STATE OF MICHIGAN

COURT OF APPEALS

LARRY ROCKIND,

Petitioner-Appellant,

v

TOWNSHIP OF WEST BLOOMFIELD,

Respondent-Appellee.

UNPUBLISHED
March 2, 2001

No. 214620
Michigan Tax Tribunal
LC No. 00-237228

Before: Whitbeck, P.J., and Murphy and Cooper, JJ.

PER CURIAM.

Petitioner Larry Rockind appeals by right the Tax Tribunal's finding that respondent West Bloomfield Township properly reassessed the taxable value of Rockind's property for the 1996, 1997, and 1998 tax years to include property that had been omitted from the property record card. We affirm.

I. Basic Facts And Procedural History

Rockind owned a single family residence, built in 1978 in West Bloomfield, classified as residential property. The 1995 valuation record stated that the taxable value of the property was $78,890 for the 1995 tax year and that the house contained 1,419 square feet. The Township's appraiser went to Rockind's home in early May 8, 1995. Although no one was at the house, the appraiser noticed discrepancies between the square feet listed on the Township's assessment and what he could observe while standing outside the house. In late May 1995, the appraiser returned to Rockind's home and, again, was not able to enter the house. This time the appraiser observed the lower level interior finish, the increased square footage, less unfinished interior basement, more finished interior, and air conditioning. These observations, including the conclusion that the house now had 1,829 square feet of living area, were incorporated in the 1996 assessment. Another Township appraiser inspected the house in 1997 from the outside and determined that the house was not a "walk-out," but was a "quad level." The appraiser concluded that the house had 2,704 square feet for purposes of the 1998 property taxes.

A referee in the small claims division of the Tax Tribunal heard Rockind's petition challenging these changes. The Tax Tribunal entered an opinion and judgment in favor of the Township in late January 1998, holding that the property was correctly categorized as "omitted

real property." Rockind requested rehearing, which was granted. Nine days before the rehearing, Rockind filed a motion for leave to employ a court reporter, which the Tax Tribunal denied.

The rehearing occurred in late June 1998, at which time Rockind argued that the Township unlawfully increased the taxable value of his home greater than the inflationary factor because the property was incorrectly classified as omitted property. He also claimed that any omission in the original assessment was a clerical error not correctable under the relevant law. The Township countered that it had lawfully increased the taxable value of the home beyond the inflationary rate because there was omitted real property correctly applied as an addition to the taxable formula.

In mid-September 1998, the Tax Tribunal vacated the January 1998 opinion and judgment, recalculated the property's taxable value, and entered an opinion and judgment in favor of the Township. The Tax Tribunal found the Township's classification of the property complied with the statutory definition of "omitted real property," MCL 211.34d(1)(b)(i); MSA 7.52(4)(1)(b)(i), because the property had not been included in previous assessments. However, the Tax Tribunal found that the taxable values from the previous years were incorrect. The Tax Tribunal calculated the taxable value for 1996 as $107,650, not $114,630, $110,660 for 1997, not $123,830, and $113,640 for 1998, not $129,450.

II. The Motion For Leave To Employ A Court Reporter

A. Standard Of Review

Rockind argues that the Tax Tribunal abused its discretion in denying his motion for leave to employ a court reporter. "In the absence of fraud, review of a decision by the Tax Tribunal 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."[1]

B. Analysis

Under Tax Tribunal Rule 205.1283(5), proceedings in front of the entire Tax Tribunal must "be recorded either electronically or stenographically, or both, in the discretion of the tribunal." The small claims division, however, has its own rules of practice and procedure. Rule 205.1305(1) provides that a "formal transcript shall not be taken for any proceeding commenced and completed in the small claims division." Subsection (2) of this same rule states that an "informal transcript of a small claims proceeding prepared from a recording device or by a stenographer is not a record of the proceeding." These rules appear to ensure the less formal nature of the proceedings in the small claims division.

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[1] *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994), citing Const 1963, art 6, § 28 and *Continental Cablevision v Roseville*, 430 Mich 727, 735; 425 NW2d 53 (1988).

Despite these rules concerning the record developed in the small claims division, Rockind moved for leave to employ a court reporter pursuant to Rule 205.1305(2) He argued that a reporter was necessary because the issues involved in the case, including the proper way to calculate taxable value for the relevant tax years, were important. The Tax Tribunal denied the motion, noting that the Township did not concur in the motion, the Township would incur additional expense if the motion were granted, and, because of the late time at which it was filed, the Township lacked an adequate opportunity to respond to the motion. Similarly, the Tax Tribunal commented that it lacked adequate time to consider the motion. The Tax Tribunal also observed that Rockind had failed to distinguish his case from the many other cases that pass through the small claims division without a reporter to make a record. The Tax Tribunal concluded that

> absent a sufficient statement of cause, the Tribunal finds the request to be contrary to preserving the simple, informal, and inexpensive nature of the Small Claims Division. Parties wishing to have their appeals heard, where those cases are of such complexity (as Petitioner appears to characterize its case) that additional resources are required, may proceed in the Entire Tribunal. If Petitioner had need of greater resources necessitated by the complexity of its case, a timely motion for transfer was permitted under TTR 315(1).

The ruling on this motion complies with the rules of practice and procedure that apply to the small claims division. In fact, the rule Rockind cited as the basis for his motion *prevents* formal transcripts for these informal proceedings. Nowhere in their plain language do these rules grant the Tax Tribunal the discretion to permit a reporter in a small claims division proceeding. Even if the rules did permit the Tax Tribunal discretion to permit a party to hire a reporter to make a transcript of the proceedings, it did not abuse any such discretion. The Tax Tribunal considered a number of proper factors in its ruling, including its findings that it would be improvident to grant the motion without a response by the Township, it lacked sufficient time to consider the issue, and Rockind had failed to articulate a special need for this service. We add that, even on appeal, Rockind has failed to articulate a special need or legal basis to have a court reporter in the hearing in the small claims division. Further, as the Tax Tribunal noted, if there were a pressing need for a reporter in this case, Rockind could have moved to have the matter transferred out of the small claims division. Thus, the Tax Tribunal did not commit a legal error in denying the motion.

III. "Additions" and "Omitted Real Property"

A. Standard Of Review

Rockind argues that the Tax Tribunal erroneously construed the term "additions" as used in Const, 1963, art 9, § 3, that MCL 211.34d; MSA 7.52(4) is unconstitutional because it conflicts with this constitutional provision, and that the Tax Tribunal erred by construing the

term "omitted real property" to include his already-assessed residence. Constitutional issues and statutory construction present questions of law that we review de novo.[2]

B. Constitutional And Statutory Construction

In *People v Antkoviak*,[3] this Court outlined the methodology it applies when construing a constitutional provision:

> When interpreting [a section of the Michigan Constitution], this Court's primary duty is to ascertain the provision's purpose and intent. See *White v Ann Arbor*, 406 Mich 554, 562; 281 NW2d 283 (1979). By intent, we mean the intent of the people who adopted the constitutional provision at issue. *Straus v Governor*, 459 Mich 526, 533; 592 NW2d 53 (1999). As a result, our interpretation should reflect the meaning that the people themselves would apply. *Bolt v Lansing*, 459 Mich 152, 160; 587 NW2d 264 (1998). The clearest way to ascertain this meaning is to look at the text's "natural, common, and most obvious meaning, strictly construed and limited to the objects fairly within its terms, as gathered both from the section of which it forms a part and a general purview of the whole context." *Clearwater Twp v Board of Supervisors of Kalkaska Co*, 187 Mich 516, 525; 153 NW 824 (1915).

Courts prefer not to construe constitutional provisions in a way that leads to an absurd result.[4] When possible, courts also prefer "to avoid an interpretation that creates a constitutional invalidity."[5]

The rules that apply when this Court construes a statute are well-known and similar to these rules of constitutional interpretation:

> A fundamental rule of statutory construction is to ascertain the purpose and intent of the Legislature in enacting the provision. *Barr v Mt Brighton, Inc*, 215 Mich App 512, 516; 546 NW2d 273 (1996). Statutory language should be construed reasonably and the purpose of the statute should be kept in mind. *Id*., citing *Grieb v Alpine Valley Ski Area, Inc*, 155 Mich App 484, 486; 400 NW2d 653 (1986). The first criterion in determining intent is the specific language of the statute. *Barr*, *supra* at 516-517, citing *House Speaker v State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993). If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted and courts

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[2] *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998); *Mahaffey v Attorney General*, 222 Mich App 325, 334; 564 NW2d 104 (1997).

[3] *People v Antkoviak*, 242 Mich App 424, 435-436; 619 NW2d 18 (2000).

