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**OFFICE OF
APPELLATE COURTS**

Supreme Court No. A21-1349

STATE OF MINNESOTA

IN SUPREME COURT

Under the Rainbow Early Education Center, Inc.

Relator,

v.

County of Goodhue, Respondent,

Respondent.

RESPONDENT'S BRIEF

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STATEMENT OF ISSUES

1. Does the Appellant/Relator qualify as a seminary of learning for purposes of a tax exemption under Minn. Stat. §272.02 subd. 5.

Trial Court Answer: No. The Tax Court ruled against the Appellant/Relator and in favor of the Respondent in finding that the Appellant/Relator did not qualify as a seminary of learning and therefore is not entitled to a tax exemption.

Most Apposite Authority:

Minn. Stat. §272.02 subd. 5 which states as follows: "All academies, colleges and universities, and all seminaries of learning are exempt."

2. Does the Minnesota Constitution and statutory law provide precedent as to whether a seminary of learning is entitled to a tax exemption.

Trial Court Answer: Yes

Most Apposite Authority:

Minnesota Constitution Article 10, Section 1; Minn. Stat. §272.02 subd. 5

3. Did the Tax Court err in denying the Relator/Appellant's motion for summary judgment.

Trial Court Answer: No. The Tax Court properly denied the Relator/Appellant's motion for summary judgment

Most Apposite Authority:

Minnesota Constitution Article 10, Section 1; Minn. Stat. §272.02,
subd. 5

4. Did the Tax Court err in granting the Respondent's motion for summary judgment.

Trial Court Answer: No. The Tax Court properly granted the Respondent's motion for summary judgment

Most apposite authority:

Minnesota Constitution Article 10, Section 1; Minn. Stat. §272.02,
subd. 5

5. In evaluating the entitlement of an educational institution to a property tax exemption, are the inquiries from *Nw. Preparatory Sch.* regarding the type of education provided to be applied as essential elements of an exemption claim?

Trial Court Answer: Yes. The Tax Court held in the affirmative, using the inquiries from *Nw. Preparatory Sch.*

Most apposite authority:

State v. Nw. Preparatory Sch., 249 Minn. 552, 83 N.W.2d 242 (1957);
Minn. Stat. §272.02, subd. 5.

6. To be entitled to a property tax exemption, must an educational institution show “cooperation” or “coordination” with the local public school district?

Trial Court Answer: Yes. The Tax Court held in the affirmative.

Most apposite authority:

State v. Nw Preparatory Sch., 249 Minn. 552, 83 N.W.2d 242 (1957);

Minn. Stat. §272.02, subd. 5

7. Does a child care center qualify as an educational institution entitled to a property tax exemption under Minn. Stat. §272.02, subd. 5 where that center has an active license through the Minnesota Department of Human Services (“DHS”) and maintains the highest possible “Four-Star” rating through DHS’ “Parent Aware” early childhood education kindergarten preparedness rating system?

Trial Court answer: No. The Tax Court ruled in the negative on summary judgment.

Most apposite authority:

Minn. Stat. §272.02.

INTRODUCTION

The Respondent Goodhue County was served with a Petition in the Minnesota Tax Court by the Relator/Appellant. The Tax Court heard competing summary judgment motions on June 3, 2021, and issued its Order and Judgment on September 15, 2021, the Honorable Wendy S. Tien presiding. The Tax Court found in favor of the Respondent Goodhue County granting its summary judgment motion and denying the summary judgment motion of the Relator/Respondent. This case is before the Minnesota Supreme Court on appeal by the Relator/Appellant.

The Relator/Appellant sought a property tax exemption as a seminary of learning pursuant to Minn. Stat. 272.02. The County contended and contends that the Relator/Appellant is not entitled to an exemption from tax.

The property in consideration is the Under the Rainbow Early Education Center, (hereinafter UTR) located in Red Wing, Goodhue County, Minnesota. The property is licensed by the Minnesota Department of Health and Human Services (hereinafter DHS) as a child care center.

Of specific importance in this matter is that UTR sought a tax exemption for assessment year 2019. As detailed in this brief, UTR provided documents relating to many years other than 2019, for instance, 2020, 2021, and 2022. Well after the discovery deadline, UTR persisted in providing documents to Respondent and the Tax Court.

Consequently, the County contends as follows:

1. That UTR did not meet its burden of proof in the Tax Court for assessment year 2019 that the property was exempt from tax pursuant to Minn. Stat. §272.02, subd. 5.

2. That UTR did not meet its burden of proof in the summary judgment motion before the Tax Court for assessment year 2019 that the property was exempt from tax pursuant to Minn. Stat. §272.02, subd. 5.

STATEMENT OF THE CASE

On February 7, 2019, the Relator/Appellant, UTR, applied for an exemption from property taxation as a seminary of learning pursuant to Minn. Stat. 272.02 subd. 5 for assessment year 2019.¹ The due date for such applications is February 1 of each year, see Minn. Stat. §272.025. A previous Goodhue County Assessor denied the exemption application.² The current Goodhue County Assessor is Lavon Vieths-Augustine. UTR then filed a Petition in the Minnesota Tax Court.³ The parties engaged in discovery and the Relator/Appellant noticed the deposition of the current Goodhue County Assessor, Ms. Vieths-Augustine, which was held on March 31, 2021.⁴

The County's position is that UTR for the applicable assessment year does not qualify for a tax exemption as a seminary of learning under Minn. Stat. §272.02, subd. 5.

¹ Minnesota Tax Court Record pp. 128-129.

² Id. at p. 127.

³ Id. at pp. 1-4.

⁴ Id. at pp. 51-113.

The parties filed competing summary judgment motions which were heard on June 3, 2021.⁵ On September 15, 2021, the Tax Court, the Honorable Wendy Tien presiding, found in favor of the County and granted the County's motion for summary judgment.⁶ In the same Order and Judgment, Judge Tien denied UTR's motion for summary judgment.

The Tax Court found that there was no genuine dispute of material fact that UTR functions as an educational institution. The County did not take that position and argued that UTR was licensed and performed as a child care center for infants-12 year olds. The Court then found that UTR had to meet two additional requirements under the statute which they failed to meet to qualify as a seminary of learning: (1) alleviating public burden; and (2) regular curriculum as reasonable substitute. The County concurs with the Court on its analysis of the seminary of learning requirements.

⁵ *Id.* at pp. 29-32, 33-47, 48-489, 490, 491-496, 497-510, 511-520, 521-555, 556-598.

⁶ *Id.* at p. 722-750.

STATEMENT OF FACTS

I. Application for Exemption

The Relator/Appellant filed a Real Property Tax Petition with the Minnesota Tax Court on January 2, 2019 (for assessment year 2019), for taxes payable in 2020. In that Petition, the Relator/Appellant claimed that the subject property is exempt from taxation as a seminary of learning. The filing was made under the name and address of Under the Rainbow Child Care, 1927 Launa Avenue, Red Wing Minnesota. Attached to the Petition was a 2019 Property Tax Statement for Property ID#R. 55.893.0030 with a property address of 555 Technology Drive, Red Wing, Minnesota. The description is MedTech Park subd. 2 Add Lot-003 Block-001 1.68 acre lot 3 Blk 1 Doc #485220. This property is located in Goodhue County, Minnesota.⁷

UTR filed the application for Property Tax Exemption at the office of the Goodhue County Assessor on February 7, 2019. The applicable statute, Minn. Stat. 272.025, provided that it must be filed by February 1, 2019. No supporting materials other than the property tax statement was filed. The application stated that the property was used to provide early childhood education for ages 6 weeks-12 years old. A previous Goodhue County Assessor, Betty Schultz, denied the application. The current Goodhue County Assessor is Lavon Vieths-Augustine.⁸

⁷ Id. at pp. 1-4.

⁸ Id. at p. 127.

The property records indicate that it is land and building classified as non-Homestead Commercial Land and Buildings. For assessment year 2019 pay 2020, the estimated market value is \$669,200.⁹ UTR seeks a tax exemption for the entire property, its request is not confined to areas allocated to preschool.

II. Property is Licensed as a Child Care Center

The property is licensed by the State of Minnesota as a child care center with the Minnesota Department of Human Services (DHS). The license indicates their capacity is 123 and the service is Daytime Child Care. The ages served as identified on the license are infants, toddlers and preschool age. Their license number is #808478. Minnesota Child Care Licensing Rules are found at Minnesota Administrative Rules Chapter 9503. The information in the child care license differs from the information provided in the Exemption Application. That Application indicates that the child care center provides services for children up to age 12.¹⁰ The property is not licensed by the Minnesota Department of Education.

III. Filings With the Minnesota Secretary of State

The records at the office of the Minnesota Secretary of State indicate that Relator/Appellant filed as a nonprofit corporation in 1995 under the name of Under the Rainbow Child Care Center, Inc. On January 23, 2008 there was an involuntary dissolution. There was an annual reinstatement on May 18, 2009. In 2016, there was an amendments to its name as a nonprofit corporation as Under the

⁹ *Id.* at pp. 1-4.

¹⁰ *Id.* at pp. 128-129.

Rainbow Early Education Center. The president is noted as Micelle I Finholdt, the Registered Agent is Michelle I. Suchanek and the registered office address as of October 28, 2020 is 308 Pioneer Road, Red Wing, Minnesota. The tax Petition filed in this matter originally named the Petition as Under the Rainbow Child Care which was later amended by stipulation to Under the Rainbow Early Education Center. Stipulation and Order dated March 16, 2021.¹¹

IV. Discovery

A scheduling order was issued with a discovery deadline date of February 16, 2021.¹² Discovery was done by both parties and concluded on February 16, 2021, as of the scheduling order. The February 16 date was extended by the parties to accommodate the deposition of Lavon Vieths-Augustine, Goodhue County Assessor, which was noticed by the Relator/Appellant. The deposition was held on March 31, 2021.¹³ Relator/Appellant provided additional discovery on February 21, 2021.

In the Respondent's discovery requests, the following questions were specifically asked of the Relator/Appellant, among others:

2. Please provide information regarding the principal use(s) of Petitioner's facility located at 555 Technology Drive, Red Wing, Minnesota:

¹¹ Id. at pp. 16-18.

¹² Id. at pp. 5-11.

¹³ Id. at pp. 51-113.

a. Breakdown of caregivers and credential licenses they hold for the years 2017, 2018 and 2019

b. Age breakdown of children/number in each room for 2017, 2018 and 2019.

c. Curriculums used for specific children, age range on daily basis for 2017, 2018 and 2019.

d. Handbook for 2017, 2018, and 2019.

8. Does your organization provide services to the public that alleviate burdens or responsibilities that would otherwise be borne by the government?

The County contended to the Tax Court and contends that it did not receive relevant information regarding 2019 licensing, staff, or curriculum. Thus, the County never received proper documentary information for the assessment year 2019.

V. Administrative and Statutory Requirements for Child Care and Compulsory Education

Some relevant parts of the Minnesota Administrative Rules 9503 are as follows:

- 9503.0170 states that an organization may not operate a child care center without a license from the Commissioner.
- 9503.0005 Subp. 6 states that a child means a child 12 years of age or younger.

- 9503.0005 Subp. 7 provides that a child care programs means the systematic organization or arrangement of activities, personnel, materials and equipment in a facility to promote the physical, intellectual, social and emotional development of a child in the absence of the parent for a period of less than 24 hours a day.
- 9503.0005 Subp. 8 states that a child care plan means the written document that states the specific activities that will be provided by the license holder to promote the physical, intellectual, social and emotional development of the children enrolled in the center.
- 9503.0005 Subp. 21 provides that a program staff person means a teacher, assistant teacher, or aide, whether paid or unpaid, who carries out the child care program plan in the center and has direct contact with children.

Minnesota Administrative Rules 9503.0045 provide for a Child Care Program plan for child care. Rule 9503.0032 provides standards for child care teachers. Rule 9503.0033 provides standards for child care assistant teachers. These standards are notably different from what is required for teachers in schools in the State of Minnesota.

In contrast, Minn. Stat. 120A.22 Subd. 6, Compulsory Instruction, applies to children between the ages of 7-17 years. The statute provides for the

knowledge and skills required in at least the following areas: basic communication skills, mathematics and science, social studies, history, economics, government and citizenship, and health and physical education. According to Subd. 10 instructors must hold a valid Minnesota teaching license and have a baccalaureate degree, among other requirements. Subd. 11 provides for the assessment of performance.

As a contrast, the Tax Court Record at p. 219 shows an undated list of staff showing degrees, both Bachelor's and Associate, a number of which are unrelated to education.

VI. Parent Aware Program

Under the Rainbow uses a program called "Parent Aware." Minn. Stat. 124D.142 is a quality rating and improvement system. Parent Aware is a program administered through the Minnesota DHS which receives funding from the federal government. A family can use Parent Aware Star Ratings to find the right child care program for their child. The Parent Aware program covers centers and preschools, family child care, and Head Start. There are early learning scholarships available through the program for families meeting income eligibility requirements and who have a child between the ages of 3-4 and in some cases younger than 3 who choose a program with a Parent Aware rating. There is a Parent Aware online search tool. Consequently, it is arguable that centers,

preschools, and family child care could claim to be a seminary of learning under the Relator/Appellant's position.

VII. Document Provided By UTR To Support Claim For Exception

In the Relator/Appellant's Answers to Petitioner's Second Request for Admissions, Interrogatories and Request for Documents dated February 5, 2021 the Respondent specifically did not admit that UTR was an educational institution, indicating that discovery requests were outstanding and that there were no attachments to the Application for Exemption which would substantiate exemption.¹⁴

In response to the County's specific discovery requests the Relator/Appellant supplied a number of documents which were not specifically related to assessment year 2019. For example:

1. A document entitled "Objectives for Development and Learning (Tax Court Record pp. 133-168). Nothing in that document relates to assessment year 2019. The document on its face states that it applies from birth through kindergarten.

2. The affidavit of Connie Welch (Tax Court Record pp. 169-171). There is nothing in this affidavit that explains how long Ms. Welch has worked with UTR, relates to any specific staff, infrastructure, or age group to which she refers. Nor does she identify who the "observer" for UTR is. She provides a generic Parent

¹⁴ Id. at 119-123.

Aware Rating Guide with no particulars filled in relating to UTR (Tax Court Record p. 172).

3. The UTR Handbook is provided (Tax Court Record pp. 204-229). In that document there is no reference to school age children (p. 205). On page 221 there is a reference to pre K/school age with no breakdown. There is nothing in this document relating to assessment year 2019 other than two DHS Correction orders on p. 228.

4. A Teaching Strategies Gold Assessment System is found at Tax Court Record pp. 299-309. This is a study which is noted dated and there is no reference to UTR.

5. In other documents Tax Record p. 350 is clearly dated 2020; p. 353 is clearly dated 2020; p. 358 is clearly dated 2020; pp. 380-392 is clearly dated 2020-2021; pp. 394-409 is clearly dated 2020-2021; pp. 410-416 is clearly dated 2020-2021; pp. 425-428 is clearly dated 2020; pp. 429-439 is clearly dated 2020-2022; p. 350 is clearly dated 2020; p. 353 is clearly dated 2020; p. 358-363 clearly bear a 2020 dated; pp. 380-392 is clearly dated 2020-2021; pp. 394-409 are clearly dated 2020-2021; pp/ 410-416 are clearly dated 2020-2021; pp. 425-428 are clearly dated 2020; pp. 429-439 are clearly dated 2020-2022; pp. 441-449 are clearly dated 2020; pp. 450-455 and 456-464 are clearly dated 2020-2021; p. 466 is clearly dated 2020; pp. 467-474 is clearly dated 2021-2022; pp. 475-471 are clearly dated 2021; pp. 518-519 are clearly dated 2021; pp. 520 is clearly dated 2020.

UTR provided additional affidavits and documents which showed no relation to assessment year 2019, and in fact, clearly included photographs from other assessment years (2021).

VIII. Goodhue County Contacts UTR On Exemption Case Law

Throughout its submissions, UTR claims that it has not received any guidance on Goodhue County's requirements for a seminary of learning. In point of fact, as long ago as 2003-2004, the Goodhue County Assessor's Office advised Ms. Finholdt of the County's requirements for exemption pursuant to Minnesota case law. (Tax Court Record pp. 488-489) And as late as the discovery response period for this litigation, the Relator/Appellant was questioning the meaning of "curriculum".

ARGUMENT

I. Legal Standards

A. Standard of Review

The Court must review Tax Court decisions pursuant to Minn. Stat. §271.19 "on the ground that the order of the Tax Court was not justified by the evidence or was not in conformity with the law or that the Tax Court committed any other error of law." Minn. Stat. §271.10 provides that there is a requirement that the Tax Court base its decision on credible and sufficient evidence which can support appellate scrutiny using a reasonableness standard.

In American Assn. of Cereal Chemists v. County of Dakota, 454 N.W. 2d 912, 914 (Minn. 1990) the Supreme Court held that the Court's role in the

review of Tax Court decisions is a limited one. The Tax Court's ruling is to be upheld "where sufficient evidence exists for the tax court to reasonably reach the conclusion it did. See *Green Giant Co v. Commissioner of Revenue*, 534 N.W. 2d 710, 711 (Minn. 1995).

Manthey v. Commissioner of Revenue, 468 N.W. 2d 548, 500 (Minn. 1991) holds that the Supreme Court must view the evidence as a whole. The burden of proof is on the taxpayer to produce evidence which the Tax Court and a reviewing court can evaluate, weigh, and independently substantiate.

B. Summary Judgment in the Tax Court

Under Minn. R. Civ. P. 56.03, summary judgment is appropriate when the pleadings, affidavits and record "...show there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. See also Minn. R. Civ. P. 56.01; *Henson v. Uptown Drink, LLC*, 922 N.W. 2d 185, 189-190 (Minn. 2019). It is the moving party's burden to demonstrate that there are no genuine issues of material fact. *DLH, Inc. v. Russ*, 566 N.W. 2d 60, 69 (Min. 1997). ("{A } party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of {the record}...which it believes demonstrate the absence of a genuine issue of material fact.") See also *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) and Minnesota Tax R. of Proc. Rules 8610.0070.

In the event of cross motions for summary judgment "...each party is both a moving party who bears the burden of establishing the absence of a genuine

issue of material fact, and a non-moving party who bears the burden of coming forward with specific facts creating such an issue of fact. The Court must decide where there are genuine issues of material fact present, and if not, which party is entitled to judgment as a matter of law. If the Court determines that there are genuine issues of material fact, the Court should not enter summary judgment for either party." *W.S.A., Inc. v. Liberty Mut. Ins. Co. No. CV-392-162*, 1992 W.L. 544960 at 4 (D. Minn. Sept. 30, 1992) (applying Fed. R. Civ. P. 56(a)).

C. Burden of Proof in the Tax Court

All property is taxable unless the property is by law exempt from taxation. Minn. Stat. 272.01, Subd. 1. Statutory provisions exempt property from taxation are to be strictly construed and exemption from taxation is the exception. *ILHC of Eagan LLC v. County of Dakota*, 693 N.W. 2d 412 (Minn. 2005). The burden of proof rests with the party seeking the exemption. *Care Institute, Inc. - Roseville v. County of Ramsey*, 612 N.W. 2d 443 (Minn. 2000). Each case must be decided on its own facts. *Mayo Foundation v. Commissioner of Revenue*, 236 N.W. 2d 767 (Minn. 1975).

The basis of tax exemption is the accomplishment of public purposes and not the favoring of particular persons at the expense of the taxpayers generally. *In re the Petition of Board of Foreign Missions of Augustana Synod*, 22 N.W. 2d 642 (Minn. 1946); *Camping and Education Foundation v. State*, 164 N.W. 2d 369 (Minn. 1969).

II. Exemptions From Tax

A. Generally

Minnesota Constitution art. 10, §1 and Minn. Stat. §272.02, declare that “All academies, colleges and universities, and all seminaries of learning” are exempt from property taxation. Whenever a tax exemption is claimed based on the seminary of learning exemption, the court must determine: 1) whether the institution is truly of an “educational” nature; 2) whether it provides at least a significant part of the educational training which would otherwise be required to be furnished by publicly supported institutions thereby reducing in some way the public burden; and 3) the training provided be “readily assimilated as an integral part of the public school system...” *Eyota Kid's Korner, Inc.*, File No. C5-92-1513 (Minn. Tax Ct. Dec. 29, 1992) slip op. at 14 citing *Northwestern Preparatory School*, 249 Minn. At 558, 83 N.W. 2d at 246.

