FILED
JAN 2 6 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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MARTHA E. COTT, )

Plaintiff-Appellee, )

vs. )

BOARD OF REVIEW OF THE CITY OF AMES, IOWA, ) 8-523 88-454

Defendant-Appellant. )

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Appeal from the Iowa District Court for Story County (No. 33079), Ronald H. Schectman, Judge.

Defendant Board of Review appeals from a ruling by the district court which granted plaintiff's motion for summary judgment. **AFFIRMED.**

John R. Klaus, City Attorney, for defendant-appellant.

John L. McKinney, Ames, for plaintiff-appellee.

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

**DONIELSON, J.** 31

Defendant Board of Review appeals from a ruling by the district court which granted plaintiff's motion for summary judgment. Plaintiff brought this action claiming that her property should be assessed partially as residential and the remainder as agricultural under Iowa Code section 384.1. The board argues that the district court erred in ordering a tax classification of agricultural for an asserted tract not established by any deed, contract, official plat, or decree of partition as being separate from a tract with a residential use.

Plaintiff Martha E. Cott and her husband bought a 10.13 acre tract near the western limits of Ames in 1977. The original house was razed and they built a new residence. The residence was assessed separately from the remaining tract until 1981 when it was all classified as residential. The parties settled by a consent decree that the .5 acre homestead would be residential and the remaining 9.63 acres would be agricultural. The land is mostly unused except for a portion which is used for growing raspberries for commercial sale. In 1986, one acre was deeded to Martha's son, Randy. Randy had built a residence on the one-acre tract in 1984, and in 1985, the assessor again assessed the entire 10.13 acres as residential. Martha filed an action and the district court found that Martha's .5 acre tract and Randy's one-acre

tract should be considered residential and the remainder agricultural. A nunc pro tunc order was later entered to reflect the deed of one acre to Randy.

On January 1, 1987, Martha's entire property was again classified as residential. The Board of Review of the City of Ames agreed with the assessment and Martha brought this action in district court seeking a review of the decision. Martha filed a motion for summary judgment which the court granted. The district court determined that there had been no change in the use of the land since the 1986 ruling. It pointed out that the city had agreed to the two classifications in the 1982 consent decree. The court found that Martha's .5 acre tract should be considered residential and the remaining 8.63 acres should be agricultural because the primary good faith use of the property was agricultural.

The Board of Review has appealed the decision of the district court. The board argues that the property cannot be considered as two tracts, but the entire 9.13 acres must be under one classification. The board states that there is no statutory authority for making a new tract for tax purposes unless there is a deed of conveyance or a decree in a petition proceeding. The board asserts that the district court's decree did not effectively create two tracts for assessment.

Summary judgment is only proper when there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. Brown v. Monticello State Bank of Monticello, Iowa, 360 N.W.2d 81, 83 (Iowa 1984). If, under the entire record, the only conflict concerns the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Id. at 84. The moving party here must show that she is entitled to judgment on the merits as a matter of law. Id. Our task on review is to determine whether a genuine issue of fact exists and whether the law was applied correctly. Id.

The facts in this case are undisputed. The only issue concerns the conclusions drawn from these facts. As the trial court correctly noted, if reasonable minds could draw different inferences and reach different conclusions, the issue must be reserved for trial and summary judgment is improper. Daboll v. Hoden, 222 N.W.2d 727, 733 (Iowa 1974). However, the trial court found that only one conclusion was possible from the facts and thus summary judgment was granted.

The subject tract of land, less the .5 acre, is within the administrative definition of agricultural real estate.

> Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation . . . . Land and the nonresidential improvements and structures located

> on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, . . ., all for intended profit.

701 Iowa Admin. Code 71.1(3) (1986).

The subject tract of land, less the .5 acre, is used to grow raspberries commercially. Agriculture is its good faith use Therefore, we find the trial court correctly applied the law to the undisputed facts. Summary judgment is affirmed.

**AFFIRMED.**