ATTORNEY FOR PETITIONER:
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Indianapolis, IN

ATTORNEY FOR RESPONDENT:
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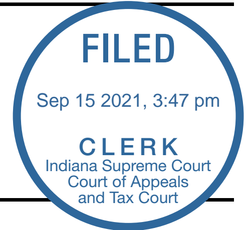
IN THE
INDIANA TAX COURT



GILDAY & ASSOCIATES, P.C.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 21T-TA-00002
	)	
MARION COUNTY ASSESSOR,	)	
	)	
Respondent.	)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

FOR PUBLICATION
September 15, 2021

WENTWORTH, J.

Gilday & Associates, P.C. ("Gilday") challenges the Indiana Board of Tax Review's final determination that dismissed its administrative appeals for lack of standing to claim a property tax refund for the 2014 through 2017 tax years. Upon review, the Court reverses the Indiana Board's final determination.

FACTS AND PROCEDURAL HISTORY

The subject property is a single-family residence located on Coral Reef Way in Lawrence Township, Marion County, Indiana. (See Cert. Admin. R. at 1-5.) During the years at issue, the property was owned by Paul Terry Batties, who used it exclusively as

his personal residence. (See Cert. Admin. R. at 3-4.) At some point, Batties entered into a residential mortgage loan transaction with Green Tree Servicing, LLC, and an escrow account was established from which the property taxes were to be paid. (See Cert. Admin. R. at 4, 10.)

Batties became delinquent on the loan during the years at issue. (See Cert. Admin. R. at 4.) Green Tree, however, advanced the payment of the property taxes on Batties' property throughout the delinquency period. (See Cert. Admin. R. at 4, 10.) During that period, the property's Homestead Deduction was "inexplicably" removed even though the property had received the Homestead Deduction for the preceding years. (See Cert. Admin. R. at 4, 10.) See also, e.g., IND. CODE § 6-1.1-12-37(b)-(c) (2021) (providing that an eligible homestead may receive a standard deduction annually up to $45,000 from the assessed value of the homestead).

In the meantime, Green Tree filed a complaint for foreclosure on the property in the Marion County Superior Court and eventually "obtained a mortgage foreclosure judgment that included all of the [property] taxes that it had advanced on behalf of [] Batties." (See Cert. Admin. R. at 4.) Thereafter, in July of 2018, Gilday purchased the subject property at a sheriff's sale for $375,000. (See Cert. Admin. R. at 4, 10.) The purchase price included the amount of Green Tree's mortgage foreclosure judgment (i.e., $280,467.86). (See Cert. Admin. R. at 4, 10.)

Believing that it had paid all the property taxes for the years at issue by virtue of its payment to the Marion County Sheriff, Gilday filed four "Notice[s] to Initiate an Appeal" ("Form 130s") with the Marion County Assessor on November 13, 2018. (See, e.g., Cert. Admin. R. at 6-16.) In the Form 130s, Gilday claimed it was entitled to a partial refund of

its property tax payments because the property should have received Homestead Deductions during the years at issue. (See, e.g., Cert. Admin. R. at 10.) On December 14, 2018, the Marion County Property Tax Assessment Board of Appeals (the "PTABOA") denied all of the Form 130s. (See, e.g., Cert. Admin. R. at 17-18.)

On January 28, 2019, Gilday sought review with the Indiana Board by filing four "Petition[s] for Review of Assessment" ("Form 131s"). (See, e.g., Cert. Admin. R. 1-5.) Several months later, Gilday filed a "Motion for Leave to Propound, to the Extent Necessary, More Than Twenty-five (25) Interrogatories" and the Assessor moved to quash two non-party subpoenas duces tecum. (See Cert. Admin. R. at 81-88, 93-163.)

In his motion to quash, the Assessor explained that he intended to file a motion to dismiss because Gilday had failed to state a claim upon which relief may be granted. (See Cert. Admin. R. at 131-32.) Given the Assessor's representations, the Indiana Board ordered the Assessor to file a motion to dismiss, and advised the parties that their discovery motions would be held under advisement. (See Cert. Admin. R. at 221.) On November 1, 2019, the Assessor filed his motion to dismiss, asserting that Gilday's appeals should be dismissed because 1) the removal of the Homestead Deductions was correct as a matter of law, 2) Gilday failed to apply for a Homestead Deduction within the statutorily prescribed period, and 3) Gilday had used the wrong appeal procedure to challenge the removal of the Homestead Deductions. (See Cert. Admin. R. at 222-32.)

Approximately three months later, after Gilday filed a brief in response to the Assessor's motion to dismiss, the Indiana Board issued a "Sua Sponte Motion and Order for Rule to Show Cause" ("Sua Sponte Motion"). (Cert. Admin. R. at 368-69.) In its Sua Sponte Motion, the Indiana Board explained that because Gilday's response brief

indicated it neither owned nor had paid the property taxes on the subject property during the years at issue, Gilday needed to establish that it had the statutory right to appeal or its Form 131s would be dismissed. (See Cert. Admin. R. at 368-69.) See also 52 IND. ADMIN. CODE 2-10-2(b) (2020) (authorizing the Indiana Board to issue an order of dismissal on its own motion) (repealed 2020). In addition, the Indiana Board advised the parties that it would rule on the Assessor's motion to dismiss after resolving the standing issue. (See Cert. Admin. R. at 369.)

In response to the Sua Sponte Motion, Gilday asserted that because the Indiana Board was bound by the Indiana Trial Rule 12(B)(6) standard, it must accept as true the factual allegations in its Form 131s that it was the taxpayer that paid the property taxes for the years at issue by virtue of paying Green Tree's judgment at the sheriff's sale. (See Cert. Admin. R. at 379-84.) As such, Gilday claimed that its appeals were authorized by Indiana Code § 6-1.1-15-1.1 ("Section 15-1.1") and Indiana Code § 6-1.1-26-1.1 ("Section 26-1.1"), which expressly allowed "taxpayers" to appeal to the Indiana Board. (See Cert. Admin. R. at 379, 384-88.)

The Assessor, on the other hand, maintained that the Indiana Board did not need to accept as true Gilday's factual allegations that it was the taxpayer that paid the property taxes on the subject property because those statements were "legal conclusions, requiring an application of law to the facts." (See Cert. Admin. R. at 402-03.) As a result, the Assessor claimed that Gilday's appeals should be dismissed because the facts in its Form 131s showed that Green Tree was the taxpayer, not Gilday. (See Cert. Admin. R. at 403.)

On December 4, 2020, the Indiana Board issued its final determination in the

matter. (See Cert. Admin. R. at 449-61.) In that final determination, the Indiana Board explained that it did not need to accept as true the factual allegation that Gilday was the taxpayer that paid the property taxes on the subject property because "[t]he question of whether Gilday [was] a taxpayer within the meaning of the appeal statutes [was] a mixed question of fact and law." (See Cert. Admin. R. at 455 ¶ 15.) Upon interpreting the word "taxpayer" as used in Section 15-1.1 and examining the language in the sheriff's deed in relation to Section 26-1.1,[1] the Indiana Board further found that neither statute authorized Gilday's appeals to the Indiana Board. (See Cert. Admin. R. at 454-57 ¶¶ 14-22.) Accordingly, the Indiana Board dismissed Gilday's appeals for lack of standing. (See Cert. Admin. R. at 460 ¶ 30.)

On January 18, 2021, Gilday initiated this original tax appeal. The Court heard the parties' oral arguments on June 10, 2021. Additional facts will be supplied when necessary.

STANDARD OF REVIEW

The party seeking to reverse an Indiana Board final determination bears the burden of demonstrating its invalidity. Osolo Twp. Assessor v. Elkhart Maple Lane Assoc., 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003). Consequently, Gilday must demonstrate to the Court that the Indiana Board's final determination in this matter is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

[1] To support its claims, Gilday offered several documents to the Indiana Board that were not attached to its Form 131s, including an affidavit, a copy of a cashier's check, and a copy of the sheriff's deed. (Compare Cert. Admin. R. at 1-73 (Gilday's Form 131s), with Cert. Admin. R. at 376-95 (Gilday's response to the Indiana Board's Sua Sponte Motion).) Although the Indiana Board relied upon the documents in reaching its final determination, it did not convert its Sua Sponte Motion into a motion for summary judgment, reasoning that its newly enacted regulation did not require it to follow Indiana's Rules of Trial Procedure or the related case law. (See Cert. Admin. R. at 452 ¶ 7 n.3.)

contrary to constitutional right, power, privilege, or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by substantial or reliable evidence. See IND. CODE § 33-26-6-6(e)(1)-(5) (2021).

