

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0952

**CLYDE A. "ROCK" GISCLAIR,
ASSESSOR FOR ST. CHARLES PARISH**

VERSUS

**STATE OF LOUISIANA THROUGH THE LOUISIANA DEPARTMENT
OF REVENUE AND TAXATION AND ET ALS**

Judgment rendered: DEC 22 2010

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Number: 582,121; Division: A #27
The Honorable Todd W. Hernandez, Judge Presiding**

**William W. Edelman
Metairie, Louisiana**

**Counsel for the Plaintiff/Appellant
Clyde A. "Rock" Gisclair
Assessor for St. Charles Parish**

**Victor E. Bradley, Jr.
Norco, Louisiana**

**Robert D. Hoffman, Jr.
Covington, Louisiana**

**Counsel for Defendant/Appellee
Louisiana Tax Commission**

BEFORE: KUHN, PETTIGREW AND KLINE, JJ.¹

¹ Judge William F. Kline, Jr., retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

for **PETTIGREW, J. concur**

KLINE, J.

Clyde A. "Rock" Gisclair, Assessor for St. Charles Parish (Gisclair), appeals a judgment that denied his request for a writ of mandamus to the Louisiana Tax Commission (Tax Commission), the appellee. For the following reasons, we affirm the judgment of the trial court.

PERTINENT FACTS AND PROCEDURAL HISTORY

Among other relief sought in his second amendment to the petition, Gisclair asked the trial court to issue a writ of mandamus directing the Tax Commission to hold an administrative hearing and rule on his exceptions and appeal. Gisclair's petition avers that the Tax Commission unlawfully refused to consider or act on his exceptions and appeal in which he claimed the Tax Commission "significantly undervalued Entergy when it determined the 2009 value of Entergy Louisiana, LLC" in St. Charles Parish.

After hearing argument on Gisclair's mandamus request, the trial court took the matter under advisement. It issued a written ruling explaining why it denied the writ of mandamus and, subsequently, entered judgment accordingly.²

Gisclair now appeals, asserting two assignments of error, summarized as follows:

1. The trial court erred in concluding that a Louisiana assessor has no legal or constitutional right or ability to compel the Tax Commission to consider and rule on the assessor's administrative challenge;
2. The trial court erred in refusing to issue the writ of mandamus.

DISCUSSION

In its thorough and well-reasoned written ruling, the trial court succinctly set forth the pertinent facts and issues before it. It concluded "that there is no

² Pursuant to this court's interim order, the trial court submitted an amended judgment designating the judgment as final after expressly determining that there was no just reason for delay. Accordingly, this appeal is properly before us.

authority to order the Tax Commission to grant [Gisclair's] hearing." We agree, and we affirm the judgment of the trial court denying Gisclair's request for writ of mandamus.

In **Gisclair v. Louisiana Tax Com'n**, 10-0563 (La. 09/24/10), 44 So.3d 272, the Louisiana Supreme Court considered a different challenge by Gisclair to the Tax Commission's valuation of the Entergy property. In that challenge, Gisclair sought to enjoin "unlawful exemptions" given by the Tax Commission to Entergy and also sought to enjoin "unlawful appraisal practices" that benefitted Entergy. Without considering the merits of Gisclair's claims, the supreme court raised and sustained on its own motion the peremptory exception of no right of action.

In deciding the matter, the supreme court observed that "the substantive right at issue herein is the right to challenge the application of the relevant laws governing the tax valuation of public service properties." **Id.** 10-0563 at p. 7, 44 So.3d at 278. It distinguished La. R.S. 47:1998C,³ which allows an assessor to seek judicial review over local assessments, and concluded that La. R.S. 47:1856G contained the tax provisions specific to the assessment of public service property. **Id.**, 10-0563 at p. 8, 44 So.3d. at 278. Paragraph G provides as follows:

Any taxpayer asserting that a law or laws, including the application thereof, related to the valuation or assessment of public service properties is in violation of any act of the Congress of the United States, the Constitution of the United States, or the constitution of the state shall file suit in accordance with the provisions of R.S. 47:2134(C) and (D). The provisions of R.S. 47:1856(E) and (F) shall be applicable to such proceedings; however, the tax commission and all affected assessors and the officers responsible for the collection of any taxes owed pursuant to such assessment shall be made parties to such suit. If such suit affects assessments of property located in more than one parish, such suit may be brought in either the district court for the parish in which the tax commission is domiciled or the district court of any one of the parishes in which the property is located and

³ Louisiana Revised Statutes 47:1998C provides as follows:

The assessor shall bring suit, when necessary to protect the interest of the state, and shall also have the right of appeal and such proceedings shall be without cost to him or the state.

assessed. No bond or other security shall be necessary to perfect an appeal in such suit. Any appeal from a judgment of the district court shall be heard by preference within sixty days of the lodging of the record in the court of appeal. The appeal shall be taken thirty days from the date the judgment of the district court is rendered.

The supreme court concluded that the right of action sought to be enforced belonged solely to the public service taxpayer, and not to the assessor. *Id.*, 10-0563 at p. 10, 44 So.3d. at 280-81. Accordingly, the supreme court noticed and sustained the peremptory right on no right of action against Gisclair. Concluding that the grounds of exception could not be removed by amendment, it dismissed Gisclair's petition against the Tax Commission with prejudice. *Id.*

Pursuant to the Louisiana Supreme Court's guidance, we conclude that Gisclair has no right of action to pursue the remedy he seeks. While the trial court did not articulate the peremptory exception of no right of action, it did find that it had no authority to grant the relief Gisclair requested. The trial court did not err in denying Gisclair's request for a writ of mandamus. Gisclair's assignments of error are without merit.

DECREE

We affirm the judgment of the trial court. Costs of this appeal are assessed to Clyde A. "Rock" Gisclair, Assessor for St. Charles Parish in the amount of \$878.50.

AFFIRMED