

Bond Case Briefs

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Galloway v. County of Northampton

Supreme Court of Virginia - April 1, 2021 - S.E.2d - 2021 WL 1220722

In action brought by taxpayers against county and town, alleging that real property had been overvalued in tax assessments, county and town moved in limine and to dismiss, seeking exclusion of taxpayers' expert witnesses for failure to comply with uniform pretrial scheduling order and dismissal of case for failure to provide timely detailed report on substance of witness' intended testimony.

The Northampton Circuit Court excluded expert witnesses and dismissed case with prejudice. Taxpayers appealed.

The Supreme Court held that:

- Taxpayers failed to comply with pretrial scheduling order, and thus exclusion of expert witness' testimony was warranted;
- Taxpayers' identification of another intended expert witness was valid; and
- Taxpayers did not waive right to have witness testify as expert.

Taxpayers failed to comply with provision of pretrial scheduling order that required them to disclose substance of facts and opinions to which expert witnesses were expected to testify and to provide grounds for each opinion 90 days before trial, and thus exclusion of witness from testifying was warranted in action brought by taxpayers against county and town, alleging that real property had been overvalued in tax assessment, even though taxpayers identified witnesses several days before deadline and had provided opportunity to depose witness; taxpayers did not disclose substance of facts and opinions and grounds for opinions until two months after disclosure of witnesses' identities, and while order was not entered by court until date on which taxpayers were required to make witness disclosures, taxpayers' counsel had signed order before such date.

Taxpayers' identification of intended expert witness was valid in action brought against county and town, alleging that real property had been overvalued in tax assessments, even though taxpayers' counsel failed to sign signature blank on response to interrogatories regarding expert witnesses, as required by court rule governing signing of discovery requests, responses, and objections; counsel's signatures at end of discovery responses, together with taxpayer's notarized and sworn signature, satisfied rule's requirements, and even if they had not, counsel promptly signed response after he realized, without prompting from opposing counsel or court, that he had initially failed to do so.

Taxpayers, in response to interrogatory regarding expert witnesses, did not waive right to have intended witness testify as expert in action brought against county and town, alleging that real property had been overvalued in tax assessments, even though response did not list expert; taxpayers had already informed county and town that they intended to call expert in response to previous interrogatory, and if county and town had conferred with taxpayers on issue, they would have known that taxpayers intended to supplement, rather than supplant, identification of experts.

