

IN THE COURT OF APPEALS OF IOWA

FILED

APR 29 1980

CLERK SUPREME COURT

504

FRIENDS OF FAITH RETIREMENT)
HOMES, INC.,)

Plaintiff-Appellee,)

vs.)

THE BOARD OF REVIEW OF THE)
CITY OF WATERLOO,)

Defendant-Appellant.)

Filed April 29, 1980

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2-63417

Appeal from Black Hawk District Court - Dennis D. Damsgaard, Judge.

Defendant appeals from district court determination that plaintiff is entitled to an exemption from property taxes as a charitable organization under section 427.1(9), The Code 1977. AFFIRMED.

William S. Smith of Smith and Kennedy, Waterloo, Iowa, for defendant-appellant.

David J. Dutton of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, Iowa, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant board of review appeals from district court determination that plaintiff retirement and nursing home is entitled to an exemption from property taxes as a charitable organization under section 427.1(9), The Code 1977. Also presented is the plaintiff's claim, urged by way of cross-appeal, that an adjudication made in prior litigation between the parties is determinative of the issues presented under the doctrine of issue preclusion.

Plaintiff's facility opened in 1968. It has been increased in size through additions in 1969, 1970 and 1978. The assessor for the City of Waterloo placed the property on the tax roles for the year 1968 and 1969. Appeals were taken from the decision of the assessor and the board of review and on August 5, 1970, the Black Hawk County District Court entered a decree holding that plaintiff was an exempt organization pursuant to section 427.1(9), The Code. Following this decree, the exempt status of the plaintiff continued until 1978 when the assessor once more placed its property on the tax roles. The board of review upheld this decision. This determination was reversed by the trial court following plaintiff's appeal under section 441.38, The Code. Our review of the trial court's order is *de novo*.

The plaintiff care facility offers life care to elderly men and women. The average age of all residents during the year 1978 was 79. Entrance is limited to persons over 62 years of age. Over 50% of the residents are suffering from some form of disabling physical or mental affliction in addition to the usual problems of the elderly.

The medical and nursing care offered by the plaintiff care center is the focal point of its operation. The nursing staff is supplemented by support personnel, including a social worker, activities director, chaplain, dietitian, medical director, therapist, pharmacist, audiologist, podiatrist, and dentist. A full range of nursing services is provided to the residents. In addition to medical, nursing, and infirmary services, crafts, games, and exercise programs are provided under the supervision of an activities director. These programs are aided by volunteer groups who visit the facility regularly. These activities are designed to alleviate isolation, depression, and other emotional problems of the elderly.

In an agreed statement of the case, it is conceded that three out of four of the residents of the plaintiff care facility are limited in their income to the point of qualifying for rent supplements under federal guidelines. Certain of the elderly residents of the facility who retired on a fixed income have become unable to pay the

regular charges for their care. Such problems are confronted and handled by plaintiff on a continuing basis in such manner that care is provided to these people regardless of their ability to pay.

I. We first consider plaintiff's contention that established doctrines of issue preclusion prevent relitigation of the exempt status afforded it under the August 5, 1970 district court decree. Even assuming that factually plaintiff's operation has not changed since the time of that decree, we are reluctant to accord preclusive effects thereto. In the area of tax collection by public authority, injustice might well result to third persons similarly situated or to the public generally by strict adherence to the doctrine of issue preclusion. This is the view expressed in Restatement of Judgments § 70, comment f. (1942). Based upon these principles, we decline to apply the doctrine of issue preclusion in determining plaintiff's entitlement to exempt status.

II. On the merits, we agree with the trial court's determination. The record satisfies us that plaintiff's care facility is in fact engaged in providing for its residents the type of housing, medical and nursing care, and other beneficial activities peculiarly related to alleviation of the problems of the elderly. Plaintiff is committed to providing such services to those persons in residence even in the event that they cannot make full payment therefore.¹ This effort is enhanced by substantial volunteer contributions of personal services. Viewed in its entirety, this effort serves to place upon plaintiff, burdens which might otherwise become those of the general public with no view toward pecuniary profit on plaintiff's part. These circumstances qualify plaintiff as entitled to a charitable exemption under section 427.1(9), The Code, based upon the standards approved in Evangelical Lutheran Good Samaritan Society v. Board of Review of Fayette County, 267 N.W.2d 413 (Ia. Ct. App. 1978); see Dow City Senior Citizens Housing, Inc. v. Board of Review, 230 N.W.2d 497, 499 (Iowa 1975); South Methodist Homes, Inc. v. Board of Review, 173 N.W. 526, 532 (Iowa 1970). The trial court's determination was correct and is affirmed.

AFFIRMED.

¹ In this respect, it is plaintiff's commitment to provide such services to its residents without regard to their ability to pay, which is significant. The record shows such commitment to be substantiated by actual practice. The extent to which this is done depends, of course, on the financial condition of plaintiff's residents. Plaintiff's exempt status is not destroyed by the fact that it does exact reasonable charges from those persons who are able to pay.