IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-50816

United States Court of Appeals
Fifth Circuit
FILED
January 29, 2019
Lyle W. Cayce
Clerk

CHRISTOPHER A. HAYNES; PRISCILLA HAYNES,

Plaintiffs - Appellants

v.

UNITED STATES OF AMERICA,

Defendant - Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:16-CV-112

Before DENNIS, CLEMENT, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

The IRS assessed a penalty against Christopher and Priscilla Haynes (the Hayneses) for filing their 2010 tax return late. This case is their attempt to recoup that penalty.

Taxpayers are entitled to a refund on IRS penalties only if they can show reasonable cause and a lack of willful neglect for the late filing. 26 U.S.C. § 6651(a)(1). In *United States v. Boyle*, the Supreme Court held that reliance

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

on an attorney or an accountant to file a tax return cannot constitute reasonable cause under § 6651(a)(1). 469 U.S. 241, 245 (1985). The district court held that *Boyle,* which was decided before electronic filing existed, should be extended to e-filing. It believed that this ruling ended the case as a matter of law in the Government's favor. This latter conclusion is incorrect. Even if *Boyle* should be extended to e-filing, another genuine dispute of material fact precludes summary judgment. Accordingly, we vacate and remand without deciding the *Boyle* question.

I.

On October 17, 2011, the last day of a six-month filing extension, John Dunbar, a certified public accountant and paid tax preparer, electronically transmitted the Hayneses' Form 1040 income tax return, which he had prepared, to Lacerte Software Corporation for filing with the IRS. Later that day, Dunbar notified Mr. Haynes that the 2010 return had been timely filed. Ten months later, however, on August 20, 2012, the Hayneses received an overdue-return notice from the IRS for the 2010 tax year.

In response to the Hayneses' resulting inquiry, Dunbar ultimately determined that, on October 17, 2011, Lacerte accepted the electronically submitted return and timely transmitted it to the IRS. Nevertheless, the IRS rejected the return because Ms. Haynes's Social Security Number erroneously appeared on the line designated for an employment-identification number. For reasons unknown, the Hayneses did not receive a rejection notice from the IRS, Dunbar, or Lacerte prior to the August 2012 notice of nonpayment.

To remedy the deficiency, the Hayneses filed a paper return. Once it was received, the IRS assessed a penalty, which the Hayneses paid. But the Hayneses did not let the issue die; they filed a request for abatement of the penalty for reasonable cause. The IRS denied their request, and the Hayneses sued, seeking a refund under § 6651(a)(1).

After discovery, both parties moved for summary judgment. The district court denied the Hayneses' summary-judgment motion but granted the Government's. It concluded that, as a matter of law, the Hayneses' undisputed reliance on their CPA to timely electronically file their tax return could not constitute reasonable cause under § 6651(a)(1). The Hayneses timely appealed.

II.

We review *de novo* the district court's grant of summary judgment, using the same standard as the district court. *Windham v. Harris Cty., Tex.,* 875 F.3d 229, 234 (5th Cir. 2017). We are not limited to the district court's reasons for granting summary judgment, however, and may affirm "on any ground raised below and supported by the record." *Boyett v. Redland Ins. Co.,* 741 F.3d 604, 606–07 (5th Cir. 2014) (quotation omitted).

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine dispute of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). We construe "all facts and inferences in the light most favorable to the nonmoving party." *Dillon v. Rogers,* 596 F.3d 260, 266 (5th Cir. 2010). But "[s]ummary judgment may not be thwarted by conclusional allegations, unsupported assertions, or presentation of only a scintilla of evidence." *McFaul v. Valenzuela,* 684 F.3d 564, 571 (5th Cir. 2012).

III.

A.

When taxpayers fail to timely file their tax returns, they are hit with a penalty that increases as time passes. "To escape the penalty, the taxpayer bears the heavy burden of proving both (1) that the failure did not result from 'willful neglect,' and (2) that the failure was 'due to reasonable cause.'" *Boyle*,

469 U.S. at 245 (quoting 26 U.S.C. § 6651(a)(1)). Under the relevant regulations, reasonable cause exists when the taxpayer "demonstrate[s] that he exercised 'ordinary business care and prudence' but nevertheless was 'unable to file the return within the prescribed time.'" *Id.* at 246 (quoting 26 C.F.R. § 301.6651(c)(1)). "Whether the elements that constitute 'reasonable cause' are present in a given situation is a question of fact, but what elements must be present to constitute 'reasonable cause' is a question of law." *Id.* at 249 n.8 (emphasis omitted).

In *Boyle*, the Supreme Court laid down a bright-line rule regarding the reasonable-cause standard: reliance on an agent to file a tax return cannot, standing alone, constitute reasonable cause excusing a late filing. *Id.* at 252. *Boyle* dealt with placing a paper tax return in the mail. *Id.* at 243. The Hayneses now ask us to cabin *Boyle* to that specific context. They do so largely because they believe filing a tax return electronically—due to the special software needed—is fundamentally different than mailing a return. Unsurprisingly, the Government sees no problem with extending *Boyle*'s bright-line rule to e-filing.

While the e-filing issue is an interesting one, it is one that we need not decide today. Even if the Government is right that *Boyle* should apply to e-filing, another genuine dispute of material fact—laid out in the next section—still defeats summary judgment. Consequently, we take no position on whether a taxpayer's reliance on a CPA to e-file a tax return, by itself, constitutes reasonable cause.

B.

To understand the dispute of material fact, it is first necessary to recognize the fundamental agency rule working in the background of *Boyle*: an agent's authorized actions are imputed to its principal. *See Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 397 (1993) (holding that a

principal is responsible for the acts and omissions of a "freely selected agent" (quotation omitted)). In *Boyle*, no one disputed that the attorney negligently failed to mark the filing date on his calendar and did not file his client's tax return on time due to that slip. *Boyle*, 469 U.S. at 242–43. Thus, under the normal agency rule, the client would be responsible for that negligence. The client attempted to escape that normal rule by arguing that reliance on his attorney to timely file his return was enough, standing alone, to constitute reasonable cause under the tax code. *Id.* at 249–51. The *Boyle* court rejected that assertion. But the important point for our purposes is this: the client's strategic move was only needed because his attorney was clearly negligent. *See Pioneer Inv. Servs.*, 507 U.S. at 397 (holding that the proposition that "a client could be penalized for counsel's tardy filing of a tax return" animated *Boyle*).

In contrast to the attorney in *Boyle*, it is not clear that Dunbar was negligent. On the one hand, Dunbar electronically submitted the Hayneses' return to the IRS prior to the expiration of the October 17, 2011, filing deadline. Nevertheless, the Hayneses' return was rejected because it had the wrong employment-identification number. Yet for reasons unknown, a rejection notice pointing out the error was never sent to Dunbar. Had it been, Dunbar could have easily cured the clerical error. On the other hand, while Dunbar did not receive a rejection notice, neither did he receive an acceptance notice, nor did he proactively ensure that the IRS had accepted the tax return.

Whether it was reasonable for Dunbar to assume, based on the IRS's silence, that it had accepted the Hayneses' return or whether ordinary business care and prudence would demand that he personally contact the IRS to ensure acceptance is a genuine question of material fact for the jury to decide. Because Dunbar is the Hayneses' agent, if a jury determines that his actions meet the reasonable-cause standard, it must find the same to be true for the Hayneses—

barring any determination of independent negligence by them.[1] After all, principals are not only bound by their agents' failures, as in *Boyle*, but also by their diligence.[2]

It is this question of material fact that makes it unnecessary for us to decide whether a broad e-filing exception to *Boyle* exists. That complex question need only be answered if Dunbar, in fact, acted negligently in filing the Hayneses' tax return. Only then would the Hayneses be relegated to relying solely on their reliance on Dunbar to meet the reasonable-cause standard, thereby teeing up the *Boyle* question.

IV.

Accordingly, because there is a genuine dispute of material fact at this time over whether Dunbar's actions could meet the reasonable-cause standard, the district court erroneously granted summary judgment for the Government. The judgment of the district court is VACATED, and this case is REMANDED for proceedings consistent with this opinion.

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[1] It is apparent from the record that after Dunbar timely electronically submitted the return, and provided verbal confirmation of filing to Mr. Haynes, on October 17, 2011, neither he nor the Hayneses took further action to confirm that the IRS had actually received the return from Lacerte or acknowledged its acceptance for processing. Additionally, though the Hayneses' return reflected an unpaid balance due in the amount of more than $40,000, they made no tax payment in October 2011, or at any time, by electronic withdrawal or otherwise, prior to August 2012. The Government argues that this nonpayment information was sufficient to impose a duty of inquiry on the Hayneses, relative to the status of their return, such that reasonable cause is necessarily legally absent. Likewise, the Government emphasizes the obligations of both Dunbar and Lacerte, as Authorized IRS *e-file* Providers, to check the IRS acknowledgement file to confirm the IRS's acceptance of a previously transmitted return and to inform the taxpayer of rejections.

[2] We note that this same factual issue also precludes summary judgment on the willful-neglect element.