

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2019-001867

Denis Yeo,

Appellant,

v.

Lexington County Assessor

Respondent.

FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authoritiesii

Argument

- 1. RESPONDENT ERRS IN FOLLOWING THE ERROR OF THE GUTHRIE
DECISION AND THE DECISION OF THE ALJ IN THE CASE AT HAND1
- 2. SOUTH CAROLINA DEPARTMENT OF REVENUE (SCDOR) REGULATION
117-1800 SHOWS WHEREIN RESPONDENT AND THE ALJ HAVE ERRED.....3

Conclusion6

TABLE OF AUTHORITIES

CASES

CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 73, 716 S.E.2d 877, 880 2011).....1

J.M. Guthrie and Lou D. Guthrie vs. Orangeburg County Assessor Docket
No. 01-ALJ-17-0173-CC (2001)..... 1

Hodges v Rainey, 341 S.C. 79, 85, 533 S.E.2d 578,581 (2000).....2

Ravenel v. Dekle, 265 S.C. 364,218 SE 2d 521 (1975).....2

CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. at 74, 716 S.E.2d at 881
(quoting State v. Sweat, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008)).....6

STATUTES

OTHER AUTHORITIES

SCDOR Regulation 117-1800 Classification of Property – Legal Residence.....2, 4

STANDARD OF REVIEW

"Tax appeals to the ALC are subject to the Administrative Procedures Act (APA)." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011). Accordingly, the Appellate Court reviews the decision of the ALC for errors of law." *Id.* at 74, 716 S.E.2d at 881. Questions of statutory interpretation are questions of law, which this Court is free to decide without any deference to the ALC. *Id.*

ARGUMENT

I. RESPONDENT ERRS IN FOLLOWING THE ERROR OF THE GUTHRIE DECISION AND THE DECISION OF THE ALJ IN THE CASE AT HAND

Respondent has chosen not to address the issues raised in Appellant's brief. He relies on two opinions to buttress his position, that of the ALJ in the Guthrie case, *J.M. Guthrie and Lou D. Guthrie vs. Orangeburg County Assessor* Docket No. 01-ALJ-17-0173-CC (2001), and that of the ALJ in this. Inasmuch as Appellant's arguments at hearing dealt extensively with the issues of error raised in the former, and Appellant's brief with error in the latter, those arguments will not be repeated here, except by way of reference.

It is worthy of note, however, that the ALJ in this case did not base her decision on Guthrie, an omission that is conspicuous by its absence. While the reason for this is not given - Guthrie is, after all, non-precedential - it is clear from the record that she would differ from the ALJ in the former case. As stated in Appellant's brief, Page 7, "At hearing, the ALJ stated, that in a previous case with similar circumstances, she ruled "that this other house was –

because it was contiguous and it was not rented out and it was not used for any business, that it was entitled to the four percent.” (Tr. Pg. 45, Ln 5).”.

Respondent states, “Appellant cannot meet the additional requirements of 12-43-220(c)(1) that the additional dwelling located on the same property **must** (emphasis added) be occupied by immediate family members .” Respondent’s Brief page 8. Appellant in his brief under Argument III (Page 10) has answered Respondent’s statement. The “must” of Respondent is the result of his erroneous construction of the statute. Respondent, quoting the Final Order, states, “Our Supreme Court has held that where "the statute's language is plain and unambiguous and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v Rainey, 341 S.C. 79, 85, 533 S.E.2d 578,581 (2000). Respondent has imposed his own meaning upon the statute in following the ALJ’s “same property” error.

Adding to the confusion in Respondent’s brief is the employment of an artifice, that of domicile. Respondent seems to equate “legal residence” with “domicile” in order to buttress his argument. He appeals to Ravenel v. Dekle, 265 S.C. 364,218 SE 2d 521 (1975) as supporting his “Single Residence” theory based on a single domicile. Ravenel, however, dealt with a determination of which State it was in which he was domiciled, New York or South Carolina. Thus, it does not apply to, and is not relevant to the case at hand, which is not about the State of Appellant’s domicile.

II SOUTH CAROLINA DEPARTMENT OF REVENUE (SCDOR) REGULATION 117-1800 SHOWS WHEREIN RESPONDENT AND THE ALJ HAVE ERRED.

It is clear that the statute’s language is not “. . . plain and unambiguous and conveys a clear and definite meaning. . .”, else there will not be the multiplicity of strained definitions of

“legal residence”. There is much confusion as to what constitutes the “legal residence”. From the Respondent who, following the Guthrie decision, states that “a “legal residence” as used in Section 12-43-220(c) means a single dwelling and that it would be a strained and liberal definition of "legal residence" for it to include two separate dwellings on two separate lots, whether-contiguous or not." (Respondent Brief page 7), to the ALJ in this case, who conceives of the “legal residence” as being only the actual residence and the lot on which it is located.

While paying lip-service to the fact that Appellant’s two properties are contiguous, Respondent raises a straw-man objection in his footnote on page 7 of his brief, where he says,

“The Appellant's argument would mean that a builder could build a house in which he resides and then build/develop as many houses as he can that are within 5 acres and contiguous to that house and claim legal residence on all the houses if the builder/developer stores some clothes in all of the houses.”

This is the same objection that Respondent raised at hearing.

MR. ANDERSON: I mean, otherwise, Your Honor, I mean, they -- let's just take the extreme -- the other extreme. A developer -- a developer could have five acres, build ten houses on it, a half acre each. Move in one of the houses and put some clothes in the rest of the houses and say I reside in ten houses. I mean, they ought to be ---

THE COURT: And that comes down to a question of fact.

MR. ANDERSON: Right.

Tr Pg 47, RA 32, Ln 22 – Tr Pg 48, RA 33, Ln 7.

The Court responded correctly to the objection. It comes down to a question of fact. Is the builder/developer engaged in business or not? The Respondent has answered his own objection when he uses the word “develop”, for if one is developing, the presumption is that one is engaged in a business, and therefore would not qualify for the 4% assessment.

SCDOR Regulation 117-1800 has to do with Legal Residence. It became effective on Jun 25, 2004, almost three years after the decision in Guthrie. One wonders if the ALJ in Guthrie would have ruled the way he did had the regulation been available to him. The regulation states very plainly under Paragraph 1:

1. 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 Section 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** (emphasis added).

Several things need to be noted:

1. The regulation makes a distinction between “the legal residence” and “the actual residence” and states that the legal residence **includes** (emphasis added) the actual residence. It is not limited to the actual residence and the lot on which the actual residence is situated, in contravention to the decision of the ALJ.
2. The legal residence includes up to five acres contiguous and whatever additional dwelling (“portion”) may be on those five acres, as long as the dwelling (“portion”) is used for residential purposes by the owner. The double negative employed by the regulation (**shall not include** any portion which is **not owned and occupied for residential purposes**;) is a way of asserting the positive. The regulation does not require that an additional dwelling be located on the same lot as the actual residence in order to qualify for the 4 per cent assessment, as the ALJ has stated.

3. The regulation is silent as to immediate family members. It should be obvious why it is silent. It is clear that the SCDOR regulation does not contemplate the statute reference to immediate family members as a sine qua non requirement but as a concession, as Appellant has contended.
4. The only disqualifying criterion in the regulation on an additional dwelling is if it were not used (occupied) for residential purposes of the owner. The regulation states in a single disqualifying criterion what the statute states in two criteria - rented or used in a business for profit.

Undoubtedly, County Assessors will seek various ways to circumvent the simple provision of the regulation and the statute, such as saying that the contiguous property qualifies only if the land is vacant; or by saying that a dwelling on contiguous property has to be connected to the actual residence, and that the connection needs to be something that meets the approval of the Assessor; or that it has to be occupied by an immediate family member because the owner of the residence cannot be deemed to occupy two residences at the same time, and so on. The number of ways that will be sought out to circumvent the regulation and the statute will be limited only by the ingenuity of assessors, and will vary from county to county, unless settled by case law. The statute is elegant in its simplicity, and this elegance is captured in the simplicity of Regulation 117-1800 with its single disqualifying criterion. Anything more than this single criterion, results in mischief.¹

¹ Respondent assesses at 6% a guest house even if it were located on the same lot as the actual residence.

Respondent cannot be allowed to ignore Regulation 117-1800, the way he has ignored 117-1760.2.² Nor can he be allowed to add his own criteria, whatever the criteria may be, if those criteria have not been provided for by the statute or SCDOR regulation.

Appellant's position and that of SCDOR Regulation 117-1800 are entirely consistent with each other. Such cannot be said of the Respondent's, nor of the ALJ's. It will be noted that the regulation contravenes the positions of the Respondent (following the ALJ in Guthrie), and that of the ALJ in this case.

CONCLUSION

A judge once opined that, in law, what does not make a difference does not matter. Reasoning from that opinion, if contiguity does not make a difference, then it does not matter. If it does not matter, then it should not be in the law, for then it would be superfluous. “. . .Th[e] court "must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.'" *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. at 74, 716 S.E.2d at 881 (quoting *State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008)). But contiguity is in the law; therefore, it does matter. Hence, the statement of the Respondent, following Guthrie - “. . . it would be a strained and liberal definition of "legal residence" for it to include two separate dwellings on two separate lots whether contiguous or not.” *ibid*, or the ALJ in this case - “Petitioner's house on 224 does not qualify because the house is not on the same property as Petitioner's legal residence on 228”, ignoring contiguity

² As mentioned in Appellant's brief (p17), and as argued at hearing, (Tr Pg 34, RA 24, Ln 18 - Tr Pg 36, RA 26, Ln 1), Respondent erroneously assesses the other side of an owner occupied duplex, whether rented or not, at 6%, in clear contravention of Regulation 117-1760.2

and its implications, are clearly in error, as Appellant has argued in his briefs. For these reasons, the decision of the ALJ in this case must be reversed.

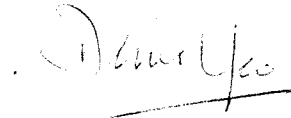
Respectfully submitted,

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Respectfully submitted,

A handwritten signature in black ink that reads "Denis Yeo". The signature is written in a cursive style with a horizontal line underneath the name.

October 22, 2020

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