

No. 1-17-1522

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

OMEGA MISSIONARY BAPTIST CHURCH,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 16 L 50449
)	
CONSTANCE BEARD, in Her Official Capacity as)	
Director of the Department of Revenue; and)	
THE DEPARTMENT OF REVENUE,)	Honorable
)	Daniel J. Kubasiak,
Defendants-Appellees.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* In this action for administrative review, the denial of a property tax exemption is affirmed where the applicant lacked standing.

¶ 2 Plaintiff-appellant, the Omega Missionary Baptist Church (Omega), filed a complaint for administrative review after its application for a property tax exemption for the 2013 tax year was denied by defendants-appellants, Constance Beard, in her official capacity as Director of Revenue, and the Department of Revenue (collectively, the Department). Omega has now

appealed from an order of the circuit court affirming the Department's administrative decision. For the following reasons, we affirm.¹

¶ 3

I. BACKGROUND

¶ 4 In July 2009, Omega filed a previous application for a property tax exemption for the 2008 tax year with the Cook County board of review. Specifically, Omega sought an exemption from 2008 property taxes for property located on the 4600 block of South State Street in Chicago, consisting of those parcels of real estate more specifically identified by property index numbers 20-03-318-005 through 20-03-318-008 (the property). Omega is a Baptist congregation that has been operating a church on a portion of the property since the 1950's. Over the years, Omega has acquired additional parcels of property and, together, these parcels made up the property that is currently being used as a church and was the subject of the 2008 exemption application. Omega is a not-for-profit, tax-exempt religious organization in good standing with both the federal Internal Revenue Service and the Department. As such, the property had historically been granted an exemption from property taxes.

¶ 5 In the mid-2000's, however, Omega began to lose members, experience a reduction in contributions, and ran into financial difficulties. This included difficulty in paying its monthly mortgage payment on the property. Omega ultimately filed for bankruptcy and lost the property to foreclosure in 2006. The property was acquired in 2007 by a trust benefitting 47th and State, LLC, a company solely owned by Mr. Gerese Tadros, the current owner of the property.

¶ 6 After reviewing Omega's prior application and specifically noting that the property was "no[t] in exempt ownership," the board of review recommended that the exemption request be

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

denied by the Department. On December 10, 2009, the Department issued a written denial of exemption. The Department indicated that its denial followed a review of Omega's prior application and supporting documentation, and was based upon its conclusion that: (1) the property was not in exempt ownership; (2) the property was not in exempt use; and (3) the applicant, Omega, was a lessee and not the owner of the property.

¶ 7 Omega filed a timely request for an administrative hearing on the Department's denial of the exemption, and that hearing was held before an administrative law judge (ALJ) on October 6, 2010. At that hearing, the evidence established that after purchasing the property, Mr. Tadros and Omega entered into two leases covering the period from February 2007 through February 2010. Those leases provided—*inter alia*—that Omega was responsible for the payment of “real estate taxes.”

¶ 8 On January 14, 2011, the ALJ issued a written recommendation for disposition concluding that the Department's initial decision to deny the prior application for a 2008 property tax exemption for the property should be affirmed. On the same day the ALJ issued its written recommendation for disposition, the Director of the Department issued a written notice of decision adopting the ALJ's recommendations as the Department's final administrative decision in the prior matter. Omega then filed a timely complaint for administrative review in the circuit court. In a written order entered on January 27, 2012, the circuit court affirmed the prior administrative decision after concluding that the “decision of the ALJ and adopted by the Director was not clearly erroneous.”

¶ 9 Omega appealed, and this court affirmed the judgment of the circuit court and confirmed the Department's administrative decision. *Omega Missionary Baptist Church v Hamer*, 2013 IL (1st) 120600-U, ¶ 61. In reaching that decision, this court initially addressed the issue of

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Omega's standing to apply for a property tax exemption for the property, considering the fact that it had applied as a lessee and not as the property owner. *Id.* ¶ 25-29. After concluding that the Department had waived the issue of Omega's standing, we nevertheless concluded that Omega's standing in the prior matter was supported by the prior lease provisions holding Omega responsible for paying the property taxes on the property. *Id.* ¶¶ 27-28.

¶ 10 While the prior administrative review proceeding was pending in the circuit court, Omega and Mr. Tadros entered into a new "USE AND OCCUPANCY AGREEMENT" (Agreement). The Agreement was both executed and effective March 1, 2011, and by its terms is to "continue for as long as the terms of the Agreement are met by [Omega.]" While the Agreement allows Omega to make use of the property for an "Occupancy Payment," it also provided that the Agreement "shall not be considered a lease and no tenancy is created" thereby.

