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**IN THE  
INDIANA TAX COURT**



WASHINGTON TOWNSHIP ASSESSOR, )  
ALLEN COUNTY ASSESSOR, )  
and ALLEN COUNTY PROPERTY TAX )  
ASSESSMENT BOARD OF APPEALS, )  
 )  
Petitioners, )  
 )  
v. )  
 )  
VERIZON DATA SERVICES, INC., )  
 )  
Respondent. )

Cause No. 49T10-1102-TA-13

**ORDER ON RESPONDENT’S MOTION TO DISMISS**

**NOT FOR PUBLICATION**  
**April 5, 2013**

WENTWORTH, J.

This matter concerns whether the failure of the Washington Township Assessor, the Allen County Assessor, and the Allen County Property Tax Assessment Board of Appeals’ (collectively Assessor) to serve the summons and petition directly on Verizon Data Services, Inc. bars this appeal. The Court finds it does not.

**FACTS AND PROCEDURAL HISTORY**

On December 6, 2010, the Indiana Board signed a final determination granting

summary judgment in favor of Verizon with respect to its 2005 personal property tax assessment appeal. (See Mem. Law Supp. Resp't Mot. Dismiss V. Pet. ("Resp't Br.") at 1.) On that same day, the Indiana Board also signed a Confidentiality Order directing Verizon's counsel to provide it with a redacted copy of the final determination on or before December 21, 2010, if necessary. (V. Pet. Judicial Review Final Determination Ind. Bd. Tax Review ("Petr's Pet."), Order Regarding Confidentiality at 1-2.)

The Indiana Board's courier delayed mailing the final determination and Confidentiality Order to Verizon until December 28, 2010, more than three weeks after they were signed. (Resp't Br. at 1-2.) Two days later, one of Verizon's attorneys e-mailed the Indiana Board and the Assessors' attorneys to inform them about Verizon's delayed receipt and that Verizon intended to file a motion for extension of time to redact the final determination according to the Confidentiality Order. (Mem. Law Opp'n Resp't Mot. Dismiss V. Pet. ("Petr's Br."), Ex. 1 ¶ 4, Ex. A.) During a telephone conversation on January 4, 2011, the Assessors' attorney told one of Verizon's attorneys that the Assessor would be filing an appeal. (Petr's Br. at 2-3, Ex. 1 ¶¶ 3, 5.) As a result of its post-decision communications with the parties' attorneys regarding the delayed mailing, the Indiana Board issued a nunc pro tunc order on January 5, 2011, deeming the date the courier mailed the documents to be the date they were issued: December 28, 2010. (See Resp't Br. at 1-2, Ex. A.)

On February 9, 2011, the Assessor timely filed its Verified Petition for Judicial Review of a Final Determination of the Indiana Board of Tax Review (Petition), and with that filing, furnished a summons to the Clerk of the Tax Court. (Petr's Br. at 3; Resp't Br. at 2.) That same day, the Assessor mailed a copy of the Petition to Verizon's

attorneys. (Petr's Br. at 3.) On February 14, 2011, the Clerk mailed the Petition and summons as directed to: "Bingham McHale, LLP[;] c/o Jeffrey T. Bennett, Esq.[;] c/o Bradley D. Hasler, Esq.[;] 8900 Keystone Crossing, Suite 400[;] Indianapolis, Indiana 46240[;]" return receipt requested. (See Resp't Br. at 2, Ex. B.) On February 16, 2011, Verizon's attorneys accepted service of the Petition and summons. (See Petr's Br. at 4).

On March 11, 2011, Verizon's attorneys entered their appearance on behalf of Verizon, and moved to dismiss the Assessors' appeal pursuant to Indiana Tax Court Rule 4 and Indiana Trial Rules 12(B)(1), (2), (4), and (5). (See Petr's Br. at 4; Resp't Br. at 1.) Shortly thereafter, the Assessor furnished the Clerk with an alias summons addressed to Verizon's registered agent.<sup>1</sup> (Petr's Br. at 4 (footnote added).) The Court held a hearing on Verizon's Motion on May 5, 2011. Additional facts will be provided as necessary.

## **LAW**

The following statutes set forth the requirements for initiating an original tax appeal with respect to a final determination of the Indiana Board. Indiana Code § 33-26-6-2 states:

A taxpayer who wishes to initiate an original tax appeal must file a petition in the tax court to set aside the final determination of the . . . Indiana board of tax review. If a taxpayer fails to comply with any statutory requirement for the initiation of an original tax appeal, the tax court does not have jurisdiction to hear the appeal.

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<sup>1</sup> After the Assessor served the alias summons on Verizon's registered agent, Verizon withdrew its claim that the Tax Court did not acquire personal jurisdiction because the Assessor failed to serve its registered agent. (See Hr'g Tr. at 15-16; Resp't Reply Mem. Supp. Mot. Dismiss at 5 n.4; Mem. Law Supp. Resp't Mot. Dismiss V. Pet. at 7-8.)

IND. CODE § 33-26-6-2(a) (2011).<sup>2</sup> Moreover, Indiana Code § 6-1.1-15-5 states that a petitioner must, among other things, file a petition with the Court and serve the respondent with a copy of the petition. See IND. CODE § 6-1.1-15-5(b), (e) (2011). These actions must be taken not later than 45 days after the Indiana Board gives the petitioner notice of its final determination. I.C. § 6-1.1-15-5(c).

While these statutes are silent as to how a petitioner must serve the petition, Indiana Tax Court Rule 3 deems service proper if copies of the petition are served in the manner provided by Indiana Trial Rule 5(B). Ind. Tax Court Rule 3(D). Indiana Trial Rule 5(B) provides, in part:

Whenever a party is represented by an attorney of record, service shall be made upon such attorney unless service upon the party himself is ordered by the court. Service upon the attorney or party shall be made by delivering or mailing a copy of the papers to [him at his] last known address[.]

Ind. Trial Rule 5(B).

Indiana Tax Court Rule 4 requires service of a summons in accordance with the Trial Rules. Ind. Tax Court Rule 4(B)(4). The summons and petition must be served together. Ind. Trial Rule 4(E). Indiana Trial Rule 4.6, in relevant part, provides that “[s]ervice upon a[ domestic or foreign] organization may be made . . . upon an executive officer thereof, or if there is an agent appointed or deemed by law to have been appointed to receive service, then upon such agent.” Ind. Trial Rule 4.6(A)(1) (emphasis added). Additionally, Indiana Trial Rule 4.15(F) provides that no summons or service of process shall be set aside if either is “reasonably calculated” to inform the person to be served of the impending action before him. See Ind. Trial Rule 4.15(F).

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<sup>2</sup> This procedure also applies when an assessor seeks to initiate an original tax appeal. See IND. CODE § 6-1.1-15-5(e) (2011).

## ANALYSIS

Verizon contends that this appeal must be dismissed because the Assessor initially served a copy of the Petition and summons on a non-party law firm whose attorneys were not the attorneys of record in the Tax Court rather than serving Verizon directly. (See Hr'g Tr. at 6, 14-15.) Verizon further asserts that the Assessors' appeal is untimely because in serving the summons on a non-party, it failed to toll the applicable statute of limitations for appeal and take all requisite steps to initiate the appeal within the statutorily prescribed period. (See Hr'g Tr. at 6-19; Resp't Reply Mem. Supp. Mot. Dismiss ("Resp't Reply Br.") at 1-7; Resp't Br. at 5-9.)

In general, when a petitioner appeals a final determination of the Indiana Board to the Tax Court, there can be no attorney of record for the respondent until after its attorney enters an appearance. See Ind. Trial Rule 3.1(B). Therefore, at the commencement of this action, Hasler and Bennett were not Verizon's "attorneys of record," as that term is used in Trial Rule 5(B). Moreover, the plain language of Tax Court Rule 3(D) does not provide for an exclusive means of service, but merely a safe harbor. Accordingly, because the petition and summons must be served together, the manner of service of the summons is applicable to that of the petition. T.R. 4(E); see also Rumpfelt v. Himes, 438 N.E.2d 980, 983-84 (Ind. 1982) (explaining that courts are to construe Indiana's rules of trial procedure harmoniously whenever possible).

Indiana Trial Rule 4.6, similar to Tax Court Rule 3(D), also provides a non-exclusive method of service on an organization that, when followed, constitutes proper service. The Assessor claims that because it caused the Petition and summons to be served on Verizon's attorneys as its agents, it perfected service in accordance with Trial

Rule 4.6. (See Petrs' Br. at 4-6.) While the Court is not persuaded by the Assessors' claim, its technical failure to comply with the trial rules does not necessitate the dismissal of this appeal given that the plain language of Trial Rule 4.6 suggests that it too is a safe harbor. See T.R. 4.6(A)(1) (stating that service on an organization may be made on an executive officer or an agent who is appointed or deemed by law to have been appointed to receive service); see also, e.g., Beyer v. State, 280 N.E.2d 604, 606 (Ind. 1972); Board of Com'rs of Daviess Cnty. v. State ex rel. Gilley, 128 N.E. 596, 597 (1920) (both explaining that "may" is generally understood to be permissive, not mandatory). In fact, Indiana Trial Rule 4.15(F) instructs that no summons or service of process shall be set aside if either is "reasonably calculated" to inform the person to be served of the impending action before him. T.R. 4.15(F). Reasonably calculated to inform "is identical to the 'elementary and fundamental requirement of due process . . . notice reasonably calculated, under all the circumstances, to apprise[.]'" Glennar Mercury-Lincoln, Inc. v. Riley, 338 N.E.2d 670, 675 (Ind. Ct. App. 1975) (citations omitted).

Here, Hasler and Bennett had a long history of representing Verizon with the Assessor. On October 25, 2005, Verizon executed a power of attorney granting Hasler and Bennett broad representative authority to litigate both real and personal property tax matters for the 2005 and 2006 tax years in any administrative proceeding. (See Resp't Reply Br., Ex. E-1.) During the next five years, those attorneys and the Assessor disputed the accuracy of Verizon's 2005 personal property assessment at the administrative level, the same year and issue in this appeal. Furthermore, even after the administrative process culminated in the issuance of a final determination, Verizon's

attorneys continued to represent Verizon in communications with the Assessors' attorney by telephone and email. In fact, the Assessors' attorney told Verizon's attorneys that Verizon intended to appeal the final determination, but neither attorney indicated that they would not be representing Verizon in the Tax Court. (See Petrs' Br. at 3 n.2, Ex. 1 ¶¶ 5-6.) Accordingly, the Assessors' counsel caused two copies of the Petition and a summons to be issued to Bingham McHale c/o Hasler and Bennett (which Hasler accepted)<sup>3</sup> under a reasonable belief that they would remain Verizon's attorneys.

Because the Petition and summons were not served on Verizon directly, the question is whether the manner of service on the attorneys who represented Verizon throughout the administrative proceedings was reasonably calculated to inform Verizon of the initiation of this original tax appeal. See Gourley v. L.Y., 657 N.E.2d 448, 450 (Ind. Ct. App. 1995) ("The minimal requirements of due process require only that notice be served in a manner reasonably calculated to inform the defendant of the pending action") (citation omitted), trans. denied. The facts show that the Petition and summons both named Verizon as the respondent, that both documents were directed to Verizon's attorneys who had a long history of representing Verizon on this same property tax matter, and that Verizon's attorneys continued to represent Verizon after the administrative proceedings concluded. (See Petrs' Br. at 4; see generally Petrs' Pet.) Moreover, Verizon's attorneys have never alleged that the manner of service harmed or prejudiced their client. (See Hr'g Tr. at 17-19.) Indeed, Verizon concedes that it had timely knowledge of this original tax appeal, which suggests that the Assessors' manner

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<sup>3</sup> By accepting service, Verizon's attorneys had a duty to deliver the documents to Verizon or notify Verizon that they were in their possession. See Ind. Trial Rule 4.16(B).

of service, while not made on Verizon directly, was likely to inform.<sup>4</sup> Accordingly, the Court holds that the specific facts of this case indicate the manner of service was reasonably calculated to inform Verizon of the initiation of this original tax appeal.

This decision is consistent with the Court's "long-standing policy that cases should be decided on the merits and justice should not be defeated by [procedural] technicalities." See Miller Beach Invs., LLC v. Dep't of Local Gov't Fin., 848 N.E.2d 1190, 1194 n.3 (Ind. Tax Ct. 2006). Moreover, the Indiana Supreme Court has stated:

Although our procedural rules are extremely important, it must be kept in mind that they are merely a means for achieving the ultimate end of orderly and speedy justice. [Thus, w]e must examine our technical rules closely when it appears that invoking them would defeat justice; otherwise we become slaves to the technicalities themselves and they acquire the position of being the ends instead of the means. This is e[s]pecially true in [this] case . . . where we prejudice no one [in] allowing the . . . [case to proceed] at this point.

American States Ins. Co. v. State ex rel. Jennings, 283 N.E.2d 529, 531 (Ind. 1972).

Indeed, the Court's "function is to serve the truth and to decide legal issues, not clear [its] dockets by utilization of unnecessarily narrow technical interpretations" of the procedural rules. Id. at 531-32 (citation omitted). Therefore, the Court DENIES Verizon's Motion to Dismiss.<sup>5</sup>

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<sup>4</sup> See Northwestern Nat'l Ins. Co. v. Mapps, 717 N.E.2d 947, 955 (Ind. Ct. App. 1999) (explaining that while actual notice "alone will not cure defective service, it may be considered in determining whether the notice was reasonably calculated to inform an organization of the action"); see also Reed Sign Serv. Inc. v. Reid, 755 N.E.2d 690, 696 n.5 (Ind. Ct. App. 2001) ("actual notice following service attempts is strong evidence that the attempts were 'reasonably calculated to inform'"), trans. denied.

<sup>5</sup> Finally, the holding in this case is fact sensitive and should not be taken as license to disregard the procedural rules.

SO ORDERED this 5th day of April 2013.

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Martha Blood Wentworth  
Judge, Indiana Tax Court

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