

STATE OF MICHIGAN
COURT OF APPEALS

PAUL H. GRANT and MARIANA GRANT,

Petitioners-Appellants,

v

TOWNSHIP OF DELTA,

Respondent-Appellee.

UNPUBLISHED
February 25, 2010

No. 290220
Tax Tribunal
LC No. 00-343493

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

PER CURIAM.

Petitioners appeal as of right from the decision of the Michigan Tax Tribunal (MTT) denying their application for a poverty exemption from property taxes owed. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Petitioners own a residence in Eaton County, assessed at \$80,600 taxable value in 2008. They are each full-time students: he at Cooley Law School and she at Michigan State University. They anticipated their income from part-time jobs for 2008 to be \$12,400 for the year. They stated they were able to get more money from grants and loans for school than by working, even though they are both able to work. There is no dispute that their income from work is below the federal poverty level. They owned three older vehicles. They had significant financial obligations, specifically monthly mortgage payments, including taxes and insurance, of \$1,182; credit card debt of \$65,769; student loan debt of \$120,000; and two minor children. They applied for a poverty exemption for their property taxes, but respondent's Assessing Department denied it, as did respondent's Board of Review. Petitioners appealed to the MTT, but the MTT found that, although petitioners' income was sufficiently low for the exemption, they did not qualify because they "ha[d] the ability to pay property taxes." The MTT found, "Petitioner[s] must be getting some regular support from sources outside the household that they neglected to disclose It was never the intent of the statute to allow persons who have the ability to work to be granted poverty exemptions because they chose not to work."

MCL 211.7u, the statute at issue, provides in part:

(1) The principal residence of persons who, in the judgment of the supervisor and board of review, by reason of poverty, are unable to contribute toward the public charges is eligible for exemption in whole or in part from taxation under this act. This section does not apply to the property of a corporation.

(2) To be eligible for exemption under this section, a person shall do all of the following on an annual basis:

* * *

(e) Meet the federal poverty guidelines updated annually in the federal register . . . or alternative guidelines adopted by the governing body of the local assessing unit provided the alternative guidelines do not provide income eligibility requirements less than the federal guidelines.

* * *

(4) The governing body of the local assessing unit shall determine and make available to the public the policy and guidelines the local assessing unit uses for the granting of exemptions under this section. The guidelines shall include but not be limited to the specific income and asset levels of the claimant and total household income and assets.

(5) The board of review shall follow the policy and guidelines of the local assessing unit in granting or denying an exemption under this section unless the board of review determines there are substantial and compelling reasons why there should be a deviation from the policy and guidelines and the substantial and compelling reasons are communicated in writing to the claimant.

In the absence of fraud, review of a decision by the MTT is limited to determining whether the Tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Continental Cablevision v Roseville*, 430 Mich 727, 735; 425 NW2d 53 (1988). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

We find the MTT did not err in applying the law and that its factual findings were supported by competent, material, and substantial evidence on the whole record. The statute, while setting out minimum requirements for eligibility, does not guarantee that those meeting the requirements will be granted the exemption as a matter of course. The statute allows the local governing body the discretion to depart from the guidelines when it finds substantial and compelling reasons to do so. Although the MTT did not identify the reasons relied on by respondent, it indicated that it found petitioners' evidence incredible. They had the ability to pay thousands of dollars in tuition, mortgage, and other expenses, but somehow came short when it was time to pay the property taxes. In sum, the MTT did not err in finding that petitioners' choice of what to pay first, leaving property taxes as an expense left over after they had paid other things, did not qualify them for the exemption.

Petitioners cite MCL 211.2(2) as supporting their theory that assets are to be viewed as a snapshot taken on the tax day, i.e., in this case, the day of application for the exemption, or on December 31 of the tax year. However, that statute applies to the assessment of real property, not to the total financial picture of the taxpayer on that one day. We find that petitioners'

interpretation of the law is erroneous and unsupported by any case law. Even a cursory look at their financial picture makes it clear that their student loans must cover many of their expenses, yet while they count that money as neither income nor asset, they include as expenses all the things it pays. The MTT was well within its authority to find petitioners' financial documents did not accurately reflect their true position. As respondent argues, petitioners simply made the choice to put their loan money toward certain of their expenses, and not to put it toward their property taxes.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Alton T. Davis