¶ 11 The Agreement further provides:

"For any given month, the amount of the Occupancy Payment will not be for a specific amount. Instead, it shall be based upon what [Omega] can afford to pay, based on the church's income and expenses." With respect to real estate taxes on the property, the Agreement obligated Omega to "seek court review and reversal of the [Department's] January 11, 2011 administrative decision on the real estate exemption for [the] 2008 tax year."

If that decision was not reversed, the Agreement also obligated Omega to "file an exemption for a later year, without delay, and *** continue to pursue an exemption until it is secured." Finally, the Agreement provided that "[i]n the interim period prior to securing an exemption, the Owner will be responsible to pay the real estate taxes."

¶ 12 Following the entry of this court's prior final order with respect to the 2008 property tax exemption application, and consistent with the terms of the Agreement, Omega applied for a property tax exemption with respect to the property for the 2013 tax year. That application, which is the subject of the instant appeal, was denied by the Department on August 28, 2014.

¶ 13 Omega, thereafter, filed a timely request for an administrative hearing on the Department's denial of the 2013 exemption application, and that hearing was held before an ALJ on October 27, 2015. On May 4, 2016, the ALJ issued a written recommendation for disposition concluding that the Department's decision to deny the prior application for a 2013 property tax exemption for the property should be affirmed. The ALJ concluded that Omega lacked standing to apply for a property tax exemption, because it was not and could not be held responsible for paying any property taxes on the property. The ALJ also concluded that the application failed on the merits.

¶ 14 The director of the Department issued a written notice of decision adopting the ALJ's recommendations as the Department's final administrative decision on June 8, 2016. Omega then filed a timely complaint for administrative review in the circuit court. In a written order entered on May 25, 2017, the circuit court affirmed the administrative decision after concluding that Omega lacked standing to pursue administrative review. Omega timely appealed.

¶ 15

II. ANALYSIS

¶ 16 Because we find that Omega lacked standing, we affirm the judgment of the circuit court and the administrative decision of the Department.

¶ 17 Our review of the Department's final administrative decision is governed by the Administrative Review Law. 735 ILCS 5/3-101, *et seq.* (West 2016); 35 ILCS 200/8-40 (West 2016). While our review extends to all questions of law and fact presented by the record (735

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ILCS 5/3-110 (West 2016)), "[i]n administrative cases, our role is to review the decision of the administrative agency, not the determination of the circuit court" (*Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006)).

¶ 18 The doctrine of standing “assures that issues are raised only by those parties with a real interest in the outcome of the controversy.” *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). Standing requires some injury in fact to a legally cognizable interest. *Id.* The doctrine of standing precludes persons who have no interest in a controversy from bringing a lawsuit and ensures that issues are raised only by parties with a real interest in the outcome of the controversy. *Id.*

¶ 19 The claimed injury may be actual or threatened, and it must be (1) distinct and palpable; (2) fairly traceable to the defendant’s actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492-93. More specifically, “ ‘[o]ne who is adversely affected in fact by governmental action has standing to challenge its legality, and one who is not adversely affected in fact lacks standing.’ ” (Emphasis in original.) *Id.* at 488 (quoting 4 K. Davis, *Administrative Law Treatise* § 24:2, at 212 (2d ed.1983)). Furthermore, “administrative review is limited to parties of record before the administrative agencies and then only when their rights, duties or privileges are adversely affected by the decision.” *Board of Education of Roxana Community School District No. 1 v. Pollution Control Board*, 2013 IL 115473, ¶ 20; see also *Goldberg v. Department of the Lottery*, 275 Ill. App. 3d 231, 233 (1995) (“In an administrative review action, a plaintiff must allege and the record must show that he personally was adversely affected by the decision rendered by the administrative agency.”). “The issue of standing presents a question of law that this court reviews *de novo*.” *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 35.

¶ 20 Here, it is undisputed that Mr. Tadros is the owner of the property. As such, only Mr. Tadros has the statutory obligation to pay the 2013 property taxes for the property. 35 ILCS 200/9-175 (West 2016) (“The owner of property on January 1 in any year shall be liable for the taxes of that year[.]”). In addition, it is undisputed that the evidence introduced below established that the 2013 tax bill was sent to and paid by Mr. Tadros. Furthermore, it is undisputed that the Agreement specifically provided that Omega had no property rights in the property and that, unless and until a property tax exemption was obtained, Mr. Tadros would be responsible for paying the property taxes for the property, including the taxes owed in 2013. As such, Omega has no legal responsibility to pay any property taxes for the property, including those imposed for the 2013 tax year. As Omega itself concedes in its brief on appeal: “There will never be a point whereby Mr. Tadros will not be responsible for the real estate taxes, nor whereby Omega will have any legal responsibility to pay them either.”

¶ 21 In light of these undisputed facts, it is evident that Omega has no real interest in the outcome of this controversy, as it has no actual or threatened injury that is distinct and palpable, fairly traceable to the Department’s actions, and which would be prevented or redressed by the grant of the requested exemption. *Supra* ¶¶ 18-19. Indeed, Omega has not identified any rights, duties or privileges that will be adversely affected by that denial. *Id.* Therefore, we conclude that the circuit court properly concluded that Omega lacked standing to challenge the denial of a 2013 property tax exemption for the property in this action for administrative review.

¶ 22 In reaching this conclusion, we reject a number of specific arguments raised by Omega on appeal. First, we reject Omega’s assertion that its standing is supported by its general interest in “not having a property that qualifies to be exempt from taxes listing on the tax rolls,” and its general concern that “the government should not be imposing a property tax on property used for

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religious purpose, a constitutionally protected activity.” Such alleged interests and concerns are insufficient, as the gravamen of standing is a *real* interest in the outcome of the controversy, and that interest must be more than mere general concern about the outcome. *Save Our Sandy v. Department of Agriculture*, 2016 IL App (4th) 150582, ¶ 31.

¶ 23 Second, we reject Omega’s contention that its claim of standing in this case is supported by the decision in *New Holy Temple Missionary Baptist Church v. Discount Inn, Inc.*, 371 Ill. App. 3d 443 (2007). In that case, this court concluded that a church had standing to file a petition to vacate the tax-deed judgment that transferred ownership from the church to another party. *Id.* at 446. We fail to see how this factual scenario is in any way analogous to the one presented here. In that case, the church had an actual property right that was eliminated by a tax-deed judgment, and there was a possibility that the loss of that right could be redressed by the grant of the requested petition to vacate. Here, Omega has no real interest that can possibly be redressed by administrative review of the Department’s denial of the 2013 exemption application.

¶ 24 Finally, we reject Omega’s contention that any challenge to its standing in this case is foreclosed by our resolution of the prior appeal with respect to the 2008 exemption application, and “the Department should have been precluded from arguing standing, based on *res judicata* and law of the case.” We disagree.

¶ 25 The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any *subsequent lawsuits* between the same parties or their privies involving the same *cause of action*. *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996); *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998). “For the doctrine of *res judicata* to apply, the following three requirements must be satisfied: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction, (2) there is an identity of

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cause of action, and (3) there is an identity of parties or their privies.” *River Park*, 184 Ill. 2d at 302. In contrast, the law of the case doctrine generally bars relitigation of an issue previously decided in the *same case*. *Krautsack v. Anderson*, 223 Ill. 2d 541, 552 (2006). Thus, “ ‘the determination of a question of law by the Appellate Court on the first appeal may, as a general rule, be binding upon it on the second appeal.’ ” *Id.* (quoting *Zerulla v. Supreme Lodge Order of Mutual Protection*, 223 Ill. 518, 520 (1906)).

¶ 26 As such, for either of these doctrines to apply here, the issue of standing decided in our prior order must have been made in the context of deciding the “same cause of action” at issue here, or it must have been decided in the “same case” as is now before this court. Neither situation is presented here. It is well understood that a cause of action for exemption from property taxes for one year is not identical to a cause of action for exemption from property taxes in subsequent years. *Jackson Park Yacht Club v. Illinois Department of Local Government Affairs*, 93 Ill. App. 3d 542, 546 (1981). Whether or not the property was exempt from property tax in 2008 is irrelevant to the question presented here as to the property’s taxable status in 2013.

¶ 27 Moreover, we note again that our discussion of standing in our prior order revolved around Omega’s contractual obligation to pay any property taxes imposed on the property in 2008, pursuant to two leases covering the period from February 2007 through February 2010. Those leases were not in effect in 2013, and as noted above the Agreement that was in place at that time specifically stated that Omega had no obligation to pay any 2013 property taxes with respect to the property.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court and the administrative decision of the Department.

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¶ 30 Circuit court judgment affirmed.

¶ 31 Department decision affirmed.