

STATE OF MICHIGAN
COURT OF APPEALS

TELLURIDE ASSOCIATION INC,
Petitioner-Appellant,

UNPUBLISHED
July 16, 2013

v

CITY OF ANN ARBOR,

Respondent-Appellee.

No. 304735
Tax Tribunal
LC No. 00-306817

TELLURIDE ASSOCIATION INC,
Petitioner-Appellee,

v

CITY OF ANN ARBOR,

Respondent-Appellant.

No. 305239
Tax Tribunal
LC No. 00-306817

Before: Beckering, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

In Docket No. 304735, petitioner Telluride Association, Inc., appeals an order denying its petition for a charitable-institution and educational-institution exemption under MCL 211.7o and MCL 211.7n, respectively. In Docket No. 305239, the City of Ann Arbor appeals an order imposing sanctions under MCR 2.114(D)(2) and MCR 2.114(E). For the reasons set forth below, we affirm.

I. FACTS AND PROCEEDINGS

Telluride is a nonprofit corporation organized under the law of New York, with its principal place of business located in New York. Telluride's Restated Certificate of Incorporation states as follows:

The Corporation is organized exclusively for one or more of the following purposes: charitable, scientific, literacy, or educational purposes, as specified in Section 501(c)(3) of the Internal Revenue Code (as not in effect or may

hereinafter be amended) (the “Code”). More specifically, the Corporation is organized to promote the highest well being by broadening the field of knowledge and increasing the adoption as the rule of conduct of those truths from which flows individual freedom as the result of self-government in harmony with the Creator.

To support its stated purpose, Telluride’s constitution authorizes it to “make alliances and establish Branches with universities and other educational institutions.”

Telluride currently operates two branches, one at Cornell University, and the other at the University of Michigan. The Michigan Branch of Telluride (MBTA) is located at 1735 Washtenaw Avenue in Ann Arbor, near the University of Michigan campus, in a building known as the “Telluride House,” the subject of this appeal. The Telluride House is described as a “self-governing scholarship house,” which houses between 20 and 30 students enrolled at the University of Michigan each year. Telluride provides each student with free room and board during the academic year. The scholarships are renewable for up to five years, provided the students meet certain minimum requirements.

MBTA is a project-driven organization and places a special emphasis on public service. Each year, student residents are expected to design and implement a community service project aimed at improving public life in the Ann Arbor area. During the years at issue, the various projects included programs focused on literacy, as well programs designed to fight hunger, homelessness, and poverty.

Telluride also hosts two summer educational programs for high school juniors and sophomores—respectively, the Telluride Association Summer Programs (TASP) and the Telluride Association Sophomore Seminars (TASS). Telluride uses the Telluride House for its TASP and TASS programs. TASS “promote[s] intellectual rigor, interest in African American studies and the studies of other minority cultures, group living, and community service.” The program is co-sponsored and co-funded by Telluride and the University of Michigan. Approximately 36 students participate in the program, attending college level seminars at the University of Michigan. TASS is free to the students, and the students reside at the Telluride House throughout the duration of the program. TASP is a similar program offered to high school juniors.

On May 24, 2011, the tribunal entered an opinion and judgment affirming the Ann Arbor’s denial of Telluride’s exemption for the 2004, 2005, and 2006 tax years. The tribunal determined that Telluride was not a “charitable institution” under MCL 211.7o(1). The tribunal concluded that because Telluride’s overall purpose was assisting its members in “developing his or her potential for leadership and public service,” Telluride was not organized chiefly for charity. The tribunal further concluded that Telluride offered its room and board scholarships on a discriminatory basis. The tribunal also denied Telluride’s claim for exemption as an educational organization under MCL 211.7n.

II. CHARITABLE INSTITUTION EXEMPTION

Telluride argues that the tribunal erred by concluding that it is not organized chiefly for charity and offers its charity on a discriminatory basis. We review this issue to determine whether the tribunal misapplied the law or adopted a wrong legal principle. *Liberty Hill Housing Corp v Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008). The tribunal’s factual findings are deemed conclusive provided they are supported by competent, material, and substantial evidence on the whole record. *Id.* This Court reviews matters of statutory interpretation de novo. *Id.*

MCL 211.7o(1) states that “[r]eal or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.” The Legislature has not defined “charitable institution” as it is used in MCL 211.7o.

In *Wexford Med Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), our Supreme Court set forth what a claimant must show to receive a tax exemption as a charitable institution. The Court quoted favorably the definition of “charity” set forth in *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc, v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982):

“[Charity] * * * [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.” [*Wexford*, 474 Mich at 214 (internal quotation marks and citations omitted; emphasis deleted by *Wexford*; alterations in original).]

Pursuant to this definition, the Supreme Court in *Wexford* set forth six factors to determine whether an organization 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. [*Id.* at 215.]

Here, the tribunal determined that Telluride failed the second and third factors of the *Wexford* test. We agree with Telluride that the tribunal erred to the extent it concluded that Telluride is not organized chiefly, if not solely, for charity. Nonetheless, we affirm because we hold that Telluride offers its charity on a discriminatory basis.

In *Wexford*, 474 Mich at 213, our Supreme Court explained that

In a general sense, there can be no restrictions on those who are afforded the benefit of the institution’s charitable deeds. This does not mean, however, that a charity has to serve every single person regardless of the type of charity offered or the type of charity sought. *Rather, a charitable institution can exist to serve a particular group or type of person, but the charitable institution cannot discriminate within that group.* [Emphasis added.]

The groups that Telluride is purporting to serve are high school sophomores and juniors, students enrolled at the University of Michigan, and members of the Ann Arbor community. Telluride does not discriminate on the basis of any protected class; however, Telluride does discriminate by choosing who, among these groups, will receive its charity. Telluride selects scholarship recipients through a highly subjective application process. Candidates submit essays that are read by Telluride House members. “Each candidate receives an overall ranking based on the strength of the essays, awards, references, and community service, among other factors.” Telluride House members then conduct interviews and choose to whom it will offer scholarships. Telluride selects its TASP and TASS participants on the basis of a similar application process. Further, Telluride members choose which community service projects in which it will engage.¹

Telluride acknowledges that it selects its members using a highly individualized application process. Telluride argues, however, that its application process is not discriminatory. In support of its argument, Telluride cites *Grutter v Bollinger*, 539 US 306, 343; 123 S Ct 2325; 156 L Ed 2d 304 (2003), in which the United States Supreme Court held that the University of Michigan Law School’s race-conscious admission program did not violate the Equal Protection Clause.² *Grutter* is inapplicable to the facts of this case. This case does not involve an equal protection challenge, but a tax exemption. And the *Grutter* Court did not hold that the policy at issue was non-discriminatory. Rather, it stated that the policy passed strict scrutiny and did not

¹ Telluride is not required to serve all members of the Ann Arbor community and could, for example, create a literacy program open to all high school students in the area. But this is not what Telluride does. Rather, Telluride generally partners with other non-profits in the area. Thus, it selects which groups within the Ann Arbor area deserve its services.

² US Const, Am XIV.

violate the Equal Protection Clause. Telluride does not discriminate against a protected class, and its policies would likely survive an equal protection challenge. But that does not make the policies any less discriminatory.³ Therefore, we hold that the tribunal correctly denied Telluride’s claim for a charitable-institution exemption.

III. EDUCATIONAL INSTITUTION EXEMPTION

Telluride argues that the tribunal erred when it concluded that Telluride is not tax-exempt as an “educational institution” pursuant to MCL 211.7n, which provides in relevant part as follows:

Real estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act.

In *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944), our Supreme Court interpreted MCL 211.7n and set forth four elements that must be satisfied to qualify for tax-exempt status:

- (1) The real estate must be owned and occupied by the exemption claimant;
- (2) The exemption claimant must be a library, benevolent, charitable, educational or scientific institution;
- (3) The claimant must have been incorporated under the laws of this State;
- (4) The exemption exists only when the building and other property thereon are occupied by the claimant solely for the purpose for which it was incorporated.

In *Chauncey & Marion Deering McCormick Foundation v Wawatam Twp*, 186 Mich App 511, 514-515;465 NW2d 14 (1990), the Supreme Court held that the third requirement is unconstitutional. Therefore, a claimant must establish only the other three requirements.

