# STATE OF MICHIGAN

# COURT OF APPEALS

V. K. VEMULAPALLI,

Petitioner-Appellant,

v

TOWNSHIP OF FLINT,

Respondent-Appellee.

UNPUBLISHED
November 15, 2002

No. 233006
Tax Tribunal
LC No. 00-226813

Before: Murray, P.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Petitioner appeals as of right from a Tax Tribunal judgment in respondent's favor. We affirm.

Petitioner first argues that he was denied a fair hearing because he had to proceed in propria persona after the tribunal denied his motion for an adjournment. We disagree. Generally, the grant or denial of a motion to adjourn is reviewed for an abuse of discretion. MCR 2.503; *Zerillo v Dyksterhouse*, 191 Mich App 228, 230; 477 NW2d 117 (1991).

Petitioner claims that the Tax Tribunal's denial of his motion to adjourn forced him to proceed in propria persona, because his third attorney was simultaneously scheduled to appear at a criminal trial, thereby causing him prejudice. We note that the record is unclear as to whether petitioner's third attorney requested an adjournment before he withdrew from the case. Petitioner did not provide, nor does the lower court record contain, an order denying petitioner's motion to adjourn. Further, review of the motion to withdraw reveals that petitioner's attorney's lack of preparedness prompted the motion, not a scheduling conflict. Accordingly, the petitioner has failed to establish that the tribunal abused it discretion in denying an adjournment request because of circumstances involving his third attorney. See *id.*

To the extent that petitioner argues that the Tax Tribunal improperly denied a motion to adjourn regarding his proposed fourth attorney, we also disagree. In its discretion, a court may grant a motion for an adjournment to promote the cause of justice. MCR 2.503(D)(1); see, also, *Zenith Industrial Corp v Dep't of Treasury*, 130 Mich App 464, 467; 343 NW2d 495 (1983). Generally, three factors should be considered in determining whether to grant or deny a motion for an adjournment, including: (1) the number of past continuances, (2) the failure of the movant to exercise due diligence, and (3) the lack of injustice to the movant. See *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1991); *Rosselott v Muskegon Co*, 123 Mich App 361, 371;

333 NW2d 282 (1983), quoting *Hackett v Connor*, 58 Mich App 202, 206; 227 NW2d 292 (1975).

Our review of the record indicates that there were numerous prior adjournments. Further, petitioner did not act with due diligence in that his motion for an adjournment regarding his fourth attorney was filed approximately two months after petitioner's third attorney withdrew from representation. Therefore, petitioner had sufficient time to retain new counsel and seek assistance of the tribunal, if needed, to obtain his file from the previous attorney. See *Wykoff v Winisky*, 9 Mich App 662, 668-669; 158 NW2d 55 (1968). Further, the denial of the motion to adjourn did not substantially harm petitioner because he was not prevented from proceeding with his case. This case originally began in July 1995. The parties had completed discovery on September 1, 1999. Additionally, prior to the hearing, petitioner and respondent were given additional time to resubmit amended valuation reports. Petitioner and respondent had already submitted witness and exhibit lists. Accordingly, in light of the restrictions on introducing "surprise" testimony or information and petitioner's previous experience as an in propria persona litigant before the tribunal, we conclude that the tribunal did not abuse its discretion in denying petitioner's motion for an adjournment. See 1999 AC, R 205.1270.

Petitioner also argues that (1) the tribunal improperly limited his direct examination of his appraiser to only that information contained in the valuation disclosure that he submitted to establish the cash value of his property, and (2) the tribunal improperly refused to admit an addendum to his valuation report on the day of the hearing. We disagree. This Court may review the tribunal's rulings regarding evidentiary issues if they involve errors of law. *Georgetown Place Co-op v Taylor*, 226 Mich App 33, 50; 572 NW2d 232 (1997). In tribunal hearings, "[t]he parties must be given the opportunity to present evidence and arguments regarding issues of facts, cross-examine witnesses, and submit rebuttal evidence." *Id*. at 52, citing MCL 24.272(3), (4). Further, "[t]he rules of evidence must be followed as far as practicable, but the tribunal 'may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.'" *Georgetown Place Co-op*, *supra*, citing and quoting MCL 205.746(1) and MCL 24.275. Irrelevant, immaterial or unduly repetitious evidence may be excluded. MCL 205.746(1).

Petitioner had the burden to establish the true cash value of his property. MCL 205.737(3); 1999 AC, R 205.1252(1); *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002). Further, pursuant to 1999 AC, R 1283(3), the tribunal rules expressly limit the content of testimony as follows:

> Without leave of the tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure containing that person's value conclusions and the basis for the conclusions.

Here, petitioner failed to submit a valuation disclosure for the proper tax years and, instead, submitted a restricted disclosure related to May 1998. Consequently, the witness' testimony was restricted to the information contained in the valuation disclosure, and petitioner was unable to supplement the information contained in his invalid valuation disclosure. Petitioner concedes that the addendum was only a statement that market conditions had remained constant between the tax years in question and the date of the May 1998 appraisal. Consequently, the addendum was not probative of the cash value of the property for the *relevant tax years*, and was immaterial

to the proceedings; therefore, the tribunal did not err when it refused to admit the addendum. See MCL 205.746(1).

Petitioner next argues that the tribunal, which denied him the right to cross-examine respondent's appraiser, was biased or predisposed to preemptively dismiss his petition. Again, we disagree. Generally, this Court reviews the Tax Tribunal's decisions to dismiss a petition for an abuse of discretion. *Professional Plaza, LLC*, *supra* at 475.

Here, the tribunal determined that the testimony of respondent's appraiser would not offer any *additional* information that would have been probative of the true cash value of the property in light of petitioner's failure to submit a proper valuation disclosure. We note that petitioner's submission of the May 1998 valuation disclosure subjected petitioner to immediate dismissal by the tribunal because he failed to submit a correct valuation disclosure for 1995 and 1996, the relevant tax periods involved in the instant dispute. See 1999 AC, R 205.1247(4); R 205.1252(1). Because petitioner's valuation disclosure did not contain any "person's value conclusion and the basis for the conclusions," for the tax years 1995 and 1996, petitioner could have been prohibited from calling *any* witnesses to testify regarding the value of the property without leave of the tribunal. 1999 AC, R 205.1283(3). Nonetheless, although petitioner failed to submit a proper valuation disclosure, the tribunal allowed petitioner to proceed with his case.

We further note that the tribunal (1) did not immediately grant respondent's motion to dismiss, but held it in abeyance, (2) allowed petitioner to testify, although he had no first hand knowledge regarding the true cash value of the property, and (3) allowed petitioner's appraiser to testify, although petitioner's appraiser was not on the witness list and the appraiser performed the valuation disclosure for the incorrect tax year. Because petitioner failed to sustain his burden of proof and submitted an improper valuation disclosure, the tribunal properly made a determination that respondent's appraiser's testimony was no more probative than the other competent, substantial evidence that respondent submitted in its valuation disclosure. Accordingly, in light of the deficiencies in petitioner's proofs, petitioner's inability to cross-examine respondent's appraiser is insufficient to establish plain error. The fact that the tribunal ultimately ruled against petitioner is insufficient to establish bias, especially in light of the wide latitude that petitioner was given to present his case.

Petitioner next argues that the tribunal improperly awarded costs to respondent because petitioner proceeded in good faith with his petition. We disagree. The Tax Tribunal rules expressly state that "[c]osts may be awarded to a *prevailing party* only where provided for by the tribunal in a decision or order." 1999 AC, R 205.1145(4). Here, the requirements of 1999 AC, R 205.1145 were satisfied because (1) petitioner's petition was dismissed, and (2) the tribunal, in its conclusion of law, found "Petitioner's case to be of nominal merit, requiring Respondent to expend the cost of an unnecessary defense," which warranted an award of costs.

The tribunal noted that the tax rules do not provide which costs may be awarded; however, 1999 AC, R 205.1111(4) provides that if an applicable tribunal rule does not exist, the 1995 Michigan Rules of Court, as amended, and the provisions of MCL 24.271 to 24.287 shall govern. The power to tax certain expenses, however, is statutory and the prevailing party cannot recover such expenses absent statutory authority. *Beach v State Farm Mut Auto Ins Co*, 216 Mich App 612, 621; 550 NW2d 580 (1996). Pursuant to MCL 205.752(1), the tribunal has the authority to award costs.

Here, the tribunal awarded respondent the following costs: (1) $2,500 for the appraiser's fee for preparing the valuation report, (2) $560 for the appraiser's fee for time spent at two hearings, (3) $125 for motion fees, and (4) $64.48 for mileage fees. The tribunal, in its opinion and judgment, noted that petitioner had come to a previous hearing in propria persona and unprepared. Additionally, the tribunal noted that respondent submitted the required affidavit in support of its bill of costs. The tribunal further concluded that respondent's fees were reasonable and necessary. Accordingly, because respondent was the prevailing party and the costs were provided for by statutory authority, we discern no error in the tribunal's award of costs. See 1999 AC, R 205.1145.

Affirmed.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra