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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Timothy B. Smith, Petitioner, vs. Charleston County Assessor, Respondent.	)	Docket No. 22-ALJ-17-0028-CC **ORDER DENYING MOTION TO RECONSIDER**

APPEARANCES: For Petitioners: Nicholas C.C. Stewart, Esquire
Giampiero Diminich, Esquire
Felix Chisolm Pelzer, Jr., Esquire

For Respondent: Bernard E. Ferrara, Jr., Esquire
Kevin Michael DeAntonio, Esquire

STATEMENT OF THE CASE

This matter comes before the Administrative Law Court (the ALC or the Court) following a request for a contested case hearing pursuant to section 12-60-2540 of the South Carolina Code (2014) and section 1-23-600(B) of the South Carolina Code (Supp. 2021). Timothy B. Smith (Petitioner or Taxpayer) challenges the Charleston County Assessor's (Respondent's or the Assessor's) denial of a 4% legal residence exemption for properties located at 2514 and 2524 Raven Drive, Sullivan's Island, South Carolina 29482 (the 2514 and 2524 Parcels) for the relevant tax year. Respondent denied the exemption because Petitioner was already receiving the 4% exemption on a property adjacent to, specifically directly between, the 2514 and 2524 Parcels located at 2520 Raven Drive, Sullivan's Island, South Carolina 29482 (the 2520 Parcel). The Charleston County Board of Assessment Appeals (the Board) affirmed the Assessor's action.

Petitioner filed a request for a contested case hearing dated January 20, 2022. The Assessor filed a motion for judgment on the pleadings or alternatively, for summary judgment. Petitioner filed a cross motion for summary judgment on May 18, 2022. A hearing on the motions was held on May 26, 2022. At the hearing, the parties stipulated to certain facts, which were entered in the record.

On June 13, 2022, the Court granted summary judgment in favor the Assessor. On June 23, 2022, Taxpayer served a motion to reconsider upon the Assessor, and the motion was subsequently filed on June 27, 2022.[1]

SCALC Rule 29(D)/Rule 59(e), SCRCP

SCALC Rule 29(D) permits a party to "move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief in Rule 59, SCRCP." Rule 59(e), SCRCP, motions may be used not only to request that the court alter or amend a judgment, but also to seek reconsideration of issues or arguments. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Parties are usually permitted to ask the court to reconsider its decision "even if it means rehashing all or part of an argument previously presented." *Id.* at 21, 602 S.E.2d at 779. A party may file a Rule 59 motion "when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780.

DISCUSSION

Taxpayer makes the following arguments in his motion to reconsider: (1) the Court's order rests on the assumption that section 12-43-220 of the South Carolina Code (2014 & Supp. 2021)[2] is a tax exemption statute which, Taxpayer claims, is not accurate; (2) the Assessor's use of discretion to control tax map numbers and parcel identifiers is a violation of the Equal Protection Clause and amounts to a government taking; and (3) the Court has misconstrued section 12-43-220(c) to require that this section contemplates a 4% tax ratio only on a single tract or parcel of land; and (4) the Court misstates that the South Carolina Constitution does not provide a broader exemption than the exemption authorized by statute because, again, section 12-43-220 is not an exemption. The Court reaffirms is prior ruling in toto but issues this order to respond to the specific

[1] Taxpayer failed to include the filing fee with his motion; thus, the motion was not deemed filed until Taxpayer provided the proper fee. *See* SCALC Rule 71(D) ("A motion will not be deemed filed until the fee is paid.").

[2] As noted in the Court's June 13, 2022 order, section 12-43-220 has been amended several times over the recent past. However, because the specific portions of this section that the Court analyzes have not changed during the applicable period, the Court cites the current version of the Code for simplicity.

arguments raised by Taxpayer in his motion to reconsider. Each of these arguments will be addressed below.

I. Construction of Section 12-43-220 as an Exemption Statute

Taxpayer's argument that section 12-43-220 is not an exemption statute has been previously considered by South Carolina courts. *See, e.g.*, *Ford v. Beaufort Cnty. Assessor*, 398 S.C. 508, 515-16, 730 S.E.2d 335, 339-40 (Ct. App. 2012).[3] In *Ford*, the South Carolina Court of Appeals stated that:

> [Appellants] complain the ALC erroneously treated the four-percent assessment ratio as an exemption or deduction and construed it against them based on this allegedly incorrect characterization. They assert that the ALC did not cite any authority for the proposition that property tax ratios are characterized as exemptions or deductions or that any ambiguities in a tax classification statute should be construed against the taxpayer.

