STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM A. POWER, III, as personal representative of the estate of ALLAN WARNER, Petitioner-Appellant,	UNPUBLISHED April 9, 2013 APPROVED FOR PUBLICATION May 28, 2013 9:05 a.m.
v MICHIGAN DEPARTMENT OF TREASURY, Respondent-Appellee.	No. 309773 Michigan Tax Tribunal LC No. 403214

Before: BOONSTRA, P.J., and SAAD and HOEKSTRA, JJ.

PER CURIAM.

Petitioner appeals from the final opinion and judgment issued by the Michigan Tax Tribunal ("the Tribunal") on March 29, 2012, adopting the proposed opinion of the hearing referee and dismissing petitioner's appeal. The Tribunal dismissed petitioner's appeal of respondent's denial of the principal residence tax exemption (PRE), MCL 7211.7cc, for the tax years of 2005, 2006, 2007, and 2008, finding that petitioner had not proven that he was an "owner" of the property at issue. For the reasons stated below, we affirm.

I. BASIC FACTS AND PROCEDURE

This case concerns property held in the name of the Chicago Resort Company, a Michigan corporation ("the corporation"). The corporation is the owner of record of property near Charlevoix, Michigan. The property at issue is a residential property that contains at least one house. The parties do not dispute that petitioner occupied the property. The bylaws of the corporation indicate that a person may only acquire a "right to occupy a Site or other property owned by the corporation" by becoming a shareholder of the corporation.

From 2002 to 2007, petitioner held a "lot lease" for the real property identified as "building lot 2" at the cost of $175.00 per year. As of January 1, 2008, this lease was superseded by a license agreement, granting petitioner a license to use and occupy the property for $175.00 per year. The license agreement explicitly stated that it did not grant any legal or equitable interest in or title in or to the lot.

Taxes were billed to the corporation as the record owner of the property. An accounting firm collected all the bills sent to the corporation and provided individual invoices to respective members for the taxes attributable to each member's individual property, share of the common area, and boat slip if applicable.

In 2008, following an exemption audit, respondent denied the corporation its PRE for the 2005 through 2008 tax years, because a corporation is not a "person" for purposes of defining an "owner" eligible for a PRE. MCL 211.7dd(b). Petitioner appealed that determination to respondent, contending that he was a "lessee" of the parcel in question, that he owned a "dwelling" on the leased land, and that he therefore was an "owner" eligible for the PRE. Following an informal conference, respondent upheld the denial.

Petitioner then appealed the decision to the Tribunal's Small Claims division. Petitioner presented evidence and testimony related to his occupancy of the subject property. In support of his contention that he owned the property, petitioner cited to his lease and license agreements as described above, as well as the testimony of Ms. Edwina Powell, petitioner's step-daughter, and Mr. Kevin Christman, who testified as to how his accounting firm handled the corporation's taxes as described above. Petitioner did not provide any evidence of his ownership of any shares in the corporation.

The hearing officer found that petitioner was not the owner of the subject property and had not submitted any documents showing him to be the owner of record. The hearing officer further found that the lease and license agreements indicated that they conveyed to petitioner the right to use and occupy the lot, and that the owner of the real estate was the corporation. Finally, the hearing officer found that petitioner did not show any evidence of ownership of the building. The hearing officer thus concluded that petitioner had failed to prove by a preponderance of the evidence that the subject property was qualified to receive the PRE. The Tribunal accepted the hearing officer's findings and proposed opinion.

II. STANDARD OF REVIEW

Absent fraud, our review of Tribunal decisions is "limited to determining whether [the Tribunal] erred in applying the law or adopted a wrong legal principle." *Vanderwerp v Plainfield Charter Tp.*, 278 Mich App 624, 627; 725 NW2d 479 (2008). To the extent that our review requires the interpretation and application of a statute, such review is de novo. *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 519; 676 NW2d 207 (2004). However, "statutes exempting persons or property from taxation must be narrowly construed in favor of the taxing authority." *Liberty Hill Housing Corp v Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008).

In *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 366, 388-389; 576 NW2d 667 (1998), this Court stated:

> While this Court is bound by the Tax Tribunal's factual determinations and may properly consider only questions of law under this section, a Tax Tribunal decision that is not supported by competent, material, and substantial evidence on the whole record is an "error of law" within the meaning of Const

> 1963, art 6, § 28. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993); *Kern v Pontiac Twp*, 93 Mich App 612, 620; 287 NW2d 603 (1979). Substantial evidence must be more than a scintilla of the evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). "Substantial" means evidence that a reasonable mind would accept as sufficient to support the conclusion. *Kotmar, Ltd v Liquor Control Comm*, 207 Mich App 687, 689; 525 NW2d 921 (1994).

III. ANALYSIS

Petitioner argues that the Tribunal erred in concluding that he did not own the house located on the leased property. We disagree.

