

STATE OF MICHIGAN
COURT OF APPEALS

JAMES F. ROBERTS,

Petitioner-Appellant,

v

TOWNSHIP OF WEST BLOOMFIELD,

Respondent-Appellee.

UNPUBLISHED

May 10, 2012

No. 303098

Michigan Tax Tribunal

LC No. 00-376316

Before: FITZGERALD, P.J., and MURRAY and GLEICHER, JJ.

PER CURIAM.

Respondent West Bloomfield Township’s tax assessor determined that petitioner James F. Roberts did not actually live in his claimed “principal residence” and denied his request for a principal residence tax exemption (PRE) under MCL 211.7cc. The Michigan Tax Tribunal (MTT) concurred with the Township’s finding. Based on the record evidence, we agree that Roberts failed to establish that he “owned and occupied” the West Bloomfield home as his one “true, fixed, and permanent residence.” MCL 211.7dd(c). Accordingly, we affirm.

I. BACKGROUND

Roberts owns residential property at 2165 Locklin Lane in West Bloomfield Township. Roberts used the home as a rental property until September 2007. After his tenants vacated the premises, Roberts attempted to claim 2165 Locklin as his principal residence and enjoy the tax benefits of that classification. On April 22, 2008, and April 21, 2009, Roberts filed applications with the Township for a PRE. The PRE is governed by statute and provides that “[a] principal residence is exempt from the tax levied by a local school district for school operating purposes” MCL 211.7cc(1). A “principal residence” is defined as “the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established.” MCL 211.7dd(c). A principal residence “includes only that portion of a dwelling . . . that is subject to ad valorem taxes and that is owned *and occupied* by an owner of the dwelling” *Id.* (emphasis added). A landowner claiming a PRE must file an affidavit with the local taxing authority averring that the property is owned and occupied as a principal residence. MCL 211.7cc(2). The Township denied both applications because its tax assessors determined that Roberts did not occupy 2165 Locklin Lane.

Roberts appealed both denials to the MTT Small Claims Division, and the appeals were consolidated in January 2010. The Township presented photographic evidence from March 2008, showing that Roberts had not cleaned the yard after the autumn leave drop and that the home lacked window treatments. A visual inspection through the windows revealed a paucity of furnishings. The Township also provided evidence from its water department that Roberts had used no water or sewage services from September 4, 2007, through May 4, 2009. Roberts, on the other hand, presented a copy of his driver's license and voter registration card, both bearing the Locklin address. Roberts presented copies of checks he submitted to the Township's water department in fall 2009, bearing the Locklin address in the top left corner. He produced a bank statement mailed to the Locklin address. Roberts also presented copies of his 2008 and 2009 federal and state income tax forms listing the Locklin address as his residence.

A hearing was conducted before a referee on April 27, 2010. At the hearing, Roberts claimed that he and his brother purchased the property in 1996, that he had since bought his brother's interest, and was now the sole owner of 2165 Locklin. Roberts admitted that he closed up the property and asked the Township to shut off the water during the winter months when he stayed with his mother in Florida. However, Roberts "testified that he spent 'the vast majority of his time' at the subject" property. Roberts admitted that he rented the property to a tenant until 2007, and that the tenant abandoned the property in violation of the lease. He also claimed to have furniture inside the residence.

The Township claimed that Roberts rented the property to tenants in 2006 and 2007 and that water department records showed no water usage after September 2007, when the tenant left the premises. The Township relied upon its photographic evidence showing that no one resided in the house. The Township further relied upon *Leavitt v City of Novi*, unpublished opinion per curiam of the Court of Appeals, issued November 18, 2008 (Docket No. 279344), for the proposition that a driver's license and voter registration card bearing an address are insufficient to establish occupancy.

In a July 7, 2010 proposed opinion, the referee found that Roberts owned the home but had used no water on the property from September 4, 2007, through May 1, 2009. The referee concluded that Roberts:

ha[d] not proven by a preponderance of the evidence, that the subject property is qualified to receive an exemption under MCL 211.7cc for the tax year at issue. Water usage for occupancy at a dwelling is a necessity. Petitioner has not demonstrated occupancy at the subject without the usage of water.

Roberts filed exceptions to the referee's proposed opinion and an MTT tribunal judge reconsidered the case. Roberts claimed that the water meter must have been malfunctioning during the period in question. Roberts claimed that he received only a redacted version of the water department's "history detail report." Roberts also noted that between March 2 and June 2, 2009, there was actually water usage of 748 gallons. Roberts explained that the home had no window treatments because they were stolen. Roberts challenged the Township's reliance on *Leavitt* as, in that case, there was absolutely no furniture, appliances, or clothing inside the house. Roberts claimed that his house "contained furniture, clothes, and dishes as well as appliances and was in fact occupied."

The Township continued to rely upon its evidence and denied that the water meter at the Locklin residence had malfunctioned. The Township further challenged the credibility of Roberts' sudden claim that he used water at the residence in the last two months of the extended challenged time period. The Township found it incredible that Roberts would not have inquired into the whereabouts of his water bill from September 2007 through May 2009 if he truly occupied the dwelling.

The tribunal judge affirmed the hearing referee's proposed opinion that "based on the facts and evidence presented, [Roberts] had failed to establish that he was entitled to a [PRE] for the subject property for the 2008 and 2009 tax years." The judge noted that Robert's income tax returns, driver's license, and voter registration card listing the Locklin address were insufficient, standing alone, to conclusively establish that the home was occupied by Roberts as his principal residence. The judge further noted:

The case file indicates that the subject property was rented out through approximately September 2007 and [the Township] indicated it was listed for rent in February 2008. Further, while [Roberts] stated that the water was turned off while he went to Florida each year and was subsequently turned on upon his return to Michigan, there is little to no water usage indicated during the time frame in question. [Roberts] contends this was due to a broken meter. However, [Roberts] should have become aware that he was not being billed for water services if in fact water was being used at the subject property. The fact that no water was being used at the subject property is a persuasive indicator that the property was not being occupied as [Roberts'] principal residence. Further, [Roberts] was on notice that [the Township] intended to rely on the lack of water usage at least as of the April 14, 2010 date that the History Detail Report was submitted into evidence. [Roberts] could have offered other evidence to prove that the subject property was occupied and utilities were being used, including proof of electricity or gas usage, cable television, home phone service, or other services that result from home occupancy. [Roberts] failed to provide any such information. As such, the Hearing Referee's determination that the subject property was not entitled to the [PRE] for the 2008 and 2009 tax years was reasonable given the evidence presented.

Roberts sought reconsideration of the MTT's decision, arguing that the Township's water department history detail report was "incomplete and redacted." The MTT denied Roberts' motion.

II. STANDARD OF REVIEW

"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.' *Mich Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994)." [*Ferrero v Walton Twp*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 302221, issued February

23, 2012), slip op at 2, quoting *Klooster v City of Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011).]

“Evidence is competent, material, and substantial if a reasoning mind would accept it as sufficient to support a conclusion. Courts should accord due deference to administrative expertise and not invade administrative fact finding by displacing an agency’s choice between two reasonably differing views.” *Galuszka v State Employees Retirement Sys*, 265 Mich App 34, 45-46; 693 NW2d 403 (2004) (quotation marks and citations omitted). A petitioner must establish his membership in a statutory exemption category by a preponderance of the evidence. *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 495; 644 NW2d 47 (2002).

“Issues of statutory interpretation are questions of law that are reviewed de novo. *Brown v Detroit Mayor*, 478 Mich 589, 593; 734 NW2d 514 (2007). The primary goal of statutory interpretation is to give effect to the Legislature’s intent, focusing first on the statute’s plain language. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). ‘The words of a statute provide “the most reliable evidence of its intent”’ *Id.*, quoting *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981). When construing a statute, a court must read it as a whole. *People v Jackson*, 487 Mich 783, 791; 790 NW2d 340 (2010).” [*Ferrero*, ___ Mich App at ___, slip op at 2, quoting *Klooster*, 488 Mich at 295.]

