THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

H.W. Funderburk, Administrative Law Judge

Appellate Case No.: 19-ALJ-17-0016-CC

Kristiane M. Shirer, Respondent,

v.

Calhoun County Assessor, Appellant.

FINAL REPLY BRIEF OF APPELLANT

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1) Appellant agrees that "dwelling" is not synonymous with "legal residence."

Respondent repeatedly argues that Appellant's interpretation of the statute requires that "dwelling" be read as synonymous with "legal residence." This is not accurate. Appellant readily concedes that a person can own multiple "residences" or "dwellings." However, a person can have only one "legal residence" or "domicile." South Carolina law is abundantly clear on this point. *See Phillips v. S.C. Tax Comm'n*, 195 S.C. 472, ___, 12 S.E.2d 13, 16–18 (1940); *Ravenel v. Dekle*, 265 S.C. 364, 379, 218 S.E.2d 521, 528 (1975); *Russell v. Cox*, 383 S.C. 215, 218, 678 S.E.2d 460, 462 (Ct. App. 2009). Appellant stated as much in its principal brief. *See* App. Br. at p. 11.

The issue on appeal in this case is not whether every "dwelling" is a "legal residence" or vice versa; rather, it is what the Legislature meant when it used the term "occupied" in Section 12–43–220 of the South Carolina Code. As examined below, the authority relied upon by Respondent does not establish that the term "occupied" as used in Section 12–43–220 refers to infrequent, temporary visitation. Instead, a plain reading of the provisions at issue supports only one interpretation of the word "occupied": that the immediate family members of the property owner must live in the additional dwelling as his or her permanent residence.

2) The analysis in *Evans* and *Davis* interpreting the definition of "dwelling house" under South Carolina's burglary statute does not aid in the interpretation of the statute at issue.

Respondent relies upon two cases interpreting South Carolina's burglary statutes, *State v. Davis*, 422 S.C. 472, 812 S.E.2d 423 (Ct. App. 2018), and *State v. Evans*, 376 S.C. 421, 656 S.E.2d 782 (Ct. App. 2008), to argue that homeowners can "occupy" multiple dwellings simultaneously. Both of these cases interpret the statutory definition of "dwelling house" under our State's burglary and arson statutes. As a preliminary matter, the term at issue in *Davis* and *Evans*—"dwelling house"—is different than the term at issue in this case—"dwelling." Thus, this Court's analysis

in Davis and Evans of the Legislature's intent surround the use of "dwelling house" is not helpful to the Court's analysis in this case.

Further, the burglary statutes define "dwelling house" as "any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property." S.C. Code Ann. § 16–11–10 (Supp. 2018).[1] Notably absent from this definition is the word "occupy." Thus, this Court's analysis in *Davis* and *Evans* as to whether the factual scenarios presented in those cases made the burglarized homes "dwelling houses" under the burglary statute does not have any bearing on the issue before the Court here.

Finally and most importantly, the analysis in *Davis* or *Evans* does not discuss or interpret the meaning of the word "occupy," which is the term at issue in this case. While both cases reference "occupants" of dwelling houses, neither contain any meaningful discussion of what it means to "occupy" a dwelling. As such, these cases are not helpful to the issue on appeal in this case and do not stand for the propositions advanced by Respondent.

3) The two tax cases relied upon by Respondent, *Phillips* and *Turner*, support Appellant's interpretation of "occupied."

Respondent further relies upon two tax cases from the 1940s, *Phillips v. S.C. Tax Comm'n*, 195 S.C. 472, 12 S.E.2d 13 (1940) and *Turner v. Bd. of Cnty. Tax Assessors*, 71 Ga. App. 374, 31 S.E.2d 61 (1944), to support her interpretation of the term "occupy" to permit the property owner

[1] Respondent further cites to Section 16–11–430 of the South Carolina Code for the proposition that our burglary statutes require that the dwelling at issue "be subject to specific occupancy." Br. of Resp. at 8 n.1. Section 16–11–430 is the definitions section of the Protection of Persons and Property Act. S.C. Code Ann. § 16–11–430 (Supp. 2018). This Act, while also in Chapter 11 of Title 16, is a separate and distinct statutory scheme from the burglary statutes being analyzed in *Davis* and *Evans*. Accordingly, it does not support the premise that the definition of "dwelling house" under the burglary statute includes a requirement of occupancy.

and her family to occupy both her legal residence and the additonal dwelling located on her property. Upon inspection of the facts and issues analyzed in these cases, both of these cases actually support the interpretation being advanced by Appellant.