LAW

The issue before the Court is whether the Indiana Board erred in dismissing Gilday's administrative appeals for lack of standing to claim a property tax refund for the years at issue. The judicial doctrine of standing focuses on whether the complaining party in a lawsuit is the proper person to invoke a court's power. Bielski v. Zorn, 627 N.E.2d 880, 888 (Ind. Tax Ct. 1994). Specifically, it ensures that "the party before the court has a substantive right to enforce the claim that is being made in the litigation." Pence v. State, 652 N.E.2d 486, 487 (Ind. 1995). In cases as this, however, where the question is whether the complaining party is the proper person to invoke the power of administrative review, the judicial doctrine of standing does not apply. See, e.g., Huffman v. Office of Env't Adjudication, 811 N.E.2d 806, 809 (Ind. 2004) (explaining that the judicial doctrine of standing does not apply to administrative proceedings). Instead, Section 15-1.1, Indiana Code § 6-1.1-15-3 ("Section 15-3"), and Section 26-1.1 control because they confer the authority to pursue an administrative proceeding before the Indiana Board. See IND. CODE § 6-1.1-15-1.1(a) (2018); IND. CODE § 6-1.1-15-3(a) (2019) (amended 2020);[2] IND. CODE § 6-1.1-26-1.1(a) (2018).

When Gilday filed its Form 130s with the PTABOA, Section 15-1.1 stated, in relevant part, that "[a] taxpayer may appeal an assessment of a taxpayer's tangible

[2] The 2020 amendment of Indiana Code § 6-1.1-15-3(a) has no bearing on the outcome of this matter.

property by filing a notice in writing with the . . . county assessor[.]" I.C. § 6-1.1-15-1.1(a) (emphasis added). The statute further provided that the appeal could raise any claim of error related to the omission of a deduction, a mathematical error, or the legality of a property tax. See I.C. § 6-1.1-15-1.1(a). In turn, Section 15-3 governed appeals to the Indiana Board, stating that "[a] taxpayer may obtain a review by the Indiana board of a county board's action with respect to . . . [t]he assessment of that taxpayer's tangible property if the county board's action requires the giving of notice to the taxpayer." I.C. § 6-1.1-15-3(a) (emphases added). Lastly, Section 26-1.1 provided that when a taxpayer filed an appeal under Indiana Code § 6-1.1-15, "the notice of appeal shall be treated as a claim for refund by the taxpayer filed as of the date of the final disposition of an appeal by the county board, board of tax review, department of local government finance, or a court." I.C. § 6-1.1-26-1.1(a) (emphasis added).

ANALYSIS

On appeal, Gilday contends that the Indiana Board's final determination must be reversed because it is contrary to law. (See, e.g., Pet'r Br. Supp. Pet. J. Rev. ("Pet'r Br.") at 16-32.) More specifically, Gilday maintains that the Indiana Board did not apply the correct standard of review in dismissing its appeals because the Indiana Board failed to apply the Trial Rule 12(B)(6) standard that requires all factual allegations in its Form 131s, including that it was the taxpayer, to be taken as true.[3] (See, e.g., Pet'r Br. at 16-24; Oral Arg. Tr. at 16-18.)

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[3] Gilday also claims that the Indiana Board ignored the fact that the Assessor waived his right to seek the dismissal of its appeals for a lack of standing. (See Pet'r Br. Supp. Pet. J. Rev. at 32-35.) The Court, however, does not need to address this claim given its disposition of this matter. See, e.g., Ward v. Carter, 90 N.E.3d 660, 666 (Ind. 2018) (declining to address a litigant's "broader argument" because the case was resolved on a narrower ground).

The question of whether a petitioner's complaint should be dismissed for lack of standing must be treated as a motion to dismiss under Trial Rule 12(B)(6). See McPeek v. McCardle, 888 N.E.2d 171, 173 (Ind. 2008) (stating that "[a] claim of lack of standing is properly treated as a motion to dismiss under Indiana Trial Rule 12(B)(6) for failure to state a claim upon which relief can be granted") (citation omitted). Indeed, because the standing requirement does not implicate a court's subject matter jurisdiction, an allegation that a party lacks standing is properly filed under Trial Rule 12(B)(6). Lake Cnty. Council v. State Bd. of Tax Comm'rs, 706 N.E.2d 270, 280 (Ind. Tax Ct. 1999). Furthermore, the Indiana Supreme Court has explained that the same standard of review applies to administrative proceedings. See Huffman, 811 N.E.2d at 813-14. See also, e.g., Old Nat'l Bancorp v. Hanover Coll., 15 N.E.3d 574, 576 (Ind. 2014) and Indiana Fam. & Soc. Servs. Admin. v. Anderson by Everroad, 155 N.E.3d 621, 624 (Ind. Ct. App. 2020) (providing that the question of whether a party has standing to seek administrative review is a pure question of law that appellate courts review de novo). Therefore, the Court (as well as the Indiana Board) is required to accept as true all the facts alleged in Gilday's Form 131s, viewing them in the light most favorable to Gilday with every inference drawn in its favor. See Wireless Advocates, LLC v. Indiana Dep't of State Revenue, 973 N.E.2d 111, 112 (Ind. Tax Ct 2012); Minks v. Pina, 709 N.E.2d 379, 381 (Ind. Ct. App. 1999), trans. denied.

The Assessor claims that the Indiana Board applied the correct standard of review because determining whether Gilday was a "taxpayer" for purposes of Sections 15-1.1, 15-3, and 26-1.1 is a mixed question of law and fact that must be analyzed differently than questions of fact alone. (See, e.g., Resp't Br. at 3-6.) Accordingly, the Assessor

maintains that the Indiana Board was required to accept as true just the facts alleged, but not the legal conclusions such as Gilday's claim that it was the taxpayer that paid the property taxes by virtue of purchasing the subject property at a sheriff's sale. (See, e.g., Oral Arg. Tr. at 33-44.) The Assessor proposed this same standard for analyzing mixed questions of law and fact during the administrative proceedings, but neither then nor now has he identified any legal authority in support of this novel claim. (See Cert. Admin. R. at 402-03 (presenting the unsupported claim to the Indiana Board); Oral Arg. Tr. at 43 (explaining that for purposes of the Tax Court's proceedings, he focused only on whether the Tax Court "had look[ed] at mixed questions of law and fact").) See also, e.g., Garrett v. Noble Cnty. Assessor, 112 N.E.3d 1168, 1174 (Ind. Tax Ct. 2018) (stating that the parties must walk the Indiana Board and this Court through every element of their analyses).

In resolving the Assessor's unique claim, the Court notes that case law from other jurisdictions reveals that in the context of 12(B)(6) dismissals, courts have accepted a complaint's factual allegations – including mixed questions of law and fact – as true and have drawn all reasonable inferences therefrom in favor of the non-moving party. See, e.g., Warren v. District of Columbia, 353 F.3d 36, 40 (D.C. Cir. 2004); Friendship Edison Pub. Charter Sch. Collegiate Campus v. Murphy, 448 F.Supp.2d 166, 169 (D.D.C. 2006). See also Branson v. Exide Elecs. Corp., 645 A.2d 568, 1994 WL 164084, *2-3 (Del. Apr. 25, 1994) (providing that "allegations in a complaint which are sufficient to state a valid claim and which raise mixed questions of law and fact will withstand a Rule 12(b)(6) motion to dismiss"); Five Star Fin. Corp. v. Merchant's Bank & Tr. Co., 949 N.E.2d 1016, 1020-21 (Ohio Ct. App. 2011) (explaining that "'because statute-of-limitation issues

generally involve mixed questions of law and fact, [a 12(B)(6) motion to dismiss] is usually not the appropriate vehicle for challenging a complaint on that ground'") (citation omitted). This reasoning is consistent with Indiana's policy of deciding cases on their merits. See Couch v. Hamilton Cnty. Bd. Zoning Appeals, 609 N.E.2d 39, 41 (Ind. Ct. App. 1993). See also Ratliff v. Cohn, 693 N.E.2d 530, 534 (Ind. 1998) (stating that Trial Rule 12(B)(6) dismissals are "'rarely appropriate'") (citation omitted). Accordingly, the Court will affirm the Indiana Board's final determination in this case only if Gilday's Form 131s state a set of facts, which, if true, clearly demonstrate that it was not entitled to the relief requested under any theory or basis found on the face of the Form 131s. See Thornton v. State, 43 N.E.3d 585, 587 (Ind. 2015) (explaining that a Trial Rule 12(B)(6) dismissal cannot be affirmed "'unless it is apparent that the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances'") (citation omitted).

Gilday's Form 131s alleged that 1) the subject property was entitled to Homestead Deductions during the years at issue, 2) the Homestead Deductions were "inexplicably and erroneously removed[,]" 3) Gilday was the "taxpayer" that had paid the overstated property taxes, and 4) Gilday had "the right to pursue [a] refund of those taxes due to the erroneous exclusion" of the Homestead Deductions. (See Cert. Admin. R. at 3-5, 10.) As previously mentioned, Sections 15-1.1, 15-3, and 26-1.1 authorize a "taxpayer" to seek administrative review to obtain a refund for any claim of error related to the omission of a deduction, a mathematical error, or the legality of a property tax. See I.C. § 6-1.1-15-1.1(a), -3(a), -26.1.1(a). Therefore, Gilday's third factual allegation, taken as true, is sufficient to show that Gilday is the taxpayer authorized to pursue this refund claim. Consequently, the Indiana Board erred by dismissing Gilday's administrative appeals for

lack of standing to claim a property tax refund for the years at issue.[4]

CONCLUSION

For the foregoing reasons, the Indiana Board's final determination is REVERSED and REMANDED. On remand, the Indiana Board shall resolve the Assessor's motion to dismiss and, if necessary, the parties' pending discovery motions.

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[4] The Court notes that the Assessor has offered four alternative arguments in support of dismissal: 1) Gilday was not the taxpayer because he was not the owner; 2) Gilday used the wrong appeal procedure; 3) Gilday was required, but failed, to apply for Homestead Deductions during the years at issue; and 4) the Homestead Deductions were properly removed. (See Resp't Br. at 7-14.) Although none of these arguments were presented in response to the Indiana Board's Sua Sponte Motion, (Cert. Admin. R. at 399-403), they were presented in the Assessor's own motion to dismiss. (Cert. Admin. R. at 222-32.) The Indiana Board reserved its right to resolve that motion, as well as the parties' pending discovery motions, after it resolved the standing issue. (See Cert. Admin. R. at 221, 368-69.) Consequently, the Court will not invade the province of the Indiana Board, but instead remands the case to the Indiana Board to resolve the parties' pending motions. See, e.g., Thornton v. State, 43 N.E.3d 585, 587 (Ind. 2015) (providing that the court may affirm a Trial Rule 12(B)(6) dismissal if it sustainable on any basis in the record); Smith v. Progressive Se. Ins. Co., 150 N.E.3d 192, 200 (Ind. Ct. App. 2020), trans. denied. See also Sensient Flavors, LLC v. Indiana Occupational Safety & Health Admin., 969 N.E.2d 1053, 1058 (Ind. Ct. App. 2012) (explaining that the exhaustion of administrative remedies requirement "'protects the autonomy of administrative agencies, respects administrative expertise, facilitates judicial review by ensuring a well-developed factual record, and promotes judicial economy by avoiding piece-meal review of cases and by giving the agency the opportunity to resolve the case to the parties' mutual satisfaction without judicial interference'") (citation omitted).