NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3351-15T3

FISHER, KRYSTAL and DAVID,

Plaintiffs-Appellants,

v.

CITY OF MILLVILLE,

Defendant-Respondent.

APPROVED FOR PUBLICATION

JULY 7, 2017

APPELLATE DIVISION

Argued May 10, 2017 - Decided July 7, 2017

Before Judges Lihotz, Hoffman and Whipple.

On appeal from the Tax Court of New Jersey, Docket Nos. 14080-2014 and 7736-2015, whose opinion is reported at 29 N.J. Tax 91 (Tax 2016).

Todd W. Heck argued the cause for appellants (Testa Heck Scrocca & Testa, P.A., attorneys; Mr. Heck, on the briefs).

Brock D. Russell argued the cause for respondent.

The opinion of the court was delivered by

LIHOTZ, P.J.A.D.

Plaintiff Krystal Fisher appeals from a Tax Court order denying a personal residence real estate tax exemption, granted

by the Legislature to certain disabled veterans.[1] In a written opinion, Tax Court Judge Mark Cimino reviewed the statute and concluded defendant, the City of Millville, correctly denied plaintiff's request for exemption. Fisher v. Millville, 29 N.J. Tax 91, 101-02 (Tax 2016). The judge found, although plaintiff is completely disabled as a result of her military service, her injuries did not occur "in direct support" of military operations in Afghanistan, which was required to claim the disabled veterans personal residence tax exemption.

On appeal, plaintiff challenges the judge's statutory interpretation as "incorrect." We are not persuaded and affirm.

The Tax Court's review resulted from cross-motions for summary judgment. Id. at 92. The parties submitted a joint statement of stipulated material facts. Ibid.

In October 2002, plaintiff suffered injuries during an Army training exercise, when she fell from a two-story building at Fort Leonard Wood, Missouri. Ibid. The injuries did not preclude her continued military service, and plaintiff was transferred to Fort Stewart, Georgia, in March 2003, where she was assigned to a unit scheduled to deploy to Afghanistan. Id. at 93. However, in light of her injuries, plaintiff was not

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[1] For ease, we refer solely to Krystal Fisher as plaintiff; however, we understand and recognize David Fisher, Krystal's husband, is also a plaintiff and has joined in the appeal.

sent overseas. Instead, she remained at Fort Stewart, assigned to the "Rear Detachment" for her unit in Afghanistan. Ibid. In this role, plaintiff's duties included

> shipping weapons, food, clothing and processed supplies for the overseas portion of her unit; keeping inventory logs of weapons utilized by her unit, including checking in and out each weapon; retrieving, processing, and formalizing reports for her unit overseas as to their military police activities; assembling protective shield units for Humvee military vehicles utilized in overseas combat; performing military police duties at Fort Stewart, a staging base; and participating in prisoner of war camp studies and simulations at Fort Stewart along with the development of prisoner camp protocols to be utilized overseas. Moreover, while stationed at Fort Stewart, plaintiff continued to train for potential deployment to Afghanistan as part of the military police.
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> [Ibid.]

The Army honorably discharged plaintiff on December 20, 2003. On May 21, 2014, she was declared 100 percent disabled by the United States Department of Veterans Affairs.[2]

Plaintiff submitted an application to defendant, claiming a disabled veteran's property tax exemption, pursuant to N.J.S.A. 54:4-3.30. Ibid. The Millville City Tax Assessor issued a

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[2] There is no explanation for the eleven-year gap between plaintiff's discharge, and the disability certification. The parties agree, and the trial court found, plaintiff's disability was a result of her military service. Ibid.

notice of disallowance on June 26, 2014. Ibid. Plaintiff appealed to the Cumberland County Board of Taxation, which concluded the exemption was properly denied. Id. at 94. Plaintiff appealed to the Tax Court, which conducted a hearing on the parties' respective motions for summary judgment. Analyzing the requirements for exemption, the judge concluded plaintiff's injury was not suffered "in direct support" of military operations in Afghanistan. Id. at 101. He denied plaintiff's motion and granted defendant's motion for summary judgment. Id. at 102.

We review an order granting summary judgment applying the same standard guiding the trial judge. Conley v. Guerrero, 228 N.J. 339, 346 (2017). "[S]ummary judgment will be granted if there is no genuine issue of material fact and 'the moving party is entitled to a judgment or order as a matter of law.'" Ibid. (quoting R. 4:46-2(c)).

The issue presented here is a legal question requiring examination of statutory interpretation. "An appellate court interprets . . . statutes . . . de novo." Meehan v. Antonellis, 226 N.J. 216, 230 (2016) (quoting Mort. Grader, Inc. v. Ward & Olivio, L.L.P., 225 N.J. 423, 435 (2016)).

> It is well settled that the goal of statutory interpretation is to ascertain and effectuate the Legislature's intent. Murray v. Plainfield Rescue Squad, 210 N.J. 581,

> 592 (2012) (citing DiProspero v. Penn, 183 N.J. 477, 492 (2005)). "In most instances, the best indicator of that intent is the plain language chosen by the Legislature." State v. Gandhi, 201 N.J. 161, 176 (2010) (citing DiProspero, supra, 183 N.J. at 492). "[W]hen the language of a statute is clear on its face, 'the sole function of the courts is to enforce it according to its terms.'" Hubbard v. Reed, 168 N.J. 387, 392 (2001) (quoting Sheeran v. Nationwide Mut. Ins. Co., 80 N.J. 548, 556, 404 A.2d 625 (1979)). In carrying out that function, an appellate court must read words "with[in] their context" and give them "their generally accepted meaning." N.J.S.A. 1:1-1. A court "may neither rewrite a plainly-written enactment of the Legislature nor presume that the Legislature intended something other than that expressed by way of the plain language." O'Connell v. State, 171 N.J. 484, 488 (2002).
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> [Cashin v. Bello, 223 N.J. 328, 335 (2015).]

The Legislature provides a tax exemption for

> [t]he dwelling house and the lot . . . of any citizen and resident of this State . . . . honorably discharged . . . from active service, in time of war, in any branch of the Armed Forces. . . who has been or shall be declared by the United States Veterans Administration . . . from other service-connected disability declared by the United States Veterans Administration . . . to be a total or 100% permanent disability . . . .
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> [N.J.S.A. 54:4-3.30(a).]

The statute's enactment embodies the State Constitution's authorization to adopt statutes granting veterans tax exemptions. See N.J. Const. art. VIII, § 1, ¶3 (1947). The

Legislature has provided for two types of property tax benefits for veterans; a partial deduction for veterans, honorably discharged, who served in "active service in time of war," N.J.S.A. 54:4-8.11; and a total exemption for veterans, honorably discharged, who served in "active service in time of war," and who have been declared disabled as a result of their service, N.J.S.A. 54:4-3.30(a). The term "active service in time of war," defined in N.J.S.A. 54:4-8.10(a), is used to determine eligibility for both the ordinary and disabled veterans exemptions.

Under N.J.S.A. 54:4-3.30(2), entitlement to an exemption from real property taxes for a dwelling requires a party to prove:

> (1) "[a] citizen and resident of this State"; (2) "now or hereafter honorably discharged or released under honorable circumstances"; (3) "from active service, in time of war"; (4) "in any branch of the Armed Forces of the United States"; (5) "who has been or shall be declared by the United States Veterans Administration or its successor to have a service-connected disability . . . declared by the United States Veterans Administration or its successor to be a total or 100% permanent disability . . . sustained through enemy action, or accident, or resulting from disease contracted while in such active service . . ."
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> [Wellington v. Twp. of Hillsborough, 27 N.J. Tax 37, 48 (Tax 2012) (quoting N.J.S.A. 54:4-3.30(a)).]

Here, the only question is whether plaintiff satisfies element three: whether her disability resulted "from active service, in time of war." On this issue we remain mindful "taxation is the rule, and the claimant bears the burden of proving an exemption." N.J. Carpenters Apprentice Training & Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 177 (1996), cert. denied, 520 U.S. 1241, 117 S. Ct. 1845, 137 L. Ed. 2d 1048 (1997).

In his written opinion, Judge Cimino detailed the historic changes in the constitutional provisions directed to veterans tax benefits and the Legislature's adaptation to these amendments. Fisher, supra, 29 N.J. Tax at 94-97. In doing so, the judge reviewed amendments to taxation statutes, which align with the constitutional amendment, allowing relief to veterans who suffered 100 percent disability "in time of war or other emergency as, from time to time, defined by the Legislature . . . ." Id. at 94 (citing N.J. Const. art. VIII, § 1, ¶ 3).

The phrase "[a]ctive service in times of war" as used in N.J.S.A. 54:4-3.30(a), is a defined term, which means the "periods of time set forth in [N.J.S.A. 54:4-8.10]." N.J.S.A. 54:4-3.33(a). The Legislature listed sixteen separate military conflicts, starting with the Civil War up to Operation Iraqi Freedom, encompassed within the definition of "[a]ctive service

in time of war," to discern eligibility of disabled veterans seeking tax exemptions and deductions.[3] N.J.S.A. 54:4-8.10(a). Many of these periods of war or conflict are defined temporally – with a beginning and end date during which the disabling injury must occur, regardless of cause or location. See Fisher, supra, 29 N.J. Tax at 95 (describing treatment of service and disability during the Vietnam and Korean conflicts as an "all-encompassing approach, which only required service during a conflict."). However, recent military conflicts are more narrowly circumscribed.

Applicable to plaintiff's time of service is the following:

> Operation "Enduring Freedom", on or after September 11, 2001, who served in a theater of operation and in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days in such active service commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation; provided, that any person receiving an actual service-incurred injury or disability while engaged in such service

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[3] Specifically, the statute lists these conflicts: the Civil War, the Spanish American War, World War I, World War II, the Korean conflict, the Lebanon crisis, the Vietnam conflict, the Lebanon peacekeeping mission, the Grenada peacekeeping mission, the Panama peacekeeping mission, Operation "Desert Shield/Desert Storm," Operation "Northern Watch" and Operation "Southern Watch," Operations "Joint Endeavor" and "Joint Guard" in the Republic of Bosnia and Herzegovina, Operation "Restore Hope" in Somalia, Operation "Enduring Freedom," and Operation "Iraqi Freedom."

> shall be classed as a veteran whether or not that person has completed the 14 days' service as herein provided[.]
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> [N.J.S.A. 54:4-8.10(a).]

This definition of "[a]ctive service in times of war" requires (1) service after September 11, 2001; (2) service in "a theater of operation and in direct support of that operation"; and (3) a "service-incurred injury or disability while engaged in such service." Ibid. (emphasis added). The statute, by its clear terms, requires service in the specified geographic area, an issue we discuss below, as well as a proof the disability results from "such service" in the geographic area.[4]

Plaintiff first refutes the judge's conclusion the statutory definition is more constrictive and maintains the series of amendments adding various conflicts over time was intended to expand to availability of relief for military missions and engagements, not just declared wars. Further, she urges the Legislature "abandoned" the requirement the military service occur "in expressly-defined geographic locales." While it is true the amendments expanded benefits to veterans disabled

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[4] Because we conclude plaintiff's service in Georgia is incompatible with the statute's requirements for service "in a theater of operation and in direct support of that operation," we take no position on what proofs would establish the causal linkage between a plaintiff's "service incurred injury or disability" and "such service."

in designated military conflicts, keeping step with the Constitution's amendment to authorize Legislation covering events "in time of war or other emergency," N.J. Const. art. VIII, § 1, ¶ 3, we reject the suggestion benefits were intended to be extended without regard to geographic limitations. N.J.S.A. 54:4-8.10(a) circumscribes the definition of "active service in time of war," and thus limits eligibility to those injured "in a theater of operation and in direct support of that operation." Inclusion of this geographic requirement was purposeful.[5]

As noted by the Tax Court in Wellington:

> It is too plain to require extended discussion that members of the military who are physically present on the battlefield during a military conflict serve in the

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[5] The language used is "a theater of operation" versus "the theater of operation," which the Tax Court has concluded does not necessarily require presence on the battlefield. See Galloway Twp. v. Duncan, 29 N.J. Tax 520, 527-28 (Tax 2016) (extending benefits to doctor disabled during service while treating soldiers wounded in combat, who were flown to Andrews Air Force Base in Maryland).

