

To: Law Revision Commission
From: Rachael Segal; John Cannel
Re: Meaning of widow in N.J.S. 54:4-3.30
Date: February 11, 2019

MEMORANDUM

Summary

The Exemption Statute of 1948 provided for a total property tax exemption for veterans who were declared permanently disabled as a result of their military service. This exemption was subsequently extended to a deceased veteran's widow¹ in certain circumstances. Currently, the statute's definition of widow does not address whether a veteran's widow who remarries and is later widowed again is considered a widow under the statute, or whether widowhood ceases permanently upon a remarriage. In *Pruent-Stevens v. Twp. of Toms River*, the Tax Court addressed the definition of "widow" in the context of N.J.S. 54:4-3.30.

Background

In 1973, Sergeant Peter J. Pruent married Rosanna Ignomirello (now known as Rosanna Pruent-Stevens; hereinafter "Plaintiff").² Sergeant Pruent's health deteriorated, and he died in 1989 at age 41 from complications associated with exposure to Agent Orange during his military service in Vietnam.³ At the time of his death, Sergeant Pruent left behind a wife and two minor children.⁴ Unemployed, his widow applied for Dependency and Indemnity Compensation ("DIC") benefits from the United States Veterans Administration (now known as United States Department of Veterans Affairs; hereinafter "VA").⁵ This request was denied by the VA.⁶

In 1993, Rosanna married Charles J. Stevens, also a veteran.⁷ He died four years later.⁸ Plaintiff continued to apply for benefits for her daughters.⁹

In 2014, almost 25 years after Sergeant Pruent's death, "the VA finally determined that

¹ The term "widow" refers to both a widow and widower, and the term "widowhood" refers to both widowhood and widowerhood.

² *Pruent-Stevens v. Twp. of Toms River*, 30 N.J. Tax 200, 203 (2017).

³ *Id.* at 203-05.

⁴ *Id.* at 203.

⁵ *Id.*

⁶ *Id.* at 204.

⁷ *Id.* at 205.

⁸ *Id.*

⁹ *Id.* at 205.

[his] premature death was ‘presumptively connected’ to his military service in Vietnam.”¹⁰ The VA then approved DIC benefits retroactive to his date of death, and approved the two daughters’ rights to educational benefits.¹¹ At the time of its determination, the VA was aware of Plaintiff’s second marriage.¹² It was the VA’s determination that Plaintiff was “the un-remarried surviving spouse of Peter J. Pruent,”¹³ and that he “posthumously became a veteran who met the qualifications for property tax exemption.”¹⁴

In July of 2015, Plaintiff applied to the Township of Toms River (“Municipality”) for a 100% disabled veterans’ exemption on a residence she had acquired in 2002.¹⁵ The Municipality’s Tax Assessor issued the Plaintiff a Notice that indicated her application was “disallowed based on N.J.S.A. 54:4–3.30(b)(1), which the assessor interpreted as terminating the exemption to surviving spouses who have at any time remarried.”¹⁶ Plaintiff appealed to the Ocean County Board of Taxation.¹⁷ After reviewing the Plaintiff’s petition, the Board issued a Memorandum of Judgment upholding the disallowance.¹⁸ Plaintiff appealed to the Tax Court.¹⁹

Analysis

Article VIII, § 1, ¶ 3 of the 1947 New Jersey Constitution states that:

The widow of any citizen and resident of this State who has met or shall meet his death on active duty in time of war in any such service shall be entitled, during her widowhood, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemption as from time to time may be provided by law.²⁰

This provision makes no reference to remarriage.²¹ In 1948, the original response to this constitutional paragraph was the Legislature’s enactment of N.J.S. 54:4–3.30 (“Exemption Statute”). The Exemption Statute provided for a total exemption from property tax for those veterans whom the VA declared 100% permanently disabled as a result of their military

¹⁰ *Pruent-Stevens*, 30 N.J. Tax at 205.

¹¹ *Id.*

¹² *Id.* at 206 (decision referenced “Death certificate of claimant’s second husband, Charles Stevens, received January 16, 2014”).

¹³ *Id.* (“By law, her four-year marriage to Mr. Stevens was not a permanent bar to her eligibility for DIC”).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 207.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ N.J. CONST., art. VIII, § 1, ¶ 3.

²¹ *Pruent-Stevens*, 30 N.J. Tax at 209.

service.²² In section (b), the statute extended the exemption to a veteran's widow. Under the terms of this exemption, the veteran had to have been both entitled to and have actually received the exemption on a jointly owned residence at the time of death.²³

The relevant portion of the current statute is:

The surviving spouse of any citizen and resident of this State who was honorably discharged and, after the citizen and resident's death, is declared to have suffered a service-connected disability as provided in subsection a. of this section, shall be entitled, on proper claim made therefor, to the same exemption the deceased would have become eligible for. The exemption shall continue during the surviving spouse's widowhood or widowerhood, as the case may be, and while a resident of this State, for the time that the surviving spouse is the legal owner thereof and actually occupies the dwelling house or any other dwelling house thereafter acquired.

The Exemption Statute, however, does not define "widow" or "widowhood," nor does it mention remarriage.²⁴

In *Pruent-Stevens*, the Court addressed the arguments regarding the undefined term, "widowhood" with respect to the veterans' exemption, considering whether Plaintiff's marriage to Mr. Stevens in 1993 permanently extinguished her "widowhood," thereby making her ineligible for the exemption.²⁵

Plaintiff maintained that "a woman who remarries always remains the widow of her husband."²⁶ Plaintiff's definition is predicated on common law establishing that "the legal status of a widow upon subsequent remarriage does not affect any vested rights she acquired before her remarriage."²⁷ Plaintiff further argued that the focus is on the status of the surviving spouse, since the phrase "is still unmarried" is distinct from "has never remarried."²⁸

The Court noted that Plaintiff's definition is also used in a number of other states.²⁹ The

²² *Pruent-Stevens*, 30 N.J. Tax at 209.

²³ *Id.* at 210.

²⁴ *Id.* at 211.

²⁵ *Id.* at 211-13.

²⁶ *Id.* at 217.

²⁷ *Id.* (citing *Hansen v. The Brann & Stewart Co.*, 90 N.J.L. 444, 447 (Sup. Ct. 1913)).

²⁸ *Id.* at 218.

²⁹ *Id.* at 217-19 (citing *In re Estate of Ray*, 13 Misc. 480 (Sur. Ct. 1895)) (Court interpreted 'husband' to include 'widower'); see *Bd. of Trs. of Police men's & Firemen's Ret. Fund v. Kennedy*, 547 So.2d 886 (Ala. Civ. App. 1989) (widow was entitled to receive pension benefits, and a subsequent marriage did not forever terminate her right

Court also found that “both the Division of Taxation and the Office of Legislative Services have publicly disseminated information on the veterans’ exemption and deduction, of which a fair reading would indicate that it is the present, not past, status of the surviving spouse that qualifies.”³⁰ Previously, the New Jersey Legislature “defined a widow as a person, not as a marital status.”³¹

Adopting this approach, the Court found that “a ‘widow’ is always the widow of her deceased spouse until she herself dies,” and that the benefit “terminates upon remarriage, not widowhood.”³² The Court found that Plaintiff qualified based on that language and determination.³³ Finally, the Court found that no additional burden was created due to its determination of the meaning of widow.

Given the difficulty that the Court had in deciding the meaning of “widow” it appears appropriate to add a definition to the statute. The Commission’s scope in determining a definition is limited; the term defined is part of the Constitution. Any definition should be in accord with judicial interpretation of the Constitution, that is, *Pruent-Stevens v. Twp. of Toms River*. One possible approach would be to add a subsection (f) to N.J.S. 54:4–3.30 to define the undefined terms. Two options for doing so are shown below. Staff seeks guidance from the Commission regarding the proposed approach.

Language of Existing Statute:

54:4-3.30. Exemption of dwellings of veterans suffering certain disabilities; surviving spouse's rights

- a. The dwelling house and the lot or curtilage whereon the same is erected, of any citizen and resident of this State, now or hereafter honorably discharged or released under honorable circumstances, from active service, in time of war, in

to receive benefits).

³⁰ *Pruent-Stevens*, 30 N.J. Tax at 219-20 (focusing on the phrase “unmarried surviving spouses”).

³¹ *Id.* at 221.

³² *Id.*; *Id.* at 202 (finding that an applicant’s marital status does not become relevant until the VA determines that the deceased spouse was 100% disabled due to military service, and that the Legislature’s use of the qualifying phrase “has not remarried” is meant to reflect current marital status during “widowhood” or “widowerhood”).

³³ *Id.* at 220; *Id.* (“In 2005, the Office of Legislative Services published a report regarding ‘Qualifications For Eligibility To Receive Veterans Property Tax Deduction,’ in which it cited online publications referring ‘to remarriage in the present tense as opposed to the past tense.’”); *Id.* at 221 (citing N.J.S. 18A:66–2(u)(1)) (“[O]ther unrelated New Jersey statutes do contain such a definition,” specifically the Teachers’ Pension and Annuity Fund ... which reads in pertinent part: “The dependency of such a widow will be considered terminated by the marriage of, or establishment of a domestic partnership by, the widow subsequent to the member’s death”); *and see id.* at 213 (This was found even though the Court determined that the eligibility requirements for the tax exemption would not be retroactive).

any branch of the Armed Forces of the United States, who has been or shall be declared by the United States Veterans Administration or its successor to have a service-connected disability from paraplegia, sarcoidosis, osteochondritis resulting in permanent loss of the use of both legs, or permanent paralysis of both legs and lower parts of the body, or from hemiplegia and has permanent paralysis of one leg and one arm or either side of the body, resulting from injury to the spinal cord, skeletal structure, or brain or from disease of the spinal cord not resulting from any form of syphilis; or from total blindness; or from amputation of both arms or both legs, or both hands or both feet, or the combination of a hand and a foot; or from other service-connected disability declared by the United States Veterans Administration or its successor to be a total or 100% permanent disability, and not so evaluated solely because of hospitalization or surgery and recuperation, sustained through enemy action, or accident, or resulting from disease contracted while in such active service, shall be exempt from taxation, on proper claim made therefor, and such exemption shall be in addition to any other exemption of such person's real and personal property which now is or hereafter shall be prescribed or allowed by the Constitution or by law but no taxpayer shall be allowed more than one exemption under this act.

b. (1) The surviving spouse of any such citizen and resident of this State, who at the time of death was entitled to the exemption provided under this act, shall be entitled, on proper claim made therefor, to the same exemption as the deceased had, during the surviving spouse's widowhood or widowerhood, as the case may be, and while a resident of this State, for the time that the surviving spouse is the legal owner thereof and actually occupies the said dwelling house or any other dwelling house thereafter acquired.

(2) The surviving spouse of any citizen and resident of this State who was honorably discharged and, after the citizen and resident's death, is declared to have suffered a service-connected disability as provided in subsection a. of this section, shall be entitled, on proper claim made therefor, to the same exemption the deceased would have become eligible for. The exemption shall continue during the surviving spouse's widowhood or widowerhood, as the case may be, and while a resident of this State, for the time that the surviving spouse is the legal owner thereof and actually occupies the dwelling house or any other dwelling house thereafter acquired.

c. The surviving spouse of any citizen and resident of this State, who died in active service in time of war in any branch of the Armed Forces of the United States, shall be entitled, on proper claim made therefor, to an exemption from

taxation on the dwelling house and lot or curtilage whereon the same is erected, during the surviving spouse's widowhood or widowerhood, as the case may be, and while a resident of this State, for the time that the surviving spouse is the legal owner thereof and actually occupies the said dwelling or any other dwelling house thereafter acquired.

d. The surviving spouse of any citizen and resident of this State who died prior to January 10, 1972, that being the effective date of P.L.1971, c. 398,¹ and whose circumstances were such that, had said law become effective during the deceased's lifetime, the deceased would have become eligible for the exemption granted under this section as amended by said law, shall be entitled, on proper claim made therefor, to the same exemption as the deceased would have become eligible for upon the dwelling house and lot or curtilage occupied by the deceased at the time of death, during the surviving spouse's widowhood or widowerhood, as the case may be, and while a resident of this State, for the time that the surviving spouse is the legal owner thereof and actually occupies the said dwelling house on the premises to be exempted.

e. Nothing in this act shall be intended to include paraplegia or hemiplegia resulting from...

Proposed Changes:

Option 1

f. For purposes of this statute, widowhood or widowerhood shall begin at the death of the qualified veteran to whom the widow or widower is then married and continue through the life of the widow or widower but shall not include any periods during which the widow or widower is remarried.

Option 2

f. For purposes of this statute, widowhood or widowerhood benefits shall be given to qualified individuals during the periods when the surviving spouse is not married.