STATE OF MICHIGAN

COURT OF APPEALS

FREDERICK A. PATMON,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED
February 22, 2002

No. 227050
Tax Tribunal
LC No. 262867

Before: Neff, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Petitioner appeals as of right from an order of the Tax Tribunal dismissing his petition as a sanction for refusing to obey the Tribunal's orders requiring him to provide his address of "legal residence" in accordance with Tax Tribunal Rule 240(2)(a), 1999 AC, R 205.1240(2)(a).[1] We affirm.

Petitioner argues that the Tax Tribunal incorrectly interpreted Rule 240(2)(a) as requiring him to provide his street address of legal residence, as opposed to only a post office address, and therefore erred in placing him in default for failure to comply with its orders requiring a street address and in thereafter dismissing his petition for failure to cure the default. We review the Tax Tribunal's decision to dismiss a petition as a sanction for an abuse of discretion. *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986). Questions of statutory interpretation are reviewed de novo. *Heinz v Chicago Rd Investment Co*, 216 Mich App 289, 295; 549 NW2d 47 (1996).[2]

Tax Tribunal Rule 240(2)(a) requires that a petition contain "[t]he petitioner's name and *legal residence* or, in case of a corporation, its principal place of business." 1999 AC, R

[1] Petitioner also argues that the Tax Tribunal could not properly require an address of his attorney. Because it is clear that the petition was dismissed solely because of petitioner's failure to provide his legal residence, and that the Tribunal did not decide the question of the attorney's compliance, which it determined was a "moot" issue, we find it unnecessary to consider petitioner's arguments regarding his attorney.

[2] The rules of statutory construction also apply to administrative rules. *Port Huron v Amoco Oil Co*, 229 Mich App 616, 631; 583 NW2d 215 (1998).

205.1240(2)(a) (emphasis added). The Tax Tribunal interpreted this rule as requiring disclosure of petitioner's address of "actual legal residence." While the term "residence" is susceptible to different interpretations, see *Ortman v Miller*, 33 Mich App 451, 454-460; 190 NW2d 242 (1971) (discussing some of the various possible meanings of "residence"), we conclude that the Tax Tribunal's interpretation is both reasonable and preferred.

This Court affords "great deference" to an agency's reasonable interpretations of its own rules and orders. *ABATE v Public Serv Comm*, 219 Mich App 653, 661-662; 557 NW2d 918 (1996). Similarly, great deference should be given to an agency's choice between two reasonably differing views as influenced by administrative expertise. *In re Kurzyniec Estate*, 207 Mich App 531, 537; 526 NW2d 191 (1994).

In *Ortman*, *supra* at 454, this Court noted that "[t]he terms 'residence' and 'resident' have no fixed meaning in the law," and instead "have variable meanings depending on the context[.]" However, each of the possible interpretations discussed in *Ortman* involved a location where someone physically lives, not whether a mailing address may qualify as a legal residence. The question in that case concerned whether it was necessary that a person intend to live somewhere permanently in order to reside there. See *Ortman*, *supra* at 454-460. Indeed, it is apparent that a person cannot reside in a post office box, and may in fact reside in a completely different city, county, or state from where a post office box is located. Thus, we conclude that a construction of Rule 240(2)(a) as encompassing a post office box, as advocated by petitioner, is not warranted. This conclusion is supported by the dictionary definitions of the term "residence," which includes "the place, esp. the house, in which a person lives or resides; dwelling place; home" and "the act or fact of residing" and "the act of living or staying in a specified place, as while performing official duties." *Random House Webster's College Dictionary* (1997). These definitions support a construction of the term "residence" as requiring the location of the place where a person physically resides.

Petitioner raises other arguments advocating why he believes it was improper to dismiss his petition for failure to disclose his street address. However, it is well-settled that "[a] party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date." *Kirby v Michigan High Schl Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998); see, also, *Schoensee v Bennett*, 228 Mich App 305, 317; 577 NW2d 915 (1998).

In *Kirby*, our Supreme Court set aside a contempt finding because it concluded that, given the timing of events below, it was not possible to obey the court's order. *Kirby*, *supra* at 40-41. However, in *In re Hague*, 412 Mich 532, 544-545; 315 NW2d 524 (1982), the Supreme Court held that, unless a court lacks jurisdiction, its orders *must* be obeyed, and a litigant's reasons for disobeying an order are "irrelevant" to the issue of whether sanctions for disobedience are properly imposed. Similarly, in *Schoensee*, this Court held that a party was not free to disregard a court order even after filing a claim of appeal. *Schoensee*, *supra* at 317-318. Additionally, even where this Court has "held the ordinance upon which [an] injunction was based to be void, nevertheless, an order entered by a court of proper jurisdiction must be obeyed even if it is clearly incorrect." *Ann Arbor v Danish News Co*, 139 Mich App 218, 229; 361

NW2d 772 (1984). Therefore, we conclude that petitioner's arguments concerning the validity of the Tax Tribunal's orders are irrelevant and do not excuse his wilful noncompliance.[3] Furthermore, while the Tribunal found that petitioner's arguments did not have merit, they were not the basis for the orders of default or dismissal. Rather, the petition was dismissed because of petitioner's repeated refusal to cure his default by complying with the Tax Tribunal's rules and orders.

Tax Tribunal Rule 247 provides that, "[i]f 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."[4] 1999 AC, R 205.1247(1). The party "shall cure the default as provided by the order placing the party in default," and file a motion to have the default set aside. *Id*. "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 by [Rule 247]." *Id*. Similarly, the "[f]ailure 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 the scheduling of a default hearing for the respondent." 1999 AC, R 205.1247(4). "[A]n order of dismissal may be set aside by the tribunal for reasons it deems sufficient." *Id*. This Court has held that "[t]he power of the Tax Tribunal to dismiss a petition because of a petitioner's noncompliance with a rule or order of the tribunal is unquestionable." *Stevens*, *supra* at 761. In this case, it is clear that petitioner repeatedly failed to comply with the rules and orders of the Tax Tribunal, and refused to cure the deficiency despite opportunities to do so. Therefore, the Tax Tribunal was authorized to declare petitioner in default and eventually dismiss his petition.

Like the Tax Tribunal's rules, the Michigan Court Rules allow a trial court to dismiss an action for, among other things, lack of progress or failure to comply with a discovery order. See *North v Dep't of Mental Health*, 427 Mich 659, 661-663; 397 NW2d 793 (1986); see, also, *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999). In such cases, "[t]he trial court should carefully consider the circumstances of the case to determine whether a drastic sanction such as dismissing a claim is appropriate." *Id*.; see, also, *North*, *supra* at 662. In determining whether a dismissal for lack of progress is appropriate,

> [t]he trial court should evaluate the length, circumstances, and reasons for delay in light of the need for administrative efficiency and the policy favoring the decisions of cases on their merits, considering among other factors: (1) the degree of the plaintiff's personal responsibility for the delay, (2) the amount of prejudice to the defendant caused by the delay, (3) whether there exists a lengthy history of

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[3] Petitioner states that the Tax Tribunal had no "jurisdiction, power and authority to issue the disputed orders." Petitioner fails to explain or support this statement in any way. Further, it is clear that the Tax Tribunal had jurisdiction. See MCL 205.731, 205.732, and 205.735.

[4] Because the Tax Tribunal could have dismissed the petition on its own motion, we deem it irrelevant whether it properly granted respondent's motion to set aside its default, and then granted respondent's motion to dismiss. Further, petitioner offers no support for his argument that, despite the discovery responses contained in the lower court record, respondent remained in default.

> deliberate delay, and (4) whether the imposition of lesser sanctions would not better serve the interests of justice. [*Id.*]

Similarly, in deciding whether to dismiss for failure to provide discovery, courts should consider:

> (1) [W]hether the violation was wilful or accidental; (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses); (3) the prejudice to the [other party]; (4) actual notice to the [other party] of the witnesses and the length of time prior to trial that the [other party] received such actual notice; (5) whether there exists a history of [the party's] engaging in deliberate delay; (6) the degree of compliance by the [party] with other provisions of the court's order; (7) an attempt by the [party] to timely cure the defect[;] and (8) whether a lesser sanction would better serve the interests of justice. [*Bass, supra* at 26-27, quoting *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990).]

"Severe sanctions are generally appropriate only when a party flagrantly and wantonly refuses to facilitate discovery, not when the failure to comply with a discovery request is accidental or involuntary." *Bass, supra* at 26. "The record should reflect that the trial court gave careful consideration to the factors involved and considered all its options in determining what sanction was just and proper in the context of the case before it." *Id*.

In the present case, respondent raised the legal residence issue in its December 1998 response to the petition, and again in its July 1999 prehearing statement. The Tax Tribunal ordered petitioner to disclose his address of legal residence in the July 1999 prehearing summary, and again in orders issued in January 2000, and March 2000, when petitioner was found to be in default. The petition was finally dismissed on April 25, 2000, because of petitioner's continued failure to comply.

Applying the above factors by analogy, it is clear that petitioner's violation was wilful, not accidental. There is no apparent reason for petitioner's noncompliance other than his disagreement with the Tax Tribunal's interpretation of Rule 240(2)(a). There is no indication that anyone, other than petitioner, bears any personal responsibility for petitioner's noncompliance. Further, petitioner's noncompliance spans the entire history of the proceeding, and was never rectified. The Tax Tribunal initially pursued the less drastic sanction of placing petitioner in default, and allowing him to cure the deficiency, but petitioner persisted in his refusal to comply.

The only relevant factor absent in this case appears to be prejudice to respondent. See *North*, *supra*; *Bass, supra* at 26-27. While respondent wasted time and resources answering discovery requests just before the petition was dismissed, it is not apparent that respondent was prejudiced by petitioner's failure to disclose his address of legal residence. Nonetheless, we conclude that any lack of prejudice does not warrant reversal.

In *Stevens*, this Court found a lack of prejudice and reversed the Tax Tribunal's dismissal of a petition where the petitioner's attorney failed to attend a counsel conference. *Stevens, supra* at 761-762. The record showed that the respondent's attorney had prepared for a prior conference, which was adjourned by stipulation at the petitioner's request; however, "the record

[wa]s silent as to the need for further significant preparation . . . ." *Id*. at 758-759, 761. The petitioner's attorney represented that his failure to appear was inadvertent, and that he was under heavy scheduling pressures because he was covering cases of his partner, who had been diagnosed with cancer. *Id*. at 759. Under the circumstances of that case, this Court concluded that dismissal was inappropriate because costs and fees could have been imposed to compensate the respondent for the delay and waste of resources. *Id*. at 760-762.

We find that *Stevens* is distinguishable because the facts in that case do not demonstrate a wilful defiance of authority, which is clearly present here. Apart from prejudice, all relevant considerations support the conclusion that petitioner's noncompliance was deliberate, wilful, and persistent. Further, the sanction of dismissal "must be available . . . not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent." *North, supra* at 662, quoting *NHL v Metropolitan Hockey Club, Inc*, 427 US 639, 643; 96 S Ct 2778; 49 L Ed 2d 747 (1976). In the present case, dismissal was necessary not only to punish petitioner for repeatedly flaunting the Tax Tribunal's authority, but also to deter others from doing the same.

Accordingly, we hold that the Tax Tribunal did not abuse its authority in placing petitioner in default, or in dismissing his petition.

Affirmed.

/s/ Janet T. Neff
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra