

SUPREME COURT OF ARKANSAS

No. 10-1296

HOWARD CURRY,

APPELLANT,

VS.

POPE COUNTY EQUALIZATION
BOARD AND KAREN MARTIN, TAX
ASSESSOR,

APPELLEES,

Opinion Delivered 10-6-11

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT, NO. CV-07-1296,
HON. RUSSELL ROGERS, JUDGE,

AFFIRMED.

ROBERT L. BROWN, Associate Justice

The question presented in this case is whether the Pope County Equalization Board and Karen Martin (collectively referred to as Assessor), in her official capacity as the Pope County Tax Assessor, improperly raised the assessed value of Howard Curry's real property after Curry's sixty-fifth birthday in violation of amendment 79 to the Arkansas Constitution. The circuit court found that improvements made prior to Curry's sixty-fifth birthday were substantial improvements within the meaning of amendment 79 and that the Assessor would be allowed to include those improvements in the assessment of Curry's real property. Because this case involves the interpretation of the Constitution of Arkansas, this court has jurisdiction pursuant to Arkansas Supreme Court Rule 1-2(a)(1) (2010). We affirm.

Amendment 79 was approved by the voters in the November 7, 2000 election and became effective on January 1, 2001. Ark. Const. amend. 79, § 5. Section 1 of amendment 79 places caps on how much an assessment can increase following a reappraisal of real



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property. Ark. Const. amend. 70, § 1. The amendment distinguishes between a homestead or principal place of residence, and non-homestead property. Section 1(d) of amendment 79 is at issue in the instant case. Section 1(d)(1)(B) provides:

When a person becomes disabled or reaches sixty-five (65) years of age on or after January 1, 2001, that person's homestead used as the taxpayer's principal place of residence shall thereafter be assessed based on the lower of the assessed value on the person's sixty-fifth birthday, on the date the person becomes disabled or a later assessed value.

Ark. Const. amend. 79, § 1(d)(1)(B). There is an exception, however, that permits an increase in the assessed value on a principal place of residence after the taxpayer's sixty-fifth birthday, if that taxpayer has made or does make substantial improvements on that residence. Ark. Const. amend. 79, § 1(d)(4).

The facts of this case are substantially set out in *Curry v. Pope County*, 2011 Ark. 408, 385 S.W.3d 130, handed down this same date, and we do not reiterate them fully here. In sum, Curry's property appraisal has increased on two different occasions since his sixty-fifth birthday on January 24, 2005. The last appraisal prior to Curry's sixty-fifth birthday was in 2004 and valued his property at \$74,650. The 2005 appraisal, which he received after his birthday, increased the appraised value of Curry's property to \$97,050 based on a change in the location factor. In 2007, two years after his sixty-fifth birthday, the appraised value of Curry's property increased to \$124,600. That appraisal included the new additions and improvements to the property Curry had completed prior to his sixty-fifth birthday.



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After his 2007 assessment, Curry unsuccessfully petitioned the Equalization Board of Pope County to reduce the appraisal on his property. On October 4, 2007, Curry filed a petition in the Pope County Court stating that the valuation was arbitrary and unreasonable and that the property was incorrectly assessed under amendment 79. After hearing testimony and reviewing the evidence, the county court issued an order on November 13, 2007, finding that the assessed value of the property was \$118,600. The county court ruled only on the assessment value and did not rule on the amendment 79 issues. On December 13, 2007, Curry lodged an appeal in the Pope County Circuit Court. Curry's circuit court petition challenged both the valuation and the constitutionality of the increased appraisal after his sixty-fifth birthday. The parties and the court decided Curry should file a direct action on the constitutional issues in circuit court to avoid any jurisdictional issues. On December 19, 2008, Curry filed a petition for declaratory relief and an injunction. In that petition, Curry requested a declaratory order delineating the proper use and application of amendment 79 to him as an owner of a homestead in this county upon which taxes are due and injunctive relief to require the Assessor to properly implement the intent of the amendment. The two cases were merged for trial.

Both the assessment value case and the amendment 79 case were tried in a bench trial on July 27, 2009. In the final judgment filed on August 17, 2010, the circuit court found that the correct value for the improvements to Curry's property was \$118,400. As to the constitutional issues, the circuit court found that the Assessor could include "all additions made to the property prior to [Curry] turning age 65." In addition, the circuit court found



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that the improvements made were “substantial improvements” within the language and intent of amendment 79 and that amendment 79 allows the value of substantial improvements to be added to a real estate assessment for any improvements completed prior to the taxpayer turning age 65 regardless of whether the improvements were added to the assessment of the parcel prior to the taxpayer reaching 65 years of age. Curry filed two appeals to this court challenging both the assessment and the circuit court’s interpretation of amendment 79. In the instant case, Curry argues that the circuit court’s assessment of \$118,400 for his property violates amendment 79 because it is higher than the \$74,050 assessment that was in place on his sixty-fifth birthday.

The proper assessment value of Curry’s home is inextricably intertwined with the resolution of the constitutional arguments presented in Curry’s second appeal. Accordingly, for the reasons stated in *Curry v. Pope County*, 2011 Ark. 408, 385 S.W.3d 130, handed down this same date, we affirm the trial court’s finding that the proper appraised value of Curry’s home is \$118,400, which includes the improvements made prior to his sixty-fifth birthday.

Affirmed.