STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1307

Michael Otto Hartmann,
Appellant,

vs.

Sibley County Board of Commissioners, et al.,
Respondents.

Filed March 2, 2010
Affirmed
Connolly, Judge

Sibley County District Court
File No. 72-CV-08-259

Michael Otto Hartmann (pro se appellant)

David E. Schauer, Sibley County Attorney, Winthrop, Minnesota (for respondents)

Considered and decided by Hudson, Presiding Judge; Connolly, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant-trustee appeals the district court's dismissal of his suit challenging the commercial classification of the trust property for property tax purposes. Appellant contends that Minn. Stat. § 278.01 (2008) is not the exclusive remedy for challenging a

property classification and that such a challenge is properly brought as a declaratory judgment action under Minn. Stat. § 555.01 (2008). Appellant also raises due-process and equal-protection claims regarding the classification. Because Minn. Stat. § 278.01 is the exclusive remedy to challenge a property classification for tax purposes and because we find no merit in appellant's constitutional claims, we affirm.

FACTS

Appellant-trustee Michael Otto Hartmann resides upon and farms property known as the "Lakeview Trust," located in Sibley County. The land is used for dairy agricultural pursuits, maintaining organic farming practices throughout the process of raising and milking dairy cows. It is uncontested that one acre of appellant's property was reclassified for property tax purposes as "commercial" instead of "agricultural." Appellant asserts that this acre "contains a building in which [appellant] prepares his milk production for sale, and has been referred to in this proceeding as a 'creamery.'" The record reflects that the commercial classification has been in place since at least 2003, and that appellant has challenged this classification numerous times at both the township and county levels in 2005, 2006, 2007, and 2008. After the Sibley County Board of Equalization (the board) again affirmed the classification in 2007, appellant sued respondents Sibley County Board of Commissioners, Sibley County Board of Equalization, and Sibley County Assessor (collectively, the county) in district court both appealing the board's decision and seeking a declaratory judgment that (1) the property in question is agricultural and (2) Minn. Stat. § 273.13, subd. 23 (2008) (describing property

classifications, including agricultural property),[1] was unconstitutional as applied to appellant.

The county moved to dismiss appellant's suit on four grounds: (1) appellant had not properly served his petition; (2) appellant's classification claim was barred by statutory timelines; (3) appellant did "not have any estate, right, title or interest" in the property; and (4) Minnesota law "does not permit a declaratory judgment action in tax appeal cases." Appellant responded that the grievance procedure set forth in Minn. Stat. § 278.01 (2008) did not apply to him; a declaratory judgment action under Minn. Stat. § 555.01 (2008) is the proper means of challenging the constitutionality of a tax classification; and he had an interest in the property as he "continue[s] to occupy and cultivate these parcels on behalf of the family beneficiaries of the trust. . . . [and] as both a grantor and a trustee of the farm trust is in privity with the trust and is a proper party to assert the interests of a property owner."

After a hearing, the district court issued an order granting the county's motion and dismissing appellant's complaint/petition. In its accompanying memorandum, the district court concluded that appellant had failed to follow the service requirements set forth in Minn. Stat. § 278.01, subd. 1(a), which required him to serve one copy of the petition on the county auditor, the county attorney, and the county treasurer and three copies on the

[1] We note that the statutes cited herein postdate the county action appellant challenges on appeal. We use the current version of the statute unless it changes or alters a matured or unconditional right of the parties or creates some other injustice. *McClelland v. McClelland*, 393 N.W.2d 224, 226-27 (Minn. App. 1986), *review denied* (Minn. Nov. 17, 1986); *see also Interstate Power Co. v. Nobles County Bd. of Comm'rs*, 617 N.W.2d 566, 576 (Minn. 2000).

county assessor. Appellant had only served a single copy of the petition on both the county auditor and the county assessor. The district court also concluded that because Minn. Stat. § 278.01, subd. 1(c), required appellant to file the requisite copies of his petition "on or before April 30 of the year in which the tax becomes payable" and that appellant had not filed his petition until August 2008, appellant's first cause of action was time-barred. Because section 278.01 governs appellant's classification dispute and because appellant failed to comply with the statute's requirements, the district court concluded that appellant's first cause of action challenging the county's classification must be dismissed.

