

No. A09-466

STATE OF MINNESOTA

IN SUPREME COURT

Kevin E. Burns,

Petitioner,

vs.

Commissioner of Revenue,

Respondent.

RESPONDENT'S INFORMAL BRIEF

KEVIN E. BURNS
Petitioner

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STATEMENT OF LEGAL ISSUE

- I. DID THE TAX COURT CORRECTLY AFFIRM THE ORDER OF THE COMMISSIONER OF REVENUE THAT PETITIONER REIMBURSE THE STATE OF MINNESOTA \$1,145.00 PLUS INTEREST FOR A 2003 PROPERTY TAX REFUND THAT HE IMPROPERLY RECEIVED?**

The Tax Court held that Petitioner was not entitled to the 2003 property tax refund because he did not own and occupy, as of January 2, 2004, the residence in connection to which he was claiming the property tax refund.

Apposite statutes:

Minn. Stat. § 290A.03, subd. 13 (2008)

Minn. Stat. § 290A.04, subd. 2 (2008)

STATEMENT OF THE CASE

This appeal is from a decision of the Minnesota Tax Court, by the Honorable George W. Perez, dated February 10, 2009. The matter went to trial before the Tax Court on August 4, 2009. In its decision the Tax Court held that Petitioner improperly received a 2003 property tax refund because he did not meet the requirements of Minn. Stat. § 290A.03, subd. 13 (2008), which requires that a person claiming a property tax refund must have owned and occupied the homestead property as of January 2 of the year in which the tax is payable.

STATEMENT OF FACTS

In 2004 Petitioner filed a 2003 property tax refund with the State of Minnesota, indicating that he owned and occupied [REDACTED], Apple Valley, Minnesota ("Harmony Way") as his homestead. Tax Court's Findings of Fact, Conclusions of Law, and Order for Judgment ("Tax Court decision") at 2; Petitioner's Appendix ("App."), item 1. Petitioner received a refund from the State of Minnesota in the amount of \$1,145.00. Commissioner's Notice of Determination on Appeal; App., item 2. Subsequently, Petitioner filed with the Department of Revenue a second 2003 property tax refund indicating that he was the renter of a different property in 2004. Tax Court decision at 2; App., item 1.

Certificates of Title for the Harmony Way property indicate that Petitioner was not the owner of the property as of January 2, 2004. Tax Court decision at 4; Trial Exhibits

1-3. Litigation in the Dakota County District Court established that Petitioner did not own and occupy the [REDACTED] property on January 2, 2004. Tax Court decision at 4.

ARGUMENT

Minn. Stat. ch. 290A sets forth the requirements for receiving a property tax refund. A homeowner whose “property taxes payable” are in excess of a certain percentage of household income is eligible to receive a property tax refund from the State. Minn. Stat. § 290A.04, subd. 2 (2008). To make a claim for refund of a portion of “property taxes payable,” the claimant must have owned and occupied a property classified as homestead property on January 2 of the year in which the tax is payable. Minn. Stat. § 290A.03, subd. 13 (2008).

The Tax Court made findings of fact that Petitioner did not own and occupy [REDACTED] on January 2, 2004. These findings were based upon the Tax Court’s review of certificates of title for the property and the Tax Court’s review of orders of the Dakota County District Court in which these issues were litigated. Because the findings of fact rely upon the interpretation of legal documents and legal precedent, the question before this Court is one of law, and this Court’s standard of review is *de novo*. *Palm Lumber Co. v Kopfmann Homes, Inc.*, 535 N.W.2d 302, 304 (Minn. 1995).

In 2003 and 2004 the issue of the ownership of the Harmony Way property was litigated in the Dakota County District Court. *In the Matter of the Petition of R.A. Ungerman Construction, Inc.*, No. C9-03-9789 (Dak. Co. D. Ct., Findings, Conclusions

of Law, and Order filed December 24, 2003.) (“Dakota County decision”.)¹ In that case Petitioner Ungerman asked the court to cancel Registered Property Certificate No. 122132 and issue a new certificate in favor of Ungerman as a result of its redemption pursuant to mortgage foreclosure on June 19, 2003. At the hearing on December 24, 2003 Kevin Burns made a special appearance to contest personal jurisdiction. Dakota County decision, at 1. The district court made findings of fact that included findings that Certificate of Title No. 122132 was entered by the Registrar of Titles in 2001 to Barbara and Kevin Burns as owners of the Harmony Way property, that the premises were vacant and unoccupied as of the date of the hearing, and that proper notice had been given to Barbara and Kevin Burns. Dakota County decision, at 2-4. The district court ordered that Certificate of Title No. 122132 be canceled and that a new Certificate of Title for the [REDACTED] property be issued in favor of R.A. Ungerman Construction Company. Dakota County decision, at 7. The court also ordered the Registrar of Titles not to receive, file, or record any purported encumbrance regarding the property from Barbara or Kevin Burns without further order of the court. *Id.*

During the Tax Court proceeding, Petitioner contended that the order of the Dakota County District Court of December 24, 2003 had been appealed and that it had in some manner been superseded by an appellate decision. Petitioner produced no evidence of such a decision. Indeed, the record simply shows that, after the December 24, 2003

¹ This decision is included in the record as exhibit F attached to the letter dated August 1, 2008, from Assistant Attorney General Kevin Rodlund to Judge Perez.

order, Kevin Burns moved that the order be set aside. By an order filed on January 20, 2004, Dakota County District Court Judge Thomas Lacy denied Mr. Burns' motion.² Judge Lacy found that Mr. Burns failed to provide proof of perfection of an appeal to the court of appeals of the district court's order of December 24, 2003.

The record contains certified copies of certificates of title relating to the Harmony Way property. Trial Exhibits 1-3. Certificate of Title No. 122132, which showed Barbara and Kevin Burns as owners of the Harmony Way property, was cancelled pursuant to the December 24, 2003 order of the Dakota County District Court. Pursuant to that order, a new certificate of title was created, No. 129781. Pursuant to the December 24, 2003 order, this certificate of title certifies that R.A. Ungerman Construction Company, Inc. was the owner of the Harmony Way property. In turn, this certificate of title was cancelled, and a new certificate of title was created, No. 132435, certifying that as of June, 2004, other individuals, Kenneth and Beth Johnson, became the owners of the Harmony Way property.

Before the Tax Court, Petitioner attempted to re-litigate the issues determined by the Dakota County District Court in the 2003 and 2004 orders, orders which had never been appealed.³ The Tax court correctly concluded that Petitioner was barred by

² This order is attached to the letter dated August 5, 2008, from Assistant Attorney General Kevin Rodlund to the Tax Court.

³ Barbara and Kevin Burns have attempted to relitigate the same or similar issues involving the Harmony Way property in numerous cases and courts. *See, e.g., Burns v Ungerman*, # 03-17802, 2004 WL 848272 (Henn. Co. D. Ct., Jan. 16, 2004) (noting Burns' litigation in Dakota and Hennepin County district courts has a "lengthy, expensive (Footnote Continued On Next Page.)

collateral estoppel from re-litigating the district court case in tax court. *Kaiser v. Northern States Power Company*, 353 N.W.2d 899, 902 (Minn. 1984). The issue of ownership during the relevant period was fully and finally adjudicated by the Dakota County District Court and was dispositive for purposes of the Tax Court case.

and tortured history” and Ms. Burns’ continuing attempts to relitigate issues already decided, court precludes the Burns from initiating any further litigation against the Ungermans or regarding the Harmony Way property and directs court staff not to accept any such documents for filing); *DeFina v. State of Minnesota Office of State Treasurer, et. al*, 62-C3-03-011394 (Ramsey Co. D. Ct., order filed April 27, 2004) (attached to August 5, 2008 letter to the Tax Court from Kevin Rodlund) (finding, in case alleging that the Burns lost the [REDACTED] property due to errors of the Dakota County registrar of titles, that the Dakota County district court had already determined that the foreclosure and sheriff’s sale that resulted in the Burns losing their property interest were proper in every material respect); *Burns v. Bank of America*, 655 F.Supp. 2d 240 (S.D.N.Y. 2008) (granting summary judgment for defendants in suit in which plaintiffs challenged, *inter alia*, legality of December 5, 2002 foreclosure of the Harmony Way property), *aff’d by Burns v. Bank of America*, No. 09-0188, 2010 WL 106715 (2nd Cir. , Jan. 13, 2010); *Burns v. Chubb Ins. Cos.*, No. L-1284-04, 2007 WL 1484480 (N.J. Super. A.D., May 23, 2007) (upholding findings, in decision affirming award of \$128,000 in attorney’s fees to defendants for plaintiffs’ frivolous and bad faith lawsuit, that the [REDACTED] property was vacant as early as October 2002, that in July 2003 the Dakota County Sheriff was ordered to remove the Burns from the premises if necessary, and that on or about December 31, 2003, Ungerman repeated its request to the Burns that they arrange a time to remove their personal property from the premises to avoid that personal property being sold in January 2004).

CONCLUSION

For the reasons stated above, Respondent requests that this Court affirm the decision of the Minnesota Tax Court.

Dated: April 28, 2010

Respectfully submitted,

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