

William N. and Sandra L. Thibodeau

v.

Department of Revenue Administration

Docket No.: 18024-99HR

DECISION

The "Taxpayers" appeal, pursuant to RSA 198:54, the department of revenue administration's ("DRA") denial of the Taxpayers' 1999 Property Tax Hardship Relief Application ("Application"). For the reasons stated below, the appeal is remanded to the DRA for determination of the amount of hardship relief in keeping with this decision.

While Chapter 338 (the statewide education property tax law) contains no specific provision as to who has the burden in this type of appeal, it is well settled that in civil actions the burden of proof is generally on the plaintiff to establish its case by a preponderance of the evidence. Dunlop v. Daigle, 122 N.H. 295 (1982); Jodoin v. Baroody, 195 N.H. 154 (1958); TAX 201.27(f).

The facts of this case are not in dispute and are summarized as follows. During 1998 and the six years prior, the Taxpayers owned and lived in a dwelling at 167 Karwendal Strasse in the Town of Bartlett. Bartlett is one of the towns whose school tax rate increased as a result of the passage of the statewide education property tax. In August of 1999 the Taxpayers sold the 167

Karwendal Strasse property and purchased another property in Bartlett at 26 Rocky River, which they resided in at the time they filed their Application with the DRA on January 18, 2000. The DRA denied the Taxpayers' Application because they had not resided in the 26 Rocky River homestead for one year prior to the Application.

The Taxpayers argued they were entitled to relief because:

(1) the move from the 167 Karwendal Strasse property to the 26 Rocky River property in the same town (Bartlett) was required because they were unable to maintain the 167 Karwendal Strasse property following the husband's heart surgery; and

(2) they have been residents of Bartlett since 1982 and, thus, should be eligible for the relief as other residents who had not moved between 1998 and 1999.

The DRA argued the denial of property tax hardship relief was proper because:

(1) the statutes and the DRA's rules require continuous residence at a single homestead; and
(2) property tax hardship relief should not be granted if the taxpayer moves to a different homestead even if it is in the same municipality.

BOARD'S RULINGS

Summary Ruling

In an appeal of a denial of a hardship relief claim by the DRA, "the board may reverse or affirm, wholly or partly, or may modify the decision brought up for review when there is an error of law or when the board finds the Commissioner's actions to be arbitrary or unreasonable." RSA 198:54, II. In this case, while the DRA's decision may not have been either "arbitrary or unreasonable" based on its reading of the statute, the board finds the DRA's literal application results in a decision that is anomalous and contrary to the overall intent and purpose of the

statute. The DRA's denial is based on some language in the statute and the DRA's own regulatory requirement that a taxpayer must have resided in a homestead in a qualifying town for a period of one year prior to the date of Application. RSA 198:51, III(b); REV. 1202.01(b). The board finds sufficient ambiguity exists within the statute. The board also finds that denying the Taxpayers relief would ignore the stated legislative purpose and intent to provide "... assistance to ... low and moderate income taxpayers ..." (Chapter 338:1 III, 1999 Legislative Session). Consequently, the board reverses the DRA's decision to deny the Application on residency grounds, and remands the appeal to the DRA for determination of the proper amount of hardship relief to be granted to the Taxpayers in accordance with this decision.

Principles of Construction

In arriving at this ruling, the board applies the following general rules of statutory interpretation and construction.

- In construing statutes, the board should first examine the language and, where possible, ascribe plain and ordinary meaning to the words unless the statute itself suggests otherwise. Appeal of Astro Spectacular, 138 N.H. 298, 300 (1994); see also Appeal of Campton School District, 138 N.H. 267, 269 (1994).
- A statute, however, will not be construed to lead to an illogical or absurd result. Foster v. Town of Henniker, 132 N.H. 75, 82 (1989); General Electric Co. v. Dole Co., 105 N.H. 477, 479 (1964).
- The board should read the language at issue in the context of the entire statute "as a whole" and the statutory scheme. Barksdale v. Town of Epsom, 136 N.H. 511, 514-516 (1992); Great Lakes Aircraft Co., Inc. v. City of Claremont, 135 N.H.

270, 277-278 (1992).

- If a statute is ambiguous, legislative history can be a valuable aid in ascertaining the intended meaning of a statute. King v. Sununu, 126 N.H. 302, 307-308 (1985).
- In determining legislative intent and in construing a statute, the basic purpose - - the problem the statute was intended to remedy - - should be considered. Inquiry must be made into the statute's declared purpose and essential characteristics. American Automobile Association v. State, 136 N.H. 579, 585 (1992); Rix v. Kinderworks Corp, 136 N.H. 548, 550 (1992).

Statutory and Regulatory Language

RSA 198:50, II and Rev. 1201.02 define "homestead" for the purposes of administering education property tax hardship relief:

Chapter 198:50, II. "Homestead" means the dwelling owned by a claimant or, in the case of a multi-unit dwelling, the portion of the dwelling which is owned and used as the claimant's principal place of residence and the claimant's domicile for purposes of RSA 654:1. "Homestead" shall not include land and buildings taxed under RSA 79-A or land and buildings or the portion of land and buildings rented or used for commercial or industrial purposes. In this paragraph, the term "owned" includes a vendee in possession under a land contract and one or more joint tenants or tenants in common (emphasis added).

REV. 1201.02. "Homestead" means a dwelling owned and used as the applicant's principal place of residence and domicile for purposes of RSA 654:1 (emphasis added).

Throughout the remainder of the statute and the regulations, the term "homestead" is preceded by the words "a," "the" or "such." The DRA argued that these articles and adjective require a single homestead during the time period under consideration. This interpretation harms the

Taxpayers in this case who moved from one homestead to another in the same qualifying town over the relevant one-year period. While at first blush the DRA's regulatory interpretation may not be unreasonable, the board finds the issue is not free of doubt. First, the article "a" can denote plurality, such as in any homestead.

The word "a" has varying meanings and uses. "A" means "one" or "any," but less emphatically than either. It may mean one where only one is intended, or it may mean any one of a great number ***. The article "a" is not necessarily a singular term; it is often used in the sense of "any" and is then applied to more than one individual object. Black's Law Dictionary 1 (5th ed. 1979).

Further, and probably more importantly, both the statutory and regulatory definitions of "homestead" refer to RSA 654:1 for the establishment of the taxpayer's domicile. RSA 654:1 establishes the criteria for a taxpayer establishing legal domicile for voting purposes. Under RSA 654:1, residents are legal voters of a municipality if they can establish their intention of residing in a municipality for an indefinite and significant period of time. Such residency requirements are not tied to a single dwelling, but could apply to more than one dwelling if it was clear that those dwellings, at different points in time, were each the taxpayer's primary residence. This is exactly the situation in this case. The Taxpayers, while having two different dwellings during the time period one year prior to their Application, never lost their legal residency status in the Town of Bartlett.

Because of the conflict and ambiguity between the literal reading of the words "a homestead," and the legal domicile provisions of RSA 654:1, the board concludes it is necessary to consider the overall purpose and intent of Chapter 338, (which includes the education property tax hardship relief statute). The purpose and intent provision of Chapter 338 clearly states the

New Hampshire Legislature (“Legislature”) intended to provide financial relief to taxpayers who resided in towns whose school district tax rates increased as a result of the enactment of a state-wide property tax (such towns have been dubbed “donor” towns). As a result, the Legislature created a distinct class of taxpayers based on their residency within towns whose education tax rates increased, but not necessarily based upon where specifically those taxpayers actually resided within the donor town.

The Taxpayers in this case would have received property tax hardship relief but for the fact they sold the dwelling they resided in during the 1998 tax year, and purchased another dwelling in the same town less than one year prior to applying for their education property tax hardship relief in 1999. The board concludes the legislative purpose and intent enunciated in Chapter 338 is better served by granting rather than denying the Taxpayers’ Application. Given the short time frame between the New Hampshire Supreme Court’s October 15, 1999 decision in Claremont School District et al. v. Governor, et al. (“Claremont III”), __ N.H. __, 15 N.H. Sup. Ct. Rptr. 230, declaring portions of Chapter 17 unconstitutional and the Legislature’s subsequent passage of Chapter 338 on November 3, 1999, it is quite conceivable that the Legislature did not anticipate the fact scenario presented in this case.

Claremont III is instructive in this regard. The supreme court ruled the previous phase-in provisions of the statewide property tax adopted by the Legislature to be unconstitutional because “the classification at issue imposes a State tax on property at different rates . . . based solely on the location of the property A phase-in of a State tax . . . where the rates vary from one municipality to another is [unconstitutional].” 15 N.H. Sup. Ct. Rptr. at 232. The supreme

court also quoted from an earlier opinion, State v. Griffin, 86 N.H. 609, 614 (1894), to the effect that: “A state law selecting a person or class or municipal collection of persons for favors and privileges withheld from others in the same situation . . . is at war with a principle which this court is not authorized to surrender.” Id. With these concerns in mind, the board concludes the Legislature would not have intended to discriminate in the area of property tax hardship relief between a person who remained in a single location (dwelling) and one who moved to another location (dwelling) in the same municipality.

Therefore, it is proper, where there is ambiguity in the statute, to be guided by the Legislature’s purpose and intent to ensure that taxpayers who change dwellings within the same town between 1998 and a subsequent tax year in which Chapter 338 is in effect be eligible for the same rights as taxpayers who remain in the same dwelling.

Remand to DRA

Consequently, the board remands this appeal to the DRA for its determination of the Taxpayers’ 1999 Property Tax Hardship Relief based on the assessed value and tax liability of the property they owned as of the date of their Application (property located at 26 Rocky River).

The DRA shall review the file and make a determination within 30 days of the date of this order.

The Taxpayers shall, upon receipt of the DRA’s ruling, notify this board in writing whether it is still necessary to proceed with the appeal.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity

all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to William N. and Sandra L. Thibodeau, Taxpayers; and Kathleen J. Sher, Esq., Counsel for the Department of Revenue Administration.

Date: July 3, 2000

Lynn M. Wheeler, Clerk