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STATE OF MICHIGAN

COURT OF APPEALS

SONJA M. REITAN,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED
July 22, 2021

No. 354425
Tax Tribunal
LC No. 19-003968-TT

Before: FORT HOOD, P.J., and MARKEY and GLEICHER, JJ.

PER CURIAM.

Sonja Reitman claimed a principal residence exemption (PRE) for a house in Frankfort. The Michigan Tax Tribunal (MTT) denied the PRE for tax years 2016 through 2019 because Reitman neither owned nor occupied the residence during those years. We affirm.

I. BACKGROUND

The property at issue in this case is located on Herron Road in Frankfort's Evergreen Shore Subdivision. All parcels in the neighborhood are owned by The Evergreen Shore and are leased to individuals. The subject parcel has been leased by members of Reitman's family since 1932. Reitman took over the lease in 2015.

Reitman claimed that she moved into the house in 2012, but nevertheless listed her address on her driver's license, voter registration, and vehicle registration on Gorivan Road, her father's residence. Reitman also had her mail delivered to her father's address. Beginning in November 2018, Reitman admitted that she began spending extensive time at her father's house to care for him. However, Reitman asserted that she spent a couple of hours each day at the Herron Road property, to shower and unwind. Reitman further claimed that she continued to keep clothes and personal property at the Herron Road property.

In 2019, the Department of Treasury notified Reitman that it was denying her PRE for tax years 2016 through 2019 because it determined that she neither owned nor occupied the property. Reitman appealed first to the department and then to the MTT, both of which upheld the decision. Reitman now appeals to this Court.

II. ANALYSIS

"Absent fraud, our review of MTT decisions is limited to determining whether the MTT erred in applying the law or adopted a wrong legal principle." *Vanderwerp v Plainfield Charter Twp*, 278 Mich App 624, 627; 752 NW2d 479 (2008). We review de novo the MTT's interpretation and application of statutory provisions. *Id*. Tax exemptions are "narrowly construed in favor of the taxing authority." *Estate of Schubert v Dep't of Treasury*, 322 Mich App 439, 448; 912 NW2d 569 (2017) (quotation marks and citation omitted). The taxpayer bears the burden of proving his or her entitlement to an exemption by a preponderance of the evidence. *Gardner v Dep't of Treasury*, 306 Mich App 546, 558-559; 858 NW2d 76 (2014), rev'd on other grounds by 498 Mich 1 (2015).

When the MTT's factual findings "are supported by competent, material, and substantial evidence on the whole record," we have no ground to grant relief. *Estate of Schubert*, 322 Mich App at 447. "Substantial evidence is that which a reasonable mind would accept as adequate to support a decision, being more than a mere scintilla, but less than a preponderance of the evidence. Evidence is competent, material, and substantial if a reasoning mind would accept it as sufficient to support a conclusion." *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 431; 906 NW2d 482 (2017) (quotation marks and citations omitted).

MCL 211.7cc(1) has provided at all relevant times that "[a] principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under . . . MCL 380.1211, if an owner of that principal residence claims an exemption as provided in this section." A principal residence is defined by MCL 211.7dd(c) as "the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established." To claim the PRE, the taxpayer must file an affidavit that states "that the property is owned and occupied as a principal residence by that owner of the property on the date that the affidavit is signed and shall state that the owner has not claimed a substantially similar exemption, deduction, or credit on property in another state." MCL 711.7cc(2). Accordingly, the taxpayer must both own and occupy a dwelling to claim a PRE. *Estate of Schubert*, 322 Mich App at 451.

A. OWNERSHIP

Relevant to this case, an "owner" is defined as "[a] person who owns or is purchasing a dwelling on leased land." MCL 211.7dd(a)(*iv*). The Evergreen Shore leased the Herron property to Reitman's ancestors beginning on August 20, 1932, for a 99-year period "renewable forever thereafter." Reitman took over the lease with The Evergreen Shore's permission on July 27, 2015. The Evergreen Shore "covenant[ed] and agree[d] that it is the lawful owner of said leased premises with the right to lease the same," and "that it will warrant and defend its title therein if necessary against the lawful claims of all persons whomsoever." But as long as a lessee paid rent and fulfilled the other conditions of the lease, The Evergreen Shore promised that the lessee could remain in residence indefinitely, and could even provide for disposition of the lease in her will.

Historically, lessees in the subdivision have built homes on their leased parcels under the following contractual language:

> Lessee also agrees at all times to keep the premises in good condition and repair; and he shall the right and privilege of making such improvements and repairs on said premises and such changes and alterations therein as he may deem necessary from time to time.

The lease contract provides for Reitman to make annual rental payments of $75 to The Evergreen Shore. Reitman is also required "to pay all taxes, street and other assessments, water, rents and all charges whatsoever that may be levied or assessed against said premises." In the event a lessee fails to pay the required rent or taxes or otherwise violates the terms of the lease, The Evergreen Shore may "declare a forfeiture of said lease and into said premises to re-enter and the same to have again with all permanent improvements thereon in addition to all moneys paid hereunder, to repossess and enjoy as in Lessor's first and former estate."

Nothing in the language of this deed suggests that Reitman owns the home sitting on her leased parcel. The lease permitted Reitman to build and improve a residence on the property. However, if Reitman failed to pay her rent or taxes, The Evergreen Shore could take possession of the land and the house without compensating her. Reitman leased the land and the house that her family built. In this regard, The Evergreen Shore lease is similar to a commercial lease. Business lessees often lease land and build a storefront, or build out an existing space, without being granted an ownership interest in the structure they paid for.

Reitman contends that she owned the dwelling on the leased land because the lease did not discuss structures on the property and her parents built the residence on the property. However, *Power v Dep't of Treasury*, 301 Mich App 226; 835 NW2d 622 (2013), is directly on point and dictates the opposite conclusion. Like in this case, the land in *Power* was owned by a corporation—the Chicago Summer Resort Company. A resident in the community had to become a "shareholder" to acquire the right to occupy a site. The petitioner signed "a 'lot lease' for the real property identified as 'building lot 2' at the cost of $175 a year." There was a house on that "building lot." *Id*. at 228. The petitioner claimed a PRE for the property, arguing that he leased the land but owned the dwelling. *Id*. at 228-229. Like in this case, the lease in *Power* did not purport to convey the "land to [the] petitioner or any building to [the] petitioner; in fact, it requires the leaseholder to seek corporation approval to make any changes to the premises and restricts [the] petitioner from conveying the property or assigning his leasehold interest." *Id*. at 231-232. *Power* instructs that the language of the lease did not give Reitman an ownership interest in the home. Indeed, The Evergreen Shore retained the right to seize not only the land, but any home built on the land in the event Reitman forfeited her interest by failing to pay her taxes or rent.

Reitman also argues that she should be deemed an owner because she was obligated to pay property tax to the local government. However, the property tax record does not establish ownership of a parcel. Reitman's property tax record includes a disclaimer that the "[i]nformation herein deemed reliable but not guaranteed." Further, Reitman was required to pay the property taxes as a condition of the lease.

Reitman contends that she owned the residence because lessees in The Evergreen Shore are required to construct, maintain, and insure residences on their leased parcels, implying that they own the homes. However, the lease contracts do not provide an ownership interest in any permanent residence constructed, maintained or insured on the property. And insuring a residence

does not establish ownership under MCL 211.7dd(a) because "[s]uch policies may provide coverage based on a possessory interest as well as an ownership interest." *Power*, 301 Mich App at 233.

Reitman cites MCL 211.27a(6)(g) which "defines a transfer of ownership as 'a conveyance by lease if the total duration of the lease, including the initial term and all options for renewal, is more than 35 years . . . .' " As her lease had a 99-year term, Reitman contends that she took an ownership interest in the home. However, when a statute "defines a word or phrase, that definition is controlling." *Estate of Schubert*, 322 Mich App at 448. MCL 211.7dd provides the definition of "owner" for PRE purposes. The definition of "transfer of ownership" in the completely unrelated MCL 211.27a(6)(g) is inapplicable. Accordingly, the MTT committed no error in determining that Reitman did not own the Herron Road home.

B. OCCUPANCY

Reitman also challenges the MTT's determination that she did not occupy the Herron Road dwelling during the years in question. She cites a lack of evidence that she "abandon[ed]" her home to take up residence with her father.

The term "occupy" is not defined by MCL 211.7cc or MCL 211.7dd, and this Court has used *Merriam-Webster's Collegiate Dictionary* (11th ed), to define the term "in relevant part, as 'to reside in as an owner or tenant.' In turn, 'reside' is defined as 'to dwell permanently or continuously: occupy a place as one's legal domicile.' " *Estate of Schubert*, 322 Mich App at 449-450 (citations omitted). "[A] person must dwell either permanently or continuously at a property to 'occupy' the property." *Id*. An owner may present evidence of occupancy as a principal residence through documentary evidence or testimony. *Id*. at 454. The documentary evidence could include "utility bills, driver's licenses, tax documents, other documents showing the petitioner's address, and voter registration cards." *Id*. at 454-455. No single document is conclusive. *Id*. at 455.

Contrary to Reitman's insistence, she did not use the Gorivan Road property only as her mailing address. In *Estate of Schubert*, 322 Mich App at 444-445, the taxpayer did not use the PRE address on her driver's license, Michigan income tax returns, vehicle registration, and voter registration. Similarly, Reitman used the Gorivan Road property for her driver's license, voter registration in 2016 and 2017, and vehicle registration in 2014, 2017, and 2018, in addition to having her mail sent to the Gorivan address. This evidence sufficed to support the MTT's finding that Reitman did not occupy the Herron Road property.

Reitman presented affidavits from neighbors in the Evergreen Shore Subdivision attesting to her presence at the property. These affidavits were not conclusive. One neighbor claimed to see Reitman daily, but also stated that Reitman spent significant time at her father's house due to his illness. Another indicated that Reitman told her "that she tries to get back to the residence as often as she can to rest and recuperate while caring for her father." A third stated, "It appears to me that [Reitman] has tried to stay at her house as much as possible while caring for her father. I see her there at least a couple times per week." None of the affiants described that Reitman spent a majority of her time at the Herron Road property or explained why Reitman would list her official

address elsewhere. And the MTT has discretion to assess the weight of the evidence, an assessment we "may not second-guess." *Id*. at 456.

Again, we have no ground to interfere with the MTT's conclusion that Reitman did not occupy the subject property during the years in question and could not claim a PRE.

We affirm.

/s/ Karen M. Fort Hood
/s/ Jane E. Markey
/s/ Elizabeth L. Gleicher