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What Happens When Everyone Messes Up?

Cannata v. Cuyahoga County Board of Revision

The Ohio Supreme Court's Analysis of the Plain Error Doctrine and the Carry Forward Provision

What happens when the Board of Revision fails to perform its statutory duty, the Board of Tax Appeals renders a decision without considering all relevant evidence, the school district waives its right to object to the BTA's actions by failing to appear at the BTA hearing, and the property owner files multiple jurisdictionally defective complaints against valuation in the same triennium? The Ohio Supreme Court recently was presented with this scenario in *Cannata*¹ in which it addressed two major issues:

- (1) Whether the BTA erred in lowering the value of the subject property given that it was not able to consider the oral testimony given at the BOR which was missing from the statutory record; and whether the BTA's decision without the benefit of the missing testimony constituted a **plain error** that the Court must correct despite the school district's failure to appear at the BTA hearing, thereby waiving its right to object?
- (2) Whether the **carry forward provision** that typically extends a valuation decision to the remaining years in the same tax cycle was cut-off by jurisdictionally defective complaints?

BOR Hearing

In *Cannata*, the property owner filed a tax appeal contesting the Auditor's \$858,600 valuation of a residential property for Tax Year 2009. The property owner presented an appraisal report and the appraiser's testimony at the BOR hearing supporting a new valuation of \$330,000 – a 62% reduction. The BOR rejected the appraisal report and issued a "No Change" decision. The property owner appealed to the BTA.

BTA Hearing

Two interesting, albeit not unusual developments, then occurred. First, the BOR failed to include an audio recording or written transcript of the appraiser's testimony when it certified the statutory record. Additionally, representatives of the school district and county failed to attend the BTA hearing. The BTA reversed the BOR's decision and adopted the property owner's appraisal value, noting that it considered the appraisal report but did not consider the audio of the BOR hearing because the BOR had not transmitted the entire record. The school district and BOR then appealed to the Court.

Second, the property owner filed two (2) additional complaints against valuation for the same property (Tax Year 2010 and Tax Year 2011). These filings violated the prohibition of multiple filings during the same three-year "interim period."² These rogue filings by the property owner caused the school district to subsequently file a motion to limit the exercise of the BTA's jurisdiction to Tax Year 2009 (as opposed to the BTA-determined value being carried forward for Tax Years 2010 and 2011 as would normally occur). This would allow the school district to limit any potential tax savings by the property owner to Tax Year 2009 exclusively. The BTA overruled this motion.

¹ *Cannata v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2016-Ohio-1094. Click [here](#) to read the Supreme Court's full decision.

² See Ohio Revised Code § 5715.19(A)(2).

Issue 1: Plain Error

The Supreme Court summarily rejected the BOR's objection to the BTA's proceeding without the full statutory record in front of the BTA, holding that the BOR may not profit from its own negligence in failing to preserve and certify the statutory record.

In analyzing the school district's identical claim that the BTA erred in rendering a decision without considering relevant evidence, the Court noted that both the school district and the property owner had "unfairness" claims because it was neither the school district's nor the property owner's fault that the BOR failed to comply with its statutory duty. The Court also noted that the property owner correctly contended that the school district waived its right to object to the BTA's holding by not appearing at the BTA hearing.

Despite all this, the Court concluded that the BTA's issuing a decision without considering relevant oral testimony in reversing the BOR's "No Change" decision constituted a **plain error**. Because the BOR had called into question the reliability of the property owner's appraisal report and because the property owner was requesting such a dramatic decrease in value, "the character of the property *called for careful scrutiny* of [the] appraisal [evidence]." The BTA had the statutory power to and should have investigated the whereabouts of the missing evidence and/or ordered the BOR to remedy its mistake and fully certify the record.

Because the BTA failed to use its statutory powers, the Court felt it had no choice but to vacate the BTA's decision and remand the case with instructions to the BTA to perform an independent valuation of the subject property. In this context, the plain error doctrine overruled any issue concerning the school district's waiver at the BTA.

Practice Point: Always check the statutory record (accessible through the BTA's website) for completeness when your case is appealed!! Had the property owner noticed that the BOR failed to include the oral testimony from the BOR hearing, years of litigation might have been avoided.

Issue 2: Carry Forward Provision

Normally, a BOR or BTA decision carries forward to all other tax years in the same triennial period. Had the property owner here only filed the initial complaint against valuation, a reduction in value would have been applied to Tax Years 2009, 2010 and 2011. But the property owner actually filed separate complaints against valuation for the later years, which were ultimately dismissed on jurisdictional grounds.

In considering the school district's motion to limit the application of the BTA's decision just to Tax Year 2009, the Court analyzed the **carry forward provision** of Ohio Revised Code § 5715.19(D)³. The Court had to decide whether the filing of a jurisdictionally defective complaint constituted a cut-off point preventing any decision about 2009's value carrying forward to Tax Years 2010 and 2011.

The Court decided that it did not. Citing *Cincinnati*⁴ and *Fogg-Akron*⁵, the Court concluded that "the filing of a 'fresh complaint' . . . terminates the continuation of an earlier complaint, **as long as the new complaint is procedurally valid**". The property owner in *Cannata* was very fortunate that her jurisdictionally defective complaints for Tax Years 2010 and 2011 did not bar her for having the ultimate decision in the Tax Year 2009 case being carried forward to 2010 and 2011.

Practice Point: The decision in a tax appeal case carries forward automatically to remaining years in the same triennial period. There is no need to file a 2nd or 3rd complaint, unless one of the four check-the-box scenarios listed on the complaint against valuation form applies.

For more information or to schedule a FREE consultation regarding your real estate taxes, contact [Bluestone Law Group](#) today.

DISCLAIMER – These materials have been prepared for general educational purposes only and are not intended as legal advice for any specific case. The reader is strongly encouraged to seek professional legal representation with respect to the filing of any proceedings by the Board of Revision or the Ohio Board of Tax Appeals.

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³ "Liability for taxes and recoupment charges for such year and each succeeding year until the complaint is finally determined * * * shall be based upon the determination, valuation, or assessment as finally determined."

⁴ *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 74 Ohio St.3d 639, 642, 660 N.E.2d 1179 (1966).

⁵ *Fogg-Akron Assocs., L.P. v. Summit Cty. Bd. of Revision*, 124 Ohio St.3d 112, 2009-Ohio-6412, 919 N.E.2d 730 (2009).