

CV16860095

100095053

7
FILED

2017 AUG 14 P 12:02

WINOLIN,
CLERK OF COURTS
CUYAHOGA COUNTYIN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MARIE E. CULLY)	CASE NO. CV 16 860095
)	
Plaintiff,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	<u>JUDGMENT ENTRY REVERSING</u>
)	<u>A DECISION OF THE BOARD OF</u>
CUYAHOGA COUNTY BOARD OF)	<u>REVISION</u>
REVISION, <i>et al.</i>)	
)	
Defendants.)	

John P. O'Donnell, J.:

This case is a taxpayer's appeal under section 5717.05 of the Ohio Revised Code of a decision by the Cuyahoga County Board of Revision to deny her application for a homestead exemption for tax year 2013. The homestead exemption is provided for in R.C. 323.152 and allows a homeowner a reduction in real property tax under specified circumstances. In plaintiff Marie E. Cully's case, she sought a reduction on the basis that she was at least 65 years old.

Since December 2013 Cully has owned and lived in the condominium at 12029 Clifton Boulevard, #606, in Lakewood, permanent parcel number 312-29-335. On November 21, 2015, she applied for a homestead exemption from real property tax for the year 2013. The Cuyahoga County fiscal officer denied the request on December 1, 2015. According to the fiscal officer,

the request for exemption was denied because “the 2013 tax year is closed. We are no longer accepting applications for 2013.”

The fiscal officer was presumably referring to the deadline in R.C. 323.153(A)(3) of “not later than the first Monday in June” of the succeeding year in the event of a late application. Under that provision, Cully would have had to file the application by June 2, 2014. Cully appealed the fiscal officer’s denial to the board of revision, and the board affirmed the denial, without a further explanation, by a notice dated February 10, 2016. Cully then appealed to this court.

R.C. 5715.05 requires the board of revision to file a complete transcript of the board’s proceedings and the common pleas court “may hear the appeal on the record and the evidence thus submitted, or it may hear and consider additional evidence.” This means the court has a duty on appeal to independently weigh and evaluate all evidence properly before it. *Black v. Board of Revision*, 16 Ohio St. 3d 11, 13 (1985). The court’s review of the evidence should be thorough and comprehensive, and should ensure that its final determination is more than a mere rubber stamping of the board of revision’s determination. *Id.*

Cully claims that the fiscal officer should be estopped from denying her late application because the form issued by the officer to apply for the exemption improperly required her to swear that she had lived at the property for all of 2013. The transcript of the board of revision hearing shows that Cully filed her original application for the 2014 tax year in May 2014, within the statutory deadline for that year. Cully swore to the board of revision that she would have filed her late application for 2013 at the same time, i.e. within the R.C. 323.153(A)(3) deadline for a late application, if it hadn’t been for the fact that the application form required her to assert

under oath that she lived in the property for all of 2013, and she could not swear to that since she only moved to the property in December 2013.¹

She ultimately filed the late application in 2015 once she became aware of the decision of the Eighth District Court of Appeals in *DeVan v. Cuy. Co. Bd. of Revision*, 8th Dist. No. 102945, 2015-Ohio-4279. In that case, DeVan filed, within the statutory deadline, a late homestead exemption application for the 2013 tax year on property that he acquired in August of that year. The application form that DeVan filled out was likely the same as the one Cully objects to here because it included a declaration under the penalty of perjury that, among other things, he had “occupied this property as my principal residence on Jan. 1 of the year(s) for which I am requesting the homestead exemption.”

DeVan’s application was denied at the administrative level on the basis that his income exceeded the statutory limit. He appealed to the common pleas court and the denial was affirmed, but on the basis that “he did not own and occupy his property on January 1, 2013.” The appellate court reversed the trial court, finding that:

an interpretation of R.C. 323.151 through 323.154 that requires the applicant to occupy the residence as of January 1, 2013, for the tax year 2013 homestead exemption is inappropriate. As a result, the denial of DeVan’s homestead application for the tax year 2013 on the basis that he did not own the Broadview Heights residence as of January 1, 2013, is unreasonable. *Id.*, ¶26.

The practical effect of the *DeVan* decision was to make it clear that the homestead exemption application form should not have required Cully to aver under oath that she resided in the home since the start of the tax year because that is not one of the statutory requirements for

¹ Transcript, page 88.

eligibility. *DeVan* was decided on October 15, 2015, and Cully filed her application about a month later.

But all *DeVan* means to this case is that Cully was eligible for the homestead exemption for the 2013 tax year even though she did not own and occupy the condominium for the entire year. The question here is not, as asserted by the appellees, simply “whether the appellant timely filed a late application for exemption.”² Instead, the question is whether the application form provided to her was so misleading that the fiscal officer and the board of revision should be estopped from asserting the lateness of her application as a reason to deny the exemption. Or, as Cully frames the issue in her merit brief:

Equitable estoppel applies against the county to provide consideration of an application for homestead exemption where the county’s application form for the homestead exemption requires the applicant to commit perjury in order to obtain a substantial benefit for which the applicant fully qualifies.³

The homestead exemption application is a two-page form known as a DTE 105A. The version of it in evidence was apparently revised in July 2014 and was signed by Cully on November 20, 2015, for tax year 2013. According to Cully, this form contains the same language as the one she was confronted with in May 2014 and could not sign because she didn’t meet the listed requirement that she occupied the property for all of 2013, namely the declaration that “I occupied this property as my principal place of residence on Jan. 1 of the year(s) for which I am requesting the homestead exemption.”⁴

² Appellees’ merit brief, second page. (The pages are not numbered.)

³ Appellant’s merit brief, p. 1.

⁴ Transcript, p. 9.

A prima facie case for equitable estoppel requires a party to prove: (1) that the adverse party made a factual misrepresentation; (2) that it is misleading; (3) that it induced actual reliance which is reasonable and in good faith; and (4) that the reliance caused detriment to the relying party. *Marden Rehab. Servs. v. East Liverpool Convalescent Ctr., Inc.*, 7th Dist. Columbiana No. 10 CO 24, 2011-Ohio-6638, ¶21. The typical equitable estoppel case involves a defendant who had represented an existing or past fact to the plaintiff, who then reasonably and in ignorance of the truth relied upon the representation to her detriment. *Hortman v. City of Miamisburg*, 110 Ohio St. 3d 194, 2006-Ohio-4251, ¶21. The doctrine of estoppel has been primarily formulated to prevent results contrary to good conscience and fair dealing. *Lewis & Michael Moving & Storage, Inc. v. Stofcheck Ambulance Serv.*, 10th Dist. No. 05AP-662, 2006-Ohio-3810, ¶34.

The legislature enacted the homestead exemption with instructions to taxpayers that, to obtain the exemption, they must file an application with the county auditor. R.C. 323.153(A). The original application must include a signed statement which “shall be on a form, devised and supplied by the tax commissioner, which shall require no more information than is necessary to establish the applicant's eligibility for the reduction in taxes.” R.C. 323.153(A)(3). Presumably the tax commissioner devised form DTE 105A and the fiscal officer provided it to Cully.

A close reading of R.C. 323.152 reveals no full-year occupancy requirement to be eligible for the exemption. But the tax commissioner and the fiscal officer require taxpayers to swear to full-year occupancy as part of the information necessary to determine eligibility. In essence, the agents of the executive branch of government, by devising and using a form that adds full-year occupancy as an eligibility requirement, have imposed on taxpayers a condition for eligibility not found in the statute. Even a sophisticated taxpayer who reads R.C. 323.152

and concludes that full-year occupancy is not a condition to the exemption would be shaken in that conclusion when confronted with the statutorily mandated form – a form which, by law, must seek no more information than is necessary to establish the applicant's eligibility for the reduction in taxes – obligating her to swear, under the penalty of perjury, that she has occupied the residence for the entire year. The evidence demonstrates that, by requiring a homestead exemption applicant to aver full-year occupancy of the property, the tax commissioner and the fiscal officer made a misleading factual misrepresentation to Cully by, essentially, telling her (and every other applicant) that she was only eligible for the exemption if she occupied the home during the entire tax year.⁵

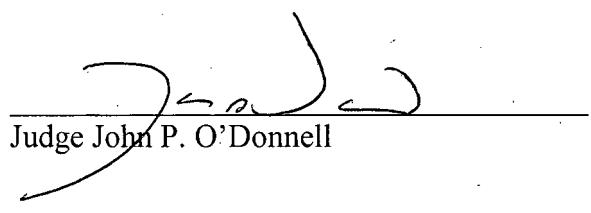
The evidence shows that Cully relied on this misrepresentation by forgoing a timely late application for the 2013 exemption, and her reliance was to her detriment because she was, in fact, eligible for the exemption. Accordingly, the fiscal officer is equitably estopped from denying her application on the basis that it was made too late.

As a result, the Cuyahoga County Board of Revision's February 10, 2016, decision denying Marie E. Cully's application for the homestead exemption under R.C. 323.152 for permanent parcel number 312-29-335 for the tax year 2013 is hereby reversed. The board of revision is ordered to enter a decision approving her application for the tax year 2013 homestead exemption with instructions to the Cuyahoga County Fiscal Officer to determine the amount of the reduction in taxes to which Cully would have been entitled for tax year 2013 had her application been made and approved in that year. Under R.C. 323.153(B), the amount of such

⁵ A misleading statement, by the way, they continue to make. See http://fiscalofficer.cuyahogacounty.us/pdf_fiscalofficer/en-US/DTE_105A_08.pdf, last accessed August 10, 2017, a page on Cuyahoga County's web site linking to the most recent version of the DTE 105A which still mandates an averment to full-year occupancy.

reduction shall be treated by the auditor as an overpayment of taxes and shall be refunded in the manner prescribed in R.C. 5715.22 for making refunds of overpayments.

IT IS SO ORDERED:


Judge John P. O'Donnell

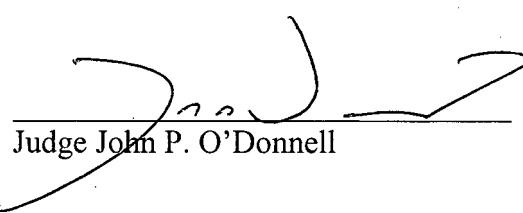
8/14/2017
Date

SERVICE

A copy of this judgment entry was sent by email on August 14, 2017, to the following:

Marie E. Cully
mecully@yahoo.com
Appellant/plaintiff pro se

Saundra Curtis-Patrick, Esq.
scurtisppatrick@prosecutor.cuyahogacounty.us
Attorney for the appellees/defendants


Judge John P. O'Donnell