

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lee and D'Ann Van Boening,
Appellants,

v.

Hall County Board of Equalization,
Appellee.

Case No: 19H 0002

Decision and Order Affirming the Decision
of the Hall County Board of Equalization

Background

1. The Subject Property is a residential parcel in Hall County with a legal description of Center Twp Westroads Estates 4th Sub Lt 2.
2. Lee and D'Ann Van Boening (the Taxpayers) applied for a homestead exemption from taxation for the Subject Property for tax year 2019.¹
3. The Hall County Assessor (the County Assessor) rejected the application on the grounds that "Applicant does not occupy home" and "Other[:] D'Ann has been in the nursing home for longer than 3 years and other applicant is not 65[.]"
4. The Taxpayers filed a complaint requesting a hearing with the Hall County Board of Equalization (the County Board).
5. The County Board denied the homestead exemption application.
6. The Taxpayers appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission).²
7. A single commissioner hearing was held on July 8, 2020, in Grand Island, Nebraska, before Commissioner James D. Kuhn.
8. Lee Van Boening was present at the hearing for the Taxpayers. D'Ann Van Boening did not attend the hearing.
9. Sarah Carstensen, Deputy Hall County Attorney, was present for the County Board. Kristi Wold, the County Assessor, and Mandy Pfeil, Deputy Hall County Assessor, also appeared as witnesses for the County Board.

Applicable Law

1. Homestead shall mean ... (1) a residence or mobile home, and the land surrounding it, not exceeding one acre, in this state actually occupied as such by a natural person who is the owner of record thereof from January 1 through August 15 in each year[.]³

¹ Neither party provided the Taxpayers' application for exemption to the Commission. The documents and testimony that were offered do not clarify whether the exemption was sought pursuant to Neb. Rev. Stat. §§ 77-3507, 77-3508, or some other applicable statute.

² The Commission initially determined that both Lee and D'Ann Van Boening were appellants in this matter based on documents submitted with the appeal showing both as owners of the Subject Property. However, the appeal form was signed only by Lee Van Boening "as representative for D'Ann Van Boening."

³ Neb. Rev. Stat. § 77-3502 (Reissue 2018).

2. A qualified claimant shall mean an owner of a homestead during the calendar year for which the claim is made who was sixty-five years of age or older before January 1 of such year and who shall be entitled to relief pursuant to section 77-3507.⁴
3. An applicant residing in a nursing home may qualify for a homestead exemption if he or she intends to return to the residence, the household furnishings have not been removed, and the home has not been rented or leased.⁵
4. The Commission's review of a determination of a county board of equalization is de novo.⁶
5. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁷
6. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸
7. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁹

Findings of Fact

1. D'Ann Van Boening (D'Ann) has resided in a nursing home since 2013.
2. Lee and D'Ann Van Boening were divorced on or about September 6, 2018. The divorce decree awarded the Subject Property to Lee Van Boening (Lee).
3. Lee testified that there was a possibility D'Ann could return to occupy the Subject Property at some time in the future, depending upon her condition.
4. Lee was not yet sixty-five years old as of January 1, 2019.

Analysis

Lee is not a qualified claimant because he was not yet sixty-five years old as of January 1, 2019. D'Ann was not the legal owner of the Subject Property as of January 1, 2019, because the divorce decree awarded the property to Lee on or about September 6, 2018. Furthermore, even if D'Ann had been the legal owner of the Subject Property on January 1, 2019, she did not actually occupy the Subject Property as of that date, and she had not actually occupied it for more than six years. Lee's testimony that there was a possibility D'Ann could return to the

⁴ Neb. Rev. Stat. § 77-3505 (Reissue 2018).

⁵ 350 Neb. Admin. Code, ch. 45 § 002.19A (2013).

⁶ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

Subject Property at an unknown point in the future does not constitute clear and convincing evidence that D'Ann intends to return to the Subject Property.

Conclusion of Law

The Taxpayers have not presented clear and convincing evidence that the decision of the County Board is arbitrary or unreasonable, so the decision of the County Board must be affirmed.

THEREFORE IT IS ORDERED:

1. The Decision of the County Board of Equalization denying the application for the homestead exemption for tax year 2019 is affirmed.
2. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
3. Any request for relief not specifically provided for by this Decision and Order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This Decision and Order shall only be applicable to tax year 2019.
6. This Decision and Order is effective on July 24, 2020.

Signed and Sealed: July 24, 2020

James D. Kuhn, Commissioner