

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #026

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 8th day of May, 2012, are as follows:

PER CURIAM:

- 2011-C -2079 MICHAEL H. MARTIN, IN HIS CAPACITY AS ASSESSOR FOR LAFOURCHE
C/W PARISH v. ANR PIPELINE CO., ET AL. (Parish of Lafourche)
- 2011-C -2193 GENE BONVILLAIN, ASSESSOR OF TERREBONNE PARISH v. TENNESSEE GAS
PIPELINE COMPANY, ET AL. (IN RE: APPEAL OF ANR PIPELINE COMPANY)
(Parish of Terrebonne)
- 2011-C -2252 IN RE: APPEAL OF ANR PIPELINE CO., MONA KELLEY, IN HER OFFICIAL
CAPACITY AS CAMERON PARISH TAX ASSESSOR v. ANR PIPELINE COMPANY,
ET AL. (Parish of Cameron)
- 2011-C -2266 GENEVA F. ODOM, IN HER OFFICIAL CAPACITY AS ASSESSOR FOR EAST
CARROLL PARISH v. SOUTHERN NATURAL GAS CO. AND TENNESSEE GAS
PIPELINE COMPANY C/W DEANNA K. SMITH, IN HER CAPACITY AS ASSESSOR
FOR WEST CARROLL PARISH v. ANR PIPELINE COMPANY, SOUTHERN NATURAL
GAS COMPANY & LOUISIANA TAX COMMISSION C/W EDDIE GATLIN, IN HIS
OFFICIAL CAPACITY AS ASSESSOR FOR JACKSON PARISH v. SOUTHERN
NATURAL GAS COMPANY AND TENNESSEE GAS PIPELINE COMPANY (Parish of
East Carroll)
- 2011-CC-2716 KATHRYN BROUSSARD, IN HER OFFICIAL CAPACITY AS ASSESSOR FOR
VERMILION PARISH v. SOUTHERN NATURAL GAS COMPANY (Parish of
Vermilion)

For the foregoing reasons, we reverse the lower court decisions in these consolidated cases and render judgment sustaining the peremptory exception of no right of action and dismissing the assessors' petitions with prejudice.

EXCEPTION OF NO RIGHT ACTION SUSTAINED; DISMISSED.

VICTORY, J., dissents for the reasons assigned by Justice Weimer.
WEIMER, J., dissents and assigns reasons.

05/08/2012

SUPREME COURT OF LOUISIANA

No. 2011-C-2079

**MICHAEL H. MARTIN, IN HIS CAPACITY AS
ASSESSOR FOR LAFOURCHE PARISH**

VERSUS

ANR PIPELINE CO., ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF LAFOURCHE

consolidated with

No. 2011-C-2193

GENE BONVILLAIN, ASSESSOR OF TERREBONNE PARISH

VERSUS

TENNESSEE GAS PIPELINE COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF TERREBONNE

consolidated with

No. 2011-C-2252

**IN RE: APPEAL OF ANR PIPELINE CO.,
MONA KELLEY, IN HER OFFICIAL CAPACITY
AS CAMERON PARISH TAX ASSESSOR**

VERSUS

ANR PIPELINE COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF CAMERON

consolidated with

No. 2011-C-2266

**GENEVA F. ODOM, IN HER OFFICIAL CAPACITY
AS ASSESSOR FOR EAST CARROLL PARISH
VERSUS
SOUTHERN NATURAL GAS CO. AND
TENNESSEE GAS PIPELINE COMPANY**

consolidated with

**DEANNA K. SMITH, IN HER CAPACITY
AS ASSESSOR FOR WEST CARROLL PARISH
VERSUS
ANR PIPELINE COMPANY, SOUTHERN NATURAL
GAS COMPANY & LOUISIANA TAX COMMISSION**

consolidated with

**EDDIE GATLIN, IN HIS OFFICIAL CAPACITY
AS ASSESSOR FOR JACKSON PARISH
VERSUS
SOUTHERN NATURAL GAS COMPANY AND
TENNESSEE GAS PIPELINE COMPANY**

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
SECOND CIRCUIT, PARISH OF EAST CARROLL

consolidated with

NO. 2011-CC-2716

**KATHRYN BROUSSARD, IN HER OFFICIAL CAPACITY
AS ASSESSOR FOR VERMILION PARISH**

VERSUS

SOUTHERN NATURAL GAS COMPANY¹

ON SUPERVISORY WRITS TO THE FIFTEENTH JUDICIAL
DISTRICT COURT, PARISH OF VERMILION

¹ These cases were consolidated for oral argument with **ANR Pipeline Co. v. Louisiana Tax Com'n**, 11-2078 (La. 5/8/12), ___ So.3d ___, which was decided in a separate opinion.

PER CURIAM.

After remand of this matter by the court in **ANR Pipeline Co. v. Louisiana Tax Com'n**, 05-1142 (La.App. 1 Cir. 9/7/05), 923 So.2d 81, 92 (**ANR VI**), this court, in **ANR Pipeline Co. v. Louisiana Tax Com'n**, 11-2078 (La. 5/8/12), ___ So.3d ___ (**ANR IX**), held that the Louisiana Tax Commission (LTC) remained charged with the constitutional and statutory duty of determining the reassessment valuations and reassessing the public service properties in question. Each of these consolidated cases was brought against the taxpayers and/or the LTC by an assessor, seeking review of the final determination that was made by the LTC on November 23, 2009, as supplemented. In that respect, these cases are procedurally similar in posture to **Gisclair v. Louisiana Tax Com'n**, 10-0563 (La. 9/24/10), 44 So.3d 272 (**Gisclair II**).

Interpreting La. R.S. 47:1856(G),² this court, in a per curiam opinion in **Gisclair II**, found that the right to bring an “as applied” challenge regarding the tax valuation of public service property belongs to public service taxpayer alone. **Gisclair II**, 10-0563 at 7-10, 44 So.3d at 279-80. Under the rationale of **Gisclair II**, the assessors in the instant consolidated cases cannot circumvent the constitutional and statutory framework relating to the assessment of public service properties by filing

² La. R.S. 47:1856(G) provides:

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 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.

petitions for judicial review in their home parishes pursuant to La. R.S. 47:1998 in connection with the reassessment valuations in question.

Having failed to disclose in their petitions a right of action in a plaintiff, the district courts erred in overruling the taxpayers' exception of no right of action in each of these proceedings. The lower courts further erred in considering the merits of the assessors' claims and/or transferring any such claims to the Nineteenth Judicial District Court for the Parish of East Baton Rouge. Moreover, because the grounds of these exceptions cannot be removed by amendment, we dismiss with prejudice the assessors' petitions in these matters. See La. C.C.P. art. 934 ("If the grounds of the objection raised through the exception cannot be so removed, ... the action, claim, demand, issue, or theory shall be dismissed.").

DECREE

For the foregoing reasons, we reverse the lower court decisions in these consolidated cases and render judgment sustaining the peremptory exception of no right of action and dismissing the assessors' petitions with prejudice.

EXCEPTION OF NO RIGHT ACTION SUSTAINED; DISMISSED.

05/08/2012

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No. 2011-C-2079

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VERSUS

SOUTHERN NATURAL GAS COMPANY

ON SUPERVISORY WRITS TO THE FIFTEENTH JUDICIAL
DISTRICT COURT, PARISH OF VERMILION

WEIMER, J., dissenting.

Based on the reasons set forth in my dissent in **Gisclair v. Louisiana Tax Com'n**, 10-0563 (La. 9/24/10), 44 So.3d 272 (**Gisclair II**), I believe La. R.S.

47:1998(C) affords an assessor a right of action relative to the Louisiana Tax Commission's final determination of the assessed valuation of public service properties. See **Gisclair II**, 44 So.3d at 282, Weimer, J., dissenting. Therefore, I would affirm the lower courts' overruling of the taxpayers' exception of no right of action in these actions. Accordingly, I respectfully dissent.