398 S.C. at 515, 730 S.E.2d at 339. The Court notes that this argument is virtually identical to the one made by Taxpayer here.

Notably, the South Carolina Court of Appeals rejected this argument. It stated "[t]he South Carolina Supreme Court has . . . held that section 12-43-220 is a tax exemption statute." *Id.* (citing *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). Taxpayer's first argument regarding the Court's construction of section 12-43-220 as an exemption statute is therefore without merit.[4]

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[3] Taxpayer overemphasizes the extent to which the principle of statutory construction of tax exemption statutes underlays the Court's decision. The Court additionally notes Taxpayer *frequently* referred to the 4% legal residence exemption as an *exemption* during the course of the proceedings before the Court. *See, e.g.*, Pet'r's Prehearing Statement at 3 (stating the following issue was before the Court: "Was the Board Decision erroneous to deny *the legal residence (4%) exemption* for the Properties?" (emphasis added)); Pet'r's Opp'n To Mot. For J. On The Pleadings And/Or For Sum. J. at 1 ("Petitioner asserts the a plain reading of the South Carolina Constitution entitles him to the legal residence *(4%) exemption* . . . ." (emphasis added)); Pet'r's Mot. For Sum. J. at 1-2 ("Petitioner is entitled to claim the *legal residence (4%) exemption* . . . ." (emphasis added)).

[4] *Ford* also disposes of Taxpayer's fourth argument that the Court erred in finding that the South Carolina Constitution does not provide a broader exemption than does section 12-43-220. This argument rests on the incorrect argument that section 12-43-220 is not an exemption statute.

II. Equal Protection and Governmental Taking

Taxpayer asserts that many counties and municipalities allow property owners to combine lots into a single tax map identification number with minimal hurdles but that the Town of Sullivan's Island does not. He further argues that Sullivan's Island has not demonstrated it has a rational basis to do so. Next, Taxpayer argues that because Sullivan's Island will not permit consolidation, the Assessor lacks the discretion to disallow a 4% ratio on a lots or parcels adjacent to a legal residence. Petitioner asks the rhetorical question: "How is it fair that a citizen of Georgetown County can easily combine his lots and obtain the four (4) percent classification, but because a taxpayer lives on Sullivan's Island, he cannot take advantage of his constitutional classification right?" Petitioner asserts that the actions of the Town of Sullivan's Island/Charleston violate his equal protection rights and amount to a governmental taking and asks the Court to order discovery on whether Charleston County or its municipalities have imposed arbitrary or unconstitutional restrictions on the combination of lots for tax purposes.

However, Taxpayer's arguments fail for several reasons. Taxpayer has not previously challenged the validity of the Sullivan's Island ordinance or the application of the statutory taxation framework on Equal Protection Clause[5] or Takings Clause grounds and cannot do so now. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (stating a party cannot use a Rule 59(e), SCRCP, motion to present an issue the party could have raised prior to judgment but did not); *Anderson Mem'l Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) ("A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.").

Additionally, to the extent that Taxpayer makes a facial challenge to the validity of Sullivan's Island's ordinance, this Court is not the proper forum for such challenges. *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 108, 705 S.E.2d 28, 38 (2011) ("It is well settled in this State that ALCs, as part of the executive branch, are without power to pass on the constitutional validity of a statute or regulation."). *See generally Dorman v. Dep't of Health & Env't Control*, 350 S.C. 159, 171, 565 S.E.2d 119, 126 (Ct. App. 2002) ("While it is true that ALJs

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[5] The Court does not construe Petitioner's statements that it is unfair for a resident of a town other than Sullivan's to be able to consolidate lots and thereby obtain a 4% tax ratio when a Sullivan's Island resident cannot do so as articulating a challenge based upon equal protection grounds.

cannot rule on a facial challenge to the constitutionality of a regulation or statute, ALJs can rule on whether a law as applied violates constitutional rights.").

Moreover, to the extent that Petitioner's argument can be construed as raising a challenge to the constitutionality of a statute on an "as applied basis," it does not appear Petitioner articulated an equal protection claim. The hallmark of "an equal protection claim is a showing that similarly situated persons receive disparate treatment." *Bodman v. State*, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013). There is no allegation that Sullivan's Island has applied its zoning ordinance in a disparate manner.[6] Similarly, there is no allegation that the Assessor has applied section 12-43-220 in a disparate manner. Petitioner seems to argue instead that a uniform application of section 12-43-220 by the Assessor produces unfair results because Sullivan's Island has a zoning ordinance which differs from that of other municipalities in Charleston County or elsewhere in South Carolina. The Court recognizes that the situation may seem unfair to Petitioner, but the situation does not implicate equal protection.

Finally, any challenge to Sullivan's Island's ordinance would of necessity have to be made against the Town of Sullivan's Island, who is not a party to this proceeding.

III. Construction of Section 12-43-220 as Contemplating Only a Single Tract or Parcel

Taxpayer argues primarily that the Court has grammatically misconstrued section 12-43-220 and the Court's construction of this statute conflicts with certain South Carolina Regulations. Taxpayer asserts that the Court cites irrelevant law and "blatantly misstates the law that the four (4) percent assessment only applies to a single dwelling."

After considering the arguments set forth in Taxpayer's motion to reconsider, the Court reaffirms its prior construction of section 12-43-220. Taxpayer contends that section 12-43-220(c)'s use of plural verb form "are" when discussing the property to be afforded the preferred tax rate means that the statute contemplates that the legal residence and not more than five acres contiguous thereto should be both be given the four percent tax rate. The full language of the relevant portion of this code section is set forth below:

> The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, *and additional dwellings located on the*

[6] Indeed, neither party has ever even identified the allegedly offensive Sullivan's Island ordinance or provided any evidence of its contents to the Court.

> *same property and occupied by immediate family members of the owner of the interest*, are taxed on an assessment equal to four percent of the fair market value of the property.

Id. (emphasis added). Taxpayer's argument omits consideration of the language italicized above. In the Court's opinion, the plural verb form "are" refers not to the "legal residence" *and* "not more than five acres contiguous thereto" but instead to "the legal residence and not more than five acres contiguous thereto" *and* any "additional dwellings" located thereon which satisfies the other statutory criteria.

The Court also rejects Taxpayer's argument that the Court's construction of section 12-43-220 contradicts regulations 117-1740.2(2)(C) and 117-1800.1 of the South Carolina Code (2012). Regulation 117-1740.2(2)(c) defines the term "parcel" as used by the Assessor in determining when property may be separately taxed. It grants the Assessor discretion to establish a unit of land which is capable of being separately taxed. *Id.* Taxpayer argues that because the Assessor is permitted to designate as a "parcel" a tract which was conveyed by multiple instruments, created by survey, or previously consisted of several lots or fractions of lots, the definition of "legal residence and not more than five acres contiguous thereto," as used in 12-43-220(c), must include multiple contiguous parcels.

The word "parcel," however, does not appear in section 12-43-220(c), and Taxpayer misconstrues the regulation.[7] The regulation governs the process by which the Assessor initially determines which tracts of land are subject to individual taxation. Regulation 117-1740.2 is no longer relevant once this determination is made by the Assessor.

In this case, the Assessor has long ago made the determination that the 2514, 2520, and 2524 Parcels are separate taxable parcels. They all have different addresses and different tax map numbers. Taxpayer has not challenged this determination but instead seeks preferential tax treatment for the 2514, 2520, and 2524 Parcels despite the long-standing determination by the Assessor that the three parcels are separate units for purposes of taxation.

Additionally, and alternatively, the Court notes that regulation 117-1740.2(2)(C) specifies that a parcel of land for tax purposes is a contiguous area of land "under one ownership."

[7] To the extent that Petitioner's argument rests on the use of the word "parcel" in the Court's prior order, the Court clarifies that it used the word parcel in a generic sense and did not intend to refer to a specific statutory or regulatory definition.

Therefore, even if Taxpayer's argument regarding the Court's construction of this regulation were correct, the 2520 and 2514 Parcels could not be considered part of a single tract because they are not land under "one ownership." The 2514 Parcel is owned by an LLC. The 2520 Parcel is owned by Taxpayer individually. These two tracts are not under one ownership. Thus, regulation 117-1740.2(2)(c) provides an additional and alternative ground for denying Taxpayer's motion for summary judgment and granting Assessor's motion for summary judgment, which the Court adopts in the alternative.

Nor does regulation 117-1800 change the Court's prior conclusion that section 12-43-220(c)(2)(i) supports the Court's ruling that the 4% tax ratio is only available on a single tract. Taxpayer contends that regulation 117-1800 undercuts the Court's conclusion that an owner-occupant must have actually owned and occupied the residence as his or her legal residence and been domiciled at the address for some period during the applicable tax year.

Regulation 117-1800 states the following:

> Qualification Requirements. The property must be occupied by the owner as his legal residence and the property and the owners of the property must meet the requirements of [s]ection 12-43-220(c) of the South Carolina Code of Laws. *The legal residence includes not more than five acres contiguous to the actual residence owned totally or in part in fee, or by life estate, but shall not include any portion which is not owned and occupied for residential purposes.* If the residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the four percent assessment ratio described in [c]ode [s]ection 12-43-220(c) applies if the trustee certifies to the assessor that the property is occupied by the income beneficiary of the trust.

S.C. Code Ann. Regs. 117-1800.1 (emphasis added). As the Court understands Taxpayer's argument, Taxpayer specifically argues that because the actual residence as used in this regulation is the location where a taxpayer is domiciled and the regulation permits favored tax treatment for up to five acres in addition to the actual residence, then a taxpayer does not have to actually reside on all of the property for which preferred tax treatment is sought.

The Court rejects this construction of the regulation because it conflicts with the language of section 12-43-220(c)(2)(i). This section provides the following:

> To qualify for the special property tax assessment ratio allowed by this item, *the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at*

> *that address for some period during the applicable tax year.* A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to [s]ection 12-37-251 for the entire year, and for the homestead exemption under [s]ection 12-37-250, if otherwise eligible, for the entire year.

Id. (emphasis added). The requirement that a taxpayer actually reside at the residence and been domiciled there for some part of the year is an express statutory requirement. The Court declines to interpret the regulation in a manner that alters a statute. *See McNickel's Inc. v. S.C. Dep't of Revenue,* 331 S.C. 629, 634, 503 S.E.2d 723, 725 (1998) (stating a regulation cannot alter or add to a statute).

Taxpayer next takes issue with the Court's conclusion that the requirement that, to qualify for the preferred ratio, a taxpayer must provide proof of registration of vehicles at that address supports the conclusion that section 12-43-220 does not permit the 4% ratio to apply to more than one address. He argues that the Court's conclusion is flawed because Taxpayer cannot combine lots because of an arbitrary ordinance enacted by Sullivan's Island.

The Court cannot accept this argument. The content of the ordinance is irrelevant to the statutory construction of section 12-43-220(c). No municipal ordinance, whatever it may say or do, can alter or change the operation of a statute. *See generally McNickel's Inc.,* 331 S.C. at634, 503 S.E.2d at 725 (stating a regulation cannot alter or add to a statute); *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 217, 863 S.E.2d 456, 462 (2021) ("Local governments derive their police powers from the state. The state has granted local governments broad powers to enact ordinances respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities. This is in recognition that more stringent regulation often is needed in cities than in the state as a whole. *However, the grant of power is given to local governments with the proviso that the local law not conflict with state law.* (internal citations and quotation marks omitted by court) (quoting *City of North Charleston v. Harper*, 306 S.C. 153, 156–57, 410 S.E.2d 569, 571 (1991))); *Town of Hilton Head Island v. Coal. of Expressway Opponents*, 307 S.C. 449, 456, 415 S.E.2d 801, 805 (1992) ("When a municipality enacts an ordinance which conflicts with state law, the ordinance is invalid."); *Hosp. Ass'n of S.C., Inc. v. Cnty. of Charleston*, 320 S.C. 219, 229, 464 S.E.2d 113, 119 (1995) ("The ordinances do *not attempt to change or circumvent any of the requirements of the State statutes*, and nothing in

these statutes prohibits the municipalities from imposing an additional and separate charge on accommodations rentals or food and beverage sales." (emphasis added)). Additionally, as discussed above, the Court cannot address Taxpayer's constitutional arguments.

Finally, Taxpayer argues that the Court glosses over the definition of "property" as used in section 12-37-10 of the South Carolina Code (2014), ignoring the duty to construe in favor of the taxpayer. This argument lacks merit. There is no duty to construe statutes in favor of the taxpayer as Taxpayer is indeed attempting to invoke a tax exemption.[8]

For the reasons stated above, Taxpayer's motion to reconsider is hereby **DENIED**.

AND IT IS SO ORDERED.

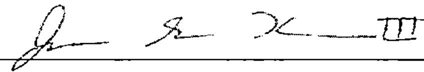
Robert L. Reibold
Administrative Law Judge

June 30, 2022
Columbia, South Carolina

[8] Taxpayer's argument relies in part on the Court's statement in its prior order that section 12-37-10 is itself ambiguous with respect to use of singular or plural terms. Taxpayer's argument takes this quotation out of context. The Court's reference to ambiguity in section 12-37-10 was meant to address Taxpayer's previous argument that, because the definition of property in this section was plural, then multiple lots may receive preferred tax treatment under section 12-43-220. The Court intended to convey that it was not clear that section 12-37-10 required the term "property" to be construed in the plural sense.

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

June 30, 2022
Columbia, South Carolina