

STATE OF MICHIGAN
COURT OF APPEALS

CAMP RETREATS FOUNDATION, INC.,

Petitioner-Appellant,

v

TOWNSHIP OF MARATHON,

Respondent-Appellee.

UNPUBLISHED

May 15, 2012

No. 304179

Tax Tribunal

LC No. 00-346969

Before: FITZGERALD, P.J., and MURRAY and GLEICHER, JJ.

PER CURIAM.

Camp Retreats Foundation, Inc., a Michigan non-profit corporation, owns 106 acres of land in Marathon Township. The property includes a lodge, dining hall, athletic facilities, two swimming pools, residence dormitories, a prayer hall, and other buildings. Nonprofit organizations primarily associated with the Muslim faith use the facility for camps, retreats, and other philanthropic activities. The Tax Tribunal denied Camp Retreats a charitable exemption from ad valorem taxation, finding that it did not meet the definition of a charity. We reverse and remand for entry of judgment in favor of Camp Retreats Foundation.

I. FACTS AND PROCEEDINGS

Until June 2007, the property at issue was owned by the Tau Beta Association, which sponsored summer camps for disadvantaged children. Marathon Township granted Tau Beta exemption from ad valorem taxation. According to Tom Valentine, Marathon Township's assessor and chairman of its planning commission, Tau Beta was "a sorority group" that used the facility as "a charitable camp." Camp Retreats purchased the property with funds supplied by the Tawheed Institute, a nonprofit corporation that enjoys tax-exempt status pursuant to 26 USC 501(c)(3).¹ The Tawheed Institute's articles of incorporation set forth its purpose as follows:

¹Camp Retreats, a 501(c)(2) organization, is a wholly-owned subsidiary of the Tawheed Institute. 501(c)(2) organizations are "[c]orporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section," e.g. a 501(c)(3) corporation. 26 USC 501(c)(2).

To operate exclusively for the purposes set for in section 501(c)(3) of the Internal Revenue Code, as amended (“the Code”[)], including for purposes of [sic] such as making of distribution to organizations that qualify as exempt organizations under Code Section 501(C)(3) [sic]. Such activities shall specifically include the promotion of athletic sports pastimes dedicated to young adults and children. To take or lease building or lands for purposes of holding matches and promote the sports and physical activities for young adults and children.

Despite that this description focuses on “athletic pastimes,” the parties agree that the Tawheed Institute is actually an Islamic organization. Before purchasing the Marathon Township property, Tawheed sponsored Islamic summer camps at facilities leased from the YMCA and other organizations. As a renter of camp facilities, Tawheed encountered logistical difficulty in structuring gender-segregated living and recreational areas. Tawheed sought a facility that could be adapted to Islamic living requirements, and bought the former Tau Beta camp to advance this goal.

After purchasing the facility, Camp Retreats created three separate “villages” to accommodate gender-segregated activities. For example, female campers use their own swimming pool and tennis court. Since 2008, the Tawheed Institute has conducted two-week-long Tawheed summer camps at the facility. Camp agendas include thrice-daily congregational prayer, Qur’an recitations, and lectures on the Qur’an. The 2008 description of camp “qualifications and requirements” provided:

All participants must observe Islamic laws, which includes but is not limited to, good moral standards, maintaining proper hijab, keeping away from backbiting and gossiping, presenting oneself with respect and dignity, maintaining decency with appropriate clothing and more. Brothers and sisters must show respect for each other. Any misconduct may lead to expulsion from the camp if deemed necessary.

During the 2008 camp session, the Tawheed camp’s theme was “The Holy Prophet (saww).” The “curriculum” statement for the camp session described the thematic planned activities as follows:

All the cabins will be named after his blessed character and each participant belonging to the particular cabin shall work with their group to represent a character of his.

Various competitions and plays shall be conducted during the 2 weeks. Camp fires are of course one of the best highlights during the camp and we plan to hold many of these.

If time permits, we will conduct a short Qur’an recitation and memorization competition with prizes given to the best reciters.

All the daily prayers shall be conducted in congregation (jamaat) followed by recitations of du’a as well as short surahs from the Holy Qur’an.

Tawheed's camping programs are open to people of all faiths and non-Muslims have attended. Participation in Muslim prayer is not required of camp attendants. Other groups have rented the Camp Retreats facility; most have been associated with Islam. A full-time caretaker resides on the property.

In 2008, Marathon Township classified the Camp Retreats property as commercial and rejected Camp Retreats' request for a tax exemption. Camp Retreats appealed in the Michigan Tax Tribunal. Initially, Camp Retreats invoked several different statutory grounds for exemption from ad valorem taxation, including MCL 211.7n, MCL 211.7o, and MCL 211.7q. When the Tax Tribunal hearing commenced, Camp Retreats' counsel waived the claims brought under MCL 211.7n and MCL 211.7q, specifically limiting Camp Retreats' exemption claim to MCL 211.7o, applicable to "charitable institutions."

The Tax Tribunal rejected Camp Retreats' contention that it was entitled to an exemption. The Tax Tribunal judge found that Camp Retreats had not been "organized for charitable purposes," and concluded that even when analyzed along with the Tawheed Institute, Camp Retreats "is chiefly organized for recreational purposes rather than for charitable purposes."

II. STANDARDS OF REVIEW

The Michigan Supreme Court summarized as follows the applicable standards governing review of Tax Tribunal rulings:

The standard of review for Tax Tribunal cases is multifaceted. Where fraud is not claimed, this Court reviews the tribunal's decision for misapplication of the law or adoption of a wrong principle We deem the tribunal's factual findings conclusive if they are supported by competent, material, and substantial evidence on the whole record Const 1963, art 6, § 28^[2] [*Wexford Med Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006) (quotation marks and some citations omitted).]

The substantial evidence standard signifies a level reaching "more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. Failure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal." *Leahy v Orion Twp*, 269 Mich App 527, 529-530; 711 NW2d 438 (2006) (quotation marks and citation omitted). "[W]hen statutory interpretation is involved, this Court reviews the tribunal's decision de novo." *Wexford Med Group*, 474 Mich at 202.

² Const 1963, art 6, § 28, provides as follows with respect to review of administrative property tax valuation decisions: "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation."

III. ANALYSIS

Camp Retreats contends that the Tax Tribunal erred by denying its claim to the charitable exemption from ad valorem taxation codified in MCL 211.7o(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.” Because the definition of a “charity” includes “a gift” benefiting an indefinite number of people by “bringing their minds or hearts under the influence of . . . religion,” the Tribunal erred by denying Camp Retreats’ request for tax exemption as a charitable institution.

In *Wexford Med Group*, 474 Mich 192, our Supreme Court closely examined the contours of the charitable institution exemption. The initial test that must be applied to property for which a charitable exemption is claimed includes the following components:

- (1) The real estate must be owned and occupied by the exemption claimant;
- (2) The exemption claimant must be a . . . charitable . . . institution;
- (3) The claimant must have been incorporated under the laws of this state;
- (4) 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. [*Id.* at 203 (quotation marks and citation omitted).]

The disputed issue in this case is whether the Tax Tribunal misinterpreted the law by finding the nature of Camp Retreats to be “recreational” rather than charitable.

The Tribunal commenced its analysis by reviewing the relationship between Camp Retreats and Tawheed. Because Internal Revenue Service requirements mandate that Section 501(c)(2) organizations confine their purposes and powers to holding title to property, collecting income from property, and turning over the amount collected to an exempt organization, the Tribunal appropriately analyzed Camp Retreats’ exemption claim “by including evidence and testimony that relates to Tawheed Institute, Inc., a Section 501(c)(3) corporation and the parent” of Camp Retreats.

Addressing the first factor, the Tribunal found that the presence of a full-time caretaker on the property “and possibly the use of the subject property by” the Tawheed Institute for four weeks during 2010 and two weeks in 2008 and 2009, “minimally” satisfied the occupancy requirement. The second factor concerns whether Camp Retreats qualifies as a “nonprofit charitable institution.” While the parties agree that Camp Retreats and the Tawheed Institute are nonprofit entities, the dispute in this case centers on whether they fulfill the definition of a charitable institution.

