

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN WILDLIFE AND FOREST
PRESERVATION FOUNDATION,

UNPUBLISHED
June 25, 1999

Petitioner-Appellant,

v

No. 209573
Michigan Tax Tribunal
LC Nos. 227456, 237308

DOVER TOWNSHIP,

Respondent-Appellee.

Before: Markey, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's determination that petitioner is not a charitable organization entitled to tax exempt status for purposes of real property taxation. We affirm.

Petitioner owns 350 acres of undeveloped land in Dover Township. Petitioner argues that the act of preserving land in its natural state qualifies it as a charitable organization entitled to tax-exempt status from ad valorem property taxes. The tribunal determined that the mere preservation of land, without more, does not make petitioner a charitable organization pursuant to MCL 211.7o; MSA 7.7(4-1) of the General Property Taxation Act, MCL 211.1 *et seq.*; MSA 7.1 *et seq.* The tribunal further concluded that the land had not been occupied solely for the purposes for which petitioner was purportedly incorporated as required by § 7o.

Judicial review of a determination by the Tax Tribunal is limited to determining whether the tribunal made an error of law or applied a wrong principle. Const 1963, art 6, § 28; *OCLC Online Computer Library Center, Inc v City of Battle Creek*, 224 Mich App 608, 611; 569 NW2d 676 (1997); *Rose Hill Center, Inc v Holly Twp*, 224 Mich App 28, 31; 568 NW2d 332 (1997). The factual findings of the tribunal are final, provided that they are supported by competent, material, and substantial evidence on the whole record. *Rose Hill, supra* at 31.

Petitioner bore the burden of proving by a preponderance of the evidence that it was entitled to a property tax exemption status. *Holland Home v City of Grand Rapids*, 219 Mich App 384, 394-

395; 557 NW2d 118 (1996). To qualify for an exemption under MCL 211.7o; MSA 7.7(4-1), the property owner must satisfy the following requirements:

- (1) the real estate must be owned and occupied by the exemption claimant;
- (2) The exemption claimant must be a library, benevolent, charitable, educational or scientific institution;
- (3) The claimant must have been incorporated under the laws of this state;¹
- (4) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated. [*Id.* at 396-397 (citations omitted).]

“Charity” has been defined as:

a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. [*Id.* at 399, quoting *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 671; 378 NW2d 737 (1985).]

Thus, “[t]o qualify as a charitable institution, petitioner’s activities, taken as a whole, must constitute a charitable gift for the benefit of the general public without restriction [or] for the benefit of an indefinite number of persons.” *OCLC, supra* at 615 (citation omitted). Petitioner argues that its “gift . . . for the benefit of an indefinite number of persons” is the actual preservation and conservation of this property in its natural state.

In *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981), the petitioner sought an exemption regarding certain real properties, including a thirty-one acre parcel of undeveloped land. *Id.* at 659. The Kalamazoo Nature Center was organized “[t]o develop in people and especially children a better understanding and appreciation of our natural surroundings and of the problems of wise management of our nature resources.” *Id.* Other purposes included working with other agencies concerned with natural history and conservation, sponsoring service and educational programs, ecological research, and maintaining “the area known as Cooper’s Glen and other natural areas” *Id.* at 659-660. The facts revealed that the center was supported solely by contributions and volunteer help, and that approximately 100,000 people visited its lands and took part in its educational programs per year. *Id.* at 660. The *Kalamazoo* Court did not refer to any definition of charity, but simply affirmed the tribunal’s finding that the center was a “charitable” organization. *Id.* at 661-663.

In *Moorland Twp v Ravenna Conservation Club, Inc*, 183 Mich App 451; 455 NW2d 331 (1990), the respondent sought tax exempt status as a charitable organization. *Id.* at 453. The club was a nonprofit corporation whose purpose was to conserve and promote natural resources and wildlife,

and to assist the Department of Natural Resources in preserving and developing natural resources and wildlife. *Id.* at 454. The facts revealed that the club's twenty acres of land had a clubhouse, archery and rifle range, nature trails with identifying signs and markers, and a stream. *Id.* at 455. The property was not fenced in, was open to the public free of charge, and was used by various local groups. *Id.* Club members annually raised and released pheasants and brook trout, and participated in bluebird restoration projects. *Id.* The club also assisted the DNR on a regular basis with various projects. *Id.* In addition, the club sponsored wildlife discovery programs for schools, offered free hunter safety courses for children, and distributed free informational brochures. *Id.* at 456. The *Moorland Twp* Court quoted the above definition of charity, and noted that "[t]he proper focus of this test is whether the organization's activities taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons." *Id.* at 458. Regarding the club's activities, the *Moorland Twp* Court concluded:

These are all purposes intended to benefit the general public without restriction. According to the record, both the stated purposes and actual activities of the RCC address these objectives. The RCC's property is open to the public; and, in addition to its own independent activities, the RCC works directly with the DNR in assisting it in carrying out its designated purposes. Without the assistance of the RCC, various DNR projects could not be implemented or would otherwise have to be discontinued.

Therefore, we believe that, by dedicating itself to the conservation and promotion of natural resources and wildlife, areas which have been expressly declared to be of paramount public concern, and by either engaging in independent activities addressing these areas or assisting the state agency charged with the same, the RCC has not only lessened an expressly recognized burden of government but has also conferred a laudable "gift" on the community at the same time. [*Id.* at 461.]

Applying these principles to this case, petitioner had the burden of showing that it bestowed "a gift for the benefit of an indefinite number of persons by lessening the burdens of government." *Holland Home, supra* at 399. In meeting that burden, "[t]he proper focus . . . is whether the organization's activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons." *Moorland Twp, supra* at 458.

We agree with petitioner that *Kalamazoo, supra*, and *Moorland Twp, supra*, support its argument that the preservation and conservation of land in its natural state can be, and has been, considered a charitable purpose. Thus, petitioner's actions in preserving the 350 acres in Dover Township can be construed as lessening the government's burden regarding that objective. However, these decisions do not support a conclusion that merely "preserving" land, without more, is a charitable "gift" for the purposes of establishing tax exempt status. In both *Kalamazoo* and *Moorland Twp*, the preservation of land in its natural state was combined with a variety of other activities. Here, the facts reveal that petitioner did little more than plant trees in conformance with a forest management plan and grow certain crops to feed native wildlife. Petitioner does not conduct any educational programs or tours of the property. Although petitioner is maintaining the land according to a plan given it by the DNR, petitioner does not appear to be actively assisting the department in any way. Thus, the facts

here are distinguishable from those in *Kalamazoo, supra*, and *Moorland, supra*, and support the Tax Tribunal's finding that petitioner was not a charitable organization for exemption purposes because it had not bestowed a "gift" by merely preserving the land in its present state.

Furthermore, even if the mere preservation of the land constituted a gift, it has to benefit the general public without restriction or an indefinite number of persons. *Moorland Twp, supra* at 458. In *Kalamazoo, supra*, the KNC was regularly open to the public and conducted regular tours. Thus it was a benefit to the general public or an indefinite number of persons. Similarly, in *Moorland Twp, supra*, the club's property was always open and available for public use free of charge. Here, the record reveals that the property was enclosed by a fence, and access was controlled by several gates. In addition, eighteen "No Trespassing" signs were posted around the edges of the property. The facts revealed that any use of the property was limited. A few church groups and a group of college students had used the property with petitioner's permission, along with elk hunters, and a wildlife photographer. Based on these facts, and comparing them to the facts in *Kalamazoo, supra*, and *Moorland Twp, supra*, we conclude that the Tax Tribunal's decision that petitioner's preservation of the land was not for the benefit of the general public without restriction or for an indefinite number of persons is supported by competent, material, and substantial evidence on the whole record." *Rose Hill, supra* at 31. Because petitioner failed to prove that it was a charitable institution, this Court need not address whether the property was occupied solely for its charitable purpose.

Affirmed.

/s/ Jane E. Markey

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald

¹ The third requirement is no longer required since it was found unconstitutional. *OCLC, supra* at 612.