

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Honorable S. Phillip Lenski, Jr.

Appellate Case Number 2018-002153
Case Number 18-ALJ-17-0233-CC

J. ANNETTE OAKLEY,Appellant,

vs.

BEAUFORT COUNTY ASSESSOR,Respondent(s).

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. When a term of art is used consistently throughout a statute but defined in only one instance, may a court apply that statutory definition to the otherwise undefined use of that same term of art as it appears in other parts of the same statutory subsection when such application is consistent with legislative intent?

STATEMENT OF THE CASE

The Appellant, J. Annette Oakley ("Ms. Oakley"), acquired title to the subject property, located at 18 Plumbridge Lane, Hilton Head Island, South Carolina, in Beaufort County, in February of 2015. She was the sole owner of the subject property as of December 31, 2016, and remained the sole owner throughout the tax year 2017. Ms. Oakley submitted a timely application seeking a determination that the subject property, for the tax year 2017, was eligible for the 4% residential assessment ratio, available only to those properties which satisfy those criteria set forth within SC Code Section 12-43-220(c)(1)(Supp. 2018).

The Appellant's application was denied, and a series of unsuccessful administrative appeals led her to serve a request, for a contested case hearing before the Administrative Law Court. The parties stipulated to the facts, a summary of which is as follows:

- a. At the time of her application, and at all times during calendar year 2017, Ms. Oakley was married to Millard V. Oakley.
- b. Mr. Oakley, at the time of the application, and at all times during calendar year 2017, was a citizen and legal resident of the state of Tennessee, where he maintained his primary legal residence at 1051 Monterey Highway, Livingston, Tennessee.
- c. Moreover, neither Ms. Oakley nor her husband, Millard V. Oakley, has, at any time, either sought or obtained a legal separation, a limited divorce, a partial or complete termination of

their marital relationship, or any property or marital settlement, in any court of competent jurisdiction, whether in South Carolina, Tennessee, or in any other state of the United States.

On September 13, 2018, Ms. Oakley filed a motion for summary judgment, and on September 18, 2018 the Assessor also moved for summary judgment; both parties agreed that there were no disputed facts and the only issue was a matter of law for the Court to resolve. A hearing was held on the motions on September 20, 2018, and on November 7, 2018 the Administrative Law Court issued an order granting the Assessor's motion for summary judgment. The Assessor was served with a notice of appeal on December 4, 2018.

STANDARD OF REVIEW

In reviewing the grant of a summary judgment motion, an appellate court must apply the same standard that governed the trial court under Rule 56(c), of the South Carolina Rules of Civil Procedure. White v. J.M. Brown Amusement Co., Inc., 360 S.C. 366, 601 S.E.2d 342 (2004); Redwend Ltd. Partnership v. Edwards, 354 S.C. 459, 468, 581 S.E.2d 496, 501 (Ct. App. 2003) (citation omitted). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. White at 370, 601 S.E.2d at 344; Redwend at 467, 581 S.E.2d at 501.

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Redwend at 467–68,

581 S.E.2d at 501. In determining whether any issues of material fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be construed in the light most favorable to the nonmoving party. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). “Once the moving party carries its initial burden, the opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing there is a genuine issue for trial.” Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (internal quotation marks omitted).

Summary judgment is not appropriate if further inquiry into the facts of the case is desirable to clarify the application of the law. Vermeer at 59, 518 S.E.2d at 305. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Hall v. Fedor, 349 S.C. 169, 173–74, 561 S.E.2d 654, 656 (Ct. App. 2002). “Moreover, summary judgment is a drastic remedy which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues.” Redwend at 469, 581 S.E.2d at 501 (citations omitted). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Hedgepath at 355, 559 S.E.2d at 336.

ARGUMENT

I. THE LOWER COURT CORRECTLY APPLIED THE STATUTORY DEFINITION OF “MEMBER OF MY HOUSEHOLD”, AS SET FORTH IN CODE 12-43-220(c)(2)(iii)(A), TO THAT SAME TERM OF ART AS IT APPEARS IN OTHER PARTS OF THE SAME STATUTORY SUBSECTION.

The issue before the Court is whether, under Section 12-43-220(c) of the South Carolina Code, the Appellant is entitled to the 4% residential assessment ratio even though a “member of [her] household” – her husband – claims legal residence in a state other than South Carolina.

The criteria for eligibility for the 4% residential assessment ratio are set forth within South Carolina Code Section 12-43-220(c). The provisions of Section 12-43-220(c)(1) require, among other criteria, that the property, to qualify for the favorable 4% residential assessment ratio, (1) must be the legal residence of the taxpayer, (2) must be owned by the taxpayer, and (3) must be occupied by the taxpayer as his or her legal residence. Those criteria, however, are not exhaustive; additional mandatory requirements for eligibility for the 4% residential assessment ratio are set forth within Code Section 12-43-220(c)(2)(ii). That subsection requires that the taxpayer make application for the preferential assessment ratio, and further mandates that the taxpayer, under penalty of perjury, certify that:

(A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose;

(B) that neither I, nor any member of my household, claim the special assessment ratio allowed by this section on another residence.

S.C. Code Ann. Section 12-43-220(c)(2)(ii) (emphasis added).

Moreover, Subsection 12-43-220(c)(2)(iii) provides that “[f]or purposes of subitem (ii)(B) of this item, ‘a member of my household’ means: (A) the owner-occupant’s spouse, except when that spouse is legally separated from the owner-occupant;”

Thus, while the phrase “member of my household” is used in both subitems (A) and (B) of Code Section 12-43-220(c)(2)(ii), the statute specifically defines the phrase only as to subitem (B). The legal issue this Court must decide is whether the definition of “member of my household,” delineated in the statute, was also intended to apply to that term as it is used in subitem (A). The statute’s legislative history, its function as a tax exemption provision, and its interpretation by the lower courts all require such application.

A. A Review of the Statute’s Legislative History Reveals that the General Assembly Clearly Intended for the Same Definition of “Member of my Household” to Apply to the Entirety of Section 12-43-220(c)(2).

A review of the relevant legislative history reveals that it was clearly the intention of the legislature that the definition of the term “member of my household,” as set forth in Section 12-43-220(c)(2)(iii)(A), was to apply to that term as set forth in both subitems (A) and (B) of code Section 12-43-220(c)(2)(ii).

Prior to the 2012 amendments to Section 12-43-220(c), the certification required by the 1996 version of Section 12-43-220(c)(2)(ii) read as follows:¹

Under penalty of perjury I certify that:

¹ A copy of S.C. Code subsections 12-43-220(c)(2)(ii)(A)&(B) and 12-43-220(c)(2)(iii)(A), as those subsections had been enacted prior to the 2012 amendments, is included herein.

(A) the residence which is the subject of this application is my legal residence where I am domiciled at the time of this application and that I do not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose;

(B) that neither I nor any member of my household is residing in or occupying any other residence which I or any member of my immediate family has qualified for the special assessment ratio allowed by this section. (Emphasis added).

At the same time, (and prior to the enactment of the 2012 amendments), Section 12-43-220(c)(2)(iii) read, in relevant part, as follows:

“For purposes of subitem (ii)(B) of this item, “a member of my household” means:

(A) the owner-occupant’s spouse, except when that spouse is legally separated from the owner-occupant; . . .

Thus, prior to the 2012 amendments, the term “member of my household” appeared only in subitem (ii)(B), and not in subitem (ii)(A) of Section 12-43-220(c)(2). Under the circumstances, the statutory reference solely to subitem (ii)(B), (the only subitem in which the defined term then appeared) made perfect sense, and did not indicate a legislative intent to define the term to the exclusion of subitem (ii)(A).

Since the enactment of the 2012 amendments to the statute, Section 12-43-220(c)(2)(ii) now reads as follows:

Under penalty of perjury I certify that:

(A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to

be a legal resident of a jurisdiction other than South Carolina for any purpose;

(B) that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence
(Emphasis added)

The 2012 amendment added the phrase “member of my household” in section 12-43-220(c)(ii)(A). Although the amendment did not amend the definition as set forth in Section 12-43-220(c)(2)(iii)(A) so as specifically to include not only subitem (ii) (B) but also the newly modified subitem (ii) (A), it was clearly the intention of the legislature that such definition be applied to “member of my household” as utilized both in Sections A and B of subitem (ii). The failure to amend the definition at Section 12-43-220(c)(2)(iii)(A) is little more than a scrivener’s error. Any other interpretation would lead to an absurd result clearly not contemplated by the General Assembly; in the words of the lower court, “[A]pplying different definitions to a single term of art here, particularly within the same certification, would be both ‘cumbersome and illogical.’” (ALC Order p. 10) (quoting Healthkeepers Inc. v. Richmond Ambulance Auth., 642 F.3d 466, 472 (4th Cir. 2011)).

