STATE OF MICHIGAN

COURT OF APPEALS

PINE LAKE COUNTRY CLUB,

Petitioner-Appellant,

v

CHARTER TOWNSHIP OF WEST BLOOMFIELD,

Respondent-Appellee.

UNPUBLISHED
October 22, 2020

No. 351979
Michigan Tax Tribunal
LC No. 2017-002655

Before: METER, P.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

In this tax petition involving the taxable value of a private golf course and clubhouse, petitioner appeals as of right the Michigan Tax Tribunal's order that barred petitioner's valuation disclosure or any other evidence or testimony to support its petition. We affirm.

I. BACKGROUND

The tribunal received petitioner's property tax petition on May 31, 2017, in which petitioner assessed the true cash value of the subject property to be almost $700,000 less than respondent's assessment. The tribunal entered a prehearing order that set the valuation disclosure file and exchange date for August 20, 2018, and the order warned the parties that valuation disclosures "will **not** be admitted into evidence **unless** disclosed and furnished in accordance with this Order (even though admissible) **except** upon a finding of good cause by the Tribunal."

On June 11, 2018, petitioner's lead counsel, Fred Gordon, was hospitalized due to an "unknown illness." Because of this, the parties filed a stipulated motion to move the petition to the March 18-29, 2019 docket. On June 27, 2018, the tribunal granted the motion and set the new valuation disclosure submission date for January 18, 2018, providing the same warning language as the original order about late valuation disclosures not being admitted into evidence except for good cause.

On January 17, 2019, petitioner submitted a prehearing statement to the tribunal, stating that the true cash value of the subject property was the same as its May 31, 2017 petition. The

prehearing statement also stated that Michael Rende, petitioner's appraiser, would "testify regarding valuation of the subject property." Additionally, one of petitioner's attorneys, Brian Etzel, sent an email to respondent's counsel, Derk Beckerleg, that informed him that petitioner was not "in a position to furnish" its valuation disclosure by the January 18, 2019 deadline. Etzel also asked that respondent either agree to adjourn the deadline or file its valuation disclosure with a motion to withhold. Accordingly, petitioner did not submit a valuation disclosure on or before the January 18, 2019 deadline. On January 18, 2019, respondent timely filed its prehearing statement, valuation disclosure, and a motion to withhold its valuation disclosure.

A notice of prehearing conference was provided to both parties on February 15, 2019, setting the date of the prehearing conference for March 18, 2019. The notice informed the parties that the prehearing conference was to "commence as a show cause hearing because [petitioner] ha[d] failed to timely file the required valuation disclosure."

On March 11, 2019, petitioner submitted its valuation disclosure to the tribunal, and the valuation disclosure showed that Rende had submitted his appraisal to petitioner on March 7, 2019, which estimated the true cash value of the subject property to be $525,000 less than the estimated true cash value in petitioner's original petition. Two days later, respondent filed a motion to strike petitioner's valuation disclosure because petitioner had missed the submission deadline. Respondent argued that it would be severely prejudiced if the document was admitted because petitioner had additional time to prepare its valuation and could incorporate rulings from the tribunal that had occurred after the January 18, 2018 deadline into its assessment.

On March 18, 2019, the prehearing conference was held, but no transcript or recording of what was argued or presented by each party at the prehearing conference exists. The only document in the tribunal's record that provides information about what was presented during the March 18, 2019 prehearing conference is the tribunal's March 20, 2019 summary of prehearing conference order, scheduling order, and notice of hearing. According to that order, petitioner's main argument for why its valuation disclosure was filed late was Gordon's illness. Conversely, respondent asserted that petitioner had been withholding its valuation disclosure to modify it based on the final opinion and judgment in *Plum Hollow Golf Course v Southfield*, MTT 17 (Docket No. 002072), issued February 8, 2019. Ultimately, the order stated that "Petitioner failed to show good cause as to why the Valuation Disclosure was filed 53 days late. As a result, Petitioner is subject to default." Additionally, the tribunal ruled that "Petitioner is not permitted to offer its valuation disclosure for admission or witnesses to testify," and the next hearing was scheduled for May 21, 2019.

Petitioner filed a motion for reconsideration, arguing that it had good cause for the late filing and that the tribunal essentially dismissed its petition without weighing the proper factors. Petitioner explained that Rende had been diagnosed with prostate cancer during the summer of 2018, and he began chemo steroid injections in October 2018, causing "extreme fatigue." Petitioner stated that Rende inspected the subject property on January 15, 2019, but his fatigue affected how quickly he could complete the appraisal. Additionally, petitioner argued that the tribunal's order, preventing petitioner from introducing any evidence or testimony, was

"effectively a dismissal" of the case, and Michigan law requires that certain factors[1] be weighed before dismissing a tax petition, which the tribunal did not analyze in its summary of the prehearing conference order.

On April 8, 2019, the tribunal entered an order denying petitioner's motion for reconsideration. The order stated that "the valuation disclosure delay was not related to the medical conditions of Petitioner's attorney or its valuation expert," and it explained that *Grimm v Dep't of Treasury*, 291 Mich App 140; 810 NW2d 65 (2010), is only applicable when there has been an actual dismissal of the petition, so it was not binding in this case. This appeal followed.

II. DISCUSSION

On appeal, petitioner argues that it showed good cause for the late filing of its valuation disclosure, respondent suffered no prejudice due to the late filing, the lack of a formal recording from the preconference hearing was in violation of Michigan law and the tribunal's rules, and the tribunal's order that prevented petitioner's valuation disclosure and witness testimony from being presented at the upcoming hearing was the functional equivalent of a dismissal. Although we agree that respondent was not prejudiced by the late filing of petitioner's valuation disclosure, we disagree with petitioner's remaining arguments.

A. STANDARD OF REVIEW

> This Court's ability to review the tribunal's decisions is quite limited:
> Michigan's Constitution provides: "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Thus, this Court's "review of decisions of the Tax Tribunal, in the absence of fraud, is limited to determining whether the tribunal made an error of law or adopted a wrong principle . . . ." *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 630-631; 806 NW2d 342 (2011) (citations omitted).

"Factual findings that are supported by competent, material, and substantial evidence on the whole record will not be disturbed on appeal." *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). "Substantial evidence is the amount of evidence that a

[1] Petitioner asserted the tribunal must consider the following factors before dismissing a tax petition:

> (1) whether the violation was willful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice. *Grimm v Dep't of Treasury*, 291 Mich App 140, 149; 810 NW2d 65 (2010), quoting *Vicencio v Ramirez*, 211 Mich App 501, 507; 536 NW2d 280 (1995).

reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence." *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004).

"When an issue of statutory construction is involved, appellate review is de novo." *Forest Hills Coop v Ann Arbor*, 305 Mich App 572, 587; 854 NW2d 172 (2014). "Discovery sanctions are reviewed for an abuse of discretion." *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990). Additionally, "the decision of a hearing officer to refuse to admit evidence will not be disturbed on appeal" unless there was an abuse of direction. *Tomczik v State Tenure Comm*, 175 Mich App 495, 502; 438 NW2d 642 (1989). "The abuse-of-discretion standard recognizes that there will be circumstances in which there will be more than one reasonable and principled outcome, and selection of one of these principled outcomes is not an abuse of discretion." *Grimm*, 291 Mich App at 149.

Petitioner did not advance the arguments that Rende's illness served as good cause for the late filing of the valuation disclosure, the prehearing conference not being recorded violated the tribunal's rules, and the tribunal's March 20, 2019 order was the functional equivalent of a dismissal until its motion for reconsideration. "Where an issue is first presented in a motion for reconsideration, it is not properly preserved." *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 519; 773 NW2d 758 (2009). Unpreserved issues on appeal are reviewed for plain error. *Henderson v Dep't of Treasury*, 307 Mich App 1, 9; 858 NW2d 733 (2014). "To establish plain error, petitioner must show (1) that an error occurred, (2) that the error was plain, and (3) that the plain error affected defendant's substantial rights." *Id* (quotation marks and citation omitted).

B. GOOD CAUSE

Petitioner argues that the tribunal abused its discretion by not finding good cause for petitioner's late filing of its valuation disclosure on the basis of the illnesses of its primary counsel and appraiser. We disagree.

The term good cause is "difficult to define." *Richards v McNamee*, 240 Mich App 444, 451; 613 NW2d 366 (2000). This Court has previously stated that good cause is "a substantial reason amounting in law to a legal excuse for failing to perform an act required by law." *Franchise Mgt Unlimited, Inc v America's Favorite Chicken*, 221 Mich App 239, 246; 561 NW2d 123 (1997).[2] Additionally, "the burden of demonstrating good cause and a meritorious defense to set aside the default" falls on the defaulting party. *Saffian v Simmons*, 477 Mich 8, 15; 727 NW2d 132 (2007).

The main thrust of petitioner's argument for why it had good cause for its late filing of the valuation disclosure was the illnesses of Gordon and Rende. Although petitioner did not know

[2] Mich Admin Code, R 792.10289 defines "good cause" as an "error of law, mistake of fact, fraud, or any other reason the tribunal considers sufficient and material." However, this rule is encapsulated within the rules for the small claims division of the tribunal, meaning it is an informative but nonbinding definition for this case.

about Rende's illness until after the prehearing conference, petitioner asserts that the tribunal abused its discretion by not accepting the effects of Gordon's and Rende's respective illnesses on their ability to complete their work as a reasonable excuse for missing the valuation disclosure submission date.

The tribunal's order was not an abuse of discretion. The original deadline for submitting valuation disclosures was pushed back on a stipulated motion due petitioner's counsel becoming ill, and the amount of additional time provided to petitioner was five months. Petitioner failed to inform the tribunal that it would miss the deadline date before submitting its valuation disclosure late and missed the deadline by over 50 days. Ultimately, it was not an abuse of discretion for the tribunal to determine that good cause was lacking for petitioner's late filing because of the large amount of time petitioner was given to submit its valuation disclosure and petitioner's unexplained failure to inform the tribunal it was going to miss the new deadline.

Petitioner contends that it submitted its valuation disclosure as quickly as possible once it received the appraisal from Rende, which showed good faith on petitioner's part, but this argument is relatively immaterial. Although it took only four days for petitioner to file its valuation after receiving the appraisal from Rende, the fact still remains that petitioner had already missed the deadline set by the tribunal and was in clear violation of the tribunal's order. This gave the tribunal discretion to sanction petitioner, no matter how quickly petitioner submitted its valuation after the deadline.[3] Also, petitioner's haste after receiving the appraisal could be attributed to the fact that the prehearing conference, which served as the close of discovery, was scheduled only 11 days after Rende sent his appraisal, meaning petitioner may have just been trying to submit its valuation disclosure before discovery closed.[4] Therefore, petitioner's quick submission of its valuation disclosure after receiving the appraisal cannot be treated as dispositive of any kind of intent on petitioner's part.

The evidence also does not indicate that petitioner was ignorant as to what was expected from the parties regarding the January 18, 2019 deadline. Gordon returned to work in September 2018, which would seem to be plenty of time to complete the necessary work for the January 18, 2019 deadline, and Gordon even signed the prehearing statement that was filed with the tribunal on January 17, 2019. Additionally, Etzel's email to Beckerleg informed him that petitioner was not going to make the January 18, 2019 deadline and suggested that the parties "stipulate to adjourning the valuation disclosure/appraisal exchange for a *couple of weeks* so our appraisers can review the information and use it in their respective reports should they decide." It is odd that petitioner would recommend that the deadline date be moved back "a couple of weeks" and

[3] Mich Admin Code, R 792.10237 states, "[a] party's valuation disclosure in a property tax contested case shall be filed with the tribunal and exchanged with the opposing party as provided by the tribunal." Additionally, "[f]ailure of a party to properly . . . comply with an order of the tribunal is cause for dismissal of the contested case or the conducting of a default hearing for respondent." Mich Admin Code, R 792.10231.

[4] "Discovery shall not be conducted after completion of the prehearing conference, unless otherwise provided by the tribunal." Mich Admin Code, R 792.10247(10).

proceed to submit the valuation disclosure over seven weeks later. While this could be attributed to Rende's illness, petitioner could have been more diligent in trying to get Rende's appraisal as quickly as possible. Still, it is clear that petitioner knew that its deadline was January 18, 2019, so it cannot claim it was unaware of the tribunal's expectations at that time.

Additionally, petitioner's overall lack of awareness and urgency around obtaining Rende's appraisal, along with its failure to inform the tribunal it was going to miss the deadline, does not bolster its good cause argument. There is no explanation of why petitioner did not inform the tribunal that its valuation disclosure was going to be late or why petitioner did not inquire when Rende's appraisal was going to be completed. Rende inspected the subject property on January 15, 2019, which should have served as a red flag to petitioner that it was going to struggle to meet the January 18, 2019 deadline. Petitioner could have been more diligent in its communications with Rende after he inspected the property, so petitioner could receive updates as to when Rende thought the appraisal might be complete. Petitioner also could have provided proactive communication with the tribunal instead of deciding to provide essentially no reasoning for its delay until it filed the valuation disclosure on March 11, 2019. The tribunal had full discretion to determine whether petitioner had good cause for its late filing, and it was reasonable that the tribunal did not find good cause for petitioner's late filing on the basis of petitioner's reactive actions paired with its lack of proactive communication with the tribunal.

Petitioner argues that respondent's assertion that petitioner waited to file its valuation disclosure after the *Plum Hollow* decision is not an acceptable or accurate reason for the tribunal to not find good cause for petitioner's late filing. Although understandably frustrated for being accused of such an act, petitioner, as the defaulting party, bears the burden of demonstrating good cause. Additionally, a failure to find good cause does not require the tribunal to find "bad cause" or dishonest motives. Ultimately, it fell on petitioner to convince the tribunal that illnesses of Gordon and Rende were a valid and reasonable excuse for the late filing of the valuation disclosure, and the tribunal was not persuaded by this argument.

Although ulterior motives or malintent are not necessary for the tribunal to find good cause was lacking, the timing of the *Plum Hollow* decision, Etzel and Rende's involvement in that case, and the timing of petitioner's valuation disclosure being submitted can reasonably be interpreted as circumstantial evidence that petitioner decided to submit its valuation disclosure after *Plum Hollow* was decided to be in accordance with the decision. Rende inspected the subject property on January 15, 2019, and *Plum Hollow* was decided on February 8, 2019. *Plum Hollow* was also a case about the valuation of a golf course, and Etzel had served as Plum Hollow's legal counsel while Rende was Plum Hollow's appraiser. Also, the tribunal found that petitioner's valuation disclosure had apparently been modified to adhere to the *Plum Hollow* decision. If petitioner would have been more proactive in its communication with the tribunal and brought up Rende's illness before its motion for reconsideration, the tribunal may have been persuaded that the delayed filing was indeed because of Gordon's and Rende's illnesses. However, the tribunal ultimately determined that "the valuation disclosure delay was not related to the medical conditions of Petitioner's attorney or its valuation expert," meaning the tribunal did not agree that the reasoning provided by petitioner established good cause.

On the basis of the timeline of events and overall understanding of the situation by the tribunal, paired with petitioner's failure to diligently submit its valuation disclosure on time, the tribunal's determination that petitioner had not established good cause for filing its valuation disclosure over 50 days past the submission deadline was within the range of reasonable and principled outcomes.

C. PREJUDICE

Petitioner argues that respondent was not prejudiced by the late valuation disclosure submitted by petitioner. We agree.

The prejudicial effect from an opposing party's late submission of evidence to the tribunal must be substantial or material for a party to have truly suffered prejudice. See *Stevens v Bangor Twp*, 150 Mich App 756, 759-762; 389 NW2d 176 (1986). In *Kern v Pontiac Twp*, 93 Mich App 612, 622-624; 287 NW2d 603 (1979), the respondent was allowed to introduce a valuation for the first time at the hearing for the case. Although improperly admitted, this Court found that the petitioner had not suffered prejudice, even though petitioner was "surprised" by the evidence, because the expert for the respondent who prepared the document "explained how he arrived at his assessment for the property" and the "petitioner was able to engage in vigorous cross-examination" of the expert at the hearing. *Id.*

In *Dean v Tucker*, 182 Mich App 27, 29; 451 NW2d 571 (1990), a pretrial conference was held on July 17, 1987, and an order was given that all discovery be complete and witness lists be submitted by August 6, 1987. The plaintiff's witness lists were filed on August 27, and the plaintiff moved for more time to file her lists because the plaintiff's counsel had mistakenly marked the deadline date as August 28. *Id.* This Court concluded that the defendant was not prejudiced by this delay in filing because the witness list was submitted "approximately eighty days before trial" and the defendant was "aware of the existence of all of the witnesses prior to the pretrial conference." *Id.* at 34-35. Additionally, the defendant's "vague generalizations about their entitlement to rely on the terms of the pretrial conference order and the conclusory statement about their ability to timely prepare and present their defense" were found unconvincing. *Id.*

In *Community Assoc v Meridian Charter Twp*, 110 Mich App 807, 811; 314 NW2d 490 (1981), the deadline to submit prehearing appraisals was May 24, 1978. The respondent submitted its appraisal by the deadline, but the petitioner did not submit its appraisal until March 26, 1979, which was still five months prior to the formal hearing. *Id.* Then at the hearing, the respondent submitted a new appraisal, which was "substantially different" from its original appraisal. *Id.* at 811-812. This Court concluded that neither party was prejudiced by these actions. *Id.* at 812-813. The respondent was not prejudiced because the "[p]etitioner submitted its written appraisal five months prior to the hearing which gave respondent[] ample time to review the appraisal," and the petitioner was not prejudiced by the appraisal introduced at the hearing because "[the tribunal] rejected [the true cash value] figures as too high and used a more moderate figure[,] which was closer to respondent's first appraisal." *Id.*

Here, respondent argued it was prejudiced by petitioner's late filing of the valuation disclosure, which was submitted seven days prior to the prehearing conference, because petitioner had 52 more days than respondent to prepare its valuation disclosure and could incorporate new

rulings from the tribunal in its assessment that respondent could not. The formal hearing was scheduled for May 21, 2019, ten weeks after petitioner's valuation disclosure was filed. In *Kern*, the petitioner's valuation was admitted the day of the hearing, and this Court said that did not prejudice the respondent because it could cross-examine the appraiser. *Kern*, 93 Mich App at 622-624. Here, respondent was not subject to default, so it could have cross-examined Rende as much as it desired at the hearing had petitioner's valuation disclosure been accepted by the tribunal, and respondent could not argue it was "surprised" by the evidence. Similar to the 80-day period the defendant had to review the late-filed witness list in *Dean*, respondent had over 70 days from the date petitioner's valuation was submitted to the date of the hearing to review and analyze the document, which would provide respondent plenty of time to incorporate any arguments or holdings from new rulings from the tribunal.

Additionally, the tribunal's independent duty to find the most accurate valuation for the subject property helps remove any real prejudice from the late-filed disclosure, as "[t]he Tax Tribunal has a duty to make its own, independent determination of true cash value." *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). In *Community Assoc*, this Court determined that prejudice from the late-filed valuation by the respondent was nonexistent because the tribunal found that the valuation was inaccurate and did not utilize its figures. *Community Assoc*, 110 Mich App at 812-813. In this case, the tribunal's duty still exists. It did not have to accept petitioner's valuation, as the tribunal was required to ensure petitioner's calculations and underlying data were scrutinized for accuracy. It also would have reviewed respondent's valuation in the same manner. Because of the statutory duties imposed on the tribunal and how it handles each petition, the late filing was not going to be able to sneak anything past the tribunal or respondent, making the prejudice suffered by respondent minimal, if not nonexistent.

On the basis of the amount of time respondent would have had to review the valuation paired with the tribunal and respondent's ability to dissect petitioner's valuation at the future hearing, respondent did not suffer any real prejudice from the late filing.

D. LACK OF TRANSCRIPT

Petitioner argues that the lack of a transcript or audio recording from the prehearing conference is an error requiring reversal. We disagree.

When analyzing statutes and rules, this Court must determine and adhere to the intent of the legislature. *Kelly Servs, Inc v Treasury Dep't*, 296 Mich App 306, 311; 818 NW2d 482 (2012). Statutory interpretation begins with reviewing the text of the statute, and, if the language of the statute provides a clear and plain meaning without ambiguity, this Court must cease its analysis and adhere to the plain meaning of the text. *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 632; 806 NW2d 342 (2011). Every word of the statute's text should have distinctive meaning, and any interpretation of the text should avoid redundancy or surplusage. *Inter Coop Council v Tax Tribunal Dep't of Treasury*, 257 Mich App 219, 225-226; 668 NW2d 181 (2003). Additionally, terms should be read in light of the entire statutory scheme to ensure they are given consistent meaning. *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 528; 817 NW2d 548 (2012).

Looking at the applicable administrative codes for this case, Mich Admin Code, R 792.10103(b) defines an "administrative law judge" as a "person assigned by the hearing system to preside over and hear a contested case or . . . [a] tribunal member." Mich Admin Code, R 792.10114(3) states that "*at the discretion of the administrative law judge*, all or part of a prehearing conference *may* be recorded."[5] (Emphasis added.) Additionally, Mich Admin Code, R 792.10120(h) states that the record for each case or proceeding shall contain "[t]ranscripts, *if ordered* by the administrative law judge or submitted by a party prior to issue of a final decision." (Emphasis added.) Here, no transcript was ordered by the administrative law judge or either party, and Rule 792.10114 gives the administrative law judge complete discretion as to whether the prehearing conference is recorded or not, so the lack of an audio recording or formal transcription of the prehearing conference does not violate the tribunal's rules.

Petitioner argues that its assertion is supported by Mich Admin Code, R 792.10255(1), which states that "[a]ll *hearings* before the entire tribunal shall be *recorded either electronically or stenographically*, or both, in the discretion of the tribunal." (Emphasis added.) This section of the Code provides additional support that the tribunal does *not* need to provide an audio recording or transcription of a prehearing conference. The additional, detailed instructions around how the recording should be formatted, "electronically or stenographically," are unique to this section of the Code. These details are laid out explicitly in this section, which is titled "Conduct of Hearings," because hearings are considered the formal trial where final decisions are made by the tribunal.[6] Although petitioner argues that a prehearing conference should be considered a "hearing," Mich Admin Code, R 792.10247(1) does not reflect this stance, stating that "a prehearing conference shall be held in all contested cases before the entire tribunal for *scheduling a hearing* in the contested case." (Emphasis added.) This language shows that a prehearing conference and a hearing are viewed as two separate events and do not fall under the same umbrella categorization of "hearing." Therefore, the explicit recording language of Rule 792.10255(1) does not apply to prehearing conferences.

Petitioner also argues that MCL 24.286(2) mandates a recording of the prehearing conference, as the statute states that "[o]ral proceedings at which *evidence is presented* shall be

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[5] Expanding on this discretion, Mich Admin Code, R 792.10120(3) states that "[t]he administrative law judge may authorize the use of tape recorders, cell phones, and other mechanical, electronic, or video recording devices."

[6] Looking at multiple decisions by this Court, the phrase "the hearing" is used when referring to the final, trial-like proceeding that the tribunal oversees to come to its final opinion and judgment over the case, furthering the idea that Rule 792.10255 is only referring to these types of hearings. See, e.g., *Forest Hills Coop v Ann Arbor*, 305 Mich App 572, 603-604; 854 NW2d 172 (2014) (analyzing findings from "the hearing," which had detailed quotes from the hearing that appear to come from a transcription of the proceeding); *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 431-432; 830 NW2d 785 (2013) (analyzing detailed testimony from "the hearing" where the tribunal ultimately decided a property's tax value); *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 632-633; 806 NW2d 342 (2011) (analyzing quotes from a detailed transcription from "the hearing").

recorded, but need not be transcribed unless requested by a party." (Emphasis added.) Rule 792.10114 states that "[a] prehearing conference may be convened to address matters including, but not limited to, any of the following . . . Identification and exchange of documentary evidence . . . Admission of evidence." MCL 24.286(1) states that "[a]n agency shall prepare an official record of a hearing which shall include . . . evidence presented." Noting that a prehearing conference should not be categorized as a hearing, a prehearing conference is not actually a proceeding where evidence is "presented." Although evidence is discussed for identification, exchange, and admission purposes at the prehearing conference, it is not formally presented for the tribunal to make its ultimate decision on the case, like it would be at a hearing.

Additionally, MCL 24.286 is titled "Official record of hearing; contents and requirements." This statement being under the section focused on creating official records of hearings indicates that "oral proceedings" should be limited to hearings themselves, not to prehearing conferences or other types of meetings.[7] Ultimately, the language of the Michigan Administrative Code does not require the tribunal to produce an audio recording or detailed transcription of a prehearing conference, so no error was committed by the tribunal on this matter.

E. FUNCTIONAL EQUIVALENT OF A DISMISSAL

Petitioner argues that the tribunal's order preventing petitioner's valuation disclosure and witness testimony from being presented at the hearing is the functional equivalent of a dismissal, meaning the tribunal would have to weigh the *Grimm* factors before entering its order. We disagree.

When analyzing lower court sanctions, "trial courts possess the inherent authority to sanction litigants and their counsel, including the power to dismiss an action." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "The trial court has a gate-keeping obligation, when such misconduct occurs, to impose sanctions that will not only deter the misconduct but also serve as a deterrent to other litigants." *Id.* at 392. Mich Admin Code, R 792.10231(1) states, "[i]f a party has failed to plead, appear, or otherwise proceed as provided by these rules or the tribunal, the tribunal may, upon motion or its own initiative, hold that party in default," and Rule 792.10231(4) emphasizes that the "[f]ailure of a party to properly . . . comply with an order of the tribunal is cause for dismissal of the contested case or the conducting of a default hearing." Rule 792.10231(2) explains that a default hearing is "a hearing at which the defaulted party is precluded from presenting any testimony, submitting any evidence, and examining the other party's witnesses."