[4] *Carman v Secretary of State*, 384 Mich 443, 451, n 3; 185 NW2d 1 (1971).

[5] *House Speaker v Governor*, 443 Mich 560, 585; 506 NW2d 190 (1993).

> must apply the statute as written. *Barr, supra* at 517, citing *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995).[6]

Nevertheless, "[s]tatutes should be construed so as to prevent absurd results, injustice, or prejudice to the public interest."[7] Additionally, courts presume that statutes are constitutional unless the contrary is obvious.[8]

C. Constitutional and Statutory Conflict

Following amendments to Const 1963, art 9, § 3 in 1994, known as Proposal A, this constitutional provision now states:

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. *For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred.* When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. The legislature may provide for alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem taxation. Every tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates.
>
> A law that increases the statutory limits in effect as of February 1, 1994 on the maximum amount of ad valorem property taxes that may be levied for school district operating purposes requires the approval of 3/4 of the members elected to and serving in the senate and in the house of representatives.[9]

The Legislature then defined the word "additions," as it appears in this constitutional provision, in MCL 211.34d(1); MSA 7.52(4)(1), which provides in relevant part:

> (a) For taxes levied before 1995, "additions" means all increases in value caused by new construction or a physical addition of equipment or furnishings,

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[6] *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000).

[7] *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998).

[8] *Lowe v Dep't of Corrections (On Rehearing)*, 206 Mich App 128, 137; 521 NW2d 336 (1994).

[9] Emphasis added.

> and the value of property that was exempt from taxes or not included on the assessment unit's immediately preceding year's assessment roll.
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> (b) For taxes levied after 1994, "additions" means, except as provided in subdivision (c), all of the following:
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> (i) Omitted real property. As used in this subparagraph, "omitted real property" means previously existing tangible real property not included in the assessment. Omitted real property shall not increase taxable value as an addition unless the assessing jurisdiction has a property record card or other documentation showing that the omitted real property was not previously included in the assessment. The assessing jurisdiction has the burden of proof in establishing whether the omitted real property is included in the assessment. Omitted real property for the current and the 2 immediately preceding years, discovered after the assessment roll has been completed, shall be added to the tax roll pursuant to the procedures established in section 154. For purposes of determining the taxable value of real property under section 27a, the value of omitted real property is based on the value and the ratio of taxable value to true cash value the omitted real property would have had if the property had not been omitted.

Although Rockind claims that this definition of "additions" including "omitted real property" is in conflict with Const 1963, art 9, § 3, the Township argues that Proposal A applies to property that has been assessed *fully*. In other words, from the Township's perspective, the constitutional language limiting assessment increases that resulted from Proposal A only applies once the property has been assessed in its entirety and a property that was assessed without including the value of omitted real property cannot be considered assessed *fully*.

The Township's reasoning is not only reasonable, the constitutional language and the rules of constitutional construction support this interpretation. Before the voters adopted Proposal A, the Legislature had already defined the word "additions" in the same manner as it is currently defined in MCL 211.34d(1)(a); MSA 7.52(4)(1)(a). Consequently, the drafters must have known[10] that the Legislature had taken on the responsibility of defining this term of art[11] as it applied to tax valuations. Without attempting to define this word in the constitution itself, the drafters and voters intended to permit the Legislature to continue to define the word "additions," a conclusion this Court reached recently in *WPW Acquisition Co v City of Troy*.[12] In fact, the

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[10] We must presume that the individuals who drafted the provision at issue did so in light of existing laws. *Bingo Coalition v Bd of State Canvassers*, 215 Mich App 405, 412; 546 NW2d 637 (1996).

[11] Rockind claims that the word "additions" is a common word. However, taxation is a specialized area of the law that lends itself to using terms of art and we infer from the fact that the Legislature took the initiative to define this word in a statute *before* Proposal A that "additions" in this context is a term of art. Thus, we attempt to ascertain and apply its specialized meaning to carry out the intent of the people who adopted Proposal A. *Straus*, *supra*.

[12] *WPW Acquisition Co v City of Troy*, 243 Mich App 260, 267; ___ NW2d ___ (2000).

second sentence of this constitutional provision expressly charges the Legislature with the duty to make laws "for the determination of true cash value of [real and personal] . . . property . . . ." In other words, the Legislature had to adopt a meaning for the word "additions" so that the taxes levied after 1994 could rely on equalized assessments. We see no statute-constitution conflict in the Legislature's decision to discharge its duty and create this definition.

Further, because the constitutional provision refers to the Legislature establishing the taxable value of land "*adjusted* for additions and losses" in the same sentence discussing a cap on taxation, we infer that the voters did not consider an assessment that excluded factors relevant to valuation as the property value subject to the cap. The Legislature acted in accordance with this constitutional mandate by amending MCL 211.34d(1); MSA 7.52(4)(1) to include subsection (b), which accounts for factors that contribute to property value that, by definition, were not included in an assessment. By applying the taxation cap to property values that had been adjusted, this constitutional provision furthers a taxation system that relies on equalized property value assessments. To interpret Const 1963, art 9, § 3, to mean that taxes could be assessed based on incomplete or erroneously information concerning property value would be an absurd result in light of this plain meaning, and so we must avoid it.[13] Thus, the term "additions" found in MCL 211.24d(1)(b)(i); MSA 7.52(4)(1)(b)(i) does not conflict with Const 1963, art 9, § 3, because it complies with the constitutional limit on taxation for property that has been assessed *fully* rather than, as here, property that was only *partially* assessed.

D. New Construction

Petitioner next asserts that even if the term "additions," as defined by MCL 211.34d(1); MSA 7.52(4)(1), is constitutional, the Legislature could not place "omitted real property" under this category in subsection (b)(i) because the only types of property intended to be classified as "additions" under Proposal A were new construction and new improvements to property made *after* it had been assessed. While new construction and new improvements have been considered "additions" before and after Proposal A was adopted, we find no evidence in the language of the constitution to support this argument that the Legislature acted outside its authority by giving "additions" a comprehensive, albeit expanded, meaning.[14] Again, the adjustment language in Const 1963, art 9, § 3, creates a taxation cap for property that has been assessed in its entirety. Property value that is determined without the benefit of considering omitted real property does not lead to this sort of full and accurate assessment. To permit some property owners to benefit from an incomplete property assessment until the property is transferred would lead to unequal and unfair real property taxation, not the equalized system of assessments envisioned by the constitution. The Legislature discharged is constitutional duty to govern this area by defining the word "additions." Rockind has failed to present an argument that would overcome our presumption that this statute is constitutional.[15]

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[13] *Carman*, *supra* at 451, n 3.

[14] *WPW Acquisition Co*, *supra* at 267-268.

[15] *Mahaffey*, *supra* at 344.

IV. Factual Support For The Tax Tribunal's Decision

A. Standard Of Review

Rockind argues that the Tax Tribunal committed an error of law because its findings of fact were not supported by competent, material, and substantial evidence on the record when the Tribunal construed "omitted property" to include previously assessed property. The factual findings of the Tax Tribunal are final, provided they are supported by competent, material, and substantial evidence.[16]

B. Competent, Material And Substantial Evidence

The Tax Tribunal applies its expertise to the facts of each case when determining the appropriate method of arriving at the cash value, or fair market value, of the property at issue.[17] In order for this evidence to reach the constitutional[18] threshold for sufficiency, the evidence must be that "which a reasoning mind would accept as sufficient to support a conclusion. While it consists of more than a mere scintilla of evidence it may be substantially less than a preponderance of the evidence."[19]

C. The Evidence

Here, the original living space assessment for Rockind's home in the 1995 tax year was approximately 1,419 square feet. The appraiser conducted an exterior inspection of the residence and found an additional 410 square feet of living area, plus air conditioning, neither of which had been previously recorded or taxed. These revisions were noted in the 1996 valuation record, which stated that the house had 1,829 feet of living space. Another appraiser inspected the property in 1997 and found that an additional 875 square feet of living area should be added to the assessment. Consequently, the valuation for the living area for 1998 was 2,704 square feet. This was substantial evidence from which the Tax Tribunal could find that the square footage had been omitted from the previous assessment of 1,419 square feet. Thus, the Tax Tribunal correctly classified the additional square footage, which had been excluded from previous assessments, as "omitted property."

Affirmed.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Jessica R. Cooper

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[16] See *Michigan Bell Telephone Co, supra*.

[17] See *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

[18] Const 1963, art 6, § 28.

[19] *Russo v Dep't of Licensing & Regulation*, 119 Mich App 624, 631; 326 NW2d 583 (1982).