

STATE OF MICHIGAN
COURT OF APPEALS

TOLL BROTHERS, INC.,

Petitioner-Appellant,

v

TOWNSHIP OF NORTHVILLE,

Respondent-Appellee.

UNPUBLISHED

June 20, 2006

No. 261804

Tax Tribunal

LC No. 00-310237

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Petitioner appeals as of right from the Tax Tribunal's dismissal of its petition and the denial of its motion to reinstate the petition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On June 30, 2004, petitioner sought review of property tax assessments concerning subdivision lots in a Northville Township development by filing an appeal request with the Michigan Tax Tribunal. Pursuant to Tax Tribunal Rule 320, the Tax Tribunal responded to that request by sending a cover letter and small claims petition form to petitioner. The letter explicitly stated, "you must complete and return by the date specified at the top and bottom of the petition form. . . . Failure to complete and return the petition form by the due date will result in the dismissal of your appeal." The due date specified on the petition form was August 23, 2004. The petition form itself also stated that "[f]ailure to complete this form, including signature, and return it by AUG-23-2004 will result in dismissal." Petitioner completed the form and sent it back to the Tax Tribunal in an envelope postmarked August 25, 2004.

On November 15, 2004, the Tax Tribunal dismissed the case in a sua sponte order. The order stated that the dismissal was due to petitioner's failure to timely return the petition form as was clearly indicated in the cover letter and on the form itself.

Following that dismissal, petitioner filed a motion to reinstate the case. Petitioner argued that gathering and assembling the information required in the petition form was time consuming due to the number of properties involved and their complexity. Petitioner also argued that filing the petition form two days late did not prejudice the respondent. On March 10, 2005, the Tax Tribunal denied petitioner's motion.

This Court's review of Tax Tribunal decisions was summarized in *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 474-475; 647 NW2d 529 (2002):

Our review of a decision of the Tax Tribunal is typically limited to whether the decision was authorized by law and whether the tribunal's findings were supported by competent, material, and substantial evidence on the whole record. Although the Tax Tribunal has the authority to dismiss a petition for failure to comply with its rules or orders, the tribunal's actions in that regard are reviewed for an abuse of discretion. An abuse of discretion exists where the result is so palpably and grossly violative of fact and logic that it indicates a perversity of will, a defiance of judgment, or the exercise of passion or bias. [Internal citations omitted.]

The present case deals with the mandatory language of Tribunal Rule 320, which states as follows:

Upon receipt of the letter from the petitioner, the clerk of the tribunal shall send the petitioner a form to be completed and returned to the tribunal within 28 days after mailing or as otherwise ordered by the tribunal. Failure to complete and return the form within the 28 days or as otherwise ordered by the tribunal shall result in a dismissal of the petition. [1996 MR 4, R 205.1320(2).]

Petitioner's cover letter from the Tax Tribunal clerk plainly stated that "[f]ailure to complete and return the petition form by the due date will result in dismissal of your appeal." The accompanying petition form twice stated that the due date was August 23, 2004. Further, the petition form, as well as the cover letter, also plainly stated that failure to complete and return the form by August 23, 2004 "will result in dismissal." Petitioner offers no evidence to suggest that any attempt was made to request an extension or otherwise give notice that the form would be tardy. Accordingly, the Tax Tribunal's decision did not violate fact and logic, but rather followed the mandatory language of the tribunal rules.

On appeal, petitioner also raises the issue of equitable tolling. Equitable tolling was not raised in petitioner's brief in support of its motion for reinstatement of the case as provided to the administrative tribunal. An issue that is not raised before the administrative tribunal is not preserved for appeal. *Rutherford v Dep't of Social Services*, 193 Mich App 326, 331; 483 NW2d 410 (1991).

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette