

NO. A07-0468

State of Minnesota
In Supreme Court

Under the Rainbow Child Care Center, Inc., Petitioner,
Respondent,

v.

County of Goodhue, Respondent,
Relator.

RELATOR'S REPLY BRIEF

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ARGUMENT

I. INTRODUCTION

Goodhue County replies to the Respondent's Brief as noted below.

Goodhue County's reply to the Under the Rainbow Child Care Center Inc. (hereinafter Center) Statement of Facts is contained within the Argument.

II. STANDARD OF REVIEW

This Court must review Tax Court decisions pursuant to Minn. Stat. Sec. 271.10 "on the ground that the order of the Tax Court was not justified by the evidence or was not in conformity with the law or that the Tax Court committed any other error of law."

The Center, in its Respondent's Brief, proposes to supplant this statutory standard of review with the standard of review for cases appealed from the District Court or cases appealed from the Tax Court after an Order stemming from a summary judgment motion. This is clearly incorrect. Goodhue County contends that the statute and this Court have set up a requirement that the Tax Court base its decision on credible and sufficient evidence which can support appellate scrutiny using a reasonableness standard.

The Center cites to a number of cases regarding standard of review. Quoting American Assn. of Cereal Chemists v. County of Dakota, 454 N.W. 2d 912, 914 (Minn. 1990) the Supreme Court held that the Court's role in the review of Tax Court decisions is a limited one. The Tax Court's ruling is to be upheld "where sufficient evidence exists for the tax court to reasonably reach the

conclusion it did." See Green Giant Co. v. Commissioner of Revenue, 534 N.W.2d 710, 711 (Minn. 1995).

The Center cites to Wybierala v. Commissioner of Revenue, 587 N.W. 2d 832, 836 (Minn. 1999) to stand for the proposition that this Court will reverse the Tax Court's findings if "upon reviewing the entire evidence, it is left with a firm conviction that a mistake has been made." The Wybierala case involved an owner of two waste management corporations who sought review of an order assessing personal liability against him for sales and use taxes, interest and penalties. This Court did address the standard of review. However, this Court also addressed the burden of proof on the taxpayer to show that the Commissioner of Revenue's assessment is incorrect or invalid. The Court cited to F-D Oil Co.v. Commissioner of Revenue, 560 N.W. 2d 701,704 (Minn. 1997), stating that "the burden of demonstrating the incorrectness or invalidity of the commissioner's assessments is on the taxpayer.

Goodhue County contends that Wybierala stands for the proposition that this Court must review all the evidence to determine if it is sufficient.

Further, the taxpayer bears the burden of poof.

The Center cites to Manthey v. Commissioner of Revenue, 468 N.W. 2d 548, 550 (Minn. 1991) to stand for the proposition that this Court should not substitute its judgment for that of the tax court in questions of fact, leaving factual findings undisturbed where the evidence, as a whole supports the decision." Manthey and Dreyling v. Commissioner of Revenue, 711 N.W. 2d

491,494 (Minn. 2006) involved a determination of domicile for the purpose of resident income taxation. In the present case before the Court, the factual findings are erroneous and the underlying evidence as a whole contradicts the decision.

Goodhue County contends that Manthey and Dreyling stand for the proposition that this Court must view the evidence as a whole. They further put the burden of proof on the taxpayer to produce evidence which the Tax Court and a reviewing court can evaluate, weigh, and independently substantiate.

The Center cites to Minnesota Public Interest Research Group v. White Bear Road & Gun Club, 257 N.W. 2d 762 (Minn. 1977) to expand on its discussion regarding standard of review in Tax Court cases. Minnesota Public Interest Research Group involved an appeal to the Supreme Court from a decision of the Washington County District Court. This cite is clearly irrelevant for purposes of this matter. Goodhue County contends that the use of the "clearly erroneous" standard does not apply in a Tax Court action where appeal rights are set by statute.

The Center also cites to Skyline Preservation Foundation v. County of Polk, 621 N.W. 2d 727 (Minn. 2001). Skyline stemmed from a Tax Court case that involved a summary judgment motion where the Court found in favor of the County. This Court applied the statutory standard of review found at Minn. Stat. §271.10 and also the standard for summary judgment review to determine whether there were any genuine issues of material fact and whether the lower court erred in

its application of law. In Skyline neither party argued that any facts were in dispute, so this Court reviewed only for error in the Tax Court application of the law.

Goodhue County did not stipulate to any factual matters in the case at bar. There was no summary judgment motion made or heard. The Center cannot, by this response, recreate history and claim that there are no issues of fact or law. Goodhue County contends that there was not sufficient evidence on each particular issue, or in the record overall, to support the conclusion of law that the Center is exempt from property tax.

The standard of review cited in Goodhue County's Relator's Brief is correct. The Center cannot ignore the statute, the case law, and use either the standard of appeal from the District Court or from a summary judgment order to bolster its case.

The Tax Court's decision to order final judgment was not justified by the evidence, was not in conformity with the law, errors of law were committed by the Tax Court, and its decision should be reversed by this Court.

III. BURDEN OF PROOF

Goodhue County argued in its Relator's Brief that the burden of proof had not been met by the Center. Goodhue County notes that the Center does not highlight this issue with the importance that Goodhue County contends that it deserves.

Minnesota Rules of Evidence Rule 301, states as follows:

"In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with the evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast."

The burden of proof encompasses two concepts. First, the burden of going forward with the evidence, i.e. producing sufficient evidence to the trier of fact. Second, the burden of persuasion, i.e. the burden of persuading the trier of fact that an alleged fact is true. Goodhue County contended in its Relator's Brief, and in this Reply Brief, that the Center did not meet its burden of proof, both in going forward with the evidence and of persuasion.

Goodhue County draws the attention of this Court to the fact that a total of six documentary exhibits were introduced by the Center at trial. Other than the Articles of Incorporation, all exhibits were one page and were prepared for litigation. Goodhue County, after review of the Center's Respondent's Brief of 28 pages notes that only two footnotes out of 47 refer to exhibits. The rest references trial testimony. Goodhue County does not argue that trial testimony is not relevant or admissible. However, in matters of this complexity one would expect a more complete and robust record made by the Center.

The granting of an exemption from taxation, in Goodhue County's view, is an extraordinary exception from tax that is accorded by Constitution and statute. See ILHC of Eagan LLC v. County of Dakota, 693 N.W. 2d 412 (Minn. 2005). The Center, at trial, and now at appeal, appears to argue that to be awarded this extraordinary exception they need not bring in an Internal Revenue Service Determination Letter, a Minnesota Department of Revenue Certificate of Exempt Status, an Attorney General Annual Report, tax returns for the applicable assessment years, a financial statement, a certified financial statement, books and records in original form, or documentation of donations. Instead, the Center stated to the Tax Court, and now this Court, that the conclusory testimony of Michelle Finholdt, James Welsch, Patrick Gannon, and the Articles of Incorporation are enough. They have now progressed to making the argument that they can use Goodhue County's witnesses to bolster their burden of going forward with the evidence.

Goodhue County contends that this is contrary to the Minnesota Rules of Evidence and the law. The Center had the services on its Board of Directors of Mr. Welsch, a CPA; a professional tax preparer; and was able to obtain the services of Mr. Gannon. The Center is responsible for its own case, and must prove, the elements of its case. The question remains why the Center did not choose to substantiate its case with credible documentation to meet the North Star factors. See North Star Research Institute v. County of Hennepin, 236 N.W. 2d 754 (Minn. 1975).

IV. NORTH STAR FACTORS

A. Factor 1

The Center states that the Tax Court found that it is organized as a nonprofit organization and provides no material reward to its board members.

Goodhue County noted in its Relator's Brief that in 2003 Michelle Finholdt was compensated \$43,389 as the Chairperson of the Board of directors; \$23,172 in 2004; and \$29,380 in 2005 based on the Center's tax returns.(A-47, 71, 96, Relator's Brief)

The Center stated that the Tax Court found that it has not posted a profit during the taxable years of 2003, 2004 and 2005.

The Center provided no documentation in its case to show whether it posted a profit or loss in the relevant years. Goodhue County would contend that conclusory statements from James Welsch do not satisfy the strict burden of proof. There was no discussion in the Center's case of revenues, expenses, profit or loss other than a conclusory statement of no "profit". Mr. Welsch did not define within his testimony "revenue" "expenses" "profit" or "loss". Goodhue County contends that there are many concepts that one can use in regard to accounting, for example: gross profit, retained earnings, operating income, net income, revenue, operating expenses, expenses, loss. None of these concepts were discussed by the Center, none of these concepts were presented to the Court in regard to the Center's operations, and no documentation was provided. The tax returns Form

990 introduced by the County refer to total revenue, total expenses, and excess or deficit for the year. (A-44, Relator's Brief)

The Center now argues that the County claims that the Tax Court should have used evidence of a different type and/or should have relied only on evidence provided by the Center. The County contends that the Center did not meet its burden of proof of going forward with the evidence and offered no credible evidence that was sufficient to support the Tax Court conclusions of law. In regard to the documentation introduced by the County, the County argues that these documents contradict rather than support the Center's position. For example, the Form 990 forms do not support the Center's testimony on chairperson salary, bad debts, and donations. It is improper for the Center to argue and infer on the basis of those documents when there were no questions asked and no foundation laid by the Center. To support that statement, the County asks that this Court look to the testimony of James Welsch (Tr. at 141-154). The attorney for the Center asked Mr. Welsch no substantive questions about the tax returns on direct or when they were introduced. (Tr. at 154).

The Center states that its executive director received a salary which was average for the industry and was not tied to any performance goals. Goodhue County contends that the salary of Ms. Finholdt was received as Chairperson of the Board as noted above.

The Center claims that the sale of the South Service Drive house did not constitute a material advantage to Michelle Finholdt. On cross examination Ms. Finholdt was asked the following:

Q. When you were located at the vo-tech, was that at approximately the same time you had the location at South Service Drive?

A. The vo-tech was started in 1994, and the South Service Drive, our second location, was established in June of 1996.

Q. Then you incorporated in 1995?

A. Correct.

Q. So you were still at least at the vo-tech location at that point?

A. Correct.

Q. Since that time you have moved to your new facility?

A. Correct.

Q. Did you sell the facility on South Service Drive?

A. We were leasing space from that location. So we pulled out of our lease at that point.

Q. Somebody else owned the building?

A. Correct. (Tr. at 21-22)

There was no redirect testimony. (Tr. at 34)

Later in the day, the County called Ms. Finholdt for testimony. During that testimony she stated that she owned the South Service Drive location personally, rented it to the Center as a "triple net lease" and sold it within seven

years for a profit of \$130,000-\$140,000. The Center claims that this information is irrelevant for purposes of this appeal. Goodhue County points to the transaction for two reasons: (1) it bears on the credibility of one of the three witnesses for the Center; and (2) it establishes that Chairperson of the Center benefited from her salary as Chairperson and personally received economic gain based on the triple net lease and subsequent sale to the wife of a Board Member.

B. Factor 2

The County stated in its Relator's Brief that no credible documentation was produced to show the level of donations to the Center. The Center's federal Form 990 tax returns contradict Trial Exhibit 2 in regard to donated services for the assessment years in question. (A-29, Relator's Brief)

The Center continues to claim that there are "public contributions" made through child care assistance payments. The Center equates these payments to "charity". In its Relator's Brief, Goodhue County discussed the payment for services for child care at length. Child care assistance payments are noted on the voucher as "payment for services" which the Center signs and submits. The family is required to make a co-pay. If that co-pay is not met, the child care assistance payments end. The Center points to government programs administered in Minnesota, Missouri, and Maryland. At no point does the Center analyze the type of payments made. Is there a co-pay? Must it be made? If the individual does not make the co-payment are the payments terminated? Did the federal government build the housing structure itself? There is no support in statute or

case law for broadening the legal precedent as the Tax Court proposes to establish by its finding that public child care payments for services equate to charitable donations.

The Center includes the Prairie Island Indian Community payments for child care services with child care assistance payments from county government. The Center produced no witnesses from the Prairie Island Indian Community to testify to the nature of these payments. Goodhue County argues that these are payments for day care services as verified in the testimony of Michelle Finholdt.

C. Factor 4

The Center bases its argument for Factor 4 partially on Duane Walbridge, a retired employee of the Goodhue County Assessor's office called by the County. Mr. Walbridge testified that he did not do an application evaluation of the "purely public charity" issue because he did not have the information that he needed. (Tr. at 98). Mr. Walbridge stated that he would not be qualified to give an answer on this topic and stated: "Well, today we are here in this courtroom to have the Honorable Judge make a decision regarding this issue." (Tr. at 100).

On redirect Mr. Walbridge was asked:

Q. For most of the time you were dealing with it you were dealing with the seminary of learning issue?

A. That's correct.

Q. Did anybody come to you and say they wanted to be exempt as a purely public charity?

A. No.

...

Q. Because of that you never received any information from them regarding what would support that, correct?

A. That's correct. (Tr. at 108-113).

In conclusion, Mr. Walbridge evaluated the Center's application for exemption on the "seminary of learning" issue and did not review it on the issue of "purely public charity." He reiterates throughout his testimony that he was not provided with the appropriate documents for review.

The Center contends that Duane Walbridge testified to seeing an IRS Determination Letter. (Tr. at 111). The purported document was not marked or offered as evidence by the Center, no foundation was laid for such document and Mr. Walbridge was not questioned about the contents of the document.

The Center is just one of many Centers and home based daycares in Goodhue County. There was no showing that the Center was necessary to service Spanish speaking families, infants, or any other category of child. (Tr. At 83-84).

D. Factor 5

The Center contends that a witness called by Goodhue County, Connie Minnick, bolsters its argument in regard to Factor 5. Ms. Minnick is the Goodhue County Case Administrator of the Child Care Assistance Program. (Tr at

114, 124-128). Ms. Minnick was not qualified as an expert witness. Ms. Minnick testified that she is not a policy maker. Goodhue County witness Ms. Minnick does not support the Center's claims. The Center's attorney admitted to the Court that he could find no one in Goodhue County to address the lessening of burdens of government issue (Tr. At 65-66)

E. Factor 6

Goodhue County refers this Court to its Relator's Brief on this issue.

F. Factor 3

The Center seeks to have the Supreme Court determine this Factor de novo. In making the statement in the Respondent's Brief that the Center's rates are average with everyone else in the area, the Center contradicts the Tax Court's findings that the rates are below market. Goodhue County argued in its Relator's Brief that the rates were generally at or above market level. The record contains no credible information concerning reduced rates, writing off several thousand dollars of child care payments, or bad debts (which should be reflected on the Center's tax returns). For example at Part IV, Line 47a, Form 990 a line is provided for "doubtful accounts" as a deduction from accounts receivable. In 2003, 2004 and 2005 it is not filled in. (A-44 et seq, Relator's Brief)

CONCLUSION

The Center attempts to use Goodhue County and its witnesses to bolster its case. Those Goodhue County witnesses were Duane Walbridge, the retired Senior Appraiser (Tr. at 92) and Connie Minnick, Case Administrator of

the Child Care Assistance Program (Tr. At 99-101; Tr. 114, 124-128). These witnesses were called by the County as fact witnesses, they were not qualified as expert witnesses, and are not in policy making positions.

In conclusion, the standard of review is set out in statute. The burden of going forward with the evidence is on the Center. The Statement of Facts of the Center is not supported by the evidence.

Goodhue County respectfully requests that this Court apply the North Star Factors to hold that the evidence in this case does not support the decision of the Tax Court and that it should be overturned.

Respectfully Submitted,

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STATE OF MINNESOTA

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CERTIFICATION OF BRIEF LENGTH

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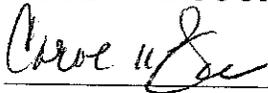
County of Goodhue, Respondent,

Relator.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 3,367 words. This brief was prepared using Microsoft Word 2002.

Dated: May 10, 2007

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