

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE CARLE FOUNDATION HOSPITAL)	
Plaintiff)	
)	
v.)	2008-L-202
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
ET AL.)	
Defendants)	

MEMORANDUM OPINION ON CROSS-MOTIONS FOR SUMMARY DETERMINATION
OF A MAJOR ISSUE/CASE MANAGEMENT ORDER

The issue presented is simple – does Oswald v. Hamer, 2018 IL 122203, change what Plaintiff must prove to be entitled to property tax exemptions?

The procedural history of this case is extensive and will not be fully repeated here. In December 2007, Carle Foundation (hereafter referred to as “Plaintiff”) initiated this lawsuit. The matter went up on appeal, the Illinois Supreme Court entered its opinion in Provena Covenant Med. Ctr v. Dept. of Revenue, 236 Ill.2d 368 (2010) and the General Assembly enacted 35 ILCS 200/15-86. In January 2014, Plaintiff filed the current Fourth Amended Complaint. This Court dismissed Count 1 and Plaintiffs voluntarily dismissed allegations on other counts relating to Section 15-65 claims. The issue for trial in January 2019, is whether Plaintiff is entitled to property tax exemptions for 2004-2011 under Section 15-86.

Section 6 of Article IX of the Illinois Constitution requires a property owner to have a “charitable use.” In Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968)(hereafter referred to as Korzen), the Illinois Supreme Court identified numerous factors to help determine whether a property owner has met this constitutional test. The Illinois General Assembly created Section 15-65, a statutory requirement for the entity to be a charitable institution. There have been many court cases over the years discussing both the constitutional and statutory requirements.

In 2010, the Provena case held that the hospital did not meet the requirements for a charitable exemption due to a minimal number of uninsured patients receiving free or discounted care. In response, in 2012, the Illinois General Assembly enacted Section 15-86 which set forth a formula which grants a tax exemption to a hospital if the value of certain services and activities equals or exceeds the hospital’s estimated property tax liability. This statute was litigated and appealed to the Illinois Supreme Court in Oswald. The main issue on appeal was whether Section 15-86 was facially unconstitutional because the statute did not discuss the constitutional test that

must be met. On Sept. 20, 2018, the Illinois Supreme Court held Section 15-86 facially constitutional and further held that the constitutional “charitable use” test still must be met.

Why is Oswald important to the current litigation? Section 15-65 was in effect prior to Section 15-86. Section 15-65 incorporated into it both a “charitable ownership” component as well as the constitutional “charitable use” requirement. After Section 15-86 was enacted, Plaintiff argues that a new class of ownership was created. They argue that Oswald significantly changed what has to be proven in order to meet the constitutional “charitable use” test; Defendants argue it did not change anything. All parties briefed their positions and argued them before the Court. This Court will not attempt to address each and every argument made.

Plaintiff argues that they must prove two things: a) the statutory requirements of Section 15-86 that they gave more in charity than they would pay in taxes and b) the new constitutional test set forth in Oswald. Plaintiff submits that the new test is outlined in paragraphs 15-17 of Oswald and includes that 1) they provide charity for the benefit of an indefinite number of persons which reduces the burdens of government and 2) their primary purpose is charitable. Plaintiff notes that Oswald did not overrule Korzen and the Court specifically listed only several of the Korzen factors in paragraphs 15-17. Plaintiff argues that this was intentional because the factors which the Illinois Supreme Court did not cite were those dealing with whether a property owner was a charitable institution (as opposed to charitable use). These factors include whether a property owner has no capital, stock or shareholders, whether it derives funds mainly from public and private charity, does not provide gain or profit in a private sense to anyone connected to it, etc. When the Illinois Supreme Court said in Oswald that “the above-stated principles constitute the frame of reference to which we must apply plaintiff’s use of its property,” they meant only those several principles from Korzen and not all of them. Plaintiff further argues that property need not be owned by a charitable institution to be eligible for a charitable tax exemption. Therefore, the Korzen factors left out of Oswald, which deal with charitable ownership, are now irrelevant to the analysis.

