

IN THE SUPREME COURT OF OHIO

CITY OF CARLISLE	)	CASE NO. <u>10-0209</u>
	)	
Appellant,	)	On Appeal from the Warren
	)	County Court of Appeals
vs.	)	Twelfth Appellate District
	)	
WALLACE R. CAMPBELL, ET AL.	)	Court of Appeals Case
	)	No. CA2009-05-053
Appellees.	)	

---

MEMORANDUM IN SUPPORT OF JURISDICTION

---

David A. Chicarelli (0017434)  
 DAVID A. CHICARELLI CO., L.P.A.  
 614 E. Second Street  
 Franklin, Ohio 45005  
 Telephone: (937) 743-1500  
 Fax: (937) 743-1501  
 Email: dac1500@cinci.rr.com  
 Counsel for Appellant

Rupert E. Ruppert (#0025972)  
 RUPPERT, BRONSON & RUPPERT  
 1063 E. Second Street, P.O. Box 369  
 Franklin, Ohio 45005  
 Phone: (937) 746-2832  
 Fax: (937) 746-2855  
 Counsel for Appellees

FILED  
 FEB 02 2010  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

TABLE OF CONTENTS

	<u>Page(s)</u>
TABLE OF CONTENTS .....	i
EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST .....	1
STATEMENT OF THE CASE AND FACTS .....	2
ARGUMENT .....	3
Proposition of Law No. 1: When considering a petition for detachment of farmland a court shall consider the amount of taxes the landowner is actually required to pay .....	3
CONCLUSION .....	5
CERTIFICATE OF SERVICE .....	5
TABLE OF AUTHORITIES .....	6
Ohio Rev. Code Ann. §5713.01 .....	2
Ohio Rev. Code Ann. §5713.30 .....	2
Ohio Rev. Code Ann. §709.41 .....	2, 3
Ohio Rev. Code Ann. §709.42 .....	1, 2, 3, 4
<u>Cases:</u>	
<i>Cline v. Ohio Bur. of Motor Vehicles</i> (1991), 61 Ohio St. 3d 93, N.E.2d 77 .....	4
<i>Featzka v. Millcraft Paper Co.</i> (1980), 62 Ohio St. 2d N.E.2d 264 .....	4
<i>Griffith v. City of Huron</i> (Apr. 29, 1988), Erie App. No. E-87-46, 1988 WL 39714, *2. ....	2
<i>Kelly v. Accountancy Bd. Of Ohio</i> (1993), 88 Ohio App. 3d N.E.2d 292 .....	4
<i>Kunkler v. Goodyear Tire and Rubber Co.</i> (1988), 36 Ohio St. 3d N.E.2d 477 .....	4
<i>Renner, et al. v. Tuscarawas County Board of Revision, et al.</i> (1991), 59 Ohio St. 3d N.E. 2d 56 .....	4
<u>Appendix:</u>	
Judgment Entry .....	A-1
Opinion .....	A-2

**EXPLANATION OF WHY THIS IS A CASE OF PUBLIC  
OR GREAT GENERAL INTEREST**

This case presents a critical issue for municipalities facing attempts by landowners to detach their property from municipal corporations.

In this case the property sought to be detached from the City of Carlisle was actually taxed based upon the properties' current agricultural use value (CAUV) rather than its real value in money. As a result, the actual taxes on the property were reduced from \$12,538.99 to \$172 per year.

Although the landowners paid this much lower tax based upon CAUV valuation, the court of appeals ruled that when considering a petition for detachment the trial court must consider the property's non-CAUV tax valuation.

The decision of the court of appeals ignores the plain meaning of the detachment statute, which uses the words "is taxed." *Ohio Rev. Code Ann. §709.42*. The phrase "is taxed" clearly means the amount of tax the landowner must actually pay. If a landowner participates in the CAUV program, that landowner is actually paying lower property taxes. The actual tax paid is the relevant inquiry.

The decision of the court of appeals is illogical. Instead of comparing the actual taxes the landowner pays against the value of the municipal benefits conferred on the landowner, the court of appeals compares a hypothetical tax against these benefits.

The decision of the court of appeals sets a precedent which will make it easier for landowners to detach their property from municipal corporations because of taxes, even though those taxes have been forgiven under the CAUV program.

