

IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE
ASSETS, INC., A NEVADA NON-
PROFIT CORPORATION, ON BEHALF
OF ITS MEMBERS AND OTHERS
SIMILARLY SITUATED,

Appellant,

vs.

THE STATE OF NEVADA ON
RELATION OF ITS DEPARTMENT OF
TAXATION, THE NEVADA STATE TAX
COMMISSION, AND THE STATE
BOARD OF EQUALIZATION; WASHOE
COUNTY; ROBERT MCGOWAN,
WASHOE COUNTY ASSESSOR; AND
BILL BERRUM, WASHOE COUNTY
TREASURER,
Respondents.

No. 43441

FILED

MAR 19 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a district court order dismissing a declaratory and injunctive relief action in a real property tax assessment dispute.¹ Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

FACTS

On behalf of its members, appellant Village League to Save Incline Assets, Inc., filed a district court complaint concerning property

¹The Honorable Kristina Pickering, Justice, voluntarily recused herself from participation in the decision of this matter.

tax assessments against respondents—namely, the State of Nevada, on relation of its Department of Taxation, Tax Commission, and State Board of Equalization; the Washoe County Assessor; and the Washoe County Treasurer. In its complaint, Village League contended that the property assessment methods and tax-related notice procedures used by the Washoe County Assessor were constitutionally invalid and that the State Board of Equalization had failed to carry out its constitutional obligation to equalize property valuations. In addition to declaratory and injunctive relief, Village League sought property tax refunds. Because neither Village League nor its members had first exhausted their administrative remedies, however, the district court dismissed the complaint. Village League timely appealed.

DISCUSSION

Failure to exhaust available administrative remedies renders the matter unripe for district court review and, thus, nonjusticiable. Allstate Ins. Co. v. Thorpe, 123 Nev. ___, ___, 170 P.3d 989, 993-94 (2007); see also Baldonado v. Wynn Las Vegas, 124 Nev. ___, ___, 194 P.3d 96, 105 (2008) (noting that declaratory relief actions generally are inappropriate when an administrative remedy exists). As we have noted before, “[t]he exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and conserves judicial resources, so its purpose is valuable; requiring exhaustion of administrative remedies often resolves disputes without the need for judicial involvement.” Allstate, 123 Nev. at ___, 170 P.3d at 993-94. District court orders dismissing an action for failure to exhaust administrative remedies typically are reviewed de novo. See id. at ___, 170 P.3d at 993 (noting that this court reviews de novo whether the statutory scheme requires exhaustion of administrative

remedies); Wyatt v. Terhune, 315 F.3d 1108, 1117 (9th Cir. 2003) (explaining that courts generally review de novo orders dismissing complaints for failure to exhaust administrative remedies, unless the court makes factual determinations, which are reviewed for clear error).

Regarding exhaustion, NRS 361.410(1) provides, in relevant part,

No taxpayer may be deprived of any remedy or redress in a court of law relating to the payment of taxes, but all such actions must be for redress from the findings of the State Board of Equalization, and no action may be instituted upon the act of a county assessor or of a county board of equalization or the Nevada Tax Commission until the State Board of Equalization has denied complainant relief.²

Because the majority of Village League's complaint "related to" the payment of property taxes—as exemplified by its requests for refunds—its failure to first seek redress from the State Board of Equalization rendered those issues nonjudicial. First Am. Title Co. v. State of Nevada, 91 Nev. 804, 543 P.2d 1344 (1975).

Exceptions to the exhaustion doctrine

Nevertheless, Village League asserts that exceptions to the exhaustion doctrine apply here, such that despite NRS 361.410(1)'s clear terms, it was not required to first exhaust administrative remedies. We

²Correspondingly, NRS 361.420(2) provides in relevant part that "[t]he property owner, having protested the payment of taxes . . . and having been denied relief by the State Board of Equalization, may commence a suit in any court of competent jurisdiction in the State of Nevada against the State and county in which the taxes were paid."

have recognized that exhaustion is not required when the issues “relate solely to the interpretation or [facial] constitutionality of a statute.” Malecon Tobacco v. State, Dep’t of Taxation, 118 Nev. 837, 839, 59 P.3d 474, 476 (2002) (quoting State of Nevada v. Glusman, 98 Nev. 412, 419, 651 P.2d 639, 644 (1982)). Additionally, exhaustion is excepted when resort to administrative remedies would serve no useful purpose or is futile. Id.; Engelmann v. Westergard, 98 Nev. 348, 353, 647 P.2d 385, 388-89 (1982) (explaining that requiring exhaustion would be futile when administrative remedies are not viable, when no fair opportunity to exhaust administrative remedies exists, or when the agency clearly lacks jurisdiction).

Here, Village League contends that its challenge to the County Assessor’s methods is analogous to a constitutional challenge to a statute’s or ordinance’s facial validity and, thus, not subject to the exhaustion requirement. Further, while Village League acknowledges that NRS 361.345 allows the county board of equalization to determine property values and modify an assessor’s incorrect valuation, it nonetheless argues that no administrative process exists to review several of its assertions. In particular, Village League insists that no administrative body can properly review its assertions that (1) the assessment methodologies used were invalid de facto regulations, (2) the Department of Taxation and Tax Commission failed to standardize assessment methods and procedures statewide, and (3) the State Board of Equalization and Department of Taxation failed to carry out their equalization duties. Although we conclude that Village League was required to exhaust administrative remedies with respect to its assertions regarding the Assessor’s methods and the state agencies’ failures to standardize those methodologies, we

agree with Village League that no administrative process exists by which it could challenge the State Board's compliance with its equalization duties.

In Malecon Tobacco v. State, Department of Taxation, we recognized that, while an administrative agency has no authority to determine whether a statute, on its face, is unconstitutional, when resolving the constitutional challenge involves a factual evaluation, that evaluation is best left to the administrative agency, which can use "its specialized skill and knowledge to inquire into the facts of the case." 118 Nev. 837, 841, 59 P.3d 474, 477 (2002). Accordingly, exhaustion is required for "as applied" constitutional challenges. Similarly addressing the constitutional challenge exception to the exhaustion doctrine, the Tennessee Supreme Court has explained that, like with "as applied" challenges, the administrative agency can use its skill to determine constitutional challenges to an agency rule or procedure, including reviewing due process concerns. Richardson v. Tennessee Bd. of Dentistry, 913 S.W.2d 446, 455, 457 (Tenn. 1995). Presenting such issues to the agency helps create a complete record, allows the agency to correct any errors, and promotes judicial efficiency. Id.³

³While the Tennessee court determined that parties must follow the administrative process before seeking judicial review, it also determined that, under Tennessee's legal system, failure to raise constitutional challenges during the administrative process does not necessarily preclude judicial review of those issues. Richardson, 913 S.W.2d at 457-58. We need not determine whether failure to raise constitutional challenges during the administrative process in Nevada precludes judicial review of those issues here because Village League failed to exhaust administrative remedies in the first instance.

In this matter, any challenges to tax assessments based on improper property valuations should have been raised before the county board. In the context of challenging those assessments, the parties could have raised their constitutional challenges to the County Assessor's methods, including whether those methods were properly applied to the properties at issue despite their alleged nonstandardization statewide. Accordingly, the district court properly dismissed the complaint with respect to those claims for failure to exhaust administrative remedies.

It is not clear, however, that Village League had available any means to administratively challenge the State Board of Equalization's alleged failures to carry out its equalization duties. While NRS 361.356 allows a property owner to raise equalization issues regarding properties with comparable locations before the county board, and while NRS 361.360 allows taxpayers to challenge the county board's failure to equalize, those statutes do not address statewide, county-by-county equalization issues. And in State, Board of Equalization v. Barta, 124 Nev. ___, ___, 188 P.3d 1092, 1102 (2008), we recognized that a property taxpayer suffers injury when properties are not valued in accordance with the constitutional right to a uniform and equal rate of assessment, which the equalization processes are intended to ensure.

Village League's complaint alleged that, despite taxable valuation disparities between Washoe and Douglas Counties in the 2003/04 tax year and prior tax years, the State Board failed to equalize those valuations. As a remedy therefore, Village League sought a declaration that the property valuation disparity between Washoe and Douglas Counties violated the Nevada Constitution and a mandatory

injunction directing the State Board to redress that disparity by equalizing property valuations.

As no statute provides for an administrative process to remedy the State Board's failure to equalize county valuations, insofar as Village League alleged that the State Board failed to perform an act required by law and sought an order directing that act's performance, such was appropriately raised in its district court complaint.⁴ See, e.g., NRS 34.160; Idaho State Tax Com'n v. Staker, 663 P.2d 270 (Idaho 1982); Fondren v. State Tax Commission, 350 So. 2d 1329 (Miss. 1977), reaffirmed in State Tax Commission v. Fondren, 387 So. 2d 712, 723-24 (Miss. 1980), abrogated on other grounds by Marx v. Truck Renting & Leasing Ass'n, 520 So. 2d 1333, 1346 (Miss. 1987); 84 C.J.S. Taxation § 654 (2001). Accordingly, we reverse the portion of the district court's order dismissing the equalization claim, and we remand this matter for further proceedings on that claim.⁵

⁴Village League has not pointed to any authority for requesting the court to "declare" a disparity in property valuations, and nothing in Nevada's declaratory relief statutes, NRS Chapter 30, appears to so authorize. Accordingly, the district court properly dismissed the declaratory relief portion of the equalization claim.

⁵Having considered respondents' argument that Village League lacks standing to raise the equalization claim, we conclude that it is without merit; in light of this order, standing with respect to the remainder of Village League's claims need not be reached.

CONCLUSION

The district court properly dismissed the action below, except for the equalization claim, because Village League failed to exhaust its administrative remedies prior to seeking judicial review. Regarding the equalization claim, the district court should have proceeded to determine whether Village League's claim for injunctive relief was viable. Therefore, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.

Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Second Judicial District Court Dept. 7, District Judge
Cathy Valenta Weise, Settlement Judge
Morris Peterson/Reno
Attorney General Catherine Cortez Masto/Carson City

Attorney General Catherine Cortez Masto/Las Vegas
Washoe County District Attorney Richard A. Gammick/Civil
Division
Washoe District Court Clerk