

IN THE COURT OF APPEALS OF IOWA

No. 1-559 / 91-654

FILED

JUN 25 1992

CLERK SUPREME COURT

R.K. RICHARDS,

Appellant,

vs.

790

IOWA DEPARTMENT OF REVENUE AND FINANCE,

Appellee.

Appeal from the Iowa District Court for Story County,
Louie P. Beisser and Carl A. Baker, Judges.

Richards appeals from a district court judgment affirming the department's grant of a property tax exemption for 1982 to Northcrest, Inc., an elderly care facility. **AFFIRMED.**

R.K. Richards, Ames, pro se.

Bonnie J. Campbell, Attorney General, and Henry M. Griger, Special Assistant Attorney General, for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J.

In August 1982, R.K. Richards filed an application with the Iowa Department of Revenue and Finance seeking to revoke the 1982 property tax exemption of Northcrest, Inc. Northcrest was granted an exemption as a charitable institution, pursuant to Iowa Code section 427.1(9), by the Ames City Assessor. Northcrest is a nonprofit corporation which maintains a retirement community providing services for people over sixty-two years of age.

Richards previously challenged Northcrest's property tax exemption for 1981. See Richards v. Iowa Department of Revenue, 414 N.W.2d 344 (Iowa 1987) (Richards I). The court noted Iowa law has a broad view of charity. Id. at 351. The gratuitous or partly gratuitous care of elderly persons is considered a charitable purpose. Id. The court determined there was substantial evidence to support the decision of the Director of Revenue that Northcrest was a charitable institution. Id. at 354.

An evidentiary hearing in this case was held before a hearing officer in May 1988. Richards admitted that Northcrest was probably a charitable institution under the definition of "charitable" found in Richards I, but he felt this definition was contrary to the intent of chapter 427. The hearing officer found Northcrest's operation had not changed since 1981. In 1982 Northcrest still provided lifetime residents with care and service if they became

financially unable to meet living expenses. Also, during 1982 Northcrest did make concessions on fees to those residents who became unable to pay the full fees and charges. The hearing officer concluded there was substantial evidence to show Northcrest is a charitable institution.

Richards filed an appeal with the Director of Revenue. The director adopted the findings and conclusion of the hearing officer.

In January 1989, Richards filed a petition for judicial review of the director's decision. The district court dismissed Richards' petition on the ground that he lacked standing. Richards v. Iowa Department of Revenue and Finance, 454 N.W.2d 573, 574 (Iowa 1990) (Richards II). The supreme court held Richards' pecuniary interest as a taxpayer entitled him to judicial review of the department's decision. Id. at 576. The case was then remanded to the district court. Id.

The district court reviewed the case under the substantial evidence test. The court found Richards did not meet his burden to establish Northcrest should be disqualified from receiving a property tax exemption. The court found there was substantial evidence to support the director's finding that Northcrest is a charitable institution. Richards now appeals.

I. Our review is governed by the Iowa Administrative Procedure Act. Richards, 414 N.W.2d at 350. When this court reviews a district court decision on the validity of an agency action, we ask only whether the district court has correctly applied the law. Id. If, after applying the standards of Iowa Code section 17A.19(8) to the agency action, our conclusion is the same as that of the district court, we must affirm. Id.

Unless the department is wrong as a matter of law, we should broadly and liberally apply its findings in order to uphold rather than defeat its decision. Id. The department's factual determinations are binding on the courts if they are supported by substantial evidence. Id. Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. Id.

II. Richards first contends the district court should have granted his request for a default judgment on the ground that the department did not timely certify the entire record pursuant to section 17A.19(6). That section provides:

Within thirty days after filing of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of any contested case which may be the subject of the petition.

Because of the appeal to the supreme court in Richards II, the district court granted the department sixty days from the date of any final order in the appeal to file the

certified copy of the transcript in this case. The department transmitted a certified copy of the record to the district court within sixty days after procedendo was issued in Richards II. Richards argues the certified copy should have been transmitted within sixty days after the supreme court's decision.

Even if we consider the agency's transmission of the certified copy to be untimely, a rescission of an agency's order is ordinarily not an authorized sanction for violating the transcript filing requirements of section 17A.19(6). See Hartvigsen v. Iowa Department of Transportation, 426 N.W.2d 399, 402 (Iowa 1988). Thus, the district court was correct in not granting Richards a default judgment.

III. Richards also questions the standard of review applied by the district court. He points out that in other cases, where a board of review has denied an applicant's request for property tax exemption, the review of the district court and on appeal is de novo. See Atrium Village, Inc. v. Board of Review, 417 N.W.2d 70, 72 (Iowa 1987).

Richards brought this case under the special procedure found in section 427.1(26). That section allows a taxpayer to make an application to the director for revocation of any exemption, based on alleged violations of chapter 427. The section also provides for petitions for judicial

review. We determine the district court correctly applied the standard of review as set forth in the Iowa Administrative Procedure Act, chapter 17A, for petitions for judicial review.

IV. Richards contends the district court improperly placed the burden of proof upon him. He believes Northcrest should have the burden to prove it is entitled to the tax exemption.

Our review is de novo. Southside Church of Christ v. Des Moines Bd. of Review, 243 N.W.2d 650, 651 (Iowa 1976). We strictly construe the statutes exempting property from taxation. Iowa Methodist Hospital v. Bd. of Review, 252 N.W.2d 390, 391 (Iowa 1977). Any doubt concerning an exemption must be resolved in favor of taxation. Atrium Village v. Bd. of Review, 417 N.W.2d 70, 72 (Iowa 1987). The burden is on the party claiming the exemption to show the property should not be taxed. Id.

Appellant claims the district court incorrectly placed the burden of proof upon him. However, he fails to provide authority which states who has the burden of proof following a final agency decision when the party claiming exemption won. Our research failed to locate a definite answer regarding placement of the burden in this situation.

We do not reach this question. Our review is de novo. We have reviewed the record and find Northcrest has established its exemption.

V. Richards raises an issue concerning whether Northcrest properly applied for a property tax exemption. However, he did not raise this issue before the department. In reviewing agency action, the district court and the appellate court may only review issues considered and decided by the agency. Grudle v. Iowa Department of Revenue and Finance, 450 N.W.2d 845, 847 (Iowa 1990).

VI. Richards claims the decision of the district court was contrary to language found in Dow City Senior Citizens Housing, Inc. v. Board of Review, 230 N.W.2d 497, 500 (Iowa 1975). The facility in that case was denied a property tax exemption. Id. The court noted the legislature had separately provided property tax relief for low-income elderly persons. Id. Under chapter 425, low-income elderly persons may be reimbursed for a percentage of gross rent paid which is attributable to property taxes. Id. The court noted that if the facility were granted an exemption, the renters would be entirely exempt from property taxes. Id.

Richards believes the policy set forth in Dow City, to tax the facility and reimburse low-income residents, makes sense. However, his policy arguments have already been addressed by the legislature. By enacting section 427.1(9), the legislature has made the policy decision that charitable institutions should be exempt from property taxes. We note that the Dow City facility was specifically

found not to be a charitable or benevolent institution. Id. at 499. We conclude the Dow City case is inapplicable to the case at hand.

VII. Finally, Richards contends the department and district court erred in finding Northcrest was a charitable institution in 1982 for purposes of section 427.1(9). He points out Northcrest had only \$10,000 in available income for charitable purposes. Also, Northcrest provided \$15,540 in free services to one resident. Richards argues this amount of charity is miniscule in comparison to the \$62,054 in property tax which is lost because of Northcrest's exemption.

We cannot agree with Richards' arguments. There is no exact dollar balancing which must be made to determine whether an institution should be considered charitable. The partly gratuitous care of elderly persons is a charitable activity. Evangelical Lutheran Good Samaritan Society v. Board of Review, 267 N.W.2d 413, 414 (Iowa App. 1978). Other important factors are whether the institution received a federal tax exemption based on charitable status and the purposes of the institution as stated in its articles of incorporation. Bethesda Foundation v. Board of Review, 452 N.W.2d 224, 227 (Iowa App. 1990). However, the actual use of the property governs whether an exemption should be granted. Friendship Center West, Inc. v. Harman, 464 N.W.2d 455, 457 (Iowa App. 1990).

We find there is substantial evidence in the record to show Northcrest should be considered a charitable institution under these factors. Northcrest has received a federal tax exemption for every year it has been in operation. Its articles of incorporation suggest a charitable purpose for the corporation. Furthermore, Northcrest provides its lifetime residents with care and service if they become financially unable to meet living expenses. During 1982 Northcrest did make concessions on fees for a resident who became unable to pay the full fees and charges.

We affirm the decision of the district court and the director that Northcrest should not be disqualified from receiving a property tax exemption under section 427.1(9). Costs of this appeal are assessed to Richards.

AFFIRMED.