

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM P. FROLING and MARILYN
FROLING,

UNPUBLISHED
January 23, 2014

Petitioners-Appellants,

v

No. 309091
Tax Tribunal
LC No. 00-379945

CITY OF BLOOMFIELD HILLS,

Respondent-Appellee.

Before: OWENS, P.J., and METER and BORRELLO, JJ.

PER CURIAM.

Petitioners appeal as of right from the Michigan Tax Tribunal's judgment rejecting petitioners' argument that their property had been overvalued for purposes of taxation. For the reasons set forth in this opinion, we affirm.

In March 2009, petitioners protested the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of their property located in Bloomfield Hills, Michigan to the local Board of Review. Following the Board's decision, petitioners filed an appeal with the Michigan Tax Tribunal on July 29, 2009. Subsequently, a hearing was held in the small claims division of the Tax Tribunal at which petitioners protested the property assessments for the years 2009, 2010 and 2011. The tribunal determined that petitioners' property had the following values in 2009: the TCV was \$2,000,000, the SEV was \$1,000,000, and the TV was \$582,630. In 2010, the TCV was \$1,900,000, the SEV was \$950,000, and the TV was \$580,880. In 2011, the TCV was \$1,700,000, the SEV was \$850,000, and the TV was 590,750. The values that petitioners proposed were significantly lower than the valuation of the tribunal. Petitioners claimed their property had been devalued because of persistent flooding problems. Petitioners now appeal the tribunal's decision, on two separate bases. First petitioners allege that this Court should remand to the tax tribunal for purposes of conducting a recorded hearing. They contend that the failure by the tax tribunal to conduct a recorded hearing infringed on this Court's ability to conduct a meaningful review and that they were denied due process. Next, petitioners contend that the tribunal's ultimate decision as to taxable value was contrary to law.

Our review of a tax tribunal's decision is limited to determining whether the tax tribunal made an error of law or adopted a wrong legal principle. *W A Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 336; 686 NW2d 9 (2004). This Court will accept as true a tax

tribunal's findings of fact where they are supported by competent, material, and substantial evidence. *Mich Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490-491; 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." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). When statutory interpretation is involved, we review the tax tribunal's decision de novo. *Michigan Milk Producers Ass'n*, 242 Mich App at 491. Clear and unambiguous statutory language must be applied as written. *Id.*

We first consider petitioners' claim that the referee's failure to record the proceeding, along with the tribunal's decision that petitioners were not entitled to a formal recording, deprived petitioners of their constitutional rights and precluded the tribunal and this Court from properly reviewing the referee's opinion. We note that the tax tribunal relied on this Court's decision in *Shuster v Township of Leelanau*, unpublished opinion per curiam of the Court of Appeals, issued December 10, 2009 (Docket No. 286120), in concluding that a recorded hearing was not mandated. Indeed, this Court addressed this same argument when the petitioner asserted in *Shuster* that "the tax tribunal erred to the extent that it did not consider oral testimony presented at the referee's hearing and could not fully and fairly evaluate the referee's opinion without a formal record of the prior proceeding." *Id.* at 1. We find the *Shuster* Court's rationale instructive¹ and adopt it in the instant case.

As in *Shuster*, petitioners elected to file their tax claim in the small claims division. MCL 205.762(2) governs proceedings in the small claims division of the Tax Tribunal and provides, in relevant part: "A person or legal entity entitled to proceed under section 31, and whose proceeding meets the jurisdictional requirements of subsection (1), 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." According to Michigan Tax Tribunal Rule (TTR) 265(1), "A formal transcript shall not be taken for any proceeding conducted in the small claims division, unless otherwise provided by the tribunal." Both the statute and the tribunal rule provide that no recording is to be made of hearings in the small claims division. Nevertheless, review of hearings is possible without a formal record. See *Oldenburg v Dryden Twp*, 198 Mich App 696, 698-699; 499 NW2d 416 (1993) (holding that a tribunal must make its own finding of true cash value and clearly set forth its reasoning). The requirement of a written opinion containing a concise statement of facts and conclusions of law enables meaningful review. See *Granader v Southfield Twp*, 145 Mich App 585, 588; 377 NW2d 893 (1985) (stating that "[a]dequate findings of fact are particularly important in proceedings before the small claims division since review is hindered by the informal record maintained in those proceedings").

¹ "An unpublished opinion is not precedentially binding under the rule of stare decisis." MCR 7.215(C)(1). However, unpublished opinions can be instructive or persuasive. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010).

Petitioners do not argue that the referee failed to set forth her findings and conclusions with particularity. Rather, petitioners' contention is with the lack of recorded evidence. However, after consideration of petitioners' arguments on this matter we find them without merit. Furthermore, petitioners' reliance on MCL 24.286(2), which grants the right to record "[o]ral proceedings at which evidence is presented," is misplaced. The more specific requirements of the Tax Tribunal as set forth in MCL 205.762(2) and TTR 265(1) govern the small claims division and do not require a formal recording of the proceedings. See TTR 261 (providing that the small claims rules govern practice and procedure in the small claims division and, where an applicable small claims rule does not exist, the entire tribunal rules govern). We find, contrary to the arguments of petitioners, that the statute and tribunal rule do not conflict with MCR 7.210(A)(2), which provides:

In an appeal from an administrative tribunal or agency, the record includes all documents, files, pleadings, testimony, and opinions and orders of the tribunal, agency, or officer (or a certified copy), except those summarized or omitted in whole or in part by stipulation of the parties. Testimony not transcribed when the certified record is sent for consideration of an application for leave to appeal, and not omitted by stipulation of the parties, must be filed and sent to the court as promptly as possible.