In *Phillips*, our Supreme Court considered the meaning of the word "residing" in the context of our State's income tax statute. 195 S.C. at 472, 12 S.E.2d at 15.[2] The Court noted that the terms "residing" and "residence" could have various meanings depending on the context in which they were being used.[3] *Id.* at ___, 12 S.E.2d at 15. ("Manifestly the word 'residence' is a general term susceptible of varying interpretations."). The court noted that the term "residence" was

> an ambiguous, elastic, flexible, or relative term, which, notwithstanding numerous definitions are to be found in the books, is difficult of precise definition, as it has no fixed meaning applicable alike to all cases, but instead is used in different and various senses, and has a great variety of meanings and significations, because its meaning is variously shaded according to the variant conditions of its application. Also its meaning often depends upon the subject matter and connection in which it is used, and the sense in which it should be used is controlled by reference to the object; hence it may be given a restricted or enlarged meaning, considering the connection in which it is used.

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[2] Notably, in its brief, Respondent treats the terms "reside" and "occupy" as synonymous. *See* Br. of Resp. at p. 7 ("Evans and Davis, though burglary cases, have understood "occupied" like other cases have understood "occupy" and "reside" in the tax context.).

[3] Similarly, the word "occupy" has numerous meanings depending on the context in which it is used. The definition from Black's Law Dictionary cited by Respondent's exemplifies this point as it provides six distinct definitions for this term. Clearly, the meaning of the word "occupy" in the context of an adverse possession claim differs from the meaning in the context of a tax statute. *See, e.g.*, *Jones v. Leagan*, 384 S.C. 1, 12, 681 S.E.2d 6, 12 (Ct. App. 2009) ("For the purpose of constituting adverse possession by a person claiming title founded upon a written instrument, land shall be deemed to have been possessed and occupied when it has been 'usually cultivated or improved,' and when it has been 'protected by substantial enclosure.'" (citing S.C. Code Ann. § 5–67–230 (Supp. 2008)) (emphasis added).

Id. at ___, 12 S.E.2d at 15–16. Because of the nature of this term, the Court stated the importance of considering the context and legislative purpose behind the statute being interpreted. *Id.* at ___, 12 S.E.2d at 15. (noting that the meaning of a word with respect "to statutory enactments would be governed by the legislative intent or purpose."). The Court noted that in the tax context, residence often refers to "the place where the taxpayer lives and where he claims that his home or domicile is, a place of abode as distinguished from a temporary sojourn or from a temporary residence." *Id.* Ultimately, the Court adopted this interpretation as the intended meaning within our income tax statute, concluding "the word 'residing' as used in the income tax acts refers to *legal residence* in this State which is equivalent to domicile." *Id.* at ___, 12 S.E.2d at 19.

Likewise, in *Turner*, the Georgia Supreme Court was interpreting whether a property owner could properly claim a homestead exemption on her home in Georgia, despite the fact that she lived in North Carolina for the majority of the year as a result of her job. 71 Ga. App. at ___, 31 S.E.2d at 62. The statutory language for the homestead exemption required that the residence at issue "must be actually occupied as the permanent residence and place of abode by the person awarded the exemption." *Id.* at___, 31 S.E.2d at 63. Importantly, the Georgia court made a factual distinction between the two residences at issue, calling her Georgia home "her permanent home" and her North Carolina residence a home where she "temporarily resides." *Id.* The Court ultimately concluded that the property owner was entitled to claim the Georgia home as her homestead. *Id.*

In both of these cases, the courts were interpreting the meaning of the terms "reside" and "occupied" as used in tax statutes. In both cases, the courts noted that a difference between a residence at which the taxpayer permanently resided and other residences at which the person temporarily resided. In both cases, the courts interpreted the terms "occupy" and "reside" as used

in the tax statutes to refer solely to the permanent residence of the taxpayer. This is exactly the distinction Appellant is asking this Court to apply here. The term "occupied" as used in the tax statute at issue in this case, Section 12–43–220, must refer to the permanent residence of the immediate family member. As suggested by *Phillips* and *Turner*, the temporary occupation of a dwelling does not constitute occupation as contemplated in a tax statute.

4) The term "occupied" as used in Section 12–43–220 means to permanently reside.

As noted by Respondent, the term "occupied" is used twice in the applicable provision—once relating to the owner of interest and once relating to his or her immediate family members. Section 12–43–220 reads in applicable part:

> The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and **occupied** by the owner of the interest, and additional dwellings located on the same property and **occupied** by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

S.C. Code Ann. § 12–43–220(c)(2) (Supp. 2018) (emphasis added). The meaning given to the term "occupied" in this sentence must be consistent. Under Respondent's suggested interpretation, the two uses of the same word are given entirely different meanings. "Occupied" as it relates to the owner of interest cannot mean to "reside in as one's legal residence," while "occupied" as it relates to immediate family members mean "to infrequently visit on a temporary basis." These words must be given the same meaning and in the context of this statute, that meaning refers to a person's permanent residence.

This interpretation is supported by the affirmation requirement in subsection 12–43–220(c)(2)(ii). As part of his or her application to receive the reduced rate, the owner must declare under penalty of perjury that "that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence." S.C. Code Ann. § 12–43–

220(c)(2)(ii)(B). By including this requirement, the Legislature demonstrated its intent that individuals can only occupy a single residence at one time and cannot claim multiple residences for the special four percent assessment ratio. The fact that Respondent's children temporarily stay in the second dwelling during visitations does not qualify it for the reduced tax rate.

This interpretation is further supported by the military exception outlined in subsection 12–43–220(c)(2)(v)(C). Under this exception, a member of our armed forces "who receives orders for a permanent change of station or a temporary duty assignment for at least one year" can claim "two residential properties located in the State" as their legal residence so long as certain criteria is satisfied. S.C. Code Ann. § 12–43–220(c)(2)(v)(C)(1)–(3). By creating an exception to allow a servicemember to occupy two residences under limited circumstances, the Legislature demonstrated its intent that the term "occupy" means permanently reside and occupation of multiple residences could not be accomplished without this exception.

5) Respondent, like the ALC, fails to distinguish *Guthrie* from the facts presented in this case.

Respondent has failed to distinguish the facts in this case from those in *Guthrie v. Orangeburg Cnty. Assessor*, No. 01-ALJ-17-0173-CC, 2001 WL 1107822 (Sept. 5, 2001), in a manner such that the analysis in *Guthrie* would not apply here. Respondent tries to distinguish *Guthrie* on the basis that the two residences in *Guthrie* were located on "separate properties." Br. of Resp. at p. 15. However, the court in *Guthrie* specifically noted that the two properties at issue "were combined by the Assessor for administrative convenience" and shared a single tax map number. *Guthrie*, 2001 WL 1107822 at *2. Thus, for purposes of tax assessment, these dwellings were located on a single property, not separate properties as argued by Respondent.

Moreover, this distinction is completely arbitrary and subject to manipulation depending on the lens through which "separate properties" are viewed. For example, a property owner can

divide a parcel of land into as many smaller parcels as he or she should choose. He or she could legally convey one or more of these smaller parcels without conveying his or her interest in the other smaller parcels. Likewise, a property owner could combine two or more parcels into a single parcel for purposes of conveyance.

Similarly, under South Carolina's tax regulations, a county tax assessor has the authority to designate parcels for taxation purposes. *See* S.C. Code Regs. § 117–1740.2(C) (defining "parcel of land" as "a contiguous area of land under one ownership . . . that, as determined by the Assessor, should be included in the description for appraisal and assessment purposes after considering all legal and practical factors"). Pursuant to this authority, these designations are at the discretion of the assessor after considering "all legal and practical factors." *Id.* This means an assessor can designate a parcel regardless as to how it is legally conveyed or surveyed. *Id.* ("Parcels may have been conveyed by one or more legal instruments, or created by survey, and may contain several lots or fractions of a lot"). Accordingly, this Court should not base its decision in this case on the fact that the two dwellings are currently on a single tax parcel because the assessor has the authority to change this at any time.

Moreover, Respondent's proposed interpretation has the potential to lead to absurd results. For example, consider a hypothetical where four siblings inherited a large beach front lot consisting of two acres. The siblings each build a sizeable home on this property. One of the siblings moves into his or her beach house full time, while the other three siblings only use their beach homes as secondary residences for vacation purposes. Under Respondent's interpretation of Section 12–43–220, each of these four homes would be entitled to the reduced four percent rate, as the one of these residences is the legal residence of one sibling and "additional dwellings . . . occupied by the immediate family members" of that sibling. This result is completely contrary to

the plain language of the statute and the underlying legislative intent that each property owner only be able to apply this reduced rate to a single residence.

6) The Respondent's alternative argument that the second dwelling is part of the "five acres contiguous" to Respondent's legal residence is a strained interpretation of the statute at issue.

As Respondent concedes in its brief**,** Section 12–43–220 is a tax exemption statute. *See Ford v. Beaufort Cnty. Assessor*, 398 S.C. 508, 515, 730 S.E.2d 335, 339 (Ct. App. 2012); *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). As such, it is strictly construed against the taxpayer. *See CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 ("[I]nterlaced with these standard canons of statutory construction is our policy of strictly construing tax exemption statutes against the taxpayer.").

Despite acknowledging this heightened standard, Respondent argues that "legal residence" encompasses "not just one building, but the areas and structures around it." Resp. Br. at p. 18. This argument ignores that Section 12–43–220 specifically contemplates "additional dwellings" (as opposed to other buildings and curtilage) being located on the same property. Certainly, additional buildings and structures can be included as part of a taxpayer's legal residence. However, if those additonal buildings are dwellings, they must meet the requirements to fall under the additional dwelling exception. To interpret the statute to permit multiple dwellings to make up a legal residence ignores the plain language of the statute that sets forth the requirements for additonal dwellings to be taxed at the reduced rate. As such, Respondent's proposed interpretation is a strained construction of the applicable statutory provisions that ignores the strict construction standard to be applied our courts.

Moreover, the fact that Respondent's legal residence is the only addressed structure on the property is immaterial and should not factor into the court's analysis in this case. Addressing is a

technical exercise done for the purpose of providing accurate locations for postal delivery and emergency responders. It has no bearing on how a property is taxed.

In Calhoun County, as in every other county in our state, addresses are assigned pursuant to the 911 statute contained in Section 23–47–60 of the South Carolina Code and the local ordinances. Under the Section 23–47–60, "[e]ach house, building, or other occupied structure must be assigned a separate number." S.C. Code Ann. § 23–47–60(C)(3) (Supp. 2018). Accordingly, pursuant to this requirement, the second dwelling on Respondent's property should be addressed separately. Further, under Calhoun County's local ordinance, address assignment is building specific and each building's street number is assigned by the county administrator's office at their discretion. CALHOUN CNTY, S.C., CODE OF ORDINANCES, § 62-22(b)(2)–(4). Accordingly, county administration has the authority to assign the second dwelling a new address at any time.

CONCLUSION

This Court should reverse the ALC's order permitting Respondent to have her second dwelling assessed at the reduced four-percent assessment ratio under Section 12–43–220 of the South Carolina Code. Under a plain reading of Section 12–43–220's terms, the term "occupied" cannot include temporary occupation of the "additional dwelling" during infrequent, brief visitations as suggested by Respondent. As such, the second dwelling at issue in this case is not "occupied by immediate family members of the owner of the interest" and therefore not entitled to the reduced assessment rate. Accordingly, the ALC's final order granting Respondent's request to assess her second dwelling at the four percent ratio should be reversed.

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