

STATE OF MICHIGAN
COURT OF APPEALS

COMPREHENSIVE HEALTH SERVICES, INC.,

Plaintiff-Appellant,

v

CITY OF OAK PARK,

Defendant-Appellee.

UNPUBLISHED

March 13, 1998

No. 196078

Michigan Tax Tribunal

LC Nos. 00220125 and

00224150

Before: Doctoroff, P.J., and Reilly and Allen*, JJ.

PER CURIAM.

Plaintiff appeals by right from two Michigan Tax Tribunal (MTT) orders granting defendant summary disposition pursuant to MCR 2.116(C)(8) for failure to state a claim on which relief could be granted. We affirm.

Plaintiff, a nonprofit health maintenance corporation, owns property in Oak Park, Michigan. Plaintiff petitioned the MTT for an ad valorem property tax exemption for the 1986 tax year, arguing that its charitable organization status entitled it to the exemption. However, the MTT denied plaintiff's petition, based on its determination that plaintiff provided services for value and that plaintiff therefore did not qualify as a charitable organization. This Court affirmed. *Comprehensive Health Services of Detroit, Inc v City of Oak Park*, unpublished memorandum opinion of the Court of Appeals, issued September 3, 1993 (Docket No. 132744). In the instant case, plaintiff sought an ad valorem property tax exemption for the 1994 and 1995 tax years, again claiming that it qualified for an exemption as a charitable organization. The MTT determined that collateral estoppel precluded plaintiff from again seeking tax exemptions as a charitable organization, and thus dismissed plaintiff's petitions.

Plaintiff first contends that the MTT erred by granting defendant's motion for summary disposition before plaintiff's time to respond to the motion had expired. While we agree that the MTT erred in failing to grant plaintiff the proper time in which to respond to defendant's motion, we conclude that this error was harmless and thus does not require reversal of the MTT's

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

decision. *Community Associates v Meridian Charter Twp*, 110 Mich App 807, 812; 314 NW2d 490 (1981). The Michigan Administrative Code allows parties to file “[w]ritten opposition, if any, to motions . . . within 14 days after service.” 1996 MR 4, R 205.1230(1). Because defendant filed for summary disposition on May 2, 1996, the MTT should have permitted plaintiff until May 16, 1996 to respond. Instead the MTT entertained and granted defendant’s motion on May 13, 1996, the day set for the beginning of the parties’ trial. However, because plaintiff had prepared its case for trial and because the MTT allowed plaintiff to present its proofs before ruling on the summary disposition motion, plaintiff would not have been able to produce sufficient evidence to change the MTT’s final decision. “[I]t would [have been] pointless to grant plaintiff additional time in which to respond.” *Nelson v American Sterilizer Co*, 212 Mich App 589, 591; 538 NW2d 80 (1995), rev’d on other grounds 453 Mich 946 (1996). Thus, because a sufficient record existed to allow the tribunal to review the merits of the case, its error was harmless and does not require remand. *Id.* at 592-594.

Plaintiff next argues that its provision of free medical services to persons unable to pay for them constitutes a gift to the general public without restriction that qualifies plaintiff as a charitable organization for tax exemption purposes. We disagree. We note initially that plaintiff’s allegation that in 1994 and 1995 it provided free medical services to persons unable to pay for them presents an issue that had not previously been “actually litigated and determined by a valid and final judgment.” *Nummer v Treasury Dep’t*, 448 Mich 534, 542; 533 NW2d 250 (1995), quoting *Storey v Meijer, Inc*, 431 Mich 368, 373 n3; 429 NW2d 169 (1988). The present case concerns plaintiff’s actions in 1994 and 1995, whereas its prior MTT petition concerned the 1986 tax year. Therefore, the MTT committed an error of law by granting defendant summary disposition on the basis of collateral estoppel. *Id.* However, this Court will not reverse a tribunal decision unless the party alleging the error can show prejudice. *Community Associates*, *supra* at 812. Because we conclude as a matter of law that plaintiff does not qualify as a charitable organization for tax exemption purposes, plaintiff suffered no prejudice from the MTT’s erroneous application of collateral estoppel, and this Court will not reverse the MTT’s decision.

To qualify for tax exemption as a charitable organization in Michigan it is not enough that one of the organization’s direct or indirect purposes or results is benevolence, charity, education, or the promotion of science. It must be organized chiefly, if not solely, for one or more of these objectives. *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 608; 163 NW2d 508 (1968). The proper focus is whether the organization’s activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons. *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 737 (1985). Plaintiff has provided no specific figures regarding its alleged gratuitous provision of medical services. In determining the focus of plaintiff’s activities, taken as a whole, we may consider statements of purpose in plaintiff’s articles of incorporation and bylaws. *Ass’n of Little Friends, Inc v City of Escanaba*, 138 Mich App 302, 310; 360 NW2d 602 (1984). However, neither plaintiff’s articles of incorporation nor its bylaws include an express charitable purpose. Furthermore, in both 1994 and 1995, the amount of money plaintiff received from capitation payments (primarily from the state for plaintiff’s treatment of Medicaid patients) and commercial sector premiums, taken together, exceeded plaintiff’s total expenses. That plaintiff provided services for which it was compensated in amounts exceeding its total annual expenses indicates that any alleged uncompensated services provided

by plaintiff were incidental to its provision of services to paying customers. See *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 351; 330 NW2d 682 (1982) (denying charitable organization status to senior citizen apartment complex that provided the seniors free services, but charged rent designed to cover the complex's utility and construction costs). Considering plaintiff's financial figures, together with the absence of any express charitable purpose in plaintiff's articles of incorporation or bylaws, we conclude that plaintiff's activities, taken as a whole, do not constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons. *Michigan United Conservation Clubs, supra* at 673. Because plaintiff does not qualify as a charitable organization, plaintiff suffered no prejudice from the MTT's grant of summary disposition to defendant. Therefore, we may not reverse the MTT's decision. *Community Associates, supra* at 812.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Maureen Pulte Reilly

/s/ Glenn S. Allen, Jr.