In Tax Court, the assessment year controls for purposes of exemption. In this case, the exemption year is 2019 for taxes payable in 2020.

UTR claims that the subject property, a child care center, is exempt from taxation as a seminary of learning.

The Relator/Appellant has provided discovery as detailed in the Statement of Facts. The Relator/Appellant also took the deposition of Lavon Vieths-Augustine, the Goodhue County Assessor.

The Respondent argues that there is no evidence provided in the documents submitted by Relator/Appellant, or in the deposition, that substantiate the claim that UTR should be exempt from taxation under any theory. Irrespective of UTR's affidavits, there is scant documentary evidence for assessment year 2019 which is relevant to the case in point.

Respondent asked for specific information in discovery for assessment year 2019 and received undated documents and documents for years 2020-2022. Photographs late submitted were for 2021. As noted in the Statement of Facts, Goodhue County had provided Ms. Finholdt with written case law requirements as long ago as 2003-2004.

B. “Educational” Nature

In the case of *Junior Achievement of Greater Minneapolis, Inc. v. State*, the Minnesota Supreme Court stated that “an educational institution may teach a variety of useful subjects and yet not be an academy or seminary of learning entitled to tax exemption. To qualify for such an exemption it is necessary that a substantial part of the branches of learning offered by a publicly supported school must be furnished by the institution seeking the tax exemption before it qualifies therefor.”¹⁵ The Court in *Junior Achievement*, citing to precedent, stated as follows:

The requisite that a Substantial part of the branches of general learning offered by a publicly supported seminary must be furnished by a school before it qualifies for tax exemption is satisfied only if its regular curriculum of instruction is a reasonable substitute for the usual program of courses pursued by a student enrolled at a comparative educational level in the public system. And to be a reasonable substitute it must appear (1) that the required curriculum...embraces a sufficient variety of academic subjects to give the student a general education and (2) that the units of educational training are readily assimilated as an integral part of the public school system in that each essential subject is taught in such a comprehensive and thorough manner that, if a student were transferred to the same grade or level of instruction in the public system, he would receive full credit for his work in that subject.¹⁶

In the case of *Pine County Co-op. Nursery Sch. v. County of Pine*,¹⁷ a school-based exemption was granted to a nursery school because the Tax Court found a very

¹⁵ *Junior Achievement of Greater Minneapolis, Inc. v. State* at 271 Minn. 385, 388-89, 135 N.W.2d 881, 884 (1965).

¹⁶ *Id.*, citing to *State v. Northwestern Preparatory Sch.*, 249 Minn. 552, 558, 83 N.W.2d 242, 246 (1957).

¹⁷ *Pine County Co-op Nursery Sch. v. County of Pine*, C2-87-671 (Minn. Tax November 16, 1987).

close nexus between that school and the local public school system. The Court made detailed findings as follows:

The Nursery School employs a certified teacher who also teaches in the public school. The curriculum of the Nursery School was designed in consultation with the local kindergarten teachers. The Nursery School follows the curriculum guidelines of the public schools. The Nursery School members are required to attend one public school board meeting per year to outline their curriculum. ...The Nursery School works with, and in some cases parallels, the public school pre-school program. The local public school employs the Nursery School teacher for its own classes in parenting, child rearing and health education. ...The Nursery School program saves cost to the school district by allowing the school district to spend its pre-school education dollars on programs not included in petitioner's school. If petitioner did not offer daytime pre-school class, the school district would be providing those services and would have to cut back on its parenting and/or other pre-school programs. The Nursery School also benefits the school system by preparing students to enter the public school system, thereby avoiding remedial measures at the early grade levels.