Petitioners mistakenly argue that the court rule implies that a transcript must be provided to conduct a meaningful appellate review of claims before the Tax Tribunal. As previously noted, review of a tribunal decision is possible despite the lack of a formal recording. *Oldenburg*, 198 Mich App at 698-699. In particular, a concise statement of the facts and legal conclusions provides sufficient background for a meaningful review. *Granader*, 145 Mich App at 588. Clearly, petitioners' assertion that they are entitled to a formal recording of the valuation hearing is unfounded and contrary to the law and the Tax Tribunal's own rules.

Finally we find that petitioners are precluded from asserting that a recording should have been made when they failed to timely request a formal recording. See *Bloemsma v Auto Club Ins Ass'n*, 190 Mich App 686, 691; 476 NW2d 487 (1991) (stating that error requiring reversal must not be error "to which the appellant contributed by plan or negligence"). Thus, for the reasons previously stated in this opinion, when petitioners sought relief in the small claims division, a recorded proceeding was not available to them. Therefore, we find that petitioners are not entitled to relief on this issue.

Next, we consider petitioners' contention that the proposed opinion of the referee and the final judgment of the tribunal are contrary to the law and contradictory to the facts presented regarding the valuation of the subject property. The taxpayer has the burden of proof to establish the true cash value of the property. *Oldenburg*, 198 Mich App at 698-699. Nonetheless, the tax tribunal must make its own independent determination of a subject property's true cash value. *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). In doing so, the tax tribunal "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." *Id.* at 390. However, the tax tribunal may not merely accept a party's valuation theory without providing an explanation why the valuation accurately reflected the true cash value of the subject property. *Jones & Laughlin*, 193 Mich App at 355-356. A determination of the tax

tribunal must include a concise statement of the facts and conclusions of law in support of its decision. MCL 205.751(1).

Our review of the evidence leads us to conclude that the tax tribunal properly made an independent determination regarding the true cash value of petitioners' property. In rendering its decision, the tribunal adopted the referee's findings of fact and conclusions of law as its own, but modified them to reflect its specific findings. The tribunal reasoned that, in light of the evidence, the hearing referee "failed to consider [p]etitioners' list of comparable sales as comparables." The tribunal noted the omitted evidence included a list of nine recent sales and calculations showing an average price per square foot of \$163.43. Despite acknowledging the referee's error, the tribunal determined that the error was harmless as "[p]etitioners' comparable sales [were] not a reliable indicator of value for the tax years at issue." The tribunal found petitioners' evidence was insufficient because they failed to make adjustments to the sales price of the comparable properties to reflect differences in the subject property. Additionally, petitioners averaged the sales, which is an invalid method of valuing property as it fails to adequately reflect the market.

Petitioners contend that the tribunal did not address the unique nature of their property because it failed to consider their flooding problem. However, our review of the evidence reveals that the tribunal determined that the referee properly found that "a flooding problem does exist; however there is insufficient valuation data as to indicate what effect the flooding problem has on the market price of the property." The tribunal further found, "[T]he [p]etitioners contend that a 50 percent reduction in land value is warranted along with 20 percent depreciation for functional obsolescence and 20 percent for external obsolescence. These contentions are not supported by reliable valuation data on the record." In adopting the referee's findings into its final decision in this case, the tribunal effectively acknowledged that there was evidence showing flooding on the property, indicating the presence of allergic mold, and affirming that real estate brokers would not list the property with its current flooding issues. However, it agreed with the referee's conclusion that "[t]he evidence fails to persuasively establish that a significant reduction in value for the water issue should be applied for the tax years at issue." Moreover, while petitioners' exceptions appeared to be submitted subsequent to the hearing, the tribunal determined that "the [p]etitioners' exceptions and additional information still d[id] not provide reliable valuation data to support its contentions of value for the tax years at issue."

Furthermore, the tribunal determined that the referee properly found that the sales comparisons offered by respondent accurately reflected the value of petitioners' property. Specifically, it adopted the referee's finding that "the subject property was inspected in 2009. There was no damage observed and [respondent] did not feel any additional depreciation was warranted." Moreover, the referee found, "[T]he sales comparison analysis submitted by [r]espondent does support reductions for each tax year at issue. The sales comparables selected were similar to the subject and contained reasonable adjustments for differences. Two of the 2009 comparables and one 2010 comparable were located on the same golf course as the subject property." Petitioners argue that the comparables do not account for the flooding problems but, again, "[t]he evidence fail[ed] to persuasively establish that a significant reduction in value for the water issue should be applied for the tax years at issue." Thus, the tribunal sufficiently explained its decision. *Jones & Laughlin*, 193 Mich App at 355. In particular, the tribunal explained why it believed respondent's assessment accurately reflected the true cash value of the subject property. *Id.* at 355-356. Additionally, while not the only method for determining true

cash value, the sales comparison method utilized by respondent is one of the three most common approaches. See *Great Lakes*, 227 Mich App at 390.

On reconsideration, the tribunal explained its decision to affirm the final judgment and factual findings it contained. The tribunal held that it could not ascertain where petitioners' percentages of reduction in land value and depreciation for obsolescence derived and determined that "there [was] no sufficient and reliable evidence supporting these reductions. Even if the Tribunal were to have determined, which it did not, that a reduction was warranted, it would have been incumbent on [p]etitioners to prove, with specificity, what those reductions should be." The evidence supports the tribunal's conclusion that petitioners failed to satisfy their burden of proof. Furthermore, the tribunal's findings are supported by competent, material and substantial evidence. Thus, there are no errors warranting relief.

Affirmed. No costs are awarded. MCR 7.219.

/s/ Donald S. Owens

/s/ Patrick M. Meter

/s/ Stephen L. Borrello