

Spring 2001

2000 Survey of Rhode Island Law: Cases: Tax Law

Patricia K. Holmes

Roger Williams University School of Law

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Recommended Citation

Holmes, Patricia K. (2001) "2000 Survey of Rhode Island Law: Cases: Tax Law," *Roger Williams University Law Review*: Vol. 6: Iss. 2, Article 19.

Available at: http://docs.rwu.edu/rwu_LR/vol6/iss2/19

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Tax Law. *Cummings v. Shorey*, 761 A.2d 680 (R.I. 2000). Certifications of property revaluations required by Rhode Island General Laws sections 44-5-11(b) and 44-5-22 are not void, and the resulting taxes levied on the property illegal are not, if the certification is not made in writing by the statutory time deadline. Also, if a taxpayer concedes that a revaluation of her property yielded a true and accurate value, she cannot then challenge the legality of the assessment pursuant to section 44-5-12(a).

FACTS AND TRAVEL

In 1989, Middletown, Rhode Island's tax assessor, William H. Shorey (Shorey), the defendant, conducted a town-wide revaluation of all taxable real estate pursuant to Rhode Island General Laws section 44-5-11.¹ The plaintiff, Carol Cummings (Cummings), owned property in Middletown that was included in this revaluation.² In the course of the appraisal, Cummings sought relief from the Middletown Board of Tax Appeals (Board), claiming that the taxes assessed on her property had been assessed illegally and that the revaluation was either not certified pursuant to law, or was certified late.³ After receiving some reduction in assessments from the Board, Cummings filed tax appeals under section 44-5-26 of the Rhode Island General Laws for the years 1991 through 1995.⁴ The appeals stated three primary allegations.⁵ First, Shorey violated section 44-5-11(b) of the Rhode Island General Laws by not certifying the revaluation.⁶ Second, Shorey violated section 44-5-22 of the Rhode Island General Laws by certifying late the tax assessments for years 1989 through 1993.⁷ Third, the 1989 revaluation and subsequent tax assessment exceeded the full and fair cash value of Cummings's property in Middletown and therefore violated section 44-5-11.⁸

1. See *Cummings v. Shorey*, 761 A.2d 680, 682 (R.I. 2000); R.I. Gen. Laws § 44-5-11 (1956) (1999 Reenactment).

2. See *Cummings*, 761 A.2d at 682.

3. See *id.*

4. See *Cummings*, 761 A.2d at 682; R.I. Gen. Laws § 44-5-26 (1956) (1999 Reenactment).

5. See *Cummings*, 761 A.2d at 683.

6. See *id.*; R.I. Gen. Laws § 44-5-11(b).

7. See *Cummings*, 761 A.2d at 683; R.I. Gen. Laws § 44-5-22 (1956) (1999 Reenactment).

8. See *Cummings*, 761 A.2d at 683.

At trial, the parties stipulated that although Shorey was required by section 44-5-11(b) to certify to the state in writing that the revaluation was completed, he did not do so.⁹ The parties also agreed that Shorey's certification of the tax assessment, required by section 44-5-22 for the years 1989 through 1993, occurred well after the required date.¹⁰ Notwithstanding these facts, the trial justice found that although section 44-5-11(b) directed the tax assessor to certify to the Department of Administration in writing of the completion of the revaluation, the Rhode Island General Assembly had not provided a remedy in the event such certification was filed late or not at all.¹¹ The court stated that because Rhode Island General Laws section 44-5-26 provided an express remedy in the event the assessed tax was illegally assessed or collected, but omitted any remedy for late certification or no certification, the court could not apply one.¹²

Cummings also stipulated at trial that the valuations of her property were true and accurate valuations of said property for those respective tax years.¹³ In addressing Cummings's allegation that the 1989 valuation and tax assessment exceeded the full and fair cash value of her property in Middletown, the trial justice determined that by stipulating at trial that her property was accurately valued at its full and fair cash value, Cummings essentially not only approved the assigned values, but affirmed the process itself.¹⁴ Thus, Cummings failed to satisfy her burden of proving her property was overassessed, or that Shorey overassessed her property illegally.¹⁵ The trial justice then entered judgment for Shorey on all three allegations and the Cummings appealed.¹⁶

9. *See id.*

10. *See id.* The actual certification deadlines pursuant to section 44-5-22 for the tax rolls in these years was June 15th of the year following December 31st of the certification year. The trial court also noted that the tax assessor did correspond with the State of Rhode Island Department of Administration to explain that "his office did not consider the process to be complete until all of the board of review hearings had been dealt with." *Id.*

11. *See id.*

12. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.*

ANALYSIS AND HOLDING

Before addressing Cummings's allegations, the court discussed two other relevant issues in the case.¹⁷ First, did Cummings have standing to bring such claims?¹⁸ Second, did the trial court err in denying Cummings a remedy pursuant to section 44-5-26?¹⁹

With respect to the standing question, the court determined that section 44-5-26 allows a plaintiff to protest his or her own tax assessment.²⁰ However, the court also stated that absent such a claim of personal deprivation, a plaintiff would not have standing to contest the general outcome of a revaluation, as such a contest would be a general grievance, common to all taxpayers affected by such revaluation.²¹ As to the availability of a remedy under section 44-5-26, the supreme court affirmed the lower court and stated if the Legislature did not provide an express remedy for taxpayers in Cummings's condition, the court should not substitute one.²² The court then addressed Cummings's three primary claims.

Failure to Certify Revaluation

Section 44-5-11(b) of the Rhode Island General Laws provides that the assessors of the cities and towns shall certify in writing, to the Department of Administration when the revaluation is completed.²³ Cummings alleged that because Shorey never certified the 1989 revaluation it is void.²⁴ In addressing Cummings's claim, the supreme court affirmed its reasoning expressed in *Rivas v. Taylor*.²⁵ In *Rivas*, the court held that a delay in returning a roll is important only when it deprives the individual taxpayer of the opportunity to examine into his own assessment and to take proper steps to have it reduced or corrected.²⁶ In the present case, the

17. *See id.* at 684.

18. *See id.* at 684-85.

19. *See id.* at 685.

20. *See id.* at 684.

21. *See id.* at 684-85.

22. *See id.* at 685.

23. *See id.*

24. *See id.* Note that as of the date of the parties' agreed statement of facts, the defendant had not certified the 1989 revaluation.

25. 43 R.I. 426 (1921).

26. *See id.* at 430.

court stated that Cummings was given the opportunity to have her assessment reduced in her initial case with the Board of Tax Appeals.²⁷ Further, after this reduction, Cummings stipulated that her property was accurately valued.²⁸ Thus, the court held that Cummings had suffered no deprivation of a substantive right as a result of the tardiness of the tax assessor and therefore was entitled to no remedy.²⁹

Late Certification of Tax Rolls

Cummings next argued that because the time period for certifying the assessments in writing were mandated by statute, specifically sections 44-5-11(b) and 44-5-22, failure to meet those dates rendered the revaluation void and the associated tax illegal.³⁰ The court, however, after reviewing the relevant provisions of the general laws, concluded that the written certification requirements at issue were directory and not mandatory.³¹ Thus, Shorey's failure to perform a directory function did not render the revaluation void, or the levied tax illegal.³²

Assessment in Excess of Full and Fair Cash Value of Property

Finally, Cummings alleged that the tax assessor systematically assessed valuations in excess of 100% of full and fair cash value in clear violation of the assessment process.³³ Section 44-5-12(a) provides that "all property subject to taxation shall be assessed at its full and fair cash value, or at a uniform percentage of its value, not to exceed one hundred percent."³⁴ Citing *Nos Ltd. Partnership v. Booth*,³⁵ the court stated that a taxpayer who challenges the legality of the assessment or claims the assessor used an inappropriate fair market value of the subject property has the burden of presenting evidence of fair market value.³⁶ In the present case, once Cummings conceded the fair and accurate revalua-

27. See *Cummings*, 761 A.2d at 686.

28. See *id.*

29. See *id.*

30. See *id.*

31. See *id.*

32. See *id.*

33. See *id.* at 686.

34. *Id.*

35. 654 A.2d 308, 310 (R.I. 1995).

36. See *id.* at 687.

tion of her property, the "full and fair cash value" was established.³⁷ Thus, Cummings failed to meet the required burden.³⁸

CONCLUSION

In *Cummings v. Shorey*, the Rhode Island Supreme Court established that certifications of property revaluations required by sections 44-5-11(b) and 44-5-22 are not void, and the resulting taxes on the property are not illegal, because of a delayed process. Also, if a taxpayer concedes that a revaluation of her property yielded a true and accurate value, she cannot then challenge the validity of the assessed full and fair cash value of the property pursuant to section 44-5-12(a).

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37. *See id.*

38. *See id.*