

**Court of Appeals, State of Michigan**

**ORDER**

Kevin G. Klevorn v City of Boyne City  
Kevin G. Klevorn v Township of Eveline  
Docket No. 286870; 286872  
LC No. 00-321687; 00-321688

Richard A. Bandstra  
Presiding Judge  
David H. Sawyer  
Donald S. Owens  
Judges

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The Court orders that the February 2, 2010 concurring opinion is hereby AMENDED to correct a clerical error. On page 2, all references to Martha Klevorn should read Thelma Klevorn.

In all other respects, the February 2, 2010 concurring opinion remains unchanged.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 23 2010  
Date

*Sandra Schultz Mengel*  
Chief Clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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KEVIN G. KLEVORN,

Petitioner-Appellant,

v

CITY OF BOYNE CITY,

Respondent-Appellee.

UNPUBLISHED

February 2, 2010

No. 286870

Tax Tribunal

LC No. 00-321687

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KEVIN G. KLEVORN,

Petitioner-Appellant,

v

TOWNSHIP OF EVELINE,

Respondent-Appellee.

No. 286872

Tax Tribunal

LC No. 00-321688

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Before: Bandstra, P.J. and Sawyer and Owens, JJ.

PER CURIAM.

In this property tax case, petitioner appeals an order of the Michigan Tax Tribunal (MTT) granting summary judgment in favor of respondents under MCR 2.116(I)(2). Petitioner, Kevin Klevorn, claims that his property was improperly “uncapped” for taxable value purposes, when his mother and joint tenant, Mrs. Thelma Klevorn died. Petitioner contends that he is entitled to the no-transfer-of-ownership exemption found in MCL 211.27a(7)(h). We reverse and remand.

Petitioner argues that there was no transfer of ownership in 2005, when Mrs. Klevorn died, because her death was not a “conveyance,” and therefore petitioner is entitled to the no-transfer-of-ownership exemption found in MCL 211.27a(7)(h). We agree. Absent fraud, we review Tax Tribunal decisions to determine whether the tribunal made an error of law or adopted a wrong legal principle, *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000), and we review the interpretation and application of a statute de novo. *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006).

Section 27a(7)(h) provides in relevant part that a transfer of ownership does not include

A transfer creating or terminating a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. A joint owner at the time of the last transfer of ownership of the property is an original owner of the property. . . .

Here, the joint tenancy between Mrs. Klevorn and petitioner was initially created through a warranty deed in 1987. At the time that tenancy was created, “at least 1 of the persons” (Mrs. Klevorn) was an original owner of the property. Therefore, this requirement has been satisfied.

The next requirement consists of two parts that must be met, but only “if the property is held as a joint tenancy at the time of the conveyance.” MCL 211.27a(7)(h). In looking to the language of the statute, this Court “must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory.” *TMW Enterprises Inc v Dep’t of Treasury*, 285 Mich App 167, 172; \_\_\_ NW2d \_\_\_ (2009), quoting *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). The parties agree that at the time that Mrs. Klevorn died, she and petitioner held the property as joint tenants with full rights of survivorship.

In a factually analogous case, this Court recently held that the death of a joint tenant does not equate with a “conveyance” and therefore does not constitute a transfer of ownership under MCL 211.27a(7)(h). In *Klooster v City of Charlevoix*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 286013, issued December 15, 2009), the petitioner’s parents purchased property in 1959 and held title to the property as tenants by the entirety. *Id.*, slip op at 1. On August 11, 2004, the petitioner’s mother quitclaimed the property to the petitioner’s father, and the petitioner’s father quitclaimed the property to himself and the petitioner as joint tenants with rights of survivorship. *Id.* The petitioner’s father died in 2005, and the petitioner became the sole owner of the property. *Id.* The respondent thereafter uncapped the taxable value of the property, based on the transfer of property by operation of law due to the death of the petitioner’s father. *Id.* The petitioner appealed, claiming that the death of his father was not a “conveyance” and therefore the property should not have been uncapped. *Id.*, slip op at 2.

In *Klooster*, this Court agreed with the petitioner and held that there was no transfer of ownership and the taxable value of the property should not have been uncapped under MCL 211.29a(3).” *Id.*, slip op at 4. The Court reasoned that the death of the petitioner’s father “does not constitute a ‘conveyance’ within the meaning of § 27a(7)(h),” and therefore the second conditional requirement in § 27a(7)(h) was never triggered. *Id.*, slip op at 3. The Court stated, “It is well established, as a legal term, that a ‘conveyance’ means every instrument *in writing* which affects the title to any real estate.” *Id.*, slip op at 4, citing MCL 565.35 (defining conveyance) and *McMurty v Smith*, 320 Mich 304, 307; 30 NW2d 880 (1948). Because the death of the petitioner’s father was not a written conveyance, but instead a change by operation of law, it was not a conveyance for purposes of MCL 211.27a(7)(h).

The facts in this case are very similar to those in *Klooster*, and therefore, that case governs. *People v Petros*, 198 Mich App 401, 407 n 3; 499 NW2d 784 (1993). Based on the rule of law established in *Klooster* that the death of a joint tenant does not constitute a transfer for purposes of MCL 211.27a(7)(h), the death of Mrs. Klevorn and the subsequent transfer of ownership to petitioner does not constitute a conveyance. Therefore, the second half of MCL 211.27a(7)(h) was not triggered and petitioner's property value should not have been uncapped as a result of the termination of Mrs. Klevorn's interest in the property.

Because we find this issue dispositive, we need not consider the alternative grounds asserted by petitioner in opposition of the MTT ruling.

Reversed and remanded for entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Donald S. Owens