STATE OF MICHIGAN

COURT OF APPEALS

STEVE CHEN, Petitioner-Appellant,	UNPUBLISHED October 17, 2013
v	No. 311979 Michigan Tax Tribunal
MUSKEGON COUNTY, Respondent-Appellee.	LC No. 00-431670

Before: HOEKSTRA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Following a hearing in front of the Michigan Tax Tribunal, petitioner was denied a principal residence exemption for his home in Muskegon County for tax years 2008 through 2011. Petitioner appeals as of right. Because we conclude that the tribunal properly applied the relevant legal principals, we affirm.

Petitioner claimed a principal residence exemption for a home he owned in Muskegon County, while living with his wife in her home in Wayne County. Petitioner was audited in 2011. While the audit was being conducted, petitioner changed his address on his driver's license and voter identification card from his wife's home to his house in Muskegon County. His principal residence exemption was subsequently denied by Muskegon County, and petitioner was billed for unpaid taxes. Petitioner appealed to the Michigan Tax Tribunal, which held that the home in Muskegon County was not petitioner's principal residence, and he was found ineligible for the principal residence exemption for that house.

On appeal, petitioner claims that the tribunal erred because the home was actually his principal residence. He also argues that he should be permitted to claim the principal residence exemption by making a retroactive conditional rescission, and that the decision was against public policy in light of his age, financial problems, and inability to sell the home.

Our review of the decisions of the Tax Tribunal is limited by Const 1964, art 6, § 28, which provides that "[i]n 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." Accordingly, any finding of fact by the tribunal is considered final if it is supported by competent and substantial evidence. *Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially

less than a preponderance of the evidence." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). The tribunal is free to make its own decisions regarding the weight to be given evidence presented. *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 636; 806 NW2d 342 (2011).

In pertinent part, MCL 211.7cc(1) states that, "[a] principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, if an owner of that principal residence claims an exemption as provided in that section." MCL 211.7dd(c) defines a "principal residence" as a place that is "the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established." MCL 211.7dd(c) also requires the residence be "owned and occupied" by the owner to be considered a principal residence.

First, we reject petitioner's argument that the Muskegon County home was actually his principal residence for all the years in question. In order to qualify as a principal residence, petitioner's Muskegon County home had to be the one place that he always intended to return. MCL 211.7dd(c). Contrary to petitioner's argument, the facts show that petitioner only changed his address to the Muskegon County home on October 31, 2011—after the audit process had begun. Before that, his address was listed at his wife's home. The tribunal determined that this was proof that the Muskegon County home was not petitioner's principal residence. As stated earlier, the tribunal is free to weigh the evidence in a manner it deems correct. *President Inn Props, LLC*, 291 Mich App at 636. The tribunal believed, based on the evidence, that petitioner was living at his wife's home, and that petitioner's Muskegon County home was not his principal residence. The evidence that petitioner only changed his address after being audited was adequate proof for the tribunal to make that decision. Therefore, the tribunal did not err.

Next, petitioner argues that he should be allowed to make a retroactive conditional rescission to keep the principal residence exemption for the years in question. However, petitioner did not properly file the necessary forms, nor did he have his house for sale the entire time, both of which are requirements for using a conditional rescission. MCL 211.7cc(5). Therefore, we reject petitioner's argument.

Next, petitioner argues that the tribunal erred by not considering his old age, financial difficulties, Federal HUD public policy, the real estate market in Muskegon County, and his inability to sell the house. However, none of these considerations pertain to the classification of petitioner's home in Muskegon County as his principal residence. MCL 211.7dd(c). Therefore, the tribunal did not err by failing to take these considerations into account.

Petitioner next argues that he paid all of the required taxes as stated in tax notice letters sent to him by Norton Shores City. Those notice letters, however, presumed that petitioner had properly claimed a principal residence exemption. As discussed *supra*, petitioner was not actually entitled to claim a principal residence exemption. Therefore, while he may have paid the full amount at the time, that amount was incorrect and petitioner's payment of the assessed taxes does not entitle him to relief on appeal.

Finally, petitioner argues that he should be able to retroactively change his principal residence to his home in Muskegon County, and pay the penalty on his wife's home in Wayne County. Petitioner argues that this action should be permitted because his taxes in Muskegon County are much higher, and it would save him money to have the principal residence exemption at that house. However, MCL 211.7cc does not allow individuals to choose the property on which to use the exemption. As discussed *supra*, petitioner's Muskegon County home is not his principal residence. Accordingly, this argument is without merit.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra