

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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SC Court of Appeals

James F. Early Trust,)
)
Petitioner,)
)
v.)
)
Charleston County Assessor,)
)
Respondent.)
_____)

Docket No. 15-ALJ-17-0184-CC

FINAL ORDER AND DECISION

FILED

October 20, 2015
SC ADMIN. LAW COURT

This matter comes before the South Carolina Administrative Law Court (Court or ALC) following the Charleston County Board of Assessment Appeals' (Board) decision affirming Respondent Charleston County Assessor's (Assessor) denial of Petitioner James F. Early Trust's (Petitioner) application for the 4% special tax assessment ratio provided in S.C. Code Ann. § 12-43-220(c)(2)(ii) (2014 & Supp. 2014):

FACTS/PROCEDURAL BACKGROUND¹

On June 15, 2000, James and Mary Early purchased 206 Sand Fiddler Court (Property) on Kiawah Island in Charleston County, South Carolina. The Property is further identified by Charleston County tax map parcel identification number 265-13-00-015. Mary Early is a resident of South Carolina and lives full-time at the Property. James Early, on the other hand, is a resident of, and domiciled in, Connecticut. On April 1, 2010, James and Mary Early submitted an application for a 4% special tax assessment ratio to the Assessor. On June 8, 2010, the Assessor qualified the Property for the special property assessment ratio. However, on December 26, 2012, James and Mary Early, as joint tenants with rights of survivorship, conveyed the Property to James Early and Mary Early as tenants in common by virtue of a Quitclaim Deed dated December 26, 2012 and recorded December 27, 2012. Further, on December 26, 2012, James Early transferred the Property to Mary Early and Paul L. Behling as Trustees of the James F. Early 2012 Trust Agreement by virtue of a Title to Real Estate dated December 26, 2012 and recorded December 27, 2012. Based on the conveyances, James Early owns no interest in the Property. Mary Early

¹ On May 27, 2015, the parties filed a Stipulation of Facts. The facts above are included in that stipulation.

claims that she owns 100% of the Property (50% individually and 50% as the income beneficiary under the Trust). The 2012 conveyance further triggered a review of the tax assessment ratio by the Assessor that resulted in a change of the tax assessment ratio from the 4% to 6%.

On August 31, 2013, Mary E. Early, individually and as Trustee, submitted a Legal Residence (4%) Special Assessment Application (Application) in the name of the James F. Early Trust to the Assessor for the 4% assessment ratio. On May 6, 2014, the Assessor denied the Trust's Application, because Mrs. Early's spouse was a legal resident of a jurisdiction other than South Carolina. The Trust appealed the Assessor's denial of its Application for the Property. On April 13, 2015, the Board issued its decision denying Petitioner's Application and affirming the decision of the Assessor. On April 20, 2015, Petitioner filed a Request for a Contested Case with this Court.

DISCUSSION

Petitioner is challenging the denial of the Application on constitutional and due process grounds. Petitioner argues that the "member of my household" language in S.C. Code Ann. § 12-43-220(c)(2)(ii)(A), (iii)(A) (2014) violates both the Due Process and Equal Protection Clauses under the United States and South Carolina Constitutions.² Petitioner asserts that "the General Assembly makes [Mr. Early] a 'member of the household' by a stroke of the pen [and so] creates a larger tax burden simply by virtue of marriage. This cannot pass constitutional muster." However, this Court is without subject matter jurisdiction to hear and decide facial challenges to the constitutionality of statutes. *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 38-39 (2011) (holding that the ALC can rule on as-applied challenges to statutes or regulations but not on facial challenges to the constitutionality thereof).

Petitioner alleges that "[t]he Assessor and the Board of Assessment Appeals refused to allow Mrs. Early's appeal based upon a strict reading and interpretation of [Section 12-43-220(c)(2)(ii), (iii)(A)]. Petitioner also later argues that the tax exemption statute "must be given its plain ordinary meaning" and that "the taxpayer should receive the benefit in cases of doubt." However, Petitioner does not specify how the Assessor and Board applied the statutory provisions in an unconstitutional manner or even offer an alternative interpretation of the provisions. Rather,

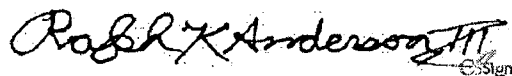
² It is noteworthy that S.C. Code Ann. § 12-43-220(c)(2)(iii) defines "a member of my household" "[f]or purposes of subitem (ii)(B)" of subsection (c). However, the phrase "a member of my household" is included in both subitems (ii)(B) and (ii)(A) of subsection (c). Because it would lead to absurd results to apply the definition of "a member of my household" under subitem (iii) to only subitem (ii)(B), the Court finds it reasonable to also apply this definition to subitem (ii)(A) as well.

Petitioner argues at length about the unconstitutionality of the statutory provisions themselves and the implications of this “attempt by the General Assembly to close a tax loophole.” For instance, Petitioner asserts that the General Assembly has “create[d, with its definition ‘member of household,] a class of newly divorced couples so that the former spouse who lives in South Carolina full time would qualify for the 4% assessment ratio . . .” and this has “plac[ed] an undue burden on couples who are similarly situated to the Earlys who are validly married yet domiciled in different states.” According to Petitioner, it is this change by the General Assembly to the definition “a member of my household” in Section 12-43-220(c)(2)(iii)(A) that “violates both Due Process and Equal Protection guaranteed by both the United States Constitution and the South Carolina Constitution of 1895.” Indeed, Petitioner specifically states that it is “[t]he definition of ‘member of household’ in the act [that] g[ave] rise to this appeal”

Because Petitioner has presented a facial challenge to the constitutionality of the statutory provisions at issue, the Court lacks subject matter jurisdiction to hear and decide this matter and must, therefore, dismiss it. See *McCain v. Brightharp*, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012) (“The lack of subject matter jurisdiction can be raised at any time . . . and can be raised *sua sponte* by the court.”).

ORDER

IT IS THEREFORE ORDERED that this case is **DISMISSED WITH PREJUDICE.**
AND IT IS SO ORDERED.

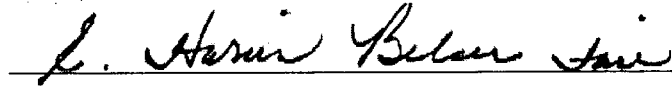
A handwritten signature in black ink that reads "Ralph King Anderson, III". The signature is written in a cursive style. To the right of the signature, there is a small circular logo with the word "eSign" inside.

Ralph King Anderson, III
Chief Administrative Law Judge

October 20, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, 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).



E. Harvin Belser Fair
Judicial Law Clerk

October 20, 2015
Columbia, South Carolina