

ORIGINAL

Docket No. 38781-6-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON

WILLIAM SCHEIDLER

Plaintiff/Appellant,

v.

KITSAP COUNTY ASSESSOR,

Defendant/Respondent,

APPELLANT'S REPLY BRIEF

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STATE OF WASHINGTON
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KITSAP COUNTY

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I. INTRODUCTION

Appellant, Mr. Schiedler replies to Respondent, Kitsap County's Brief as follows.

This matter involves a purely legal question: Whether Kitsap County ("County") is properly implementing tax relief available to retirees, disabled persons and disabled veterans authorized by the Legislature under RCW 84.36. More specifically, the County is including items in a disposable income calculation that are not consistent with the definition under the RCW 84.36.383(5).

The County argues, among other things, that Mr. Schiedler does not state a claim upon which relief can be granted, that he does not have a justiciable controversy and that this is not an issue of public importance. The County is in error. Mr. Schiedler has brought this court's attention to an error made in the forms implementing the Property Tax Relief Act. As argued in the Appellant's Brief, Mr. Schiedler has exhibited an economic interest in this problem as a disabled retiree and has the right to be heard by this court.

V. ARGUMENT

A. STANDARD OF REVIEW.

The trial court dismissed Mr. Schiedler's suit under CR 12(b)(6). The standard of review under CR 12(b)(6) is

We review dismissal of a claim under CR 12(b)(6) *de novo*. *Reid v. Pierce County*, 136 Wn.2d 195, 200-01, 961 P.2d 333 (1998); *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994). Dismissal is appropriate only if the complaint alleges no facts that would justify recovery. *Reid*, 136 Wn.2d at 200-01, 961 P.2d 333. We accept the plaintiffs' allegations and any reasonable inferences as true. *Id.* at 201, 961 P.2d 333. And for that reason CR 12(b)(6) motions should be granted sparingly and with care. *Cutler*, 124 Wn.2d at 755, 881 P.2d 216.

Wright v. Jeckle, 104 Wn. App. 478, 481, 16 P.3d 1268 (2001).

The sole question here is not whether Mr. Schiedler is correct in his claim, but, whether or not he has **the right to challenge** the improper application of the law in the property tax exemption forms. As a matter of law, he does.

B. MR. SCHEIDLER HAS STANDING IN PRESENT SUIT.

Mr. Schiedler has standing in this suit. Mr. Schiedler, a disabled person, has economic interests which are directly impacted by the County's wrongful application of RCW 84.36.383(5). As previously argued economic interests are

sufficient to meet the standing requirement under the Uniform Declaratory Judgment Act (“UDJA”)

Parties whose financial interests are affected by the outcome of a declaratory judgment action have standing.^{FN3}

FN3. *Yakima County Fire Protection Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 379, 858 P.2d 245 (1993) (citing *Seattle School Dist. No. 1 v. State*, 90 Wn.2d 476, 493, 585 P.2d 71 (1978)).

Casey v. Chapman, 123 Wn. App. 670, 676, 98 P.3d 1246 (2004).

However, every taxpayer will be fairly presumed to be injured when a municipal corporation undertakes to enter an illegal contract. *Barnett v. Lincoln*, 162 Wash. 613, 299 P. 392 (1931).

Mincks v. City of Everett, 4 Wn. App. 68, 73, 480 P.2d 230 (1971); see also *City of Seattle v. King County*, 68 Wn.2d 811, 416 P.2d 84 (1966) (City had standing to bring claim under the UDJA seeking exemption from assessment imposed by off street parking statute); *Pasco v. Miller*, 50 Wn.2d 229, 310 P.2d 863 (1957) (taxpayer who meets requirements of RCW 7.24.020 has standing under the UDJA to bring a claim); *City of Sequim v. Malkasian*, 119 Wn. App. 654, 79 P.3d 24 (2003) (City had standing under UDJA to challenge voter initiative adopted into an ordinance which initiative impacted the issuance of revenue bonds); see generally 15 WASHINGTON PRACTICE §42.2 *Standing to sue—Generally*.

The County fails to comment on the case on point, *Hartman v. Washington State Game Commission*, 85 Wn.2d 176, 532 P.2d 614 (1975). Again, as argued in primary briefing, when the Legislature decided to confer a tax exemption upon retirees, disabled persons and disabled veterans under Property Tax Relief Act if certain conditions are met, it likewise conferred upon those individuals the right to bring a claim relating to its implementation. The County fails to convincingly persuade that Mr. Schiedler does not have a claim under CR12(b)(6).

Mr. Scheidler has the right to be heard in this matter, his economic interests are directly at issue in this case, he is entitled to claim an exemption from property taxes and is prevented from doing so because the County has implemented a system which is inaccurately applies the law. This case should not have been dismissed.

C. ALL NECESSARY PARTIES ARE INCLUDED IN THE SUIT.

The Attorney General and the State of Washington are not necessary parties in this suit. Mr. Schiedler is not challenging the statute, nor its constitutionality. This appeal is presenting a narrow

question, one which is challenging the way the statute is applied, not the way in which it is written.

Here, the County ignores the fact that the constitutionality of the statute was not argued in the appeal and simply relies on the original complaint that was filed pro se to make their argument that not all parties were named in the suit, this is incorrect.

