

SUPREME COURT OF OHIO

Chagrin Realty, Inc. v. Testa

114 N.E.3d 204 (Ohio 2018) · Decided November 30, 2018

SUMMARY

The Ohio Supreme Court affirmed the Board of Tax Appeals' denial of a charitable-use property-tax exemption for property owned and leased by Chagrin Realty, a nonprofit corporation. The court held that Chagrin Realty's exclusive activity of owning and leasing property did not qualify as charitable use under Ohio law, and that its federal 501(c)(2) status and relationship to charitable entities did not establish eligibility for the exemption.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Maureen O'Connor, Chief Justice; Judith L. French, Justice; Terrence O'Donnell, Justice; William M. O'Neill, Justice; Pat DeWine, Justice; Mary DeGenaro, Justice; Jennifer Brunner, Justice
JURISDICTION	Ohio
DECIDED	November 30, 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal by a property owner from a Board of Tax Appeals decision affirming the tax commissioner's denial of a charitable-use real-property-tax exemption, with a cross-appeal by the tax commissioner challenging the BTA's authority to reissue its decision.
STANDARD OF REVIEW	The court determines whether the BTA's decision is reasonable and lawful. It defers to factual findings supported by reliable and probative evidence and to the BTA's credibility determinations and weighing of evidence, subject to abuse-of-discretion review, but reverses decisions based on incorrect legal conclusions.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential.
PARTIES	Chagrin Realty, Inc. v. Tax Commissioner Testa

TOPICS

[property tax](#)[tax exempt organizations](#)[administrative law](#)[statutory interpretation](#)[appellate procedure](#)

PRACTICE AREAS

property tax

tax-exempt organizations

administrative law

statutory interpretation

QUESTIONS PRESENTED

1. Whether a nonprofit corporation that qualifies under Internal Revenue Code section 501(c)(2), owns and leases property to a related nonprofit tenant, and distributes net rental income to a related section 501(c)(3) organization qualifies as a charitable institution or makes charitable use of the property under Ohio Revised Code sections 5709.12(B) and 5709.121(A).
2. Whether the BTA reasonably and lawfully denied Chagrin Realty's charitable-use property-tax exemption based on Chagrin Realty's own activities rather than the activities of its related entities.
3. Whether the BTA had authority to reissue its earlier decision after it had been sent to an incorrect address.

HOLDINGS

1. An entity whose sole use of property is leasing it does not qualify for the charitable-use exemption under R.C. 5709.12(B), because leasing has not been found to constitute use exclusively for charitable purposes.
2. A property owner must establish its charitable status based on its own core activities and use of the property; it cannot rely on the activities of a lessee, parent, or other related institution to obtain a vicarious charitable exemption.
3. Federal tax-exempt status under section 501(c)(2) does not establish entitlement to Ohio's charitable-use property-tax exemption because Ohio law applies its own standards for charitable use.

KEY QUOTATIONS

“an owner cannot establish its status as a charitable institution by relying on the activities of a lessee or another related institution.” (¶ 13)

“It is only the use of property in charitable pursuits that qualifies for tax exemption, not the utilization of receipts or proceeds that does so” (¶ 18)

“a reading of R.C. 5709.121 that essentially substitutes [the] more lenient federal-law standards for the well-developed Ohio law of charitable use.” (¶ 23)

FACTUAL BACKGROUND

Chagrin Realty is an Ohio nonprofit corporation recognized as tax-exempt under Internal Revenue Code section 501(c)(2), organized to hold title to property, collect rental income, and transfer the net income to the Leonard C. Rosenberg Foundation, a section 501(c)(3) organization. It leased the subject property to Community Dialysis Center, a nonprofit entity that operated a hemodialysis facility there. Chagrin Realty's admitted sole activity was owning and leasing the property and distributing the rental proceeds to the Foundation.

PROCEDURAL HISTORY

Chagrin Realty applied for a real-property-tax exemption for tax years 2003 through 2005. The tax commissioner denied the application, and the BTA affirmed. After the BTA reissued its decision at Chagrin Realty's request because the original decision had allegedly been sent to an incorrect address, Chagrin Realty appealed and the tax commissioner cross-appealed. The Supreme Court of Ohio previously resolved the jurisdictional issue concerning the reissued decision and in this opinion affirmed the BTA's denial of the exemption.

DISPOSITION

affirmed

CASES CITED

- HealthSouth Corp. v. Testa, 132 Ohio St. 3d 55, 2012-Ohio-1871, 969 N.E.2d 232
- Rural Health Collaborative of S. Ohio, Inc. v. Testa, 145 Ohio St. 3d 430, 2016-Ohio-508, 50 N.E.3d 486
- Dialysis Clinic, Inc. v. Levin, 127 Ohio St. 3d 215, 2010-Ohio-5071, 938 N.E.2d 329
- Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino, 93 Ohio St. 3d 231, 754 N.E.2d 789 (2001)
- Cincinnati Community Kollel v. Testa, 135 Ohio St. 3d 219, 2013-Ohio-396, 985 N.E.2d 1236
- ShadoArt Prods., Inc. v. Testa, 146 Ohio St. 3d 263, 2016-Ohio-511, 55 N.E.3d 1065
- Northeast Ohio Psychiatric Institute v. Levin, 121 Ohio St. 3d 292, 2009-Ohio-583, 903 N.E.2d 1188
- First Baptist Church of Milford, Inc. v. Wilkins, 110 Ohio St. 3d 496, 2006-Ohio-4966, 854 N.E.2d 494
- Community Health Professionals, Inc. v. Levin, 113 Ohio St. 3d 432, 2007-Ohio-2336, 866 N.E.2d 478
- OCLC Online Computer Library Ctr., Inc. v. Kinney, 11 Ohio St. 3d 198, 464 N.E.2d 572 (1984)
- Agle v. Tracy, 87 Ohio St. 3d 265, 719 N.E.2d 951 (1999)
- Hubbard Press v. Tracy, 67 Ohio St. 3d 564, 621 N.E.2d 396 (1993)
- Akron Golf Charities, Inc. v. Limbach, 34 Ohio St. 3d 11, 516 N.E.2d 222 (1987)
- Church of God in N. Ohio, Inc. v. Levin, 124 Ohio St. 3d 36, 2009-Ohio-5939, 918 N.E.2d 981
- Vick v. Cleveland Mem. Med. Found., 2 Ohio St. 2d 30, 206 N.E.2d 2 (1965)
- NBC-USA Hous., Inc.-Five v. Levin, 125 Ohio St. 3d 394, 2010-Ohio-1553, 928 N.E.2d 715

OPINION

PER CURIAM.

Per Curiam. *353{¶ 1} In this case, appellant and cross-appellee, property owner Chagrin Realty, Inc., challenges a decision of the Board of Tax Appeals ("BTA") affirming appellee and cross-appellant tax commissioner's denial of a charitable-use property-tax exemption for the subject property.

The BTA found that Chagrin Realty did not qualify for that exemption under R.C. 5709.12 or 5709.121, because Chagrin Realty's sole purpose is to own and lease the subject property. We affirm the decision of the BTA.

I. FACTS AND PROCEDURAL HISTORY {¶ 2} Chagrin Realty is an Ohio nonprofit corporation exempt from federal income tax under section 501(c)(2) of the Internal Revenue Code, 26 U.S.C. 501(c)(2) (granting exemption to "[c]orporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section").

Chagrin Realty leases the property at issue to a single nonprofit tenant, the Community Dialysis Center ("CDC"). The CDC operates a hemodialysis facility on the property and is the sole member of the Leonard C. Rosenberg Foundation ("Foundation").

The Foundation enjoys section 501(c)(3) status and is the sole member of Chagrin Realty. See 26 U.S.C. 501(c)(3) (granting federal-income-tax exemption to "[c]orporations * * * organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes"). {¶ 3} The Centers for Dialysis Care, Inc., is a for-profit management company that contracts with the CDC and employs all personnel who work for the CDC.

The CDC wholly owns this for-profit management company. {¶ 4} Chagrin Realty disburses the rental income from the property lease, less expenses, to the Foundation; the monthly base rental payment is approximately \$24,959.52, which equals \$299,514.24 annually. {¶ 5} Chagrin Realty filed an application for real-property-tax exemption relating to the subject property for tax years 2003, 2004, and 2005.

The tax commissioner determined that Chagrin Realty did not satisfy the requirements *354for exemption under R.C. 5709.12 or 5709.121 and denied the application. Chagrin Realty appealed to the BTA. {¶ 6} The BTA rejected Chagrin Realty's contention that its 501(c)(2) federal tax status and its reliance on vicarious-exemption theories qualified it as a "charitable" institution.

Because Chagrin Realty's use *207of the property consisted of only leasing it, the BTA determined that Chagrin Realty did not satisfy the requirements of R.C. 5709.12 or 5709.121 and affirmed the tax commissioner's final determination denying the exemption. {¶ 7} The BTA issued its decision in April 2014. Nearly three years later, in March 2017, Chagrin Realty filed a motion asking the BTA to reissue its April 2014 decision, alleging that its counsel had recently discovered that the BTA had sent its decision to Chagrin Realty at an incorrect address.

The BTA granted the motion. {¶ 8} Chagrin Realty appealed to this court from the reissued decision. The tax commissioner cross-appealed, challenging the BTA's authority to reissue its decision. On July 24, 2017, we ordered Chagrin Realty to show cause why the appeal should not be dismissed on those grounds. See 150 Ohio St.3d 1402, 2017-Ohio-6912, 78 N.E.3d 904.

On November 1, 2017, we determined that Chagrin Realty had shown cause why the appeal should not be dismissed. 151 Ohio St.3d 1423, 2017-Ohio-8371, 84 N.E.3d 1061. Thus, we have already resolved the jurisdictional issue raised in the tax commissioner's cross-appeal. II.

ANALYSIS {¶ 9} The central issue before us is whether Chagrin Realty qualifies for the charitable-use property-tax exemption under R.C.

5709.12(B) and 5709.121(A) because it is a 501(c)(2) organization that holds and leases property and distributes the lease proceeds to a separate corporation that itself is exempt from federal taxation. {¶ 10} On appeal, we must determine whether the BTA's decision is both "reasonable and lawful." R.C. 5717.04.

We defer to the BTA's factual findings "if they are supported by reliable and probative evidence, and we afford deference to the BTA's determination of the credibility of witnesses and its weighing of evidence subject only to an abuse-of-discretion review on appeal." *HealthSouth Corp. v. Testa*, 132 Ohio St.3d 55, 2012-Ohio-1871, 969 N.E.2d 232, ¶ 10; see also *Rural Health Collaborative of S. Ohio, Inc. v. Testa*, 145 Ohio St.3d 430, 2016-Ohio-508, 50 N.E.3d 486, ¶ 24, citing *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, 938 N.E.2d 329, ¶ 31-35 (affirming BTA's determination of property owner's charitable status after concluding that that determination was "reasonable and lawful").

But we "will not hesitate to reverse a BTA decision that *355is based on an incorrect legal conclusion." *Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino*, 93 Ohio St.3d 231, 232, 754 N.E.2d 789 (2001). A. The scope of the charitable-use exemption under R.C. 5709.12(B) and 5709.121(A) {¶ 11} R.C. 5709.12(B) provides that "[r]eal and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation."

Under R.C. 5709.12(B), any institution, whether charitable or not, "may qualify for a tax exemption if it is making exclusive charitable use of its property." *Cincinnati Community Kollel v. Testa*, 135 Ohio St.3d 219, 2013-Ohio-396, 985 N.E.2d 1236, ¶ 23. {¶ 12} R.C. 5709.121(A) expands the meaning of R.C. 5709.12(B)'s phrase "used exclusively for charitable purposes" to include situations in which property ownership and property use do not coincide.

ShadoArt Prods., Inc. v. Testa, 146 Ohio St.3d 263, 2016-Ohio-511, 55 N.E.3d 1065, ¶ 36. R.C. 5709.121(A) provides that "[r]eal property and tangible personal *208property belonging to a charitable or educational institution * * * shall be considered as used exclusively for charitable or public purposes * * * if it meets" one of the requirements specified by that statute.

Thus, although R.C. 5709.121(A) itself does not create any exemption, *ShadoArt Prods.* at ¶ 41, it links certain property uses to R.C. 5709.12(B)'s exclusive-charitable-use exemption, *id.* at ¶ 36. {¶ 13} "Special treatment under R.C. 5709.121 depends on the owner's qualifying as a 'charitable or educational' institution." *Dialysis Clinic*, 127 Ohio St.3d 215, 2010-Ohio-5071, 938 N.E.2d 329, at ¶ 22.

To determine whether a property owner qualifies as a charitable institution, we must examine the owner's " 'core activity.' " *Rural Health*, 145 Ohio St.3d 430, 2016-Ohio-508, 50 N.E.3d 486, at ¶ 23, quoting *Dialysis Clinic* at ¶ 30. And the activity we review must relate to the property owner's actions; an owner cannot establish its status as a charitable institution by relying on the activities of a lessee or another related institution.

Northeast Ohio Psych. Inst. v. Levin, 121 Ohio St.3d 292, 2009-Ohio-583, 903 N.E.2d 1188, ¶ 11; see also *First Baptist Church of Milford, Inc. v. Wilkins*, 110 Ohio St.3d 496, 2006-Ohio-4966, 854 N.E.2d 494, ¶ 15. {¶ 14} Because Chagrin Realty admits that its sole use of the property is leasing it and leasing has not been found to constitute a use that is "exclusively for charitable purposes," the property does not qualify for exemption under R.C.

5709.12(B). See *Northeast Ohio Psych. Inst.* at ¶ 11, 14-15. Thus, Chagrin Realty must qualify for the charitable-use exemption, if at all, under R.C. 5709.121(A). See *Northeast Ohio Psych. Inst.* at ¶ 11, 14-15; *First Baptist Church of Milford* at ¶ 15-16; *Community Health Professionals, Inc. v. Levin*, 113 Ohio St.3d 432, 2007-Ohio-2336, 866 N.E.2d 478, ¶ 17-18. *356B.

The BTA reasonably and lawfully found that Chagrin Realty is not a charitable institution {¶ 15} As its sole proposition of law, Chagrin Realty argues that the BTA erred in finding that it is not a charitable institution under R.C. 5709.12 and 5709.121. Chagrin Realty emphasizes that it was organized for the sole purpose of holding title to property and collecting rental income for the benefit of the Foundation, without a view toward profit.

Chagrin Realty urges us to put substance over form and focus on its relationship with its parent (the Foundation) and the support that it provides to the Foundation. 1. We must examine Chagrin Realty's "core activities" {¶ 16} "The determination whether a property owner qualifies as a charitable institution under R.C. 5709.121 requires examination of the 'core activity' of the institution and determining whether that activity qualifies as charitable for property-tax purposes."

Rural Health, 145 Ohio St.3d 430, 2016-Ohio-508, 50 N.E.3d 486, at ¶ 23, quoting *Dialysis Clinic*, 127 Ohio St.3d 215, 2010-Ohio-5071, 938 N.E.2d 329, at ¶ 30. Chagrin Realty argues that its activities should be viewed in conjunction with the activities of the Foundation, because Chagrin Realty was organized for the sole purpose of holding title to property and collecting rental income for the benefit of the Foundation. {¶ 17} Under the caselaw we discussed above, Chagrin Realty cannot establish its charitable status by relying on the activities of related entities.

See also *OCLC Online Computer Library Ctr., Inc. v. Kinney*, 11 Ohio St.3d 198, 201, 464 N.E.2d 572 (1984). The BTA acknowledged the close relationships among Chagrin Realty, the CDC, and the Foundation but *209found that Chagrin Realty is itself a separate legal entity and that Chagrin Realty may not rely on vicarious exemption to establish its charitable status.

See *Agley v. Tracy*, 87 Ohio St.3d 265, 268, 719 N.E.2d 951 (1999) ("A corporation is an entity separate and apart from the individuals who compose it; it is a legal fiction for the purpose of doing business [emphasis sic]"); *Northeast Ohio Psych. Inst.*, 121 Ohio St.3d 292, 2009-Ohio-583, 903 N.E.2d 1188, at ¶ 14.

The BTA acted both reasonably and lawfully in determining that Chagrin Realty did not qualify for the charitable-use exemption "based on its own activities and use of the property," BTA No. 2011-2523, 2014 WL 2708168, *2 (Apr. 29, 2014). {¶ 18} Chagrin Realty also argues that its income-producing lease, the proceeds of which inure to the benefit of the Foundation, supports its claimed charitable status.

But this fact does not establish Chagrin Realty's status as a charitable institution because " '[i]t is only the use of property in charitable pursuits that qualifies for tax exemption, not the utilization of receipts or proceeds that does so' " (emphasis added), *Dialysis Clinic* at ¶ 33, quoting *357 *Hubbard Press v. Tracy*, 67 Ohio St.3d 564, 566, 621 N.E.2d 396 (1993); see also *Northeast Ohio Psych.*

Inst. at ¶ 16. {¶ 19} In this regard, Chagrin Realty's reliance on *Akron Golf Charities, Inc. v. Limbach*, 34 Ohio St.3d 11, 516 N.E.2d 222 (1987), is misplaced. *Akron Golf Charities* involved a claim of sales-and-use-tax exemption under former R.C. 5739.02(B)(12) and did not involve a claim of real-property-tax exemption as in the instant appeal. Further, the sole purpose of *Akron Golf Charities* was to raise funds for local charitable organizations by staging golf tournaments.

By contrast, Chagrin Realty engages in the ongoing business activity of leasing real property, an activity that generates substantial revenue and has not been found in other cases to be charitable in nature. See *Northeast Ohio Psych. Inst.* at ¶ 14, 16-17; *Dialysis Clinic*, 127 Ohio St.3d 215, 2010-Ohio-5071, 938 N.E.2d 329, at ¶ 33. {¶ 20} Chagrin Realty also relies on *Rural Health*, 145 Ohio St.3d 430, 2016-Ohio-508, 50 N.E.3d 486, as support for its claimed status as a charitable institution.

However, that case is materially distinguishable. {¶ 21} In *Rural Health*, the property owner was engaged in a range of charitable activities, such as obtaining grants for tobacco cessation and pregnancy care and education, in addition to the ownership and leasing of a dialysis clinic. *Id.* at ¶ 25, 28.

In contrast, the record here contains no indication that Chagrin Realty engaged in other activities; rather, Chagrin Realty admits that its "only purpose is to own property, collect income from the property, and distribute that income to the Foundation."

Therefore, Chagrin Realty's reliance on *Rural Health* is unpersuasive. 2. Chagrin Realty's status as a 501(c)(2) organization does not qualify it as a charitable institution under R.C. 5709.121 {¶ 22} Chagrin Realty also contends that it is a charitable institution based on limitations imposed on it as

a 501(c)(2) organization. Relying on our precedents, the BTA reasonably and lawfully rejected this argument.

Our precedents predicate entitlement to the charitable-use exemption on providing services "on a nonprofit basis to those in need, without regard to race, creed, or ability to pay." (Emphasis added.) *Church of God in N. Ohio, Inc. v. Levin*, 124 Ohio St.3d 36, 2009-Ohio-5939, 918 N.E.2d 981, ¶ 19, citing *Vick v. Cleveland Mem. Med. Found.*, 2 Ohio St.2d 30, 206 N.E.2d 2 (1965), paragraph two of the syllabus.

Federal tax laws, in contrast, provide for a charitable-use exemption on a less restrictive basis. *Dialysis Clinic*, 127 Ohio St.3d 215, 2010-Ohio-5071, 938 N.E.2d 329, at ¶ 26, quoting *M. Hall & J. Colombo, The Charitable Status of Nonprofit Hospitals: Toward a Donative Theory of Tax Exemption*, 66 Wash.L.Rev. 307, 320-321 (1991), quoting *Rev.Rul. 69-545*, 1969-2 C.B.

117 (the Internal Revenue Service " 'abandoned the charity care requirement' " and " 'adopted a "per se" rule' " that " 'an entity engaged in the "promotion of health" for the general benefit of the community is pursuing a charitable purpose, even though a portion of the community, such as indigents, are [sic] excluded from participation ' " [emphasis added in *Dialysis Clinic*]). {¶ 23} Chagrin Realty's reliance on its 501(c)(2) federal status in support of its claimed charitable status is unavailing because it conflates Ohio's property-tax exemption with inapplicable federal standards for tax-exempt charities.

Indeed, we have specifically rejected "a reading of R.C. 5709.121 that essentially substitutes [the] more lenient federal-law standards for the well-developed Ohio law of charitable use." *Id.* at ¶ 26. {¶ 24} Moreover, we are not persuaded by Chagrin Realty's references to out-of-state decisions analyzing other states' tax-exemption statutes and allowing exemption under those statutes based on an entity's federal-tax-exemption status and that entity's relationship to its parent corporation.

As we have stated, " 'tying charitable use so tightly to Congress's policy goals is wrong because Congress does not define the scope of charitable use under Ohio law.' " *Id.* at ¶ 25, quoting *NBC-USA Hous., Inc.-Five v. Levin*, 125 Ohio St.3d 394, 2010-Ohio-1553, 928 N.E.2d 715, ¶ 20. III. CONCLUSION {¶ 25} Chagrin Realty's expansive construction of the charitable-use exemption is inconsistent with our precedents interpreting R.C.

5709.121(A). Because the BTA's factual findings are supported by the record in this case, they merit our deference. See *HealthSouth Corp.*, 132 Ohio St.3d 55, 2012-Ohio-1871, 969 N.E.2d 232, at ¶ 10. Accordingly, we reject Chagrin Realty's sole proposition of law and affirm the decision of the BTA. Decision affirmed. O'Connor, C.J., and French, Fischer, and DeGenaro, JJ., concur.

O'Donnell, Kennedy, and DeWine, JJ., concur in judgment only.