We also note the Legislature has varied the width and breadth of the geographic requirements. Whereas the definition of "Active service in time of war" relating to "Operation 'Restore Hope' in Somalia" required "serv[ice] in Somalia or on board any ship actively engaged in patrolling the territorial waters of that nation for a period," the definition for "Operation Enduring Freedom," required, as we have noted, service "in a theater of operation and in direct support of that operation," a more flexible geographic requirement. N.J.S.A. 54:4-8.10(a).

> theater of operation of that conflict within the meaning of N.J.S.A. 54:4-8.10. Their health and life are endangered by exposure to enemy action, weapons and resistance, as well as numerous other dangers inherent in warfare. It is this exposure to risk for the benefit of national security that warrants a property tax exemption for veterans who are 100% permanently disabled as the result of their military service.
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> [Wellington, supra, 27 N.J. Tax at 50.]

Plaintiff next asserts her unit was stationed in a combat zone, and her service was in direct support of that combat unit, although performed stateside. She relies on prior Tax Court cases she believes are "more typical" of the "modern requirement," determining "direct support" can occur far from the actual battlefield.

"N.J.S.A. 54:4-8.10(a) does not define 'theater of operation.'" Wellington, supra, 27 N.J. Tax at 50. Nor does the statute define "direct support."

Citing Wellington, plaintiff urges a "more balanced" interpretation of the statute than the one provided by the Tax Court. She contends she was exposed to the experiences of war and, being disabled as a consequence of such service, as a matter of policy, should result in entitlement to the claimed tax relief. See Galloway, supra, 29 N.J. Tax at 532 ("With modern warfare, it defies reality to claim that one has be on the battlefield to experience war.").

We find these arguments unavailing. We remain mindful "[t]ax-exemption statutes are strictly construed against those claiming exemption because of the compelling public policy that all property should bear its fair share of the burden of taxation." Kenilworth, supra, 147 N.J. at 177 (quoting Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214 (1961)). Further, the court in Wellington acknowledged "the unusual circumstances of th[e] case," which extended the exemption to the plaintiff, who

> although in the United States during his military service, was directly exposed to the dangers of the battlefield. Enemy chemical agents intended to harm members of the United States military were recovered from the battlefield in Iraq and transported to the United States for testing. The purpose of the testing was to protect American soldiers and Marines engaged in military operations in the Arabian Peninsula, Persian Gulf and elsewhere. As a result of his exposure to actual, physical enemy weapons, plaintiff suffered 100% permanent disabilities.
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> [Wellington, supra, 27 N.J. Tax at 50.]

The facts here are distinguishable from those presented in Wellington. We cannot agree plaintiff's injury experienced in a fall during her Missouri basic training or her role performing the Rear Detachment services outlined above in Georgia satisfy the statutory requisites of service "in a theater of operations

and in direct support of that operation . . . ." N.J.S.A. 54:4-8.10(a).

We concur with Judge Cimino's analysis of the Legislature's intent, concluding the determination turns on the exposure of the service member to the harms of war, an experience not visited upon plaintiff. Accordingly, plaintiff's disabling injuries were not suffered in a theater of operation or in direct support of a theater of operation, and thus, were not the result of "active service in time of war," as defined in N.J.S.A. 54:4-8.10(a).

Finally, plaintiff asserts the statutory scheme amounts to an equal protection violation, as up until recently, certain military positions were closed to women. The parties stipulated plaintiff remained in Georgia because of her injury, not because of any policy discriminating against female soldiers. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION