STATE OF MICHIGAN

COURT OF APPEALS

ALLAN FALK,

Petitioner-Appellant,

v

TOWNSHIP OF MERIDIAN,

Respondent-Appellee.

UNPUBLISHED
March 18, 2021

No. 353741
Tax Tribunal
LC No. 19-000505-TT

Before: BORRELLO, P.J., and BECKERING and SWARTZLE, JJ.

PER CURIAM.

In this property tax dispute, petitioner appeals as of right a judgment of the Michigan Tax Tribunal (MTT) involving the 2019 taxable value of petitioner's residential property. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Petitioner received notice that the assessed value of his principal residence for 2019 was $161,100, which was an increase of $1,100 from the 2018 assessed value of $160,000. This notice also indicated that the taxable value (TV) for 2019 was $138,544, which represented an increase of $7,836 from the 2018 TV of $130,708. The 2019 and 2018 state equalized values (SEV) were $161,100 and $160,000 respectively. There was not a transfer of ownership in 2018. The property was 100% exempt as petitioner's principal residence.

Petitioner protested the 2019 valuation with the Meridian Township Board of Review in March 2019. The Board of Review denied petitioner's protest and determined that no reduction would be made.

Petitioner appealed this decision to the MTT Small Claims Division. In his petition, petitioner argued that the increase in the TV for 2019 exceeded the amount allowed by law because it was greater than the rate of inflation, there had not been a change in ownership, and there had not been any new construction or improvements to the property. In its answer to the petition, the township argued that the "Assessment does not exceed 50% of true cash value" and that the 2019 taxable value "was correctly determined using the mandated inflation rate multiplier of 1.024 and

additions for omitted property of $4,700." The township submitted a bulletin from the Department of Treasury State Tax Commission indicating that the inflation rate multiplier for use in the 2019 capped value formula had been determined to be 1.024 (representing a 2.4% inflation rate) and that the township was required to apply this inflation rate multiplier in the 2019 capped value formula.

The township's evidence also included a letter explaining the township assessing department's "Re-inspection Program," which "includes a site visit by Township personnel to photograph and measure all buildings, inspect property improvements, and conduct a brief interior walk-through, noting current conditions and amenities and asking a few questions of the property owner to update and verify assessing records." The township's evidence further included documents showing the additions and removals that were made with respect to petitioner's property after a 2018 reinspection of the property. The additions included a concrete patio, brick walk, a three-fixture bathroom, an extra sink, two separate showers, three vent fans, a jacuzzi tub, security system, an automatic garage door, and an enclosed porch. With respect to removals from the assessment record, the square footage of the finished basement was reduced, and a range and hot tub were determined to no longer be present. The township further asserted that the TV for petitioner's property had increased as a result of "omitted property" discovered through the reinspection program.

Petitioner subsequently submitted a prehearing brief in which he argued, as relevant to the issues presented on appeal, that the increase in his property's taxable value assessment based on the addition of omitted property was contrary to statutory requirements because the township had not produced a property record card or other documentation showing that the omitted property was not previously included in the assessment and because the township had not sought prior approval of the State Tax Commission for adding the omitted property to the assessment. Petitioner further maintained that the "omitted property" documented by the township either did not actually constitute omitted property because it had already been included in the assessed value of the property or had been overstated by the township in terms of size or value.

Following a hearing, the administrative law judge (ALJ) issued a proposed opinion and judgment concluding that the property's true cash value (TCV) was $322,200, that its state equalized value (SEV) was $161,100, and that its taxable value (TV) was $133,844.

With respect to the TCV, the ALJ stated that the burden was on petitioner to establish the TCV, that the township had submitted evidence to support its TCV determination, and that petitioner had not submitted any evidence regarding the TCV. The ALJ determined that the township had submitted the best evidence of the property's TCV and that the TCV accordingly was $322,200. The SEV was 50% of the TCV.

With respect to the TV issue, the ALJ explained that MCL 211.27a set forth the TV calculation formula and that the township had the "burden of proof with respect to the addition of value related to omitted property." The ALJ found that there was no transfer of ownership in 2018 and reasoned that under MCL 211.27a(2), "the correct formula for calculating the taxable value is the prior year's taxable value, minus any losses, multiplied by the rate of inflation, and plus any additions." The ALJ concluded that the township had failed to establish that the additions on which it relied to increase the TV in 2019 had actually been omitted before 2019 because the

township did not produce the 2018 property record card for the subject property. Accordingly, the ALJ concluded that the TV assessed by the township was not supported by the evidence and that the TV should instead be $133,844. The ALJ reasoned:

> Respondent's evidence failed to include a copy of the 2018 property record card, sketch, and valuation report to help the Tribunal determine which features were and were not assessed in the prior tax year. Respondent's evidence does include a list of the additions and losses made in 2019 as a result of the 2018 re-inspection, and Respondent credibly testified to the contents of the list. Respondent determined the certain property to be added to the property record card as additions of omitted property: Petitioner rebuts these purported additions. By failing to include the 2018 property record card, the Tribunal finds that Respondent failed to meet his burden of proof to demonstrate that the subject property was truly omitted in the prior tax year. As a result, the inflation rate multiplier can only increase by the rate of inflation. As a result, the taxable value is equal to the prior year's taxable value multiplied by 1.024, deriving a value of $133,844.

The ALJ also rejected other arguments raised by petitioner.[1]

Petitioner filed exceptions to the proposed opinion and judgment. The MTT issued a final opinion and judgment rejecting petitioner's exceptions, adopting the proposed opinion and judgment as the tribunal's final decision, and thus concluding that the 2019 TV for petitioner's property was $133,834 rather than $138,544 as the township's board of review had determined. The MTT denied petitioner's subsequent motion for reconsideration. This appeal followed.

II. STANDARD OF REVIEW

> Absent fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle. The tribunal's factual findings are upheld unless they are not supported by competent, material, and substantial evidence. Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. Failure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal. [*Meijer, Inc v City of Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000) (citations omitted).]

Whether an issue is moot is a question of law that is reviewed de novo on appeal. *League of Women Voters of Mich v Secretary of State*, ___ Mich ___, ___; ___ NW2d ___ (2020) (Docket No. 160907); slip op at 5-6.

III. ANALYSIS

[1] Further discussion of these arguments and the ALJ's reasoning is not material to our resolution of the issues presented on appeal.

On appeal, petitioner first argues that although the MTT properly prohibited the township from increasing the 2019 TV based on the addition of the alleged omitted property in this case because the township failed to provide evidence that the alleged omitted property actually was not previously included in the assessment, the MTT nonetheless erroneously concluded that the township was not required to seek prior approval of the State Tax Commission (STC) pursuant to MCL 211.154 before attempting to add omitted property for purposes of increasing the TV as it did in this case. This argument was a subject of petitioner's exceptions to the ALJ's proposed opinion and judgment, as well as petitioner's motion for reconsideration. The MTT rejected petitioner's arguments in both its final opinion and judgment and its order denying petitioner's motion for reconsideration.

This particular argument by petitioner is moot.

An issue is moot if "an event occurs that renders it impossible for a reviewing court to grant relief" or if "it presents only abstract questions of law that do not rest upon existing facts or rights." *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). "As a general rule, an appellate court will not decide moot issues." *Id*. Furthermore, as our Supreme Court has recently explained:

> It is universally understood by the bench and bar . . . that a moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy. The only way a disputed right can ever be made the subject of judicial investigation is, first, to exercise it, and then, having acted, to present a justiciable controversy in such shape that the disputed right can be passed upon in a judicial tribunal, which can pronounce the right and has the power to enforce it. [*League of Women Voters*, ___ Mich at ___; slip op at 11-12 (quotation marks and citation omitted; ellipsis in original).]

In this case, petitioner argued before the MTT that the township's addition of alleged omitted property to increase the 2019 TV of petitioner's property was improper on multiple grounds. The MTT ruled that the township could not rely on the alleged omitted property to increase the 2019 TV of petitioner's property. The MTT based its decision on the township's failure to provide the necessary documentation to establish that the alleged omitted property actually was not included in a previous assessment as required by MCL 211.34d(1)(b)(*i*).[2]

[2] MCL 211.34d(1)(b)(*i*) provides in relevant part as follows:

> (1) As used in this section or section 27a . . .
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> * * *

On appeal, petitioner essentially asks this Court to decide whether the township, if it had actually produced the 2018 property tax card or other sufficient documentation, would have had to seek approval from the STC before using the omitted property as a basis for increasing the TV of petitioner's property. However, these are not the facts of this case and petitioner merely "seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy." *League of Women Voters*, ___ Mich at ___; slip op at 11 (quotation marks and citation omitted). His appellate argument is premised on a hypothetical scenario not actually before this Court and "presents only abstract questions of law that do not rest upon existing facts or rights." *B P 7*, 231 Mich App at 359. Petitioner does not explain how this Court could grant him any further relief with respect to the alleged omitted property that the township attempted to add in this case because the township has already been prohibited from adding this property to support an increase in the 2019 TV of petitioner's property. For all these reasons, this issue is moot. *League of Women Voters*, ___ Mich at ___; slip op at 11-12; *B P 7*, 231 Mich App at 359.

"Though a court is not precluded from reaching issues before actual injuries or losses have occurred, there still must be a present legal controversy, not one that is merely hypothetical or anticipated in the future." *League of Women Voters*, ___ Mich at ___; slip op at 17 (quotation marks and citation omitted). With respect to petitioner's STC-approval issue in this case, petitioner has merely raised a hypothetical or anticipated future controversy, and we decline to address it at this juncture. *Id.*

To the extent petitioner argues that this issue is not moot because it is "one of public significance that is likely to recur, yet evade judicial review," see *League of Women Voters*, ___ Mich at ___ n 26; slip op at 14 n 26, petitioner is incorrect because he has not shown that the hypothetical scenario of which he complains is likely to recur and avoid judicial review where it has not even been shown to have occurred *yet* and is a purely speculative anticipation of potential future harm as explained above. Moreover, should this hypothetical scenario ever occur in the

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> (b) For taxes levied after 1994, "additions" means . . .
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> (*i*) Omitted real property. As used in this subparagraph, "omitted real property" means previously existing tangible real property not included in the assessment. *Omitted real property shall not increase taxable value as an addition unless the assessing jurisdiction has a property record card or other documentation showing that the omitted real property was not previously included in the assessment*. The assessing jurisdiction has the burden of proof in establishing whether the omitted real property is included in the assessment. Omitted real property for the current and the 2 immediately preceding years, discovered after the assessment roll has been completed, shall be added to the tax roll pursuant to the procedures established in section 154. For purposes of determining the taxable value of real property under section 27a, the value of omitted real property is based on the value and the ratio of taxable value to true cash value the omitted real property would have had if the property had not been omitted. [Emphasis added.]

future, petitioner could obtain judicial review just as he has in the present case.[3] Petitioner essentially wants a ruling now preventing the need to litigate a speculative anticipated future injury, which is a prime example of a moot issue that we will not address. *League of Women Voters*, ___ Mich at ___; slip op at 11-12.

Next, petitioner argues that the 2019 TV for his property should be decreased to account for the property that the assessor determined was no longer present on petitioner's property, i.e., the extra square footage in the finished basement, the range, and the hot tub. This argument was also a subject of petitioner's exceptions to the ALJ's proposed opinion and judgment, as well as petitioner's motion for reconsideration. The MTT denied petitioner this requested relief.

MCL 211.27a(2) provides as follows:

> (2) Except as otherwise provided in subsection (3) [involving a transfer of ownership of the property], for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
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> (a) *The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions*. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
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> (b) The property's current state equalized valuation. [Emphasis added.]