Wexford describes several “common threads” found in the case law construing the term “charitable institution.” First, the Supreme Court emphasized, “it is clear that the institution’s activities as a whole must be examined; it is improper to focus on one particular facet or activity.” *Id.* at 212. This evaluation necessitates consideration of “the overall nature of the

institution, as opposed to its specific activities.” *Id.* at 213. Alternatively stated by this Court, “[t]he substance of an arrangement rather than its form should be the guiding principle in determining ownership and tax exemption status.” *NMC v Green Lake Twp*, 76 Mich App 608, 614; 257 NW2d 188 (1977). “A second indispensable principle is that the organization must offer its charitable deeds to benefit people who need the type of charity being offered.” *Wexford Med Group*, 474 Mich at 213. According to this requirement, a charity may not restrict its beneficence to a select few. “This does not mean, however, that a charity has to serve every single person regardless of the type of charity offered or the type of charity sought. Rather, a charitable institution can exist to serve a particular group or type of person, but the charitable institution cannot discriminate within that group.” *Id.* Third, “each case is unique,” and courts may not place “an artificial parameter on the charitable institution statute” by erecting a threshold level of charitable endeavor. *Id.*

After setting forth these principles, the Supreme Court adopted the following definition of “what a claimant must show to be granted a tax exemption as a charitable institution”:

“[Charity] . . . [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.” [*Id.* at 214, quoting *Jackson v Phillips*, 96 Mass (14 Allen) 539 (1867).]

This definition supplied the *Wexford* Court with the following factors to be applied in making a MCL 211.7o(1) determination:

- (1) A “charitable institution” must be a nonprofit institution.
- (2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.
- (3) A “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.
- (4) A “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burden of government.
- (5) A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of

the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year. [*Wexford Med Group*, 474 Mich at 215.]

The Tax Tribunal found that Camp Retreats was not organized solely or chiefly for charity, but instead to promote sports and recreation. The Tribunal further found that Camp Retreats failed to establish that it made the property “available to the general public” or benefited “an indefinite number of persons.” In reaching these conclusions, the Tribunal disregarded its own factual determination that the facility was chiefly used as camp for children and families of the Muslim faith, and in so doing misapplied the law. We find that the property fulfills the requirements of a charity because its primary use focuses on “bring[ing] people’s minds or hearts under the influence of . . . religion,” and it offers this charity on a nondiscriminatory basis.

As the Tax Tribunal recognized in its findings of fact, various groups sharing an identity with Islam constitute the principal users of the camp facility: “Most groups renting the subject facilities were of the Islamic faith because the facilities are constructed to separate and ‘manage’ the two genders and because the availability of the facilities was generated through word of mouth communications among Muslims.” Indeed, un rebutted evidence established that Camp Retreats bought the land specifically intending to create a camp for use by people of the Islamic faith, and has created a facility particularly suitable for that use. In rejecting the inherently religious nature of the camp and its structures, the Tax Tribunal relied solely on the articles of incorporation filed by Tawheed and Camp Retreats. While the articles bear relevance to whether the use of the property qualifies as charitable, they are not definitive. In *Mich Baptist Homes Dev Co v City of Ann Arbor*, 396 Mich 660, 671; 242 NW2d 749 (1976), the Supreme Court looked beyond a petitioner’s articles of incorporation, which announced “benevolent, charitable and general welfare purposes,” concluding that the facts did not support this characterization. Here, the Tax Tribunal misinterpreted the law by confining its consideration of charitable purposes to the articles of incorporation and by disregarding the evidence linking the purposes of Tawheed and Camp Retreats to religious expression.

The relevant inquiry is whether the property “benefit[s] . . . an indefinite number of persons, either by bringing their minds or hearts under the influence of . . . religion.” This requires a searching examination of the actual nature of the activities conducted on the land, with an eye toward evaluating “the overall nature of the institution, as opposed to its specific activities.” *Wexford*, 474 Mich at 213. The record evidence substantiates that Tawheed’s articles of incorporation do not reflect the true purposes of the organization. Despite the articles’ emphasis on athletic activities for youth, Camp Retreats’ central focus is on providing the Islamic community with religious experience in a camp environment. Marathon Township admits as much; its brief in this Court asserts: “Apart from a few exceptions, all uses share the common thread of being Islamic in nature. Participants either have a personal connection to the two directors, who are both Muslim, or are tied to Muslim groups or activities.”

Given that the evidence overwhelmingly supports the religious nature of Tawheed’s activities on the property, we are hard-pressed to distinguish this case from *Gull Lake Bible Conference Ass’n v Ross Twp*, 351 Mich 269; 88 NW2d 264 (1958). In that case, the nonprofit plaintiff’s stated purpose was “[t]o promote and conduct gatherings at all seasons of the year for the study of the Bible and for inspirational and evangelistic addresses.” *Id.* at 271. The plaintiff

owned a “tabernacle and youth chapel” located on land exempt from ad valorem taxation. *Id.* In addition, the plaintiff owned land “in close proximity” to the tabernacle and youth chapel that included a lake, “a fellowship center building, picnic area, boat docks, bath house, bathing beach, playground, and horseshoe and badminton courts.” *Id.* at 272. The Supreme Court held that the additional land qualified for a charitable property tax exemption because its use “promote[d]” gathering for the study of the Bible. *Id.* at 275. The Supreme Court adopted the following elaboration of the plaintiff’s charitable function:

Looking at the situation in the light of this latter purpose, it may be logically concluded that in order to obtain satisfactory attendance to its conference, plaintiff found it advisable and necessary to provide those attending with living accommodations, recreational facilities and all of the other services offered by plaintiff and made possible through the use and occupancy of the land in question by plaintiff in the manner in which they do use and occupy such land. [*Id.*]

As in *Gull Lake*, the Tawheed camp’s recreational opportunities further religious purposes. Islamic worship and observance are inextricably interwoven into the camp’s daily programs. An internet description of the property introduced by Marathon Township portrayed Tawheed camps as providing “a full residence summer and winter camp experience in a beautiful setting within an Islamic environment.” Thus, the camp’s overall structure operates as a “gift” for the benefit of an indefinite number of persons, by bringing their minds or hearts under the influence of religion.

Finally, we reject as entirely unsupported the Tribunal’s finding that Camp Retreats failed to establish that it made the property “available to the general public” or benefited “an indefinite number of persons.” No evidence supports that the general public was prevented from attending Tawheed programs. To the contrary, the testimony substantiated that Tawheed welcomed participants of every faith, as well as atheists. Although the Tax Tribunal may rest a factual finding on substantially less than a preponderance of the evidence, an unsupported conclusion constitutes an error of law. *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 388-389; 576 NW2d 667 (1998).

Contrary to the Tribunal’s reasoning, the presence of fences on the property and signs warning against trespassing bear no relationship to whether Camp Retreats offers its charity generally and without restriction. In *Wexford*, the Supreme Court described the healthcare organization meriting an exemption as offering “free and reduced-cost medical care to the indigent with no restrictions. It operates under an open-access policy under which it accepts any patient who walks through its doors, with preferential treatment given to no one.” *Wexford*, 474 Mich at 216, footnote omitted. Here, Camp Retreats offers its property to nonprofit organizations without restriction. Institutions including the University of Michigan and the Marathon Fire Department have also used the facility for minimal or no fees. That Camp Retreats maintains responsibility and control over who uses the property hardly defeats its charitable purpose. The Tax Tribunal misinterpreted the law by requiring that the property remain open to trespassers to qualify as a charity.

Reversed and remanded to the Tax Tribunal for entry of judgment in favor of Camp Retreats. We decline to assess costs.

/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray
/s/ Elizabeth L. Gleicher