

STATE OF MICHIGAN
COURT OF APPEALS

DR. BRIAN ADELMAN,

Petitioner-Appellant,

v

TOWNSHIP OF WEST BLOOMFIELD,

Respondent-Appellee.

UNPUBLISHED
December 17, 2013

No. 312435
Michigan Tax Tribunal
LC No. 00-339838

Before: METER, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Petitioner appeals as of right from the tax tribunal's opinion and judgment establishing the taxable value of his residential real property for tax years 2007 through 2011. We affirm.

This case originates from petitioner's appeal to the tribunal challenging the Township's property tax assessments for tax years 2007 through 2011 of his real property, an approximately 13,336 square foot residential dwelling situated on five acres located in the Township of West Bloomfield ("the Township"). In his appeal to the tribunal, petitioner claimed that the true cash value of the subject property is considerably lower than the value assessed by the Township, thereby significantly reducing its taxable value. At the hearing on petitioner's appeal, the tribunal did not allow the admission of petitioner's valuation evidence, which was untimely filed in violation of the tribunal's prehearing order. After conducting the hearing, the tribunal ultimately adopted the true cash value and taxable value for the tax years at issue established by the Township's valuation of the subject property. At issue in petitioner's appeal to this Court is whether the tribunal abused its discretion in refusing to admit petitioner's untimely filed valuation evidence.

Our Supreme Court, in *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527-528; 817 NW2d 548 (2012), summarized the standard of review applicable to decisions of the tribunal:

Review of decisions by the Tax Tribunal is limited. "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 Tax Tribunal's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record. If the facts are

not disputed and fraud is not alleged, our review is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle. [Citations omitted.]

Further, we review the tribunal's enforcement of its own rules for an abuse of discretion. *Perry v Vernon Twp*, 158 Mich App 388, 392; 404 NW2d 755 (1987). Likewise, we review discovery sanctions for an abuse of discretion. *Dean v Tucker*, 182 Mich App 27, 31-32, 35; 451 NW2d 571 (1990). The admission of evidence in an administrative proceeding is also discretionary. *Tomczik v State Tenure Comm*, 175 Mich App 495, 502; 438 NW2d 642 (1989). An abuse of discretion occurs when a trial court selects an outcome falling outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

The tax tribunal's rules, TTR 205.1111 *et seq.*, "govern the practice and procedure in all cases and proceedings before the tribunal." TTR 205.1111(1).¹ The instant case, brought before the entire tribunal, is governed by the specific rules applicable to the entire tribunal. TTR 205.1111(2). Specifically at issue is TTR 205.1252(1) governing the prehearing procedure for the parties to file and exchange their respective valuation disclosures in property tax appeals before the entire tribunal and mandating that a valuation disclosure must be filed with the tribunal and exchanged with the opposing party as provided by order of the tribunal.²

It is undisputed that petitioner failed to comply with TTR 205.1252(1) when he did not file and exchange his valuation disclosure within the time period prescribed by the tribunal's prehearing order. The tribunal's rules governing appeals brought before the entire tribunal do not contain a specific sanction for a party's failure to timely file its valuation disclosure.³ In the

¹ The Tax Tribunal Rules effective when the tribunal decided the instant case were revised effective March 20, 2013. See TTR 792.10201, *et seq.*

² Specifically, TTR 205.1252(1) provides:

A party's valuation disclosure in a property tax appeal shall be filed with the tribunal and exchanged with the opposing party as provided by order of the tribunal. However, a party may, if it has reason to believe that the opposing party may not exchange its valuation disclosure as provided by order of the tribunal, submit its valuation disclosure to the tribunal together with a motion and appropriate filing fee requesting the tribunal's leave to withhold and place a protective order on the valuation disclosure until the opposing party actually exchanges its valuation disclosure with the party.

³ A "valuation disclosure" is "documentary evidence or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention regarding the true cash value of the subject property or any portion thereof and which contains the party's value conclusions and data, valuation methodology, analysis, or reasoning in support of the contention." TTR 205.1101(1)(m).

absence of any specific penalty provision in the tribunal's rules governing appeals before the entire tribunal, the Michigan Rules of Court govern. TTR 205.1111(4).

Petitioner's failure to comply with the tribunal's prehearing order by untimely filing his valuation disclosure is in the nature of a discovery violation. MCR 2.313 governs discovery procedures and allows the imposition of sanctions for a party's failure to comply with a discovery order, including precluding a party from introducing expert testimony or evidence at trial. MCR 2.313(B)(2)(b); *LaCourse v Gupta*, 181 Mich App 293, 296; 448 NW2d 827 (1989). Our Courts have found the following factors relevant in evaluating whether a discovery sanction is appropriate:

(1) whether the violation was wilful or accidental, (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses), (3) the prejudice to the defendant, (4) actual notice to the defendant of the witness and the length of time prior to the trial that the defendant received such actual notice, (5) whether there exists a history of plaintiff engaging in deliberate delay, (6) the degree of compliance by the plaintiff with other provisions of the court's order, (7) an attempt by the plaintiff to timely cure the defect, and (8) whether a lesser sanction would better serve the interests of justice. [*Dean*, 182 Mich App at 32-33 (footnotes and citations omitted.)]

Applying these factors to the instant case, we find no abuse of discretion in the tribunal's refusal to admit the untimely filed valuation evidence.⁴ See *Dean*, 182 Mich App at 31-32; *Tomczik*, 175 Mich App at 502; *Perry*, 158 Mich App at 392.

The record does not suggest that petitioner's failure to timely file his valuation disclosure was accidental. The tribunal issued its prehearing order on July 21, 2011, requiring the parties to file and exchange their valuation disclosures by April 2, 2012. Yet petitioner waited more than seven months after the issuance of the order to retain an appraiser, waiting until March 5, 2012, less than one month before the April 2, 2012 filing date ordered by the tribunal, despite that his appeal involved numerous tax years (2007 through 2011) and an extensive multi-million dollar property. We fail to find that the appraiser's workload and the large number of years at issue is a reasonable excuse for the delay. It is noteworthy that the Township was able to file its valuation disclosure of the subject property within the time established by the tribunal, despite the large number of years at issue and the complexity of the property. The lack of a reasonable excuse or any good cause for the delay, as the tribunal found, evidences a lack of diligence on the part of petitioner, not merely an accidental delay or an inadvertent mistake in the delayed filing. See *Dean*, 182 Mich App at 32-34.

Although nothing in the record indicates that petitioner deliberately delayed the proceedings, the record further suggests an overall lack of diligence on the part of petitioner. In addition to petitioner's failure to comply with the filing date of the valuation disclosure at issue,

⁴ The tribunal allowed petitioner's appraiser to provide testimony in accordance with TTR 205.1283(2).

petitioner failed to timely comply with the Township's discovery request for documents, TTR 205.1260, necessitating the Township to file a motion to compel and the tribunal's entry of an order compelling petitioner to answer the request. Petitioner also apparently did not respond to the tribunal's order compelling an answer in a timely manner, prompting the Township to file a motion to dismiss the petition. The record also indicates that petitioner did not comply with the tribunal's prehearing order by failing to file his prehearing statement by April 2, 2012, as required. Although petitioner attempted to cure his lack of compliance by requesting admission of the untimely valuation evidence, he did not do so in a timely manner. Instead, he waited until the prehearing conference, 11 months after the issuance of the tribunal's pretrial order, to motion the tribunal for additional time to file and/or notify the tribunal of his need for additional time to comply with the filing date, at which point discovery had already closed.

Moreover, petitioner's failure to timely file his valuation disclosure was clearly prejudicial to the Township because it undermined the Township's opportunity to review and conduct discovery regarding petitioner's valuation of the subject property. Pursuant to the tribunal's order, the Township, which timely filed its valuation disclosure, should have been allowed to conduct prehearing discovery regarding petitioner's valuation for a two-month period from April 2, 2012 through June 1, 2012. Petitioner, however, did not attempt to file his valuation disclosure until June 21, 2012, after the discovery period closed and within only one month of the scheduled hearing, thereby precluding the Township from conducting discovery regarding the valuation before the hearing. This is especially so considering the fact that the appeal involved numerous tax years and a large multi-million dollar property. The tribunal's determination that there would be insufficient time for the Township to conduct discovery before the hearing was clearly supported by the evidence on the record. See *Mich Props*, 491 Mich at 527-528. Although the record indicates that the Township had actual notice that petitioner's expert witness would likely testify, and thus, the Township was not subjected to any unfair surprise that petitioner's appraiser planned to testify on behalf of petitioner, the substance of the appraiser's valuation testimony was not revealed until he completed his appraisal/valuation disclosure, at which point discovery had already closed and less than one month remained before the hearing. Accordingly, regardless of the Township's actual notice, due to the untimely filing of the valuation disclosure, the Township was likely unable to adequately review and evaluate the valuation disclosure in preparation of addressing his testimony at the hearing.

Finally, considering petitioner's lack of diligence in failing to request additional time to file and exchange the valuation, we cannot say that justice would be better served by imposing a lesser sanction. See *Dean*, 182 Mich App at 33. The tribunal's order provided clear notice to the parties that it would not admit late-filed valuation disclosures absent good cause. The tribunal, as recognized in its opinion, has a right to manage its caseload to ensure the timely processing of the appeals pending before it. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 640; 607 NW2d 100 (1999), quoting *Banta v Serban*, 370 Mich 367, 368; 121 NW2d 854 (1963) (“[O]ur Supreme Court has ‘recognized the inherent power of a court to control the movement of cases on its docket by a variety of sanctions.’”) Considering petitioner's lack of diligence, reopening discovery or adjourning the hearing without good cause or a reasonable excuse for the delay would compromise the tribunal's ability to manage its caseload and would not better serve the interests of justice. See *Dean*, 182 Mich App at 33.

On this record, we conclude that the tribunal did not abuse its discretion in precluding the admission of petitioner’s untimely filed valuation evidence. See *Dean*, 182 Mich App at 31-32; *Tomczik*, 175 Mich App at 502; *Perry*, 158 Mich App at 392. Although under TTR 205.1275, “pursuant to its general power to issue orders altering discovery procedures ‘as justice may require to achieve a full and fair hearing of a matter before the tribunal,’ the tribunal may extend the date of the exchange,” *Georgetown Place Co-op v City of Taylor*, 226 Mich App 33, 50; 572 NW2d 232 (1997), we cannot say that, under the circumstances of this case, the tribunal’s decision to preclude the admission of petitioner’s valuation evidence fell outside the range of reasonable and principled outcomes so as to constitute an abuse of discretion. See *Maldonado*, 476 Mich at 388; *Dean*, 182 Mich App at 31-32.

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Henry William Saad