

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL COMPSON, PAMELA COMPSON,
and CATHARINE COMPSON,

UNPUBLISHED
February 21, 2013

Petitioners-Appellants,

v

No. 310011
Tax Tribunal
LC No. 00-412949

COUNTY OF MECOSTA,

Respondent-Appellee.

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

PER CURIAM.

Petitioners appeal by right the final opinion and judgment of the Michigan Tax Tribunal (MTT) denying their request for a principal residence exemption. We reverse and remand to the MTT for the purpose of granting petitioners' request for a principal residence exemption on their parcel for the tax years at issue.

Petitioners received the principal residence exemption for the property at issue for tax years 2006-2009. However, following an audit, petitioners were denied the exemption. Consequently, petitioners appealed the decision. The dispute with regard to the exemption arose because of a small rustic cabin located on petitioners' hunting property. The cabin had no septic system, no running water, and no heating system, but it did have a wood stove. The cabin was not occupied as a residence, and its primary use was for storage of furniture and equipment. However, petitioners admitted that the cabin was used for shelter for two days during the opening days of hunting season. Petitioners asserted that any other use was sporadic and uncommon. Respondent claimed that the cabin had electricity, a wood stove, an outhouse, and temporary occupancy such that petitioners were not entitled to the exemption. The hearing referee ruled in favor of petitioners, concluding that the property was not occupied as a principal residence, was not suitable for use as a dwelling because it was crowded with furniture and equipment, and questioned whether a certificate of occupancy could be issued for the cabin. Following objections by respondent, the MTT concluded that temporary occupancy precluded the receipt of the exemption. The sole issue on appeal is whether the MTT erred in its construction of the term unoccupied for purposes of determining the principal residence exemption.

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 MTT may make determinations regarding the credibility of witnesses and the weight to be assigned to the evidence in the record. *President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 636; 806 NW2d 342 (2011).

"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). When the tribunal's decision involves an issue of statutory interpretation, we review the matter de novo. *Kinder Morgan Mich, LLC v City of Jackson*, 277 Mich App 159, 163; 744 NW2d 184 (2007). When construing a statute, the primary task is to discern the intent of the Legislature from the language of the statute. *Id.* "Terms used in a statute must be given their plain and ordinary meaning, and it is appropriate to consult a dictionary for definitions." *Id.* When the statutory language is unambiguous, judicial construction is neither permitted nor required. *Id.*

MCL 211.7cc(1) governs Michigan's principal residence exemption (PRE) or "homestead exemption" and provides that "[a] principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under . . . the revised school code . . . if an owner of that principal residence claims an exemption as provided in this section." MCL 211.7dd(c) defines "principal residence" 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." This statute continues by providing that "[p]rincipal residence also includes all of an owner's unoccupied property classified as residential that is adjoining or contiguous to the dwelling subject to ad valorem taxes and that is owned and occupied by the owner . . ." MCL 211.7dd(c). Consequently, to receive the PRE or homestead exemption for residential, unoccupied property adjoining or contiguous to the dwelling, the petitioner bears the burden of proving, by a preponderance of the evidence, that the parcel: "(1) was classified as residential, (2) was adjoining or contiguous to their dwelling, and (3) was 'unoccupied.'" *EldenBrady v City of Albion*, 294 Mich App 251, 257; 816 NW2d 449 (2011).

In *EldenBrady*, the petitioners sought a PRE for a 10-acre parcel that included an abandoned school building. The building was not currently in use, but the petitioners intended to convert the building into an art center in the future. The MTT hearing referee determined that the parcel qualified for the exemption because it was "unoccupied, zoned residential and contiguous to [the] petitioners' dwelling." *Id.* at 253. The MTT disagreed with the referee's recommendation, concluding that an adjacent parcel was only eligible for a PRE if the land was vacant or the structure was a storage facility, such as a garage, that served as an extension of the petitioners' home. *Id.* at 253-254.

On appeal, the *EldenBrady* Court reversed the MTT, holding that its interpretation of MCL 211.7dd(c) constituted an error of law. *Id.* at 256. Specifically, this Court held that the MTT failed to distinguish between the terms “unoccupied” and “vacant,”¹ and, in the context of MCL 211.7dd(c), the terms had separate and distinct meanings. *Id.* at 258.

“ [C]ourts have sometimes distinguished *vacant* from *unoccupied*, holding that *vacant* means completely empty while *unoccupied* means not routinely characterized by the presence of human beings.” Similarly, one dictionary “defines ‘unoccupied’ as ‘without occupants’ and ‘occupant’ as ‘a tenant of a house, estate, office, etc.; resident.’” Another dictionary observes that “‘*vacant* means without inanimate objects, while *unoccupied* means without human occupants.” When read in context, it is clear that the Legislature intended the term “unoccupied” in the third sentence of MCL 211.7dd(c) to mean “without human occupants” rather than “completely empty,” “without inanimate objects,” or “having no contents; empty; void.” Indeed, if the word “unoccupied” in MCL 211.7dd(c) were to be interpreted as meaning “vacant” (and by extension “completely empty,” “without inanimate objects,” or “having no contents; empty; void”), then any property with a garage or shed would be ineligible for the principal residence exemption under the third sentence of MCL 211.7dd(c). Even the MTT implicitly admits that this cannot be what the Legislature intended.

In sum, the third sentence of MCL 211.7dd(c) does not require that contiguous property be *vacant* or completely devoid of any inanimate objects, contents, or structures to qualify for the principal residence exemption. Instead, the statutory language merely requires that the contiguous property be *unoccupied*, i.e., without human occupants. As explained earlier, an occupant is a tenant or a resident. [*EldenBrady*, 294 Mich App at 258-259 (citations and footnoted omitted; emphasis in original).]

Consequently, the *EldenBrady* Court held that the petitioners’ 10-acre parcel and the abandoned school building were not used as a residence or dwelling because they did not have tenants or residents. *Id.* at 259. This Court determined that the petitioners’ parcel was zoned as residential, was adjoining or contiguous to the petitioners’ dwelling, and was “unoccupied” within the meaning of MCL 211.7dd(c). Therefore, petitioners were entitled to the principal residence exemption on the property. *Id.*

In the present case, the parties do not dispute that the parcel is zoned residential and adjoins or is contiguous to petitioners’ dwelling. Rather, the only dispute is whether the property with the wood cabin is “unoccupied.” The hearing referee concluded that the property was not occupied, rendering the following relevant facts and conclusions of law:

¹ The term “vacant” does not appear in the text of MCL 211.7dd(c). However, “vacant” was the standard applied by the MTT. *EldenBrady*, 294 Mich App at 253-254.

The State Tax Commission takes the position that a parcel that is contiguous to a person's occupied principal residence (dwelling) qualifies for the PRE if it is unoccupied, and that a parcel is not "unoccupied" if it has a habitable dwelling on it. The term habitable is not defined in the PRE statute. As described by Petitioners, it is unlikely that the cabin could qualify for an occupancy permit under building codes. It does not have running water, indoor plumbing, or a heating source (other than a wood stove). The cabin is not occupied by anyone as a principal residence and is not suitable for use as a dwelling. Although the record card lists the property as having 480 square feet of living area (including second floor space) Petitioners state that it is a 16' x 22 (352 square foot) shed that is used mostly for storage. A photograph of the cabin shows that it has a very rustic interior with visible joists in the ceiling and is crowded with furniture and equipment.

The referee ruled that the property was not occupied within the meaning of MCR 211.7dd(c), and the property was entitled to a PRE for tax years 2007-2010. After reviewing the *EldenBrady* decision, the MTT did not alter the referee's factual findings. Rather, the MTT merely concluded that the property was occupied because "any occupancy, whether it be temporary or more permanent in nature, is sufficient to negate the occupancy requirement[.]"

We conclude that the MTT's determination constitutes an error of law. A review of the *EldenBrady* decision reveals that property, to be unoccupied, must be without human occupants, and an occupant is a tenant or a resident. *EldenBrady*, 294 Mich App at 258-259. Here, it was undisputed that the cabin at issue was not in a condition to house a tenant or a resident. Rather, it was cluttered with furniture and equipment and contained no running water or heating system. Its only use was to provide shelter for a two-day period during hunting season. Contrary to the holding by the MTT, the plain language of the statute contains no temporal requirement that would convert a property's classification from unoccupied to occupied. *Kinder Morgan*, 277 Mich App at 163. Rather, the *EldenBrady* Court held that the key determination is whether the property is occupied by a tenant or a resident. Here, the wood cabin did not have a tenant or a resident, was used for storage, and was not prepared or configured to house a tenant or a resident. Accordingly, the MTT erred in its denial of the principal residence exemption for the tax years at issue.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. Petitioners, the prevailing parties, may tax costs, MCR 7.219.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Karen M. Fort Hood