During the reinspection, the township also categorized certain property as property that should be removed from the assessment, i.e., excess square footage in the finished basement, a range, and a hot tub. Petitioner essentially seeks to have these "losses" deducted from his 2019 TV pursuant to the formula outlined in MCL 211.27a(2)(a). Under MCL 211.27a(2)(a), the TV

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[3] Furthermore, to the extent the issue could arise for other property owners, they would also be able to obtain judicial review as petitioner has in this case. See *In re Smith*, ___ Mich App ___, ___ & n 1; ___ NW2d ___ (2021) (Docket No. 353861); slip op at 3 & n 1 (addressing the exception to the mootness doctrine for issues of public significance that are likely to recur and evade judicial review and recognizing that the issue could arise in future cases with different parties). This Court's quotation of *League of Women Voters* in *In re Smith* seems especially pertinent to the issue presented by petitioner in the present case:

> "We agree that, when it is appropriate, this Court has an obligation to say what the law is. But we cannot let this desire for stability overcome the limits of our role. The judiciary cannot simply scan the horizon for important legal issues to opine on—we address such issues only as they arise in the genuine controversies between adverse parties that come before us. Because such a case is not before us, we are constrained from reaching the underlying merits." [*In re Smith*, ___ Mich App at ___; slip op at 4, quoting *League of Women Voters*, ___ Mich at ___; slip op at 29 n 60.]

of the property is "the property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions."

MCL 211.34d(1)(h)(*i*) provides in relevant part as follows:

> (1) As used in this section or section 27a . . .
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> * * *
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> (h) For taxes levied after 1994, "losses" means . . .
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> (*i*) Property that has been destroyed or removed. For purposes of determining the taxable value of property under section 27a, the value of property destroyed or removed is the product of the true cash value of that property multiplied by a fraction, the numerator of which is the taxable value of that property in the immediately preceding year and the denominator of which is the true cash value of that property in the immediately preceding year.

In this case, although petitioner acknowledges these statutory formulas, petitioner nonetheless presents an appellate argument that is completely untethered to MCL 211.27a(2)(a) and MCL 211.34d(1)(h)(*i*) to advance his claim that the MTT "erred in refusing to subtract $5,000 from the 2018 TV of $130,708 before applying the 2.4% inflation factor for a 2019 TV of $128,725." Petitioner does not clearly explain how he arrived at a value of $5,000 for the losses, but appears to contend that this Court should rely on the price per square foot value used by the assessor, as well as the assessor's valuation of the missing appliances. Although it is unclear from the township's evidence of the reinspection of petitioner's property that petitioner is correct that the value of these losses is $5,000, petitioner nevertheless appears to assert that the reinspection report conclusively demonstrates that his 2019 TV should be $128,725. However, petitioner has not cited any legal authority to support his asserted method of factoring in the alleged losses to calculate the TV. Moreover, MCL 211.34d(1)(h)(*i*) explains how to calculate the value of "losses" for purposes of accounting for losses in the context of the formula for calculating TV that is contained in MCL 211.27a(2)(a). Petitioner's method is contrary to MCL 211.34d(1)(h)(*i*).[4]

Hence, petitioner has failed to demonstrate any basis on which this Court could grant him relief. By failing to present this Court with a coherent argument and failing to cite relevant legal authority supporting the fundamental premises of his apparent arguments, petitioner has

[4] In his reply brief, petitioner attempts for the first time to show his mathematical calculations for the alleged "losses" and purports to apply the formula contained in MCL 211.34d(1)(h)(*i*). However, instead of using the previous year's taxable value and true cash value of the *destroyed or removed* property to calculate the value of the losses as required by the statutory language, petitioner uses the previous year's taxable value and true cash value for the subject property *as a whole*. Thus, petitioner's attempt to provide a mathematical calculation in accordance with the statute, which notably yielded an even lower 2019 TV than he had claimed in his original appellate brief, does not support his appellate argument or have any effect on our analysis of this appellate issue.

abandoned this argument on appeal. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) ("It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.") (quotation marks and citation omitted).

Affirmed.

/s/ Stephen L. Borrello
/s/ Jane M. Beckering
/s/ Brock A. Swartzle