

NO. COA12-630

NORTH CAROLINA COURT OF APPEALS

Filed: 18 December 2012

In the Matter of the Appeal of:

NC Yadkin House, LLC,
from the decision of the Rowan
County Board of Equalization and
Review revoking *ad valorem*
property tax exemption status for
certain property for tax years
2009 and 2010.

From The North Carolina
Property Tax Commission
No. 10 PTC 901

Appeal by Rowan County from Final Decision entered 20 March
2012 by the North Carolina Property Tax Commission sitting as
the State Board of Equalization and Review. Heard in the Court
of Appeals on 25 October 2012.

*Everett Gaskins Hancock LLP, by E.D. Gaskins, Jr., for
Appellee NC Yadkin House, LLC.*

*Parker Poe Adams & Bernstein LLP, by Charles C. Meeker and
Jamie S. Schwedler, for Appellant Rowan County.*

STEPHENS, Judge.

Facts and Procedural History

NC Yadkin House, LLC ("NC Yadkin") owns a sixty-seven unit
apartment complex in Salisbury, North Carolina. NC Yadkin rents
these units exclusively to low-income tenants, and all units are
subject to Section 8 regulations of the United States Department

of Housing and Urban Development ("HUD"). Section 8 requires, *inter alia*, that NC Yadkin rent units only to individuals with incomes at least 30% below the median income for Rowan County ("the County"). NC Yadkin is wholly owned by the American Housing Foundation of North Carolina, LLC ("AHF-NC"), and AHF-NC is a wholly owned subsidiary of the American Housing Foundation, Inc. ("AHF"). AHF's certificate of incorporation provides that the organization's

purposes are to foster in the community the enthusiasm, hope and joy that comes [sic] from being servants to each other, by helping each other meet their physical needs for good housing, good health, and rewarding work, their emotional and intellectual needs for a caring and sharing community, and their needs to love and communion with God. This brotherhood and fellowship . . . shall be demonstrated through the development of adequate housing and any further activities that would enhance the lives of those involved in the housing program, and in particular, this corporation shall foster low-income housing.

AHF's amended articles of incorporation also provide that "[t]he corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including . . . the fostering of low-income housing[,]" and, further, that "[u]pon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of Section

501(c)(3) of the Internal Revenue Code"

AHF was organized as a Texas nonprofit corporation in 1989. In 1990, the Internal Revenue Service ("IRS") recognized AHF as a tax-exempt, 501(c)(3) charitable organization. Nineteen years later, NC Yadkin applied for and received exemption from *ad valorem*¹ property taxation as a nonprofit organization under N.C. Gen. Stat. § 105-278.6(a)(8) because it provides housing for individuals and families with low to moderate incomes. On 20 January 2010, however, the County changed its position and revoked NC Yadkin's *ad valorem* tax exemption, informing NC Yadkin that:

[T]he property does not meet the description of a "charitable purpose" as described in G.S. 105-278.6(b). The property owner is receiving lease payments at market rate for the units in the building on this parcel and therefore the use of this property does not meet the statute's description of a charitable purpose[,] which describes a charitable purpose as "one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward."

On 20 October 2010, the Rowan County Board of Equalization and

¹ An *ad valorem* tax on property is one "imposed proportionally on the value of [the property], rather than on its quantity or some other measure." Black's Law Dictionary 1594 (9th ed. 2009), tax, *ad valorem* tax.

Review upheld that revocation. One year and five months later, the North Carolina Property Tax Commission ("the Commission") reversed the County Board's decision and granted NC Yadkin's *ad valorem* tax exemption. The County appeals pursuant to N.C. Gen. Stat. § 105-345 (2011).

Standard of Review

When reviewing decisions made by the Commission, this Court decides "all relevant questions of law, interpret[s] constitutional and statutory provisions, and determine[s] the meaning and applicability of the terms of any Commission action." N.C. Gen. Stat. § 105-345.2(b) (2011). We are empowered to affirm, reverse, declare null and void, or remand a decision of the Commission. *Id.* Further, we may reverse or modify a decision of the Commission if (A) the appellant's substantial rights have been prejudiced, and (B) the Commission's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions; or
- (2) In excess of statutory authority or jurisdiction of the Commission; or
- (3) Made upon unlawful proceedings; or
- (4) Affected by other errors of law; or
- (5) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

Id.

"This Court's determinations are based on a review of the whole record [We] review all questions of law *de novo* and apply the whole record test where the evidence is conflicting to determine if the Commission's decision has any rational basis." *In re Totsland Preschool, Inc.*, 180 N.C. App. 160, 162-63, 636 S.E.2d 292, 294 (2006) (internal quotation marks, citations, and brackets omitted) [hereinafter *Totsland*]. Under the whole record test, we must determine "the substantiality of evidence supporting the agency's decision" and "take into account evidence contradictory to the evidence on which the agency decision relies. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. If the whole record supports the Commission's findings, the decision of the Commission must be upheld." *In re Pavillon Int'l*, 166 N.C. App. 194, 197, 601 S.E.2d 307, 308 (2004) (quoting *In re Univ. for the Study of Human Goodness & Creative Grp. Work*, 159 N.C. App. 85, 89, 582 S.E.2d 645, 649 (2003)).

"[S]tatutory provisions providing for exemptions from taxes are to be strictly construed, and all ambiguities are to be resolved in favor of taxation." *Totsland*, 180 N.C. App. at 164, 636 S.E.2d at 295. A taxpayer seeking the benefit of an

exemption bears the burden of proving that she or he is entitled to that exemption. *Id.* NC Yadkin has that burden in this case.

Discussion

On appeal, the County argues that NC Yadkin is not exempt from *ad valorem* taxation under N.C. Gen. Stat. § 105-278.6(8) because it is not formed as a nonprofit organization, the Commission failed to make correct findings and conclusions, and NC Yadkin failed to show that it and AHF were not operated for profit.² We address these contentions in two parts.

I. Whether NC Yadkin May Qualify as a Nonprofit Organization Through AHF

Section 105-278.6(a)(8) requires certain exempted real property to be owned by a "nonprofit organization." N.C. Gen. Stat. § 105-278.6(a)(8) (2011). Thus, NC Yadkin must qualify as a nonprofit organization before it can attempt to take advantage

² In addition, the County submitted a Rule 11(c) supplement to the printed record on appeal, which contains various newspaper articles that the County contends are relevant to AHF's status as a nonprofit. NC Yadkin has moved to strike that supplement from the record. Both parties agree these articles were not offered into evidence to prove the truth of their contents and were only alluded to, referenced, or discussed *ad hoc* during the hearing. Further, the County has offered no explanation for why these materials, beyond what is already available in the transcript of the hearing, are now necessary. Accordingly, we grant NC Yadkin's motion and strike this supplement from the record.

of *ad valorem* tax exemption under that section. We address this matter first.

The County argues that NC Yadkin cannot avoid *ad valorem* taxation under subsection (8) because it is organized as a limited liability company ("LLC"). The County contends that, as an LLC, NC Yadkin is necessarily a for-profit organization and notes that the word "nonprofit" cannot be found within NC Yadkin's operating agreements. The County also contends that NC Yadkin should not be allowed to employ Section 105-278.6(a)(8) simply because its parent organization, AHF, is a 501(c)(3) nonprofit organization, citing the section's failure to explicitly allow for this sort of parent-subsidiary relationship in its provisions. We are not persuaded.

Interpreting Section 105-278.1(b), which provides that "[r]eal and personal property belonging to the State, counties, and municipalities is exempt from taxation," this Court has determined that "ownership" of property may be imputed to a parent organization even though its subsidiary holds legal title. See *In re Fayette Place LLC*, 193 N.C. App. 744, 748, 668 S.E.2d 354, 357 (2008) [hereinafter *Fayette Place*]. In *Fayette Place*, an LLC was completely owned by the Housing Authority of the City of Durham. *Id.* at 745-46, 668 S.E.2d at 355-56. The LLC

sought exemption from *ad valorem* taxation under subsection 105-278.1(b) on grounds that the property belonged to the State. *Id.* Reasoning that possession of legal title is not determinative as to the question of ownership, we focused our inquiry on the State's interest in the property instead. *Id.* at 747, 668 S.E.2d at 357. Because the LLC was a wholly controlled subsidiary corporation of the Housing Authority, we determined that the property "belonged to" the State and, thus, was exempted from *ad valorem* taxation. *Id.*; *cf. In re Appalachian Student Housing Corp.*, 165 N.C. App. 379, 388, 598 S.E.2d 701, 706 (2004) ("We hold that the equitable title held by ASU as beneficiary of this trust is sufficient to show that the property belongs to the State of North Carolina."). That rationale is applicable here.

We are not persuaded by the County's attempts to distinguish subsection 278.1 merely because it uses the language of "belonging to" as opposed to the language of "owning," which is employed in subsection 278.6. Because the legislature uses the terms interchangeably in subsections 278.1(a)-(b), we find that both sets of words have the same effect in this context. In *Fayette Place*, we noted that "ownership" can be imputed to the State even though legal title resides with an LLC, again using the terms "ownership" and "belonging to" interchangeably.

Therefore, we hold that "ownership" of the apartment complex may be imputed to AHF despite the fact that legal title resides with NC Yadkin. Accordingly, we hold that NC Yadkin may qualify for exemption from *ad valorem* taxation under Section 105-278.6(a)(8) as a wholly owned subsidiary of AHF.

II. Charitable Purpose and Nonprofit Activities

The County next asserts that, under Section 105-278.6 of the North Carolina General Statutes, NC Yadkin is not operated for a charitable purpose and neither NC Yadkin nor its parent, AHF, constitutes a nonprofit organization.³ Accordingly, it contends that NC Yadkin should not be exempted from *ad valorem* taxation under the statute. We disagree.

Section 105-278.6(a)(8) states that "[a] nonprofit

³ The County also argues that the Commission erred by finding as fact that NC Yadkin had sustained "operation losses," which the Commission determined were only maintained because of a substantial contribution made by AHF through AHF-NC to NC Yadkin. The County asserts that these losses are the result of amortization and depreciation of assets and, thus, should not have been included in the calculation of NC Yadkin's so-called "operation losses." We note that whether the Commission correctly found NC Yadkin to have sustained "operation losses" is not dispositive in this case. Though that fact may lend weight to NC Yadkin's argument that it has a charitable purpose, Section 105-278.6 does not tie the existence of "operation losses" with an organization's status as a nonprofit or its charitable purpose. See N.C. Gen. Stat. § 105-278.6. Thus, we refrain from addressing the merits of the County's argument concerning "operation losses" and note that, if any error exists, it is harmless.

organization providing housing for individuals or families with low or moderate incomes shall be exempted from taxation" as to real property, if: (i) it is actually and exclusively occupied and used by the owner for charitable purposes, and (ii) the owner is not organized or operated for profit. N.C. Gen. Stat. § 105-278.6(a)(8). Subsection (b) defines a "charitable purpose" as "one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward." N.C. Gen. Stat. § 105-278.6(b). Whether an entity has a charitable purpose, as defined by the statute, is a question of law that we review *de novo*. *Totsland*, 180 N.C. App. at 165-66, 636 S.E.2d at 296.

The County first argues that the apartment complex is not actually and exclusively occupied and used for charitable purposes under subsection (i), citing "undisputed evidence" that NC Yadkin charged above-market rates,⁴ NC Yadkin's allowance of rent concessions totaling less than 1% of its annual rentals, and the lack of financial contributions or gifts to NC Yadkin. After careful consideration of these assertions and the evidence

⁴ We disagree and note that counsel for NC Yadkin does dispute this point, stating in the transcript of the proceedings: "I don't think there's any evidence they get above-market rates"

the County provides to support them, we are convinced that the NC Yadkin apartments are actually and exclusively occupied and used for a charitable purpose.

The County fails to distinguish this situation from that in *Totsland*. There we held that a day care center was eligible for an exemption from *ad valorem* taxation, despite receiving a government subsidy because of its "charitable purpose." *Id.* at 165-68, 636 S.E.2d at 296-98 (noting that an entity should not be precluded from being considered "charitable" simply because it is primarily supported through government funding). In coming to that conclusion, we pointed out that the day care center had provided low-cost daycare services along with "a number of other services to the community at large, free of charge." *Id.* at 167, 636 S.E.2d at 297. Those services included after-school programs for children and educational programs for parents. *Id.* In evaluating that purpose, we clarified that courts should focus on "the purpose of the activities and the actual use of the [government] funds . . . , rather than the source of the funds." *Id.* at 168, 636 S.E.2d at 298.

Here, NC Yadkin exclusively provides subsidized, low-rent housing to individuals with incomes at or below 30% of the median income for the Salisbury area, pursuant to HUD Section 8

regulations. The County argues that NC Yadkin charges "above-market rates" and, further, earns a profit on those rates because of the subsidy it receives from the government, reasoning that NC Yadkin does not use its property for charitable purposes. We find this contention unpersuasive. NC Yadkin does not have control over its own rental rates. Rather, those charges are pre-set by HUD, based on the prevailing market rates in the Salisbury area at any one time. In addition, we have already determined that an entity should not be precluded from being considered "charitable" simply because it receives a government subsidy. See *id.* at 165, 636 S.E.2d at 296.

In addition, NC Yadkin provides a number of free community services. NC Yadkin's Resident Service Coordinator testified that the company has organized fundraising events for the community at large, holiday projects for indigent persons, and donations to the local food pantry. The service coordinator position also exists to ensure that residents within NC Yadkin "age in place," a healthcare process that involves either making sure residents are in contact with their doctor or helping get them to a hospital, when necessary. Given NC Yadkin's status as a dedicated low-rent housing facility for low-income residents, coupled with its participation in a number of other charitable

and humanitarian activities, we hold that NC Yadkin is actually and exclusively occupied and used for a "charitable purpose" under Section 105-278.6(a)(8)(i).

Second, and lastly, the County alleges that NC Yadkin and AHF are organized for profit and, thus, unable to meet the requirements of Section 278.6(a)(8)(ii), which prohibits exemption from *ad valorem* taxation when the owner of the property is organized for profit. Even though NC Yadkin may qualify as a nonprofit organization through its parent, AHF, the County argues that it is barred from *ad valorem* tax exemption under subsection (ii) because AHF is not a nonprofit organization. We disagree. Because AHF is recognized by the federal government as a 501(c)(3) charitable organization and organized as a nonprofit corporation in the State of Texas, we find that it meets the requirements of subsection (ii). Accordingly, we affirm the holding of the Commission.

AFFIRMED.

Judges GEER and MCCULLOUGH concur.

Report per Rule 30(e).

A TRUE COPY
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OF NORTH CAROLINA
BY Laura Jannette
DEPUTY CLERK
Jan. 7, 2013