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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4724-08T2

SUZANNE MORAN,

Plaintiff-Appellant,

v.

TOWNSHIP OF MONTGOMERY,

Defendant-Respondent.

Submitted: June 9, 2010 - Decided: June 22, 2010

Before Judges Axelrad and Fisher.

On appeal from the Tax Court of New Jersey, Docket No. 012115-2008.

Suzanne Moran, appellant pro se.

Mason, Griffin & Pierson, P.C., attorneys for respondent (Paul R. Adezio, on the brief).

PER CURIAM

In this local property tax matter, plaintiff property owner claims she is entitled to relief by correction of error pursuant to N.J.S.A. 54:51A-7, for the tax years 2005 through 2008. The complaint was filed in the Tax Court on or about November 26, 2008. Plaintiff alleged her property, Block 1001, Lot 25.03, known as 54 Hamlet Court in Montgomery Township, had a total assessment of $970,100, of which the land assessment was

$479,000 for each of those tax years; the assessor failed to give credit or reduce the land assessment for the fact it was, in part, encumbered by a conservation easement; prior to 2005, the land assessment properly reflected the impact of the easement and the resulting land assessment was $222,000; and plaintiff was therefore entitled to have her land assessment changed to $222,000 for the years in question under the Correction of Errors statute. In other submissions, plaintiff argued her land assessment should be reduced by twenty percent for the requisite period because for some prior years she had been given such credit for the conservation easement.

The matter came before the Tax Court on cross-motions for summary judgment. The municipality conceded that the land assessment history of the property reflected a twenty percent credit given for the conservation easement for the 1996 through 1998 tax years and that during a meeting subsequent to April 1, 2008, the assessor agreed to give plaintiff a prospective twelve and one-half percent credit, thereby setting the land assessment at $419,000 for the 2009 tax year. The assessor also certified that at the time of the municipal revaluation in 1999, it did not appear that any conservation easements were considered for purposes of reducing land values. Moreover, the attached property record cards for the subject property from that year

forward did not reflect any credit given for the conservation easement. The assessor further explained that as a result of the municipal reassessment for the 2005 tax year, all land assessments were increased substantially, including that of the subject property ($222,000 to $479,000).

In an oral opinion of April 17, 2009, memorialized in an order of the same date, former Presiding Judge Joseph C. Small, now retired, granted the municipality's motion for summary judgment dismissing plaintiff's appeal and denying plaintiff correction of errors relief. The court acknowledged that the municipality's failure to take the conservation easement into account when assessing plaintiff's property for the years in question was an error in assessment, but found there was no straightforward formula mandating the twenty percent reduction that she had previously been given. After discussing the applicable statute, N.J.S.A. 54:51A-7, and landmark case of Hovbilt, Inc. v. Township of Howell, 138 N.J. 598 (1994), Judge Small concluded:

> There is no black letter rule or any scientific evidence to show that 20 percent is a fixed, definite and certain amount, other than the exercise of a given assessor for a given year relating to a given property.
>
> . . . .

> [H]aving found the error, it would have been necessary for the assessor to exercise her judgment as to how much that conservation easement would reduce [the land value of the property], that is clearly an area of judgment and not one of a correctable error.
>
> Thus, although, there was an error in the assessment, the error was not easily correctable and the benefit of an extended statute of limitations provided for by the [C]orrection of [E]rrors statute cannot be availed of by the plaintiff in this case.
>
> Furthermore, each year that the plaintiff received its assessment, and had until April 1st to file a complaint [under N.J.S.A. 54:3-21], the plaintiff did not seem particularly disturbed by the total amount of the assessment. Only in very rare instances is the extended statute of limitations provided for by the [C]orrection of [E]rrors statute available to a taxpayer. And since the taxpayer itself is unable to convince this Court that recognition of the conservation easement error would lead to an easily defined assessment means that the relief provided by the statute cannot be granted.

This appeal ensued.

On appeal, plaintiff argues the error was a "simple failure to carry forward a credit that had already been determined as appropriate" and is thus a mistake of the "mechanical error" variety correctable under the statute. Accordingly, plaintiff contends she is entitled to a twenty percent credit against the land assessment for the years under appeal.

We affirm substantially for the reasons stated by Judge Small. Contrary to plaintiff's assertion, in the present case there was no typographical error, transposition in numbers, or mechanical error regarding the land assessment of her property for the tax years 2005 through 2008. If plaintiff had timely challenged her assessment each year, the assessor would have had to perform an analysis of the impact of the conservation easement on the land value of plaintiff's parcel for the respective year to determine the appropriate adjustment. The challenged mistake in assessment involves an assessor's exercise of judgment and its correction is not self-evident; therefore, it is not within the category of "indisputable" mistakes that can be corrected under the Correction of Errors statute. Hovbilt, supra, 138 N.J. at 618.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION