

STATE OF MICHIGAN
COURT OF APPEALS

ROGER SHERR and ANDREA SHERR,

Petitioners-Appellants,

v

TOWNSHIP OF WEST BLOOMFIELD,

Respondent-Appellee.

UNPUBLISHED
February 23, 2010

No. 290386
Tax Tribunal
LC No. 00-327306

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Petitioners appeal as of right from a Tax Tribunal order dismissing their petition challenging property tax assessments for tax years 2006, 2007, and 2008. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

After petitioners filed their initial petition in June 2006, they were given written notice on July 24, 2006, that a party's failure to comply with a tribunal rule or order may result in entry of a default pursuant to Tax Tribunal Rule (TTR) 247(1), AC, R 205.1247(1). On April 24, 2007, the parties were ordered to exchange and file valuation disclosures by June 29, 2007. The order also specified, **"Failure to exchange and file valuation disclosures by the date indicated will result in default"** (emphasis in original). In addition, the order required the parties to exchange and file prehearing statements by July 6, 2007. Pursuant to subsequent motions for an extension brought by respondent, the filing dates were later extended to December 28, 2007, and January 4, 2008, respectively.

On June 11, 2008, the Tax Tribunal entered an order of default against petitioners for failure to file a valuation disclosure or prehearing statement. Petitioners were given 21 days to file and exchange these documents with respondent. Petitioners were also ordered to "file a motion to set aside the default within 21 days" and to "show good cause for its prior failure to file and exchange the valuation disclosure and prehearing statement." Petitioners filed the valuation disclosure and prehearing statement within 21 days of the June 11, 2008, order, but they did not file a motion to set aside the default. On August 6, 2008, the Tax Tribunal dismissed their petition for failure to correct the default. The tribunal also denied petitioners' motion for reconsideration. Petitioners now argue on appeal that the tribunal abused its discretion by dismissing their petition.

In general, our review of a Tax Tribunal's decision in a property tax matter is limited. *City of Mount Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007); Const 1963, art 6, § 28. The Tax Tribunal's decision to dismiss a petition for failure to comply with its rules or orders, and its decision denying a motion for reconsideration, are reviewed for an abuse of discretion. *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002); *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 548; 656 NW2d 215 (2002). An abuse of discretion occurs when a decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Here, we disagree with petitioners to the extent that they argue that there were no administrative rules governing the Tax Tribunal's exercise of discretion. The Tax Tribunal was clearly acting within the scope of its authority as prescribed by TTR 247 when ordering the default and the subsequent dismissal of the petition. TTR 247 provides, in pertinent part:

(1) If a party has failed to plead, appear, or otherwise proceed as provided by these rules or as required by the tribunal, then the party may be held in default by the tribunal on motion of another party or on the initiative of the tribunal. *A party placed in default shall cure the default as provided by the order placing the party in default and file a motion to set aside the default accompanied by the appropriate fee within 21 days of the entry of the order placing the party in default or as otherwise ordered by the tribunal.* Failure to comply with an order of default may result in the dismissal of the case or the scheduling of a default hearing as provided in this rule.

* * *

(4) Failure of a party to properly prosecute the appeal, comply with these rules, or comply with an order of the tribunal is cause for dismissal of the appeal or for the scheduling of a default hearing for the respondent. Upon motion made within 21 days of the entry of the order as provided by R 205.1288, *an order of dismissal may be set aside by the tribunal for reasons it deems sufficient.* [Emphasis added.]

In addition, TTR 288, AC, R 205.1288, provides that “[t]he tribunal may order a rehearing or reconsideration of any decision or order upon its own initiative or the motion of any party filed within 14 days of the entry of the decision or order sought to be reheard or reconsidered.”

A properly promulgated rule has the force of law. *Danse Corp v City of Madison Hts*, 466 Mich 175, 181; 644 NW2d 721 (2002). “We are cognizant that procedural due process, in the context of administrative procedure, militates against undefined discretion, favoring duly processed and well-defined procedure rules.” *Smith v Lansing School Dist*, 428 Mich 248, 257-258; 406 NW2d 825 (1987). But petitioners here do not address the applicable rules, so any challenge to their validity may be deemed abandoned. “It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court.” *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Petitioners have not shown that the trial court abused its discretion, under the standards established by TTR 247, by dismissing their petition or denying their motion for reconsideration. TTR 247 does not mention “good cause” or require a finding of prejudice as a condition for dismissal. Further, unlike in *Stevens v Bangor Twp*, 150 Mich App 756; 389 NW2d 176 (1986), prejudice was not a factor in the tribunal’s decision to order dismissal in this case. Consistent with TTR 247, the tribunal’s June 11, 2008, default order gave petitioners notice of how to proceed to cure the default. Because the default was caused by petitioners’ failure to comply with the tribunal’s order, the tribunal reasonably imposed good cause as a requirement to cure the defect.

Petitioners thereafter compounded their disregard of the Tax Tribunal’s November 13, 2007, order when they also disregarded the Tribunal’s order to file a motion to set aside the default within 21 days. Because petitioners had notice that dismissal would be ordered if the default order was violated, and TTR 247(4) authorized dismissal, the Tax Tribunal’s decision to dismiss the petition was not an unreasonable or unprincipled outcome.

Although TTR 247(4) gave the Tax Tribunal discretion to reconsider the dismissal order, it does not obligate the Tribunal to do so. Petitioners failed to show good cause for violating the November 13, 2007, order. In the context of a motion to set aside a default under the Michigan Court Rules, MCR 2.603(D)(1),¹ “good cause” is satisfied by showing a substantial procedural irregularity or defect, or a reasonable excuse for not complying with the requirements that created the defect. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233; 600 NW2d 638 (1999). Here, neither a procedural defect nor a reasonable excuse was shown for not timely filing and exchanging a valuation disclosure and prehearing statement. Petitioners alleged only that the delay was “due to the ongoing negotiation’s [sic] regarding the appraisal fee and the busy schedule of the appraiser.”

Petitioners also failed to offer a reasonable excuse for not timely moving to set aside the default. Therefore, under the circumstances, the Tax Tribunal did not abuse its discretion by denying petitioners’ motion for reconsideration. Considering petitioners’ repeated failure to comply with Tax Tribunal orders, with notice of the consequences, and their failure to offer any reasonable excuse for not complying, the tribunal did not abuse its discretion by denying petitioners’ motion for reconsideration.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Alton T. Davis

¹ Although TTR 247 governs the instant case, the Michigan Court Rules apply to tribunal proceedings if an “applicable entire tribunal rule does not exist.” See TTR 111(4), AC, R 205.1111(4).