



**Fourth Court of Appeals
San Antonio, Texas**

MEMORANDUM OPINION

No. 04-17-00552-CV

**Ernest BUSTOS,
Appellant**

v.

**BEXAR APPRAISAL DISTRICT and Bexar Appraisal Review Board,
Appellees**

From the 166th Judicial District Court, Bexar County, Texas
Trial Court No. 2009CI14592
Honorable Solomon Casseb, III, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Irene Rios, Justice

Delivered and Filed: May 16, 2018

AFFIRMED

Appellant Ernest Bustos (“Bustos”) appeals from the trial court’s dismissal of a tax dispute for lack of subject-matter jurisdiction. We affirm the trial court’s judgment.

BACKGROUND

Appellee Bexar Appraisal District (the “District”) appraised Bustos’s residential property at \$190,480 for the 2009 tax year. Bustos appealed the appraisal to Appellee Bexar Appraisal Review Board (the “ARB”), which held a hearing and upheld the appraisal at \$190,480.

Pursuant to Chapter 42 of the Texas Tax Code, Bustos appealed the appraisal for the 2009 tax year to the trial court.¹ Bustos amended his petition eight times to challenge the District's appraisal of the property for the 2010 through 2017 tax years as well.

In 2017, the District moved to dismiss the suit for lack of subject-matter jurisdiction on the basis that Bustos failed to substantially comply with Tax Code § 42.08(b) by not paying any taxes prior to the delinquency date. The District attached to its motion evidence that Bustos owed \$69,146.09 in total taxes and had not paid any taxes since 2008, except for \$5 paid in 2009.² After a hearing, the trial court granted the District's motion and dismissed the suit with prejudice.

DISCUSSION

Although Bustos's brief purports to raise two issues on appeal, those issues are substantively identical—*i.e.*, that the trial court erred in granting the District's motion to dismiss because he substantially complied with Tax Code § 42.08(b) or (d). We hold Bustos did not substantially comply with either Subsection (b) or (d).

A. Standard of review

Compliance with the prepayment requirements of Tax Code § 42.08(b) is a jurisdictional prerequisite to the district court's subject-matter jurisdiction to determine a property owner's rights. *EXLP Leasing, LLC v. Webb Cnty. Appraisal Dist.*, 511 S.W.3d 227, 229 (Tex. App.—San Antonio 2015, pet. denied). Whether a trial court has subject-matter jurisdiction is a question of law we review de novo. *Id.*

¹ Both the District and the ARB were defendants in the trial court. We refer to the District and the ARB collectively as the “District.”

² Bustos disputes that he paid the \$5.

B. Subsection (b)'s prepayment requirements

Tax Code § 42.08(b) provides that a property owner who appeals from an appraisal forfeits his right to a final determination of his appeal if he does not pay taxes on the property before the delinquency date. TEX. TAX CODE § 42.08(b). This prepayment requirement serves two primary objectives: (1) to ensure property owners do “not use the right of judicial review as a subterfuge for delaying or avoiding the payment of at least some tax”; and (2) to “assure that the activities of the local governments which relied on ad valorem taxes would not be unduly impeded by granting the property owner the right of judicial review.” *U. Lawrence Boze' & Assocs., P.C. v. Harris Cnty. Appraisal Dist.*, 368 S.W.3d 17, 27 (Tex. App.—Houston [1st Dist.] 2011, no pet.); *J.C. Evans Constr. Co. v. Travis Cent. Appraisal Dist.*, 4 S.W.3d 447, 451 (Tex. App.—Austin 1999, no pet.); *Mo. Pac. R.R. Co. v. Dallas Cnty. Appraisal Dist.*, 732 S.W.2d 717, 721 (Tex. App.—Dallas 1987, no writ).

The amount of taxes the property owner must pay to preserve his right to a final determination by the trial court is set forth in Subsection (b):

Except as provided in Subsection (d), a property owner who appeals as provided by this chapter must pay taxes on the property subject to the appeal in the amount required by this subsection before the delinquency date or the property owner forfeits the right to proceed to a final determination of the appeal. The amount of taxes the property owner must pay on the property before the delinquency date to comply with this subsection is the lesser of:

- (1) the amount of taxes due on the portion of the taxable value of the property that is not in dispute;
- (2) the amount of taxes due on the property under the order from which the appeal is taken; or
- (3) the amount of taxes imposed on the property in the preceding year.

TEX. TAX CODE § 42.08(b). Where the property owner elects to pay the amount of taxes described in Subsection (b)(1), his appeal to the trial court must be accompanied by a statement in writing of the amount of taxes he proposes to pay. *Id.* § 42.08(b-1).

Subsection (d) creates an exception to the prepayment requirement for a property owner who files an oath of inability to pay the taxes:

After filing an oath of inability to pay the taxes at issue, a party may be excused from the requirement of prepayment of tax as a prerequisite to appeal if the court, after notice and hearing, finds that such prepayment would constitute an unreasonable restraint on the party's right of access to the courts. . . .

Id. § 42.08(d). A property owner does not forfeit his right to appeal if he substantially complies with Subsection (b) or (d) or both. *U. Lawrence Boze*', 368 S.W.3d at 27; *J.C. Evans Constr.*, 4 S.W.3d at 451.

C. Bustos did not substantially comply with Section (b) because he did not pay any taxes before the delinquency date.

Bustos argues Subsection (b) does not require him to pay any taxes because there is no "portion of the taxable value of the property that is not in dispute." See TEX. TAX CODE § 42.08(b)(1). Bustos explained his position in the trial court and quotes this portion of the record in his pro se briefs on appeal:

... I have not assessed my property value at zero. I have elected to allow the courts to assess the proper value of the taxes based on their endemic fraud, and ask the court to use their discretion. They have a wide discretion, and that is to waive all the taxes that may be found to be owed. I've never claimed that property has a zero tax balance or has zero tax value. What I have claimed is that the endemic fraud from the district has caused me to defer to the court to find a set amount, and therefore disputing 100 percent of the tax assessed by Bexar Appraisal District. . . .

In other words, Bustos concedes he owes taxes on the property but requests the trial court waive the full amount because of endemic fraud.

“[C]ourts . . . have repeatedly held that if the property owner does not pay any portion of the assessed taxes by the delinquency date, the property owner has not substantially complied with section 42.08(b).” *Sonne v. Harris Cnty. Appraisal Dist.*, No. 01-12-00749-CV, 2014 WL 2933227, at *6 (Tex. App.—Houston [1st Dist.] June 26, 2014, no pet.) (mem. op.) (emphasis in original). In *Sonne*, the property owner did not dispute that he owned two tracts of property in Harris County but argued both tracts were “worthless” in his opinion. *Id.* The trial court dismissed the suit for lack of subject-matter jurisdiction because the property owner did not provide a written statement of the amount of taxes he proposed to pay and did not pay any taxes before the delinquency date. *Id.* The court of appeals affirmed, holding a property owner must pay at least some portion of the assessed taxes by the delinquency date in order to preserve his right to a final determination on appeal. *Id.*

Similarly, in *U. Lawrence Boze' & Associates, P.C. v. Harris County Appraisal District*, 368 S.W.3d 17 (Tex. App.—Houston [1st Dist.] 2011, no pet.), the property owner did not dispute that he had maintained a law office and associated personal property in Harris County since at least 1991. In 2000, the property owner moved his law office to his residential homestead two doors down but did not inform the taxing authority. *Id.* at 20. In 2006, the property owner informed Harris County that he would protest his assessed taxes for tax years 2000 through 2006 on the basis that the appraisal notices had been sent to his prior address. *Id.* The court of appeals held the property owner failed to substantially comply with Subsection (b) for failing to pay any taxes despite disputing the entire amount assessed for the six-year period. *Id.* at 28.

Bustos cites our opinion in *EXLP Leasing, LLC v. Webb County Appraisal District*, 511 S.W.3d 227 (Tex. App.—San Antonio 2015, pet. denied), in which we held no prepayment taxes were due because the taxpayer disputed the entire amount of the appraisal on the basis that the taxing authority lacked jurisdiction over the property in the first place. In that case, Exterran, the

taxpayer, leased field compressors located in Webb County and paid taxes on the compressors to Webb County for tax years 2008 through 2011. *Id.* at 228. On January 1, 2012, the Texas Tax Code was amended and, based on that amendment, Exterran believed the compressors no longer were business personal property taxable in Webb County, but rather heavy equipment dealer inventory taxable in the county where Exterran maintained its business address—Victoria County. *Id.* Webb County disagreed with Exterran’s reading of the amended Tax Code and assessed taxes on the compressors for the 2012 tax year. *Id.* Exterran appealed the assessment to the trial court, which dismissed the case for lack of subject-matter jurisdiction based on Exterran’s failure to pay any taxes for the 2012 tax year. *Id.* at 229.

On Exterran’s appeal from the trial court’s order of dismissal, we held the lesser amount under Subsection (b) was zero because Exterran disputed it owned any personal property subject to taxation in Webb County. *Id.* at 230. Therefore, Exterran substantially complied with Subsection (b) despite not paying any taxes in the 2012 tax year. We noted our sister court reached a similar decision in *Pratt & Whitney Canada, Inc. v. McLennan County Appraisal District*, 927 S.W.2d 641, 642 (Tex. App.—Waco 1996, writ denied), in which the taxpayer disputed there was any taxable property located in the county levying taxes. We also distinguished a case cited by Webb County because the taxpayer in that case “did not dispute the appraisal district’s authority to tax his property.” *EXLP Leasing*, 511 S.W.3d at 231–32 (citing *Carter v. Harris Cnty. Appraisal Dist.*, 409 S.W.3d 26, 30–31 (Tex. App.—Houston [1st Dist.] 2013, no pet.)).

Here, Bustos concedes he owns property subject to the District’s taxing jurisdiction. Also, because Bustos believes his property has some taxable value, the undisputed portion of the taxable value of the property is not zero. Like the property owners in *Sonne* and *U. Lawrence Boze*’, Bustos was required to provide a written statement of the amount of taxes he proposed to pay under Subsection (b)(1) and to pay some portion of the assessed taxes before the delinquency date in

order to substantially comply with Subsection (b). Because Bustos failed to do so, he did not substantially comply with Subsection (b).

D. Bustos did not substantially comply with Subsection (d) because he did not obtain a hearing.

Although not in the record, the parties do not dispute that Bustos filed an oath of inability to pay taxes on the date the trial court heard the District's motion to dismiss. However, there also is no dispute that Bustos failed to seek or obtain a hearing to determine whether prepayment of taxes would constitute an unreasonable restraint on his right of access to the courts. *See TEX. TAX CODE § 42.08(d).* Accordingly, Bustos failed to substantially comply with Subsection (d).

Bustos also argues "the [trial] court lacked subject matter jurisdiction to determine if [Bustos] had substantially complied or had not fully complied with" Subsection (b) because "there was no Notice or Motion for Hearing to Review the sufficiency of his oath under § 42.08(d)." Bustos, however, had the burden to obtain a hearing and present the trial court with evidence of his inability to prepay taxes, and his failure to do so does not excuse him from substantially complying with Subsection (b). *See Palaniappan v. Harris Cnty. Appraisal Dist.*, No. 01-11-00344-CV, 2013 WL 6857983, at *7 (Tex. App.—Houston [1st Dist.] Dec. 31, 2013, no pet.) (mem. op.) (holding property owner failed to substantially comply with Subsection (d), and therefore was not excused from substantially complying with Subsection (b), because he failed to demonstrate by a preponderance of the evidence that he was financial unable to pay taxes before the delinquency date).

CONCLUSION

Because Bustos failed to substantially comply with Tax Code § 42.08(b) or (d), the trial court did not err by dismissing the case for lack of subject-matter jurisdiction. Accordingly, we affirm the trial court's judgment.

Sandee Bryan Marion, Chief Justice

FILE COPY

RE: Case No. 18-0773 DATE: 11/9/2018
COA #: 04-17-00552-CV TC#: 2009CI14592
STYLE: BUSTOS v. BEXAR APPRAISAL DIST.

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

MORGAN D. THORNTON
BEXAR APPRAISAL DISTRICT
411 NORTH FRIO
SAN ANTONIO, TX 78207
* DELIVERED VIA E-MAIL *

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RE: Case No. 18-0773 DATE: 11/9/2018
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CHARLES DAVID WISE

* DELIVERED VIA E-MAIL *

FILE COPY

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ERNEST BUSTOS

* DELIVERED VIA E-MAIL *

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MR. KEITH E. HOTTLE
CLERK, FOURTH COURT OF APPEALS
BEXAR COUNTY JUSTICE CENTER
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DISTRICT CLERK BEXAR COUNTY
BEXAR COUNTY COURTHOUSE
PAUL ELIZONDO TOWER
101 W. NUEVA, SUITE 217
SAN ANTONIO, TX 78205-3411
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EXHIBIT 1

Texas Supreme Court denied rehearing

FILE COPY

RE: Case No. 18-0773 DATE: 2/1/2019
COA #: 04-17-00552-CV TC#: 2009CI14592
STYLE: BUSTOS v. BEXAR APPRAISAL DIST.

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.