The sequence in which the information was presented in the tribunal's summary of prehearing conference order shows that the tribunal was preparing for a default hearing, which would not allow petitioner to introduce its valuation disclosure and witness testimony because of the tribunal's rules. The top of the first page stated that "Petitioner failed to show good cause as

[7] "No law shall embrace more than one object, which shall be expressed in its title." Const 1963, art 4 § 1; See, e.g., *Gillette Commercial Operations North America & Subsidiaries v Dep't of Treasury*, 312 Mich App 394; 878 NW2d 891 (2015).

to why the Valuation Disclosure was filed 53 days late. As a result, Petitioner is subject to default." After stating that good cause had not been established by petitioner, the order reprinted the language from the original order that set the file and exchange date for valuation disclosures: "If a valuation disclosure is required, file and exchange [] valuation disclosures by January 18, 2019. **Valuation disclosures will not be admitted into evidence unless disclosed and furnished in accordance with this Order (even though admissible) except upon a finding of good cause by the Tribunal**." Further on, the order stated, "**Petitioner is not permitted to offer its valuation disclosure for admission or witnesses to testify**." The order also stated that "[f]ailure to comply with this Order may result in the dismissal of the case, as provided by TTR 231(1)." This statement had a footnote that cited Rule 792.10231 and *Grimm.*

These statements show that the tribunal was not coming up with a new sanction or effectively dismissing petitioner's case; it was merely emphasizing the rules for a default hearing. The tribunal's order showed that the tribunal did not view petitioner's default as the same sanction as a dismissal because the order warned petitioner that failure to comply with the order could result in a dismissal, a more severe penalty. Therefore, a default hearing is a different type of sanction than a dismissal.

Moreover, a default hearing cannot be considered the functional equivalent of a dismissal because the tribunal's duty to exercise its expertise to find the correct value of the subject property ensures that the nondefaulting party does not get to set the value on the basis of its calculations alone. The tribunal's independent duty is not removed or lessened depending on the parties' actions or valuations:

> The Tax Tribunal has a duty to make its own, independent determination of true cash value. The Tax Tribunal is not bound to accept the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value. *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389-390; 576 NW2d 667 (1998) (citations omitted).

Because of the tribunal's independent duty, a default hearing still gives petitioner a chance for its case to be reviewed and analyzed by the tribunal. Conversely, a dismissal totally removes the tribunal's ability to review the case and ensures respondent's valuation of the subject property is deemed controlling. Thus, the tribunal's action of holding petitioner in default cannot be considered the functional equivalent of a dismissal.

Additionally, the tribunal has the authority to determine when a dismissal or a lesser sanction should be applied. Rule 792.10231(4) gives the tribunal the power to sanction a party when the party does not comply with an order, including subjecting the party to default, and Rule 792.10231(2) explains that a default hearing is "a hearing at which the defaulted party is precluded from presenting any testimony, submitting any evidence, and examining the other party's witnesses." Although the tribunal decided not to utilize a lesser sanction than a default hearing in this case, it is clear that excluding evidence, a default hearing, and a dismissal are ultimately three different types of sanctions or actions the tribunal can take when a party fails to comply with its

orders. The tribunal has the discretion to decide which one is most appropriate on a case-by-case basis.

Because petitioner failed to comply with the tribunal's order and the tribunal had the authority to determine which sanction to utilize, it did not plainly err by subjecting petitioner to default. Moreover, a party being subject to default is not the functional equivalent of a dismissal, especially because of the tribunal's independent duty to determine the true cash value of the subject property.

III. CONCLUSION

The tribunal did not err by entering an order that prevented petitioner from submitting its valuation disclosure or presenting witnesses at the upcoming hearing. Although respondent was not prejudiced by petitioner's late filing, the tribunal reasonably determined that good cause was not established for petitioner's late filing of its valuation disclosure, and the tribunal was acting within its statutory authority when it did not create a detailed transcription or audio recording of the prehearing conference. Also, the tribunal did not need to apply the *Grimm* factors because any sanction less than an outright dismissal cannot be considered a functional equivalent of a dismissal due to the tribunal's independent duty to find the subject property's true cash value regardless of what the parties present.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Riordan