IN THE COURT OF APPEALS OF IOWA

No. 9-205 (1999-50) / 98-1274

REGIONAL RETIREMENT LIVING, INC., d/b/a SYLVAN WOODS,
Appellant,

vs.

WAPELLO COUNTY ASSESSOR and THE BOARD OF REVIEW OF WAPELLO COUNTY, IOWA,
Appellees.

Appeal from the Iowa District Court for Wapello County, Daniel P. Wilson, Judge.

Plaintiff appeals the district court's summary judgment ruling in favor of defendants in plaintiff's action seeking a property tax exemption under Iowa Code section 427.1(8) (1997). **AFFIRMED.**

David J. Dutton and Lynn M. Smith of Dutton, Braun, Staack, & Hellman, P.L.C., Waterloo, for appellant.

Victoria R. Siegel, County Attorney, for appellees.

Heard by Sackett, P.J., and Vogel and Zimmer, JJ., but decided en banc.

PER CURIAM.

Regional Retirement Living, Inc. (Sylvan Woods) appeals the trial court's grant of summary judgment to the Wapello Board of Review. Because Sylvan Woods failed to exhaust its administrative remedies as set out in chapter 441 of the Iowa Code, and Sylvan Woods failed to prove an exception to the exhaustion requirement, the trial court lacked subject matter jurisdiction to hear the claim. Summary judgment is affirmed.

I. Background Facts & Proceedings.

Sylvan Woods is an Iowa non-profit corporation which provides care to elderly persons. The corporation applied for a property tax exemption for charitable organizations pursuant to Iowa Code section 427.1(8) on April 16, 1997. The deadline to file for such exemption is July 1st of each year. On April 30, 1997, the exemption was denied by the Wapello County Assessor. Sylvan Woods applied for the exemption a second time on May 30, 1997. The exemption was again denied by the assessor on June 25, 1997.

Sylvan Woods submitted an undated protest of tax assessment to the Board of Review for Wapello County (Board) sometime after June 25, 1997. The Board took no action on Sylvan Woods' protest. Sylvan Woods filed an a petition for judicial review with the district court on July 14, 1997. The Board filed a motion for summary judgment alleging Sylvan Woods did not exhaust its administrative remedies

and the court did not have jurisdiction to review the petition. The court granted the motion. Sylvan Woods appeals.

II. Applicability of Exhaustion of Remedies Requirement to Protests Based Upon Chapter 427 of the Iowa Code.

Sylvan Woods contends the trial court erred in granting summary judgment for two reasons: (1) Sylvan Woods contends the exhaustion of remedies requirements of chapter 441 are inapplicable to the protest of a denial of a tax exemption claimed pursuant to Iowa Code section 427.1(8); and (2) Sylvan Woods claims an appeal to the Board under 441 is futile when a section 427.1(8) exemption is denied by the county assessor after May 5.[1]

Our review of a grant or denial of summary judgment is at law. Iowa R. App. P. 4; *Gabrilson v. Flynn*, 554 N.W.2d 267, 270 (Iowa 1996). Summary judgment is only appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 201 (Iowa 1997).

Sylvan Woods' first contention is without merit. Both the statutory language of chapter 441 and our case law make evident the procedural requirements of chapter 441 are applicable to the protest of denial of a tax exemption. An aggrieved taxpayer can protest to the Board of Review under chapter 441 on limited grounds. One

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[1] A taxpayer can timely comply with the filing requirements of a claim for exemption under chapter 427 of the code by filing for the exemption by July 1 of the year. However, under 441 of the code, a taxpayer must protest an assessment of tax between April 16th and May 5th. *See* 441.37(1). Thus, if the county assessor denies the tax exemption after May 5th the taxpayer may not protest the assessor's decision to the board.

ground of protest is "[t]hat the property is not assessable, is exempt from taxes, or is misclassified . . . ." Iowa Code § 441.37(1)(c). Further, our appellate courts, when reviewing county boards' decisions on entitlement to tax exemption for charitable businesses under chapter 427.1(8)[2] have referred to the procedural and review requirements of chapter 441. *See, i.e., Holy Spirit Retirement Home, Inc. v. Bd. of Review of City of Sioux City, Iowa,* 543 N.W.2d 907, 910 (Iowa 1996); *Friendship Haven, Inc. v. Webster County Bd. of Review,* 542 N.W.2d 837, 840 (Iowa App. 1995); *Bethesda Foundation v. Bd. of Review of Madison County,* 453 N.W.2d 224, 226 (Iowa App. 1990)(each case using chapter 441 review standards to determine whether Holy Spirit's apartment division was entitled to tax exempt status under Iowa Code section Iowa Code § 427.1(9)).

After concluding Sylvan Woods was required to follow the procedural framework of chapter 441, we turn to the question of whether Sylvan Woods did so under these circumstances.

Judicial review proceedings are fundamentally different from original actions commenced in the district court in their jurisdictional basis, the manner of disposition, and the types of relief provided to a successful petitioner. *Black v. University of Iowa,* 362 N.W.2d 459, 462 (Iowa 1985). A district court lacks jurisdiction to review an

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[2] Until 1997, this exemption was numbered section 427.1(9). Although the exemption is numbered section 427.1(8) in the 1997 Code, the wording of the exemption has not been amended in any manner.

agency action if the litigant has not exhausted his administrative remedies prior to seeking judicial review. *Id.*

There are exceptions to this general rule. Litigants have been allowed to bypass the exhaustion of remedies requirements in three situations. First, a litigant may seek judicial review when she alleges the agency action was in violation of the rulemaking procedures set forth under the APA. *See Lundy v. Iowa Dept. of Human Serv.*, 376 N.W.2d 893, 894(1985). Second, if the plaintiff claims no adequate administrative remedy exists for the alleged wrongful agency action. *See Rowen v. LeMars Mut. Ins. Co.*, 230 N.W.2d 905, 909 (Iowa 1975). A constitutional challenge to an agency decision fits under this exception.[3] Third, when the plaintiff claims the applicable statute does not expressly or implicitly require all adequate administrative remedies be exhausted prior to bringing an action in district court. *See id.*

Sylvan Woods contends its case falls within the futility exception to the exhaustion of remedies requirement. It argues there is no adequate administrative remedy for taxpayers who are denied a tax exemption by a county assessor after May 5th. There does appear to be an inconsistency between section 427.1(8) and 441.37, by allowing applications for tax exemptions under the former to be filed until July 1st of each year, while under the latter protests of assessor's denials can be filed from

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[3] When a constitutional challenge is made to an agency action, the administrative remedy cannot resolve the constitutional challenge, exhaustion will not be required. *Matters v. City of Ames*, 219 N.W.2d 718, 719-20 (Iowa 1974).

April 16th to May 5th. Thus, taxpayers denied the tax exemption after May 5th cannot protest the denial to the board.

To the extent an irreconcilable conflict exists between these two statutes, we find the specific provision governs. *See* Iowa Code § 4.7 (1997)(special provision governs the general); *Northern Natural Gas Co. v. Forst*, 205 N.W.2d 692, 697 (Iowa 1973)(recognizing principle that if two statutes deal with a subject matter, one generally and the other more specifically, and the statutes are unable to be harmonized the specific will rule the general). Section 441.37(1) defines the procedure to protest a denial of a tax exemption. That section unambiguously states protests are to be filed "on or after April 16, to and including May 5, of the year of the assessment." Iowa Code § 441.37(1) (1997). Section 427.1 does not set out rules as to when protests are allowed. We find the specific language of section 441.37 governs.

Sylvan Woods could have followed this procedure by protesting the assessor's April 30th denial of the tax exemption. Rather, it refiled with the county assessor on May 30th. While a protest filed after the June 25th denial was futile, a protest timely filed after the April 30th denial would not have been. Sylvan Woods had an opportunity to protest the denial of the exemption to the Board, but missed the time window in which it was able to do so. If this result is unfair, it is for the legislature to change. *See In Re Thompson*,512 N.W.2d 560, 564 (Iowa 1994). "We will not rewrite an unambiguous statute under the guise of interpretation." *Id.*

For these reasons, we find Sylvan Woods was required to follow the procedures set out in section 441.37 prior to seeking court intervention. By not following this procedure, Sylvan Woods failed to exhaust its administrative remedies and the trial court was without jurisdiction to hear its claim. The trial court's grant of summary judgment in favor of the Board is affirmed.

AFFIRMED.

All judges concur, except Sackett, C.J., who dissents.

SACKETT, C.J. (dissenting)

I dissent. I would reverse and remand.

I disagree with the majority's affirmance of the district court's ruling on summary judgment dismissing plaintiff's claim for failure to exhaust its administrative remedies.

For the exhaustion rule to control, two conditions must be present: (1) an administrative remedy must exist for the claimed wrong; and (2) the statute must expressly or impliedly require that the remedy is to be exhausted before resort to the courts. *Rowen v. LeMars Mut. Ins. Co.*, 230 N.W.2d 905, 909 (Iowa 1975). Neither of the conditions are present. The relevant statute, Iowa Code section 427.1, provides no administrative remedy. Consequently, there was no administrative remedy to exhaust.

The only statutory requirement for plaintiff under Iowa Code section 427.1(8) was to file its claim for property tax exemption on or before July 1. Plaintiff complied with that requirement. The Board of Review was not in session at the time plaintiff's claim was denied; therefore, no opportunity for protest existed.

I would find the district court erred in holding plaintiff had not met the jurisdictional requirements under Iowa Code section 441, a different statute than the statute under which the exemption was claimed.

No. 98-1274. [9-205 (1999-50)] REGIONAL RETIREMENT v. WAPELLO COUNTY

Appeal from the Iowa District Court for Wapello County, Daniel P. Wilson, Judge. **AFFIRMED.** Heard by Sackett, C.J., and Vogel and Zimmer, JJ., but decided en banc. Per Curiam. Dissent by Sackett, C.J. (8 pages $3.20)

Regional Retirement Living, Inc. (Sylvan Woods) appeals the trial court's grant of summary judgment to the Wapello Board of Review. Because Sylvan Woods failed to exhaust its administrative remedies as set out in chapter 441 of the Iowa Code, and Sylvan Woods failed to prove an exception to the exhaustion requirement, the trial court lacked subject matter jurisdiction to hear the claim. We find Sylvan Woods was required to follow the procedures set out in section 441.37 prior to seeking court intervention. By not following this procedure, Sylvan Woods failed to exhaust its administrative remedies and the trial court was without jurisdiction to hear its claim. The trial court's grant of summary judgment in favor of the Board is affirmed.

DISSENT ASSERTS: I dissent. I would reverse and remand. I disagree with the majority's affirmance of the district court's ruling on summary judgment dismissing plaintiff's claim for failure to exhaust its administrative remedies. For the exhaustion rule to control, two conditions must be present: (1) an administrative remedy must exist for the claimed wrong; and (2) the statute must expressly or impliedly require that the remedy is to be exhausted before resort to the courts. Neither of the conditions are present. The relevant statute, Iowa Code section 427.1, provides no administrative remedy. Consequently, there was no administrative remedy to exhaust. The only statutory requirement for plaintiff under Iowa Code section 427.1(8) was to file its claim for property tax exemption on or before July 1. Plaintiff complied with that requirement. The Board of Review was not in session at the time plaintiff's claim was denied; therefore, no opportunity for protest existed. I would find the district court erred in holding plaintiff had not met the jurisdictional requirements under Iowa Code section 441, a different statute than the statute under which the exemption was claimed.