As the lower court also observed, the term “member of my household” or a derivation thereof appears multiple times – six, in fact – throughout Section 12-43-220, as amended subsequent to 1996. In addition to the three appearances that are the subject of this case, Subsection 12-43-220(c)(2)(v)(B) uses the term once, and Subsection 12-43-220(c)(8) uses it twice. The lower court found that by its repetitive use of the phrase “member of my household” the General

Assembly chose to employ a term of art consistently throughout the statute, and thus intended for the term to have a consistent meaning throughout the statute. (ALC Order pp. 5-6). The Court's reasoning is not only persuasive, but also closely follows the United States Supreme Court's instruction that the "normal rule of statutory construction [is] that identical words used in different parts of the same act are intended to have the same meaning." Sullivan v. Stroop, 496 U.S. 478, 484 (1990) (citations omitted).

B. As a Statute Creating a Tax Exemption, Section 12-43-220 Must be Strictly Construed Against the Taxpayer.

It is the contention of the Appellant that the statute is clear in reflecting the intention of the legislature that the preferential residential assessment ratio is unavailable to a taxpayer whose spouse (from whom the taxpayer is not legally separated) maintains legal residence in a state other than South Carolina.

Moreover, even assuming that some ambiguity might be found in the aforesaid legislative provisions, the South Carolina Supreme Court has consistently held that ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. The Court, in State v. Life Insurance Company of Georgia, recited the "well settled rule that 'constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption, who must clearly bring himself within the constitutional or statutory language upon which he relies.'" 254 S.C. 286, 292-93, 175 S.E.2d 203, 206 (1970) (quoting York County Fair Association v. Tax Commission, 249 S.C. 337, 154 S.E.2d 361 (1967)). This recitation followed a 1964 opinion, in which the

Court had stated that language in a statute giving rise to an exemption must be given "its plain, ordinary meaning and construed strictly against the claimed exemption." Chronicle Publisher Inc. v. Tax Commission, 244 S.C. 192, 194, 136 S.E.2d 261, 262 (1964).

The Supreme Court has imposed an identical standard for construction of statutory provisions granting deductions from taxation. This standard is evidenced by the Supreme Court's declaration that language in "a deduction statute . . . is not to be liberally construed. The plaintiff must place himself squarely within the terms of the statute." Lowenstein and Sons Inc. v. Tax Commission, 277 S.C. 561, 567, 290 S.E.2d 812, 816 (1982). Similarly, the court, in Davis Mechanical Contractors v. Wasson, 268 S.C. 26, 231 S.E.2d 300 (1977), determined that statutory language purportedly granting deductions must be strictly construed against the claimed deduction.

It bears emphasis that our Supreme Court has applied these rules to the construction of Section 12-43-220(c), which the Court clearly determined to be an exemption statute. See CFRE v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011). The 4% assessment ratio is available only to those residential properties which satisfy the legislatively imposed requirements. Absent satisfaction of those requirements, the property is assessed, in accordance with the general rule, at 6%. Section 12-43-220(e).

Moreover, the preferential assessment ratio sought by the taxpayer in this matter is a matter of legislative grace, and the taxpayer seeking the relief afforded by the preferential assessment ratio must clearly bring himself within the

terms of the authorizing statute. Guarantee Bank and Trust Company vs. Tax Commission, 254 S.C. 82, 173 S.E.2d 367 (1970).

Inasmuch as the Supreme Court of South Carolina has clearly required that ambiguities within statutes, purportedly affording benefits as matters of legislative grace, be strictly construed against the taxpayer, any potential ambiguity found within Section 12-43-220(c) must be resolved against Ms. Oakley in the instant proceedings.

C. Administrative Law Courts have Consistently Denied the 4% Residential Assessment Ratio to Taxpayers whose Spouses Live in Another State.

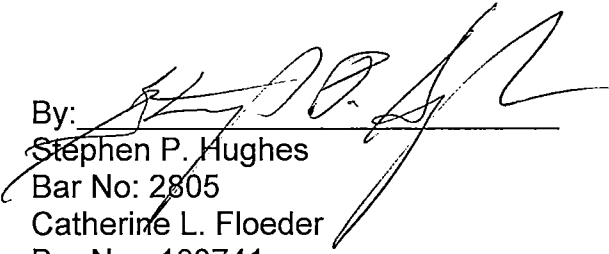
While this specific issue has not previously come before the Court of Appeals, it should be noted that the general issues before this court have been previously addressed in no fewer than three opinions issued by the Administrative Law Court. Pajer v. Lancaster County Assessor, 16-ALJ-17-0156-CC (2017); Ginsburg v. Horry County Assessor, 17-ALJ-17-0171-CC (2017); and Long v. Lancaster County Assessor, 16-ALJ-17-0150-CC (2016). In each of the aforesaid opinions, the Court determined that the residence of the taxpayer's spouse in a jurisdiction other than South Carolina disqualified the taxpayer from eligibility for the 4% residential assessment ratio. The Ginsburg Court, in specifically considering the statutory provisions at issue here, determined that "the language of the statute plainly and unambiguously requires that, in order for the petitioner to qualify for the special assessment ratio, 'neither [she], nor any member of [her] household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose'" and further determined that the taxpayer's husband – whose primary state of residence was New York – was properly

considered a "member of her household," thus preventing her from claiming the 4% residential assessment ratio. Ginsburg, 17-ALJ-17-0171-CC at *3.

CONCLUSION

South Carolina Code Section 12-43-220, governing the availability of the 4% residential assessment ratio, makes cohesive sense only if the meaning of the term "member of my household" is applied consistently throughout. This was the intention of the legislature, has been the interpretation of the lower courts, and is the only reading of the statute that conforms with the treatment of tax exemption statutes predicated by the South Carolina Supreme Court. The lower court in this case correctly and diligently interpreted the statute. The Respondent prays that this Court affirm the ruling of the lower court.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Honorable S. Phillip Lenski, Jr.

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Case Number 18-ALJ-17-0233-CC

J. ANNETTE OAKLEY,Appellant,

vs.

BEAUFORT COUNTY ASSESSOR,Respondent.

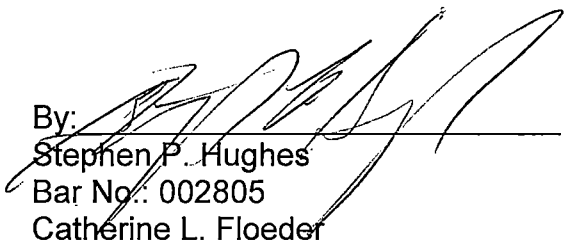
PROOF OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing *Initial Brief of Respondent and Respondent's Designation of Matter* upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on 22nd day of February, 2019 addressed to the following:

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FEB 25 2019

SC Court of Appeals

Re: Joyce Annette Oakley vs. Beaufort County Assessor
Civil Action No.: 2018-002153
Our File No: 12124 SPH

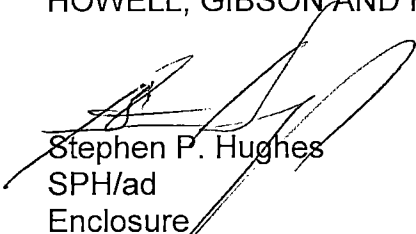
Dear Ms. Kitchings:

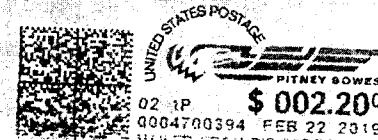
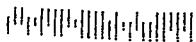
Please find enclosed herewith for filing *Initial Brief of Respondent* and *Respondent's Designation of Matter* with regard to the above referenced matter. I would appreciate your filing the same and returning a filed clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.


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cc: Curtis L. Coltrane



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