Defendants argue that Oswald did not change any requirements for trial. They agree that Plaintiff must prove the statutory requirements of Section 15-86 as well as the constitutional “charitable use” test. Where they disagree with Plaintiff is that they believe the latter test involves all the Korzen factors, not just those listed in Oswald. Defendants argue that the issue in Oswald was the constitutionality of Section 15-86 and not to define the constitutional “charitable use” test. They further argue that the Illinois Supreme Court did not overrule Korzen and specifically cited it. The Court acknowledged the “difficulty of framing a universally applicable definition of an exclusive charitable use.” Defendants suggest that the Illinois Supreme Court simply noted the basic definition of charitable use and did not repeat all the Korzen factors. They argue that other cases cited in Oswald support the use of all the Korzen factors. Therefore, Defendants claim that the constitutional “charitable use” test requires the Court to apply all the Korzen factors.

The task of the Illinois Supreme Court is to paint with broad strokes and to only address the issues presented to them. The issue before them was whether Section 15-86 was facially unconstitutional. They found it facially constitutional but acknowledged that facts in a different case could make it unconstitutional “as applied.” Would it have been helpful to lower courts, practitioners and property owners had the Illinois Supreme Court been more specific and given

greater guidance? Of course. They could have said: "We overrule Korzen." They could have said: "We find that only 'use' factors and not 'ownership' factors from Korzen apply." They could have said: "We find that all the Korzen factors constitute the constitutional test." They could have said: "We find that all the Korzen factors constitute the constitutional test, however depending on the facts and circumstances of a case, some factors may be inapplicable or can be given greater/lesser weight?" Whether this Court decides the impact of Oswald as a Motion for Summary Determination on a Major Issue or whether this Court simply gives guidance to the parties in the manner of a case management Order, it is imperative that the parties know how to proceed in terms of trial preparation.

Plaintiff makes a powerful argument in the vein of Dr. Suess' Horton the Elephant: "I meant what I said, and I said what I meant. (An elephant's faithful one hundred percent)." The Illinois Supreme Court did not have to address the Korzen factors in Oswald but they did. And they specifically listed some, but not all, the Korzen factors. The Illinois Supreme Court meant what it said. But the Defendants make an equally powerful argument that there was no mention in Oswald of overruling or even limiting Korzen. Had the Illinois Supreme Court intended to do so, they would have. Besides, the focus of Oswald was on a different issue.

In the end, this Court agrees with the Defendants that Oswald does not eliminate or reduce the Korzen factors. The Illinois Supreme Court has noted many times, even in Oswald itself, how difficult it is to define charitable use. They have used the phrase "frame of reference" to help guide lower courts, practitioners and property owners to understand what must be applied to determine if there is exclusive charitable use. Some of the Korzen factors refer to "use" while others refer to "ownership." Depending on the facts and circumstances of a particular case, some factors may be inapplicable or should be given greater or lesser weight. In the present case, counsel for State Defendants argued that the "ownership" factors may be relevant as they could affect the way in which Plaintiff uses its property.

The Court finds that Oswald did not change the requirements to obtain a charitable exemption and that all Korzen factors are a part of the constitutional "charitable use" test. Having said that, the Korzen factors dealing with ownership are only relevant if they can be shown to have affected the way in which Plaintiff uses its property.

If the court determines that there is no genuine issue of material fact as to one or more of the major issues in the case, but that substantial controversy exists with respect to other major issues, 735 ILCS 5/2-1005(d) requires the Court to enter an Order specifying the major issue or issues that appear without substantial controversy, and directing such further proceedings upon the remaining undetermined issues as are just. The issue of the scope of Oswald is one of law and not of fact. There is no genuine issue of material fact relating to how the case is to be interpreted. The Court has ruled on the scope of Oswald. The matter remains for trial on all factual issues on the exemption counts in Plaintiff's Fourth Amended Complaint.

Illinois Supreme Court Rule 218 authorizes case management Orders to promote a speedy and efficient trial, including simplifying issues and determining stipulations and waivers of objections. The Rule may also be used to explore the possibility of settlement among the parties.

By December 3, 2018, the parties are Ordered to submit, jointly if possible –

- a) A list of witnesses and likely dates of their testimony.
- b) A list of exhibits, with identification of those that are not agreed upon.
- c) A list of stipulations as to evidence, foundation, etc.
- d) A brief outline, by Defendants, of the evidence it intends to introduce on the Korzen factors dealing with ownership.
- e) All Motions in Limine.
- f) At the Final pretrial on December 4, 2018, the Court will inquire:
 - 1. If there is a possibility of a settlement among the parties.
 - 2. If there is an agreement on written vs. oral opening statements.

11-26-18

Date

R. Rosenbaum

Judge Randall Rosenbaum