

IN THE SUPREME COURT OF OHIO

| | | |
|--|---|--------------------------|
| UNIVERSITY HOSPITALS HEALTH SYSTEM, INC., | : | Case No. 2013-0936 |
| | : | |
| | : | |
| Appellee, | : | On Appeal from the |
| | : | Cuyahoga County Court of |
| v. | : | Appeals, Eighth |
| | : | Appellate District, |
| CUYAHOGA COUNTY BOARD OF REVISION, et al., | : | Case No. 98783 |
| | : | |
| | : | |
| Appellants. | : | |

APPELLEE UNIVERSITY HOSPITALS HEALTH SYSTEM, INC.'S MEMORANDUM IN RESPONSE TO APPELLANT BOARD OF EDUCATION OF THE WARRENSVILLE HEIGHTS CITY SCHOOL DISTRICT'S MEMORANDUM IN SUPPORT OF JURISDICTION

Thomas A. Kondzer (0017096)
Counsel of Record
 Michael T. Schroth (0081073)
 John P. Desimone (0062330)
 Kolick & Kondzer
 24650 Center Ridge Road, Suite 110
 Westlake, Ohio 44145
 tkondzer@kolick-kondzer.com

Karl Fanter (0075686)
Counsel of Record
 Lawrence Lindberg (0025703)
 BAKER & HOSTETLER LLP
 3200 PNC Center
 1900 East Ninth Street
 Cleveland, Ohio 44114-3485
 kfanter@bakerlaw.com
 llindberg@bakerlaw.com

Attorneys for Appellant Board of Education of the Warrensville Heights City School District

Attorneys for Appellee University Hospitals Health System, Inc.

Michael DeWine (0009181)
 Ohio Attorney General
Counsel of Record
 State Office Tower, 14th Floor
 30 East Broad Street
 Columbus, Ohio 43215

Timothy J. McGinty (0024626)
 Cuyahoga County Prosecutor
 Mark R. Greenfield
Counsel of Record
 Assistant Prosecuting Attorney
 1200 Ontario Street
 Courts Tower, 8th Floor
 Cleveland, Ohio 44113
 mgreenfield@prosecutor.cuyahoga.us

Attorney for Joseph W. Testa, Tax Commissioner of Ohio

Attorney for the Cuyahoga County Board of Revision and Cuyahoga County Fiscal Officer

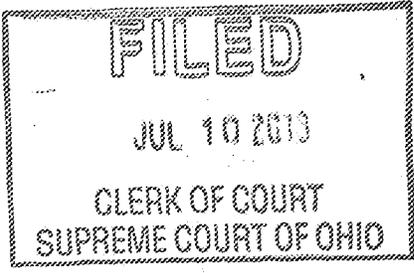


Table of Contents

| | |
|--|----|
| THIS CASE DOES NOT RAISE A QUESTION OF PUBLIC OR GREAT GENERAL INTEREST..... | 1 |
| STATEMENT OF THE CASE AND FACTS | 4 |
| A. University Hospital Files Two Valuation Complaints..... | 4 |
| B. Weeks After Conducting A Hearing On The Merits, The Board Of Revision Dismisses The Case on Jurisdictional Grounds. | 5 |
| C. The Board Of Tax Appeals Affirms, But On A Different Legal Basis..... | 6 |
| D. The Court of Appeals Reverses And Remands Because The Complaint—Error Included—Was Consistent With The Core of Procedural Efficiency..... | 6 |
| RESPONSE TO APPELLANTS' PROPOSITIONS OF LAW..... | 7 |
| Warrensville Heights' First Proposition of Law: An unregistered, fictitious entity lacks any legal capacity to litigate a complaint and lacks standing to file a complaint with a county board of revision. <i>Buckeye Foods v. Cuyahoga Cty. Bd. of Revision</i> , 78 Ohio St. 3d 459, 678 N.E.2d 917, 1997-Ohio-199, followed..... | 7 |
| Warrensville Heights' Second Proposition of Law: The naming of a property owner on a complaint filed with the board of revision is information that goes to the core of procedural efficiency. A failure to do so renders the complaint invalid. | 9 |
| CONCLUSION | 11 |

THIS CASE DOES NOT RAISE A QUESTION OF PUBLIC OR GREAT GENERAL INTEREST

Expressly relying on this Court's recent precedent, the language of R.C. 5715.19(A), and the particular facts at issue, the Eighth District properly held that University Hospitals Health System, Inc.'s ("University Hospital") valuation complaint invoked the Board of Revision's ("BOR") jurisdiction. R.C. 5715.19(A), the jurisdictional gateway to filing a complaint with the BOR, "does not itself require any specific content for the complaint." *Knickerbocker Properties, Inc. XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192, 893 N.E.2d 457, ¶¶ 11, 14. And, given "the statute's remedial purpose," R.C. 5715.19(A) should be interpreted broadly in favor of jurisdiction. *Sheldon Rd. Assoc., L.L.C. v. Cuyahoga Cty. Bd. of Rev.*, 131 Ohio St.3d 201, 2012-Ohio-581, 964 N.E.2d 794, ¶ 27.

It is "the basic tenet of Ohio jurisprudence that cases should be determined on their merits and not on mere procedural technicalities." *Barksdale v. Van's Auto Sales, Inc.*, 38 Ohio St.3d 127, 128, 527 N.E.2d 284 (1988). Thus, as this Court recently held when reversing the dismissal of a valuation complaint, it is inappropriate to "find or enforce jurisdiction barriers not clearly statutorily or constitutionally mandated, which tend to deprive a supplicant of a fair review of his complaint on the merits." *2200 Carnegie, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 135 Ohio St.3d 284, 2012-Ohio-5691, 986 N.E.2d 919, ¶ 29, quoting *Nucorp, Inc. v. Montgomery Cty. Bd. of Revision*, 64 Ohio St.2d 20, 22, 412 N.E.2d 947 (1980). Thus, even a complaint listing the wrong address still invoked the BOR's jurisdiction. *Knickerbocker Properties* at ¶ 14.

After applying this Court's well-established and recently reiterated test that an omission must "go to the core of procedural efficiency"—in this case, preventing notice from being sent to the relevant school board—to bar jurisdiction, the Eighth District held

that University Hospital's claim should be heard on its merits. *Univ. Hosps. Health Sys., Inc. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. No. 98783, 2013-Ohio-1665, ¶¶ 3, 9, quoting *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, 985 N.E.2d 1243 and *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 80 Ohio St.3d 591, 597, 1998-Ohio-179, 687 N.E.2d 723.

This is because, other than the partial description of "University Hospital" as the property owner, every other line on the complaint was complete and accurate, including the parcel number, the address, the agent's name, the property's principal use, and the current and claimed values. The partial description prejudiced no one. All parties received timely notice of the complaint and attended the BOR's hearing on the merits. This is unsurprising, since the parties were simultaneously involved in litigation over another valuation complaint for the same property.

Nonetheless, Warrensville Heights argues that this case is of public or great general interest because the decision below was allegedly contrary to *Buckeye Foods v. Cuyahoga Cty. Bd. of Revision*, 78 Ohio St.3d 459, 1997-Ohio-199, 678 N.E.2d 917, thus creating "one rule for Cuyahoga County and a different rule for the rest of the state."¹ (Memo. 1.) But *Buckeye Foods* only applies in narrow circumstances not applicable here. In *Buckeye Foods*, this Court held that "since Buckeye Foods is a fictitious name [it] has no capacity to litigate these [valuation] complaints." *Id.* at 462.

University Hospital never sought to litigate on behalf of a fictitious entity. *Buckeye Foods* was not a case where a property owner simply made an error on the first line of the

¹ Warrensville Heights describes this as a "conflict created by the Eighth District Court of Appeals." (Memo. 1.) But Warrensville Heights has waived review of any alleged conflict by not moving to certify a conflict under Appellate Rule 25. See S.Ct.Prac.R. 7.01(B)(2); S.Ct.Prac.R. 8.01-.03. And, as described below, there is no such conflict.

complaint. Rather, the plaintiff in *Buckeye Foods* intentionally sought to litigate four separate claims using a single, unregistered, fictitious name of “Buckeye Foods,” even though Buckeye Foods was neither the plaintiff’s name nor the name of any of the four property owners. *Id.* at 459-61. In other words, Warrensville Heights’ argument fails because “University Hospital” is not a “fictitious name.” “University Hospital” was a mistake on a tax form. In fact, University Hospital used its complete legal name on a prior complaint for the same property. And, consistent with R.C. 5715.19(A) and this Court’s post-*Buckeye Foods* precedent, omissions only bar a complaint when they go to the core of procedural efficiency.

Warrensville Heights also claims that the Eighth District’s ruling is “inherent[ly] inequitable” and “discriminatory” because “a small entity that employs only a few people would not be able to use a fictitious name.” (Memo. 2.) But contrary to Warrensville Heights’ assertion, the Eighth District court did not hold “that an entity may file a complaint using a fictitious name if it is a large entity, employs a large number of employees, and is well known.” (*Id.*) Rather, the Eighth District held that every omission does not automatically go to the core of procedural efficiency, and given the specific facts here, “the board’s decision was unsupported by its own reasoning and served only to deprive [University Hospital] of a fair review of its complaint on the merits.” *Univ. Hosps. Health Sys., Inc.*, 2013-Ohio-1665, ¶ 9, quoting *Nucorp, Inc.*, 64 Ohio St. 2d at 22.

Warrensville Heights also argues that any defect in a property owner’s name automatically “goes to the core of procedural efficiency” and renders the complaint invalid. (Memo. 11.) The statute, however, does not require that an owner’s name—especially when the owner itself is filing the complaint—be error-free when listed on a valuation complaint. Taking the school board’s argument to its logical extent, every typo or

incomplete listing by a complainant would deprive the BOR of jurisdiction, regardless of the lack of prejudice from such an omission. Tellingly, Warrensville Heights does not cite a single statutory provision or decision of this Court requiring that a property owner's name must be spelled correctly to invoke a BOR's jurisdiction.

Indeed, consistent with this Court's well-established "core of procedural efficiency" doctrine, including its recent *Shinkle* decision (which Warrensville Heights ignores in its memorandum for jurisdiction), the BTA has properly and repeatedly rejected the bright-line, harsh rule that Warrensville Heights seeks here—including in its decision below. "[W]e have never adopted a 'bright line' test as to what constitutes a properly identified owner on a complaint." *Univ. Hosps. Health Sys. v. Cuyahoga Cty. Bd. of Revision*, BTA No.2012-A-116, 2012 Ohio Tax LEXIS 3399, at *5 (July 11, 2012).

Reversing the Eighth District's decision would effectively overrule this Court's core of procedural efficiency test, because any typographical error, no matter how small, would prevent any homeowner or business from invoking a BOR's jurisdiction. The hypertechnical rule sought by Warrensville Heights is inconsistent with the requirements of the Revised Code, well-established precedent, and common sense. The rule would force businesses, homeowners, and school boards alike to have their claims determined by "mere procedural technicalities," instead of on their merits. *Barksdale*, 38 Ohio St.3d at 128. Accordingly, this Court should decline jurisdiction.

STATEMENT OF THE CASE AND FACTS

A. University Hospital Files Two Valuation Complaints.

University Hospital is an Ohio non-profit corporation. The taxpayer owns and operates a large healthcare system based in Cleveland, Ohio, comprising seven hospitals and twenty-five healthcare centers, including the property at issue here. In 2007,

University Hospital filed a valuation complaint with the Cuyahoga County BOR for its property at 3909 Orange Place Extension, Orange, Ohio 44022, seeking to decrease the county auditor's valuation for the years 2006 to 2008. The Warrensville Heights Board of Education counter-complained. After a hearing, the BOR issued its decision, which Warrensville Heights appealed to the Board of Tax Appeals (the "BTA") on March 13, 2009.

While the school board's appeal was pending in the 2006-2008 valuation case, on March 30, 2010, University Hospital filed the present action with the BOR, seeking to decrease the county auditor's 2009 valuation of the same property. Warrensville Heights was timely notified of the complaint, and filed a counter-complaint on May 22, 2010. The exact same parties—and the same counsel—are involved in both the 2006-2008 valuation action and the present action.

B. Weeks After Conducting A Hearing On The Merits, The Board Of Revision Dismisses The Case On Jurisdictional Grounds.

The BOR set a hearing in this action for November 11, 2011. University Hospital retained Lawrence Kell, Sr., an appraiser, who prepared a detailed report in anticipation of the hearing. On the day of the hearing—which had been scheduled for weeks—Warrensville Heights filed a motion to dismiss, alleging the BOR lacked jurisdiction solely because the "Owner of Property" entry in the complaint form listed "University Hospital," not the owner's complete name, "University Hospitals Health System, Inc." Every other entry on the form was fully accurate and complete, including the parcel number, the address, the agent's name, the property's principal use, and the current and claimed values. Despite Warrensville Heights's eleventh-hour motion, the BOR went forward with the merits hearing. University Hospital presented evidence of the property's correct value.

On December 12, 2011, the BOR notified University Hospital that its complaint had

been dismissed, holding that the name “University Hospital” on the form was a jurisdictional defect. “While the BOR is reluctant to be hyper technical,” the Board wrote, “it is persuaded that Buckeye Foods governs this case and the complaint is therefore dismissed.” The BOR did not explain why *Buckeye Foods*, which held that a party could not litigate four separate claims using a single, unregistered, fictitious name, required dismissal of University Hospital’s complaint.

C. The Board Of Tax Appeals Affirms, But On A Different Legal Basis.

University Hospital appealed to the BTA. On July 11, 2012, it affirmed the BOR’s dismissal, but on different grounds. Instead of relying on *Buckeye Foods*, the BTA cited a subsequent Supreme Court decision, *Cleveland Elec. Illum. Co.*, which held that a complaint’s omission must go “to the core of procedural efficiency” to deny the BOR jurisdiction. In explaining its reasoning, the BTA admitted it has: (1) “never adopted a ‘bright line’ test as to what constitutes a properly identified owner on a complaint,” and (2) “avoided raising jurisdictional barriers in instances of minor differences in an owner’s actual name versus the name listed on a complaint.” Nonetheless, the BTA dismissed the case because University Hospital’s full name “was not properly listed as the property owner on line 1 of the subject complaint.”

D. The Eighth District Holds That University Hospital’s Complaint Should Be Decided On Its Merits.

University Hospital appealed, and the Eighth District rejected the BTA’s conclusion as “unsupported by its own reasoning,” and held that the BOR deprived University Hospital of a fair review of the merits of its claim. *Univ. Hosps. Health Sys., Inc.*, 2013-Ohio-1665, at ¶ 9. The Court of Appeals found that the BTA’s refusal to adopt a bright-line test for what constitutes a properly identified owner means that, consistent with this Court’s established

test, a partially listed party's name does not necessarily go to the core of procedural efficiency. *Id.* at ¶¶ 3, 8. The court also noted that its decision is consistent with the BTA's prior decisions holding that complainants invoked the BOR's jurisdiction, even though the owners' names on their complaints were misspelled or incomplete. *Id.* at ¶¶ 5-7.²

RESPONSE TO APPELLANTS' PROPOSITIONS OF LAW

Warrensville Heights' First Proposition of Law: An unregistered, fictitious entity lacks any legal capacity to litigate a complaint and lacks standing to file a complaint with a county board of revision. *Buckeye Foods v. Cuyahoga Cty. Bd. of Revision*, 78 Ohio St. 3d 459, 678 N.E.2d 917, 1997-Ohio-199, followed.

Warrensville Heights' proposition of law is a red herring. The entry of "University Hospital" on the complaint form is not a fictitious entity. It is an incomplete name on an otherwise completely filled-out complaint filed by University Hospitals Health System, Inc. Warrensville Heights, however, argues that "University Hospital"—not the actual owner—was the legal entity filing the complaint, and thus, that fictitious entity cannot invoke the BOR's jurisdiction. (Memo. 7.) "[T]he issue is simply whether "University Hospital" . . . has the capacity to file any complaint whatsoever." (*Id.* at 10.) But the hospital never contended that it sought to file a complaint on behalf of a fictitious entity when it entered "University Hospital" on the first line of the complaint. Rather, it simply filled out one line of the complaint form incompletely.

