STATE OF MICHIGAN

COURT OF APPEALS

SASHKO TRIFONOV, Petitioner-Appellant,	UNPUBLISHED October 23, 2014
v	No. 317104 Tax Tribunal
CITY OF EASTPOINTE, Respondent-Appellee.	LC No. 00-449234

Before: METER, P.J., and WHITBECK and RIORDAN, JJ.

PER CURIAM.

Petitioner appeals as of right from an opinion and judgment of the Tax Tribunal denying petitioner's request for a personal residence exemption (PRE) for property located in Eastpointe. We affirm.

Petitioner filed for a PRE for the subject property for the 2011 and 2012 tax years. The Residential Small Claims Division of the Michigan Tax Tribunal denied his request, stating that petitioner had claimed a PRE for those years for property in Hazel Park. Petitioner sent a letter to the tribunal, claiming that he had been living in the Eastpointe home since 2010 and was the only owner of the property. He further claimed that he had filed a request to rescind the PRE for the Hazel Park property. He filed an appeal and numerous documents, including (1) a request he had filed to rescind the PRE for the Hazel Park property starting in 2011; (2) a notice of recission of the PRE for the Hazel Park property for 2012;[1] (3) a PRE affidavit for the Eastpointe property dated April 26, 2011; (4) a quitclaim deed, dated April 4, 2008, transferring the Hazel Park property from petitioner and his wife, Lorita Jelezarova, to petitioner, Jelezarova, and a man named Stoyan Jelezarov; (5) documents listing the Hazel Park property as the address for Jelezarov and Jelezarova; (6) tax returns for 2010, 2011, and 2012 listing petitioner's address as

[1] According to the tribunal in its opinion and judgment, respondent stated that this recission was only for petitioner and not for petitioner's wife, a co-owner of the property on Melville Road in Hazel Park. We note that certain documents in the record refer to additional property in Hazel Park, located on Goulson Avenue. Petitioner's wife claims to have lived at the Goulson Avenue property at certain points. Unless otherwise noted, when we refer to "the Hazel Park property" in this opinion we are referring to the property on Melville Road.

being the one in Eastpointe; (7) various other documents, such as bills, listing his address as being the Eastpointe address. Also in the record is a certificate of naturalization dated September 6, 2012, stating that petitioner resided in Hazel Park, that he was married, and that his country of former nationality was Bulgaria.[2]

Respondent filed several additional documents, including (1) a check dated March 11, 2013, in which petitioner's address is listed as being in Hazel Park; (2) a voter-registration card, effective on November 2, 2012, listing his mailing address as being in Hazel Park;[3] and (3) a water bill showing no use at the Eastpointe address from November 15, 2010, through April 28, 2011. The city stated, "2010 & 2011 income taxes were not filed, Married filing separately. Incomplete returns submitted by Petitioner."

The record contains no transcript of the hearing. On June 19, 2013, the tribunal issued an opinion and judgment denying petitioner's request for relief. The tribunal stated that petitioner was claiming that Jelezarova and Jelezarov occupy the Hazel Park property and that petitioner lives at the Eastpointe address, even though "it does need quite a bit of repair." The tribunal began its conclusions of law by stating that a property must be owned *and* occupied as a principal residence in order for the occupant to obtain a PRE. The tribunal noted that the evidence clearly demonstrated that petitioner owned both the Eastpointe and Hazel Park properties. It then found that some evidence, such as an affidavit from petitioner and driver's licenses, did support a conclusion that petitioner occupied the Eastpointe property for the 2011 and 2012 tax years. It further found that "[r]espondent has provided evidence that [p]etitioner did not occupy the subject property in the 2011 and 2012 tax years," such as the check listing a different address and the document listing the water-usage history. The tribunal concluded:

> Based upon the evidence presented [p]etitioner owns multiple properties. The unclear part which has conflicting information is the property [p]etitioner "occupies." It appears from the evidence that none of the evidence is conclusive. It appears to be put together to confuse[,] with [p]etitioner using Goulson Avenue as a mailing address, and the subject property at other instances. The utility bills do not assist this Tribunal in determining that [p]etitioner occupies the subject property for the tax years at issue.
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> Therefore . . . the property's PRE for the tax years at issue is DENIED . . . .

In *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 388; 576 NW2d 667 (1998), this Court noted that review of Tax Tribunal decisions is limited by the Michigan Constitution, which provides, in part:

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[2] At some point during these proceedings, petitioner changed his name from Sashko Trifonov to Alexander Montegue.

[3] The check and voter-registration card listed the Goulson Avenue address. See note 1, *supra*.

> 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. [Const 1963, art 6, § 28.]

The *Great Lakes Div of Nat'l Steel* Court continued:

> While this Court is bound by the Tax Tribunal's factual determinations and may properly consider only questions of law under this section, a Tax Tribunal decision that is not supported by competent, material, and substantial evidence on the whole record is an "error of law" within the meaning of Const 1963, art 6, § 28. Substantial evidence must be more than a scintilla of the evidence, although it may be substantially less than a preponderance of the evidence. "Substantial" means evidence that a reasonable mind would accept as sufficient to support the conclusion. [*Great Lakes Div of Nat'l Steel*, 227 Mich App at 388-389 (citation omitted).]

MCL 211.7cc(2) indicates that, in support of a request for a PRE, a taxpayer must file an affidavit indicating that "the property is owned and occupied as a principal residence by that owner of the property on the date that the affidavit is signed." MCL 211.7dd(c) states that "'[p]rincipal residence' means 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."

"In general, tax exempt[ion] statutes must be strictly construed in favor of the taxing authority." *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985). A petitioner seeking an exemption must prove his entitlement to that exemption by a preponderance of the evidence. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).

This case primarily involved a factual determination regarding whether the Eastpointe address reflected petitioner's principal residence for the 2011 and 2012 tax years. The Tax Tribunal essentially concluded that petitioner had not proved his entitlement to the PRE exemption by a preponderance of the evidence. Given the deferential standard of review that we must employ in reviewing decisions of the Tax Tribunal, we find no basis for reversal. The record includes a voter-registration card, effective on November 2, 2012, listing petitioner's mailing address as being in Hazel Park. It also includes a water bill showing no use at the Eastpointe address from November 15, 2010, through April 28, 2011. The record also contains a certificate of naturalization dated September 6, 2012, stating that petitioner resided in Hazel Park. Viewed *as a whole*, the evidence tends to refute petitioner's claims about the Eastpointe address, and thus we cannot find that the tribunal's decision was unsupported by competent, material, and substantial evidence, as discussed in *Great Lakes Div of Nat'l Steel*, 227 Mich App at 388-389. Petitioner does make certain colorable arguments concerning this evidence on appeal, but it is the tribunal, not this Court, that must decide the weight of the evidence presented. *Id*. at 404.

Petitioner claims that the tribunal "did not allow [petitioner] to persuade [the tribunal] that he owned and occupied the subject property as a principal residence." This argument is patently without merit and does not require an extended discussion, because petitioner was clearly allowed to file numerous documents in support of his position, and there is no evidence in the record that the tribunal somehow cut off petitioner's attempts to advocate his position.

Petitioner takes issue with the tribunal's reliance on the water bill, but this bill, when viewed in conjunction with other evidence, did indeed lend some support to the position that the Eastpointe residence had never been petitioner's primary residence. Petitioner also takes issue with the tribunal's reliance on the March 11, 2013, check, noting that he provided evidence that he had updated this checking account with the Eastpointe address and this check was simply an "old check" that was still honored by the bank. First, it was up to the tribunal to decide how to evaluate this evidence. Second, even if we were to disregard this check, there would be no basis on which to reverse the tribunal's opinion, given the other evidence supporting respondent's position.

Petitioner takes issue with the tribunal's having cited the case of *Drew v Cass County*, 299 Mich App 495; 830 NW2d 832 (2013), in its opinion, arguing that the facts in *Drew* differ materially from the facts in the present case. Petitioner's argument is flawed, however, because the tribunal cited *Drew* for the rather unremarkable proposition that the Tax Tribunal has the discretion to determine the weight of the evidence. See *id*. at 501. The tribunal did not, as implied by petitioner, draw an analogy between the facts in *Drew* and the facts in the present case.

Petitioner contends that "[t]he [t]ribunal did allow too much time for discussion of the issue whether the income tax filing status of [petitioner] was the basis of the denial of the PRE, when the final judgment was not based on that discussion."[4] First, we cannot assess petitioner's argument about "too much time," because the lower-court record does not contain a transcript of the hearing. Second, it was within the tribunal's discretion to hear discussion on an issue it felt could be relevant even if it ultimately chose not to rely on that issue in making its ruling.

Petitioner lastly contends that "[t]he [t]ribunal did not give the opportunity to [petitioner] to explain the confusion arising from the voter registration card mailing address." Petitioner claims that his voter-registration card listed the Goulson Avenue address because he had used that address to receive mail and had simply failed to make an address change with the Michigan Secretary of State after he moved into the house in Eastpointe. From the record, we have no basis on which to conclude that the tribunal somehow prevented petitioner from making this argument below.

[4] Petitioner states in his appellate brief: "During the hearing [respondent] stated that [it was] unable to locate a divorce case in the Tri-county records and [petitioner's] income taxes for 2010-2012 are not filed with a status [of] Married Filing Separately. [Petitioner] and his wife argued that they were separated and filed separate tax returns . . . ."

Given the deferential standard of review, we find no basis for reversal of the tribunal's decision.

Affirmed.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Michael J. Riordan