

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Jeff Schmitt Chevrolet, Ltd.,	:	
Appellant-Appellant,	:	
v.	:	No. 14AP-917 (C.P.C. No. 14CV-2870)
Director, Ohio Dept. of Job & Family Services,	:	(ACCELERATED CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on July 28, 2015

Green & Green, Lawyers, Thomas M. Green and Jonathan F. Hung, for appellant.

Michael DeWine, Attorney General, and Alan Schwepe, for appellee.

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Appellant-appellant, Jeff Schmitt Chevrolet, Ltd. ("JSCL"), appeals from a judgment of the Franklin County Court of Common Pleas, affirming the decision of the Unemployment Compensation Review Commission ("UCRC"), finding that JSCL was the successor in interest to Serra Chevrolet, Inc. ("Serra"), for the purposes of determining JSCL's unemployment compensation contribution rates as an Ohio employer. JSCL raises the following sole assignment of error for our review:

The trial court erred when it concluded that Jeff Schmitt Chevrolet, Ltd. Was the successor in interest to Serra Chevrolet, Inc.

Because the trial court did not abuse its discretion in affirming the UCRC's decision, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On September 20, 2010, JSCL entered into an asset purchase agreement with Serra, an automobile dealership. The assets acquired by JSCL through the agreement included, but were not limited to, all equipment, machinery, service tools, parts, telecommunication systems, electronic data management devices, office furnishings, accounting devices, "and all other fixed, capital, and usable assets of any kind or nature whatsoever, owned by Seller." (Asset Purchase Agreement, 3.) JSCL also purchased "[a]ll non-accounting books and records historically maintained by Seller," as well as Serra's goodwill, including their customer lists, sales records, vehicle dealer records, service records, mailing lists, and the right to use Serra's website address for two years. (Asset Purchase Agreement, 3.) JSCL also purchased Serra's inventory of new cars. The total purchase price for all of the assets, including the new car inventory, was approximately \$5.15 million. JSCL did not acquire Serra's used car inventory, worth approximately \$543,000, or Serra's General Motors ("GM") franchise license, cash on hand, tax refunds, or accounts receivable.

{¶ 3} On October 28, 2010, Serra closed its operations and terminated its GM franchise license. JSCL opened its operations as a GM dealership at the same location that day.

{¶ 4} On October 26, 2011, the UCRC notified JSCL that it had determined that JSCL was the successor in interest to Serra, and that the UCRC had assigned a contribution rate of 6.60 percent to JSCL for both 2010 and 2011. JSCL appealed this decision to the director of the Ohio Department of Job & Family Services ("ODJFS") on November 9, 2011.

{¶ 5} On May 15, 2012, the director rendered a decision affirming the initial finding that JSCL was the successor in interest to Serra. The director reviewed the asset purchase agreement, and observed that "all assets related to the on-going business were transferred" to JSCL and that the assets not purchased through the agreement, including the "cash on hand, accounts receivable, [and] Seller's record books" were not "integral to the ongoing business and [were] not dispositive of lack of total transfer." (Director's

Reconsidered Decision, 2.) The director further observed that JSCL employed a large percentage of Serra's employees, and noted that it was immaterial whether these employees "were discharged by the Seller and hired by the Buyer, or if they were transferred directly." (Director's Reconsidered Decision, 2.) As such, the director determined that JSCL was the successor in interest to Serra. JSCL appealed this decision to the UCRC.

{¶ 6} On November 19, 2013, a telephone hearing was conducted before a hearing officer for the UCRC. At the hearing, Carl Prideau, the assistant section chief of the contribution section at ODJFS, explained why ODJFS found JSCL to be the successor in interest to Serra. Prideau stated that JSCL engaged in the same business as Serra, a GM dealership, at the same location; JSCL opened the same day Serra closed; JSCL acquired a large portion of Serra's workforce; and JSCL "basically bought everything that Serra Chevrolet had built up in their trade or business and * * * acquired everything needed to operate [] and to continue the operations of Serra Chevrolet at that location." (Tr. 28.) Prideau noted that while JSCL did not acquire the used vehicle inventory, that fact did not indicate that there was no successorship, because "[u]sed cars were not necessary [] for the continuation of the business." (Tr. 28.) Prideau also noted that, when Serra filed its Disposition of Business form with ODJFS, Serra stated that JSCL had acquired 100 percent of the assets of the business.

{¶ 7} Jeff Schmitt, president of JSCL, also testified at the hearing. Schmitt emphasized that JSCL did not acquire all of Serra's assets. Schmitt stated that JSCL did not acquire Serra's used car inventory, as the parties could not agree on a purchase price for the used cars. Schmitt stated that JSCL did not receive Serra's cash or accounts receivable, but Schmitt admitted that cash and accounts receivable typically are not included in deals to buy or sell automobile dealerships. Schmitt acknowledged that JSCL did not acquire Serra's GM franchise license, but also acknowledged that GM franchise licenses are nontransferable. Schmitt admitted that JSCL "did hire 44 people that formerly worked at Serra." (Tr. 67.)

{¶ 8} The UCRC affirmed the director's decision. The UCRC found that Serra transferred "all of the trade or business of Serra" to JSCL, and noted that the "assets excluded from the purchase agreement were not integral to the business operation."

(UCRC Decision, 3.) JSCL appealed the UCRC's decision to the Franklin County Court of Common Pleas.

{¶ 9} On October 6, 2014, the trial court issued a decision and entry affirming the UCRC's decision. The court noted that there was sufficient evidence in the record to support the UCRC's finding that JSCL had acquired all of the property integral to Serra's business. Specifically, the court noted that JSCL acquired all of Serra's tangible assets, "including the new car inventory, equipment, machinery, service tools, parts, supplies, office furnishings, customer records and information, sales and service records and materials," and acquired nearly all of Serra's intangible assets, "including its goodwill, customer lists, telephone numbers, website addresses, etc." (Decision and Entry, 5.) The court further noted that JSCL had hired 44 of Serra's 60 employees, and continued to do business in the same location. The court observed that the assets not acquired by JSCL were "only a small part of the value of the business," and specifically noted that the accounts receivable and cash were items which "are not normally included in a dealership acquisition." (Decision and Entry, 5-6.) The court thus concluded that JSCL was "a successor-in-interest to Serra for purposes of unemployment compensation contribution rates." (Decision and Entry, 6.)

II. JSCL IS A SUCCESSOR IN INTEREST

{¶ 10} R.C. 4141.26(D)(2) provides that the trial court may affirm a decision from the UCRC regarding an employer's rate revision "if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative, and substantial evidence and is in accordance with law." Our review of the trial court's decision "is more limited," as we "do[] not weigh [the] evidence." *Kate Corp. v. Ohio State Unemp. Comp. Rev. Comm.*, 10th Dist. No. 03AP-315, 2003-Ohio-5668, ¶ 7, citing *Childs v. Oil & Gas Comm.*, 10th Dist. No. 99AP-626 (Mar. 28, 2000), citing *Lorain Cty. Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257 (1988). The court of appeals does not make factual findings or weigh the credibility of the witnesses; rather, we simply determine whether the UCRC's decision is supported by the evidence in the record. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 696 (1995).

{¶ 11} As such, we determine only whether the trial court abused its discretion. *Id.* at 696-97. "In successor-in-interest cases, 'this court has defined "abuse of discretion" as connoting more than an error in judgment, but implying a decision that is without a reasonable basis and clearly wrong.' " *Resource Title Natl. Agency, Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 14AP-39, 2014-Ohio-3427, ¶ 9, quoting *All Star Personnel, Inc. v. Unemp. Comp. Rev. Comm.*, 10th Dist. No. 05AP-522, 2006-Ohio-1302, ¶ 13, quoting *WLS Stamping Co., Inc. v. Admr., Ohio Bur. of Emp. Servs.*, 10th Dist. No. 93AP-278 (Dec. 14, 1993).

{¶ 12} Pursuant to R.C. 4141.09, every employer in Ohio must make contributions to the unemployment compensation fund. R.C. 4141.24(F) provides, in pertinent part:

If an employer transfers all of its trade or business to another employer or person, the acquiring employer or person shall be the successor in interest to the transferring employer and shall assume the resources and liabilities of such transferring employer's account, and continue the payment of all contributions, or payments in lieu of contributions, due under this chapter.

{¶ 13} Thus, this appeal concerns whether JSCL acquired successor in interest status under R.C. 4141.24(F), by acquiring all of the trade or business of Serra. *See All Star Personnel* at ¶ 16. Ohio Adm.Code 4141-17-04(A) provides that a transferee "shall become a successor in interest by operation of law" where (1) there is "a transfer of all of the transferor's trade or business" and, (2) at the time of the transfer, "the transferor is liable under Chapter 4141. of the Revised Code." As a successor in interest, the transferee "shall assume all of the resources and liabilities of the transferor's account" and the "director shall revise the contribution rates of the transferee to reflect the result of the successorship." Ohio Adm.Code 4141-17-04(B). For purposes of R.C. 4141.24, an employer's "[t]rade or business" includes all real, personal and intangible property integral to the operation of the trade or business." Ohio Adm.Code 4141-17-01(A).

{¶ 14} JSCL asserts that "succession does not occur unless the acquiring employer receives all of the transferring employer's trade or business," and contends that, because it did not acquire Serra's used car inventory, cash and cash equivalents, notes and accounts receivable, franchise license, or all of Serra's former staff, it did not acquire all of

Serra's trade or business. (Appellant's Brief, 11.) JSCL claims that Serra's used car inventory was "integral to JSCL's and Serra's operation." (Appellant's Brief, 15.)

{¶ 15} The evidence in the record, including the testimony from the November 19, 2013 telephone hearing, provided the trial court with credible evidence on which to find that Serra transferred all of the property integral to its business to JSCL. In *Resource Title*, we concluded that Resource Title had transferred all of the property integral to its business when it transferred "all of Resource Title's tangible and intangible assets," including, among other items, its furniture, fixtures, automobiles, certain lease security deposits, goodwill, customer files, customer lists, trade names, trademarks, trade secrets, escrow advances and a portion of its work-in-process. *Id.* at ¶ 14. The purchasing company also retained "most of Resource Title's employees," and "remain[ed] at the same physical location" as Resource Title. *Id.* As such, we found that Resource Title had "transferred all the property integral to its business" to the purchasing company. *Id.* at ¶ 18.

{¶ 16} In *Hampton's on King, Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 14AP-243, 2014-Ohio-5666, we concluded that "the assets 'integral' to conducting the business of the two entities at issue were transferred under the purchase agreement." *Id.* at ¶ 13. There, the evidence showed that B. Hampton's, the seller, transferred its liquor license, the rights to its name and its goodwill, and "certain elements of the décor" from B. Hampton's to Hampton's on King, the purchaser. *Id.* at ¶ 13. Although Hampton's on King was in a different physical location than B. Hampton's, and did not acquire all of the bar equipment owned by B. Hampton's, we nevertheless concluded that the "assets 'integral' to conducting the business of the two entities at issue were transferred under the purchase agreement," and that Hampton's on King was accordingly the successor in interest to B. Hampton's. *Id.*

{¶ 17} JSCL asserts that the instant action differs from *Resource Title* because, in that action, while the purchasing company did not acquire Resource Title's accounts receivable, it also "failed to specifically identify the number of retained accounts, the amount owed on those accounts, and whether the accounts constituted a significant portion of the transferor's business." (Appellant's Brief, 19.) JSCL asserts that in the instant case, "there is evidence of the value of unpurchased assets, and how such assets,

notably the used car inventory, were not only a significant component of Serra's business, but also integral to it." (Appellant's Brief, 19-20.) We disagree.

{¶ 18} The record demonstrates that the used car inventory was a small component of the purchased assets, especially in comparison to the new car inventory JSCL acquired from Serra, which alone comprised nearly \$3 million of the \$5.15 million purchase price. Moreover, JSCL acquired everything from Serra that it needed to operate a car dealership, as it acquired nearly all of Serra's tangible and intangible assets, including its goodwill and customer records, hired 44 of Serra's 60 employees, and remained at the same physical location as Serra. The used car inventory was not integral to Serra's operations. Furthermore, while JSCL did not acquire Serra's accounts receivable or cash, the record indicates that these items are not typically transferred during an automobile dealership purchase. Additionally, the GM franchise license was nontransferable. *See Resource Title* at ¶ 16 (noting that because the "Plute Title line of business" was not "an asset capable of being transferred by appellant" the court would not address whether this asset should have been considered integral to Resource Title's trade or business). JSCL acquired all of the property integral to Serra's business.

{¶ 19} The trial court did not abuse its discretion in affirming the UCRC's decision, which found JSCL to be a successor in interest to Serra. There was reliable, probative, and substantial evidence in the record to support the UCRC's determination that Serra transferred all of the property integral to its business to JSCL through the asset purchase agreement.

{¶ 20} Based on the foregoing, JSCL's sole assignment of error is overruled. Having overruled JSCL's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J. and KLATT, J., concur.