The district court also dismissed appellant's second cause of action, in which he sought a declaratory judgment both for the "agricultural nature" of property and the unconstitutionality of Minn. Stat. § 273.13, subd. 23. With respect to the classification of the property, the district court found appellant's declaratory judgment request to be essentially identical to his first cause of action and that under Minnesota law, "Minn. Stat. § 278 provides the exclusive remedy of a taxpayer for relief from improper taxation of real estate." The district court further stated that "[t]he Minnesota Supreme Court has even gone so far as to specifically state that landowners are precluded from seeking declaratory judgments regarding valuations or assessments in real estate tax matters," citing *Fichtner v. Schiller*, 271 Minn. 263, 135 N.W.2d 877 (1965).

As for a declaratory judgment on the constitutionality of Minn. Stat. § 273.13, subd. 23, as applied to appellant on the land at issue, the district court noted that "[a] court has jurisdiction to issue a declaratory judgment only if there is a justiciable

controversy." Concluding that appellant had met both the genuine-conflict and capable-of-specific-resolution prongs of justiciability, the district court determined that appellant had failed to meet the third prong—a definite and concrete assertion of a right—because, while he had a right to petition for review of the classification, he failed to exercise that right within the statutory period. The district court further noted that "[m]erely attacking the constitutionality of a statute is not sufficient to establish a justiciable controversy" and that "courts have found that Minn. Stat. § 278 does not violate a taxpayer's constitutional right to due process." This appeal follows.

D E C I S I O N

I. The district court did not err in concluding appellant's sole remedy to challenge a property tax classification is through Minn. Stat. § 278.01.

Minn. Stat. § 278.01 sets forth the procedure by which a person may raise a defense or objection to real and personal property taxes. Subdivision 1(a) states that:

> Any person having personal property, or any estate, right, title, or interest in or lien upon any parcel of land, who claims that such property has been partially, unfairly, or unequally assessed in comparison with other property in the (1) city, or (2) county, or (3) in the case of a county containing a city of the first class, the portion of the county excluding the first class city . . . may have the validity of the claim, defense, or objection determined by the district court of the county in which the tax is levied or by the Tax Court . . . .

Id. In this case, applicability of section 278.01 turns on whether "classification" of property is part of the "assessment" process.

Appellant asserts that the district court erred in relying on *Programmed Land, Inc. v. O'Connor*, 633 N.W.2d 517 (Minn. 2001), when it concluded section 278.01 provided

the exclusive remedy for challenging a property tax classification. Appellant's argument essentially challenges the district court's interpretation of section 278.01 as he argues that "[t]he statute says nothing about exclusivity" and that the word "classification" is used only in reference to an appeal exception set out in subdivision 4 of the statute. Appellant argues that "[a] fair reading of the statute does not clarify whether challenges to classifications are included or whether it is limited to disparity in assessment between property located in the county." We disagree.

A. "Classification" is part of the "assessment" process.

"Statutory construction is . . . a legal issue reviewed de novo." *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007). While appellant correctly asserts that section 278.01 does not define "assessment" or "classification," the Minnesota Supreme Court has explicitly held that "assessment is the process by which taxable value is ascertained, and that process includes the determination of market value, *classification* and the application of class rates." *Programmed Land, Inc.*, 633 N.W.2d at 526 (emphasis added). In reaching this conclusion, the court relied in part on its prior decision in *Summit House Apartment Co. v. County of Hennepin*, noting that "[i]n *Summit House*[,] we concluded that classification is an aspect of the assessment process in part because classification is integral to the assessor's function of ascertaining a property's taxable value." *Id.* at 524 (citing 312 Minn. 358, 362, 253 N.W.2d 127, 129 (1977)).

Appellant has offered no legal analysis or citation to contradict the Minnesota Supreme Court's interpretation of the relationship between "classification" and "assessment." We are obligated to follow the Minnesota Supreme Court's construction

of a statute. *Jendro v. Honeywell, Inc.*, 392 N.W.2d 688, 691 n.1 (Minn. App. 1986), *review denied* (Minn. Nov. 19, 1986). Appellant also attempts to factually distinguish this case from *Programmed Land, Inc.* by pointing out that he is not objecting to a misapplication of a class rate. However, much like the taxpayers in *Programmed Land, Inc.*, appellant "take[s] too narrow a view of the assessment process. Our cases describe assessment as including the entire process that results in the determination of a property's taxable value." 633 N.W.2d at 524. Like the application of the appropriate class rate, classification of property is part of the assessment process. *See id.* at 524-25 ("Like classification, applying class rates is integral to the assessor's function of ascertaining a property's taxable value.").

B. Minn. Stat. § 278.01 is the exclusive means by which a taxpayer may challenge an assessment.

As classification of property is part of the assessment process, we now consider whether section 278.01 provides the exclusive means for appellant to challenge the county's assessment of the property. Minnesota law is equally clear that section 278.01 is the exclusive remedy for challenging an assessment of real property. In *State v. Elam*, the Minnesota Supreme Court observed:

> Viewing c. 278 in its entirety, in the light of its plain terms and the imperative tenor of its various provisions, we conclude that, in the interest of a better tax-collection practice, the legislature intended that it should provide the exclusive means by which a taxpayer may assert the defense of an unfair or unequal assessment.
>
> Prior dictum of this court supports the view that the policy of the act to insure prompt payment of taxes requires that the

> defenses of partial and unfair valuation must be asserted if at all under c. 278.

250 Minn. 274, 281, 84 N.W.2d 227, 231 (1957). In *Programmed Land, Inc.*, the court echoed its prior observations in *Elam*, again concluding that "challenges that a property has been partially, unfairly or unequally assessed must be brought, if at all, under chapter 278." 633 N.W.2d at 527; *see also Bethke v. Brown County*, 301 Minn. 380, 385, 223 N.W.2d 757, 761 (1974) (stating challenges to the propriety of the assessment are to be brought under Minn. Stat. § 278.01 as the exclusive remedy of the taxpayer); *Fichtner*, 271 Minn. at 267, 135 N.W.2d at 880 (holding Minn. Stat. § 278.01 is the taxpayer's exclusive remedy for issues related to the lawfulness of the assessment). If appellant wants to challenge the reclassification of his property, he must comply with the procedure set forth in section 278.01.

C. Appellant does not dispute that he failed to meet the requirements of Minn. Stat. § 278.01.

A challenge to an assessment of real property under Minn. Stat. § 278.01, subd. 1(a), is properly brought "by serving one copy of a petition for such determination upon the county auditor, one copy on the county attorney, one copy on the county treasurer, and three copies on the county assessor." Further, "the petitioner must file the copies with proof of service, in the office of the court administrator of the district court on or before April 30 of the year in which the tax becomes payable." *Id.*, subd. 1(c). In dismissing appellant's challenge to the reclassification of his property, the district court concluded appellant had failed to meet both the service and time requirements set forth in section 278.01. Appellant appears to partially concede these procedural deficiencies by

stating that "[i]f appellant's sole remedy is not under section 278.01, the special timing and service rules are not applicable."

Appellant does not dispute that he failed to serve the county treasurer, and does not appear to dispute that he failed to serve three copies of the petition on the county assessor. Appellant contends that he did serve the county attorney, but the record contains only proof of service for the county assessor and county auditor. Appellant now asserts on appeal that the county has made no showing of prejudice and that the county has not claimed it lacked notice or an opportunity to be heard. This court will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Accordingly, the district court correctly concluded that appellant failed to meet the service requirements of Minn. Stat. § 278.01, subd. 1(a), when he failed to serve both the county treasurer and the county attorney and did not provide the requisite number of copies to the county assessor.

Likewise, appellant does not dispute that his petition was filed on August 18, 2008, with proof of service filed on September 18, 2008. Minn. Stat. § 278.01, subd. 1(c), requires that proof of service be filed "on or before April 30 of the year in which the tax becomes payable." Appellant's suit challenged the property classification for the 2008 tax year. He was required to file proof of service by April 30, 2008. He did not. Appellant also asserts that his petition was timely because "[h]ad the court made a determination [regarding the classification] pursuant to the Declaratory Judgments Act, it could have been rendered before any tax was payable in 2009." First, appellant only sought review of the classification for the 2008 tax year in district court. Second, as

discussed below, a classification cannot be challenged via a declaratory judgment action, and any argument that a declaratory judgment action could have been timely rendered for the 2009 tax year is without merit.

We conclude that the district court (1) did not err in determining that appellant's sole remedy to challenge a property tax classification is under section 278.01; (2) correctly found that appellant failed to comply with the statute's procedural requirements; and (3) properly dismissed appellant's petition for review of the commercial classification.

II. The district court did not err in concluding that appellant could not challenge a property tax classification under Minnesota's Uniform Declaratory Judgments Act, Minn. Stat. § 555.01.

Minnesota's Uniform Declaratory Judgments Act (UDJA) gives district "[c]ourts . . . within their respective jurisdictions . . . [the] power to declare rights, status, and other legal relations." Minn. Stat. § 555.01. However, the UDJA does not create causes of action that do not otherwise exist and "[a] declaratory judgment action must present a justiciable controversy or a district court has no jurisdiction to declare rights under the act." *Hoeft v. Hennepin County*, 754 N.W.2d 717, 722 (Minn. App. 2008), *review denied* (Minn. Nov. 18, 2008). "Determining whether a justiciable controversy exists, and thus whether a district court has jurisdiction over a declaratory-judgment action, is a question of law which [this court] review[s] de novo." *Id.* at 722-23.

A. Appellant cannot challenge the classification of his property under the UDJA.

Nearly akin to his assertion that section 278.01 is not the exclusive remedy for challenging classification of his property, appellant also asserts that the district court erred in concluding that appellant could not challenge the classification under the UDJA.

In *Land O' Lakes Dairy Co. v. Village of Sebeka*, the Minnesota Supreme Court explicitly addressed the unavailability of an action to challenge the assessment of real estate taxes under the UDJA, given the enactment of Minn. Stat. § 278.01:

> In order that there shall be no future confusion on this particular point of the law, we hold that in enacting M.S.A. c. 278 it was the intention of the legislature to provide an adequate, speedy, and simple remedy for any taxpayer to have the validity of his claim, defense, or objections determined by the district court in matters where the taxpayer claims that his real estate has been partially, unfairly, or unequally assessed, or that it has been assessed at a value greater than its real or actual value, or that the tax levied against the property is illegal in whole or in part, or has been paid, or that the property is exempt from the tax so levied. We believe that when the legislature enacted L. 1935, c. 300 (M.S.A. c. 278), it did so for the purpose of providing a rather simple remedy for the taxpayer to have his real estate tax grievances determined, and that it was never the intention that the aggrieved taxpayer could first proceed under this statute and, if his proceeding was dismissed for noncompliance, then come under the [UDJA] to have the same issue decided in another manner.

225 Minn. 540, 548-49, 31 N.W.2d 660, 665 (1948).

Appellant asserts that the district court erred in concluding that *Fichtner* precluded him from seeking review under the UDJA and attempts to factually distinguish this case from the circumstances in *Fichtner*. *Fichtner*, however, merely reaffirmed the Minnesota

Supreme Court's previous holding in *Land O' Lakes Dairy Co.*, that the UDJA "is not available to test questions of valuations or assessments in real estate tax matters." 271 Minn. at 268, 135 N.W.2d at 881. Because classification is an aspect of assessment and because section 278.01 is the exclusive remedy for challenging an assessment, appellant may not challenge the classification under the UDJA. Moreover, it is not "the function of this court to establish new causes of action." *Stubbs v. North Mem'l Med. Ctr.*, 448 N.W.2d 78, 81 (Minn. App. 1989), *review denied* (Minn. Jan. 12, 1990).

B. Appellant cannot proceed with his constitutional claims under the UDJA.

Appellant has asserted constitutional violations of both due process and equal protection on account of the county's reclassification. Because merely attacking the constitutionality of a statute is not sufficient to establish a justiciable controversy, *see State ex rel. Smith v. Haveland*, 223 Minn. 89, 94, 25 N.W.2d 474, 477-78 (1946) (observing that the lack of a justiciable controversy is not changed merely by challenging the constitutionality of a statute), and because we find no merit to appellant's constitutional claims, we address them only briefly.

Appellant raised only general violations of due process in his complaint as to the definitions involved with property classifications, and now argues on appeal that he never received any notice of intent to change the classification of his property; was not sufficiently informed of the reasoning for the change; and was denied an opportunity to be heard. Yet, appellant stated in his complaint/petition that he "has repeatedly opposed the classification of the creamery property as commercial," and, in his reply to the

county's motion to dismiss, acknowledged that he had received "all notices concerning taxation, classification, and all required notices concerning the rights of appeal." Further, the record contains a board document showing that appellant had attempted to challenge the commercial classification as early as April 1, 2003.

As for appellant's equal protection claim, the Minnesota Supreme Court held in *Programmed Land, Inc.* that "a taxpayer must show that the purported disparity between the taxpayer's assessment and the assessment of similarly situated properties was the result of intentional or arbitrary or systematic discrimination" in order "[t]o meet the evidentiary burden of establishing a violation of equal protection rights protected by the federal or state constitution." 633 N.W.2d at 530. Appellant candidly admits that "[t]o the extent that [his] allegation of a denial of equal protection is concerned, Appellant does not have actual notice of improper property comparisons in the city or county."

Affirmed.