

STATE OF MICHIGAN
COURT OF APPEALS

LAURENCE SMITH and SALLY SMITH,

Petitioners-Appellants,

v

CITY OF NEW BALTIMORE,

Respondent-Appellee.

UNPUBLISHED
September 3, 2009

No. 283095
Tax Tribunal
LC No. 00-322176

Before: Borrello, P.J., and Meter and Stephens, JJ.

PER CURIAM.

Petitioners appeal as of right from an opinion and judgment of the Michigan Tax Tribunal rejecting their challenge to respondent's assessment of taxes on their property. We affirm.

Petitioners first argue that the tribunal judge erred by considering respondent's filed exceptions to the proposed judgment as evidence because this denied petitioners the opportunity to challenge that evidence. Petitioners also contend that these exceptions did not constitute good cause for the tribunal judge to set aside the proposed judgment of the Administrative Law Judge (ALJ). We disagree.

This Court will not reverse a decision of the Tax Tribunal in the absence of fraud, an error of law, or the adoption of wrong principles. Const 1963, art 6, § 28; *City of Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). In addition, this Court will not disturb the Tax Tribunal's factual findings if they are supported by competent, material, and substantial evidence on the whole record. *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). Substantial evidence is "the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion," but it may be 'substantially less than a preponderance.'" *Inter Co-op Council v Dep't of Treasury (On Remand)*, 257 Mich App 219, 221; 668 NW2d 181 (2003), quoting *In re Payne*, 444 Mich 679, 692, 698; 514 NW2d 121 (1994). Further, while statutory interpretation is a question of law that is reviewed de novo, this Court generally defers to the Tax Tribunal's interpretations of the statutes it administers and enforces. *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002).

MCL 205.762(2) provides:

A person or legal entity . . . may elect to proceed before either the residential property and small claims division or the entire tribunal. A formal

record of residential property and small claims division proceedings is not required. Within 20 days after a hearing officer or referee issues a proposed order, a party may file exceptions to the proposed order. The tribunal shall review the exceptions to determine if the proposed order shall be adopted as a final order. Upon a showing of good cause or at the tribunal's discretion, the tribunal may modify the proposed order and issue a final order or hold a rehearing by a tribunal member. A rehearing is not limited to the evidence presented before the hearing officer or referee.

Contrary to petitioners' argument, the tribunal judge did not hold a rehearing and review additional evidence. Rather, as she was entitled to do under MCL 205.762(2), the tribunal judge properly reviewed the proposed order and the evidence already in the record and then modified the proposed order based on a finding of good cause.

The tribunal judge did not expand the record or rely on the exceptions as evidence. Rather, the tribunal judge noted that respondent had previously requested that the matter be decided based on the file. A thorough review of the tribunal judge's final opinion and judgment shows that respondent's exceptions were merely reiterated as explaining respondent's position. Based on the record, the tribunal judge clearly followed MCL 205.762(2), which it cited as statutory authority for modifying the proposed order. Again, this Court generally defers to the Tax Tribunal's interpretations of the statutes it administers and enforces. *Schultz, supra* at 529.

Further, under the administrative rules governing the Tax Tribunal's proceedings, good cause is defined as an error of law, a mistake of fact, fraud, or "any other reason the tribunal deems sufficient and material." 1999 AC, Rule 205.1348(4). The tribunal judge explicitly stated that the ALJ erred in his application of the appropriate law to the facts the ALJ found. She also concluded that the ALJ erred because he relied on the real estate summary sheet of a property across the street in determining the subject property's true cash value. According to the tribunal judge, this was error because the subject property's record card, which had been previously submitted, was a more reliable indicator of true cash value than the summary sheet. The tribunal judge also found that the ALJ should have honored respondent's request to be heard "on the file" because this request was timely made.¹

The tribunal judge based its determination of the 2006 true cash value on the property record card and the fact that the subject house had been demolished. For 2007, the tribunal judge used respondent's assessment because there was no reliable evidence to make an independent determination. The tribunal judge did not rely on respondent's exceptions to find good cause for modifying the order. Rather, she considered the proposed order in light of the evidence presented, which is permitted under the statute. Therefore, petitioners' claim on appeal is without merit.

¹ The assessor for respondent indicated that the ALJ misinterpreted her request as a refusal to participate in the case.

Next, petitioners contend that the tribunal judge improperly failed to consider the documentary evidence submitted by petitioners, which petitioners contend established their position regarding the subject property's true cash value. Additionally, petitioners argue that respondent did not establish good cause for reconsideration and that the tribunal judge improperly proceeded without a transcript. We disagree.

First, we note that petitioners attempt to reframe their argument from the first issue regarding the propriety of the tribunal judge modifying the proposed order from the ALJ. Again, the tribunal judge reviewed the exceptions filed by respondent as well as the proposed order and made a determination that there was good cause to modify the order. This was explicitly permitted under MCL 205.762(2). Although there was not a transcript of the hearing of petitioners with the ALJ, a transcript is not required under the plain language of MCL 205.726(2), and no testimony was relied on in the proposed opinion by the ALJ. The tribunal judge merely reviewed the same documentary evidence reviewed by the ALJ.

Second, we address petitioners' claim that they established true cash value and taxable value by a preponderance of the evidence. At both the small-claims-referee and tribunal-judge levels of review, the burden of proof is on the taxpayer to establish the true cash value of the property. MCL 205.737(3); *Oldenburg v Dryden Twp*, 198 Mich App 696, 698-699; 499 NW2d 416 (1993). The burden of proof in a tax matter encompasses two concepts: "(1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Great Lakes Division of National Steel Corp v Ecorse*, 227 Mich App 379, 408-409; 576 NW2d 667 (1998).

"True cash value" is

the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. [MCL 211.27(1).]

The phrase "true cash value" is synonymous with the phrase "fair market value." *Huron Ridge, LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007).

The Tax Tribunal "is not bound to accept the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value." *Great Lakes Div of Nat'l Steel Corp, supra* at 389-390. Three accepted and reliable methods of determining true cash value are "(1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach." *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991). The sales-comparison approach is implicated in this case.

Here, however, it is significant that the property record card for the subject property indicated that the property's specific depth and frontage were taken into consideration to increase the land value. Petitioners make no specific attack on the adjustment factors used by respondent in its analysis. Moreover, the tribunal judge found that the property record card for 2006, which the tribunal judge based her valuation on, was more reliable than the real estate summary sheet

of a purportedly similarly situated parcel. The weight given to evidence is within the Tax Tribunal's discretion. *Great Lakes Div of Nat'l Steel Corp v Ecorse, supra* at 404.

With regard to 2007, the tribunal judge found that neither petitioners nor respondent submitted sufficiently reliable evidence to establish the subject property's true cash and taxable values. Without further analysis, the tribunal accepted respondent's 2007 assessment of a \$264,800 true cash value and taxable value of \$132,400. The Tax Tribunal may not automatically accept a respondent's assessment, and a "conclusive presumption of validity is diametrically opposed to the concept of an original, independent de novo proceeding at which the petitioner simply bears the burden of proof. . . ." *Id.* at 409 (emphasis removed), quoting *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 768; 314 NW2d 479 (1981). However, the Tax Tribunal's duty to make its own independent determination of true cash value arises only when the plaintiff has met its burden of going forward with evidence. See *Great Lakes Div of Nat'l Steel Corp, supra* at 408-410. Petitioners themselves recite this legal concept in their appellate brief.

Petitioners submitted a real estate summary sheet from 2006 for a property across the street, as well as two undated listings and another listing from 2006. The tribunal judge properly concluded that the evidence submitted was not reliable or sufficient to establish a true cash value for 2007. Without any evidence to make an independent determination of the true cash value of the property, the tribunal judge was forced to use respondent's 2007 assessment because petitioners failed to meet their burden of going forward with evidence, and petitioners do not effectively counter this decision by way of their appellate arguments.

The tribunal judge did not commit an error requiring reversal in her determination of the subject property's true cash and taxable values for 2006 and 2007.

Lastly, petitioners argue that the initial assessment of the subject property by respondent constituted fraud. An issue is generally properly preserved if it is raised before and addressed by a lower court. *Heydon v MediaOne of Southeast Michigan, Inc*, 275 Mich App 267, 281; 739 NW2d 373 (2007). However, petitioners did not raise this issue in a lower court. Therefore, it is not properly preserved and we decline to address it. *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 117; 662 NW2d 387 (2003); see also *Walters v Nadell*, 481 Mich 377, 387-388; 751 NW2d 431 (2008) (stating that this Court need not address claims that were not properly preserved in a civil case).

Affirmed.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter
/s/ Cynthia Diane Stephens