STATE OF MICHIGAN

COURT OF APPEALS

USA HOCKEY FOUNDATION and PLYMOUTH AC, LLC,

Petitioners-Appellants,

v

PLYMOUTH TOWNSHIP,

Respondent-Appellee,

and

MICHIGAN DEPARTMENT OF TREASURY,

Intervening Respondent-Appellee.

UNPUBLISHED
March 18, 2021

No. 353171
Tax Tribunal
LC No. 18-001431

Before: BORRELLO, P.J., and BECKERING and SWARTZLE, JJ.

PER CURIAM.

Petitioners appeal as of right the order of the Michigan Tax Tribunal denying their motion for partial summary disposition and granting respondents' motions for summary disposition. At issue is whether petitioners are entitled to the charitable-institution exemption from ad valorem property taxation for an ice-hockey arena in Plymouth, Michigan. The tribunal ruled that petitioners were not entitled to the exemption set forth in MCL 211.7*o*(1), which exempts property "owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated." Because the tribunal correctly resolved this case under *Trinity Health-Warde Lab, LLC v Charter Twp of Pittsfield*, 317 Mich App 629; 895 NW2d 226 (2016), we affirm.

I. BACKGROUND

The subject property is an ice-hockey arena located in Plymouth Township. Plymouth AC, LLC (Plymouth) acquired the subject property in April 2015, and it financed the acquisition through the issuance of tax-exempt bonds. In 2018, respondent Plymouth Township (the

Township) determined the taxable value of the subject property to be $5,248,800, and assessed the subject property at $9,811,670. Petitioners filed a notice of appeal with the board of review, which denied the appeal.

Petitioners challenged the Township's decision by filing a petition in the Michigan Tax Tribunal. In their petition, they alleged that USA Hockey Foundation (the Foundation) is a non-profit entity, and that the Foundation is the sole member of Plymouth. Notably, however, the petition did not allege that Plymouth is a non-profit entity. Rather, the petition alleged that Plymouth is a Colorado limited-liability company with authority to conduct business in Michigan. In addition, the petition alleged that Plymouth owned the subject property, having acquired it "in April 2015 from a private property owner." In their tax-tribunal filing, petitioners raised several challenges to the Township's denial of the claim for exemption: (1) valuation, (2) assessment, (3) taxable value, (4) constitutional violations, and (5) exemption from taxation. Petitioners requested that the tribunal reduce the 2018 taxable value and state-equalized value of the subject property to $0.

The Township filed an answer to the petition, and the Michigan Department of Treasury moved to intervene in the proceeding. Neither petitioners nor the Township filed a response, and the tribunal granted the motion to intervene, based on its conclusion that the Department of Treasury had a financial interest in the case that was not represented by the existing parties.

In the tribunal, the parties filed cross motions for summary disposition. Petitioners requested that the tribunal enter partial summary disposition in their favor on the ownership aspect of MCL 211.7*o*. Respondents requested that the tribunal enter summary disposition in their favor regarding whether the subject property was exempt from taxation under MCL 211.7*o*. All parties filed briefs opposing the relief requested by their adverse parties.

The tribunal decided the cross motions under MCR 2.116(C)(10), and applied the test for entitlement to the charitable-institution exemption as expressed in *Wexford Med Group v Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006), which explained that a taxpayer must satisfy three elements to be entitled to the nonprofit-charitable-institution exemption set forth in MCL 211.7*o*:

> (1) The real estate must be owned and occupied by the exemption claimant;
> (2) the exemption claimant must be a nonprofit charitable institution; and
> (3) the exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

The tribunal concluded that petitioners did not satisfy the first element of the nonprofit-charitable-institution exemption because Plymouth did not *both* own *and* occupy the subject property. As the tribunal explained:

> With respect to the first element, Petitioners do not dispute that Plymouth is the only grantee listed on the Covenant Deed and thus fee simple title to the subject [property] is held by Plymouth alone. Petitioners do not contend, and no documentation shows, that Plymouth itself occupies the property in any way. Petitioners stated in their response to interrogatories that Plymouth "was created

> for the purpose of the acquisition and operation of the subject property," and leases show that the property is occupied by USA Hockey and Concessions. In addition, Plymouth sells space at the subject property to advertisers, licenses space to high schools for commencement ceremonies, and various hockey tournaments are held at the subject property. As such, Plymouth fails the first element because it does not occupy the subject property. The Foundation also does not satisfy the first element because it does not own the subject property. It is undisputed that the Foundation is the sole member of Plymouth. However, the Colorado Limited Liability Act provides that a "membership interest" is "a member's share of the profits and losses of a limited liability company and the right to receive distributions of such company's assets." Michigan law similarly provides that an LLC's "member has no interest in specific limited liability company property." Therefore, the Foundation has no ownership interest in Plymouth's assets, and thus does not own the subject property." [Citations omitted.]

The tribunal also concluded that petitioners did not satisfy the second element of the nonprofit-charitable-institution exemption because the subject property was not owned by a non-profit entity:

> The undisputed facts also show that Petitioners do not satisfy the second element because the subject [property] must be owned by a nonprofit. The Foundation organized Plymouth under the Colorado Limited Liability Company Act, CRS 7-80-101 *et seq*. This section is distinct from the Colorado Revised Nonprofit Corporation Act, CRS 7-121-101 *et seq*. Because Plymouth was organized under the Limited Liability Company Act, rather than the Nonprofit Corporation Act, there is no dispute of fact that Plymouth is organized as a for-profit LLC. Petitioners contend that the operating agreement between Plymouth and the Foundation states that Plymouth will not operate in a manner that could cause the Foundation to lose its nonprofit status, and thus that Plymouth is a nonprofit. However, Petitioners cite no authority for the proposition that an operating agreement may change an entity organized under a for-profit statute into a nonprofit entity. [Citations omitted.]

Finally, the tribunal considered and rejected petitioners' argument that property owned by Plymouth, as a wholly-owned subsidiary of a nonprofit-charitable institution, was automatically exempt from ad valorem taxation under the nonprofit-charitable-institution exemption set forth in MCL 211.7*o*. The tribunal concluded:

> Granting the subject an exemption under MCL 211.7*o* would require the Tribunal to combine Plymouth's ownership with the Foundation's nonprofit status and arguable occupancy for charitable purposes while ignoring the practical distinctions created by Petitioners themselves. As such, the Tribunal concludes that no material facts are in dispute with respect to ownership and summary disposition under MCR 2.116(C)(10) in Respondents' favor is warranted.

Petitioners now appeal as of right from the tribunal's decision.

II. ANALYSIS

This Court's review of a decision by the Tax Tribunal is limited. *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012). When a party does not dispute the facts or allege fraud, "our review is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle." *Id*. at 527-528. Furthermore, this Court reviews de novo the interpretation and application of tax statutes. *Id*. at 528.

The General Property Tax Act (the GPTA) provides that "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.1. The petitioner bears the burden of proving that it is entitled to an exemption. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 492-494; 644 NW2d 47 (2002). At issue in this case is MCL 211.7*o*(1), which provides an exemption from ad valorem taxation for real property owned and occupied by a nonprofit charitable institution. The statute provides, in pertinent part:

> (1) Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act. [MCL 211.7*o*.]

As explained by the Michigan Supreme Court, a taxpayer must satisfy three elements to be entitled to the nonprofit-charitable-institution exemption:

> (1) The real estate must be owned and occupied by the exemption claimant;
> (2) the exemption claimant must be a nonprofit charitable institution; and
> (3) the exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated. [*Wexford*, 474 Mich at 203.]

The tribunal characterized petitioners' argument in this case as one that "an entity that is a wholly-owned subsidiary of a nonprofit charitable institution may seek an exemption" based on the entitlement of its parent organization to a tax exemption. That is, petitioners contend that Plymouth is entitled to the nonprofit-charitable-institution exemption because it is a wholly-owned subsidiary of the Foundation, which is a nonprofit entity. This Court rejected this argument in *Trinity Health-Warde Lab*, which is precedentially binding on this Court.

In *Trinity Health-Warde Lab*, a for-profit limited-liability company argued that its real property was exempt from taxation because it was a wholly-owned subsidiary of a nonprofit hospital. This Court rejected that argument on appeal, holding that the plain language of the GPTA precluded the petitioner from claiming the property-tax exemption because it was a for-profit limited-liability company. *Trinity Health-Warde Lab*, 317 Mich App at 634. This Court also rejected the argument that a nonprofit entity's entitlement to tax-exempt status can be extended to its wholly-owned subsidiary that was not itself a tax-exempt entity. *Id*. at 634-636. As this Court explained:

> We conclude that the Tribunal adopted a wrong principle when the Tribunal allowed the [petitioner] to use the tax-exempt status of its parent corporation when it is not itself a nonprofit entity. The [petitioner] does not meet the statutory

> requirements for exemption under MCL 211.7r or MCL 211.7*o*, and caselaw does not provide that a for-profit entity may use a nonprofit parent corporation's tax-exempt status. Allowing it to do so would be contrary to the plain language of the statutes, which require the property to be owned by the nonprofit organization seeking the exemption. [*Id*. at 636.]

The statutory language at issue in this case provides that real and personal property is exempt from ad valorem taxation only when it is "owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated." MCL 211.7*o*. Because the real property in this case is owned only by Plymouth, which is not a nonprofit-charitable institution, Plymouth is not entitled to the tax exemption, and the tribunal correctly ruled on the parties' cross-motions for summary disposition.

Petitioners offer no argument why this Court is not bound by its prior holding in *Trinity Health-Warde Lab*, which is precedentially binding on this Court. See MCR 7.215(J). Petitioners offer the bare assertion that *Trinity Health-Warde Lab* was "incorrectly decided and not in line with prior established precedent." In part, petitioners point to the fact that the petitioner involved in *Trinity Health-Warde Lab* filed an application for leave to appeal with the Michigan Supreme Court, which scheduled oral argument on whether to grant the application for leave to appeal or take other action. See *Trinity Health-Warde Lab, LLC v Charter Twp of Pittsfield*, 501 Mich 900; 905 NW2d 225 (2017). It is undisputed, however, that the Supreme Court never granted leave to appeal in that case. Instead, the Supreme Court dismissed the appeal with prejudice, on stipulation of the parties. See *Trinity Health-Warde Lab, LLC v Charter Twp of Pittsfield*, 501 Mich 938; 904 NW2d 599 (2017). An order of the Supreme Court is binding precedent "if it constitutes a final disposition of an application and contains a concise statement of the applicable facts and reasons for the decision." *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 369; 817 NW2d 504 (2012); see Const 1963, art 6, § 6. In *Trinity Health-Warde Lab*, the Supreme Court's final disposition of the application for leave to appeal—its order dismissing the appeal with prejudice—did not contain any language indicating "agreement or disagreement with this Court's analysis or otherwise address the merits of the issue." *People v Giovannini*, 271 Mich App 409, 414; 722 NW2d 237 (2006). "Thus, the Supreme Court's order cannot be understood as expressing an opinion on how the issue should be decided." *Id*. This Court's holding in *Trinity Health-Warde Lab* remains precedentially binding on this panel.

Petitioners argue that "ownership" of real property "is not the same as holding legal title." Petitioners further argue that, because the Foundation "is the sole member of, and has complete control over" Plymouth, the Foundation effectively or indirectly owns the real property to which Plymouth holds legal title. As petitioners contend, "the Subject Property is considered to be owned by [the Foundation], a non-profit charitable institution, because [Plymouth] is a limited liability company that is a wholly-owned and controlled subsidiary" of the Foundation. In support of this argument, petitioners cite *Ann Arbor v Univ Cellar, Inc*, 401 Mich 279; 258 NW2d 1 (1977).

In *Trinity Health-Warde Lab*, 317 Mich App at 634, this Court considered the Supreme Court's opinion in *Univ Cellar*, and held that "this decision does not establish that a subsidiary corporation is, in fact, entitled to a tax exemption when it is a nonexempt organization and the parent company is exempt." That is because the Supreme Court specifically did not decide

"whether a tax exempt organization may extend its exemption to a separate corporation, albeit one organized to carry out the exempt purpose." *Id*., quoting *Univ Cellar*, 401 Mich at 285.

> Our Supreme Court explicitly assumed, without deciding, that the Legislature intended to permit an exempt organization to extend its exemption to a nonexempt organization. However, the [*Univ Cellar*] Court expressed caution on that issue:
>
> > To disregard the corporate entity and treat the Cellar as the alter ego of the University for tax exemption purposes, and yet regard it as a separate entity for purposes of determining whether the University is subject to liability to unpaid suppliers or to customers who are injured on the premises or by defective products would be to run with the hare and hunt with the hounds.
>
> It is axiomatic that a court is not bound on a point of law that a previous court did not actually consider or decide. The [*Univ Cellar*] Court expressly declined to decide the question, and we conclude that the Tribunal made an error of law in concluding that [*Univ Cellar*] stood for the proposition that a tax-exempt parent corporation could extend its tax-exempt status to a related entity. [*Id*. at 635 (citations omitted).]

Petitioners' argument that the Foundation "owns" the real property to which its subsidiary company holds legal title is simply another way to express its argument that a subsidiary corporation is entitled to a tax exemption when its parent company is exempt. This Court directly rejected that argument in *Trinity Health-Warde Lab*.

Finally, petitioners argue that the tribunal erred when it held that Plymouth is a for-profit entity. Petitioners argue that it is too "simplistic" to focus on the fact that Plymouth was formed under Colorado's limited-liability company act, rather than its nonprofit-corporation act. Yet, petitioners cite no authority for the proposition that a business entity formed as a limited-liability company may be considered as a non-profit, rather than a for-profit, entity. Indeed, we note that the petition filed in the tax tribunal expressly alleged that the Foundation is a non-profit corporation, but made no allegation that Plymouth is a non-profit entity. Petitioner's argument is without merit. The tribunal did not err in holding that there is no dispute of fact that Plymouth is organized as a for-profit LLC.

Affirmed. Respondents, having prevailed in full, may tax costs under MCR 7.219(F).

/s/ Stephen L. Borrello
/s/ Jane M. Beckering
/s/ Brock A. Swartzle