

ARK.] SEBASTIAN COUNTY v. EDUCARE CENTERS, INC. 540-A  
Cite as 296 Ark. 538 (1988)

SUPPLEMENTAL OPINION ON DENIAL OF  
REHEARING  
NOVEMBER 21, 1988

761 S.W.2d 884

1. APPEAL & ERROR — FAILURE TO ABSTRACT OR MENTION STIPULATION UNTIL REHEARING — COURT NOT OBLIGED TO CONSIDER IT. — Where neither party abstracted nor mentioned the stipulation until rehearing, the appellate court was not obliged to consider the argument based on the stipulation.
2. STIPULATIONS — NOT BINDING AS TO ISSUES OF LAW. — Stipulations are not considered binding as to issues of law.
3. APPEAL & ERROR — ISSUE BRIEFED AND ARGUED WITHOUT OBJECTION — COURT JUSTIFIED IN DECIDING IT — TOO LATE TO ARGUE ON REHEARING THAT THE ISSUE WAS NOT RAISED IN THE TRIAL COURT. — The supreme court was clearly justified in reaching and deciding an issue, which the appellee now argues was not raised in the trial court, since the matter was previously briefed and argued without objection.
4. APPEAL & ERROR — ON REHEARING THE COURT WILL NOT CONSIDER ARGUMENTS ALREADY CONSIDERED. — On rehearing, the supreme court will not consider or discuss further mere repetition of arguments already considered by the court.

Petition for Rehearing; denied.

TOM GLAZE, Justice. In its petition for rehearing, appellee

argues that the parties, by an express stipulation, had agreed that appellee's elementary school, grades one through six, was exempt under Ark. Const. art. 16, § 5(b). Now the appellee asserts, among other things, that this court's decision that its facilities run for profit could not be tax exempt is contrary to this express stipulation.

We first would point out that the stipulation mentioned by appellee is nowhere in the abstract of record. Apparently the stipulation was contained in a witness's deposition and resulted from an exchange between the parties' counsel. It appears that the parties' counsel agreed on the stipulation when taking the deposition of an expert, and the purpose of the stipulation was to limit the scope of the witness's examination. Basically, the parties desired to limit their concern to whether the appellee's child-care facilities were schools and therefore exempt under art. 16, § 5(b). In doing so, the parties agreed the appellee's elementary facility was a school, but they never mentioned in the stipulation the question as to whether the appellee's facilities, both child-care or the elementary school, should be taxed since appellee was a profitmaking organization. In its petition, the appellee now attempts to use the parties' stipulation, out of context, and argues the appellant stipulated for-profit schools could be tax exempt.

[1, 2] Neither party abstracted nor mentioned the stipulation until now, and accordingly, we are not obliged to consider such an argument at this late date. *See* Ark. Sup. Ct. R. 20(h). Even if we were, we need only note that stipulations are not considered binding as to issues of law. Of course, this court's holding rested upon its interpretation and construction of Ark. Const. art. 16, § 5(b) and our interpretation is obviously contrary to the construction the parties placed upon that constitutional provision when they agreed that appellee's elementary facility was exempt merely because it was a school.

[3] Appellee further claims that the appellant never argued below that appellee's property could not be tax exempt because appellee is a corporation for profit. Again, appellee raises this argument for the first time in its petition for rehearing, even though the appellant, citing *School District of Ft. Smith v. Howe*, 62 Ark. 481, 37 S.W. 717 (1896), and *Hilger v. Harding College*, 231 Ark. 686, 331 S.W.2d 851 (1960), in its appellate brief,

persuasively argued that the appellee, as a profit-making corporation, should not be given an exemption under art. 16 § 5(b). In sum, the court concludes it was clearly justified in reaching and deciding the "profit-making" issue the appellee now questions since that matter was previously briefed and argued without objection.

[4] The remainder of appellee's petition concerns a mere repetition of argument already considered by the court and for that reason, we need not consider or discuss further. *See Ark. Sup. Ct. R. 20(g)*.

For the foregoing reasons, we deny the appellant's petition for rehearing.

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