**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**December 9, 2003**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 03-0411** **Cir. Ct. No. 01-CV-000395**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT III**

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**MARSHFIELD CLINIC,**

**PLAINTIFF-APPELLANT,**

**V.**

**CITY OF EAU CLAIRE AND AL ANDREO, CITY ASSESSOR,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Eau Claire County: WILLIAM M. GABLER, Judge. *Affirmed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 HOOVER, P.J. Marshfield Clinic appeals a summary judgment denying its request for a property tax refund. The court concluded that Marshfield had not shown it uses its property exclusively for benevolent purposes as required by the relevant exemption statute, WIS. STAT. § 70.11(4) and (25). Marshfield

argues that the court erred in its conclusion. Based on the facts of record, we agree with the circuit court and affirm the judgment.

## Background

¶2 Marshfield Clinic owns three health care clinics in Eau Claire: the Eau Claire Center, the Oakwood Center, and the Riverview Center. Marshfield is a nonprofit corporation exempt from federal income tax.

¶3 On July 25, 2001, Marshfield filed suit against the City of Eau Claire and its tax assessor, seeking a refund of property taxes for the year 2000. In March 2002, Marshfield amended the complaint to also seek a refund for its 2001 property taxes. Marshfield also sought an order directing the City to refrain from imposing future property taxes on Marshfield.

¶4 Marshfield claimed exemptions from property taxes based on WIS. STAT. § 70.11(4) and (25). After stipulating to the key facts, both Marshfield and the City moved for summary judgment. The court denied Marshfield's motion, concluding it had not met its burden of proving the exclusive use requirement of both statutes. The court granted Eau Claire's motion, dismissing Marshfield's complaint with prejudice. Marshfield appeals.

## Discussion

¶5 We review summary judgments de novo, using the same methodology as the circuit court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315-17, 401 N.W.2d 816 (1987). That methodology is well established and need not be repeated here. *See, e.g.,* ***Lambrecht v. Estate of Kaczmarczyk***, 2001 WI 25, ¶20-24, 241 Wis. 2d 804, 623 N.W.2d 751. When facts are stipulated, all that remains is a question of law. ***Lewis v. Physicians Ins. Co.***, 2001 WI 60, ¶9,

243 Wis. 2d 648, 627 N.W.2d 484. Moreover, asking this court to determine whether certain property is exempt from property taxes necessarily requires us to construe WIS. STAT. § 70.11. ***Deutsches Land, Inc. v. City of Glendale***, 225 Wis. 2d 70, 79, 591 N.W.2d 583 (1999). Statutory construction is a question of law we also review independently. ***Id.*** at 79-80.

¶6 Property is presumed taxable. ***Id.*** at 80. Exemptions from taxation are matters of legislative grace and, as such, we apply a "strict but reasonable construction" to exemption statutes. ***Id.*** (citation omitted). The party seeking exemption bears the burden of proving it falls within one of the statutes, and any doubt is resolved against the party seeking exemption. ***Id.*** at 80-81.

## I. WISCONSIN STAT. § 70.11(4)

¶7 WISCONSIN STAT. § 70.11 lists several types of property exempt from taxation, and Marshfield first claims an exemption under subsec. (4). This section exempts, among other things, "Property owned and used exclusively by … benevolent associations …." To qualify for total exemption under subsec. (4), an organization must show (1) that it is a benevolent association, (2) that it owns and exclusively uses the property, and (3) that it uses the property exclusively for exempt purposes. *See* ***Deutsches Land***, 225 Wis. 2d at 81-82. For purposes of the statute, an exempt purpose is synonymous with a benevolent purpose. ***Id.*** at 85. The dispute in this case centers on whether Marshfield "exclusively uses" its property for "benevolent purposes."

### A. Benevolent Purposes

¶8 Marshfield argues that "A Benevolent Association's Use of Property to Provide Medical and Other Health Care Services on a Nonprofit Basis to Paying

Patients Is a Benevolent Use of the Property." However, we recently rejected this argument in ***University of Wis. Medical Found. v. City of Madison***, 2003 WI App 204, No. 02-1473. There, we concluded that the provision of medical care is not, per se, benevolent simply because it makes the recipients of the care better members of society.[1] ***Id.***, ¶25. Indeed, we noted that while nonprofit hospitals generally qualify for an exemption under WIS. STAT. § 70.11(4m)(a), individual doctors' offices do not. ***Id.***, ¶25 n.8.

¶9 We further concluded that while provision of medical care is not per se benevolent, it might be if the care were provided free of charge or at greatly reduced cost to the poor. ***Id.***, ¶26. In denying the Foundation's request for exemption, we noted that the clinics involved charged some patients the going market rates without any discount, and 98% of patients paid in some manner. Similarly here, Marshfield charges some patients the going market rate for medical care without any discount, and 97% of its patients pay in some manner. As a matter of law, this is not a benevolent use of property. Thus, because Marshfield uses its property for nonbenevolent activities, it does not qualify for an exemption under WIS. STAT. § 70.11(4).

B. Exclusive Use Under WIS. STAT. § 70.11(4)

¶10 Somewhat paradoxically, the exclusive use requirement of WIS. STAT. § 70.11(4) does not mean that to qualify for an exemption a property must be solely used for benevolent actions. ***U.W. Medical***, 2003 WI App 204, ¶20. If provision of medical care to paying patients were merely incidental to exempt

[1] Marshfield disputes this characterization of its argument, but distilled to its essence this is Marshfield's claim.

purposes, Marshfield might still qualify for an exemption. The relevant question then becomes how consequential the questionable nonexempt activity is compared to the total activity on the property. ***Id.***

¶11 In addition to providing medical care to patients, Marshfield engages in research and education of medical personnel. Assuming without deciding that these may be considered benevolent activities for WIS. STAT. § 70.11(4), ***U.W. Medical***, 2003 WI App 204, ¶30, Marshfield provides absolutely no itemized documentation of how much of the property's use is dedicated to research, education, patient care for destitute patients, and patient care for paying patients.[2] Marshfield fails to demonstrate that its use of property to provide medical care to paying patients is incidental to exempt activities. Thus, Marshfield also fails to meet the "exclusive use" requirement.

¶12 Marshfield claims it is impossible to break down the property use into categories. However, it had no difficulty dividing its budget into these categories: In fiscal year 2000, Marshfield spent over $19 million on research and over $10 million on education. In fiscal year 2001, it spent over $21 million on research and over $11 million on education.

¶13 A benevolent association claiming an exemption has a burden to show that it falls within the terms of the exemption. In order to sustain this burden of proof, the association must be able to show its actual exempt use. ***Deutsches Land***, 225 Wis. 2d at 85. Generalized assertions are insufficient to meet the burden of proof, ***id.*** at 87, and generalized assertions are all Marshfield offers in

[2] Marshfield stipulated that no part of the clinics was exclusively reserved for or dedicated to research or education activities.

the summary judgment record. Marshfield fails to fulfill its burden to show exclusive, benevolent use of its property under WIS. STAT. § 70.11(4).

## II. WISCONSIN STAT. § 70.11(25)

A. Exclusivity Under WIS. STAT. § 70.11(25)

¶14 Marshfield also claims an exemption under WIS. STAT. § 70.11(25), which exempts "property 'used exclusively' by nonprofit organizations 'for the purposes of: medical and surgical research … [or] promoting education … which bear[s] on medicine and surgery … [or] providing … treatment for deserving destitute individuals not eligible for assistance from charitable or governmental institutions.'" ***U.W. Medical***, 2003 WI App 204, ¶33.

¶15 Much like WIS. STAT. § 70.11(4), subsec. (25) hinges on the "exclusive use" requirement. In ***U.W. Medical***, we concluded that the inquiry under subsec. (25) must focus on "the 'main purpose for which [the clinics are] primarily devoted.'" ***Id.***, ¶34 (citation omitted). Thus, for its subsec. (25) claim to survive summary judgment, Marshfield must be able to minimally establish a factual dispute that the purpose to which its clinics are primarily devoted is one or more of the following: medical research, physician education, or care for destitute individuals. ***Id.***, ¶35.

¶16 As noted in our WIS. STAT. § 70.11(4) analysis, however, Marshfield fails to provide any documentation regarding time spent on or the use of property for research or education. Moreover, because 97% of Marshfield's patients paid for services, we cannot conclude that the clinics are primarily devoted to caring for deserving destitute individuals.

¶17 Marshfield claims that it puts all patient information into a database that can be accessed by researchers. It also claims that its patients make a large "pool" of individuals from which researchers can draw subjects for clinical trials. These two factors, Marshfield suggests, lead to a conclusion that all activities on the property lead to research.

¶18 However, this is merely an assertion of potential use, not a demonstration of actual use. Marshfield presents no information on how often or even whether the database is used. It also fails to explain how this is different from any other patient or customer tracking program. Further, ***U.W. Medical*** rejected the pool of patients argument. ***Id.***, ¶31 n.11. While Marshfield claims that rare diseases "can only be studied by accumulating cases from throughout the Marshfield Clinic system," it fails to explain why only its Eau Claire area patients constitute this purported research pool and not the community, county, or even the state at large.

¶19 On the record before us, Marshfield fails to present any evidence that would create a genuine issue of material fact as to whether Marshfield exclusively uses the property for research, education, or treatment of deserving destitutes. As a matter of law, it does none of these things with any exclusivity.

B. "Reasonably Necessary" Doctrine

¶20 The supreme court has held that the "exclusive use" requirement of a different subsection—WIS. STAT. § 70.11(4m) dealing with nonprofit hospitals—is satisfied if a nonexempt use of the property is "reasonably necessary" to the function of a hospital. ***U.W. Medical***, 2003 WI App 204, ¶14 (citing ***Columbia Hosp. Ass'n v. City of Milwaukee***, 35 Wis. 2d 660, 151 N.W.2d 750 (1967); ***Sisters of Saint Mary v. City of Madison***, 89 Wis. 2d 372, 278 N.W.2d 814

(1979)). Marshfield would now have us extend this "reasonably necessary" doctrine to subsec. (25). In ***U.W. Medical***, we explained why the doctrine did not apply to subsec. (4), adopting the same reasoning in refusing to extend it to subsec. (25). ***Id., ¶***34. For the same reason, and because we cannot modify our own prior decision, we decline again to extend the doctrine beyond subsec. (4m). *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997).

¶21 In ***U.W. Medical***, we noted that neither ***Columbia Hospital*** nor ***Sisters of Saint Mary*** gave any indication that we should extend the doctrine beyond WIS. STAT. 70.11(4m). ***U.W. Medical***, 2003 WI App 204, ¶16. In ***Columbia***, the supreme court noted that the hospital specifically disavowed it was seeking an exemption under subsec. (4). ***Columbia Hosp.***, 35 Wis. 2d at 665. Later in the opinion, the court explained that subsec. (4m) was created solely to apply to hospitals and had much broader language than the statutes applicable to charitable and benevolent associations. ***Id.*** at 669.

¶22 In ***Sisters of Saint Mary***, the supreme court specifically pointed out that the "reasonably necessary" test was the test for a tax exemption *under WIS. STAT. § 70.11(4m).* ***Sisters of Saint Mary***, 89 Wis. 2d at 382. There was no mention of applying the test to other subsections.

¶23 Most recently, when discussing the exclusive use requirements in ***Deutsches Land***, the supreme court ignored the reasonably necessary doctrine altogether. In ***U.W. Medical***, then, we concluded that the absence of the doctrine persuasively indicated the "reasonably necessary" doctrine does not apply beyond the confines of WIS. STAT. § 70.11(4m). ***Id.***, ¶17.

## III. Other Arguments

¶24 Marshfield also has a series of subarguments that we discuss briefly and reject.

¶25 First, Marshfield contends that WIS. STAT. § 70.11(25) was created specifically with Marshfield in mind. Marshfield does not show this and indeed, the proof submitted on the record is to the contrary.

¶26 Second, Marshfield argues that the Department of Revenue agrees that Marshfield should be exempt. However, this appeal is not an administrative agency review; thus, we are not reviewing the merits of a DOR opinion.[3] Moreover, the DOR has never formally interpreted WIS. STAT. § 70.11 in any administrative rule or formal legal decision. Thus, the interpretation of the statute is essentially a question of first impression for the DOR and, as such, our review of the statutory interpretation remains de novo. *See* ***Hutson v. State Personnel Comm'n***, 2003 WI 97, ¶34, 263 Wis. 2d 612, 665 N.W.2d 212.

¶27 Third, Marshfield points out that it is exempt from federal income tax. This, however, is only one factor for consideration under WIS. STAT. § 70.11(25). Because Marshfield fails on other factors, its federal tax status becomes irrelevant.

¶28 Finally, Marshfield argues that if it is not qualified for property tax exemption, no organization ever will be qualified. This is mere conjecture.

[3] It appears from the record that this "opinion" of the DOR is merely an "operative" or advisory opinion from the DOR's counsel to Marshfield. It also appears that the memo is based on the erroneous presumption that WIS. STAT. § 70.11(25) was crafted specifically for Marshfield.

Simply because Marshfield is unqualified for the property tax exemptions under WIS. STAT. § 70.11(4) and (25), does not mean some organization is not, nor does it mean some organization could not be created to meet all the criteria for exemption. To the extent Marshfield claims its disqualification results from too narrow an application of the statute, narrow applicability is consistent with the presumption that property is taxable and exemptions from taxation are matters of legislative grace.

*By the Court.*—Judgment affirmed.

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