It is significant that the Court made the above findings based on testimony from the Superintendent of the local school district, as follows:

We find that petitioner has provided that it provides training which otherwise would be provided by the public schools, thereby lessening the tax burden to the public. Mr. Joe Hobson, the Superintendent of Schools for the Pine City Public Schools, testified that the petitioner works with and parallels the public school program and is a cost saving program for the school district. Mr. Hobson testified that it is the policy of his school district to foster pre-school education. A given school district can levy up to one mill for pre-school education and this district gets approximately \$50,000 per year in school aids for their pre-school program. The district is free to shape its pre-school curriculum as they wish to. Because of this the district has attempted primarily to offer programs not offered by petitioner's pre-school programs so that a wider range of services are available to the public. The two work closely together. Petitioner's curriculum was designed in consultation with the public school kindergarten teachers, and petitioner is required to send representatives to attend one school board meeting per year to outline their curriculum. The public school and petitioner use the same nursery school teacher in their pre-school programs. The public school offers parenting, child rearing and health education classes in its pre-school program, as well as developmental and reading preparation classes in the evenings and on weekends. The public school provides pre-school programs for handicapped children. The petitioner offers a daytime program of reading preparation,

spelling preparation and group activities for pre-schoolers. Mr. Hobson testified that if the petitioner did not offer these programs, the public school would do so, but at additional cost to the public. (Emphasis added.) He also testified that the petitioner's school also benefits the public school system by preparing children for school and thereby avoiding costly remedial measures. The school board, in fact, felt so strongly about wanting petitioner's school to continue that they suggested leasing school land to petitioner for building its own building. Mr. Hobson was also instrumental in helping petitioner to bring their program up to the Department of Human Services standards to get their licensing.

Id. (emphasis added). The above clearly shows that the nursery school's exemption was based on the very close relationship it had with the public schools, thereby lessening the taxpayer's costs, as evidenced by the Superintendent's sworn testimony. Also, it is significant the Court found as follows:

"All programs offered at the Nursery School are part-time, the most extensive being a two and one-half hour per day, three day per week program. The programs are offered only during the school year. There is no daycare provided at the Nursery School. Fifty percent of the children entering kindergarten in 1987 in Pine City have attended the Nursery School."

Id. (emphasis added).

We find the evidence admitted at trial, particularly the testimony of the Owatonna Public School officials, ample to support the conclusion that KKEC is an educational institution, that its curriculum is designed to be readily assimilated by students preparing for kindergarten, and that by providing this private alternative, KKEC is reducing the burden on the public system in several important ways.

C. Public Burden

The second question to be answered is if whether the Relator/Appellant provides at least a significant part of the educational training which would otherwise be required to be furnished by publicly supported institutions thereby reducing in some way the public burden.

The child care center operates as a business. The clients pay fees that may be subsidized by child care assistance and Parent Aware scholarships. The business is licensed as a daycare/child care center. UTR provided no input from the Red Wing School District 256. UTR provided no curriculum or licensing credentials for staff that are specific to assessment year 2019.

There is no evidence that this child care center lessens the financial burden on taxpayers to provide for public schooling. This type of evidence should not be nebulous, but rather based on actual evidence. Certainly the fact that a substantial part of this business is for daycare detracts from any claim of exemption as a school. This facility is currently licensed by the DHS as a “Child Care Center”. There is no evidence that the staff are certified and trained to the same extent as those in the public school system.

D. Assimilation

The third question to be answered is if the training provided could be readily assimilated as an integral part of the public school system.

*Eyota Kid's Korner, Inc. v. County of Olmsted*¹⁸ was a 1992 case where the Tax Court determined that the preschool was exempt as a seminary of learning. Although the facility also ran a daycare, this was not discussed, as the facility was also found to be exempt as a “purely public charity.” With regard to the school exemption, similar to the Pine City case described above, in *Eyota* it was critical that the superintendent of the local public schools testified under oath in support of the school’s exemption. The Court restated the standard two-prong rule from *Northwestern Preparatory*,¹⁹ and then stated as follows:

[T]he required curriculum at Eyota covers a variety of subjects each day. While this fact may satisfy part (1) of the *Northwestern Preparatory*

¹⁸ *Eyota Kid's Korner, Inc. v. County of Olmsted*, C5-92-1513 (Minn. Tax Dec. 29, 1992).

¹⁹ *Northwestern Preparatory School*, 249 Minn. At 558, 83 N.W.2d at 246.

requirement, it cannot satisfy part (2). The requirement that the curriculum offered must replicate that offered by the public schools has no application to preschool education. The public schools do not presently offer this type of program.

The only convincing evidence that *Eyota's* curriculum replicated that offered by the public schools came from sworn testimony by the Superintendent of the Public Schools. The Court described her testimony as follows:

The Superintendent of Dover-Eyota Public Schools stated that the activities at Eyota "support and enhance the educational philosophy of Dover-Eyota Schools". She also stated the public schools "encourage the dialogue and cooperation between our Public School and Kids Corner." If the public school had the resources to educate these students, their curriculum would resemble Eyota's in order to achieve the educational goals and philosophy of the public schools.

Id. Further, similar to *Pine City*, where the teacher was certified and also taught in the public school, the Court in *Eyota* found that the teachers at that preschool had Child Development Associate Certificates from the State of Minnesota.

The discovery provided by Relator/Appellant does not include any information from Red Wing School District 256 indicting any coordination with the school.

The County's position is the submissions of UTR do not support its effort to be exempt as a seminary of learning. The child care center provides a service, for which the parents pay. The institution may impart some knowledge but cannot be considered a seminary of learning. Since the age of children served goes up to 12, some children leave the child care center for school during the day. The County would point out that in home day cares qualify for the Parent Aware program as well. Conceivably an in home day care could claim they are a seminary of learning and thus exempt from taxation. There is no evidence presented that the child care center lessens the burden on taxpayers to provide for public schooling. There was no evidence presented from Red Wing School District #256.

III. Tax Court Decision

The Tax Court in its Order and Judgment of September 15, 2021, found in favor of the County and granted its Summary Judgment Motion. The Tax Court did conclude that UTR was an educational institution. The County specifically did not admit this in discovery and did not stipulate to this conclusion. Irregardless of what is happening now, or in 2020-2021, UTR did not meet its burden of proof for 2019.

The Tax Court then concluded that UTR did not alleviate the public burden and that the regular curriculum was not a reasonable substitute. The County concurs with the Tax Court. It is clear that UTR did not communicate with Red Wing School District #256, although this guidance had been provided to UTR as far back as 2004 by the County. Its DHS licensure is clearly for a child care center, which goes from babies in cribs to 12 years of age. The Parent Aware program has in no way been incorporated into statute or case law as a precursor for an “educational institution”. It is a tool for parents and a tool for child care centers and in home day cares for funding and support.

The Tax Court properly found that UTR must show that it meets the requirement of seminary by learning pursuant to Minn. Stat. §272.02. The Court states that this is a “fact intensive” enquiry and that UTR made conclusory

allegations that did not meet the burden of proof. The County would add that many of those conclusory allegations were for tax years other than 2019.

UTR claims that in relying heavily on *NW Preparatory.*, 249 Minn. 522, 83 N.W.2d 242, the Court erred in that it is an older case and that the Court should have considered the case findings as factors rather than elements. The County would first state that the Court's Order and the County's instant brief include more and more recent cases. The holding is clear. Even if one can make an argument that they are an "educational" institution there is a further enquiry, which the Judge made. Whether considered factors or elements the Tax Court found UTR lacking and they did not meet their burden of proof.

UTR claims that it had no obligation to contact the local school district even though it had been advised to by the County as long ago as 2004 to do so. The cases cited by the Respondent, which were successful in reaching exemption, had the support of the local school district. This makes perfect sense in light of the reasonable substitute for curriculum issue and alleviating the public burden.

As the Tax Court properly found, conclusory statements about alleviating the public burden by UTR are not sufficient.

CONCLUSION

1. UTR is licensed by DHS, not the Minnesota Department of Education.
2. UTR serves infants to 12 year olds, yet seeks exemption for its entire building as a pre-school education center.

3. UTR provided discovery which was not specific to 2019 and is dated in other years.

4. UTR did not meet its burden of proof to show that it is entitled to an exemption pursuant to statute or existing case law.

UTR asks this court to upend existing statutory and case law based on a conclusory record which is not fact specific to assessment year 2019. Their appeal should be denied.

Dated: February 14, 2022

Respectfully submitted,

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Supreme Court No. A21-1349

STATE OF MINNESOTA

IN SUPREME COURT

Under the Rainbow Child Care Center, Inc.

Respondent,

CERTIFICATION OF BRIEF LENGTH

v.

County of Goodhue, Respondent,

Relator.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6363 words. This brief was prepared using Microsoft Word 2016.

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