

Barbara A. Kinney

v.

Department of Revenue Administration

Docket No.: 18060-99HR

DECISION

The "Taxpayer" appeals, pursuant to RSA 198:54, the department of revenue administration's ("DRA") determination of the Taxpayer's 1999 property tax hardship relief application. The Taxpayer has been granted leave to not attend the hearing. For the reasons stated below, the appeal is denied.

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 Taxpayer argued she was entitled to additional relief because, although her children's names are on the deed (one lives in Massachusetts and one lives in Florida), she is the sole owner and occupant.

The DRA argued the relief granted in the amount of \$16.52 was proper because Ms.

Kinney owns the homestead jointly with her son and daughter. Pursuant to RSA 198:51, V, the DRA adjusted the assessed value to reflect the percentage of ownership Ms. Kinney had in the Property, or 33-1/3%. The deed does not grant an intervening life estate to Ms. Kinney; thus, the Taxpayer's children are joint owners of the homestead and bear the rights and responsibilities of ownership.

Board's Rulings

The board finds the DRA's actions were neither unreasonable nor arbitrary and, therefore, sustains the DRA's adjustment of the Taxpayer's application.

The Taxpayer argues she owns the Property by herself, however, the deed supplied by the Taxpayer indicates she owns the Property with two other people as joint tenants with rights of survivorship. Joint tenancy refers to the situation in which two or more individuals own inseparable interests in a parcel of real estate, i.e., an individual does not own a particular part of a property but a proportionate share of the entire property. The ownership interest of each individual expires with that individual's demise and cannot be transferred through a will except in the case of the last survivor (the right of survivorship). In the instant case, the Taxpayer owns the Property with her son and daughter as joint tenants with rights of survivorship. Therefore, she is entitled to a one-third proportionate share of the relief for the Property. RSA 198:51, V.¹

¹ V. If a homestead is owned by 2 of more persons as joint tenants or tenants in common, and one or more of such joint owners do not principally reside at such homestead, hardship relief applies to the proportionate share

of the homestead value that reflects the ownership percentage of the claimant.
Only one claim may be filed for a single homestead.

The DRA's calculation allotting one-third of the relief to the Taxpayer was, therefore, proper.

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Barbara A. Kinney, Taxpayer; and Kathleen J. Sher, Esq., Counsel for the Department of Revenue Administration.

Date: August 17, 2000

Lynn M. Wheeler, Clerk

