

T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

GRACE REID,

Petitioner-Appellant,

v

WILLIAMSTOWN TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED

November 27, 2007

No. 271284

Tax Tribunal

LC No. 00-308159

Before: Donofrio, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

The Tax Tribunal upheld respondent Williamstown Township's decision to uncap the taxable value of a 14.37-acre parcel of real property because there was a "transfer of ownership," as defined in MCL 211.27(a)(6) from petitioner to her son. We affirm.

Petitioner owned the property, which originally was part of a family farm owned by petitioner's late husband. Petitioner maintains that she intended to convey the parcel to her son, James Reid, at some unspecified future date, as part of a plan to fairly and equitably distribute the farm property among her four children. In 2002, James took possession of the parcel for use as his residence. He intended to build a pole barn on the property but was not able to obtain a building permit without proof of ownership. In November 2002, petitioner executed a memorandum of land contract stating that she conveyed the parcel to James pursuant to a land contract dated July 1, 2002. The document was notarized and James used it to obtain a building permit. In April 2003, James submitted to respondent an affidavit of transfer and an affidavit of homestead exemption, both stating that petitioner transferred the parcel to him on July 1, 2002.

Relying on this documentation, respondent uncapped the taxable value of the property pursuant to MCL 211.27a(3). Petitioner protested this decision to respondent's Board of Review, arguing that she never actually transferred the property. Petitioner maintained that she executed the memorandum of land contract only to enable James to acquire a building permit and that she had no intent to transfer the property to him at that time. The Board of Review denied her protest, and petitioner appealed to the Tax Tribunal. She contended that there was no valid transfer because she never executed a land contract, and no transaction was ever recorded. Petitioner claimed that she abandoned her plan to convey the property to James after realizing that it would not result in a fair division of her property. The Tax Tribunal denied her petition, finding that the memorandum of land contract, the transfer affidavit, and the homestead exemption affidavit served as sufficient proof that a transfer took place.

Absent a claim of fraud, we review the Tax Tribunal's decision for misapplication of the law or adoption of a wrong principle. Const 1963, art 6, § 28; *Michigan Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994). We will not disturb the Tax Tribunal's findings of facts if they are supported by competent and substantial evidence. *Id.*; *City of Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007).

Petitioner argues that the Tax Tribunal erred in according greater weight to the documentary evidence than to her explanation of her intent. Although the memorandum of land contract, transfer affidavit, and homestead exemption are not themselves documents of conveyance, they constitute competent and substantial evidence that a transfer occurred. The tribunal was justified in relying on these formal legal documents executed by petitioner and her son instead of accepting petitioner's self-serving statements that the documents were "premature" and "invalid" because they were contrary to her subjective intent. Indeed, as the Tax Tribunal noted, accepting petitioner's argument would require the conclusion that petitioner and her son presented fraudulent documentation in order to facilitate her son's use of the property. Because the Tax Tribunal's finding that a transfer of ownership occurred is supported by competent and substantial evidence, we may not disturb that finding.

Petitioner also argues that the Tax Tribunal violated her right to due process, US Const, Am XIV; Const 1963, art 1, § 17, by referring to the transfer tax statute, MCL 207.526, in its decision without affording her an opportunity to respond to the applicability and relevance of that statute. We disagree.

Due process is a flexible concept that calls for such procedural safeguards as the situation demands. *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993); *Mathews v Eldridge*, 424 US 319, 332, 334; 96 S Ct 893; 47 L Ed 2d 18 (1976). In a civil action, due process generally requires nothing more than notice of the nature of the proceedings and an opportunity to be heard in a meaningful manner. *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995); *Kostyu v Dep't of Treasury*, 147 Mich App 89, 92; 382 NW2d 739 (1985).

In this case, in response to petitioner's argument that there was no evidence that a land contract was ever recorded, the Tax Tribunal noted that the mere absence of a recorded instrument with the county register of deeds does not disprove the fact of a transfer because there are "numerous reasons" why parties to a transaction do not always record instruments of conveyance. As one example, the tribunal commented that persons sometimes fail to record transactions in order to avoid the statutory transfer tax, MCL 207.523(1). But the tribunal also noted that transfers from a parent to a child are exempt from the transfer tax under MCL 207.526(j). Viewed as a whole, the tribunal's decision discloses that the tribunal only referred to the transfer tax as one possible reason, among many, why people sometimes do not record documents of conveyance. The tribunal never found that avoidance of the transfer tax was an actual motivating factor in this case. In the end, the tribunal found that "[t]he execution of the Memorandum of Land Contract, the Property Transfer Affidavit, and the Homestead Exemption Affidavit establish on this record as a whole by a preponderance of the evidence that "ownership" was transferred from [petitioner] to [petitioner's son]." Furthermore, petitioner had an opportunity to respond to the tribunal's comments about the transfer tax when she filed her objections to the proposed opinion. Because the record discloses that petitioner was afforded an opportunity to be heard in a meaningful manner, we find no due process violation.

Finally, petitioner argues that if transfer of ownership of the subject property transpired, it was accomplished pursuant to the Tax Tribunal's order and, accordingly, the taxable value could not be uncapped. MCL 211.27a(7) provides that certain transfers do not constitute transfers of ownership for purposes of uncapping the taxable value of property. These include a "transfer pursuant to a judgment or order of a court of record making or ordering a transfer, unless a specific monetary consideration is specified or ordered by the court for the transfer." MCL 211.27a(7)(g). In this case, however, the Tax Tribunal did not order a transfer; it only determined that ownership of the property had been previously transferred. Accordingly, MCL 211.27a(7)(g) is not applicable.

We affirm.

/s/ Patrick M. Donofrio

/s/ Joel P. Hoekstra

/s/ Jane E. Markey