

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DONALD E. LEWALLEN AND RONALD L.  
LEWALLEN,

UNPUBLISHED  
February 20, 2014

Petitioner-Appellants,

v

No. 312677  
Michigan Tax Tribunal  
LC No. 00-431811

TOWNSHIP OF PORTER,

Respondent-Appellee.

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Before: SHAPIRO, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Petitioners appeal by leave granted the tax tribunal's order granting respondent's motion for summary disposition and finding that certain 2012 instruments created to "correct" a February 23, 2004 deed that effected a change in ownership did not relate back to negate the uncapping of the property's taxable value. We affirm.

In February 2004, petitioners' parents, Lawrence and Barbara Lewallen, executed a quitclaim deed transferring property they owned in Cass County, Michigan, to petitioners as "tenants in common, each receiving an undivided one-half (1/2) interest." Following this transfer, neither petitioners nor petitioners' parents filed a property transfer affidavit with respondent; consequently, respondent did not learn of the 2004 quitclaim deed until 2011. Upon discovering the transfer, respondent notified petitioners that the 2004 transfer was an "uncapping event" under MCL 211.27a(3), and issued a revised property tax bill for tax years 2005 through 2011.

Following this notification, petitioners' parents filed a 2012 corrective quitclaim deed and affidavit in aid of title stating that the 2004 quitclaim deed was not executed to grant petitioners title as tenants in common with an undivided one-half interest in the property but was instead intended to grant title to petitioners and their parents as joint tenants with right of survivorship. Additionally, petitioners appealed the revised property taxes to the Michigan Tax Tribunal, arguing that the 2012 corrective quitclaim deed had retroactive effect and nullified the 2004 uncapping event. Both petitioners and respondent filed motions for summary disposition. The tribunal denied petitioners' motion and granted respondent's. The tribunal concluded that the 2004 transfer was an uncapping event, that the Michigan Land Title Standards prohibited corrective instruments that substantially change the name of the grantee, and that the tribunal

lacked jurisdiction to reform the deed under a theory of mutual mistake. Following the tribunal's order, petitioners moved for reconsideration, which was denied.

Petitioners argue that the tax tribunal erred by granting respondent's motion for summary disposition. We disagree. "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. A tax tribunal decision that is not supported by competent, material, and substantial evidence on the whole record is an "error of law" within the meaning of Const 1963, art 6, § 28. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993).

Under MCL 211.27a(3), a property's taxable value is uncapped for the year following a transfer of ownership. Here, the parties do not dispute that 2004 quitclaim deed represents an uncapping event under MCL 211.27a(3). Petitioners, however, assert that the 2012 corrective deed retroactively applies to the 2004 quitclaim deed and that the terms of the 2012 corrective deed do not constitute an uncapping event under MCL 211.27a(3). Therefore, according to petitioners, the 2004 uncapping is void, and petitioners should not be required to pay the revised property taxes for tax years 2005 through 2011.

Petitioners cite *Diehlman v Dwelling-House Ins Co*, 78 Mich 141; 43 NW 1045 (1889), wherein a corrective deed was permitted to have retroactive effect to remedy a faulty description of the real property and all the parties acted in good faith. In *Diehlman*, a fire insurance policy had been issued for real property that was subsequently destroyed by fire; the insured's deed contained an erroneous description of the land. *Id.* at 142-143. Initially, the defendant agreed to pay the claim but subsequently refused upon discovery of the deed's description error. *Id.* A corrected deed was filed after the mistake was disclosed. The Court ruled:

The plaintiff had in equity all the title . . . to the property, and in the application the agent of the defendant company correctly described the premises. It does not appear that the risk was in any way increased or made more hazardous. All the parties acted in good faith, and after the fire adjusted the loss, and defendant promised payment.

These circumstances cannot be held to work a forfeiture of the policy. The title to the premises is substantially as represented, as in equity the plaintiff had the right to the legal title as she then had the equitable title, and when it was so conveyed it related back to the time of taking possession under the deed containing the wrong description. [*Id.* at 144.]

Here, however, the corrective deed was not issued to remedy a faulty description of the property at issue. Its purpose was to change the grantees and the nature of their title. Further, rather than being made to correct a good-faith clerical error, the corrective deed in this case appears to have been issued to avoid the unintended tax consequences of an unambiguous transfer. Accordingly, *Diehlman* is factually distinguishable and inapposite to the instant case.

Additionally, petitioners' argument is contrary to Michigan Land Title Standard 3.3, which states, in relevant part, that "[a] grantor who has conveyed real property by an effective,

unambiguous instrument cannot, by executing a subsequent instrument, make a substantial change in the name of the grantee . . . even though the subsequent instrument purports to correct or modify the former.” Standard 3.3 does note, however, that “there are circumstances under which a later ‘corrective’ deed, not inconsistent with the prior instrument and intended to clarify some ambiguity contained in the deed, may be effective.” Here, however, the 2004 quitclaim deed was unambiguous and therefore fails to fall within the exception.<sup>1</sup>

Lastly, petitioners also argue that their position is supported by public policy, as the Michigan Legislature recently adopted 2012 PA 497, adding MCL 211.27a(7)(s), which excludes transfers to persons related by blood or affinity to the first degree as uncapping events. The cited provision, however, explicitly states that it takes effect on December 31, 2013. Accordingly, the legislation does not apply to the facts of this case. In fact, the amendment supports the conclusion that the 2004 quitclaim deed constituted an uncapping event under MCL 211.27a(3).

Therefore, because the 2004 quitclaim deed was an uncapping event under MCL 211.27a(3) and because petitioners cannot use a corrective deed to change the grantees and the title transferred by the 2004 deed so that it does not constitute an uncapping event, the tax tribunal did not err by granting respondent’s motion for summary disposition.

We affirm.

/s/ Douglas B. Shapiro  
/s/ Jane E. Markey  
/s/ Cynthia Diane Stephens

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<sup>1</sup> While the Michigan land Title Standards are not binding on this Court, they may be persuasive.