specify which documents or records contained the information. Thus, we conclude the record does not support appellants' argument that good cause existed to allow Soliz to testify, and the district court properly excluded her testimony. We resolve appellants' third issue against them.

Recusal

Appellants' fourth and fifth issues concern the recusal of the trial court judge. After entry of judgment, appellants filed a motion for new trial, alleging the trial judge was biased and prejudiced against them. After the motion for new trial was filed, the judge entered a sua sponte recusal order, pursuant to the code of judicial conduct. Appellants interpret the recusal order as an admission of bias and contend the trial judge should have recused himself sua sponte before signing judgment.

Rule 18a of the Texas Rules of Civil Procedure mandates that a party seeking a recusal of a judge file a motion to recuse at least ten days before trial. Tex. R. Civ. P. 18a. A party who fails to comply with the rule waives his right to complain of a judge's failure to recuse himself. See Vickery v. Texas Carpet Co., Inc., 792 S.W.2d 759, 763 (Tex. App._Houston [14th Dist.] 1990, writ denied). Appellants did not timely request recusal of the trial judge and have waived their right to complain of the judge's failure to recuse himself before signing judgment. See id.

In the alternative, appellants assert the motion for new trial should have been granted by the new trial judge assigned to consider the matter. A motion for new trial is addressed to the trial court's sound discretion, and a trial court's ruling on the motion will not be disturbed on appeal unless the appellant shows an abuse of discretion. Strackbein v. Prewitt, 671 S.W.2d 37, 38 (Tex. 1984). Having reviewed the record in this case, we conclude the trial court did not abuse its discretion in denying the motion for new trial. We resolve appellants' fourth and fifth issues against them.

Cross-point

In its cross-point, Sears asserts the trial judge erred in not awarding it attorney fees based on the court's conclusion that chapter 42 of the tax code did not apply to this action. Attorney fees may not be recovered unless provided for by statute or by contract between the parties. See New Amsterdam Cas. Co. v. Texas Indus., Inc., 414 S.W.2d 914, 915 (Tex. 1967). Statutory provisions for the recovery of attorney fees are in derogation of the common law, are penal in nature, and must be strictly construed. See id. The only provision in the tax code authorizing the recovery of attorney fees is section 42.29. See Tex. Tax Code Ann. § 42.29 (Vernon 1992). At the time of the hearing in this case,

chapter 42 did not apply to an appeal brought under section 25.25. See id. § 42.01 (Vernon Supp. 2000). Therefore, attorney fees were not authorized. We overrule Sears's cross-point.

We affirm the judgment of the trial court.

H. BRYAN POFF, JR, JUSTICE, ASSIGNED

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Tex. R. App. P. 47

1. The Honorable H. Bryan Poff, Jr., Retired Justice, Court of Appeals, Seventh District of Texas at Amarillo, sitting by assignment.

2. The recording error was a "clerical error" as defined by the tax code: "Clerical error" means an error: (A) that is or results from a mistake or failure in writing, copying, transcribing, entering or retrieving computer data, computing, or calculating; or (B) that prevents an appraisal roll or a tax roll from accurately reflecting a finding or determination made by the chief appraiser, the appraisal review board, or the assessor; however, "clerical error" does not include an error that is or results from a mistake in judgment or reasoning in the making of the finding or determination. Tex. Tax Code Ann. § 1.04(18) (Vernon 1992).

3. Former rule 215(5) was superceded by Tex. R. Civ. P. 193.6.

4. This rule provided that "[w]here the answer to an interrogatory may be derived or ascertained from: a. public records; or b. from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records ... and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served; it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained.... The specification of records provided shall include sufficient detail to permit the interrogating party to locate and to identify as readily as can the party served, the records from which the answers may be ascertained. Tex. R. Civ. P. 168(2) (former rules); see, now, Tex. R. Civ. P. 197.2(c).