

ORIGINAL

IN THE SUPREME COURT OF OHIO

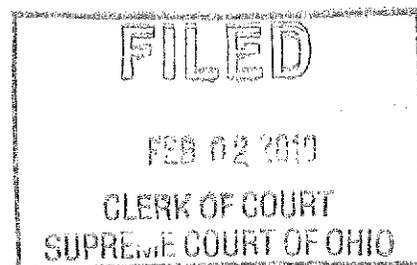
Wallace R. Campbell, et al., : Case No.: 2010-0209
Appellee, : On Appeal from the Twelfth
 : Appellate District, Warren County
v. :
City of Carlisle, Ohio, : Court of Appeals
 : Case No. CA2009-05053
Appellant. :

MEMORANDUM IN SUPPORT OF JURISDICTION OF
AMICUS CURIAE
THE OHIO MUNICIPAL LEAGUE

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**EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST**

The Ohio Municipal League ("the League"), as amicus curiae on behalf of the City of Carlisle, Ohio ("the City"), urges this Court to accept jurisdiction over this case in order to reverse the Decision of the Twelfth Appellate District in *Wallace R. Campbell v. City of Carlisle, Ohio*, CA2009-05053, 2009-Ohio-675. While the League supports all of the arguments put forward by the City, the League wishes to emphasize the importance of certain aspects of this case which establish this case as worthy of this Court's time and attention.

This case involves the interpretation and application of R.C. 709.42, the section of Ohio's detachment statutes that establishes the standard for detaching farm-land from a municipality. R.C. 709.42 provides a four-part test that a landowner must satisfy in order to detach farm-land from a municipality. One prong of that four-part test provides that a landowner must demonstrate that the property is taxed "for **municipal purposes** in **substantial excess** of the benefits conferred" upon the property by the municipality. The interpretation of "substantial excess" will have a far-reaching impact on municipalities throughout Ohio and on other court cases that are pending in various courts of this State.

The property that is the subject of this lawsuit qualified for tax valuation under the Ohio Current Agricultural Use Valuation (CAUV) program, R.C. 5713.30, *et seq.* The tax valuation for property that qualifies under this program disregards the highest and best use of the property and values the property based on its current agricultural use. This typically results in a lower tax valuation, and consequently, a lower annual property tax. The 40-acre property at issue in this

lawsuit was taxed at a rate of \$172.00 per year under the CAUV program. Had this property not been part of the CAUV program, the annual taxes would have been \$12,538.99.¹

The lower court held that, when making the determination of whether the subject property is taxed in "substantial excess" of the benefits conferred, the property's non-CAUV tax rate must be utilized. This holding disregards the standard that the taxes levied for "municipal purposes" must be in "substantial excess" of the benefits received for an order detachment to be granted. The effect of the holding is to utilize a tax figure in the statutory analysis that is higher than what is actually being imposed upon the landowner, and paid to the municipality, "for municipal purposes."

As further explained below, the "substantial excess" language represents an evolution in language that disfavors detachment. Ohio's annexation and detachment statutes reflect well established public policies favoring annexation of adjacent territory to municipalities and disfavoring the detachment of those lands from the municipality. The lower court's holding is contrary to these public policies.

The lower court correctly noted in its opinion that there was relatively little case law interpreting R.C. 709.42. Litigation regarding this issue, however, has become a matter of great general interest, recently, with detachment petitions being the subject of at least two other cases in Ohio: *Smith Evergreen Nursery, Inc. v. Village of Magnolia*, has been decided by the Fifth Appellate District (this case is currently pending in this court, see Case No. 2010-0028), and *Reywal Co. Ltd. Partnership v. City of Dublin, Ohio*, Case No. 09APE-05-522, is currently

¹ There does appear to be an issue as to what taxes the lower courts evaluated under R.C. 709.42. The statute requires an evaluation of the amount that a farm-land owner is taxed "for municipal purposes." There was a finding that "approximately 80 percent of the taxes go to the local school district." Whether all of the taxes that don't go to the local school district qualify as taxes "for municipal purposes" appears to be an unresolved question. There is no specification of whether the remaining taxes go to the county or other taxing jurisdictions, or what portion of the remaining taxes are used for "municipal purposes." Regardless of the ultimate facts of this case, the fundamental issue before this Court is whether the CAUV tax rate or the non-CAUV tax rate should be utilized in the R.C. 709.42 analysis.

pending in the Tenth Appellate District. This court should accept jurisdiction in this case, as well as the Magnolia case, in order to provide guidance to the courts of Ohio regarding the interpretation of R.C. 709.42, as these cases are reflective of a trend in the law that requires guidance from this court.

STATEMENT OF AMICUS INTEREST

The Ohio Municipal League is a non-profit Ohio corporation composed of a membership of over 750 Ohio cities and villages. Municipalities in Ohio that have farm-land within their corporate boundaries have a fundamental interest in the outcome of this case, and specifically, the manner in which R.C. 709.42 is construed and applied. The effect of the lower court's holding, if it is allowed to stand, would (by disregarding the statutory standard) make detachment easier. This, in turn, would cast doubt on the permanency of the borders of Ohio's municipalities and make economic development – the essence of municipal development – uncertain. By this brief, the League respectfully seeks to advise this Court of the urgency of the instant case.

STATEMENT OF THE CASE AND FACTS

The League hereby adopts, in its entirety, the Statement of Case and Facts contained within the City of Carlisle's Memorandum in Support of Jurisdiction.

ARGUMENT

Proposition of Law: A request to detach farm-land property from a municipality pursuant to R.C. 709.42, must be evaluated based upon the actual taxes paid for “municipal purposes,” including but not limited to the lower taxes paid for “municipal purposes” pursuant to R.C. 5713.30, *et seq.*, Ohio's CAUV program.

In order to prevail on a Petition for Detachment pursuant to R.C. 709.42 of the Ohio Revised Code, a landowner must establish **all of the following four elements:**

- (1) the land in question is farm-land that was not within the original limits of the municipal corporation;
- (2) that because the farm-land is in the municipal corporation, the owner of the land is taxed and will continue to be taxed for municipal purposes in substantial excess of the benefits conferred on the landowner;
- (3) that detaching the farm-land will not adversely affect the best interests or good government of the municipal corporation; and
- (4) that five years has elapsed from the time the land was originally annexed by the municipal corporation.

R.C. 709.42; *Griffith v. Huron*, Sixth App. No. E-87-46, 1988 WL 39714 (April 29, 1988.)

This appeal deals only with the second prong of this four-part test - the substantial excess element. Appellees, the landowners, must prove that they are taxed **for municipal purposes** in **substantial excess** of the benefits conferred upon them by virtue of being located in the City. The fundamental issue in this case is what taxes “for municipal purposes” are to be attributed to a property owner - the actual taxes paid by the property owner that go to the City for municipal purposes, or the non-CAUV tax rate the owner would pay if the property was not part of the Ohio's CAUV program?

The lower court, without citing any legal authority or the legislative history of R.C. 709.42, concluded that the actual taxes paid to the City under CAUV tax rate should not be utilized in the analysis as to whether the municipal tax is substantially in excess of the benefits conferred. This conclusion was based upon the fact that the CAUV statute (which was enacted after the detachment statute) did not amend the detachment statute to specifically state that CAUV tax valuations should apply to the detachment analysis. This interpretation disregards the plain language of the statute in favor of the application of ambiguous statutory relationship between the CAUV statute and the detachment law. The interpretation also disregards the statutory history of the farm-land detachment statute, which was amended by the Ohio General Assembly in 1911 to make detachment more difficult.

The purpose of statutory construction is to ascertain and give effect to the intent of the legislature. *Featzka v. Millcraft Paper Co.*, 62 Ohio St.2d 245, 405 N.E.2d 264 (1980). To ascertain the legislative intent, courts rely upon ordinary principles of statutory construction. *Cline v. Ohio Bur. of Motor Vehicles*, 61 Ohio St.3d 93, 573 N.E.2d 77 (1991). A court must first look at the language of the statute, and if the statute conveys a meaning which is clear, unequivocal and definite, there is no need to apply rules of statutory interpretation. *Id.* Courts should give effect to the words of the statute and should not modify an unambiguous statute by deleting words used or inserting words not used. *Kelly v. Accountancy Bd. of Ohio*, 88 Ohio App.3d 453, 459, 624 N.E.2d 292 (1993). In the absence of clear legislative intent to the contrary, words and phrases in a statute shall be read in context and construed according to their plain, ordinary meaning. *Kunkler v. Goodyear Tire and Rubber Co.*, 36 Ohio St.3d 135, 137, 522 N.E.2d 477 (1988).

The language used in R.C. 709.42 is clear and unequivocal. Detachment is permitted (assuming the other three statutory requirements are satisfied) only if the land *is taxed*, and will continue to be *taxed* for municipal purposes, in substantial excess of the benefits conferred upon the landowner. The phrase “is taxed” has a plain and ordinary meaning - the amount an owner actually pays in taxes for municipal purposes.

The lower court’s decision to utilize the non-CAUV tax rate was based on its interpretation of the statutes at issue and, in particular, their timeline of enactment. Because Ohio’s farm-land detachment statute, R.C. 709.42, was enacted before Ohio’s CAUV statute, the lower court believed that the legislature did not intend that the CAUV tax-rate would be applied in determining whether detachment should be permitted. The Court felt that the legislature’s failure to modify the detachment statute implied an intention that the non-CAUV tax rate be utilized. That reasoning has a logical counterpoint: the argument could just as easily be made that when the legislature enacted the CAUV statute it knew there was a detachment statute in place, and the legislature could have specifically stated that the new CAUV tax rate should not be applied to the detachment analysis – that a property’s theoretical tax obligation be used when detachment is considered. The point of this argument is that the legislative intent behind the CAUV statute is ambiguous, relative to the issue of detachment, and therefore, the courts should focus on the plain language of the detachment statute. The focus is on what the landowner “is taxed” - how much the landowner actually pays in taxes - not what the landowner would pay if he/she was not part of the CAUV program. The lower court’s decision disregards the plain meaning of the words of the statute, which is not an appropriate outcome of statutory interpretation.

Ohio's annexation statutes reflect a clear public policy favoring annexation of property adjacent to municipalities. *City of Middletown v. McGee* (1988), 39 Ohio St.3d 284, 285, 530 N.E.2d 902, 904. The evolution of Ohio's detachment statute mirrors this public policy. The precursor to R.C. 709.42, was G.C. 3577-3579. This section was amended to include the "taxed for municipal purposes in substantial excess" language in the year 1911. See, 102 Ohio Laws 449. Prior to 1911, an applicant for detachment did not need to prove the land was taxed "for municipal purposes in substantial excess of the benefits conferred". Prior to that legislative enactment, the applicable standard was whether the land "may be detached without materially affecting the good government of adjacent territory within the municipal limits." See, 95 Ohio Laws 260, §2. The inclusion by the legislature of a higher standard of proof is evidence of a statutory intent to make detachment of farm-land from a municipality more difficult. Employing the lower court's use of the non-CAUV tax rate in the detachment analysis effectively elides the concept of "substantial excess" from R.C. 709.42. The elimination of this longstanding statutory requirement is a decision which should be made by the legislature, not the courts.

CONCLUSION

Ohio's detachment statute was designed to protect farm-land owners from overly burdensome municipal taxes in situations where those landowners did not enjoy municipal benefits. In many of these situations, the landowners have rightfully taken advantage of Ohio's CAUV program to lighten their annual tax burden, which includes municipal property taxes. Not considering the tax rate the landowner actually pays - the CAUV tax rate - when determining if the landowner is taxed in substantial excess of the municipal benefits conferred - essentially rewrites the statute. The effect of the Twelfth Appellate District's holding is to disregard the plain language of the statute and statutory history, which both require the municipal tax burden

to be in "substantial excess" of the benefits conferred by the inclusion of the property in the municipality. Such a holding is contrary to the public policy of the state that favors the inclusion of land within municipal corporations, and would destabilize municipal boundaries.

Accordingly, the League respectfully requests that this Court accept discretionary jurisdiction of this appeal in order to reverse the lower court's judgment.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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