

*This Order Is Not Precedential
And Is Not To Be Cited*

No. 2--00--1487

FILED

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ROBERT J. MANGAN, CLERK
APPELLATE COURT 2nd DISTRICT

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

FIRST FRIENDS DAY CARE, INC.,)	Appeal from the Circuit Court
Plaintiff-Appellee,)	of De Kalb County.
v.)	
THE DEPARTMENT OF REVENUE,)	No. 00--MR--012
Defendant-Appellant)	
(De Kalb County State's Attorney))	Honorable
and De Kalb County Board of)	John W. Countryman,
Review, Defendants).)	Judge, Presiding.

RULE 23 ORDER

Defendant, the Department of Revenue (the Department), appeals from the circuit court's order reversing the Department's administrative determination and granting a property tax exemption to plaintiff, First Friends Day Care Center, Inc. (First Friends). The Department contends that First Friends is not entitled to a charitable exemption because it derives most of its revenue from fees paid by the parents of children in its care.

First Friends sought a property tax exemption for its day-care center. The local board of review exempted the property but, following administrative proceedings, the Department denied an exemption. First Friends then sought administrative review of the Department's decision. The circuit court reversed the decision and the Department appealed.

The facts are largely undisputed and are taken primarily from the record of the hearing before the Department's administrative law judge. The only witness at the hearing was Audrey Campbell, the executive director of First Friends.

First Friends operates a day-care center in Genoa. The center was started in 1996 on the impetus of Willow Glen Developers. Mark Suchy, the owner of Willow Glen, approached Campbell about running the center. According to Campbell, the Genoa area did not have any day-care facilities except for home providers, many of whom were unlicensed. Many young families live in the area.

At the time of the hearing, the center cared for 90 children who were not yet of school age and 40 older children in its before and after school program. The center charged fees ranging from \$75 to \$135 per week.

Parents of 78 children paid the full fee. If a family cannot afford the full fee, First Friends finds funding from other sources. The Illinois Department of Human Services provides subsidies for some families. For children two years old and older, the subsidy does not cover the full amount that First Friends normally charges, and the total shortfall costs the center about \$250 weekly. The United Way also provides grant money to fund partial scholarships to parents who cannot afford the full fee but do not qualify for governmental subsidies. First Friends also sets up special payment plans for families that cannot pay the full fee immediately.

Campbell testified that First Friends accepts children on a "first-come, first-served" basis without regard to the family's

ability to pay. It has never turned down a child because the family could not afford to pay for its services.

First Friends also received grants and contributions from other sources to help cover operating expenses. Financial statements for the fiscal year ending August 31, 1998, showed that First Friends received 91% of its revenues from "fees." According to Campbell, this amount included fees paid by parents as well as governmental subsidies. The center received another \$38,573, or 7% of its revenue, from contributions. Additional financial reports showed that 80% of First Friends' revenue came from nonstate sources while 9% came from state sources.

After considering this evidence, the administrative law judge recommended that the center's request for a tax exemption be denied. The Department's director accepted the recommendation. First Friends sought administrative review in the circuit court of De Kalb County. After considering the parties' briefs and the administrative record, the court reversed the Department's decision. The Department timely appeals.

The Department's primary contention is that First Friends did not establish its entitlement to a charitable tax exemption because the majority of its revenue came from the fees it charged for its services. According to the Department, because the subject parcel is used to generate those fees, it is not used primarily for charitable purposes. First Friends responds that the percentage of funds received from "public or private" charity is just one factor in the equation and that the other factors identified in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968), clearly show

that it is a charitable institution. First Friends argues that it provides a valuable service--day care--on a first-come, first-served basis without regard to ability to pay and has never turned a child away because his or her parents could not pay the full fee.

We granted leave to the De Kalb County Committee for Community Coordinated Child Care, Inc., to file a brief as amicus curiae in support of First Friends. The amicus emphasizes that First Friends provides a valuable service to the community without regard to the ability to pay, thus relieving burdens that might otherwise fall on the government. The amicus argues that First Friends is similar to other institutions that have historically been found eligible for a charitable tax exemption.

The Illinois Constitution allows the General Assembly to exempt from taxation property that is used exclusively for "school, religious, cemetery and charitable purposes." Ill. Const. 1970, art. IX, §6. Pursuant to that authority, the legislature has exempted from taxation "institutions of public charity" whose property is "exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit." 35 ILCS 200/15--65 (West 1998).

Defining when a parcel is used exclusively for charitable purposes has proved elusive. In Korzen, the supreme court set forth a list of factors to consider in determining when a parcel qualifies for a charitable tax exemption. Charitable ownership and charitable use together entitle a parcel to an exemption. It is more likely that an institution is "charitable" if it (1) benefits an indefinite number of people; (2) has no capital, capital stock,

or shareholders earning profits or dividends; (3) derives its funds primarily through private and public donation and expends these funds for the purposes expressed in its charter; (4) dispenses its benefits to all people who need and apply for them; (5) places no obstacles in the way of those seeking its benefits; and (6) uses its property primarily for charitable purposes. Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1065 (2000).

Initially, we agree with First Friends and the amicus that the Korzen factors are not rigid, and a court must balance the guidelines by examining the facts of each case and focusing on whether the institution serves the public and consequently lessens the State's burden. Lena Community Trust Fund, Inc. v. Department of Revenue, 322 Ill. App. 3d 884, 888 (2001); Randolph Street Gallery, 315 Ill. App. 3d at 1065. Exemption statutes are construed strictly in favor of taxation. Institute of Gas Technology v. Department of Revenue, 289 Ill. App. 3d 779, 781-82 (1997). The party seeking the exemption must prove by clear and convincing evidence that it is entitled to the exemption. Chicago Patrolmen's Ass'n v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); Institute of Gas Technology, 289 Ill. App. 3d at 782. Whether property is exempt from taxation is a question of law that we review de novo. Chicago Patrolmen's Ass'n, 171 Ill. 2d at 271; Lena Community Trust, 322 Ill. App. 3d at 887.

The Department does not dispute that First Friends has no capital, capital stock or shareholders, or that it earns no profits or dividends. However, the Department contends that First Friends does not derive its funds "mainly from public or private charity."

but rather from fees charged to those who use its services. The Department also contends that First Friends places obstacles in the way of those who would use its services in the form of those fees. The Department points out that First Friends has never completely waived fees for anyone and merely seeks alternative sources of funding for those who are unable to afford the full fee.

Illinois courts have long held that an institution does not lose its charitable status merely because it charges fees to those who can afford to pay for its services. Sisters of Third Order of St. Francis v. Board of Review of Peoria County, 231 Ill. 317, 327 (1907); People v. YMCA, 365 Ill. 110, 122 (1937); Randolph Street Gallery, 315 Ill. App. 3d at 1066. Although one of the Korzen factors is that the institution seeking an exemption "derives its funds mainly from public and private charity" (Korzen, 39 Ill. 2d at 157), the supreme court has never suggested that there is some threshold percentage of revenue produced by user fees that will automatically disqualify an institution from receiving a charitable exemption. This court has recognized that, while the source of the institution's funds is a factor, the primary consideration is the use to which those funds are put. Lena Community Trust, 322 Ill. App. 3d at 888; Du Page Art League v. Department of Revenue, 177 Ill. App. 3d 895, 901 (1988).

We do not believe that imposing such a rigid requirement is desirable. To do so would make an institution's tax-exempt status turn on the fortuitous circumstance of the percentage of its clients that are able to pay for its services. The purpose for the charitable tax exemption is the benefit provided to the public by

the agency's efforts. Lena Community Trust, 322 Ill. App. 3d at 888. In practical terms, the benefit to the public is the same whether the agency receives its funds primarily from fees charged or through private donations. Under the State's theory, First Friends could virtually guarantee a charitable exemption by providing day care "free" to everyone who applied but cajoling voluntary "donations" to recoup its operating expenses. Would its charitable character be any different if it operated in this manner? Given the expenditure of time and money usually associated with fundraising, the effect of such an approach might be to reduce the amount or quality of services the agency is able to provide. This would be inimical to the statute's purposes of providing benefits to the public while easing the State's burden to provide those services.

The Department cites several cases where the institution's receipt of a large percentage of its revenue from user fees was cited as a factor in denying a charitable exemption. However, in each case other significant factors were also present. In Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (1995), for example, not only did the retirement home derive most of its funds from "substantial" entrance and monthly fees charged to residents, but the charges also varied based on the size of the unit. Plaintiff had accepted only 2 charity cases out of 125 residents and its bylaws did not obligate it to accept any in the future. Wyndemere, 274 Ill. App. 3d at 460. We concluded that Wyndemere's primary purpose was not charity, but to provide an enhanced lifestyle to those who could afford it. Wyndemere, 274

Ill. App. 3d at 461; see also Korzen, 39 Ill. 2d at 158.

In Alivio Medical Center v. Illinois Department of Revenue, 299 Ill. App. 3d 647 (1998), the hospital made a net profit in fiscal year 1993, although the profit did not inure to any individual. The hospital never completely waived fees for anyone but at most would eventually write off charges it deemed uncollectible. The court held that writing off bad debts was not charity. Alivio, 299 Ill. App. 3d at 652.

None of these additional factors is present here. At most, First Friends had a slight surplus in some months, but it appears that it generally broke even or ran at a loss, even with state subsidies and private donations. It does not provide enhanced services for those willing and able to pay more. Rather, its policy is to provide service to anyone who applies, without regard to the ability to pay.

First Friends more closely resembles institutions for which charitable exemptions have been upheld. Most recently, in Lena Community Trust, we upheld a charitable exemption for an organization that operated a community center. Although the center charged fees for those who wanted to use it, we noted that the issue was "not the existence of a fee but, rather, whether the institution [made] a profit and/or the fees comprise a significant amount of the institution's operating expenses." Lena Community Trust, 322 Ill. App. 3d at 889. We did observe that the center derived a relatively small percentage of its revenue from fees and found that this factor supported granting the exemption. There is no indication in the opinion that this factor was critical,

however. The use of "and/or" indicates that the second factor, whether the fees comprise a significant percentage of revenue, is not critical as long as the institution does not make a profit.

This reasoning is consistent with that of earlier cases. In Sisters of Third Order of St. Francis, the sisters operated a hospital. The court found insignificant the fact that most of its patients paid for their care. Rather, the hospital dispensed charity to anyone who needed it, did not make any private profit, and did not place any obstacles in the way of those seeking care. Sisters of Third Order of St. Francis, 231 Ill. at 327. In School of Domestic Arts & Science v. Carr, 322 Ill. 562 (1926), the plaintiff school was deemed charitable where it made no profit and all revenues went toward the operation of the school, which took everyone who applied regardless of their ability to pay.

In YMCA, the court held that an institution does not lose its charitable character merely because its recipients who are able to pay for services are required to do so, as long as no profit is made, the amounts received are used to further the institution's charitable purposes, and none are denied services because they cannot pay. YMCA, 365 Ill. at 122. There, the defendant hotel was found to be a charitable endeavor. Although room rates were charged based on the services provided, the overall purpose was a charitable one of providing decent housing to those otherwise unable to afford it. Other services such as a cafeteria were incidental to the main purpose. YMCA, 365 Ill. at 124.

More recently, in Resurrection Lutheran Church v. Department of Revenue, 212 Ill. App. 3d 964 (1991), a dance and art academy on

plaintiff's premises was found to be charitable. This was so despite that it charged tuition for classes, admission for concerts and exhibitions, and retained a percentage of the profits from artwork sold in its visual gallery. Resurrection Lutheran, 212 Ill. App. 3d at 972.

The institutions in the above cases derived varying percentages of revenue from the fees they charged for their services or for the use of their facilities. They all received charitable exemptions, however, because they did not make a profit, made their services available to everyone regardless of ability to pay, and used the funds received to further their charitable purposes. These factors, it seems, are the most critical to deciding whether an institution is charitable. First Friends possesses all of these qualities. It is undisputed that it does not make a profit. It accepts all children on a first-come, first-served basis, without regard to the parents' ability to pay. All of the revenue it receives from fees is used for the operation of the day-care center. Moreover, the parcel is used only as a site for the center; the Department does not allege any other for-profit activity which would support the denial of an exemption. See Randolph Street Gallery, 315 Ill. App. 3d at 1065.

The administrative law judge denied the exemption because the center received most of its revenue from user fees. However, as we have seen, this factor is not controlling. After examining the facts and balancing all the guidelines, we conclude that trial judge correctly granted the exemption. See Lena Community Trust, 322 Ill. App. 3d at 888.

The State argues, however, that First Friends places obstacles in the way of those seeking its services by charging fees. In Lena Community Trust, we rejected the argument that merely charging fees is an "obstacle" as the term was used in Korzen. Lena Community Trust, 322 Ill. App. 3d at 888. The State further suggests, though, that the fees were an obstacle because First Friends did not advertise its fee-waiver policy. Public notice of a fee-waiver policy is not an indispensable element of a charitable exemption. Randolph Street Gallery, 315 Ill. App. 3d at 1068. As plaintiff notes, Genoa is a small community, and word of plaintiff's services is generally spread by word of mouth. There was no evidence that First Friends does any general advertising. Therefore, the failure to advertise its fee-waiver policy is not critical.

The judgment of the circuit court of De Kalb County is affirmed.

Affirmed.

BYRNE, J., with McLAREN and KAPALA, JJ., concurring.