Mr. Scheidler is not arguing the constitutionality issues in their appeal, therefore the state and attorney general need not be included as parties of the suit.

D. APPELLANT IS CHALLENGING APPLICATION OF THE LAW, NOT THE LAW ITSELF.

Mr. Scheidler is not challenging the law on its face, what is being challenged is the construction of the law on the property tax exemption forms more specifically how the term “disposable income” is applied to the form.

RCW 84.36.381 provides for an exemption from “all or a portion of the amount of excess and regular real property taxes” for persons “retired from regular gainful employment by reason of disability”. RCW 84.36.381(3)(a). Under RCW 84.36.381(4) provides in part:

The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of

combined disposable income, as defined in RCW 84.36.383.

The term “combined disposable income” is defined as:

the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse or domestic partner, and the disposable income of each cotenant occupying the residence for the assessment year, less amounts paid by the person claiming the exemption or his or her spouse or domestic partner during the assessment year for:

- (a) Drugs supplied by prescription of a medical practitioner authorized by the laws of this state or another jurisdiction to issue prescriptions;
- (b) The treatment or care of either person received in the home or in a nursing home, boarding home, or adult family home; and
- (c) Health care insurance premiums for medicare under Title XVIII of the social security act.

RCW 84.36.383(4). The term “disposable income” is defined as follows:

“Disposable income” means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are: **not included in or have been deducted from adjusted gross income:**

- (a) Capital gains, other than gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

- (b) Amounts deducted for loss;
- (c) Amounts deducted for depreciation;
- (d) Pension and annuity receipts;
- (e) Military pay and benefits other than attendant-care and medical-aid payments;
- (f) Veterans benefits, other than:
 - (i) Attendant-care payments;
 - (ii) Medical-aid payments;
 - (iii) Disability compensation, as defined in Title 38, part 3, section 3.4 of the code of federal regulations, as of January 1, 2008; and
 - (iv) Dependency and indemnity compensation, as defined in Title 38, part 3, section 3.5 of the code of federal regulations, as of January 1, 2008;
- (g) Federal social security act and railroad retirement benefits;
- (h) Dividend receipts; and
- (i) Interest received on state and municipal bonds.

(Emphasis added.) RCW 84.36.383(5).

As argued in the primary brief, Mr Scheidler simply points out that the County has misrepresented these provisions. The forms do not properly represent the law and are conflicting. Mr. Scheidler is presenting a real issue. Here, there is a simple

solution and that is a change in the forms to clarify the existing conflict not a change in the law.

E. APPELLANT HAS NOT RAISED ANY CONSTITUTIONAL ISSUES IN THE APPEAL.

Constitutional issues have not been raised on appeal. The County insists upon relying on the issues alleged in Mr. Schiedler's original complaint not the present appeal, even though the appeal has not asserted them.

The County asserts that Mr. Schiedler's Appellant Brief is "a distortion of his complaint" (Respondent's Brief pg. 31)

CR 8(a) requires that a pleading contain

- (1) A short and plain statement of the claim showing that the pleader is entitled to relief and
- (2) A demand for judgment for the relief to which he deems himself entitled

CR (8)(a).

In *Lewis v. Bell*, 45 Wn. App. 192, 197, 724 P. 2d 425 the court further stated

Under our liberal rules of procedure, pleadings are primarily intended to give notice to the court and the opponent of the general nature of the claim asserted.

Lewis v. Bell 45 Wn. App. 192, 197, 724 P. 2d 425.

Here, Mr. Schiedler originally filed as a pro se litigant. As we see with many pro se litigants, Mr. Schiedler brought up

constitutional arguments in the lower court. However Mr. Schiedler has raised **no constitutional issues in this appeal**, as counsel does not believe they need to be addressed by this court. Mr. Schiedler is now addressing a very narrow issue and that is in the construction of the forms regulating tax exemptions from property taxes.

There is a very simple solution to this issue, and that is the forms being changed, not the law. It is the construction of the forms applying the law that is the problem, not the laws themselves. Through their Tax exemption forms the County (while possibly inadvertently) has misrepresented the law to the public.

F. KIPSAP COUNTY MISUNDERSTANDS MR. SCHIEDLER'S REQUEST FOR REVERSAL OF COSTS AWARD.

The County has misinterpreted Mr. Schiedler's request that the trial court reverse the award of costs. Mr. Schiedler is simply requesting that if the Court of Appeals reverses the dismissal then the award on that dismissal should also be reversed.

VI. CONCLUSION

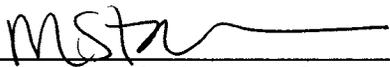
The County misunderstands Mr. Schiedler's argument. Mr. Schiedler is not disagreeing with Washington Law, he disagrees with is the application and representation of the law in the

conflicting forms he has encountered while attempting to file for exemption in his property taxes. The current forms are conflicting and scaring people away from filing for the tax exemptions they rightfully qualify for. The simple solution is to change the forms.

Again, trial court should be reversed, Mr. Scheidler's claim reinstated and award of costs pursuant to RCW 4.84 should be vacated.

Dated this 5th day of August, 2009.

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Certificate of Service

I hereby certify that I caused the foregoing document to be served upon the below named individual in the identified manner on

this 5th day of August, 2009:

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