STATE OF MICHIGAN

COURT OF APPEALS

UPPER PENINSULA LAND CONSERVANCY,

Petitioner-Appellant,

v

TOWNSHIP OF MICHIGAMME,

Respondent-Appellee.

UNPUBLISHED
June 11, 2020

No. 349492
Michigan Tax Tribunal
LC No. 17-003964-TT

Before: CAMERON, P.J., and BOONSTRA and LETICA, JJ.

PER CURIAM.

Petitioner, Upper Peninsula Land Conservancy (UPLC), appeals as of right the tax tribunal's order granting respondent's, the Township of Michigamme, motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) on petitioner's request for an ad valorem tax exemption under MCL 211.7*o*(1) or (5). We affirm.

I. BACKGROUND

UPLC is a 501(c)(3)[1] nonprofit organization that was originally formed in 1999. UPLC's executive director at the time, Dr. Christopher Burnett, asserted that it is a land preservation organization dedicated to preserving land for conservation, education, and public recreation. The purpose clause in UPLC's Articles of Incorporation stated, in part:

> The purposes for which the Corporation is organized are:
>
> A. To acquire, preserve, maintain, improve, and protect significant natural, agricultural, and scenic land areas for conservation, outdoor recreation by the general public, scientific study, preservation of biodiversity and historical sites, and the education of the general public, to acquire, maintain, and protect nature sanctuaries, nature preserves, and natural areas in the State of Michigan that

[1] 26 USC 501(c)(3) permits a nonprofit organization to enjoy federal tax-exempt status.

> predominantly contain natural habitat for fish, wildlife, and plants, and to advance land stewardship in Michigan's Upper Peninsula now and for future generations.

UPLC's bylaws also stated that it would be operated exclusively for "charitable, scientific, and educational purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code as a nonprofit corporation." The bylaws also included the same language as the articles of incorporation as to UPLC's purpose.

Petitioner, along with other properties, owns the subject property, approximately 600 acres of real property in the Upper Peninsula, referred to as the "Indian Lake Conservation Preserve," located within respondent county. Mark Murphy, acting through his single-member LLC, donated the subject property to petitioner via warranty deed in 2014. Petitioner considered Murphy a donor to UPLC through his property donation and his volunteer time. After the donation, all of the land around Indian Lake was owned by either UPLC or Murphy. Murphy also had unrestricted access to the subject property, but had a conservation easement on his private property. The only structure on the subject property was a boardwalk.

The subject property provides a home for a variety of animals, including moose, loons, and bald eagles, as well as vegetative species. The public was allowed to engage in "nondestructive" activities" within the subject property, including hiking, bird watching, cross country skiing, and snowshoeing, on existing trails and during daylight hours. The public could enter the property by walking from the Peshekee Grade, a three-mile round trip along a road easement. An individual could also attempt to enter the property via vehicle off a public roadway. However, any individual wishing to drive into the property would have to contact an UPLC representative to open two locked gates that the surrounding private property owners installed and controlled. The private property owners had also placed "no trespassing" and "private road" signs on the roadway leading up to the first locked gate. Individuals could also enter the subject property during a public event hosted thereon, but they would need to arrange to meet with an UPLC representative before the event to unlock the gates. The gates would then be relocked during the event. Three such events were held over the course of three years, 2016 through 2018. Murphy and a few others were the only attendees of these events.

Petitioner requested an exemption from ad valorem taxes pursuant to MCL 211.7*o*(1), or alternatively (5), for the 2017 tax year, which respondent denied. Petitioner filed an initial and amended petition with the tax tribunal for the tax exemption and added all future tax years to the appeal to the tax tribunal.

Petitioner and respondent then filed dueling motions for summary disposition, pursuant to MCR 2.116(C)(10). The tax tribunal granted respondent's motion under MCR 2.116(C)(10), denied petitioner's motion, denied petitioner's request for an exemption from ad valorem taxes for the 2017 and 2018 tax years, and severed the 2019 tax year to a separate docket. The tax tribunal concluded that petitioner was not a "charitable institution."

Petitioner then moved for reconsideration, arguing that the tax tribunal should consider evidence of UPLC activities as a whole organization, not just its usage of the subject property. The tax tribunal denied its motion, noting that petitioner's argument had not been properly

presented in its earlier pleadings and that "[c]onsideration of new evidence subsequent to disposition of this case is not appropriate."

This appeal followed.

II. STANDARD OF REVIEW

Our review of the tax tribunal's decision is "limited to the questions of whether the tribunal committed an error of law or adopted a wrong legal principle." *Teledyne Continental Motors v Muskegon Tp*, 145 Mich App 749, 753; 378 NW2d 590 (1985). "Thus, on appeal from a ruling of the tribunal, this Court is bound by the factual determinations of the tribunal and may properly consider only questions of law." *Id*.

"A [lower] court's decision regarding a motion for summary disposition is reviewed de novo." *Sullivan v Michigan*, 328 Mich App 74, 80; 935 NW2d 413 (2019). "Under MCR 2.116(C)(10), summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Piccione v Gillette*, 327 Mich App 16, 19; 932 NW2d 197 (2019) (quotation marks omitted). We "must review the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Id*. (quotation marks omitted). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id*. (quotation marks omitted). A court may not "make findings of fact; if the evidence before it is conflicting, summary disposition is improper." *Id*. (quotation marks and emphasis omitted). And, all reasonable inferences arising from the circumstantial evidence must be construed in favor of the non-movant. *West v Gen Motors Corp*, 469 Mich 177, 183-184; 665 NW2d 468 (2003). The court may not make findings of fact or weigh credibility in deciding a summary disposition motion. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

Tax exemptions are "narrowly construed" in favor of taxing authorities because exemptions "upset the desirable balance achieved by equal taxation[.]" *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 204; 713 NW2d 734 (2006). Tax exemptions are generally "disfavored" and are in "derogation of the principle that all shall bear a proportionate share of the tax burden." *GMAC LLC v Treasury Dep't*, 286 Mich App 365, 374-375; 781 NW2d 310 (2009). Accordingly, the party seeking the exemption bears the burden of establishing that all requirements for an exemption have been satisfied. *Id*. at 374.

III. DISCUSSION

On appeal, petitioner primarily presents two arguments. First, it argues that the tax tribunal should have considered UPLC's activities as a whole, not just regarding the subject property, when the tribunal determined whether it was a "charitable institution." Second, it argues that the tax tribunal should have viewed the restrictions to the public's access as a result of the remoteness of the subject property and its conservation efforts. We find both of these arguments unavailing.

A. UPLC AS A WHOLE

When petitioner moved for reconsideration, it argued that the tax tribunal failed to consider whether its actions as a whole organization rendered it a "charitable institution" rather than its actions on the subject property. The tax tribunal denied petitioner's motion, concluding that this was the first time petitioner presented it and, therefore, it would not consider it. Issues raised for the first time in a motion for reconsideration are not properly preserved for appeal. *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 519; 773 NW2d 758 (2009) ("Where an issue is first presented in a motion for reconsideration, it is not properly preserved.").

Petitioner contends that in its motion for summary disposition, it generally stated that its activities as an organization should be considered "as a whole," that it discussed its role as an organization, and that it provided some documentary evidence of those actions—notably, its newsletter, bylaws, and articles of incorporation. However, our review of the record demonstrates that a vast majority of the documentary evidence related only to the subject property, and petitioner's arguments in its motion regarding its actions as a larger institution related only to its actions on the subject property. Although petitioner made some mention of its larger role as an organization before its reconsideration motion, it did not clearly present this argument outside of its connection to its occupation and usage of the subject property. Put differently, although the tax tribunal did not focus on the few pieces of evidence relating to UPLC's larger role as an organization, petitioner, in turn, did not highlight this evidence to make the specific argument it raised in its motion for reconsideration. Just as "[i]t is absurdly difficult for a [lower court] to perform a search, unassisted by counsel, through the entire record, to look for such evidence," the same is true of the tax tribunal. *Cf. Barnard Mfg Co v Gates Performance Engineering, Inc*, 285 Mich App 362, 379; 775 NW2d 618 (2009). Therefore, the tax tribunal did not abuse its discretion in denying petitioner's motion for reconsideration. And, because this argument was not properly preserved, we decline to consider it.[2] *D'Agostini Land Co LLC v Dep't of Treasury*, 322 Mich App 545, 561; 912 NW2d 593 (2018).

B. CHARITABLE INSTITUTION

The tax tribunal also correctly determined that petitioner was not entitled to the exemption under MCL 211.7*o*(1) or (5) because petitioner does not qualify as a charitable institution because the subject property was not used or offered for the benefit of the general public or an indefinite number of persons.

The relevant statutory language states:

> (1) Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the

[2] For the same reason, we will not consider the impact of petitioner's partnership with Northern Michigan University.

purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

* * *

(5) Real property owned by a qualified conservation organization that is held for conservation purposes and that is open to all residents of this state for educational or recreational use, including, but not limited to, low-impact, nondestructive activities such as hiking, bird watching, cross-country skiing, or snowshoeing is exempt from the collection of taxes under this act. As used in this subsection, "qualified conservation organization" means a nonprofit charitable institution or a charitable trust that meets all of the following conditions:

(a) Is organized or established, as reflected in its articles of incorporation or trust documents, for the purpose of acquiring, maintaining, and protecting nature sanctuaries, nature preserves, and natural areas in this state, that predominantly contain natural habitat for fish, wildlife, and plants.

(b) Is required under its articles of incorporation, bylaws, or trust documents to hold in perpetuity property acquired for the purposes described in subdivision (a) unless both of the following conditions are satisfied:

(*i*) That property is no longer suitable for the purposes described in subdivision (a).

(*ii*) The sale of the property is approved by a majority vote of the members or trustees.

(c) Its articles of incorporation, bylaws, or trust documents prohibit any officer, shareholder, board member, employee, or trustee or the family member of an officer, shareholder, board member, employee, or trustee from benefiting from the sale of property acquired for the purposes described in subdivision (a). [MCL 211.7*o*.]

Under both of these provisions, a taxpayer must demonstrate that it is a "charitable institution" to qualify for an exemption. *Id*.; see also *Wexford*, 474 Mich at 215.

In *Wexford*, our Supreme Court developed a six-prong test for determining whether a taxpayer is a "charitable institution":

(1) A "charitable institution" must be a nonprofit institution.

(2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.

(3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather,

> a "charitable institution" serves any person who needs the particular type of charity being offered.
>
> (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
>
> (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
>
> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year. [*Wexford*, 474 Mich at 215.]

Recently, our Supreme Court clarified that the third *Wexford* factor bars restrictions or conditions on charity that bear no reasonable relationship to an organization's legitimate charitable goals and that it is "intended to exclude organizations that discriminate by imposing purposeless restrictions on the beneficiaries of the charity." *Baruch SLS, Inc v Tittabawassee Township*, 500 Mich 345, 357-358; 901 NW2d 843 (2017).

In order to qualify, "an institution must be organized chiefly, if not solely for charity." *Wexford*, 474 Mich at 216 (quotation marks omitted). "To qualify as a charitable institution, [the] petitioner's activities, taken as a whole, must constitute a charitable gift for the benefit of the general public without restriction for the benefit of an indefinite number of persons." *OCLC Online Computer Library Ctr v City of Battle Creek*, 224 Mich App 608, 615; 569 NW2d 676 (1997).

Our Supreme Court has previously held that a conservation club, situated on five acres, was not a charitable institution because the benefits it provided were not for an indefinite number of persons. *Michigan United Conservation Clubs (MUCC) v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 737 (1985). The organization in *MUCC* offered educational programs, including hunter safety classes for children and a summer youth camp, published informational brochures, and engaged in lobbying, among other activities. *Id*. at 665-667. However, the Court determined that, despite these activities, the organization still did not qualify for the exemption as a charitable institution. *Id*. at 671-674. The Court specifically reasoned:

> It is clear that the activities summarized by the Tax Tribunal and the Court of Appeals do not amount to gifts for the benefit of an indefinite amount of persons or the general public without restriction. Although members of the public may occasionally visit MUCC's office building and use its library, petitioner's answers to interrogatories indicated that use of the property generally is not available to non-MUCC members. [The director] testified that the use of the library by a nonmember depended on the purpose for which it was to be used. For example, students or other persons who wanted to research a particular resource management

> problem were granted permission to use the facilities. We do not consider these responses to be indicative of a benefit to the general public without restriction. [*Id.* at 673-674.]

We find *MUCC* is directly analogous. Petitioner fails to meet *Wexford* factors 2, 3, and 4, which the tax tribunal correctly identified as overlapping. Petitioner did not partake in, or offer, activities on or usage of the subject property for the benefit of the general public or an indefinite number of people. Although the property was nominally and legally open to the general public, the record demonstrates that the general public had restrictions on visiting the property that others, particularly the adjacent property owners, did not. The evidence from UPLC's representatives strongly indicate that visiting the property without prior authorization was restricted and difficult. As the tax assessor's repeated attempts to visit demonstrated, the ability to access the property by vehicle was restricted by locked gates, no trespassing signs, and private roads. The only manner that the general public could visit without prior approval was to walk. However, the general public would have to ignore signs that indicated the property was private and, therefore, not for public use, in addition to undertaking a one-and-a-half-mile hike. In fact, there were no signs to indicate that UPLC even owned the subject property. Additionally, as petitioner recognizes, the property was extremely remote, making walking access more difficult. Likewise, hiking on the property was difficult because the interactive map could not be used without cell phone service, which was unavailable. While some of these restrictions, particularly on activities allowed, are due to the remoteness of the property and the need to conserve the land, UPLC could have remedied this issue by hosting additional educational programs and further interacting with other local organizations. Yet, it had not done so, and it provided no adequate reason for not doing so beyond noting that it had only recently acquired the property. And, while there was some evidence that UPLC allowed the Forest Service to conduct research, there was little other evidence of the specific conservation efforts that UPLC had undertaken, such as with the Department of Natural Resources (DNR), outside of the restrictions it had placed on activity on the subject property.

Although there are some differences between the organization in *MUCC* and UPLC, notably that UPLC did not nominally or legally restrict the access to its property to only members, the organization in *MUCC* offered additional activities and educational events to the general public. And although legal access to the subject property was permitted to the general public, Murphy and other members gained the primary benefit from this property. For example, Murphy had unrestricted access to the property, even though he had a conservation easement on his activities. Murphy was permitted access to the lake and hiking trails without having to request access to drive his vehicle through a locked gate or ignore various signs. In short, the benefit from the property did not go to the general public or an indefinite number of persons, but to those already actively involved in UPLC as an organization.

Petitioner notes that there was evidence that it was planning on expanding the public's access to the property. However, as the tax tribunal severed the 2019 tax year from the decision before us for review, we need not consider any potential impact these improvements will have on its ability to claim the tax exemption in the future. As the record indicates for the tax years at issue, petitioner seldom held public events, the public events were sparsely attended, occurred behind locked gates, and the public had restricted access to the subject property outside of those few public events due to the locked gates. Although petitioner's expansion of the property to allow

a public road access would help with these issues, it did not resolve them during the 2017 and 2018 tax years considered by the tribunal.

