

STATE OF MICHIGAN
COURT OF APPEALS

GARY NELSON and BETH NELSON,

Petitioners-Appellants,

UNPUBLISHED
October 10, 2013

v

COUNTY OF MACKINAC,

Defendant-Appellee.

No. 309811
Tax Tribunal
LC No. 00-413013

Before: RIORDAN, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Petitioners appeal as of right from an order of the Michigan Tax Tribunal (MTT), which affirmed respondent's denial of a principal residence exemption (PRE) on the subject property during the tax years of 2007, 2008, 2009, and 2010. Because there was substantial evidence to support the MTT's decision and the MTT did not misapply the law or adopt an incorrect principle in arriving at its decision, we affirm.

I. BASIC FACTS

The subject property is a residential property located in Germfask, Mackinac County. Petitioners also own a home in Lake Orion, Oakland County. Petitioners purchased the subject property in 2004. Petitioners asserted that the subject property became their principal residence in 2007. Following an audit, respondent denied petitioners' PRE for the years of 2007, 2008, 2009, and 2010, and issued a tax bill for \$12,230.84. Petitioners appealed in the Small Claims Division of the MTT. Respondent based its denial on evidence that Beth Nelson's (Beth) driver's license reflected the Lake Orion address because she was generally in Oakland County, while Gary Nelson (Gary) changed his driver's license to reflect the subject property's address on August 18, 2010. Petitioners also voted in Oakland County. In addition, petitioners filed their federal income taxes using their Lake Orion home address until 2010 when the federal tax return was filed using the subject property's address. Petitioners' GMAC mortgage statement reflected the Lake Orion address. Petitioners had joint bank accounts in both locations. The disparity of mailing addresses was explained as a matter of convenience: petitioners traveled extensively to Lake Orion and it was more convenient to have family or neighbors collect and forward petitioners' mail.

The hearing referee found that petitioners failed to prove that the subject property qualified to receive a PRE under MCL 211.7cc for the tax years at issue. The referee concluded:

Petitioners own two homes; one property in Oakland County and subject property in Mackinac County. Petitioners maintain a mailing address in Oakland County. Beth Nelson maintains an Oakland County driver's license and voter registration, and Gary Nelson changed his driver's license to reflect subject's address on August 18, 2010. Petitioners [sic] 2007 federal tax return was filed using Oakland County home address and their 2010 tax return was filed using subject's address. Petitioners [sic] GMAC mortgage account shows the Oakland County home address. In order to verify a person's claim that a particular property is a principal residence the Tribunal accepts various documents which when taken together, establish that the person filing the claim occupies the property as a principal residence. Such documents include among other proofs, driver's license, voter registration card, financial statements listing the property address, income tax returns indicating the mailing address, and insurance policies. Documentation must verify occupancy between the periods of January 1 to May of each year. The Tribunal has reviewed the documents submitted and finds that none of the information provided prove that Petitioners occupied subject property as their principal residence during the years at issue. As such, subject property is not entitled to the exemption in 2007, 2008, 2009, and 2010.

The MTT entered a final opinion and judgment adopting the referee's proposed opinion and judgment as its final opinion and judgment, noting, "Notwithstanding the exceptions, the Tribunal adopts the Proposed Opinion and Judgment as the Tribunal's final decision in this case. See MCL 205.726."

II. STANDARD OF REVIEW

This Court's review of a decision by the MTT is very limited. *Mich. Props., LLC v Meridian Twp.*, 491 Mich 518, 527; 817 NW2d 548 (2012). "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 tribunal's factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record." *Mich. Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 919-920; 618 NW2d 917 (2000). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Drew v Cass County*, 299 Mich App 495, 499; 830 NW2d 832 (2013), citing *Jones & Laughlin Steel Corp. v City of Warren*, 193 Mich App 348, 352-343; 483 NW2d 416 (1992). "The appellate bears the burden of proof in an appeal from an assessment, decision, or order of the Tax Tribunal." *ANR Pipeline Co. v Dep't of Treasury*, 266 Mich App 190, 198; 699 NW2d 707 (2005).

III. ANALYSIS

Petitioners argue that the MTT erred in concluding that the subject property was not their principal residence. We disagree.

Michigan’s principal residence exemption is also known as the “homestead exemption” and is governed by MCL 211.7cc and MCL 211.7dd of the General Property Tax Act, MCL 211.1 *et seq.* *Drew*, 299 Mich App at 500. MCL 211.7cc(1) provides, in relevant part:

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 this section.

MCL 211.7dd defines “principal residence” as “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.”

Petitioners have failed to provide this Court with any reason to disturb the MTT’s conclusion that the subject property was not their principal residence. Beth’s driver’s license reflected the Lake Orion address and Gary did not change his address on his driver’s license until August of 2010. Moreover, petitioners filed their tax returns using their Lake Orion address until 2010 when they filed using the Germfask address. Moreover, petitioners voted in Oakland County. Petitioners GMAC mortgage statement reflected the Lake Orion address. Petitioners contend that the MTT should have given more weight to petitioners’ testimony that their mail was delivered to the Lake Orion address for purposes of convenience. However, “[t]he weight to be accorded to the evidence is within the Tax Tribunal Discretion.” *Drew*, 299 Mich App at 501 (original citation omitted). Moreover, “this Court may not second-guess the MTT’s discretionary decisions regarding the weight to assign to the evidence.” *Id.* In other words, this Court defers to the MTT to assess the weight and credibility of the evidence before it. *Id.* at 502. Thus, we do not find that the MTT committed an error of law or adopted a wrong legal principle. See *Id.* at 503.

We also reject petitioners’ claim that respondent should be equitably estopped from denying petitioners’ request for a PRE on the subject property. “Equitable estoppel is not an independent cause of action, but instead a doctrine that may assist a party by precluding the opposing party from asserting or denying the existence of a particular fact.” *Conagra, Inc. v Farmers State Bank*, 237 Mich App 109, 140-141; 602 NW2d 390 (1999). “Equitable estoppel may arise where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts.” *Id.* at 141. Petitioners argue that the MTT failed to inform them that they should have provided additional documentation to support their claim for a PRE on the subject property. However, petitioners fail to identify the substance of the “additional documents” that they could have provided the MTT. Moreover, there was ample evidence to support MTT’s conclusion that the subject property was not petitioners’ primary residence.

Affirmed.

/s/ Michael J. Riordan
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly