

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rosemary Greenwood, Todd E. :  
Greenwood, and James F. :  
Greenwood, Jr. :  
 :  
 :  
v. : No. 1497 C.D. 2008  
 : Submitted: January 23, 2009  
Susquehanna County Board of :  
Assessment Appeals, :  
Appellant :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE PELLEGRINI

FILED: February 23, 2009

The Susquehanna County Board of Assessment Appeals appeals from an order of the Court of Common Pleas of Susquehanna County (trial court) disqualifying Michael J. Giangrieco, Esquire (Giangrieco) as a board member from considering the tax appeals of Rosemary Greenwood, Todd E. Greenwood and James F. Greenwood, Jr. (collectively, the Greenwoods) whom Giangrieco represents in litigation involving the Cabot Oil & Gas Corporation (Cabot Oil) and the Greenwoods' interest in an executed oil and gas lease on their property.

The Greenwoods filed a petition for disqualification of Susquehanna County Commissioner Giangrieco, a practicing attorney, from serving as a board

member of the Susquehanna County Board of Assessment Appeals<sup>1</sup> (Board) in a tax appeal from the County assessment office after it determined that their property was being removed from the Clean & Green Tax Program<sup>2</sup> because of an oil and gas lease with Cabot Oil. The removal of their property from the Clean & Green Tax Program triggered a back tax assessment for \$12,500 which, according to their lease agreement with Cabot Oil, Cabot Oil would not pay.

They further alleged that Giangrieco was on the Board and that he should not hear their tax appeal because he represented them and had sued Cabot Oil on their behalf many times regarding the oil and gas leases. Interestingly, for reasons not apparent, they alleged that they might be prejudiced by Giangrieco's participation on the Board because of the lawsuits in which he represented them in actions against Cabot Oil. The Greenwoods requested that the trial court disqualify Giangrieco from the Board due to the conflict with his representation of them.

Before the trial court, the Deputy Prothonotary testified that 35 cases had been filed in Susquehanna County involving Giangrieco and Cabot Oil in which Giangrieco represented the Greenwoods as plaintiffs and Cabot Oil was the defendant. Some of the cases had been removed to federal court and some to state

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<sup>1</sup> Susquehanna County is a sixth class county. The county commissioners of each county of the fourth, fifth, sixth, seventh and eighth classes hear tax appeals involving assessments. Section 511 of the General County Assessment Law (Law), Act of May 22, 1933, P.L. 853, *as amended*, 72 P.S. §5020-511. *See also* Section 501 of the Law, 72 P.S. §5020-501.

<sup>2</sup> This program is formally known as the Pennsylvania Farmland and Forest Land Assessment Act of 1974, Act of December 19, 1974, P.L. 973, *as amended*, 72 P.S. §§5490.1-5490.13.

court and they were still pending. James F. Greenwood, Jr. testified that some of the property the Greenwoods owned participated in the Clean & Green Tax Program in Susquehanna County. They had an oil and gas lease with Cabot Oil which they signed on January 27, 2006. On May 29, 2008, they received a statement of a rollback tax in the amount of \$12,500 that was sent to them to which they filed an appeal. The rollback tax was for a Cabot Oil drilled oil and gas well on their property, but it was not active and they were not receiving royalties. Mr. Greenwood did not believe he could receive a fair hearing before the Board with Giangrieco on the Board because he was biased. Mr. Greenwood stated that the Greenwoods could not afford to pay the taxes. Giangrieco admitted that he had 35 lawsuits against Cabot Oil. A representative from Cabot Oil also testified.

By order dated July 16, 2008, the trial court ordered Giangrieco disqualified as a board member due to any Clean & Green Tax Program rollback taxes where Cabot Oil had an interest by way of an executed oil and gas lease on any premises. The Board filed a motion for reconsideration which was granted but the argument was never heard. This appeal followed.<sup>3</sup>

The Board contends that nothing in the record supports the trial court's determination disqualifying Giangrieco from serving on the Board due to any Clean & Green Tax Program rollback taxes where Cabot Oil has an interest by

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<sup>3</sup> Our scope of review of the trial court's order is limited to determining whether the trial court abused its discretion, committed an error of law or rendered a decision unsupported by the evidence. *Willow Valley Manor, Inc. v. Lancaster County Board of Assessment Appeals*, 810 A.2d 720 (Pa. Cmwlth. 2002).

way of an executed oil and gas lease on any premises involving the Greenwoods.<sup>4</sup> It points out that not only is Cabot Oil not a party to this matter and it has nothing to gain or lose in this case so it has no pecuniary interest in the outcome of the Greenwood tax appeal, but the lease with Cabot Oil has no provision for Cabot Oil to pay the rollback taxes assessed against the premises. Therefore, Giangrieco cannot use his position as County Commissioner and a member of the Board to pressure Cabot Oil in the cases where he represents the Greenwoods against Cabot Oil. The Board directs our attention to the Pennsylvania Constitution and reminds us that “all civil officers elected by the people...shall be removed by the Governor for reasonable cause, after due notice and full hearing.” Pa. Const., Art. 6, §7.<sup>5</sup>

In making this argument, the Board misses the point. “Generally, recusal is warranted where a member of the tribunal participates as an advocate or witness, publicly expresses predisposition, or has a fiduciary relationship with a party in interest.” *Riverwalk Casino, LP v. Pennsylvania Gaming Control Board*, 592 Pa. 505, 926 A.2d 926, 940 (2007). The trial court applied this standard and disqualified Giangrieco’s participation in hearing the tax appeal because of his representation of the Greenwoods and because he was in a fiduciary relationship with a party in interest. Because Giangrieco is representing the Greenwoods in **35**

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<sup>4</sup> The Board also argues that the trial court erred by not giving the Board the required 20 days notice of hearing and denying it an adequate opportunity to respond. However, it never raised this argument before the trial court at the hearing and does not make any argument in its brief regarding this issue. Therefore, it is waived on appeal. *See* Pa. R.A.P. 302.

<sup>5</sup> The Board also contends that the trial court erred by allowing a representative from Cabot Oil to testify. Because it was within the trial court’s discretion to allow that testimony into evidence, the Board’s argument is without merit.

cases against Cabot Oil, whose activities are involved in this appeal, recusal by Giangrieco was mandatory. No more evidence is required to support the trial court's decision.

Accordingly, the order of the trial court is affirmed.

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DAN PELLEGRINI, JUDGE

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**ORDER**

AND NOW, this 23<sup>rd</sup> day of February, 2009, the order of the Court of Common Pleas of Susquehanna County, dated July 16, 2008, is affirmed.

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DAN PELLEGRINI, JUDGE