2012 WL 9338049 (N.H.) (Appellate Brief)
Supreme Court of New Hampshire.

APPEAL OF CITY OF NASHUA.

No. 2012-0252.
September 27, 2012.

(Board of Tax and Land Appeals)

Brief of the City of Nashua, New Hampshire

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***1 QUESTION PRESENTED FOR REVIEW**

Did the Board of Tax and Land Appeals commit an error of law when it found that RSA 72:39-a, I (c) required the Appellant to deduct the amount of a mortgage on taxpayer's residence from gross assets when calculating net assets for an **elderly** exemption?

Issue raised in City of Nashua's Motion to Reconsider. Record of Board of Tax and Land Appeals pp. 58 - 64.

STATEMENT OF THE CASE

Appellee (hereinafter the "Taxpayer") filed an application with Appellant, City of Nashua (hereinafter the "City"), for an **elderly** tax exemption for the 2011 tax year pursuant to RSA 72:39-a and 72:39-b. The City denied Taxpayer's application because Taxpayer's net assets were in excess of the maximum amount allowed by the City. Taxpayer appealed the denial of her application to the Board of Tax and Land Appeals pursuant to RSA 72:34-a. Following a hearing, the Board of Tax and Land Appeals determined that the City should have deducted a mortgage on the Taxpayer's residence when calculating her net assets and granted Taxpayer's appeal. The City of Nashua appeals the decision of the Board of Tax and Land Appeals.

STATEMENT OF FACTS

State law permits municipalities to adopt and modify property tax exemptions for taxpayers who own their own homes and are at least 65 years of age. RSA 72:39-b. Appellant's Addendum (hereinafter "Addendum"), p. 12. The state has established certain ***2** requirements for individuals to qualify for **elderly** exemptions. Generally, individuals must have resided in New

Hampshire for three (3) years prior to applying for the exemption; own the property for which the exemption is sought; and, have net income and net assets which do not exceed the limits established by the municipality. RSA 72:30-a. 1 & II. Addendum, pp. 10-11. The statute's minimum limits for net assets of unmarried taxpayers and combined net assets for married taxpayers are set at $35,000. RSA 72:39-a, I (c). Addendum, pp. 10-11.

The City has adopted **elderly** exemptions. Nashua Revised Ordinances, as amended, section 295-3. Addendum, p. 13. The City has opted to have a three (3) tier exemption with the amount of the exemption increasing as the taxpayer ages. *Id.* The City has established the maximum limits for a taxpayer's net income and net assets. Nashua Revised Ordinances, as amended, section 295-4. Addendum, p. 14. At the time of Taxpayer's application for an **elderly** exemption, the maximum value of net assets a taxpayer could have and qualify for an **elderly** exemption was $125,000. *Id.*

Taxpayer filed an application for an **elderly** exemption for the 2011 tax year. The Taxpayer's claimed net income was below the City's maximum limits, but her claimed net assets, totaling $45,724.19, were above the maximum limit allowed by the City. BTLA Decision, Addendum, p. 17. The City subsequently obtained additional information regarding Taxpayer's assets and determined that the Taxpayer's net assets were worth $158,969.77. *Id.* The Taxpayer noted in her application that her condominium unit was encumbered by a mortgage in the amount of $42,000.00. Id. The City considered neither the value of the condominium nor the encumbrance when calculating Taxpayer's net assets. *Id.* Addendum, p. 16. The City denied Taxpayer's ***3** application for an **elderly** exemption because the value of her net assets exceeded the maximum limit of $125,000. *Id.*

Taxpayer appealed the City's denial to the Board of Tax and Land Appeals. Following a hearing, the board, in a majority decision, determined that the City should have deducted from Taxpayer's gross assets the $42,000 mortgage secured by Taxpayer's residence. *Id.* Addendum, p. 17. The board granted the appeal. *Id.* Addendum, p. 16. The minority opinion stated that “the statute is clear in that the legislature did not intend to include a mortgage on the actual residence in the net asset calculation.” *Id.* Addendum, p. 22.

The City appeals the decision of the Board of Tax and Land Appeals pursuant to RSA 541:6.

SUMMARY OF THE ARGUMENT

The **elderly** exemption statute permits municipalities to reduce the burden of paying property taxes on those taxpayers without sufficient means to do so. The measures of a taxpayer's ability to pay taxes selected by the legislature are the taxpayer's net income and net assets. A municipality determines the maximum limit for each category above which a taxpayer is not eligible for an exemption.

The legislature's formula for determining a taxpayer's net assets excludes “the value” of the taxpayer's residence. The value of the taxpayer's residence, when considered in the context of the entire statute, includes both the market value of the residence and any encumbrances on that residence. As the intent of the legislature was to determine the taxpayer's available assets for paying property taxes, the statute excludes ***4** from the net assets calculation debts that do not attach to assets and limit their availability for paying property taxes. Encumbrances on a taxpayer's residence do not attach to taxpayer's other assets, thereby limiting the taxpayer's ability to use these assets to pay property taxes.

The Board of Tax and Land Appeals erred when it determined that the City should have deducted the mortgage on Taxpayer's residence when the City calculated her net assets. The decision of the Board of Tax and Land Appeals should be reversed.

ARGUMENT

The Board of Tax and Land Appeals erred when it determined that a mortgage on the taxpayer's residence was a “good faith encumbrance” to be included in the calculation of taxpayer's net assets.

The sole issue before the Board of Tax and Land Appeals was whether the mortgage on Taxpayer's residence should be considered a "good faith encumbrance" to be deducted from all Taxpayer's other assets in determining the value of her net assets. The City's procedure for determining an applicant's net assets is to count only those good faith encumbrances which encumber one or more of taxpayer's assets, other than the residence. The City's position is that the legislature included good faith encumbrances on the taxpayer's residence when it excluded "the value" of taxpayer's residence from the net assets calculation.

For the purposes of the **elderly** exemption, "net assets" are defined as "the value of all assets, tangible and intangible, minus the value of any good faith encumbrances." RSA 72:39-a, I (c). Addendum, p. 10. The statute specifically excludes from that definition the value of the taxpayer's residence. *Id.* The legislation did not elaborate on ***5** which encumbrances constituted "good faith encumbrances". But, it clearly established that when a taxpayer's net assets exceed the maximum limit established by a municipality, the taxpayer is not entitled to an **elderly** exemption. *Id.*

The Board of Tax and Land Appeals majority decision reasoned that the definition of net assets in the statute does not distinguish good faith encumbrances on the taxpayer's residence from those on taxpayer's other assets, therefore, good faith encumbrances on the residence should also be included in the net assets calculation. BTLA decision, Addendum, p. 17. The Board of Tax and Land Appeals concluded that had the legislature meant to exclude mortgages and other encumbrance on the residence from the net assets calculation, it would have specifically stated so. *Id.* Addendum, p. 18. The Board of Tax and Land Appeals in rejecting the City's position stated that it was required to "ascribe to the plain and ordinary meanings to the words used and not consider what the legislature might have said or add language the legislature did not see fit to include." *Id.* (Citations omitted.) The dissenting opinion also found the statute's language defining net assets to be clear, but found, instead, that good faith encumbrances on the residence were not intended to be used in the net assets calculation. *Id.* Addendum, p. 22.

When a dispute arises over the language of a statute, this court's review is de novo. *Chatman v. Strafford County,* 163 N.H. 320, 322 (2012). The court set forth its guidelines for statutory interpretation in *Appeal of Wilson,* 161 N.H. 659, 662 (2011). The court stated:
"We are the final arbiter of the intent of the legislature as expressed in the words of the statute considered as a whole. *Appeal of Kat Paw Acres Trust,* 156 N.H. at 537, 937 A.2d 925. We first examine the language of the statute and ascribe the plain ***6** and ordinary meanings to the words used. *Id.* We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language the legislature did not see fit to include. *Id.* Furthermore, we interpret statutes in the context of the overall statutory scheme and not in isolation. *Id.* 'In so doing, we are better able to discern the legislature's intent, and therefore better able to understand the statutory language [20 A.3d 1010] in light of the policy sought to be advanced by the entire statutory scheme.' *Id.*"

When the Board of Tax and Land Appeals analyzed the statute's definition of "net assets" it did so in isolation. The definition of "net assets" is limited by the first sentence in that section which only refers to the taxpayer's "net assets" and states that the value of the taxpayer's residence is not included in the taxpayer's net assets. It is more reasonable to conclude that when the legislature used the term "value" in regard to the taxpayer's residence it was referring to the market value of the residence and any encumbrances thereon. This interpretation is consistent with language in that paragraph that excludes "attached dwelling units and unattached structures used or intended for "commercial other non-residential purposes" from the definition of residence. *Id.* Non-residential structures and any good faith encumbrances thereon are included in taxpayer's net assets calculation. *See, e.g. Pennelli v. Town of Pelham,* 148 N.H. 365, 367 (2002). The legislature intended that an encumbrance follow the asset that it encumbers.

While there is no formal legislative history which clarifies the net assets calculations, this court has stated that the purpose of the exemption "is to protect homeowners from the loss of their homes by reason of taxation beyond their means." *Opinion of the Justices,* 150 N.H. 228, 232 (1996); *Pennelli v. Town of Pelham,* 148 N.H. at 368. The statute allows municipalities to reduce the tax burden for those taxpayers it determines do not have the means to pay a tax based upon the full assessment of their ***7** residence. The exemption recognizes that many **elderly** taxpayers have substantially smaller incomes and dwindling assets, the available sources from which they can pay their taxes.

The exemption is intended to reduce, in whole or part, the financial burden on certain taxpayers occasioned by property taxes. The statute does this, in part, by creating a formula to determine the value of taxpayers' assets available to pay the property taxes. The net assets calculation is not intended to benefit a taxpayer by using the amount of a mortgage on their residence to reduce the value of their net assets which, without the deduction for encumbrances on the residence, would exceed the maximum value allowed by the municipality. Similarly, the legislature did not include other unsecured debts, such as personal loans, in the net assets calculation and allow taxpayers to deduct the amounts of those unsecured debts. It is only those encumbrances attached to specific assets that are used in the net assets calculation. A mortgage on a residence does not attach to any assets that are counted toward the taxpayer's net assets. The exclusion of good faith encumbrances on the taxpayer's residence, when calculating net assets, is consistent with the statute's language and the intent and purpose of the statute as a whole.

CONCLUSION

The Board of Tax and Land Appeals erred when it determined that the mortgage on taxpayer's residence should be deducted from the value of her other assets to calculate her net assets. The decision of the Board of Tax and Land Appeals should be reversed.

Appendix not available.

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