² *E.g.*, *Cleveland Mun. School Dist. Bd. of Educ. v. Cuyahoga Cty. Bd. of Rev.*, B.T.A. Case Nos. 99-M-1348, -1349 (June 15, 2001); *Automatic Data Processing Community Urban Dev. Corp. v. Hamilton Cty. Bd. of Rev.*, B.T.A. Case Nos. 2003-J-87, -88 (July 23, 2004); *Triple V's Holding v. Cuyahoga Bd. of Rev.*, B.T.A. No. 1997-K-1701 (Apr. 24, 2000); *Hird Ave. Props., LLC v. Cuyahoga Cty. Bd. of Rev.*, B.T.A. Nos. 2007-M-163, -164 (Nov. 25, 2008); *Champion Bldg. Co. L.P. v. Cuyahoga Cty. Bd. of Rev.*, B.T.A. No. 2006-Z-1829 (Nov. 18, 2008); *Medusa Assoc. Ltd. v. Cuyahoga Cty. Bd. of Rev.*, B.T.A. No. 2005-A-490 (Nov. 18, 2005); *Cleveland Bluffs Dev., LLC v. Cuyahoga Bd. of Rev.*, B.T.A. No. 2002-V-1632 (Dec. 19, 2003).

Thus, as both the BTA and the Eighth District below realized, the narrow holding of *Buckeye Foods* does not apply here, and instead both applied the proper “core of procedural efficiency” test. Warrensville Heights’s view of *Buckeye Foods* would eliminate that test, and turn any typographical error, no matter how small, into a complete bar to jurisdiction. That has never been, and should not be, the law.

In *Buckeye Foods*, the plaintiff intentionally filed four separate claims using the single, unregistered, fictitious name of “Buckeye Foods,” even though the property owners’ names were: (1) Buckeye Foods Limited Partnership Number One; (2) Buckeye Superior/Euclid, Inc.; (3) Buckeye Foods-Kinsman, Inc.; and, (4) Buckeye Foods—Harvard, Inc. *Buckeye Foods*, 78 Ohio St.3d at 459-61. The owner of those companies was “Buckeye Foods, Inc.,” and its sole shareholder Michael Eanes argued “‘Buckeye Foods’ is a name he allows various corporations that he has an interest in to use in leasing and operating” the four companies that owned the four properties. *Id.* at 459.

The BTA rejected Eanes’s strategy, and held that even if “Buckeye Foods” referred to “Buckeye Foods, Inc.,” that entity still had no relationship to the four properties. *Id.* at 460. Here, in contrast, there is no dispute that “University Hospital” was just the incomplete name of the actual owner, University Hospitals Health System, Inc., and that entity had legal capacity to file a valuation complaint. So, even under the inapt *Buckeye Foods* test, the complaint at issue still would pass muster. But again, the issue here is not whether a fictitious entity named “University Hospital” has legal capacity under *Buckeye Foods* to file a valuation complaint. Rather, the issue is whether the hospital’s incomplete listing on the first line of the complaint runs to the core of procedural efficiency. *See Shinkle*, 2013-Ohio-397, at ¶ 17.

Warrensville Heights' Second Proposition of Law: The naming of a property owner on a complaint filed with the board of revision is information that goes to the core of procedural efficiency. A failure to do so renders the complaint invalid.

R.C. 5715.19 provides for the filing of valuation complaints, and “does not itself require any specific content for the complaint.” *Knickerbocker Properties*, 2008-Ohio-3192, at ¶ 11. “[N]o specific language in [R.C. 5715.30] or in R.C. 5715.19 requires strict compliance with every provision of the forms that the Tax Commissioner prescribes.” *Id.* For example, this Court has held that the failure to list the correct address did not bar the valuation complaint. *Id.* at ¶ 14.

Likewise, in *Nucorp, Inc.*, this Court held that the failure to attach a copy of the BOR’s decision pursuant to a notice of appeal form was not a jurisdictional bar because the statute itself did not require it. 64 Ohio St.2d at 22. In other words, while the Court has never “condoned disregard of procedural schemes logically attendant to the pursuit of a substantive legal right, it has also been unwilling to find or enforce jurisdiction barriers not clearly statutorily or constitutionally mandated, which tend to deprive a supplicant of a fair review of his complaint on the merits.” *Id.*; *Toledo Public Schools Bd. of Educ. v. Lucas Cty. Bd. of Revision*, 121 Ohio St.3d 490, 2010-Ohio-253, 924 N.E.2d 345, ¶ 16 (“error in filling out the valuation complaint is not jurisdictionally dispositive”).

So, when determining whether a party has invoked a BOR’s jurisdiction, a tribunal is required to determine whether a particular omission “runs to the core of procedural efficiency.” *Shinkle*, 2013-Ohio-397, at ¶ 24. That is exactly what the Eighth District did here. *Univ. Hosps. Health Sys., Inc.*, 2013-Ohio-1665, ¶¶ 3-9. There is no relevant difference between the decision below and this Court’s decision in *Knickerbocker*, where listing the wrong address did not bar the valuation complaint. *Knickerbocker Properties, Inc. XLII*, 2008-Ohio-3192, at ¶ 14.

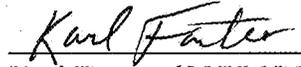
Warrensville Heights proposes a novel rule not contained in the statute's language—namely, that to invoke the BOR's jurisdiction, the property owner name listed on the complaint form must be 100% complete and accurate. (Memo. 11.) But this Court has repeatedly held that obligations barring jurisdiction must be “clearly statutorily or constitutionally mandated” on the party. *2200 Carnegie, L.L.C.*, 2012-Ohio-5691, at ¶ 29, quoting *Nucorp, Inc.*, 64 Ohio St.2d at 22. While the school board argues that a properly spelled owner's name might assist the BOR with providing notice (Memo. 12), such a requirement for a complaint has never been required by the General Assembly or this Court, and thus is not a jurisdictional hurdle. *See Shinkle*, 2013-Ohio-1665, at ¶ 19.

There is no dispute that both the property owner (as the complaining party) and the school board timely received notice of the complaint. The BOR identified the owner, sent notifications to the proper addresses, and held a hearing on the merits with all parties attending. The omission did not affect procedural efficiency at all, let alone go to its “core.” The proceeding on the merits went forward, and no one—not the school board, not the BOR, not the owner—was prejudiced in any way. Warrensville Heights seeks a ruling from this Court that any error in an owner's name on a complaint form automatically bars jurisdiction in every case, even when no prejudice results. But that is not the law, and there is no reason to effectively overrule the well-established “core of procedural efficiency” test.

CONCLUSION

The Court should decline jurisdiction over this appeal.

Respectfully submitted,



Karl Fanter (0075686)

Counsel of Record

Lawrence Lindberg (0025703)

BAKER & HOSTETLER LLP

1900 East Ninth Street, Suite 3200

Cleveland, Ohio 44114

Telephone: 216.621.0200

kfanter@bakerlaw.com

llindberg@bakerlaw.com

*Attorneys for Appellee University Hospitals Health
System, Inc.*

CERTIFICATE OF SERVICE

I certify that on July 10, 2013, a copy of the foregoing was served by regular U.S. mail upon the following parties:

Thomas A. Kondzer
Michael Schroth
John P. Desimone
Kolick & Kondzer
24650 Center Ridge Road, Suite 110
Westlake, Ohio 44145

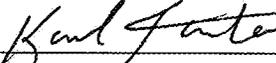
*Attorneys for Appellant Board of Education of
the Warrensville Heights City School District*

Michael DeWine
State Office Tower, 14th Floor
30 East Broad Street
Columbus, Ohio 43215

*Attorneys for Joseph W. Testa, Tax
Commissioner of Ohio*

Mark R. Greenfield
1200 Ontario Street
Courts Tower, 8th Floor
Cleveland, Ohio 44113

*Attorney for the Cuyahoga County Board of
Revision and Cuyahoga County Fiscal Officer*



*One of the Attorneys for Appellee University
Hospitals Health System, Inc.*