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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Appellate Case Number 2013-002697
(Opinion Number 5455, Filed November 16, 2016)

William J. Montgomery, Respondent,
v.
Spartanburg County Assessor, Appellant.

APPELLANT’S RETURN TO RESPONDENT’S PETITION FOR REHEARING

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ASSESSOR’S OPPOSITION TO REHEARING
Stated with particularity
SCACR 221(a)

The Respondent (“Montgomery” or “Taxpayer”) asserts this Court’s analysis is deficient by having overlooked or misapprehended ten separate aspects of this case. Respondent’s Petition for Rehearing, p. 5 – 9. The Appellant (“Assessor”) disagrees. On the contrary, this Court has neither overlooked nor misapprehended any aspect of this case.

The Taxpayer’s ten assertions are essentially four arguments: i) the Court is alleged to have failed to understand the meaning of constitutional and statutory references to Agricultural Real Property, ii) the Court is alleged to have been confused as to “Fair Market Value” for Agricultural Use Value, iii) the Court is alleged to have misunderstood the Legislative History of agricultural use valuations, and iv) the Court is alleged to have been distracted (as the Taxpayer phrases it) by a “bizarre, hypothetical question.” Each is addressed below.

I. The Meaning of Agricultural Real Property

Taxpayer in numbered paragraphs 1 through 6 of his Petition for Rehearing argues the Court overlooked or misapprehended the meaning of Agricultural Real Property. More particularly, Paragraphs 5 and 6 suggest the Court overlooked undisputed facts, Paragraphs 1 and 2 argue the Court “overlooked or misapprehended” the plain language of S.C. Const. Art. X, § 1, and Paragraphs 3 and 4 “overlooked or misapprehended” the plain language of S.C. Code Ann. § 12-43-220(d)(1)(A). All assertions are incorrect.

A. Undisputed Facts

The Court has not overlooked or misapprehended the undisputed fact that the buildings in this case are “agricultural real property” nor does the Court overlook or misapprehend the undisputed fact the buildings are “actually used for such purposes.” Just the opposite is true since the Court acknowledged (rather than overlooked) real property includes both land and the structures attached to the land.

The statutory definition of "real property" includes the structures attached to the land that pass by conveyance of the land. See § 12-37-10.

Slip Opinion p. 5.

The Court did not overlook the fact the buildings were “actually used for such purposes” since the Court relied upon that fact to uphold the 4% ratio for agricultural property by holding “Montgomery's property should be assessed at the 4% ratio applicable to agricultural real property.” Slip Opinion p. 4.

The Court did not misapprehend the legal significance of these facts. Rather the Court accurately noted the legal significance:

Accordingly, the entire property is properly assessed at the 4% ratio to determine Montgomery's tax liability. **The analysis does not end there, however, because section 12-43-220(d)(1)(A) provides only the assessment ratio to apply to the property, not the valuation method.** (Emphasis added)

Slip Opinion p. 5.

Thus, the undisputed facts are not overlooked and the legal significance is not misapprehended. Instead, Taxpayer’s allegation neglects the importance of S.C. Const. Art. X, § 2. That provision explicitly grants the General Assembly the authority to “*define the . . . values* for property tax purposes of the classes of property set forth in Section 1 of this article.” Because “[a]gricultural real property which is actually used for such purposes” is a class of property set forth in S.C. Const. Art. X, § 1, the General

Assembly is authorized to define such property's *value* for property tax purposes pursuant to S.C. Const. Art. X, § 2. Thus, this Court correctly concluded S.C. Code Ann. §12-43-220(d)(1)(A) provides only the assessment ratio for the property while the “plain language of section 12-43-220(d)(2)(A) provides the [soil capability] method *for valuing* only land . . .” *Id.*

B. Plain Language of S.C. Const. Art. X, § 1

The Taxpayer alleges the Court “overlooked or misapprehended” the plain language of S.C. Const. Art. X, § 1 because the Taxpayer claims the Court “ruled that agricultural buildings should be assessed at 4% of their fair market value, not their ‘fair market value for agricultural purposes’” (Respondent’s Petition for Rehearing, p. 5). The Assessor disagrees.

Taxpayer’s allegation fails to properly consider the literal language of Art. X. § 1(4)(A). The section provides

The General Assembly may provide for the ad valorem taxation . . . of all real and personal property [with t]he assessment . . . be[ing] equal and uniform in the following classifications [with a]gricultural real property . . . actually used for such purposes . . . [to] be taxed on an assessment equal to four percent of its value for such purposes.

Thus, Art. X, §1 establishes “an assessment equal to four percent of its value for such purposes.” It does not establish the value. Rather, once setting the assessment ratio of 4%, other provisions of the Constitution establish values. In particular, the “value for such [agricultural use] purposes” looks to section 2(a) of Article X of the South Carolina Constitution. That section places the valuation decision entirely in the General Assembly.

The General Assembly may define the classes of property and values for property tax purposes of the classes of property set forth in Section 1 of this article.

And, consistent with placing the valuation decision with the General Assembly, this Court correctly concluded that to impose the soil capability method on structures “[t]he General Assembly would have used the defined term ‘real property’ in Section 12-43-220(d)(2)(A) if it intended to include structures attached to the land . . . [and b]ecause it did not, we find the *value* of the structures is not reflected in the soil capability valuation method and the structures must therefore be *valued* under the fair market value method.” The Court’s conclusion is not a misapprehension of Art X, § 1.

C. The Plain Language of S.C. Code Ann. §12-43-220(d)(1)(A)
Taxpayer alleges the Court “overlooked or misapprehended” the plain language of S.C. Code Ann. § 12-43-220(d)(1)(A) because the Court “ruled that agricultural use value applied only to land’” (Respondent’s Petition for Rehearing, p. 6). The Court did not overlook or misapprehend the plain language of S.C. Code Ann. §12-43-220(d)(1)(A). .

Taxpayer continues to misunderstand Article X of the South Carolina Constitution. Article X provides a list of classes of property which must be *assessed* using the assessment ratios enumerated in Section 1. Section 2 of Article X, on the other hand, grants the General Assembly the authority to define the *values* of the classes of property for property tax purposes. This Court correctly concluded “section 12-43-220(d)(1)(A) provides only the assessment ratio to apply to the property, *not the valuation method.*” With the constitutional authority to define values, the General Assembly enacted the plain language of S.C. Code Ann. §12-43-220(d)(2)(A) to set the fair market value for agricultural purposes “**when applicable to land . . . as the productive earning power based on soil capability . . .**” (Emphasis added.). Thus, because the General Assembly passed no statute requiring agricultural buildings be valued under a

special valuation method, such buildings are valued under the willing buyer and willing seller valuation method of § 12-37-930.¹

The Court's conclusion is consistent with well-established statutory construction that requires, if possible, every word and every provision of a statute is given effect. None should be ignored; none needlessly given an interpretation that causes it to duplicate another provision or to have no consequence. *16 Jade Street, LLC v. R. Design Const. Co., LLC.*, 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012) ("Similarly, we are to construe a statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.'). Accordingly, the General Assembly has the constitutional authority to define how agricultural real property is valued. In enacting § 12-43-220(d)(2)(A), the General Assembly placed agricultural land—not structures—under a special valuation method: the soil capability method.

II. Taxpayer's Confusion in Applying the Label of Fair Market Value

Taxpayer argues a rehearing is warranted since "[n]o statute and no Constitutional provision authorize the Assessor to tax agricultural real property 'actually used for such agricultural purposes' at 'fair market value.'" (Respondent's Petition for Rehearing, p. 7). Such a position is in error.

The Assessor values property as dictated by the enactments of the General Assembly. This Court holds the General Assembly requires "land" used for agricultural purposes be valued under the soil-capability method and "structures" used for agricultural purposes under the fair market value method of a willing buyer and willing seller. Slip Opinion, p. 5 ("The General Assembly would have used the defined term 'real property'

¹ Section 12-43-220 cross references Section 12-37-930, stating "[a]s used in this section, fair market value with reference to real property means fair market value determined in the manner provided pursuant to Article X of the Constitution of this State, Section 12-37-930 and Article 25, Chapter 37 of this title."

in section 12-43-220(d)(2)(A) if it intended to include structures attached to the land, as Montgomery argues [and b]because it did not, we find the value of the structures is not reflected in the soil capability valuation method and the structures must therefore be valued under the fair market value method. *See* § 12-37-930.”)

Article X, Section 2, of the South Carolina Constitution explicitly grants the General Assembly the authority to define the values of the classes of property enumerated in Article X, Section 1. “Agricultural real property which is actually used for such purposes” is a class of property enumerated in Article X, Section 1.

The General Assembly in §12-37-930 requires

All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.”

Because the General Assembly has not enacted a special valuation method for agricultural buildings, such buildings must be valued pursuant to the willing buyer and willing seller fair market value method. Hence, the Court has not overlooked or misapprehended any provision of law valuing land or valuing structures on the land when used for agricultural purposes.

III. Legislative History

Taxpayer alleges the Court “overlooked or misapprehended” the “importance of Act 133 of 1979” which “amended § 12-43-220(d)(1), so that the ‘fair market value for agricultural purposes’ would apply not to ‘agricultural land,’ but to ‘agricultural real property,’ which includes both the land and all agricultural structures.” According to

Taxpayer, this Court's ruling "was improper and constituted a double taxation." (Respondent's Petition for Rehearing, pp. 9-10). The Assessor disagrees.

This Court correctly concluded Act 133 of 1979 dealt "only with the *classification* of agricultural real property [and] h[as] no bearing on the *valuation method* to be used when determining the owner's property tax liability" (Slip opinion, p. 7). The Taxpayer's allegations again seek to conflate the assessment ratio determination with the valuation determination. The only issue disputed in this case is the valuation determination and the Court correctly determined that agricultural buildings are valued according to the willing buyer and willing seller fair market value method.

Taxpayer continues its assertions on Legislative History by alleging the Court "overlooked or misapprehended" the "purpose and effect of Act 199 [of 1979]" because "Act 199 did not address whether taxation should be based on 'agricultural land' or 'agricultural real property'" (Respondent's Petition for Rehearing, p. 9). The Assessor again disagrees.

This Court did not overlook or misapprehend Act 199 of 1979. Rather, this Court reconciled Act 199 of 1979 with Act 618 of 1976 and Act 133 of 1979. According to the Court, Act 618 of 1976 restricted the assessment of agricultural real property to land only. Subsequently, Act 133 of 1979 removed "land" and replaced it with "real property," thus broadening the types of property assessed as agricultural real property. Also in 1979, the General Assembly passed act 199, which required a special valuation method be applied to "land used for the growth of timber." Thus, from 1976 to 1979, agricultural land was the only type of property assessed at the 4% ratio under Article X of the South Carolina Constitution. From 1979 forward, both agricultural land and agricultural

buildings are assessed at the 4% ratio under Article X of the South Carolina Constitution, but agricultural land is valued using a special valuation method. This Court correctly concluded that Act 199 of 1979 “created a new valuation method for land used for timber production, but did nothing to change the method of valuing any structures on the land.”

IV. Taxpayer’s Allegation a Hypothetical Question “Sidetracked” the Court

Taxpayer alleges a “bizarre, hypothetical question . . . sidetracked the Court and skewed the Court’s analysis.” (Respondent’s Petition for Rehearing, p. 9). The Assessor disagrees.

Rather than the Court’s analysis having been sidetracked by a “bizarre, hypothetical question,” the Court focuses on the practical result of the lower court’s decision. The Court concludes the lower court creates an exemption never intended by the General Assembly.

Finally, the definition adopted by the ALC would lead to an absurd result. According to Montgomery, the only valuation method applicable to agricultural real property is the soil capability method. As a result, structures on agricultural land would be essentially exempt from tax. Montgomery acknowledged at oral argument that under his interpretation, a valuable home located on a tree farm would not be valued for tax purposes as long as that home is not a legal residence and is used for agricultural purposes. We find the General Assembly did not intend to create such an exemption.

A Court called upon to interpret a statute always seeks a meaning that furthers the intention of the General Assembly because the primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). In addition, in seeking that intent, courts will reject a meaning “when to accept it would lead to a result so plainly absurd that it could not have been intended by the General Assembly. *Kiriakides v. United Artist Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)

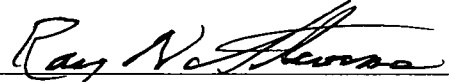
Here, the Court correctly concluded Taxpayer's position would lead to an absurd result – exempting all structures on agricultural land from property tax. Thus, the Court did not misapprehend the intention of the General Assembly.

CONCLUSION

The Appellant, Spartanburg County Assessor, respectfully requests the Court:

- a. Deny Respondent's Petition for Rehearing
- b. Confirm Opinion Number 5455, Filed November 16, 2016

[SIGNATURE PAGE FOLLOWS]



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William J. Montgomery,Respondent,

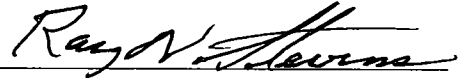
v.

Spartanburg County Assessor,Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Appellant's Return to Respondent's Petition for Rehearing complies with Rule 221 and Rule 240, SCACR.

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William J. Montgomery,Respondent,

v.

Spartanburg County Assessor,Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on December 12, 2016 s/he has caused a copy of the Appellant's Return to Respondent's Petition for Rehearing to be served upon all parties of record by hand delivering and U.S. Mail a copy of the same, addressed as follows:

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December 12, 2016

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DEC 12 2016

SC Court of Appeals

Re: ***William J. Montgomery v. Spartanburg County Assessor***
Appellate Case No. 2013-002697

Dear Ms. Kitchens:

We enclose an original and six copies of the Appellant's Return to Respondent's Petition for Rehearing. Please return the extra copy, file stamped, in the enclosed envelope.

If you have any questions, please feel free to contact me.

Sincerely,

Ray N. Stevens

RNS:fw
Enclosures

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