



ILLINOIS STATE BAR ASSOCIATION

TAX TRENDS

The newsletter of the Illinois State Bar Association's Section on State & Local Taxation

Editor's note

By Stanley R. Kaminski

This issue of *Tax Trends* contains a timely article by Bill Seitz on the recent *Provena* decision by the Illinois Supreme Court. Bill provides a detailed summary of the decision and the questions raised by the dissent. Notably, only three justices supported the Charitable Use portion of the majority decision, thus giving this portion of the decision minimal value. Yet, all five of the justices hearing the case denied Provena its Charitable Tax exemption.

A couple other items of housekeeping: The Rule 23 order in *Cook County Board of Review v. Property Tax Appeal Board and Fulton House Con-*

dominium Association has now been published as a full opinion. The full citation is 395 Ill.App.3d 776, 918 N.E.2d 1174 (1st Dist. 2009). No PLA was filed, so this case is concluded.

Lastly, The State and Local Tax Section Council is currently scheduled to have a seminar on the *Provena* (charitable property tax exemption) decision on May 6, 2010 (still subject to the Health Law Section Council's approval). Another Seminar on Ethics in Today's Government Agencies is scheduled for June 2, 2010. Please review the ISBA Web site for the time and place of these seminars. ■

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Provena Covenant Medical Center v. Department of Revenue, No. 107328. (Illinois Supreme Court, March 18, 2010)

By William Seitz

On March 18, 2010, the Supreme Court of Illinois issued its decision in *Provena Covenant Medical Center v. Department of Revenue*, No. 107328.

Provena Hospitals sought administrative review of a decision by the Director of Revenue that it was not entitled to a property tax exemption for charitable and religious organizations for the 2002 tax year.

Neither the Supreme Court nor General Assembly has specifically identified a minimum level of charity care necessary to qualify for a charitable exemption.

The Department used financial figures in deciding that Provena Hospitals had not proven charitable care was its primary purpose (the cost of its charitable activities as a percentage of its

total 2002 revenues versus the value of the property tax exemption).

The Department found Provena Hospital's charity was an incidental act of beneficence and at most, a secondary use of the subject property. Provena Hospitals challenged the findings that it was not entitled to charitable and religious exemptions.

The *Provena* court reviewed the evidence in the record and found the Department's decision was not clearly erroneous. The Department properly denied the charitable and religious property tax exemptions requested by Provena Hospitals.

Key points:

- In administrative review of property tax ex-

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Provena Covenant Medical Center v. Department of Revenue

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emption cases, where the case involves applying undisputed facts to law, the Supreme Court will use a clearly erroneous standard of review.

- Provena Hospitals, the actual owner of the tax parcels, failed to meet its burden of establishing that it was a charitable institution based on the inadequacy of the record.
- Provena Hospitals failed to demonstrate it was entitled to a religious exemption based on the lack of sufficient evidence in the record.
- A majority of the court did not agree on the portion of the plurality opinion that addressed charitable use - what evidence supports a conclusion that the charitable services is sufficient to be considered the primary purpose of an institution.

Since the discussion of charitable use did not command a majority of the court it is not binding under the doctrine of *stare decisis*.

Facts

Provena Covenant Medical Center ("PCMC") is a non-profit, full-service, general acute care hospital in Urbana. It is a faith-based institution founded, organized, owned and operated as an apostolic mission and health care ministry of the Catholic Church.

PCMC is one of six hospitals owned and operated by Provena Hospitals. PCMC, the nominal applicant, has no separate legal identity, as it is a noncorporate subdivision of Provena Hospitals. Although PCMC was the applicant, it is not a legal "person" and does not hold title to any of the property for which an exemption is sought.

The actual owner, Provena Hospitals, is considered the true applicant and the proper party seeking the property tax exemption.

As the party claiming an exemption, Provena Hospitals was required to prove by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed.

The Department rejected the claim of an exemption on charitable grounds: Provena Hospitals is not an institution of public charity and the property is not used by the organization primarily for charitable purposes.

The Department also rejected the alternative claim that the property was being used for religious purposes without a view to profit, and therefore exempt.

Clearly erroneous standard of review applied

The *Provena* court referred to the evidentiary burden on the person seeking to establish entitlement to a property tax exemption as being a "very heavy one."

The *Provena* court reviewed the Department's decision by applying the clearly erroneous standard of review, as opposed to the *de novo* standard of review.

The clearly erroneous standard of review affords more deference to the agency than *de novo* review.

In *Eden Retirement Center, Inc., v. Department of Revenue*, 213 Ill.2d 273, 821 N.E.2d 240 (2004), in a property tax exemption case, the court examined the appropriate legal standards on administrative review.

The *Eden Retirement* court held that where the facts are undisputed, the legal result of those facts is "a question of law," which is reviewed *de novo*.

In *Cinkus v. Village of Stickney Municipal Officers Electoral Bd.*, 228 Ill.2d 200, 886 N.E.2d 1011 (2008), the court held that an examination of the legal effect of a given set of facts is a mixed question of fact and law. The standard of review is "clearly erroneous," not *de novo*.

Citing *Exelon Corp. v. Department of Revenue*, 234 Ill.2d 266, 917 N.E.2d 899 (2009), the *Provena* court found that this case presents a mixed question of law and fact. The Department decision will be set aside only if clearly erroneous.

An administrative agency's decision is deemed "clearly erroneous" when the reviewing court is left with the "definite and firm conviction that a mistake has been committed." The *Provena* court referred to this standard as "significantly deferential."

Plurality opinion issued

The decision issued by the court in *Provena* was a plurality opinion in which just three Justices fully joined.

Plurality decisions are decisions of a state supreme court in which no majority agrees to the reasoning, are not binding under the doctrine of *stare decisis*; if a majority merely

agrees to a particular result, without agreeing as to the grounds for a decision, the parties are bound by the decision but the case provides no binding authority beyond the immediate parties.

Such decisions do not overrule prior or inconsistent decisions, and are not authority on any point concurred in by less than a majority.

That is what occurred in *Provena*. A majority of the court did not agree upon the reasoning as to what constitutes "charity." Instead, they only agreed to the result that it was not clearly erroneous for the Department to conclude that the exemption in this case was not proven.

With Justices Kilbride and Garman taking no part in the consideration or decision, Five Justices heard the case.

All five Justices agreed *Provena Hospitals* was not entitled to the property tax exemption.

All five joined in the particular result affirming the Director's decision that *Provena Hospitals* failed to demonstrate: (1) it was a charitable institution based on the inadequacy of the record in this case; (2) it was entitled to a religious exemption based on the lack of sufficient evidence in the record.

Only three members agreed on the court's reasoning on "charity" and the grounds for the decision: Justice Karmeier (who wrote the court's opinion), Chief Justice Fitzgerald, and Justice Thomas.

Justice Burke (who wrote the dissenting opinion) expressly disagreed on charitable use, joined by Justice Freeman. She concludes her dissent by stating:

I note that the discussion of charitable use does not command a majority of the court and, therefore, is not binding under the doctrine of *stare decisis*.

Court's charitable analysis

The *Provena* court's plurality opinion went through the guidelines or criteria for resolving the constitutional question of charitable use as articulated in *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149, 233 N.E.2d 537 (1968). Applied to the facts in the record, the court concluded that *Provena Hospitals* is not a charitable institution.

1. Factors Met by Provena Hospitals

The court found that *Provena Hospitals*

satisfied the following two criteria from *Methodist Old Peoples Home*:

- It has no capital, capital stock, or shareholders; and
- It does not provide gain or profit in a private sense to any person connected with it.

2. Funds from Charity Sources

The court found that Provena Hospitals "plainly failed" to meet the following criterion:

- It earns no profits or dividends but rather derives its funds mainly from private and public charity and holds them in trust for the purposes expressed in the charter.

The court accepted this factor as supporting the Department's argument that the primary use of the subject property in 2002 was the exchange of medical services for payment.

A nonprofit hospital will receive a very small percentage of its revenues from private philanthropy. This was the case in *Provena*. The vast majority of Provena Hospitals' total revenue was composed of patient service revenue, not from unrestricted donations.

The *Provena* court also noted that the record contains a Provena Hospitals financial statement that shows "other revenue," but has no further breakdown. If all of their "other revenue" were derived from public and private charity, it was 3.4% of total revenue.

Since Provena Hospitals, the owner of the property, had the burden of proving it qualifies as a charitable organization, the court "fully agreed" it was not clearly erroneous for the Department to conclude it was not possible to tell how much of the "other revenue" were derived from public and private charity.

3. Charity Practices

Based on the record in this case, the court found Provena Hospitals likewise failed to show by clear and convincing evidence it satisfied the following charity factors:

- It dispensed charity to all who needed it and applied for it; and
- It did not appear to place any obstacles in the way of those who needed and would have availed themselves of the charitable benefits it dispenses.

The evidentiary failure was a decisive part of the court's rationale in *Provena*. Key points are noted.

Lack of Evidence on Provena Hospitals' Charitable Expenditures

The Department concluded that the re-

cord contains no information on the charitable expenditures of *Provena Hospitals* in 2002, only PCMC. Without such information, it is not possible to conclude that the true owner of the property is a charitable institution as required by Illinois law.

The court agreed with Department. Due to this failure of proof, this aspect of the Department's decision was found to not be clearly erroneous.

Lessening governmental financial burden

The Department stated that property tax exemptions impose lost revenue costs on taxing bodies and other property owners pay higher taxes than they would otherwise. The Department then concluded the dollar amount of charitable services donated is an indication of whether an organization's use of its property is charitable.

The court agreed with this reasoning: "conditioning charitable status on whether an activity helps relieve the burdens on government is appropriate." The court stated further: "...it is a *sine qua non* of charitable status that those seeking a charitable exemption be able to demonstrate that their activities will help alleviate some financial burden incurred by the affected taxing bodies in performing their governmental functions."

Turning to the record before it, the court stated it has "no way to judge how, if at all, Provena Hospitals' use of its PCMC property in 2002 lessened the burdens those bodies would otherwise have been required to bear." Provena Hospitals failed to prove this point.

Financial Figures in Charitable Analysis

The Department's decision stated that the primary basis for its denial was that PCMC allocated seven-tenths of one percent (0.7%) of its net patient service revenues to charity care of those patients unable to pay. They concluded this amount of charitable care is insufficient to withstand the constitutional scrutiny required to justify a property tax exemption as a charitable institution.

Turning to the record before it, the Provena court stated it found "ample support" for the Department's conclusion that Provena Hospitals had failed to meet its burden of showing that it used the parcels in the PCMC complex for charitable purposes. The court concluded both the number of uninsured patients receiving free or discounted care and the dollar value of the care they received were *de minimus*.

The court observed "[I]f Provena Hospi-

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tals were truly using the PCMC complex exclusively for charitable purposes, one would therefore expect to see a significant portion of its annual admissions served by Provena Hospitals' charitable care policy."

Court's religious analysis

The court found no error in the Department's rejection of Provena Hospitals' request for a religious exemption under section 15-40 of the Property Tax Code.

Provena Hospitals' claim to a religious exemption is founded largely on the proposition that it is, itself, a ministry of the Catholic Church. A threshold problem with this argument is the facts cited in support pertain to PCMC, not *Provena Hospitals*.

The court rejected the suggestion by Provena Hospitals to review PCMC facts. This evidentiary problem could not be cured through imputing the religious values underlying the church's support of PCMC to Provena Hospitals.

The court found the record clearly established the primary purpose for which the PCMC property was used was providing medical care to patients for a fee. The court noted no claim has been made that opera-

tion of a fee-based medical center is in any way essential to the practice or observance of the Catholic faith.

Dissent

Two members of the court did not join in the charitable use portion of the plurality opinion. The result is the discussion of charitable use does not command a majority of the court and, therefore, is not binding under the doctrine of *stare decisis*.

Key points of disagreement were as follows:

Can a quantum of care requirement and monetary threshold be imposed?

The dissent disagrees with the rationale that Provena Hospital's use of the property in 2002 was not a "charitable use" because the charity care provided was *de minimus*.

In the dissent's view, the plurality is injecting itself into matters best left to the legislature. Setting a monetary or quantum standard for evaluating charitable use is a complex decision that should be left to the legislature, should it so choose.

Since the legislature has not set forth a monetary threshold, the court does not have the authority under the plain language of

section 15-65 of the Property Tax Code to impose a quantum of care or a monetary requirement, nor should it invent legislative intent in this regard. Further, the plurality has set a quantum of care requirement and monetary requirement without any guidelines. This will create confusion.

Is lessening the burden of government a condition of charitable status?

The dissent disagrees that Provena Hospitals is "required to demonstrate that its use of the property helped alleviate the financial burdens faced by the county or at least one of the other entities supported by the county's taxpayers."

In the dissent's view, there is no such requirement. Provena Hospitals is not required to specifically demonstrate some burden of government it relieved.

While alleviating some burden on government is the reason underlying the tax exemption on properties, not the test for determining eligibility. The plurality converts this rationale into a condition of charitable status.

Disagreeing with the plurality further, the dissent believes that Provena Hospitals *did* show it alleviated some burden on government in the record of this case. ■



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