Here, the dispute centers on whether Telluride is an educational institution. In *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 755; 298 NW2d 422 (1980) our Supreme Court

³ We also reject Telluride’s argument that this conclusion would effectively eliminate charities for musical, disabled, athletic, or underperforming students. *Wexford*, 474 Mich at 213, clearly holds that charities can exist to serve a particular group or type of person. However, within these groups, charities cannot discriminate by “choosing who, among the group it purports to serve, deserves the services.” *Id.* at 215.

explained that “[s]omething more than serving the public interest is required to bring one claiming an exemption as an educational institution within the goals and policies affording a tax exemption.” To qualify for the exemption as an educational institution, the claimant must (1) “fit into the general scheme of education provided by the state and supported by public taxation” and (2) make “a substantial contribution to the relief of the burden of government.” *Id.* at 755-756.

Telluride’s programs may bestow a benefit, but it cannot be said that such programs “sufficiently relieve the government’s educational burden to warrant the claimed educational-institution exemption.” *Circle Pines Center v Orangeville Twp*, 103 Mich App 593, 598; 302 NW2d 917 (1981) (citation omitted). There is no evidence that, if not for Telluride, the burden on the state would be proportionately increased. *Ladies Literary Club*, 409 Mich at 755-756. The state and the University of Michigan have no obligation to house students, and the university does not require its students to live on campus. Further, the university’s housing system is designed to be self-sustaining and is expected to generate all of its own revenue. It receives no general fund or State of Michigan allocations. Further Telluride’s educational programs are not the type of programs traditionally offered by or through the state. Therefore, we hold that the tribunal correctly denied Telluride’s claim for an educational institution exemption.

IV. SANCTIONS

On July 6, 2011, the tribunal imposed sanctions against Ann Arbor under MCR 2.114(D)(2) and MCR 2.114(E), for assertions made in a supplemental brief filed by Ann Arbor on January 23, 2007. In its statement of facts, Ann Arbor set forth a description of Telluride House, identifying “a dining room, kitchen, living room, study, mailroom, a bathroom, a bike room, and an office.” Relying on *Liberty Hill Housing Corp v City of Livonia*, unpublished opinion per curiam of the Court of Appeals, issued May 16, 2006 (Docket No. 258752),⁴ Ann Arbor later argued that Telluride was “a mere landlord” for students, that Telluride is incorporated in New York, and that the layout of the Telluride House confirms that there were no corporate offices in the structure. Ann Arbor stated: “As detailed above, the top two floors of Telluride House consist solely of faculty suites and rooms for student[s] The main floor and cellar provides for the rest of needs of a student tenant: dining room, kitchen, living room, bathrooms, laundry room, and game rooms.” The tribunal concluded that Ann Arbor violated MCR 2.114(D)(2) and that sanctions were appropriate under MCR 2.114(E) because Ann Arbor omitted the word “office” when it described Telluride House in its argument.

Ann Arbor claims that the tribunal erred when it imposed sanctions. We disagree. MCR 2.114(D)(2) provides that the signature of a party or attorney on a document filed with the court certifies that “the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.” MCR 2.114(E) states that “[i]f a document is signed in violation of this rule, the court . . . shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an

⁴ This Court affirmed the Tax Tribunal’s denial of a charitable organization exemption on the basis that the petitioner did not occupy the subject property.

order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document.”

Ann Arbor’s omission was critical in the context of its argument. Further, Ann Arbor’s use of the introductory phrase “as detailed above” indicates that Ann Arbor was referencing the description of the property contained in its statement of facts, which included the office. Ann Arbor, however, omitted that information in its argument. The tribunal thus concluded that Ann Arbor’s assertions “as to the existence of an office at the subject property contradict[ed] previous statements and exhibits and [were] clearly incorrect.” The tribunal’s finding is supported by competent, material, and substantial evidence. Therefore, we affirm the imposition of sanctions under MCR 2.114(D)(2) and MCR 2.114(E).

Affirmed.

/s/ Jane M. Beckering
/s/ Henry William Saad
/s/ Peter D. O’Connell