IN THE COURT OF APPEALS OF IOWA

No. 3-035 / 92-666

FILED
MAY 0 1993

GLEN HAVEN HOMES, INC.,

Appellant,

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vs.

MILLS COUNTY BOARD OF REVIEW,

Appellee.

Appeal from the Iowa District Court for Mills County, James M. Richardson, Judge.

The plaintiff appeals from the district court's ruling granting summary judgment regarding plaintiff's tax exempt status on the grounds that a 1981 decision was res judicata as to the 1992 request for tax exempt status. **AFFIRMED.**

Eugene T. Hackler and Robert C. Londerholm, Sr. of Hackler, Londerholm, Hinkle, Corder, Martin & Hackler, Olathe, Kansas, and James A. Campbell and Scott J. Rogers of The Peters Law Firm, Council Bluffs, for appellant.

Frank W. Pechacek, Jr. and Suellen Overton of Smith, Peterson, Beckman & Willson, Council Bluffs, for appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

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HAYDEN, P.J.

The present case stems from a long series of judicial proceedings that began in 1979 when Glen Haven Homes, Inc. (Glen Haven) brought suit against Mills County Board of Review (Board). Glen Haven operates an intermediate nursing care facility in the city of Glenwood, Mills County, Iowa. Glen Haven challenged the Board's decision denying total tax exempt status to the facility. Glen Haven argued all of its real property was exempt from taxation pursuant to Iowa Code section 427.1(9) because it was the property of and used by a charitable society. At the time of the 1980 trial, the district court found only fifty percent of Glen Haven's patients paid for their own care through private sources, and the remaining percentage paid for their care through public assistance. The district court filed its opinion on February 9, 1981. The court ruled as a result of these percentages the portion of the business not used for partly gratuitous care, which was fifty percent, was fully taxable. The court held only fifty percent of Glen Haven's property was exempt from taxation. It also provided the percentage of exemption be adjusted each year thereafter based on the number of Title XIX occupants in the facility as of January 1 of each year. No appeal was taken from this ruling.

On February 1, 1990, Glen Haven filed a claim for a 100% tax exemption. The Mills County Assessor denied Glen Haven's claim. On May 3, 1990, Glen Haven filed a petition

to the Board of Review of Mills County. The Board denied Glen Haven's petition on May 16, 1990.

On June 17, 1990, and again on July 30, 1991, Glen Haven filed various appeals from the Board's holding Glen Haven's property was not totally exempt from taxation. Glen Haven raised two grounds for its claim for 100% exempt status: (1) the property was entitled to 100% exemption because the grounds and buildings were used by a charitable and benevolent institution under Iowa Code section 427.1(9), and (2) similar nursing homes in Iowa operated in a comparable manner were being accorded 100% exemption, and to deny plaintiff the same amount of exemption was a denial of equal protection. The Board filed its motion for summary judgment on January 16, 1992, asserting the same parties and same issues had been before the district court in the 1981 case.

The district court concluded Glen Haven had raised the same issues against the same defendant in the 1981 case and held the doctrine of res judicata applied. The court noted the percentage of Medicaid patients to private pay patients had remained at the same fifty-percent share. The district court therefore granted the Board's motion for summary judgment. Glen Haven has appealed.

Glen Haven argues the district court erred in granting summary judgment. Glen Haven maintains it is entitled to exemption pursuant to section 427.1(9) because the home does not operate for pecuniary profit. Glen Haven contends

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even though it cannot now per se attack the 1981 district court ruling, the ruling is nonetheless contrary to Iowa law and current court precedent.

Glen Haven additionally argues the district court erred in granting summary judgment because Glen Haven was prepared to submit new evidence showing a number of facts had changed since the 1981 ruling. Glen Haven contends res judicata does not apply in the present case because each taxable year stands on its own and is an independent cause of action. Glen Haven next maintains the county failed to follow the requirements of Iowa Rule of Civil Procedure 237 by failing to annex to the motion for summary judgment a separate, short and concise statement of material facts as to which the Board maintained there was no genuine issue of material facts.

The Board argues in order for Glen Haven to challenge the 1981 decision it must plead and prove a change in use has occurred under Iowa Code section 427.1(23). The Board claims Glen Haven is attempting to collaterally attack the 1981 ruling. The Board maintains Glen Haven should have appealed the 1981 ruling if it believed the ruling was erroneous and contrary to Iowa law. The Board also contends Glen Haven's equal protection argument is not applicable because Glen Haven does not claim it is a member of a protected class.

Summary judgment is appropriate only if there exists no genuine issue of material facts. Farm Bureau Mut. Ins. Co.

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v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of material facts. Id. The evidence must be viewed in the light most favorable to the nonmoving party. Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). Every legitimate inference which can be reasonably deduced from the evidence should be afforded the resisting party. Id. A fact issue is generated if reasonable minds can differ on how the issue should be resolved. Id.

I. Res Judicata. Glen Haven contends the district court erred in sustaining defendant's summary judgment motion on the basis of res judicata. We look to the doctrines of claim preclusion and issue preclusion.

> The doctrine of claim preclusion bars further litigation on the same "claim" or cause of action. Under this doctrine, an adjudication in a former suit between the same parties on the same claim "is final as to all matters which could have been presented to the court for determination, and a party must litigate all matters growing out of its claim at one time rather than in separate actions."

Huffey v. Lea, 491 N.W.2d 518, 520 (Iowa 1992) (quoting Leuchtenmacher v. Farm Bureau Mut. Ins. Co., 460 N.W.2d 858, 859-60 (Iowa 1990)). The doctrine of claim preclusion applies in this case. Glen Haven is raising the same claim in this action as it did in the 1980 action. The parties are also the same in both actions. The acts complained of, and the recovery demanded, are the same. See Leuchtenmacher, 460 N.W.2d at 860. In both actions Glen Haven has sought 100% tax exemption for its property.

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The Board alleged res judicata in its generic sense as a defense; therefore, we must also determine whether the district court's decree may be upheld on the basis of issue preclusion. See Israel v. Farmers Mut. Ins. Ass'n, 339 N.W.2d 143, 145 (Iowa 1983). The four prerequisites of issue preclusion are:

> (1) The issue concluded must be identical;
> (2) The issue must have been raised and litigated in the prior action;
> (3) The issue must have been material and relevant to the disposition of the prior action; and
> (4) The determination made of the issue in the prior action must have been made necessary and essential to the resulting judgment.

Id. (citations omitted). We conclude the doctrine of issue preclusion applies in this case because the four prerequisites have been satisfied. The district court addressed the tax exempt status of Glen Haven in its 1981 decree. On appeal Glen Haven contests the percentage of property deemed exempt. The issue in the 1980 district court action is identical to the issue raised on appeal. No evidence indicates there has been a change in use of the property or circumstances warranting redetermination of Glen Haven's tax exempt status. The exemption issue was litigated and resolved in the previous district court action. Determining whether, and to what extent, Glen Haven's property was exempt from taxation was material and necessary to the district court's disposition of the action. The parties in this appeal were also the parties in the previous district court action. We hold the tax exemption issue should not be relitigated.

The 1981 district court decree constituted a final adjudication as to the tax exempt status of Glen Haven. The doctrine of res judicata prevents plaintiff from seeking a redetermination of its tax exempt status. The district court's decision to summarily dismiss Glen Haven's exemption claim on the basis of res judicata was proper.

II. Constitutional Issue. Glen Haven contends the denial of a 100% charitable tax exemption under Iowa Code section 427.1(9) constitutes a violation of its equal protection. Plaintiff alleges other nursing homes which operate in a similar manner to Glen Haven have received a 100% exemption under the same statute. Glen Haven argues this issue was not raised in the 1980 case and cannot be dismissed on the basis of res judicata.

The general rule is each tax exemption case must be decided on a case-by-case basis. Evangelical Lutheran Good Samaritan Society v. Board of Review, 267 N.W.2d 413, 414 (Iowa App. 1978).

The Board has the burden of showing no material fact existed. City of McGregor v. Janett, 480 N.W.2d 576, 579 (Iowa App. 1991). The Board presented evidence showing no change in use or square footage of Glen Haven had occurred since the 1981 decision and the doctrine of res judicata applied. The resisting party must set forth specific evidentiary facts showing the existence of a genuine issue of material fact. Willis v. City of Des Moines, 357 N.W.2d 567, 571 (Iowa 1984); Iowa R. Civ. P. 237(e). A failure to

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adequately resist a summary judgment motion is fatal if the movant has satisfied his burden. Ferris v. Anderson, 255 N.W.2d 135, 137 (Iowa 1977).

In its resistance to defendant's motion for summary judgment, Glen Haven stated it would present evidence similar nursing homes received 100% exemptions. Glen Haven has merely stated it was prepared to submit evidence regarding the exempt status of 140 nonprofit nursing homes. There is no evidence of similarity between the facilities, just mere conclusions. The opposing party cannot, in his resistance, rely solely on legal conclusions to show there is a genuine issue of material fact justifying denial of summary judgment. Byker v. Rice, 360 N.W.2d 572, 574 (Iowa App. 1984). Plaintiff has failed to set forth specific evidentiary facts showing the existence of a genuine issue of material facts. See Liska v. First Nat'l Bank, 310 N.W.2d 531, 534 (Iowa App. 1981). Glen Haven's argument relating to other nursing homes does not create a genuine issue of material facts.

We conclude Glen Haven failed to disclose information sufficient to raise a genuine issue of material facts.

III. Separate Cause of Action Each Tax Year. Glen Haven argues each tax year stands on its own so the filing of a new exemption claim constitutes a separate cause of action. Tubbessing v. City of Burlington, 68 Iowa 691, 24 N.W. 514 (1885). Basically plaintiff is arguing it is entitled to a redetermination of exempt status every tax

year. We reject plaintiff's argument in light of section 427.1(23) of the Iowa Code. This section provides, in pertinent part:

> A society . . . claiming an exemption under subsection . . . 9 [Property of religious, literary, and charitable societies] of this section shall file with the assessor not later than February 1 a statement upon forms to be prescribed by the director of revenue and finance, describing the nature of the property upon which the exemption is claimed . . . . Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property is used for the purposes specified in the original claim for exemption.

Iowa Code § 427.1(23) (1991) (emphasis added). Only a change in use can trigger a redetermination of exempt status. See Iowa Code § 427.1(23). The district court's 1981 decree also specifically stated the property tax exemption, in the future, would "be prorated according to the use of the property by declaring that portion of the value of the property exempt from taxation which bears the same relationship to the total value of the property as the percentage of occupants on Title XIX benefits bears to the total number of occupants each year." Glen Haven's claim does not constitute a separate cause of action because it has failed to present any evidence of change of use. In fact, plaintiff's administrator, Monte McVey, testified there has been no change in use of the facility. Consequently, the partial exemption granted in the 1981 decree is unchanged. The district court properly found as a matter of law each tax year does not "stand on its own"

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in this property tax exemption case and dismissed plaintiff's claim. We affirm the district court on this issue.

IV. Compliance with Iowa Rule of Civil Procedure 237(h). Glen Haven contends the district court erred procedurally in granting defendant's motion for summary judgment motion. Plaintiff alleges the motion was procedurally defective because defendant failed to annex a short and concise statement explaining why no genuine issue existed.

The Iowa Supreme Court has held "the failure of counsel to annex a statement of undisputed facts and a memorandum of supporting authorities to his or her motion for summary judgment does not affect a court's authority to rule on the motion." Toomer v. Iowa Dep't of Job Serv., 340 N.W.2d 594, 597 (Iowa 1983).

> Iowa Rule of Civil Procedure 237(h) "was designed in part to assist trial court in examining the entire record before it . . . in light of allegations in the motion." The fact that a court takes under submission a motion for summary judgment without the "assistance" provided by rule 237(h) does not strip the court of authority to rule on such a motion.

Id. at 598.

The Board specifically set forth facts upon which it was relying in its motion. It stated Glen Haven's administrator testified in his deposition there had been no change in use or square footage at the facility since the 1981 district court decision. The Board further provided

the 1981 decision barred Glen Haven's action on the basis of res judicata. The Board also submitted a brief in support of its motion and specifically set forth the statement of facts upon which it relied. The district court properly ruled on defendant's motion for summary judgment. We affirm the district court on this issue.

Under this record we conclude Glen Haven failed to generate a jury issue regarding its tax exempt status. We conclude summary judgment was proper because no material facts or issues remain to be decided. We affirm the district court in granting the Board's summary judgment motion.

AFFIRMED.

Sackett, J., concurs; Habhab, J., concurs in part and dissents in part.

HABHAB, J. (concurring in part and dissenting in part)

I concur in the result reached by the majority. I do so on the strength that res judicata applies for the plaintiff in the face of the motion for summary judgment failed to come forward with any genuine issue of facts other than those adjudicated in the previous proceedings. However, I dissent from any suggestion under Division III of the opinion that the plaintiff, because of section 427.1(23) of the Iowa Code, is precluded from seeking a new tax exemption claim. I believe that section applies only when an exemption has been allowed. Here, the exemption claim was partially denied. I do not believe section 427.1(23) prohibits a redetermination of exempt status for the portion of the exemption claim disallowed.