Michigan's principal residence exemption is also known as the "homestead exemption", and is governed by the General Property Tax Act (GTLA). MCL 211.7cc; MCL 211.7dd; *Drew v Cass County*, ___ Mich App ___; ___ NW2d ___ (2013), slip op at 3. MCL 211.7cc(1) provides in relevant part:

> A principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, if an owner of that principal residence claims an exemption as provided in this section.

Apart from certain exceptions, MCL 211.7cc(2) provides that an owner of property may claim this exemption by filing an affidavit stating that "the property is owned and occupied as a principal residence by that owner of the property . . . ." Additionally, "principal residence" is defined as "that portion of a dwelling or unit . . . that is owned and occupied by an owner of the dwelling or unit." MCL 211.7dd(c). Thus, while occupancy is a necessary condition for claiming a PRE, it is not sufficient; petitioner was also required to prove ownership. See *VanderWerp*, 278 Mich App at 630.

Petitioner states erroneously that the Tribunal erred in finding that his proof of ownership was not sufficient because it was not proven by a "deed" or "instrument of conveyance." In fact the Tribunal found that petitioner had not submitted "*any* documents which show he is the owner of record for the subject property[]" and "did not show *any* evidence of ownership of the building" on the lot for which the corporation was the owner of record. (Emphasis added). These findings are supported by substantial evidence. The lease agreement provided by petitioner does not purport to convey the land to petitioner or any buildings to petitioner; in fact it requires the leaseholder to seek corporation approval to make any changes to the premises and restricts petitioner from conveying the property or assigning his leasehold interest. The licensing agreement goes further and explicitly states that it does not grant to petitioner any legal or equitable ownership interest or title in or to the lot. Petitioner never produced his shares in the

corporation or any other document purporting to demonstrate ownership of the lot.[1] Thus, the Tribunal did not err in determining that petitioner did not demonstrate ownership of the lot, especially in the face of the fact that the corporation was the owner of record.

As the Tribunal noted, petitioner's only hope for a PRE lay in MCL 211.7dd(a)(iv), which provides a definition of "owner" as "A person who owns or is purchasing a dwelling on leased land." This, in fact, was the basis of petitioner's initial appeal to respondent. However, petitioner simply provided no evidence that he owned or was purchasing his dwelling. Petitioner claims to have submitted a declaration sheet from Liberty Mutual Insurance Company for a homeowners policy covering the house on the lot at issue. However, while that document does appear in the record on appeal to this Court, it does not appear in the list of exhibits offered before the Tribunal. Enlargement of the record on appeal is generally not permitted. *Michigan AFSCME Council 25 v Woodhaven-Brownstown School Dist*, 293 Mich App 143, 146; 809 NW2d 444 (2011). Moreover, even if the Tribunal considered this evidence, the mere fact that someone has a "homeowners" insurance policy insuring a dwelling does not render that person an "owner" under MCL 211.7dd(a). In fact, petitioner is merely described as the "named insured" of this policy. Such policies may provide coverage based on possessory interest as well as ownership interest. See, e.g., *Heniser v Frankenmuth Mut Ins Co*, 201 Mich App 70, 73; 506 NW2d 247 (1993). In any event, nothing in this document, even if provided to the Tribunal, indicates that petitioner actually owns or is purchasing the dwelling house on the lot at issue. Additionally, evidence provided that all taxes were billed to the corporation and then apportioned to individual shareholders cuts against any claim by petitioner that he owns the dwelling house at issue, as it supports the conclusion that all property at issue was owned by the corporation, not petitioner. See *Bourne v Sanford*, 327 Mich 175, 191; 41 NW2d 515 (1950).[2]

In sum, Petitioner simply provided no evidence that he had an ownership interest in either the lot or the dwelling house. The taxpayer has the burden of showing entitlement to the exemption. *Andrie, Inc v Michigan Dep't of Treasury*, 296 Mich App 355, 365; 819 NW2d 920 (2012). The Tribunal's holding that petitioner did not carry this burden was supported by substantial evidence and was not based on an error of law. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 388-389. The Tribunal therefore properly dismissed petitioner's appeal.

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[1] Even had petitioner provided evidence of ownership of shares in the corporation, such evidence, absent any specific language indicating ownership of specific property by petitioner, would not have sufficed to demonstrate that petitioner had an ownership interest in the land to which the corporation held title. "A corporation is a legal entity distinct from its shareholders, even though all of the stock is held by a single individual." *Bill Kettlewell Excavating, Inc v St. Clair County Health Dep't*, 187 Mich App 633, 639; 468 NW2d 326 (1991). Thus, ownership of corporate property is vested in the corporation itself and not the shareholders. *Bourne v Sanford*, 327 Mich 175, 191; 41 NW2d 515 (1950).

[2] The testimony of petitioner's step-daughter, and of Mr. Christman, also does not establish that petitioner was an owner of the dwelling.

Affirmed.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Joel P. Hoekstra