STATE OF MICHIGAN

COURT OF APPEALS

CHARLOTTE ARNOLD,

Plaintiff-Appellant,

v

TORCH LAKE TOWNSHIP TAX ASSESSOR,

Defendant-Appellee.

UNPUBLISHED
November 19, 2009

No. 287626
Antrim Circuit Court
LC No. 08-008392-CH

Before: Talbot, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition on her complaint for mandamus. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff owns Lot 27, Lot 26, and the adjacent half of Lot 25 of Cottrill's Grand Traverse Bay Subdivision No. 4. She obtained Lot 26 and her half of Lot 25 by one deed, and Lot 27 by a separate deed, although both were acquired in the same transaction, along with the execution of a single mortgage covering all three parcels. The three parcels had been deeded as a single unit since 1975, and according to defendant were given a single tax identification number in 1970 when a land contract vendee requested a unified tax number. A house had been constructed on Lot 27 around 1960 and a garage was built on Lot 26 in 1977. For unspecified reasons, plaintiff wants Lot 27 to be assigned its own tax identification number so it can be assessed separately, and requested defendant to do so. Defendant declined, stating he was required to do so only if the property was unimproved.

Plaintiff brought a complaint for mandamus, seeking to compel defendant to issue a separate tax identification number for Lot 27. Defendant moved for summary disposition, arguing that plaintiff had no clear legal right to demand defendant assign a separate tax identification number. The trial court agreed with defendant, concluding that the statutes only give the property owner a clear right to refuse a separate assessment, but not to demand it unless the lots are unimproved, and these were not. The court thus found mandamus was not proper.

We review a trial court's grant or denial of a writ of mandamus for an abuse of discretion. *White-Bey v Dep't of Corrections*, 239 Mich App 221, 223; 608 NW2d 833 (1999). Whether the defendant had a clear legal duty to perform and whether the plaintiff had a clear legal right to the performance of that duty are questions of law that we review de novo. See *In re MCI*, 460 Mich 396, 443; 596 NW2d 164 (1999). We review a trial court's decision to grant or deny a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Statutory interpretation is a question of law that we also consider de novo on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

To obtain a writ of mandamus, the plaintiff has the burden of showing that "(1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial in nature, and (4) the plaintiff has no other adequate legal or equitable remedy." *White-Bey, supra* at 223-224.

Plaintiff's argument is that MCL 211.24, MCL 211.25(1), and MCL 211.25a, read as a whole, clearly and unequivocally express the Legislature's intent that each parcel of property must be assessed and identified separately, unless the owner gives permission to the combine them. We disagree.

The relevant parts of these statutes read:

MCL 211.24:

> (1) On or before the first Monday in March in each year, the assessor shall make and complete an assessment roll, upon which he or she shall set down all of the following:
>
> (a) The name and address of every person liable to be taxed in the local tax collecting unit with a full description of all the real property liable to be taxed. If the name of the owner or occupant of any tract or parcel of real property is known, the assessor shall enter the name and address of the owner or occupant opposite to the description of the property. If unknown, the real property described upon the roll shall be assessed as "owner unknown". All contiguous subdivisions of any section that are owned by 1 person, firm, corporation, or other legal entity and all unimproved lots in any block that are contiguous and owned by 1 person, firm, corporation, or other legal entity shall be assessed as 1 parcel, unless demand in writing is made by the owner or occupant to have each subdivision of the section or each lot assessed separately. However, failure to assess contiguous parcels as entireties does not invalidate the assessment as made. Each description shall show as near as possible the number of acres contained in it, as determined by the assessor. It is not necessary for the assessment roll to specify the quantity of land comprised in any town, city, or village lot.

(b) The assessor shall estimate, according to his or her best information and judgment, the true cash value and assessed value of every parcel of real property and set the assessed value down opposite the parcel.

* * *

MCL 211.25:

(1) The description of real property may be as follows:

(a) If the land to be assessed is an entire section, it may be described by the number of the section, township, and range.

(b) If the tract is a subdivision of a section authorized by the United States for the sale of public lands, it may be described by the designation of the subdivision, with the number of the section, township, and range.

(c) If the tract is less than the subdivision, it may be described as a distinct part of the subdivision, or in a manner as will definitely describe it.

(d) In case of land platted or laid out as a town, city, or village, or as an addition to a town, city, or village, it shall be described by reference to the plat and by the number of the lots and blocks thereof.

(e) When 2 or more parcels of land adjoin and belong to the same owner or owners, they may be assessed by 1 valuation if permission is obtained from the owner or owners. The assessing authority shall send a notice of intent to assess the parcels by 1 valuation to the owner or owners. Permission shall be considered obtained if there is no negative response within 30 days following the notice of intent.

* * *

MCL 211.25a:

An assessing officer, with the approval of the governing body of the city or township, may establish a real estate index number system for listing real estate for purposes of assessment and collection of taxes, in addition to, or in lieu of, the method of listing by legal description provided in this act. The system shall describe real estate by county, township, section, block and parcel or lot. The numbering system shall be approved by the state tax commission. The assessing officer shall establish and maintain cross indexes of numbers assigned under the system with the complete legal description of the real estate to which such numbers relate. The assessing officer shall assign individual index numbers and the assessment rolls, tax rolls and tax statements shall carry the index numbers and not the legal descriptions, except that both the legal description and the index number shall be shown on the tax statements for the first year after this section is effective. Indexes established hereunder shall be open to public inspection.

The parties do not dispute that the exceptions set out in MCL 211.24 do not apply because this case does not involve contiguous subdivisions or unimproved lots. But contrary to plaintiff's argument, MCL 211.24(1) does not set out the *only* times parcels can be combined; instead, it identifies circumstances under which parcels *must* be combined, and the "demand" referred to in the same sentence only applies to those circumstances. Similarly, MCL 211.25(1)(e) does not help plaintiff because it only provides a permissive means of joining tax numbers; it is silent on separating joined parcels and issuing separate numbers. Both MCL 211.25(1)(c) and (e) are permissive in their language. We conclude that plaintiff's assertion that there is a clear mandate in this section is simply incorrect. The only statutory mandate regarding tax identification numbers is that contiguous subdivisions within a section and contiguous undeveloped lots must be assigned one number unless a demand is made by the owner. In all other respects, the statutes are either permissive or silent. Plaintiff has no clear right to the performance she seeks under these statutes.

Plaintiff also argues that her claim is supported by case law, citing *Edward Rose Building Co v Independence Twp*, 436 Mich 620; 462 NW2d 325 (1990), and *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 412; 576 NW2d 667 (1998). However, these cases do not support her position. Neither case touched on whether individual lots should be assigned individual tax identification numbers. Neither statute nor case law mandates that each lot be given an individual tax identification number. Thus, the trial court correctly found plaintiff did not have a clear right to performance and defendant did not have a clear duty to perform, and that the requirements for mandamus were not met.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis