

The Marist Brothers of New Hampshire, Inc.

v.

Town of Effingham

Docket No. 7569-89

**DECISION**

This decision relates to the "Town's" motion to dismiss (the Motion). The Motion seeks dismissal of the "Taxpayer's" appeal of the Town's denial of a charitable exemption under RSA 72:23. The Town asserts the appeal is barred by res judicata because of this board's prior decision involving the parties in docket number 5711-88 (the 1988 Decision).

After reviewing the Motion, the Taxpayer's objection and the Town's replication, the board held a telephone conference hearing with the parties.<sup>1</sup> During the conference, the board stated collateral estoppel, not res judicata, was the correct doctrine under which the Motion should be analyzed. See Appeal of Public Service Co. of New Hampshire, 120 N.H. 830, 831-32 (1980) (hereinafter "Appeal of PSNH"). The Town agreed and directed the board to Christian Camps & Conferences v. Town Alton, 118 N.H. 351 (1978) (hereinafter "Christian Camps"). Thus, the question presented by the Motion is whether collateral estoppel applies to bar the Taxpayer from relitigating the board's denial of the charitable exemption.

For the reasons stated below, the Motion is denied insofar as it requests a dismissal. However, based on the arguments presented by the Town, we are denying the Taxpayer's appeal because the Taxpayer is collaterally estopped

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<sup>1</sup> Telephone conferences provide the parties with an opportunity to answer the board's questions and also assist the board in making more informed and expedited decisions on motions. This one of the steps the board is implementing to address the board's substantial backlog.

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relitigating the denial of the exemption, which was litigated between the parties in the 1988 appeal. Therefore, the board's 1988 Decision is applicable to this appeal, and thus, the 1989 appeal is denied.

Collateral estoppel bars a party from relitigating matters in issue that were actually determined in a prior proceeding. Petition of Breau, 132 N.H. 351, 359 (1989); Appeal of PSNH, 120 N.H. at 833. For the doctrine to apply, the following must be established: 1) the issue must be identical in each action; 2) the first action must have resolved the issue on the merits; and 3) the party to be estopped must have been a party or in privity with a party to the first action. Appeal of PSNH, 120 N.H. at 833. Based on the record before the board, these criteria have all been met.

Concerning, the first requirement, each tax year constitutes a separate cause of action, Christian Camps, 118 N.H. at 353-54, and the supreme court has ruled collateral estoppel does not apply to abatement appeals, Appeal of PSNH, 120 N.H. at 833. Nevertheless, collateral estoppel may apply in exemption appeals since the matter in issue in exemption appeals can be identical from year to year. Abatement appeals focus on disproportionality of the tax burden, and thus the matter in issue may be different in each year due to the variables involved in assessing and taxing property values. On the other hand, exemption appeals do not depend on variables such as valuation and disproportionality. Rather, they turn on the taxpayer's entitlement to the exemption, which in this appeal involves the requirements in RSA 72:23, V. The RSA 72:23, V requirements, unlike the issue of disproportionality, can remain the same from year to year. Therefore, collateral estoppel would apply if the facts concerning the entitlement remained the same in 1989 as they were in 1988 i.e., (a) if the Taxpayer; (b) the Taxpayer's use of a property; and (c) the Taxpayer's use of any income or profits from the property were the same from 1988 to 1989.

In this 1989 appeal, the facts concerning the entitlement to the exemption are the same as were presented in the 1988 appeal. The Taxpayer stated so in its December 15, 1989 letter to the Town [?] and in the appeal to this board. Additionally, after receiving the Motion, in which the Town asserted the facts in 1989 were identical to the facts in 1988, the Taxpayer

did not present any

facts distinguishing the 1989 appeal from the 1988 appeal. Rather, the Taxpayer's objected to the Motion simply for procedural reasons. We find, therefore, the first criteria to have been met.

The second and third criteria have also been met. The issue of the Taxpayer's entitlement to the exemption given the Taxpayer's use of the Property was decided on the merits in the 1988 appeal, and the Taxpayer was a party to that appeal.

For the above-stated reasons, the board denies the Motion and denies the Taxpayer's appeal.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Peter J. Donahue, Member

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Paul B. Franklin, Member

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Ignatius MacLellan, Member

Date:

I certify that copies of the within Decision have this date been mailed, postage prepaid, to \_\_\_\_\_, taxpayer; and the Chairman, Selectmen of Effingham.

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Michele E. LeBrun, Clerk

Date:

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