IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Peter Ray Gilbert, Nancy Brennan Gilbert, Appellants v. Board of Property Assessment, Appeals and Review, County of Allegheny, North Allegheny School District, and Marshall Township	:	No. 724 C.D. 2023 Submitted: November 7, 2024

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY FILED: January 3, 2025

Peter Ray Gilbert and Nancy Brennan Gilbert (collectively, the Gilberts) appeal from the Allegheny County (County) Common Pleas Court's (trial court) June 13, 2023 order dismissing the Gilberts' Petition to Appeal *Nunc Pro Tunc* (Petition) from the County Board of Property Assessment, Appeals and Review's (BPAAR) December 19, 2019 Disposition (Disposition). The Gilberts present three issues for this Court's review: (1) whether the trial court properly dismissed their Petition; (2) whether the trial court properly held that the Gilberts' challenge to BPAAR's Disposition is barred by res judicata; and (3) whether the County's tax scheme is unconstitutional as applied or violates the Pennsylvania

Constitution's Uniformity Clause (Uniformity Clause).[1] After review, this Court affirms.

The Gilberts own property located at 172 Seneca Place, Marshall Township, in the County (Property), which they purchased on February 23, 2018, for $593,478.00. Thereafter, North Allegheny School District (District) filed an appeal from the Property's $472,500.00 2019 property tax assessment (2019 tax assessment).

On December 19, 2019, BPAAR increased the 2019 tax assessment to $518,700.00. The District appealed from the 2019 tax assessment to the trial court[2] at Docket Number BV20-97. On March 9, 2020, the District, the County, and the Gilberts entered into a stipulation (Stipulation), wherein they agreed that the Property's 2019 and 2020 tax assessments were $518,700.00. On March 12, 2020, the trial court entered an order (2020 Order) marking the appeal "Settled and Discontinued in accordance with [the Stipulation]." County Br., Ex. A, Trial Ct. Order, March 12, 2020.

On March 4, 2023, the Gilberts filed the Petition. Therein, the Gilberts contend that based upon the trial court's September 1, 2022 ruling in *Gioffre v. Fitzgerald* (Docket No. GD21-7154) (*Gioffre* Action), wherein the trial court

---

[1] PA. CONST. art. VIII, § 1. The Pennsylvania Supreme Court has explained:

> The Uniformity Clause of the Pennsylvania Constitution provides that "[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." PA. CONST. art. VIII, § 1. As we have interpreted it, the Uniformity Clause requires that every tax "operate alike on the classes of things or property subject to it." *Commonwealth v. Overholt & Co.*, . . . 200 A. 849, 853 ([Pa.] 1938).

Mount Airy #1, LLC v. Pa. Dep't of Revenue, 154 A.3d 268, 272-73 (Pa. 2016).

[2] Although the Gilberts did not appeal from the 2019 property tax assessment, Allegheny County Local Rule of Civil Procedure 503(6) provides that "[t]he filing of an appeal by any party shall act as an appeal by all parties." Alleg. Co. L. R.. 503(6).

reduced the County's Common Level Ratio (CLR) for 2020 sales of real property in the County from 81.1% to 63.53%, the trial court should vacate the 2020 Order, utilize 63.53% as the CLR for the Property from 2019 to present, refund any property tax overpayments to the Gilberts with interest, and award them attorney's fees.

In the *Gioffre* Action, after learning the CLR to be applied for Tax Year 2022 would be 81.1%, certain property owners, who are not parties to the instant appeal, filed an action in equity in the trial court[3] against the County, BPAAR, and the County Executive, challenging and seeking to enjoin the CLR's application. On September 1, 2022, the trial court entered a preliminary injunction in the *Gioffre* Action, which set the CLR at 63.53% for Tax Year 2022. On November 14, 2022, the trial court issued an opinion in the *Gioffre* Action in which it indicated that the County's automated nightly computer program that was tracking real estate transfers for submission of data to the State Tax Equalization Board (STEB) automatically invalidated special warranty deeds that were outside of the .80 to 1.20 ratio of assessment to sales price, while automatically validating transfers in the .90 to 1.10 ratio. The trial court further stated in the *Gioffre* Action that this coding had the effect of "[c]ooking the books on the CLR data submitted to STEB." Reproduced Record at 5a (quotation marks omitted).

On June 13, 2023, following argument on the Petition in the instant matter, the trial court declined to issue a rule to show cause and dismissed the Petition. The Gilberts timely filed a notice of appeal with this Court.[4] On July 7, 2023, the trial court ordered the Gilberts to file a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure (Rule) 1925(b) (Rule 1925(b) Statement).

---

[3] The same trial court judge presided in the *Gioffre* Action as in the instant action.

[4] This Court's review of an order denying an appeal *nunc pro tunc* is limited to whether the trial court abused its discretion or committed an error of law. *See Croft v. Bd. of Prop. Assessment, Appeals & Rev.*, 134 A.3d 1129 (Pa. Cmwlth. 2016).

On July 10, 2023, the Gilberts filed their Rule 1925(b) Statement, contending: (1) in *Clifton v. Allegheny County*, 969 A.2d 1197 (Pa. 2009), the Pennsylvania Supreme Court held that the County's tax scheme is unconstitutional as applied;[5] (2) erroneous CLR use violates the Uniformity Clause; (3) the County Office of Property Assessment's (OPA) submission of miscoded sales data to STEB to compute the CLR for BPAAR's use in tax assessment appeals was a fraud on STEB; (4) such fraud allows the Gilberts to bypass administrative remedies and petition the trial court for an Order to Show Cause, allowing taxpayers *nunc pro tunc* relief to reopen appeals before BPAAR to re-assess their taxes; (5) the Stipulation is void due to the parties' mutual mistake; (6) the 2020 Order is void because the Stipulation is void; and (7) the trial court abused its discretion.

On August 29, 2023, the trial court issued its opinion pursuant to Rule 1925(a) (Rule 1925(a) Opinion), wherein it opined that the Gilberts' arguments lacked merit and that the Gilberts offered no evidentiary support for their contention that the County's tax scheme is unconstitutional as applied. The trial court also observed that the Gilberts' Uniformity Clause argument might have had merit had the Gilberts not executed the Stipulation and settled the case, and stated that its use of the term *cooking the books* in the *Gioffre* Action was **not** meant to characterize the miscoding as fraud. The trial court expounded:

> Rather, it was hoped use of the term could help those that could be confused by mathematical formulas in the opinion grasp a simpler concept. According to the *Gioffre* deposition of [the] County's acting Chief Assessment Officer, the artificial intelligence created to automatically code sales data was only intended to make the process more efficient and not to inflate the [CLR]. **There was no**

[5] In *Clifton*, the Pennsylvania Supreme Court held that "as applied in [the] County, the statutory base year system of taxation at issue, which approves the prolonged and potentially indefinite use of an outdated base year assessment to establish property tax liability, violates the Uniformity Clause . . . ." *Clifton*, 969 A.2d at 1229.

> **finding of fraud in** [**the**] ***Gioffre*** [**Action**], nor could there have been since the trial [court] could make no credibility determinations from th[at] deposition testimony. Accordingly, [] [the trial court] was correct not to base [its] ruling on fraud.

Rule 1925(a) Op. at 3 (emphasis added). Further, the trial court found no breakdown in the trial court's operations, as is required for *nunc pro tunc* relief. Finally, the trial court explained that the Gilberts' mutual mistake argument was meritless because there was no mutual mistake where the CLR is a legal rather than a factual determination, the CLR was not a basic assumption of the Stipulation as it is not mentioned therein, and the Stipulation did not address the CLR but simply determined the Property's assessed value.

***Nunc Pro Tunc* Appeal**

This Court first addresses the Gilberts' assertion that the trial court erred by denying the Gilberts' appeal *nunc pro tunc*, as it is dispositive.

This Court has explained:

> "Where the legislature has fixed a time period within which an appeal may be filed, that period is **mandatory** and **may not be extended as a matter of grace or indulgence**." *Olson v. Borough of Homestead*, . . . 443 A.2d 875, 878 ([Pa. Cmwlth.] 1982) (emphasis added); *see also Hillanbrand v. P*[*a.*] *Bd. of Prob. & Parole*, . . . 508 A.2d 375 ([Pa. Cmwlth.] 1986); *Coshey v. Beal*, . . . 366 A.2d 1295, 1297 ([Pa. Cmwlth.] 1976) ("[T]he timeliness of an appeal goes to the jurisdiction of the body appealed to and its competency to act[.]").
>
> "[A]n appeal *nunc pro tunc* is a recognized exception to the general rule prohibiting the extension of an appeal deadline. . . . [It] is intended as a **remedy to vindicate the right to an appeal where that right has been lost due to certain extraordinary circumstances**." *Union Elec. Corp. v. Bd. of Prop. Assessment*, . . . 746 A.2d 581, 584 ([Pa.] 2000) (quotation marks omitted, emphasis added). "'[A]n appeal *nunc pro tunc* may be granted . . . in order

> to prevent injustice' in unique cases, 'upon a showing that **unusual circumstances prevented a party from timely filing**.[']" *In re Borough of Riegelsville from Bucks Cnty. Bd. of Assessment & Revision of Taxes*, 979 A.2d 399, 402-03 (Pa. Cmwlth. 2009) (emphasis added) (quoting *Hanoverian, Inc. v. Lehigh Cnty. Bd. of Assessment*, 701 A.2d 288, 289 (Pa. Cmwlth. 1997)).

Arena Beverage Corp. v. Pa. Liquor Control Bd., 97 A.3d 444, 448-49 (Pa. Cmwlth. 2014). Thus,

> [w]hen a statute fixes the time within which an appeal may be taken, a court may not extend that time period or allow an appeal *nunc pro tunc* absent a showing that extraordinary circumstances involving fraud or its equivalent, duress, or coercion ***caused the delay in filing an appeal***. Courts have held, for appeal purposes, that negligence on the part of administrative officials may be deemed the equivalent of fraud. Additionally, courts have held that an appeal *nunc pro tunc* may be granted in a unique case upon a showing that unusual circumstances prevented a party from timely filing in order to prevent injustice.

Hanoverian, 701 A.2d at 289 (bold emphasis added; citations and footnote omitted); *see also R.H. v. Dep't of Hum. Servs.*, 205 A.3d 410, 414 (Pa. Cmwlth. 2019) ("[A] late appeal may be permitted only where **the delay in the appeal** was caused by extraordinary circumstances involving fraud or some breakdown in the administrative process, or non-negligent circumstances related to the appellant, his counsel or a third party." (emphasis added)). "A person seeking permission to file an appeal *nunc pro tunc* has the burden of establishing[:] (1) he filed the appeal within a short time after learning of and having an opportunity to address the untimeliness; (2) the elapsed period of time is of short duration; and (3) the [appellee] is not prejudiced by the delay." *R.H.*, 205 A.3d at 414.

Here, the trial court emphasized that it did not find fraud in the *Gioffre* Action. Even assuming, arguendo, that the trial court had found that OPA had

fraudulently submitted its CLR data to STEB, the instant facts would be inadequate to demonstrate that such fraud "*caused the delay in filing an appeal*" in the instant matter. *Hanoverian*, 701 A.2d at 289. Rather, the parties stipulated to **the Property**'**s assessed and fair market values** and subsequently dismissed the original appeal based on the Stipulation.[6]

The Gilberts argue that "[t]he County's wrongdoing was not exposed until it was uncovered in [the] *Gioffre* [Action]" issued on September 1, 2022. Gilbert Br. at 23. However, the Gilberts did not file the instant Petition until March 4, 2023, more than **six months** later. Six months is not a short time. *See Gasiorowski v. City of Pittsburgh Zoning Bd. of Adjustment* (Pa. Cmwlth. No. 1752 C.D. 2009, filed Jan. 29, 2010),[7] slip op. at 4 ("Clearly an appeal filed six months after the appeal period has run is untimely and not filed within a short time of having an opportunity to address the untimeliness."). Because the Gilberts did not establish that they filed the appeal within a short time after learning of and having an opportunity to address the untimeliness and/or that the elapsed period of time was of a short duration, they did not meet their burden of proving that they were entitled to

[6] Notably, the Gilberts now claim that the County's tax scheme is unconstitutional based on *Clifton*. Because *Clifton* was decided in 2009, the Gilberts were presumably aware of it when they executed the Stipulation in 2020.

[7] Pursuant to Section 414(a) of this Court's Internal Operating Procedures, 210 Pa. Code § 69.414(a), an unreported panel decision of this Court issued after January 15, 2008, may be cited for its persuasive value, but not as binding precedent. *Gasiorowski* is cited for its persuasive value.

appeal *nunc pro tunc*. *See R.H.*. Accordingly, the trial court did not err by denying the Gilberts' Petition.[8, 9]

---

[8] Notwithstanding, the trial court properly concluded res judicata barred the Gilberts' appeal.

> [I]n Pennsylvania[,] a judgment entered by consent "binds *the parties* with the same force and effect as if a final decree has been rendered after a full hearing on the merits." *Zampetti v. Cavanaugh*, . . . 176 A.2d 906, 909 ([Pa.] 1962) (emphasis in original); *see also P*[*a.*] *Hum*[.] *Rel*[s.] *Comm'n v. Ammon K. Graybill, Jr., Inc., Real Est*[.], . . . 393 A.2d 420, 422 ([Pa.] 1978) ("A consent decree has a [r]es judicata effect, binding the parties with the same force and effect as a final decree rendered after a full hearing on the merits."). As our Supreme Court noted, "[t]he fact that without the consent of the parties the court might not have rendered the judgment does not affect its effect as res judicata. Were this not so, a consent decree would have little value." *Zampetti*, . . . 176 A.2d at 909.

Shapiro v. State Bd. of Acct., 856 A.2d 864, 883 (Pa. Cmwlth. 2004); *see also Cecil Twp. v. Klements*, 821 A.2d 670 (Pa. Cmwlth. 2003); *Khalil v. Travelers Indem. Co. of Am.*, 273 A.3d 1211, 1218 (Pa. Super. 2022) ("We have held that '[m]arking a case settled, discontinued and ended has the same effect as the entry of judgment.'" (quoting *Kaiser v. 191 Presidential Corp.*, 454 A.2d 141, 144 (Pa. Super. 1982)).

"Moreover, it is well established that **the doctrine of res judicata is applicable**, **even where there has been a change or new development in the law following the entry of the final judgment in the first action**." *Stoneback v. Zoning Hearing Bd. of Upper Saucon Twp.*, 699 A.2d 824, 828 (Pa. Cmwlth. 1997) (emphasis added).

The Pennsylvania Supreme Court has explained:

> The rationale of the doctrine of res judicata is to bring an end to vexatious and repetitious litigation. **The prohibition against renewed litigation of an old cause of action applies even though the statute upon which a valid judgment is based is later declared unconstitutional** and void. **Even if the ratio decidendi of a valid judgment is later ruled improper or erroneous by an appellate court in another case**, **the parties to the prior litigation are precluded from a new trial of the same cause of action**.

In re Est. of Tower, 343 A.2d 671, 674 (Pa. 1975) (citations omitted; emphasis added). "That **a subsequent change in the judicial view of the law shall have no effect on a valid prior adjudication of the rights of the parties** is a necessary and logical deduction from the basic policy of the doctrine of res judicata." *Id.* at 675 (emphasis added).

Here, the Gilberts executed the Stipulation and, based thereon, the trial court entered the 2020 Order marking the action *Settled and Discontinued*. The *Gioffre* decision cannot serve as a

For all of the above reasons, the trial court's order is affirmed.

_____

ANNE E. COVEY, Judge

basis to disregard the 2020 Order's res judicata effect. *See Tower*. This Court agrees that the trial court properly concluded that res judicata barred the Gilberts' appeal.

[9] Having concluded that the trial court properly dismissed the Petition, this Court does not reach the remaining constitutional issues.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Peter Ray Gilbert, Nancy Brennan Gilbert, Appellants	:	
v.	:	
Board of Property Assessment, Appeals and Review, County of Allegheny, North Allegheny School District, and Marshall Township	:	No. 724 C.D. 2023

O R D E R

AND NOW, this 3rd day of January, 2025, the Allegheny County Common Pleas Court's June 13, 2023 order is affirmed.

_____

ANNE E. COVEY, Judge