

STATE OF MICHIGAN
COURT OF APPEALS

GOODYEAR TIRE & RUBBER COMPANY,

Petitioner-Appellant,

v

CITY OF ROSEVILLE,

Respondent-Appellee.

UNPUBLISHED

December 20, 2002

No. 234470

Tax Tribunal

LC No. 00-245274

Before: Whitbeck, C.J., and Zahra and Murray, JJ.

PER CURIAM.

Petitioner appeals as of right from an order of the Michigan Tax Tribunal (the Tribunal) dismissing petitioner's appeal of respondent's property tax assessments of petitioner's commercial property in Roseville. We affirm.

Petitioner failed to appear for a prehearing conference. As a result, the tribunal sua sponte issued an order of dismissal, and thereafter denied petitioner's motion to reinstate the case. Petitioner argues on appeal that the Tribunal erred when it entered an order of dismissal and then denied petitioner's request to reinstate the case. The Tribunal's actions are reviewed on appeal for an abuse of discretion. *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986). Its factual findings must be upheld if supported by competent, material, and substantial evidence on the record. *Professional Plaza, LLC, v City of Detroit*, 250 Mich App 473, 474; 647 NW2d 529 (2002). Substantial evidence is that which a reasonable mind would accept as reasonable to support a conclusion and is more than a mere scintilla of evidence but less than a preponderance. *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994). When there is sufficient evidence to support the Tribunal's decision, a reviewing court must not substitute its discretion for that of the Tribunal even if the court might have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992).

Petitioner first argues that it should not be penalized for failing to appear at a prehearing conference when the notice for such conference was issued in violation of the Tribunal's rules. Tribunal Rule 205.1270 provides, in pertinent part:

- (4) When a case is ready for prehearing as determined by the tribunal, the clerk shall schedule the matter for a date-certain prehearing at a time and place to be designated by tribunal or shall place the proceeding on a prehearing general call.

(5) Not less than 28 days before a date-certain prehearing, *unless otherwise ordered by the tribunal*, the clerk shall send notice of the time, date, and place of the date-certain prehearing to all parties. [Emphasis added.]

Petitioner claims that because the parties were given only ten days notice of the date-certain prehearing, an order of the tribunal was required under the rule. Petitioner further claims that the notice from the deputy chief clerk of the Tribunal did not qualify as an order of the Tribunal for purposes of Rule 270 because it was not signed and authorized by the Tribunal judge.

We find petitioner's arguments unpersuasive. This precise issue was addressed by this Court in *Lawrence v Dep't of Treasury*, 128 Mich App 741; 341 NW2d 200 (1983). In that case, the *Lawrence* Court found "no requirement . . . that a written order signed by a tribunal judge need be entered and sent to the parties in order to initiate the prehearing conference procedures. A notice of prehearing conference signed by the tribunal's chief clerk, such as was sent to the parties in the instant case, is sufficient to alert the participants that the tribunal has ordered a prehearing conference to be convened." *Id.* at 744. We find the holding and reasoning in *Lawrence* applicable in this case where the tribunal's chief deputy clerk sent notice of the prehearing conference to the parties.¹ Thus, the notice sent to the parties in this case did not violate any rule of the Tribunal. Accordingly, any argument regarding the propriety of the deputy chief clerk's notice of prehearing conference must fail.

Petitioner next argues that it has been unfairly and unjustly treated and deprived of due process when its case was dismissed for failing to comply with an order issued by the chief deputy clerk in contravention of Tribunal rules. However, because we previously concluded that the Tribunal did not fail to comply with its own rules when the chief deputy clerk issued the order, petitioner's argument is without merit.

Petitioner also argues that the Tribunal abused its discretion in imposing the harshest sanction available, an order of dismissal, and thereafter denying petitioner's motion to reinstate. In denying petitioner's motion to reinstate, the Tribunal found that petitioner had failed to show good cause or demonstrate any palpable error justifying reinstatement. The power of the Tribunal to dismiss a petition because of petitioner's noncompliance with a rule or order of the tribunal is unquestionable. Indeed, Tribunal Rule 205.1247(4) specifically provides that 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" Likewise, "[f]ailure to appear at a duly scheduled prehearing conference may result in the dismissal of the appeal" 1999 AC, R 205.1270(11). Thus, Tribunal Rule 270.11, which specifically governs "prehearing conferences," unequivocally states that petitioner's failure to appear at the prehearing conference could result in the dismissal of its appeal. More significant is the absence of any language requiring a finding of prejudice by the Tribunal.

Contrary to petitioner's argument, Rule 270 does not require a finding of prejudice. Moreover, petitioner's reliance on *Stevens, supra*, for such an analysis is misplaced. In *Stevens*,

¹ Further, we find petitioner's argument that *Lawrence* is distinguishable because it involved a nonproperty tax appeal where prehearing conferences are "not to occur unless otherwise ordered by the tribunal" a distinction without a difference. See *Lawrence, supra*.

the Tribunal dismissed the case after the petitioner failed to attend a “counsel conference” as required by Rule 250. *Id.* at 759-760. On appeal, this Court found that the Tribunal had abused its discretion in dismissing the petition because the respondent had not “suffered substantial prejudice.” *Id.* at 761. However, we find that *Stevens* is not applicable to the instant case. The facts in *Stevens* involved the failure to appear at a counsel conference, not a prehearing conference, which specifically provides for dismissal for failure to appear. Notably, Rule 250 does not confer such a power on the Tribunal. See 1999 AC, R 205.1250. Therefore, because *Stevens* is factually distinguishable, a prejudice analysis is not required. As a result, because petitioner failed to appear at a duly scheduled prehearing conference, the Tribunal had the power to dismiss its petition. 1999 AC, R 205.1270(11); see also *Lawrence*, *supra* at 745. Accordingly, we cannot conclude that the trial court abused its discretion in entering an order of dismissal and finding that petitioner had failed to show good cause to reinstate the case where a copy of the scheduling order was mailed to petitioner and not returned by the post office.

Affirmed.

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Christopher M. Murray