STATE OF MICHIGAN

COURT OF APPEALS

TURTLE LAKE CLUB,

Petitioner-Appellant,

v

TOWNSHIP OF OSSINEKE,

Respondent-Appellee.

UNPUBLISHED
June 11, 2002

No. 230130
Tax Tribunal
LC No. 00-247696

TURTLE LAKE CLUB,

Petitioner-Appellant,

v

TOWNSHIP OF RUST,

Respondent-Appellee.

No. 230181
Tax Tribunal
LC No. 00-247697

TURTLE LAKE CLUB,

Petitioner-Appellant,

v

TOWNSHIP OF CLINTON,

Respondent-Appellee.

No. 230182
Tax Tribunal
LC No. 00-247698

TURTLE LAKE CLUB,

Petitioner-Appellant,

v

TOWNSHIP OF GREEN,

Respondent-Appellee.

No. 230183
Tax Tribunal
LC No. 00-247699

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Petitioner appeals as of right from the July 24, 2000, orders of the Tax Tribunal denying its motions to set aside defaults and dismissing its four petitions. These four appeals were consolidated by order of this Court. We affirm.

Petitioner appealed respondents' 1997 assessments of its real property in June 1997. Respondents posed interrogatories that requested, in part, information regarding gas and oil income and royalties. Petitioner declined to provide this information, claiming it was irrelevant because the severance tax act, MCL 205.301, did not allow ad valorem taxation of gas and oil rights or income. By that time, however, petitioner's appeals had been amended to include the 1998 assessments,[1] so respondents posed new interrogatories asking for a breakdown of the gas and oil income by year. It appears from the record that petitioner did not provide satisfactory information to respondents, and continued to challenge the relevance of the oil and gas royalty information. The tribunal decided the information could indeed be relevant depending on further factual development and ordered petitioner to provide it in an order entered November 5, 1999.[2]

When petitioner did not respond with the pertinent information within the deadline set by the tribunal, respondents moved for petitioner to be placed in default on March 6, 2000. Before the tribunal entered its order granting respondents' motion, petitioner responded to respondents' third set of interrogatories. However, in its response to the interrogatories petitioner continued to assert that the requested information was irrelevant in spite of the tribunal's ruling that it may indeed be relevant, and manifested its intention to not disclose the information absent a protective order. The tribunal granted respondents' motion to place petitioner in default in an order entered April 12, 2000. However, the tribunal granted petitioner the opportunity to cure the defaults by providing the requested information. Petitioner responded by moving to set aside

[1] By leave of the tribunal, petitioner later amended the petitions to include the 1999 tax year.

[2] Petitioner stated to all four respondents that it had received $617,000 in royalty and bonus payments.

the defaults and offering to provide the information if the tribunal would grant protective orders. The tribunal denied petitioner's motions and dismissed the cases in orders entered July 24, 2000.[3] Petitioner now appeals as of right.

The tribunal's decision to dismiss these cases is reviewed for an abuse of discretion. *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986). To warrant reversal on appeal, an abuse of discretion must be clear from the record. *Daugherty v Michigan (After Second Remand)*, 163 Mich App 697, 701; 415 NW2d 279 (1987). An abuse of discretion "occurs only when the result is so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999) (internal quotation marks omitted).

Petitioner argues that the tribunal abused its discretion in denying its motions to set aside the defaults and in dismissing its petitions because the exclusivity of the severance tax act made information regarding its gas and oil resources and income irrelevant. On the other hand, respondents reply that MCL 211.27(1) requires them to consider the value of "mines, minerals, quarries, or other valuable deposits known to be available in the land" in determining the cash value of petitioner's land. Respondents also argue that further factual discovery was necessary for the tribunal to render a definitive ruling on this issue. Moreover, respondents assert that petitioner "refused to provide the factual basis necessary to [the tribunal's] reasoned decision making process."

In concluding that default was warranted, the tribunal observed that petitioner had been given ample opportunity to comply with the tribunal's discovery orders, but had willfully failed to do so in spite of the warned consequences. The tribunal also noted that factual development of the issue was necessary to allow the tribunal to determine whether the income was exempt from other taxes under the severance tax act. Further, the tribunal noted that petitioner's repeated refusal to comply with its orders prejudiced respondents because they were placed in the unenviable position of defending against petitioner's argument that its income was excluded from real property taxation under the applicable severance tax statutes without the pertinent factual information.

Under the circumstances, we are not persuaded that the tribunal abused its discretion in denying petitioner's motions to set aside the defaults and in dismissing the petitions. The tribunal's procedural rules clearly state that a party placed in default must cure the default as provided by the default order. 1999 AC, R 205.1247(1). On April 12, 2000, the tribunal held petitioner in default for its blatant discovery violations, but petitioner did not take the opportunity to cure the default before dismissal was entered in spite of the tribunal's express

[3] Specifically, the tribunal denied petitioner's motion for protective order on the basis that petitioner did not provide reasonable notice of its motion, given that it had since December 1999 to bring the motion, and that the motion was brought on the eve of the deadline to cure the defaults. The tribunal also observed that petitioner "fail[ed] to specifically identify the documents which contained the information, or why they were in need of protection, . . . contrary to the [c]ourt [r]ule requirement 'for good cause shown.'"

warning that dismissal may follow. The tribunal's procedural rules further state that failure of a party to comply with an order of the tribunal is cause for dismissal. 1999 AC, R 205.1247(4); see also *Georgetown Place Cooperative v City of Taylor*, 226 Mich App 33, 50-51; 572 NW2d 232 (1997); *Kostyu v Dep't of Treasury*, 170 Mich App 123, 131; 427 NW2d 566 (1988). Petitioner did not comply with the tribunal's orders when the tribunal reopened discovery, and it did not comply with the orders of default. Willful violation of a discovery order and a history of deliberate delay are indeed grounds for dismissal, *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990), and a violation is willful if it was conscious or intentional. *Welch v J Walter Thompson USA, Inc*, 187 Mich App 49, 52; 466 NW2d 319 (1991).

Even when faced with orders of default, petitioner was still unwilling to provide the information determined by the tribunal to be necessary for the cases to go forward. In our opinion, the denial of petitioner's motions to set aside the defaults and dismissal of these cases were appropriate and rational because petitioner had been ordered multiple times to produce the needed information and had instead engaged in a pattern of deliberate, willful delay that effectively made it impossible for the litigation to progress. *Dean, supra* at 32-33; *Welch, supra* at 52.

Petitioner also argues that the tribunal abused its discretion in granting its motions to amend the petitions to include the 2000 assessments while petitioner was in default and then dismissing the case with respect to the 2000 tax year. The tribunal's rules allow amendment as provided by the Tax Tribunal Act, MCL 205.701 *et seq*., or by leave of the tribunal. 1999 AC, R 205.1225(2). Specifically, MCL 205.735(3) allows a petition to be amended "at any time by leave of the tribunal and in compliance with its rules." On this record, we are not persuaded that the tribunal abused its discretion in granting petitioner's motions to amend the petitions, and the petition for tax year 2000 was appropriately dismissed. *Alken-Ziegler, supra* at 227.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell