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Aspen Park, Inc. v. Bonneville County Appellant's Brief Dckt. 45679

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ASPEN PARK INC., Plaintiff-Appellant, vs. BONNEVILLE COUNTY, Defendant-Respondent.	Docket No. 45679

APPELLANT'S BRIEF

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville

HONORABLE JOEL E. TINGEY, District Judge

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I. ISSUE PRESENTED ON APPEAL

Did the district court err when it found that Aspen Park, Inc. was not entitled to tax exempt status under Idaho Code § 63-602GG?

II. STATEMENT OF THE CASE

A. Nature of the Case.

This case concerns the interpretation of a statute granting tax exempt status to providers of low-income housing. Appellant Aspen Park, Inc. ("Aspen") provides low-income housing. In 2016, the Bonneville County Board of Equalization determined that, because Aspen did not rent all of its units to individuals earning 60% or less of the median income, it did not qualify for tax exempt status under Idaho Code § 63-602GG(3)(c). The Idaho Court of Tax Appeals affirmed the County's decision. On judicial review, the District Court affirmed. Aspen now appeals the District Court's decision.

B. Statement of the Facts.

Appellant Aspen Park, Inc. ("Aspen") is an I.R.C. 501(c)(3) tax exempt organization wholly owned by the Eastern Idaho Community Action Partnership, Inc. ("EICAP"), itself a non-profit, tax exempt organization. (R., p. 913). Aspen is the owner of a 72-unit apartment complex in Idaho Falls which has, for 23 years, been dedicated to renting apartments to individuals and families that qualify as low-income. (R., p. 961).

All of Aspen's apartments are dedicated to low income housing. Rentals are made based on applications submitted to Aspen in accordance with Idaho Code § 63-602GG(3)(c) which provides:

> (3) In order to qualify for the exemption provided in this section, the low-income housing property shall meet the following qualifications:

> (c) Except for a manager's unit, all of the housing units in the low-income housing property are dedicated to low-income housing in the following manner: Fifty-five percent (55%) of the units shall be rented to those earning sixty percent (60%) or less of the median income for the county in which the housing is located; twenty percent (20%) of the units shall be rented to those earning fifty percent (50%) or less of the median income of the county in which the housing is located; and twenty-five percent (25%) of the units shall be rented to those earning thirty percent (30%) or less of the median income for the county in which the housing is located.

All qualified applicants who meet the prescribed income levels are accepted for rentals. However, there have often been more apartments available for rent than there have been qualified applicants. (R., p. 472).

In 2016, Aspen rented approximately 12 units to individuals with incomes over 60% of the Idaho median income threshold. (R., pp. 192-93). Based on this, and despite the fact that Aspen met each of the rental requirements prescribed by the statute, the Bonneville County Board of Equalization held that Aspen did not qualify for tax exempt status under Idaho Code § 63-602GG. (R., pp. 15-17).

Aspen appealed the decision. At a hearing before the Idaho Board of Tax Appeals on October 13, 2016, Aspen argued, consistent with Idaho Code § 63-602GG, that all of its units were dedicated to low-income housing and that it met the specific income category requirements of the statute. Aspen also argued that, so long as all apartments were "dedicated" to low income housing and so long as the percentages of income categories prescribed by the statute were met, it was not reasonable to assume

that the Legislature intended numerous apartments to stand vacant awaiting applications that might never be received. According to the CEO of the parent company, EICAP, "There are always a few vacancies at Aspen Park available for qualified applicants should they apply. To require that all apartments must be rented only to persons of the prescribed income thresholds, despite compliance with the prescribed percentages, is to require that a substantial number of apartments stand vacant at all times." (R., p. 472).

Nevertheless, the Board of Tax Appeals affirmed the Board of Equalization's decision, finding that Aspen was not entitled to tax exempt status because 13 units had been rented to individuals with incomes over 60% of the median income threshold. The decision was finalized on April 28, 2017. (R., p. 457). Aspen filed a Motion for Reconsideration on May 11, 2017, which was denied on May 26, 2017. (R., p. 493).

On June 20, 2017, Aspen filed its Petition for Judicial Review of the Board of Tax Appeals decision. (R., p. 497). In response, Bonneville County filed a Motion for Summary Judgment, claiming that all units in the complex are required by statute to be rented to qualified low-income individuals. (R., p. 903). On judicial review, the District Court, Hon. Joel E. Tingey, held that "100% of the units 'shall' be rented to individuals earning 60% or less of the median income." (R., p. 966).

Plaintiff filed its Notice of Appeal to the Idaho Supreme Court on December 1, 2017. (R., p. 971).

III. ARGUMENT

A. **Standard of Review on Appeal from Summary Judgment.**

When reviewing the grant of a motion for summary judgment, the Court applies the same standard used by the district court in ruling on the motion. Wright v. Ada County, 160 Idaho 491, 495, 376 P.3d 58 (2016). Summary judgment is proper only when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." IDAHO R. CIV. P. 56(c). "The burden of establishing the absence of a genuine issue of material fact rests at all times with the party moving for summary judgment." Wright, 160 Idaho at 495. The Court must construe the record in favor of the nonmoving party, drawing all reasonable inferences in that party's favor. Id. If the Court finds that reasonable minds could differ on conclusions drawn from the evidence presented, the motion must be denied. Id.

Where the case will be tried without a jury, the district court, as the trier of fact, is entitled to draw the most probable inferences from the undisputed evidence properly before it and may grant the summary judgment motion in spite of the potential of conflicting inferences. Wolford v. Montee, 161 Idaho 432, 437, 387 P.3d 100 (2016). "This Court exercises free review over the entire record that was before the district judge to determine whether either side was entitled to judgment as a matter of law and reviews

the inferences drawn by the district judge to determine whether the record reasonably supports those inferences." Id.

B. All of Aspen Park's units are dedicated to low-income housing.

A key question on this Appeal turns on the definition of "dedicate." All of Aspen Park's units are dedicated to low-income housing. As stated by Jay Doman, CEO of Eastern Idaho Community Action Partnership, Inc. ("EICAP"), the parent company of Aspen Park:

> "All of Aspen Park's apartments are dedicated to low income housing. Rentals are made based on applications submitted to Aspen Park. All qualified applicants who meet the prescribed income levels are accepted for rentals. . . . There are always a few vacancies at Aspen Park available for qualified applicants should they apply." (R., p. 872).

On appeal to the District Court, Respondent argued that the statute's requirement that all housing units be "dedicated to low-income housing" must mean that they are all "rented" to low-income tenants. The District Court agreed. This is not what the statute says.

If the Idaho legislature intended that all units be rented to low-income individuals, it certainly could have used the term "rented" instead of "dedicated" (for example, the language could have read that "all of the housing units in the low-income housing property are [to be rented] to low-income [individuals][.])" It is notable that the

term "rented" is used in three places in the statute, but not when it concerns the requirement that "all of the housing units" be "dedicated" to low-income housing.

The dictionary definition of "dedicated" is to be "devoted to a cause, ideal or purpose." Merriam-Webster Dictionary. There is no dispute that Aspen Park is devoted to renting its units to qualified, low-income persons to every extent possible.

We invite the Court to compare the purpose of Idaho Code § 63-602GG(3)(c) with the Internal Revenue Service regulation controlling low-income housing tax exemptions commonly referred to as the "safe harbor" rule, I.R.S. REV. PROC. 96-32, 1996-1 C.B. 717, 1996-20 I.R.B. 14, (1996), issued in 1996, six years prior to the Idaho statute. That regulation clearly states that the intent of qualifying low-income housing units is not to require that *all* units be *rented* to low-income individuals at all times; rather:

> "In order to support national housing policy, the safe harbor contained in this revenue procedure identifies those low-income housing organizations that will, with certainty, be considered to relieve the poor and distressed. The safe harbor permits a limited number of units occupied by residents with incomes above the low-income limits in order to assist in the social and economic integration of the poorer residents and, thereby, further the organization's charitable purposes."

I.R.S. REV. PROC. 96-32, Sec. 2.03 (Low-Income Housing Guidelines, Rulings and Determination Letters) (emphasis added).

The Idaho Legislature has given the Idaho Housing and Finance Association, (IHFA), the responsibility to regulate low-income housing projects such as Aspen Park. The Association's legislatively prescribed statutory purpose is reflective of the safe harbor rule, i.e., "the providing of safe and sanitary dwelling accommodations for persons of low incomes (which dwelling accommodations need not be solely for persons of low incomes in order to avoid concentrations of such persons in specific localities)[.]" IDAHO CODE § 67-6201(c) (emphasis added). Aspen is subject to an annual audit conducted by IHFA of its compliance with the provisions of Idaho Code § 63-602GG(3)(c).

"An organization will be considered charitable as Section 3.01(1) of the federal safe harbor federal regulation goes into even greater detail, stating that up to 25 percent of the units may be rented at market rates and still qualify as a tax exempt charitable organization under § 501(c)(3):

> "An organization will be considered charitable as described in § 501(c)(3) if it satisfies the following requirements:
>
> (1) The organization establishes for each project that (a) at least 75 percent of the units are occupied by residents that qualify as low-income; and (b) either at least 20 percent of the units are occupied by residents that also meet the very low-income limit for the area or 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit. Up to 25 percent of the units may be provided at market rates to persons who have incomes in excess of the low-income limit."

I.R.S. REV. PROC. 96-32, Sec. 3.01(1) (emphasis added).[1]

By comparison, only 13 out of Aspen Park's 72 total apartment units were rented to individuals with incomes over the 60% Idaho median income threshold in 2016, or only 18%, considerably below the federal safe harbor standard.

Aspen's units are dedicated to low income housing, satisfying the statutory requirement of Idaho Code § 63-602GG(3)(c).

C. Aspen Park rentals satisfy all income percentage categories of the statute.

In addition to the requirement that all units be "dedicated" to low income housing, Idaho Code § 63-602GG(3)(c) also has income-specific requirements. The statute requires that "fifty-five percent (55%) of the units shall be rented to those earning sixty percent (60%) or less of the median income for the county in which the housing is located." IDAHO CODE § 63-602GG(3)(c). Fifty-one units (or **81%**) of the Aspen Park units satisfy this category. (R., pp. 192-93).

"[T]wenty percent (20%) of the units shall be rented to those earning fifty percent (50%) or less of the median income of the county in which the housing is located." IDAHO CODE § 63-602GG(3)(c). Forty-four units (or **70%**) of the Aspen Park units satisfy this category. (R., pp. 192-93).

---

[1] The regulation defines "very low-income" as "50 percent of an area's median income." "Low-income" is defined as "80 percent of an area's median income." I.R.S. REV. PROC. 96-32, Sec. 3.02(1).

"[T]wenty-five percent (25%) of the units shall be rented to those earning thirty percent (30%) or less of the median income for the county in which the housing is located." IDAHO CODE § 63-602GG(3)(c). Eighteen units (or **29%**) of the Aspen Park units satisfy this category. (R., pp. 192-93).

Coincidentally, the eighteen units that meet the lowest income category (30% or less of median income), could also satisfy the middle income (50% or less of median income) and higher income (60% or less of median income) requirements of the statute. Nonetheless Aspen has always seen to it that its rentals satisfy the percentage required of each of the categories identified in this statute.

D. The District Court's reading of the statute is not reasonable and defeats the purpose of low-income housing by requiring that unqualifying units remain vacant.

Respondent has contended that no single unit can be rented to anyone exceeding 60% of the median income for the County. This is not a reasonable interpretation of Idaho Code § 63-602GG(3)(c). As stated by EICAP's CEO, Jay Doman, such an interpretation would require that a number of units remain vacant:

> "In my several years of experience with Aspen Park rentals there have always been more apartments available for rent than there have been qualified applicants. So long as the percentages of income thresholds prescribed by Idaho Code § 63-602GG(3)(c) are met, it is not reasonable to assume that the Legislature intended numerous apartments to stand vacant awaiting applications that may never be received. There are

> always a few vacancies at Aspen Park available for qualified applicants should they apply. To require that all apartments must be rented only to persons of the prescribed income thresholds, despite compliance with the prescribed percentages, is to require that a substantial number of apartments stand vacant at all times." (R., p. 871, ¶ 4).

As long as "all of the housing units in the low-income housing property are *dedicated* to low-income housing" (IDAHO CODE § 63-602GG(3)(c) (emphasis added)) and the income percentage categories of the statute are also met, renting the remaining units to other than low income persons is both permissible and desirable. See IDAHO CODE § 67-6201(c).

It is fundamental that the judiciary has the ultimate responsibility to construe legislative language. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803). To carry out this responsibility it is well established that "[i]t is the duty of courts in construing statutes to ascertain the legislative intent and to give effect thereto." J. R. Simplot Co., Inc. v. Idaho State Tax Com'n, 120 Idaho 849, 854, 820 P.2d 1206 (1991). In determining legislative intent, the Court will examine "the reasonableness of the proposed interpretations, and the policy behind the statutes" so that "all sections of applicable statutes [can] be construed together." Id. In this case, as a matter of legislatively prescribed policy, Idaho Code § 63-602GG(3)(c) and also Idaho Code § 67-6201(c), when considered together, both encourage income diversity in dwelling accommodations for persons of low incomes. This is also consistent with the federal safe harbor provisions. I.R.S. REV. PRO. 96-32.

In Hammer v. City of Sun Valley, this Court held:

> "If the statute is ambiguous, then it must be construed to mean what the legislature intended for it to mean. To determine that intent, we examine not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history.

163 Idaho 439, 414 P.3d 1178-1184, (2016). (Internal citations omitted.)

When the words of the statutes before the Court are considered together with the reasonableness of the proposed constructions and the obvious public policy behind the statutes, it is clear that the legislature intended a system of taxation that would encourage making low-income housing available to those who require it, while at the same time encouraging residential diversity. To suggest otherwise—that the Legislature would have intended apartments to stand vacant awaiting applications that do not exist—strikes at the economic viability of such projects, defeating the statutory intent. This is patently unreasonable. Such an interpretation would likely have the effect of making low-income housing unavailable throughout the state of Idaho, not only in the case of Aspen Park.

IV. CONCLUSION

It is the express public policy of the State of Idaho to provide "safe and sanitary dwelling accommodations for persons of low incomes (which dwelling accommodations need not be solely for persons of low incomes in order to avoid concentrations of such persons in specific localities), are public uses, . . . and are

governmental functions." IDAHO CODE § 67-6201(c). State law gives supervision of the operation and management of low-income housing projects to the IHFA (IDAHO CODE § 67-6207(a)), which is required to periodically examine the income levels of persons residing in a low-income housing project. Id.

It is also the express policy of the State of Idaho that "low-income housing owned by nonprofit organizations shall be exempt from taxation." IDAHO CODE § 63-602GG(1). To qualify, an organization must meet the requirements of the statute.

As discussed above, Aspen has conducted its operations, subject to IHFA's regulations, supervision and audits, in compliance with all of the controlling provisions of Idaho law, and it is entitled to do so exempt from Bonneville County's real property taxes.

For the foregoing reasons, the judgment of the District Court of the Seventh Judicial District herein should be reversed, and Aspen should be declared to be tax exempt under Idaho Code § 63-602GG.

Respectfully submitted this 22d day of May, 2018.

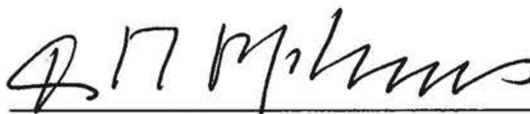
HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

By: ______________________
C. Timothy Hopkins
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22d day of May, 2018, I caused to be served a true copy of the foregoing attached document by the method indicated below and addressed to each of the following:

Bonneville County Prosecutor	☐	U.S. Mail
Attn: Weston Davis	☐	Overnight Delivery
Nelson Hall Parry Tucker, PA	■	Hand Delivery
490 Memorial Drive	■	Email
Idaho Falls, ID 83402	☐	Facsimile
Fax #: (208) 523-7254		



C. Timothy Hopkins