

Native Spiritual Pastures

v.

Town of Dalton

Docket No.: 23402-08EX

DECISION

The board has reviewed the “Town’s” September 12, 2008 Motion for Summary Judgment and Request for Attorney’s Fees and Costs (the “Motion”) and the “Taxpayer’s” September 22, 2008 response (the “Objection”).¹ For the reasons that follow, the board grants summary judgment to the Town and dismisses the appeal, but denies the Town’s further request for attorney’s fees and costs.

The legal standards for ruling on a summary judgment motion are well established. A party is entitled to summary judgment if, based on the evidence presented, there is no genuine issue as to a material fact and the board finds the moving party is entitled to judgment as a matter of law. See, e.g., Adams v. Town of Durham, BTLA Docket No. 19125-00PT (May 9, 2003), citing RSA 491:8-a, N.E. Tel. & Tel. Co. v. City of Franklin, 141 N.H. 449, 451-52 (1996) and other authorities; and Tax 201.18(g).

¹ Each party attempted to file a further pleading in response to the Motion and the Objection, but the board has returned them because of non-compliance with Tax 201.18(d).

It is also clear the burden of proving entitlement to a property tax exemption rests with the Taxpayer, not the municipality. New Canaan Academy v. Town of Canaan, 122 N.H. 134, 138 (1982). In order to prevail, the taxpayer seeking the exemption must establish the Property meets each and every required element. As recently held in Appeal of City of Nashua, 155 N.H. 443, 445 (2007), the “plain language” of the statute, RSA 72:23, III,² requires the party seeking a religious exemption to prove the “Property” was directly owned, as well as used and occupied, by a religious denomination meeting all of the other statutory requirements.³ In Nashua, the exemption was denied because the supreme court concluded the occupancy and use requirements had not been met by the taxpayer for the properties under appeal. Id.

In this appeal, the board finds there can be no genuine dispute as to the material facts regarding ownership of the “Property” (56.23 acres of land with a dwelling and accessory buildings) and the Town was correct to deny the exemption as a matter of law. Consequently, summary judgment can and should be granted on this threshold issue.

The board makes these findings after an extensive review of the pleadings and documents submitted. The appeal was filed in the name of Native Spiritual Pastures

² RSA 72:23, III provides an exemption for:

Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state and the personal property used by them for the purposes for which they are established.

³ See also Alton Bay Camp Meeting Asso. v. Alton, 109 N.H. 44, 48-49 (1968) and E. Coast Conf. of the Evangelical Covenant Church of America v. Town of Swanzey, 146 N.H. 658, 663 (2001), both also cited in Nashua.

(“NSP”) by a Michele Rzepa on July 24, 2008, asserting that the Town improperly denied NSP’s request for a religious exemption under RSA 72:23, III. Attached to the appeal document is a copy of the Town’s denial, a letter dated June 20, 2008 addressed to “Mr. and Ms. Rzepa,” stating “[f]irst and most pivotally” a property eligible for a religious exemption must be “owned” by the religious denomination seeking the exemption.

As set forth in the Motion, title to the Property is held in the name of Michele L. Rzepa, based on a quitclaim deed recorded January 18, 2006 at the Coos County Registry of Deeds transferring the Property from William D. Rzepa to her. (Motion at Tab B – the “January 18, 2006 Deed”.) The Taxpayer does not dispute the Town’s assertion that no subsequent recorded deed was found at the Coos County Registry and no listing of NSP exists for any property at any time in the Town’s assessment or other records.

The Objection asserts that: 1) the Town’s denial was not solely based on the issue of ownership (Objection at Tab B); 2) the Town’s application for seeking a religious exemption requested information not necessary for determining eligibility (Objection at Tab A); 3) NSP is a registered trade name with the New Hampshire Secretary of State (Objection at Tab E); and 4) Michele Rzepa had drawn up a quitclaim deed dated March 30, 2008 transferring the Property to NSP (Objection at Tab F – “March 30, 2008 Unrecorded Deed”).

The board need not address the Objection’s first two assertions as the sole issue before the board is whether the ownership of the Property was held by the entity seeking the religious exemption as of the assessment date. Even construing the facts most favorably to the Taxpayer, we find the Property was owned by Michele L. Rzepa as of April 1, 2008 and thus does not meet one of the three primary provisions of RSA 72:23,

III, quoted above, that the Property must be “owned, used and occupied” for religious purposes. The January 18, 2006 Deed is the most recent recorded deed and controlled the title of the Property as of April 1, 2008, the assessment date for when the religious exemption was sought.

The board finds the Certificate of Registered Trade Name for NSP issued by the secretary of state is not probative; it simply fulfills one requirement to do business under a trade name and has no bearing on the title or the ownership of the Property. In other words, the fact Michele Rzepa obtained the registration of the trade name NSP does not change the ownership of the Property from her to NSP.

The board did consider the March 30, 2008 Unrecorded Deed but finds it does not establish any ownership to the Property by NSP as of April 1, 2008 for several reasons. First, for a transfer of title to be binding and operative as to ownership on third parties, it must be recorded. “No deed of bargain and sale, mortgage nor other conveyance of real estate,... shall be valid to hold the same against any person but the grantor and his heirs only, unless such deed... be acknowledged and recorded, according to the provisions of this chapter.” RSA 477:7. Thus, the Town was not bound to recognize the purported transfer between Rzepa and NSP. Second, the March 30, 2008 Unrecorded Deed has a reverter clause that NSP “has the right to have and to hold said property until termination of said business at which time said premise shall revert back to grantor [Michele Rzepa].” This proposed reverter provision coupled with the registered trade name of NSP to Michele Rzepa would leave the discretion of the length of ownership under NSP in the March 30, 2008 Unrecorded Deed solely to the discretion of Michele Rzepa. Third (but not pivotal to the board’s findings) the March 30, 2008 Unrecorded Deed was witnessed

and ostensibly notarized by a Karen Sylvester. No notary seal or stamp with expiration date is contained on the March 30, 2008 Unrecorded Deed as is required by RSA 456-B:3, III for notarial acts to be effective. Further, the board inquired from the Secretary of State's office whether Karen Sylvester was a notary public in New Hampshire and received the attached response that she was not. Taken together, the board finds the March 30, 2008 Unrecorded Deed did not effectuate an actual transfer of ownership to NSP as of April 1, 2008 that should be legally recognized.

In summary, the board finds a sufficient basis exists for granting the summary judgment based on the ownership requirement in the statute and therefore dismisses the appeal. In deciding this single issue, the board has not ruled on whether the Property can meet all of the other requirements for an exemption if one is applied for in a future year.

The Motion's request for attorney's fees and costs based on Tax 201.39 raises a closer question than the ownership issue, but is denied. Although the board finds the Taxpayer's arguments on the ownership issue to be without merit, they appear to be the result of mistaken beliefs and genuine disagreements with the Town by a person who has no ostensible legal training or counsel. Based on the record presented, the board is unable to conclude the Taxpayer engaged in conduct that satisfies the 'frivolous' requirement; therefore, in the interests of justice, the board declines to make an award of attorney's fees and costs to the Town. Cf. In the Matter of Ramadan & Ramadan, 153 N.H. 226, 233 (2006).

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(g). 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

Albert F. Shamash, Esq., Member

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CERTIFICATION

I hereby certify copies of the foregoing Decision have been mailed this date, postage prepaid, to: Michele Rzepa, Native Spiritual Pastures, 486 Harriman Road, Dalton, NH 03598; H. Bernard Waugh, Jr., Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766; and Chairman, Board of Selectmen, Town of Dalton, 741 Dalton Road, Dalton, NH 03598.

Dated: 10/10/08

Anne M. Stelmach, Clerk