THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Hon. S. Phillip Lenski, Judge

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

J. ANNETTE OAKLEY,

Appellant,

vs.

BEAUFORT COUNTY ASSESSOR,

Respondent.

BRIEF OF APPELLANT

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2. IS A STATUTE AMBIGUOUS BECAUSE IT TREATS THINGS THAT ARE DIFFERENT IN FACT DIFFERENTLY?

STATEMENT OF THE CASE

This case was commenced by the filing of a Request for Contested Case Hearing with the Administrative Law Court on or about July 5, 2018.[1] In her request for a Contested Case Hearing, J. Annette Oakley sought review and reversal of the decision of the Beaufort County Assessor denying her application for the 4% Special Assessment Ratio authorized by S. C. Code Ann. § 12-43-220 (c)(1)(Supp. 2019).

By Order of the Hon. S. Phillip Lenski, J. Annette Oakley filed a Pre-Hearing Statement with the Administrative Law Court on July 30, 2018.[2] The Beaufort County Assessor filed a Pre-Hearing Statement with the Administrative Law Court on July 31, 2018.[3]

On or about September 11, 2018, J. Annette Oakley and the Beaufort County Assessor filed a Stipulation of Facts with the Administrative Law Court.[4] On September 13, 2018, J. Annette Oakley filed her Motion for Summary Judgment.[5] On September 18, 2018, the Beaufort County Assessor filed his Motion for Summary Judgment.[6] A memorandum was filed by the Beaufort County Assessor on September 19, 2018.[7]

On September 20, 2018, arguments on the cross motions for Summary Judgment

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1 R. pp. 13-15.

2 R. pp. 16-21.

3 R. pp. 22-28.

4 R. pp. 29-32.

5 R. pp. 33-39.

6 R. pp. 40-43.

7 R. pp. 44-73.

were held before the Hon. S. Phillip Lenski at the Administrative Law Court in Columbia, South Carolina.

On November 7, 2018, the Hon. S. Phillip Lenski filed his Order, granting the Motion for Summary Judgment of the Beaufort County Assessor and denying the Motion for Summary Judgment of J. Annette Oakley.[8]

J. Annette Oakley filed her Notice of Appeal with the South Carolina Court of Appeals on December 4, 2018

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[8] R. pp. 2-12.

STATEMENT OF FACTS

On or about September 11, 2018, J. Annette Oakley and the Beaufort County Assessor filed a Stipulation of Facts with the Administrative Law Court.[9] The Hon. S. Phillip Lenski adopted the Stipulation of Facts in his November 7, 2018, Order.[10] The facts of this case are:

During calendar year 2017, J. Annette Oakey was the sole owner of improved real property in Beaufort County, South Carolina, known as 18 Plumbridge Lane, Hilton Head Island, South Carolina.[11] During calendar year 2017, J. Annette Oakley was a citizen and resident of Beaufort County, South Carolina, and she owned the property as her primary legal residence.[12] J. Annette Oakley timely submitted an application seeking application of the four (4%) residential assessment ratio to her property, as authorized by S. C. Code Ann. § 12-43-220(c)(1)(Supp. 2018).[13] For calendar year 2017, J. Annette Oakley did not claim the four (4%) residential assessment ratio on any other property located in the State of South Carolina.[14]

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[9] September 11, 2018, Stipulation of Facts, R. pp. 29-32.

[10] November 7, 2018, Order of S. Phillip Lenski, R. P. 3.

[11] September 11, 2018, Stipulation of Facts, R. P. 29; November 7, 2018, Order of S. Phillip Lenski, R. p. 3.

[12] September 11, 2018, Stipulation of Facts, R, p. 29; November 7, 2018, Order of S. Phillip Lenski, R. p. 3.

[13] September 11, 2018, Stipulation of Facts, R. p. 29; November 7, 2018, Order of S. Phillip Lenski, R. p. 3.

[14] September 11, 2018, Stipulation of Facts, R. p.; November 7, 2018, Order of S. Phillip Lenski, R. p. 2.

J. Annette Oakley is, and was at all relevant times, married to Millard V. Oakley.[15] Millard V. Oakley is a citizen and legal resident of the State of Tennessee, and maintains his primary legal residence at 1051 Monterey Highway, Livingston, Tennessee.[16] Millard V. Oakley did not reside at 18 Plumbridge Lane, Hilton Head Island, South Carolina, at any time during calendar year 2017.[17]

J. Annette Oakley and Millard V. Oakley have never sought or obtained a legal separation, divorce or any other partial or complete termination of their marriage in South Carolina, Tennessee or any other court.[18]

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[15] September 11, 2018, Stipulation of Facts, R. p. 29; November 7, 2018, Order of S. Phillip Lenski, R. p. 3.

[16] September 11, 2018, Stipulation of Facts, R. p. 30; November 7, 2018, Order of S. Phillip Lenski, R. p. 3.

[17] September 11, 2018, Stipulation of Facts, R. p. 30; November 7, 2018, Order of S. Phillip Lenski, R. p. 3.

[18] September 11, 2018, Stipulation of Facts, R. p. 30; November 7, 2018, Order of S. Phillip Lenski, R. p. 3.

ARGUMENT NUMBER 1

BECAUSE THE ONLY EVIDENCE IN THE RECORD IS THAT MILLARD V. OAKLEY DOES NOT RESIDE WITH J. ANNETTE OAKLEY, HE IS NOT A "MEMBER OF HER HOUSEHOLD" AS THAT TERM IS USED IN S. C. CODE ANN. § 12-43-220(C)(2)(III)(A)(SUPP. 2018). J. ANNETTE OAKLEY IS SQUARELY WITHIN THE TERMS OF S. C. CODE ANN. § 12-43-220(C)(SUPP. 2018), AND SHE IS ENTITLED TO THE 4% RESIDENTIAL ASSESSMENT RATIO. (Questions Presented 1 and 2)

STANDARD OF REVIEW

This case comes to the Court seeking review of an Order of the Hon. S. Phillip Lenski granting summary judgment to the Beaufort County Assessor. The case was submitted to Judge Lenski on a stipulated set of facts, and so by this appeal J. Annette Oakley seeks correction of an error of law. When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP.[19] When reviewing a grant of summary judgment, the appellate court can correct errors of law.[20] The appellate court reviews decision of the Administrative Law Court for errors of law.[21]

ARGUMENT

This appeal presents a question of the meaning of the text of an unambiguous statute. At issue is the following text in S. C. Code Ann. § 12-43-220 (c)(2)(ii)(Supp. 2018):

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[19] *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 250, 734 S.E.2d 161, 163 (2012).

[20] *See: e.g., Norton v. Opening Break of Aiken, Inc.*, 313 S.C. 508, 513, 443 S.E.2d 406, 409 (Ct. App. 1994), aff'd, 319 S.C. 469, 462 S.E.2d 861 (1995) ("For the reasons stated, the circuit court erred as a matter of law in granting summary judgment.")

[21] *Montgomery v. Spartanburg County Assessor*, 419 S.C. 77, 80, 795 S.E.2d 866, 867 (Ct. App. 2016).

"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; and

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

(iii) 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; and. . ."

The narrow issue presented by this appeal is this:

Does the text of S. C. Code Ann. § 12-43-220 (c)(2)(iii)(Supp. 2018), which reads:

(iii) 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;

apply only to S. C. Code Ann. § 12-43-220 (c)(2)(ii)(B)(Supp. 2018), or does it also apply to S. C. Code Ann. § 12-43-220 (c)(2)(ii)(A)(Supp. 2018)?

In South Carolina, where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.[22] In interpreting a statute, words must be given their plain and ordinary meaning with resort to subtle or forced construction to limit or expand the statute's operation.[23] Words in a statute must be construed in context, and their

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[22] *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

[23] *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007); *Paschal v. State Election Commission*, 317 S.C. 434, 454 S.E.2d 890 (1995).

meaning may be ascertained by reference to words associated with them in the statute.[24]

The language of S. C. Code Ann. § 12-43-220 (c)(2)(iii)(A)(Supp. 2018) could not be more plain. The definition of "member of my household" set out in S. C. Code Ann. § 12-43-220(c)(2)(iii)(A) (Supp. 2018), applies only to S. C. Code Ann. § 12-43-220 (c)(2)(ii)(B)(Supp. 2018).

In this case, Judge Lenski found that despite the limitation in the text of S. C. Code Ann. § 12-43-220 (c)(2)(iii)(A)(Supp. 2018), that the intention of the General Assembly was that S. C. Code Ann. § 12-43-220 (c)(2)(iii)(A) (Supp. 2018), applies to both S.C. Code Ann. § 12-43-220(c)(2)(ii)(A)(Supp. 2018) and S.C. Code Ann. § 12-43-220 (c)(2)(ii)(B)(Supp. 2018).[25] The effect of Judge Lenski's ruling is that the text of S. C. Code Ann. § 12-43-220 (c)(2)(iii)(A)(Supp. 2018), is rendered meaningless. This is error because a court "must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.[26]

Judge Lenski's ruling is founded on his determination that the statute is ambiguous.[27] This was error because the statute is not ambiguous. In the statute, the General Assembly has treated things that are different in fact differently. As noted above,

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[24] *S.C. Energy Users Committee v. S.C. Pub. Serv. Commission*, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010).

[25] November 7, 2018, Order of S. Phillip Lenski, R. pp. 9-10.

[26] *Montgomery v. Spartanburg Cty. Assessor, supra.* The General Assembly went out of its way to include the limitation in S. C. Code Ann. § 12-43-220 (c)(2)(iii)(A)(Supp. 2018). If, as Judge Lenski found, such was not the legislative intent, the language would not appear in the statute, because it would serve no purpose.

[27] November 7, 2018, Order of S. Phillip Lenski, R. p. 7.

words in a statute must be construed in context.[28] In this case, the context is that S.C. Code Ann. § 12-43-220(c)(2)(ii)(A)(Supp. 2018) and S.C. Code Ann. § 12-43-220(c)(2)(ii)(B)(Supp. 2018) deal with things that are different in fact.

The factual difference is this: under S.C. Code Ann. § 12-43-220(c)(2)(ii)(B)(Supp. 2018), multiple claims for the 4% residential ratio could be made by the same family group, and under S.C. Code Ann. § 12-43-220(c)(2)(ii)(A)(Supp. 2018) multiple claims for the 4% residential ratio could not.

Judge Lenski's finding of an ambiguity is contrary to the plain language of the statute that evidences a valid decision of the General Assembly to treat different things differently. The ruling is contrary to the law of South Carolina which obliges the courts to enforce an unambiguous statute as it is written.[29]

Since the definition of "a member of my household" in S. C. Code Ann. § 12-43-220(c)(2)(iii)(A)(Supp. 2018), does not, by its express language, apply to S. C. Code Ann. § 12-43-220(c)(2)(ii)(A)(Supp. 2018), there is no statutory definition of "a member of my household" that applies to S.C. Code Ann. § 12-43-220(c)(ii)(A)(Supp. 2018). As a result,

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[28] *S.C. Energy Users Committee v. S.C. Pub. Serv. Commission, supra.*

[29] *See: Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964), where the following text appears:

> "It is perhaps unnecessary to say that courts have no legislative powers, and in the interpretation and construction of statutes their sole function is to determine, and within the constitutional limits of the legislative power to give effect to, the intention of the Legislature. They cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret."

the common, ordinary meaning of the phrase applies.[30]

As was found by Judge Lenski, the common, ordinary meaning of a "household" is a: group of people who live under the same roof."[31] Because the only evidence in the record is that Mr. Oakley does not reside with Ms. Oakley at 18 Plumbridge Lane on Hilton Head Island, under the common ordinary meaning of "household," he is not a member of J. Annette Oakley's household and he does not disqualify her from receiving the 4% residential assessment ratio.

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[30] Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. *Anderson v. S.C. Election Commission*, 397 S.C. 551, 725 S.E.2d 704 (2012). Here, because the definition of "household" is limited to subitem "B" by the plain language of the statute, the common definition of "household" must be used.

[31] *Black's Law Dictionary* (10th ed., 2014). November 7,2018, Order of Hon. S. Phillip Lenski, R. p. 6.

CONCLUSION

The application of J. Annette Oakley for the 4% Residential Assessment Ratio met the requirements set out in the plain language of S. C. Code Ann. § 12-43-220(c)(ii)(Supp. 2018). There is no ambiguity in the text of the statute, thus the Order of the Hon. S. Phillip Lenski finding ambiguity is erroneous. J. Annette Oakley urges the Court to reverse the November 7, 2018, Order of the Hon. S. Phillip Lenski granting Summary Judgment in favor of the Beaufort County Assessor, and enter judgment in favor of J. Annette Oakley finding that she is entitled to receive the 4% Residential Assessment Ratio.

Respectfully Submitted:

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This 27th day of March, 2019