“Exemption from taxation effects the unequal removal of the burden generally placed on all landowners to share in the support of local government. Since exemption is the antithesis of tax equality, exemption statutes are to be strictly construed in favor of the taxing unit.” *Mich Baptist Homes & Dev Co v City of Ann Arbor*, 396 Mich 660, 669-670; 242 NW2d 749 (1976).

III. ANALYSIS

Roberts failed to provide “competent, material, and substantial evidence” to prove by a preponderance of the evidence that he actually occupied 2165 Locklin as his one “true, fixed, and permanent home” as required to claim the PRE under MCL 211.7cc. The term “occupied” is not defined in MCL 211.7cc or MCL 211.7dd. In a homeowner’s insurance case involving a policy that similarly failed to define the term “occupied,” this Court looked to the dictionary and defined the term as “lived in.” *McNeel v Farm Bureau Gen Ins Co of Mich*, 289 Mich App 76, 91; 795 NW2d 205 (2010). Our review of various dictionaries provides similar definitions. “Occupy” is defined, in relevant part, by The American Heritage Dictionary (Second College ed), p 860, as “[t]o dwell or reside in,” and Random House Webster’s Unabridged Dictionary (2d ed), p 1340, as “to be a resident or tenant of; to dwell in.” These definitions describe a house with an actual inhabitant in residence.

The Township presented evidence that 2165 Locklin was not occupied by anyone during the relevant period. Most importantly, the Township established that Roberts did not utilize water or sewage services from September 2007 through May 2009. Whether a home is “occupied” must be judged as of May 1 in the tax year for which the PRE is claimed. MCL 211.7cc(1), (2). As of May 1, 2009, the Township’s water department had last inspected the water meter at 2165 Locklin on March 2, 2009. At that time, no water or sewage services had

been used at the property since September 2007.¹ On appeal, Roberts contends that “[t]here are a myriad number of reasons why someone occupying a residence may not use water including, but not limited to, bottled drinking water, showering at a health club, not watering grass, not cooking, etc.” We find Roberts’ claim patently ridiculous. It is incredible that a person could live in a home for 20 months without using the bathroom facilities or turning on the kitchen sink, let alone the myriad other reasons a residential customer must utilize water and sewage services. As noted by the Township and the MTT, Roberts presented no evidence that he utilized any other utility services at the residence during the relevant time period.

In addition to the lack of water usage, the Township presented photographs of the Locklin residence taken in March 2008. The photographs show that the yard had not been tended to for at least two seasons. There were no curtains or blinds in the windows and a visual inspection revealed little furniture inside the home. Roberts asserted that there were furnishings, appliances and personal possessions inside the residence, but he provided no photographic evidence or corroborating testimony on that point. The Township also provided evidence that Roberts had marketed the property for rent during his alleged occupancy.

Roberts did present a bank statement, driver’s license, voter registration card, and his state and federal tax returns, all listing his address as 2165 Locklin. We agree that these documents generally assist in determining an individual’s residence. However, these pieces of paper fail in the face of evidence that no one actually physically resided at 2165 Locklin during the relevant period. Based on competent, material, and substantial record evidence, the MTT acted within its authority to deny Roberts a PRE for the Locklin Lane residence.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray
/s/ Elizabeth L. Gleicher

¹ Roberts raises several challenges to the timing and accuracy of the water department’s “history detail report” presented in the MTT. However, the Township did present this document to the MTT and Roberts before the MTT hearing. And, contrary to Roberts’ complaint, that report was the latest information available to the Township when it had to consider Roberts’ request for a PRE on May 1, 2009.