FILED
JUL 30 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ATRIUM VILLAGE, INC.,	)	
Plaintiff-Appellant,	)	Filed July 30, 1987 20
vs.	)	
THE BOARD OF REVIEW OF JOHNSON COUNTY, IOWA,	)	6-467 85-1708
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Johnson County (No. 47991, 48616, and 47233), William R. Eads, Judge.

Plaintiff, a nonprofit nursing home/retirement facility, appeals from the trial court's affirmance of the board of review's denial of plaintiff's application for property tax exemption, contending the trial court erred in failing to grant it tax exempt status under Iowa Code section 527.1(9). Defendant contends that the court of appeals' holding in Hilltop Manor v. County Board of Review of Marion County, 346 N.W.2d 37 (Iowa App. 1984), contradicts section 427.1(9) and should be overruled. **AFFIRMED.**

William L. Meardon of Meardon, Sueppel, Downer & Hayes, Iowa City, for plaintiff-appellant.

J. Patrick White, Johnson County Attorney, Iowa City, for defendant-appellee.

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

DONIELSON, J.

Appellant retirement and care facility appeals from the judgment of the district court affirming appellee's denial of a charitable property tax exemption under Iowa Code section 427.1(9) (1985). Appellant claims the court erred in concluding it was not a charitable institution and thus not entitled to the exemption. We affirm.

Appellant is a nonprofit corporation providing a residential custodial home for the elderly in Hills, Iowa. This controversy arises out of Iowa Code section 427.1 which sets out the list of exemptions from property taxation; in particular, section 427.1(9) which exempts in relevant part: "All grounds and buildings used . . . by . . . charitable, benevolent . . . institutions and societies solely for their appropriate objects . . . and not leased or otherwise used . . . with a view to pecuniary profit." In Evangelical Lutheran Good Samaritan Soc'y v. Board of Review of Fayette County, 267 N.W.2d 413, 414 (Iowa App. 1978), we described our standard of review in the following terms: "Review is de novo. Tax exemption statutes are strictly construed, with any doubt resolved in favor of taxation. Plaintiffs have the burden to show that the property should not be taxed." In addition, exemption from taxation must be decided on a case-by-case basis, depending on the use to which the particular property is put. Iowa Methodist Hosp. v. Board of Review of the City of Des Moines, 252 N.W.2d 390, 392 (Iowa 1977). The Board claims that appellant nursing home is not exempt under this statute because it is not operated solely for charitable or benevolent purposes. There is no dispute as to the nonprofit nature of appellant's operation.

Appellant maintains this case comes within the ambit of Hilltop Manor v. County Bd. of Review of Marion County, 346 N.W.2d 37 (Iowa App. 1984), wherein we stated that the gratuitous or partly gratuitous care of the elderly is a charitable purpose within the meaning of Iowa Code section 427.1(9). 346

N W.2d at 39. Appellee contends that this case is distinguishable from Hilltop Manor and, to the extent similar, mandates that we overrule the former case. We may quickly dispose of appellee's request that we overrule our decision in Hilltop Manor. We think that case is correct in both its statement and application of precedent. See South Iowa Methodist Homes, Inc. v. Board of Review of the City of Des Moines, 173 N.W.2d 526, 532 (Iowa 1970); Evangelical Lutheran Good Samaritan Soc'y, 267 N.W.2d at 414-15. Moreover, we think this case dissimilar from Hilltop Manor and, to that extent, not controlled thereby.

Although we agree with appellant's contention that the statutory exception is not limited to facilities used solely by or for the financially destitute, South Iowa Methodist Homes, 173 N.W.2d at 531, one weighty factor in our application of the exception is the facility's policies as concerns those of limited financial means. Id.; Evangelical Lutheran, 267 N.W.2d at 415; Hilltop Manor, 346 N.W.2d at 38. In Iowa Methodist Hospital v. Board of Review of the City of Des Moines, 252 N.W.2d 390, 392 (Iowa 1977), our supreme court said the following:

> Under the record before us we hold that the hospital is not entitled to a tax exemption on the nursing home property. We find no basis upon which it can be said this property is devoted to charitable use. According to the record, no patient is accepted without paying. If suitable financial arrangements cannot be made privately or by public assistance, the applicant is turned away. Such a general practice does not contain the necessary elements of charitable use of the nursing home property.

In the case at bar, appellant's bylaws state its policy "of maintaining in residence, . . . , any person who, subsequent to admission, becomes unable to pay periodic charges." This lofty policy, however, has never been communicated to appellant's residents. Quite to the contrary, in all apartment residency agreements appellant reserves the right to terminate a residency upon the resident's noncompliance with monthly payment obligations. Although apparently no residency has been terminated to date under this provision, neither has appellant's

policy of retaining nonpaying residents been exercised. In actuality, and on this point we are in agreement with the district court, given appellant's restrictive admissions policies, it appears doubtful that any resident will become unable to pay. These policies include the following:

1. The facility has reserved and exercised the right to deny admission to applicants who are without adequate resources to pay all monthly or regular fees;

2. The facility does not adjust its fees for lower income applicants or residents;

3. The facility does not accept Title XIX recipients;

4. The facility requires guarantors to assure payment of all charges for persons who are of marginal financial ability to pay for care;

5. The facility does not inform its residents of the existence of a charity fund of approximately $30,000.00.

In light of these policies, combined with appellant's stated ability to terminate residencies because of a resident's failure to meet financial obligations, appellant's policy, as contained in the bylaws, rings hollow. In a similar situation, our supreme court has stated that:

> The objects and purposes of the corporation as expressed in its articles of incorporation may be considered in determining this question, but the recital thereof in its articles is not controlling in determining the question of exemption. This question must be determined from the use made of the property rather than the declaration made in its articles of incorporation.

South Iowa Methodist Homes, 173 N.W.2d at 532.

Our supreme court has stated that "[t]hose [retirement] homes where admission is limited to the physically and financially independent are held taxable." Id. at 533. While we do not today hold this to be the determinative principle in all cases, we think the balance of equities in the case at bar discloses the correctness of the district court's decision. Appellant has not distinguished

itself sufficiently from any number of homes properly on the tax rolls so as to justify its claim for exempt status

The district court is affirmed

AFFIRMED.