

STATE OF MICHIGAN
COURT OF APPEALS

JAMES D. AZZAR,

Petitioner-Appellant,

v

CITY OF MACKINAC ISLAND,

Respondent-Appellee.

UNPUBLISHED
February 19, 2013

No. 308743
Tax Tribunal
LC No. 00-411094

Before: K. F. KELLY, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

Petitioner appeals by right the final opinion and judgment of the Michigan Tax Tribunal (MTT) denying his request to reduce his assessment for residential property located in respondent city. We affirm.

Petitioner challenged respondent's determination of true cash value¹ (TCV) and taxable value² (TV) for his residential property located at 6597 Main, Mackinac Island. Respondent prepared a detailed evaluation utilizing the cost-less depreciation approach. Petitioner asserted that the valuations were incorrect because petitioner's home was not site-built, but was a modular home. Additionally, although petitioner had fought to obtain riparian rights to the waterfront, his legal challenges were unsuccessful. Accordingly, petitioner asserted that it was improper to characterize the residence as waterfront property. Respondent's board of review rejected his challenges and made no change to his assessment.

Petitioner appealed to the small claims division. After respondent filed its answer to the petition, petitioner sought to transfer the matter from the small claims division to the entire tribunal, citing respondent's answer wherein it noted that waterfront property was in dispute. Petitioner asserted that transfer was necessary because legal briefs and testimony would be required to address the issue of riparian rights. Because petitioner was aware that waterfront property was at issue at the time of his filing in the small claims division, the motion to transfer

¹ See MCL 211.27(1).

² See MCL 211.27a(1), (2).

was denied. Next, petitioner filed a motion to adjourn the scheduled hearing date, citing the need to file legal briefs and testimony as well as a scheduling conflict. This motion was also denied.

Ultimately, petitioner never submitted legal briefs and testimony to the MTT. Rather, petitioner claimed that his valuations were appropriate, but never even submitted a formal appraisal. Additionally, petitioner submitted three homes that were deemed to be “comparable” to his property, but the individual who prepared the “comparables” did not testify before the MTT. Respondent disputed that the properties presented by petitioner could be deemed to be comparable and continued to adhere to its evaluation utilizing the cost-less depreciation approach. The referee concluded that petitioner failed to meet his burden of proof and held that respondent’s cost-less depreciation approach was the appropriate method of valuation for this property. Despite petitioner’s objections, the MTT adopted the referee’s factual findings and conclusions of law. Petitioner now appeals that decision.

Appellate review of the MTT decision is limited. *City of Mount Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007); *Jones & Laughlin Steel Co v City of Warren*, 193 Mich App 348, 352; 483 NW2d 416 (1992). In the absence of fraud, we review the MTT decision to determine whether it erred in applying the law or adopted a wrong legal principle. *Michigan’s Adventure, Inc v Dalton Twp*, 290 Mich App 328, 334; 802 NW2d 353 (2010). Factual findings rendered by the tribunal are final if supported by competent, material, and substantial evidence. *Id.* at 334-335. “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Jones*, 193 Mich App at 352-353.

The petitioner bears the burden of proof regarding the true cash value before the MTT. MCL 205.737(3); *Oldenburg v Dryden Twp*, 198 Mich App 696, 698-699; 499 NW2d 416 (1993). “The appellant bears the burden of proof in an appeal from an assessment, decision, or order of the Tax Tribunal.” *ANR Pipeline Co v Dep’t of Treasury*, 266 Mich App 190, 198; 699 NW2d 707 (2005). The burden of proof includes the burden of persuasion, which does not shift during the hearing, and the burden of going forward with the evidence, which may shift to the opposing party. *President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011). In Michigan, courts have recognized three valuation approaches: the capitalization of income approach, the sales-comparison approach, and the cost-less depreciation approach. *Id.* at 639. When the tribunal’s valuation was within the range of the valuations presented in evidence, it was supported by competent and material evidence, and the appellate court must affirm. *Id.* at 642. The MTT may make determinations regarding the credibility of witnesses and the weight to be assigned to the evidence in the record. *Id.* at 636.

In the present case, petitioner contends that the MTT erroneously affirmed the assessed values without making an independent finding, the MTT decision was not supported by competent, material, and substantial evidence on the whole record, and the MTT applied incorrect legal principles or committed errors of law. We disagree. A review of the referee’s proposed judgment and the MTT’s final opinion and judgment reveals that the reviewing entities were well aware of the burden of proof and appropriate standards, including the discretion to make an independent finding regardless of the valuation submissions by the parties. Rather, the MTT expressly held that petitioner failed to meet his burden of proof because he did not present a formal appraisal or an expert to justify the purported comparables. Moreover, petitioner failed

to present expert testimony to distinguish between property valuations for site-built and modular homes as well as lakefront ownership and lakefront access or view. The record indicates that the MTT exercised its independent judgment. *Jones*, 193 Mich App at 354. The burden of going forward never shifted to respondent where petitioner failed to present more than blanket assertions regarding valuations and comparables. *Id.* at 355. The MTT decision was within the range of the valuations presented, and accordingly, there was no error in the adoption of respondent's cost-less depreciation approach. *President Inn Props, LLC*, 291 Mich App at 642. The MTT decision was supported by competent, material, and substantial evidence. Further, the MTT did not apply incorrect legal principles or commit an error of law.

Affirmed. Respondent, the prevailing party, may tax costs. MCR 7.219.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Karen M. Fort Hood