To contrast *MUCC*, petitioner points to two other cases to support its argument that its primary purpose, conservation, was charitable even if the subject property was not open to the public without restriction or easily accessible due to its inherent remoteness. However, we find these cases are readily distinguishable.

In *Kalamazoo Nature Ctr v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981), the tax tribunal denied tax exemptions for two residences and 31 acres of vacant land the petitioner, a nonprofit organization, owned because it did not occupy the parcels for the purposes for which it was incorporated. *Id*. at 659. While we determined that the petitioner did not truly occupy the land and it was not open to the public, we reasoned that the passive usage of the land could qualify as a purpose for which the organization was incorporated. *Id*. at 663-667. We reasoned that, "[i]n terms of contemporary environmentalism, the best 'occupancy' may be visual, educational, or other demonstrative type occupancy. Nothing in the statute requires physical use." *Id*. at 666-667.

Kalamazoo Nature Ctr would be persuasive here if, as discussed above, petitioner met the threshold requirement for a charitable institution based on the evidence presented at the summary disposition phase. However, because petitioner did not provide charity at the subject property, as the benefits and enjoyment of the subject property were restricted to only its members and surrounding private property owners, we will not examine whether occupancy of the property qualifies under MCL 211.7*o*(1).

Petitioner also relies on *Moorland Tp v Ravenna Conservation Club, Inc*, 183 Mich App 451; 455 NW2d 331 (1990). In *Moorland*, the organization's property offered a club hour, nature trail, archery range, rifle range, and stream. *Id*. at 454-455. The property was not fenced in and was available to the public at all times at no charge. *Id*. at 455. Local groups regularly used the property and the organization partnered with the DNR. *Id*. at 455-456. The organization also worked closely with area schools, sponsored a wildlife discovery program, and it paid for children to attend a conservation youth camp each year. *Id*. at 456. The tax tribunal denied the organization a tax exemption under *MUCC* because the charitable gift was not for the benefit of an indefinite number of persons or the general public. *Id*. at 459. We found that the factual differences between *Moorland* and *MUCC* distinguished the two cases, as, unlike the organization in *MUCC*, the organization in *Moorland* did not charge a fee for the dissemination of its publications to the schools and area groups, the property was always available to the public free of charge, and the organization was involved in extensive conservation efforts independently and with the DNR. *Id*. at 460. We concluded that "[a]lthough club members who volunteer their time and efforts obviously have an active interest in the conservation of natural resources and wildlife, and therefore realize a personal benefit from their accomplishments, the record establishes that the general public is both the actual and intended ultimate benefactor of the club's efforts." *Id*.

We conclude that the facts in this case are closer factually to *MUCC* than to *Moorland*. As discussed above, the record demonstrates that the subject property was not truly open to the public given the surrounding private property's locked gates blocking road access, the lack of vehicle access, and the lack of ADA accommodations. UPLC's members compromise a majority of the attendees at events hosted on the subject property, and UPLC only hosted three truly public events

during the relevant period, unlike the many educational events hosted by the organization in *Moorland*. Moreover, the record demonstrates that a majority of the benefit in the subject property was for Murphy, who had unrestricted access, unlike members of the general public who had to request access or walk a great distance to enter it. Unlike the members of the organization in *Moorland*, who were interested in conservation efforts but worked towards the benefit of the general public, there was no indication that the general public gained any real benefit from the subject property due to the lack of programming. There was also a lack of evidence, aside from the statements from UPLC's representatives, that UPLC had engaged in extensive conservation efforts like those described in *Moorland*.

As petitioner does not qualify as a charitable institution because the subject property was not used or offered for the benefit of the general public or an indefinite number of persons, it does not qualify for a tax exemption under either statutory provision in MCL 211.7*o*. Therefore, the tax tribunal properly granted respondent's summary disposition motion.

Affirmed.

/s/ Thomas C. Cameron
/s/ Mark T. Boonstra
/s/ Anica Letica