

STATE OF MICHIGAN
COURT OF APPEALS

PAUL DILLON and JODEE DILLON,
Petitioners-Appellants,

UNPUBLISHED
July 24, 2014

v

TOWNSHIP OF PLYMOUTH,
Respondent-Appellee.

No. 315316
Tax Tribunal
LC No. 00-432477

Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

Petitioners appeal as of right the order dismissing their residential property tax appeal issued by the Michigan Tax Tribunal, Small Claims Division. Petitioners also appeal the Tribunal's subsequent order denying their motion for reconsideration/motion to set aside dismissal. We affirm the dismissal order, vacate the order denying reconsideration, and remand for further proceedings consistent with *Goodyear Tire & Rubber Co v City of Roseville*, 468 Mich 947; 664 NW2d 751 (2003).

The record in this case indicates that the Tribunal scheduled three separate hearings on petitioners' case. For each hearing, the Tribunal mailed a separate notice to petitioners. All three notices included the following statement: "FAILURE TO APPEAR – if Petitioner does not attend the hearing, the Tribunal will dismiss this case." At petitioners' request, the Tribunal adjourned the first two hearings. On December 18, 2012, the Tribunal mailed the third notice of hearing to petitioners, to advise them that their hearing was scheduled for January 18, 2013. Petitioners did not appear at the scheduled hearing, and on January 31, 2013, the Tribunal entered an order of dismissal for failure to appear.

Petitioners assert that they did not receive the third notice of hearing, and that the Tribunal erred by issuing the dismissal order. We review for abuse of discretion the Tribunal's decision to dismiss for failure to comply with its rules. *Prof Plaza, LLC v City of Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002). In this case, we find no abuse of discretion. The Tribunal's rules authorize a dismissal for failure to appear, and the two previous notices mailed to petitioners advised them of the dismissal rule. See 2012 Annual Admin Code Supp, R

205.1317(2) (“Petitioner’s failure to appear or be represented at a scheduled hearing may result in a dismissal of the appeal.”).¹

Petitioners next assert that the Tribunal erred by refusing to set aside the dismissal order. We conclude that the record is insufficient to determine whether the Tribunal properly followed the procedure indicated by our Supreme Court in *Goodyear*, 468 Mich 947.

In *Goodyear*, the Tribunal had dismissed the petitioner’s commercial property tax appeal for failure to appear at a prehearing conference. *Id.*, see also *Goodyear Tire & Rubber Co v City of Roseville*, unpublished opinion per curiam of the Court of Appeals, issued December 20, 2002 (Docket No. 234470). The petitioner sought reinstatement of the case and submitted affidavits stating that it had not received the mailed notice of the conference. *Goodyear*, 468 Mich 947. The Tribunal denied the motion to reinstate. *Id.* This Court affirmed the dismissal and the denial of the motion to reinstate. *Goodyear*, unpub op at 3.

Our Supreme Court reversed and held that the Tribunal abused its discretion in denying the motion to reinstate. 468 Mich 947. The Supreme Court indicated that when the Tribunal has dismissed a case for a petitioner’s failure to appear, the Tribunal must consider, on a subsequent motion to reinstate, whether the petitioner received actual notice of the scheduled event:

The Tribunal denied the petitioner’s motion to reinstate, relying on the fact that notice had been mailed to petitioner and that the notice was not returned as undeliverable. *The Tribunal did not determine that petitioner had actual knowledge of the scheduled conference.*

While a presumption arises that a letter with a proper address and postage will, when placed in the mail, be delivered by the postal service, this presumption can be rebutted with evidence that the letter was not received. *Barstow v Federal Life Ins Co*, 259 Mich 125, 129; 242 NW2d 862 (1932); *Farmers’ Handy Wagon Co v Newcomb*, 192 Mich 634, 638; 159 NW 152 (1916). If such evidence is presented, as it was here, then a question of fact arises regarding whether the letter was received. *Id.*

The Tribunal abused its discretion when it denied petitioner’s motion to reinstate the case without first resolving the disputed issues of fact created by petitioner’s affidavits. Accordingly, we remand this case to the Tribunal for an evidentiary hearing. *The Tribunal should resolve the disputed issues of fact and then determine whether the petitioner showed good cause to reinstate the case.* [*Goodyear*, 468 Mich at 947 (emphases added).]

¹ The parties cite to the current version of the Tax Tribunal Rules, codified in Mich Admin Code, R 792.10201 *et seq.*, which became effective on March 20, 2013. It appears, however, that the prior version of the rules was in effect at the time the Tribunal issued the orders in this case. See 2012 Annual Admin Code Supp, R 205.1101 *et seq.*

Although petitioners in this case did not submit affidavits, they submitted a signed pleading in which they expressly stated: “Petitioners specifically deny receiving the Notice [of the hearing].”² This submission created a factual dispute regarding receipt of the notice.³

The record in this case does not indicate that the Tribunal determined whether petitioners received actual notice of the hearing. Instead, the Tribunal appears to have relied on the fact that the notice of hearing was sent to petitioners’ last known address and was not returned as undeliverable. The Tribunal concluded, “the purported mail delivery errors do not establish good cause to reinstate the case” According to our Supreme Court’s *Goodyear* order, the Tribunal was required to determine whether petitioners received actual notice of the hearing. On remand, the Tribunal must first make a factual finding on whether petitioners received actual notice of the hearing, and then must determine whether petitioners established good cause to reinstate the case. See *Goodyear*, 468 Mich 947.

We affirm the order of dismissal dated January 31, 2013, we vacate the order denying reconsideration dated February 28, 2013, and we remand for further proceedings consistent with *Goodyear*, 468 Mich 947.

We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Peter D. O’Connell
/s/ Stephen L. Borrello

² Petitioner Paul Dillon is an attorney and presumably understands the significance of submitting signed pleadings to a tribunal.

³ As an alternative argument, petitioners cite Mich Admin Code, R 792.10285 and contend that the December 18, 2012 notice failed to provide the 45 day advance notice referenced in the rule. Given our decision to remand, we need not address this argument. We note, however, that at the time the Tribunal issued the notice at issue in this case, the effective rule appears to have been 2012 Annual Admin Code Supp, R 205.1340, which referenced 28 days advance notice for cases in the Small Claims Division. Moreover, under either rule, the Tribunal has authority to order different notice provisions.