

STATE OF MICHIGAN
COURT OF APPEALS

PETER B. FLETCHER,

Petitioner-Appellant,

v

TOWNSHIP OF PITTSFIELD,

Respondent-Appellee.

UNPUBLISHED

July 30, 2002

No. 229470

Tax Tribunal

LC No. 0-265823

Before: Murray, P.J. and Sawyer and Kelly, JJ.

PER CURIAM.

Petitioner appeals as of right from a final judgment entered in the Tax Tribunal relative to the 1999 and 2000 tax years. This appeal is being decided without oral arguments pursuant to MCR 7.214(E). We affirm.

I. Basic Facts and Procedural History

Petitioner owns three contiguous properties in Pittsfield Township. In 1992, petitioner and Rest in the Sun¹ entered into a purchase agreement for the properties, but for reasons not clear from the record before us, the purchase was not completed and options contained in the agreement were not properly exercised. These properties have been the subject of intense litigation between petitioner and Rest in the Sun at both the circuit court and appellate levels. Apparently, because of the litigation, petitioner was unable to market or sell the properties to anyone other than Rest in the Sun.

When agents for respondent assessed the value of the properties, they took into consideration the ongoing litigation and reduced the taxable value by fifteen percent for the 1999 and 2000 tax years. Petitioner filed a protest and ultimately an appeal to the Michigan Tax Tribunal, Small Claims Division, wherein petitioner contended that the true cash value of his properties should be assessed at zero. In support of his position, petitioner offered two letters and his own testimony. He did not present an independent valuation or appraisal. The hearing

¹ Although not entirely clear on the within record, Rest in the Sun appears to be an unrelated third party to the instant appeal but has an interest in the properties at issue as evidenced by a purchase agreement for those properties.

referee found “[p]etitioner’s testimony and evidence [not] sufficiently credible to warrant a conclusion that the contested assessment [was] unlawfully excessive,” and further found that petitioner failed to satisfy his burden of proof. The Tax Tribunal denied petitioner’s request for rehearing. Petitioner appeals as of right.

II. Standard of Review

In the absence of fraud, this Court reviews the Tax Tribunal’s decision to determine whether the tribunal committed an error of law or adopted a wrong legal principle. *Michigan Milk Producers, Ass’n v Dep’t of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). Appellate review of the tribunal’s factual findings is limited to whether the findings are supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Professional Plaza, LLC, v City of Detroit*, ___ Mich App ___, ___ NW2d ___ (Docket No. 224094, issued 3/19/02), slip op p 1. Substantial evidence is that which a reasonable mind would accept as sufficient to support a conclusion. *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994); see also *Id.* at 698. Substantial evidence is more than a scintilla but may be substantially less than a preponderance of the evidence. *Id.* at 679. When there is sufficient evidence, a reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result. *Black v Dep’t of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). It does not matter that alternative findings also could have been supported by substantial evidence on the record. See *In re Payne, supra* at 698.

III. Analysis

Petitioner first argues that the tribunal erred in denying his request for rehearing. We disagree. Although a person aggrieved by a decision of the tribunal is entitled to request a rehearing, we find that petitioner’s request was properly denied for failure to establish good cause. MCL 205.762(3). A reading of the hearing referee’s opinion clearly demonstrates that the referee considered the two letters submitted by petitioner. The hearing referee further noted “a 1992 option on the properties set the sale price at \$1.3 million” but because of “litigation and delay problems” the taxable cash value of the property would be reduced by a factor of fifteen percent. The referee’s findings were supported by substantial and competent evidence. We find no err requiring reversal.

Next, petitioner argues that the tribunal erred in finding that he “failed to go forward with the evidence.” We find this argument to be without merit. The petitioner has the burden of proof in establishing the true cash value of the property. MCL 205.737(3). Here, petitioner failed to produce any evidence to establish that the property should have been assessed at \$0. There was no competing market analysis to support petitioner’s contention. To the contrary, petitioner’s own exhibits establish potential buyers for the property in the event that the litigation bar was removed and that title insurance could be procured. The evidence produced clearly established that at least one buyer, Rest in the Sun, was willing to pay \$1.3 million for the properties, and in fact instituted legal proceedings seeking specific performance of the 1992 purchase agreement. We also note that petitioner was successful in that litigation, yet has apparently pursued the matter further. Removing the cloud on the title thus appears to be within petitioner’s own control.

Finally, petitioner argues that the tribunal erred in failing to make an independent determination of the “cash value” of the properties. However, petitioner fails to brief this issue or support his argument in any way. Consequently, the issue is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Furthermore, we find no error in the tribunal’s calculation of taxable value. Taxable value must represent the usual price for which the property will sell, irrespective of the valuation approach selected by the tribunal. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992).

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Kirsten Frank Kelly