

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
13 PTC 541

IN THE MATTER OF APPEAL OF:

Edward and Bianca Aniski

ORDER

from a decision of the Dare County
Board of Equalization and Review
for tax year 2013.

This appeal was heard before the North Carolina Property Tax Commission (“Commission”) sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina on Thursday, May 14, 2015 upon Motion to Compel filed by Edward and Bianca Aniski (“Appellants”) and Motion for Summary Judgment filed by Dare County on the issue raised in this appeal concerning the decision of the Dare County Board of Equalization and Review (“County Board”) for tax year 2013.

Chairman William W. Peaslee presided over the hearing with Commission Members David A. Smith and Jack C. (Cal) Morgan III participating.

Ms. Bianca Aniski appeared at the hearing *pro se*. Robert L. Outten, Esquire, appeared at the hearing on behalf of Dare County.

Prior to the Commission considering the Appellants’ Motion to Compel and Dare County’s Motion for Summary Judgment, Vice Chairman Wheeler rescued himself from the hearing and deliberation of this appeal.

STATEMENT OF THE CASE

The Appellants have filed an appeal to the Commission challenging the decision of the County Board, which decided as to the conflict area under appeal, not to change the listing and mapping of the property. The Appellants challenged the County Board’s decision by filing a Notice of Appeal and Application for Hearing with the Commission. Thereafter, Appellants filed a Motion to Compel and Dare County filed a Motion for Summary Judgment, which are the matters currently before the Commission.

After continuing scheduled hearings of this appeal, the Commission scheduled Appellants’ Motion to Compel and Dare County’s Motion for Summary Judgment for hearing on Thursday, May 14, 2015. The Commission heard and considered the Appellants’ Motion to Compel prior to hearing Dare County’s Motion for Summary Judgment.

In the Motion to Compel, Appellants were seeking discovery of certain documents from Dare County. When reviewing the documents requested in the Motion

to Compel, and Dare County's response thereto, and hearing arguments and contentions of the parties, the Commission determined as follows: (1) All records in the possession of, or for which the Dare County Tax Office has custody or control that are responsive to Appellants' request for records were forwarded to Appellants on November 14, 2014 and on February 16, 2015; (2) Dare County has not performed a records search in the Dare County Register of Deeds Office for documents concerning Avon Harbor when such documents are public records that Appellants may search and obtain from that office, if the records or documents are available; and (3) certain documents that Appellants were requesting Dare County to produce, which are not in the possession, custody or control of Dare County Office, were not included in Dare County's response as these documents are recorded in the Dare County Register of Deeds Office, if the records or documents are available. Thereafter, the Motion to Compel was taken under advisement by the Commission in order for the Commission to consider Dare County's Motion for Summary Judgment.

ISSUE

The issue considered by the Commission as to the Motion for Summary Judgment is stated as follows:

1. Did Dare County show that there is no genuine issue as to any material fact in this appeal that would entitle the County to judgment as a matter of law?

At the hearing before the Commission, Dare County, through counsel, argued that the Commission should grant the County's Motion for Summary Judgment in this appeal when there was no genuine issue as to any material fact concerning Appellants' challenge to the County Board's decision concerning the listing and mapping of the subject property for tax year 2013. In support of its Motion for the Summary Judgment, Dare County offered the Affidavit of Greta Skeen, the Dare County Tax Assessor (the "Assessor").

After considering the Motion for Summary Judgment, the Affidavit of the Assessor, and the Exhibits attached thereto, Appellants' Response in Opposition and all matters of record, the Commission voted unanimously to grant Dare County's Motion for Summary Judgment because Dare County did show that summary judgment in favor of the County was appropriate when the pleadings, the affidavit and exhibits attached thereto showed that there is no genuine issue as to any material fact concerning Appellants' challenge of the County Board's decision for tax year 2013.

APPLICABLE LAW

Rule 56 of the North Carolina Rules of Civil Procedure provides that summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. Even though the Rules of Civil Procedure do not apply to proceedings before the

Property Tax Commission,¹ our Supreme Court has ruled that the Commission did properly grant summary judgment in favor of the movant when there was no genuine issue as to any material fact and the undisputed facts establish that a party is entitled to judgment as a matter of law.²

FROM THE NOTICE OF APPEAL AND APPLICATION FOR HEARING FILED IN THIS MATTER, THE MOTION FOR SUMMARY JUDGMENT, THE AFFIDAVIT AND EXHIBITS ATTACHED THERETO, AS WELL AS APPLICANTS' RESPONSE IN OPPOSITION THERETO, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.

2. The property subject to this appeal is located at 40161 CC Gray Road, Avon, Dare County, North Carolina,³ which has a driveway access from 41056 O'Neal Lane, Dare County, North Carolina.

3. For tax year 2013, Dare County listed the subject property as follows: Parcel Number 014543-000, PIN Number 0630(20) 90 5948 was listed to the Appellants; and Parcel Number 023454-002, PIN Number 0630(20) 90 5898 was listed as Unknown Property, both being the "Property."⁴

4. When the Appellants challenged Dare County's listing of the Property to the County Board, the County Board, after conducting a hearing, mailed a decision letter to the Appellants on June 13, 2013⁵ advising them that there would be no change to listing and mapping as to the conflict area as mapped by Parcel Number 023454-002. Thereafter, Appellants appealed the County Board's decision by filing an appeal with the Commission.⁶

5. The Appellants appealed the County Board's decision to the Commission on July 1, 2013. On the Notice of Appeal and Application for Hearing, the Appellants stated that the basis for the appeal was that "our recorded deed: notes that the south boundary is the landing road and this road no longer exists because it is in the harbor."⁷

6. On May 3, 2014, the Honorable Judge Walter Hayes Godwin, Jr., entered a Summary Judgment Order in the matter of 02-CVS-158, in favor of Appellants that determined and ordered that the Plaintiffs ("Appellants") are the owners in fee simple absolute of all the property described in their deed dated December 7, 1988 from Richard B. Smith and wife, Sarah M. Smith, which deed is duly recorded in the Office of the

¹ See 17 N.C.A.C. 11 .0209.

² See In re Ocean Isle Palms, LLC 366 N.C. 351, 749 S.E.2d 439 (2013).

³ See Affidavit of Greta Skeen, Dare County Assessor.

⁴ See Affidavit of Greta Skeen, Dare County Assessor.

⁵ See Affidavit of Greta Skeen, Dare County Assessor and Exhibit 1 attached to her affidavit.

⁶ See Affidavit of Greta Skeen, Dare County Assessor and Exhibit 1 attached to her affidavit.

⁷ See Notice and Appeal and Application for Hearing filed with the Commission on July 1, 2013.

Register of Deeds of Dare County in Book 608 at Page 893, including all improvements, appurtenance, easement and property rights conveyed therein, such property also being shown on that map and survey prepared by Kirk R. Foremen dated September 29, 1987.⁸

7. The Summary Judgment Order entered by the Honorable Judge Walter Hayes Godwin, Jr., in the matter of 02-CVS-158, was recorded in the Office of the Register of Deeds of Dare County on May 8, 2014.⁹

8. In her affidavit, Greta Skeen states that based on the recorded Order of Summary Judgment, Dare County deleted the Unknown Owner – Conflict Parcel Number 023454-002, and combined it with Parcel Number 014543-000 to reflect property boundaries as shown on the survey referred to in the Summary Judgment Order.¹⁰

9. Dare County fully complied with the Order of the Court by making the tax listing and mapping changes as directed in the Court's Order that was duly recorded in the Office of the Dare County Register of Deeds as provided Greta Skeen's Affidavit in support of Dare County's Motion for Summary Judgment in this appeal.

BASED ON THE FOREGOING FINDINGS OF FACT, THE COMMISSION MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. Summary judgment is a method of disposing of litigation when there is no genuine issue of material fact and the undisputed facts establish that a party is entitled to judgment as a matter of law.¹¹

2. The purpose of the motion is to avoid the time and expense of trials where only questions of law are involved and a fatal weakness in a claim is exposed. Kidd v. Early, 289 N.C. 343, 222 S.E.2d 392 (1976). Summary judgment motions provide a forecast of evidence to determine if a full hearing is necessary or if the facts are settled and the only issues for resolution are questions of law. Patterson v. Reid, 10 N.C. App. 11, 178 S.E.2d 1 (1970).

3. There are no disputed facts concerning the listing, appraisal, or assessment of the Property when Dare County fully complied with the Court's Summary Judgment Order by making the tax listing and mapping changes to the Dare County property tax records as directed in the Court's Order. Summary judgment in favor of Dare County is appropriate in this appeal when there is no genuine issue of material fact and the undisputed facts show that the Order entered by the Court and complied with by Dare County resolved Appellants' appeal concerning the listing, appraisal or assessment of the Property for tax year 2013.

⁸See Exhibits 2 and 3 attached to Affidavit of Greta Skeen, Dare County Assessor.

⁹See Affidavit of Greta Skeen, Dare County Assessor, and Exhibit 2 attached to her affidavit.

¹⁰See Exhibits 2 and 3 attached to Affidavit of Greta Skeen.

¹¹N.C.R.Civ.Pro., Rule 56(c).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Commission grants Dare County's Motion for Summary Judgment regarding Appellants' property tax appeal for tax year 2013.

NORTH CAROLINA PROPERTY TAX COMMISSION



William W. Peaslee, Chairman

Commission Members Smith and Morgan concur.
Vice Chairman Wheeler did not participate in the hearing or deliberation of this appeal.

ENTERED: June 23, 2015

ATTEST:

Janet L. Shires, General Counsel
Commission Secretary