

IN THE DISTRICT COURT OF SHERMAN COUNTY, NEBRASKA

**COUNTY OF SHERMAN, NEBRASKA, a
body politic and corporate,**

Plaintiff,

vs.

**DONALD D. GLINSMANN and RACHEL
A. GLINSMANN, husband and wife, et al.,**

Defendants.

Case No. 5621

ORDER

DATE OF CONFERENCE: April 11, 2000.

DATE OF SUBMISSION: May 15, 2000.

DATE OF RENDITION: June 20, 2000.

DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).

APPEARANCES: None after progression conference; appearing on briefs:
For plaintiff: Mark L. Eurek, Sherman County Attorney;
For defendants:

Glinsmann & Mingus: John S. Mingus;
Bochart: Rodney M. Wetovick.

SUBJECT OF ORDER: Matter of subject matter jurisdiction raised on court's motion (see ¶ 6 of Progression Order filed 5/4/00).

FINDINGS: The court finds:

1. At the progression conference held after the case was assigned to the present judge, the court raised the matter of subject matter jurisdiction on its own motion.

2. The parties were allowed 10 days after the filing of the progression order to file an appropriate motion for hearing if any party desired to submit evidence by affidavit on the matter of subject matter jurisdiction. The progression order was filed on May 4, 2000. No such motion was filed by May 15, 2000 (May 14, 2000, was on a Sunday). Pursuant to the progression order, the matter was deemed as submitted upon the pleadings on May 15, 2000.

3. The progression order also allowed the parties to submit briefs on the issue. Briefs have been submitted on behalf of defendants Glinsmann and Mingus and on behalf of the plaintiff.

4. When cases are interwoven and interdependent and the controversy involved has already been considered and determined by the court in the former proceedings involving one of the parties now before it, the court has a right to examine its own records and take judicial notice of its own proceedings and judgments in the former action. *In re Adoption of Trystyn D.*, 259 Neb. 539, ___ N.W.2d ___ (2000).

5. The court takes judicial notice of the petition and judgment in Case No. 5335, including the opinion of the Nebraska Supreme Court on appeal. See *County of Sherman v. Evans*, 252 Neb. 612, 564 N.W.2d 256 (1997). In that case, the county sought to foreclose tax certificates issued for the years 1980 and 1981, as well as subsequent tax liens for the years 1982 through 1990, inclusive. The Supreme Court determined that the tax certificates were void, and that both the district court and the Supreme Court lacked subject matter jurisdiction with regard thereto.

6. The decision in *County of Seward v. Andelt*, 251 Neb. 713, 559 N.W.2d 465 (1997), together with *County of Sherman v. Evans, supra*, requires that this court determine that it lacks subject matter jurisdiction as to the taxes sought to be foreclosed for years 1980 and 1981. The court notes some tension between *County of Seward* and *County of Lancaster v. Maser*, 224 Neb. 566, 400 N.W.2d 238 (1987), but concludes that *County of Seward* is controlling.

7. The court also determines that the inclusion of tax years 1982 through 1990 in the previous attempted foreclosure of tax sale certificates in Case No. 5335 constitutes an election to proceed under NEB. REV. STAT. § 77-1902 (Reissue 1996) rather than under NEB. REV. STAT. § 77-1901 (Reissue 1996) with respect to those years. Consequently, the petition is barred as to those years as well.

8. However, the record does not show any previous attempt to use the certificate method to foreclose as to years after 1990.

9. The petition in this case was filed on May 1, 1998. Exhibit A, although subsequently filed on May 21, 1998, was apparently intended as an attachment to the petition, and the court so construes it. Exhibit A shows that the petition purports to foreclose tax liens for the years 1980 through 1997, inclusive.

10. As to tax years 1980 through 1990, the court lacks subject matter jurisdiction to allow foreclosure by the lien method under § 77-1901 as explained above.

11. However, as to tax years 1991 through 1997, there appears nothing in the pleadings to this point purporting to show that tax sale certificates were issued with respect to any such years. The court appears to have subject matter jurisdiction over the plaintiff's petition to such extent. Thus, at least on the state of the record at this point, the court finds that subject matter jurisdiction exists in this court regarding tax years 1991 through 1997.

12. Because this order does not fully dispose of the case, this order is interlocutory in character and does not constitute a final order.

ORDER: IT IS THEREFORE ORDERED that:

1. The court lacks subject matter jurisdiction regarding tax years 1980 through 1990, inclusive, and upon entry of final judgment herein, the petition shall be dismissed with prejudice to the extent that the same attempts to foreclose alleged tax liens with regard to such tax years.

2. The court notes apparent subject matter jurisdiction regarding the cause of action to foreclose tax liens pertaining to tax years 1991 through 1997, inclusive.

3. This order is interlocutory in character and does not constitute a final order.

Signed in chambers at Ainsworth, Nebraska, on June 20, 2000.
DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 20__ by ____.
- Note the decision on the trial docket as: [date of filing] Signed interlocutory "Order" entered determining lack of subject matter jurisdiction as to tax years 1980 through 1990, and noting apparent subject matter jurisdiction as to tax years 1991 through 1997.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge