

12-0638

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
Division II

LEE TRACE,

Petitioner,

v.

CIVIL ACTION NO. 11-AA-2
JUDGE WILKES

PATRICIA KILMER, AS ASSESSOR
FOR BERKELEY COUNTY, WEST
VIRGINIA,
and
BERKELEY COUNTY
COUNCIL, SITTING AS BOARD OF
REVIEW AND EQUALIZATION,
and
BERKELEY COUNTY COUNCIL,

Respondents.

BERKELEY COUNTY
CIRCUIT CLERK
2012 APR 16 PM 2:17
VIRGINIA M. SINE, CLERK

Order Amending the Court's Order of March 23, 2012

This matter came before the Court this 16 day of April 2012, pursuant to a Motion for Clarification filed by Lee Trace wherein Petitioner appears to request that the Court's prior Order be considered a final appealable judgment order. Upon the written appearance of Petitioner, Lee Trace, LLC (hereinafter "Petitioner"), by counsel, Thomas Moore Lawson; and upon the record and the pertinent legal authorities the Court rules as follows.

The Petitioner moves this Court to make or clarify that the Court's last order in this matter is a final, appealable order. See W.Va. Code § 58-5-1. The Petitioner notes in his motion that this Court denied his Petition insofar as it challenges his 2010 tax assessment.

"Under W. Va. Code § 58-5-1 (1925), appeals only may be taken from final decisions of a circuit court. A case is final only when it terminates the litigation between the parties on the

merits of the case and leaves nothing to be done but to enforce by execution what has been determined.” Syl. Pt. 3, *James M.B. v. Carolyn M.*, 193 W.Va. 289, 456 S.E.2d 16 (1995).

The procedural provisions of West Virginia Code §§ 11-3-1 *et seq.* and W.Va. Code §§ 58-3-1 *et seq.*, (*See, Tax Assessment Against Purple Turtle, LLC v. Gooden*, 223 W.Va. 755 (2009)), do not contemplate challenging two tax assessments in one petition. These authorities, as noted in this Court’s last order, require challenges to a particular year’s assessment within a certain time frame. This time frame practically precludes challenging of more than one tax assessment in any one petition. Typically, when this statutory procedure is followed, a petitioner may appeal each challenge to a particular year’s tax assessment after this Court’s ruling upon it.

In this case, it appears that Petitioner wants to immediately appeal this Order insofar as it denies the challenge to the 2010 tax assessment. As noted *supra*, because of the nature of the Petitioner’s arguments here, two different year’s tax assessments were brought in one Petition (due to an argument regarding lack of notice). So, the Court is faced with a unique situation here; one that differs from what is contemplated by the proscribed procedure.

While the last order was written as an interlocutory order, the Court finds that it would be appropriate to allow Petitioner to appeal the Court’s decision therein about the 2010 tax assessment, immediately. Allowing Petitioner to do so would fall in line with the intent of the statutory scheme as well as the typical procedure in this type of case. The Court also notes that the prior Order treated the 2010 tax assessment in a final manner. *See, Franklin D. Cleckley, Robin J. Davis, & Louis J. Palmer, Jr., Litigation Handbook on West Virginia Rules of Civil Procedure § 54(b)*, at 1072 (3d ed.2008).

Accordingly, the Court GRANTS the Petitioner’s Motion for Clarification, and RULES that the Order dated and entered March 23, 2012 in this matter is a final decision upon the 2010

tax assessment, and it terminates the dispute between the parties as to the 2010 tax assessment. See W.Va.Code § 58-5-1; Syl. Pt. 3, *James M.B. v. Carolyn M.*, 193 W.Va. 289, 456 S.E.2d 16 (1995).

Therefore, it is hereby ADJUDGED and ORDERED that the Courts previous Order is a FINAL ORDER regarding only the 2010 tax assessment and immediately appealable as such. The entry date for this Court's previous order is hereby amended for the purposes of appeal and shall be the entry date of this Order.

The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to the following counsels of record:

Counsel for Petitioner:

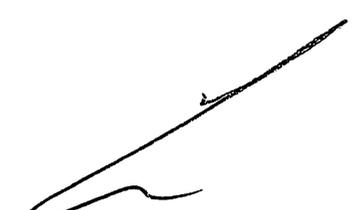
Thomas Moore Lawson, Esq.
120 Exeter Drive, Suite 200
P.O. Box 2740
Winchester, VA 22604

Counsel for Respondent, Berkeley County Assessor:

Michael D. Thompson, Esq.
119 East Liberty Street
Charles Town, WV 25414

Counsel for Respondent, Berkeley County Council:

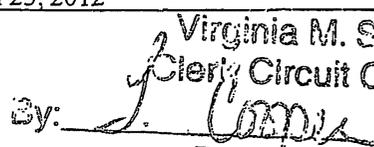
Norwood Bently, III, Esq.
400 West Stephen Street, Suite 201
Martinsburg, WV 25401


CHRISTOPHER C. WILKES, JUDGE
TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY COUNTY, WEST VIRGINIA

TRUE COPY
ATTEST

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By: 
Virginia M. Sine
Clerk, Circuit Court