

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 25, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2782

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**In the Matter of the Foreclosure
of Tax Liens Against Research
Universal Life Church, In Rem
Action 1993, Number 27:**

COUNTY OF SHEBOYGAN:

Petitioner-Respondent,

v.

**RESEARCH UNIVERSAL
LIFE CHURCH,**

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Sheboygan County: JOHN B. MURPHY, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Snyder, JJ.

PER CURIAM. In defense of a tax lien foreclosure brought by Sheboygan County against its property, the Research Universal Life Church (RULC) claims that it is entitled to property tax exemption under § 70.11(4),

STATS. The trial court denied exempt status for the tax years 1982 through 1992. We affirm the judgment vesting title in the county.

RULC was chartered and incorporated as a nonprofit corporation in Wisconsin in 1977. At that time, Bishop Edmond Galileo Hou-Seye held credentials of ordination from the "mother" church in Modesto, California. Bishop Job Hou-Seye, Edmond's son, has been a minister with RULC since June 1978. Reverend Mary Louise Hou-Seye, Edmond's wife, is also a RULC minister. All three reside on the property claimed to be exempt.

The property consists of three adjacent parcels totaling approximately 2.5 acres. There is one building on each parcel: a two-story residence occupied by the Hou-Seyes, a single story residence in which RULC houses visiting ministers and homeless persons, and a commercial building out of which RULC operates a tire and auto repair shop. The property was deeded to RULC on December 1, 1987. Although the RULC maintains that it wrote city and county officials indicating its tax exempt status and requesting information on any necessary steps to maintain that status, no formal application for tax exemption was made until 1994.

To qualify as a religious organization entitled to property tax exemption under § 70.11(4), STATS., five statutory tests must be met: (1) the taxpayer must be a bona fide church or religious association; (2) the property must be owned and used exclusively for the purposes of the church or religious association; (3) the property involved must be less than ten acres; (4) the property must be necessary for location and convenience of buildings; and (5) the property must not be used for profit. *Waushara County v. Graf*, 166 Wis.2d 442, 457, 480 N.W.2d 16, 22 (1992). The taxpayer has the burden of proving tax exempt status. *Id.* at 456, 480 N.W.2d at 22.

Where the facts are established, the determination of whether a taxpayer is a church or religious organization is subject to de novo review. *Id.* at 457, 480 N.W.2d at 22. Here, we adopt the trial court's bench decision because it is based on an analysis of the five statutory tests and is based on findings of fact which are not clearly erroneous. Section 805.17(2), STATS. The findings are based, in part, on credibility determinations. Where the trial court acts as the finder of fact, it is the ultimate arbiter of the witnesses' credibility.

Cogswell v. Robertshaw Controls Co., 87 Wis.2d 243, 250, 274 N.W.2d 647, 650 (1979).

The trial court found that the first test was satisfied; RULC was a bona fide religious association in that it was not created merely as a subterfuge designed to evade taxation. The court determined that the second and fifth tests—whether the property is used exclusively for purposes of the religious organization and that the property not be used for profit—were not met. We agree.

RULC offered evidence that religious services, Bible study sessions, weddings, counseling and church picnics were conducted on the property over the years. The two-story residence was used to house the Hou-Seye family, RULC religious leaders. The other residence was used to house visiting ministers and subjects of the church's charitable mission to provide housing and counseling to those in need and unable to afford it. Job Hou-Seye testified that the purpose of the tire and auto repair business was to facilitate the church's mission to aide others. That was accomplished by selling tires and auto repairs at a highly discounted rate to persons who could not otherwise afford to pay. Such service is believed to provide a "spring board" for making a "gospel presentation" if a customer expresses an interest. Job indicated that the sale of gasoline, cigarettes and soda was for the convenience of customers. The same "spring board" effect was suggested for the maintenance of a weight lifting facility open to the public.

Housing "members of religious orders and communities" is a valid religious purpose. *Midtown Church of Christ v. City of Racine*, 83 Wis.2d 72, 73, 264 N.W.2d 281, 283 (1978). However, the exemption includes only those persons who have an official leadership role in the activities of the church or persons who are part of a religious community living apart from the secular community. *Id.* at 75, 76, 264 N.W.2d at 284. Mary Louise Hou-Seye's function as a minister of RULC was as a bookkeeper. No integral church duties were ascribed to her. Additionally, Job Hou-Seye owns and operates an independent business and is a member of another church in the area. He was not living a religious life distinct from the secular community. The residence was not used exclusively for church purposes.

RULC argues that the revenue generated by the operation of the tire store—that is, tire sales, auto repairs, and the sale of lawn mowers and small engines—goes to support the church's work. Other than a few isolated instances where tires were given away and persons were allowed to reside on church property with nominal or no rent, there was no evidence of any ministry made outside the church grounds. Even for the one example of missionary work given, a nominal rent was charged to the woman assisted by the church. As the trial court noted, financial records were vague and nonexistent for some years. Nothing demonstrated how revenue generated by the tire shop and the church picnics was utilized to support the church's mission. The trial court found that profit was made and used for the sole purpose of supporting the Hou-Seyes. That finding is not clearly erroneous.

We conclude that RULC failed to establish that exclusive use was made of the property for church purposes and not for profit. Because RULC is not entitled to the exemption for failure to meet these two statutory tests, we need not address the remaining two tests for the exemption or RULC's argument that it cannot be denied the exemption simply because it did not file an application.

RULC argues that only the parcel with the tire business on it should be taxed. It contends that the trial court failed to address pro rata taxation. The record does not establish that RULC raised this issue in the trial court. We generally will not review an issue which is raised for the first time on appeal. *Segall v. Hurwitz*, 114 Wis.2d 471, 489, 339 N.W.2d 333, 342 (Ct. App. 1983). We note, however, that there is no evidence in the record to suggest that RULC and the Hou-Seyes ever treated the parcels in question as anything but an integrated property from 1982 through 1992.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.