The decision of the court of appeals is erroneous and a threat to the future of Ohio's municipalities.

## STATEMENT OF THE CASE AND FACTS

Appellees are the owners of approximately 40 acres of farm land located in the City of Carlisle. If the land was assessed at its true value in money, pursuant to *Ohio Rev. Code Ann. §5713.01, et seq.*, Appellees would pay property taxes in the amount of \$12,538.99 per annum.

However, this land has qualified for tax evaluation under the current agricultural use valuation statute (CAUV), *Ohio Rev. Code Ann. §5713.30 et seq.* Pursuant to these statutory provisions, the county auditor disregards the highest and best use of the property and values the property according to its current agricultural use, usually resulting in a lower valuation and a lower property tax. *Renner, et al. v. Tuscarawas County Board of Revision, et al. (1991), 59 Ohio St. 3d 142, 572 N.E. 2d 56.*

In the case of Appellees, current agricultural use valuation (CAUV) reduced their annual property taxes to \$172. This amount of tax is then distributed amongst the county, the township, the schools, the City of Carlisle, special districts, and assessments.

Appellees sought to detach their property from the City of Carlisle under *Ohio Rev. Code Ann. §§709.41 and 709.42.* In order to succeed, Appellees had to satisfy four conditions: 1) the lands were not within the original limits of the municipal corporation; 2) the owner of the farm land is taxed and will continue to be taxed thereon for municipal purposes in substantial excess of the benefits conferred on the landowner; 3) detaching the farm lands will not adversely affect the best interests or good government of the municipal corporation; and 4) five years have elapsed from the time the farm land was originally annexed by the municipal corporation. *Ohio Rev. Code Ann. 709.42; Griffith v. City of Huron (Apr. 29, 1988), Erie App. No. E-87-46, 1988 WL 39714, \*2.*

The parties stipulated that the first and fourth conditions were satisfied.

The trial court resolved the third condition in favor of Appellees.

The second condition was resolved against the Appellees. The trial court found that they were not taxed for municipal purposes in excess of the benefits received because the total annual taxes on the property was \$172, of which approximately 80% went to the local school district.

Appellees appealed to the Twelfth Appellate District Court arguing that the trial court should have considered the true tax value, \$12,538.99, rather than the CAUV taxes of \$172 per annum that they actually pay.

The Court of Appeals agreed and held that when reviewing a petition for detachment of farm land, a court must consider the property's non-CAUV tax valuation.

The Court of Appeals erred.

In support of its position on this issue, the Appellant presents the following argument:

### ARGUMENT

Proposition of Law No. 1: When considering a petition for detachment of farm land, a court shall consider the amount of taxes the landowner is actually required to pay.

Petitions for detachment of farm land are governed by statute. *Ohio Rev. Code Ann. 709.41 and 709.42.*

In its opinion, the appellate court noted that in the few detachment cases that exist, "those courts do not engage in any interpretation relating to the proper tax valuation that must be considered." Opinion p. 3. That is because there is no need for any such interpretation.

The purpose of statutory construction is to ascertain and give effect to the intent of the legislature. *Featzka v. Millcraft Paper Co. (1980)*, 62 Ohio St. 2d 245, 405 N.E.2d 264. To ascertain the legislative intent, courts rely upon ordinary principles of statutory construction. *Cline v. Ohio Bur. Of Motor Vehicles (1991)*, 61 Ohio St. 3d 93, 573 N.E.2d 77. A court must first look at the language of the statute and if the statute conveys a meaning which is clear, unequivocal and definite, there is no need to apply rules of statutory interpretation. *Id.* Court should give effect to the words of the statute and should not modify an unambiguous statute by deleting words used or inserting words not used. *Kelly v. Accountancy Bd. Of Ohio (1993)*, 88 Ohio App. 3d 453, 459, 624 N.E.2d 292. In the absence of clear legislative intent to the contrary, words and phrases in a statute shall be read in context and construed according to their plain, ordinary meaning. *Kunkler v. Goodyear Tire and Rubber Co. (1988)*, 36 Ohio St. 3d 135, 137, 522 N.E.2d 477.

The detachment statute is very clear and unequivocal. Detachment may be had (assuming the other three requirements are satisfied) only if the land *is taxed* and will continue to be taxed for municipal purposes in substantial excess of the benefits conferred on the landowner. *Ohio Rev. Code Ann. 709.42.*

The phrase “is taxed” has a plain and ordinary meaning.

Land “is taxed” only in the amount the taxpayer is legally obligated to pay. In this case, because the property was valued for current agricultural use, the Appellees had to pay tax of only \$172. This is the amount at which the property “is taxed.”

The Appellate Court’s analysis violated the rules of statutory construction. The Appellate Court failed to apply the plain meaning of the words “is taxed.” The Court of Appeals inserted into the detachment statute unnecessary words about how the tax is

determined. It is not relevant whether the tax that is actually assessed is based upon CAUV or "true value in money." The only relevant inquiry is the actual amount levied against the property. In the instant case the amount at which the property "is taxed" is only \$172. Therefore, this is the tax that is relevant for purposes of a detachment proceeding.

### CONCLUSION

For these reasons, the Appellant requests that this court grant jurisdiction so that this issue can be reviewed on its merits.

Respectfully submitted,

DAVID A. CHICARELLI CO., L.P.A.



David A. Chicarelli (0017434)  
Trial Attorney for Appellant  
614 E. Second Street  
Franklin, Ohio 45005  
Phone: (937) 743-1500  
Fax: (937) 743-1501  
dac1500@cinci.rr.com

### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on Rupert E. Ruppert, Attorney for Appellants, 1063 E. Second Street, P.O. Box 369, Franklin, Ohio 45005 by ordinary U.S. Mail on February 12, 2010.



David A. Chicarelli

# APPENDIX

IN THE COURT OF APPEALS  
 TWELFTH APPELLATE DISTRICT OF OHIO  
 WARREN COUNTY

COURT OF APPEALS  
 WARREN COUNTY  
 FILED  
 DEC 21 2009  
*James P. Spaeth, Clerk*  
 LEBANON OHIO

WALLACE R. CAMPBELL, et al., :  
 :  
 Plaintiffs-Appellants, : CASE NO. CA2009-05-053  
 :  
 - vs - : JUDGMENT ENTRY  
 :  
 CITY OF CARLISLE, :  
 :  
 Defendant-Appellee. :

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed in part, reversed in part, and remanded to the trial court with instructions to determine under R.C. 709.42 whether, in the absence of the CAUV valuation, a tax assessment of \$12,538.99 on appellants' property for municipal purposes is in substantial excess of the benefits conferred upon appellants by reason of their land being with the city of Carlisle.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed 50% to appellants and 50% to appellee.

  
 H.J. Bressler, Presiding Judge

  
 William W. Young, Judge

  
 Robert P. Ringland, Judge



IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

COURT OF APPEALS  
WARREN COUNTY  
FILED

DEC 21 2009

*James L. Spauth, Clerk*  
LEBANON OHIO

WALLACE R. CAMPBELL, et al.,

Plaintiffs-Appellants,

- vs -

CITY OF CARLISLE,

Defendant-Appellee.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

CASE NO. CA2009-05-053

OPINION  
12/21/2009

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS  
Case No. 07CV68153

Ruppert, Bronson & Ruppert, Rupert E. Ruppert, 1063 E. Second Street, P.O. Box 369,  
Franklin, Ohio 45005, for plaintiffs-appellants, Wallace R. and Helen Y. Campbell

David A. Chicarelli, 614 E. Second Street, Franklin, Ohio 45005, for defendant-appellee

**RINGLAND, J.**

{¶1} Plaintiffs-appellants, Wallace and Helen Campbell, appeal a decision of the  
Warren County Court of Common Pleas denying a petition to detach their real estate from  
the city of Carlisle.

{¶2} Appellants are the owners of approximately 40 acres of farm land located in the  
city of Carlisle. Each year appellants file an application to value the property for agricultural  
use (a "CAUV application"). As a result of the CAUV valuation, appellants pay approximately  
\$172 in yearly property taxes. Without the CAUV valuation, appellants' yearly property taxes



would amount to \$12,538.99.

{13} On March 27, 2007, appellants filed a Petition for Detachment, requesting to detach their property from the city of Carlisle. The city opposed the petition. Following a trial on the matter, the trial court denied the petition. Appellants timely appeal, raising two assignments of error.

{14} Assignment of Error No. 1:

{15} "THE TRIAL COURT ERRED WHEN IT RENDERED ITS JUDGMENT BASED ON THE AMOUNT OF TAXES THE CAMPBELLS PAID ON THEIR PROPERTY INSTEAD OF THE AMOUNT FOR WHICH THEIR PROPERTY WAS TAXED AS IS REQUIRED BY THE PLAIN MEANING OF THE STATUTE."

{16} Petitions for detachment of farm land are governed by R.C. 709.41 and R.C. 709.42. In order to detach land from a municipality, four factual conditions must be satisfied: 1) the lands are farm lands not within the original limits of the municipal corporation; 2) because the lands are in the municipal corporation, the owner of the farm land is taxed and will continue to be taxed thereon for municipal purposes in substantial excess of the benefits conferred on the landowner; 3) detaching the farm lands will not adversely affect the best interests or good government of the municipal corporation; and 4) five years have elapsed from the time the farm land was originally annexed by the municipal corporation and the time the petition for detachment of farm lands was filed. R.C. 709.42; *Griffith v. City of Huron* (Apr. 29, 1988), Erie App. No. E-87-46, 1988 WL 39714, \*2.

{17} The parties stipulated that the property was not within the original limits of the municipal corporation and at least five years have elapsed since the property was originally annexed into the municipal corporation. Further, the trial court also resolved the third issue in favor of appellants, finding that there is no evidence that detachment of the property will impact the best interests or good government of the city of Carlisle.

{¶8} However, the court concluded that appellants had not satisfied the second condition. The court reasoned that appellants were not and would not continue to be taxed for municipal purposes in excess of the benefits they receive because: 1) appellants pay only \$172 in yearly taxes on the property; 2) approximately 80 percent of the taxes go to the local school district; and 3) detachment of the property would not alter the status of the property as agricultural use.

{¶9} In their first assignment of error, appellants argue the trial court considered the wrong tax valuation. Appellants urge that the court should have considered the amount of taxes they would be required to pay without the CAUV application, \$12,538.99, instead of the amount of taxes levied yearly on the property pursuant to the CAUV.

{¶10} Our sole issue for determination is which tax valuation should have been considered by the trial court. Specifically, whether "taxed" as used in R.C. 709.42 refers to the amount of taxes levied against an agricultural property after the filing of a CAUV application or the amount that would be levied against the property if no CAUV had been filed by the property owners, i.e., a property's "true value in money." R.C. 5713.01(B). Interpretation of a statute is a matter of law and, thus, an appellate court must apply a de novo standard of review. *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶8.

{¶11} Although R.C. 709.41 and R.C. 709.42 have been in existence since 1953, petitions requesting the detachment of farm land from a municipality are quite uncommon and little precedent exists regarding detachment petitions. Even in the few farm land detachment cases, those courts do not engage in any interpretation relating to the proper tax valuation that must be considered. See *Griffith*, 1988 WL 39714; *Williams v. City of Wilmington* (1960), 85 Ohio Law Abs. 398; *Smetzer v. City of Elyria* (1912), 23 Ohio Dec. 179; *Incorporated Village of Fairview v. Giffie* (1905), 73 Ohio St. 183; *Village of Grover Hill v. McClure* (1905), 17 Ohio C.D. 376. Accordingly, we are left with an issue of first

impression.

{¶12} The statutory timeline is particularly illuminative of this question. As noted above, Ohio's current statutory procedures for detachment of agricultural land were enacted in 1953. The provisions of the Ohio Tax Code creating the separate CAUV valuations and procedures were first enacted in 1974.

{¶13} When the detachment provisions were enacted, CAUV tax valuations were never contemplated since the CAUV valuations were not in existence at the time. Accordingly, when evaluating a detachment petition before the enactment of the CAUV provisions, a court would have been required to consider the property's true valuation. When the CAUV provisions were enacted, the Ohio legislature neither incorporated nor referenced the detachment statute, nor did the legislature modify R.C. 709.42 to require the CAUV tax valuation to be the controlling tax amount in a detachment proceeding. See *Thomas v. Freeman*, 79 Ohio St.3d 221, 224-225, 1997-Ohio-395.

{¶14} By failing to reference or modify the detachment statute when enacting the CAUV provisions, the legislature by implication expressed an intent not to change the tax valuation that a court must consider in a detachment proceeding. *Henderson v. City of Cincinnati* (1909), 81 Ohio St. 27, syllabus (later act contained no provision that either expressly or by implication amended the former legislation).

{¶15} If the legislature wished for a property's CAUV valuation to be controlling in a detachment proceeding, that intent should have been reflected in the CAUV provisions or through modification of R.C. 709.42. As they were written, the CAUV provisions of the Ohio Tax Code have no effect or application to a detachment action.<sup>1</sup> See *Estate of Roberts v. Zaino* (Oct. 13, 2000), Miami App. No. 2000 CA 15, 2000 WL 1514084, \*5; *Wade v. Savings &*

---

1. The detachment statute as written is additionally problematic due to the absence of guidelines for determining the value of various municipal benefits. Courts are given no guidance regarding which municipal benefits should be considered and how to determine the valuation for the specific benefits.

& Trust Co. (June 17, 1998), Wayne App. No. 97CA0063, 1998 WL 318465, \*5. Accordingly, when reviewing a petition for detachment of farm land, a court must consider the property's non-CAUV tax valuation.

{¶16} Appellants' first assignment of error is sustained.

{¶17} Assignment of Error No. 2:

{¶18} "THE TRIAL COURT WRONGFULLY TOOK JUDICIAL NOTICE OF FACTS NOT PRESENTED AT TRIAL AND SUBJECT TO REASONABLE DISPUTE."

{¶19} In the second assignment of error, appellants argue that the trial court wrongfully took judicial notice that approximately 80 percent of the paid property tax goes to the local school system. Appellants argue that the trial court must inform the parties of the taking of judicial notice and provide the parties with an opportunity to be heard. Appellants argue the trial court failed to provide them prior notice or an opportunity to be heard.

{¶20} Judicial notice is governed by Evid.R. 201. "A court may take judicial notice, whether requested or not." Evid.R. 201(C). Further, "[j]udicial notice may be taken at any stage of the proceeding. Evid.R. 201(F).

{¶21} Once judicial notice of a fact is taken, a "party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken." Evid.R. 201(E).

{¶22} As provided clearly in the rule, a court taking judicial notice has no obligation to provide prior notice to the parties of its intentions to take judicial notice due to the safeguard provided in the rule requiring the court to conduct a hearing if requested. See Fed.R.Evid. 201(e), Advisory Committee Notes.<sup>2</sup>

---

2. Fed.R.Evid. 201(e) mirrors Ohio's Evid.R. 201(E). The principles and purposes underlying the federal rule apply equally to its Ohio counterpart. *State v. Knox* (1983), 18 Ohio St.3d 36, 37.

{¶23} Under such circumstances, it is the adversely affected party's obligation to object and request a hearing. *Ohio St. Assn. of United Assn. of Journeymen and Apprentices v. Johnson Controls, Inc.* (1997), 123 Ohio App.3d 190, 196. The judicial notice in this case appeared in the trial court's final decision and entry. Appellants failed to object or request a hearing at the trial level. If appellants wished to challenge the trial court's finding, they could have filed a Civ.R. 60(B) motion, requesting a mandatory hearing. By failing to request a hearing, appellants waived or forfeited any challenge to the judicially-noticed facts. *Id.* See, also, *Guarino v. Farinacci*, Lake App. No. 2001-L-158, 2003-Ohio-5980, ¶49; *In re Estate of Hunter*, Mahoning App. No. 00 CA 107, 2003-Ohio-1435, ¶45; *Shaker Heights v. Coustillac* (2001), 141 Ohio App.3d 349, 352.

{¶24} Appellant's second assignment of error is overruled.

{¶25} Judgment affirmed in part and reversed in part. This matter is remanded to the trial court with instructions to determine under R.C. 709.42 whether, in the absence of the CAUV valuation, a tax assessment of \$12,538.99 on appellants' property for municipal purposes is in substantial excess of the benefits conferred upon appellants by reason of their land being with the city of Carlisle.

BRESSLER, P.J., and YOUNG, J., concur.

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/ROD/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>