

STATE OF MICHIGAN
IN THE SUPREME COURT

LIBERTY HILL HOUSING CORPORATION,

Petitioner/Appellant,

Supreme Court No. 131531

v

Court of Appeals No. 258752

CITY OF LIVONIA,

MTT Docket No. 298536

Respondent/Appellee.

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131531
NOTICE OF SUPPLEMENTAL AUTHORITY FOR LIBERTY HILL HOUSING
CORPORATION'S LEAVE TO APPEAL

FILED

OCT 20 2006

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

On October 17, 2006, the Michigan Court of Appeals released for publication *Pheasant Ring v Waterford Township*, ___ Mich App___; ___NW2d ___ Docket No 262757 (copy attached at Tab A). In this case, Pheasant Ring sought exemption under MCL 211.7o for certain property it used for charitable purposes in Waterford Township. The Township specifically asserted that Pheasant Ring did not “occupy” the property because it did not maintain its offices on the property and rented the property to tenants. In dismissing the Township’s argument, the Court of Appeals stated:

This interpretation of the requirements for tax exemption is too narrow and restrictive. There is no dispute that Pheasant Ring owns the subject property. Although Pheasant Ring does not use the property for its own offices, the property is occupied by tenants of Pheasant Ring in furtherance of its charitable purpose. This Court, in determining whether a charitable organization “occupied” a subject property, for the purposes of qualification for a tax exemption, has determined that ‘[t]he proper test is whether the entire property was used in a manner consistent with the purposes of the owning institution.’ *Holland Home v Grand Rapids*, 219 Mich App 384, 398; 557 NW2d 118 (1996). Based on this criterion, Pheasant Ring “occupied” the subject residence.

Slip Opinion at 4. Like Pheasant Ring, Liberty Hill uses the property for which it seeks exemption under MCL 211.7o by renting the property to tenants in furtherance of its charitable purpose. Liberty Hill was found by the lower court to be using the home solely for the charitable purposes for which it was incorporated. The unpublished decision in Liberty Hill below directly conflicts with Court of Appeals published decision in *Pheasant Ring* and, thus, leave to appeal should be granted or the decision below should be summarily reversed.

Respectfully Submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

Dated: October 18, 2006

By:


June Summers Haas (P59009)

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A

STATE OF MICHIGAN
COURT OF APPEALS

PHEASANT RING, a/k/a. HOMES FOR
AUTISM,

Petitioner-Appellee,

v

WATERFORD TOWNSHIP,

Respondent-Appellant.

FOR PUBLICATION
October 17, 2006
9:05 a.m.

No. 262757
Michigan Tax Tribunal
LC No. 00-300885

Before: Fitzgerald, P.J., and Markey and Talbot, JJ.

TALBOT, J.

Respondent, Waterford Township (the Township), appeals as of right an opinion and judgment in favor of petitioner, Pheasant Ring, also known as Homes for Autism (Pheasant Ring), in this property tax dispute. We affirm.

This action arises from the petition filed by Pheasant Ring seeking to appeal ad valorem property tax assessments, for tax years 2003 and 2004, levied by the Township. Pheasant Ring contested the Township's denial of an exemption, pursuant to MCL 211.7o, for the residential property identified as parcel number 13-08-226-025, located in the Township. The Township argues that the Michigan Tax Tribunal's (the MTT's) opinion and judgment, including its holding that Pheasant Ring is exempt from property taxation, was not based on competent, material and substantial evidence on the record, and that the MTT improperly applied the relevant legal standards and principles. We disagree.

"This Court's authority to review a decision of the Tax Tribunal is very limited. In the absence of an allegation of fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle." *Twentieth Century Fox Home Entertainment, Inc v Dep't of Treasury*, 270 Mich App 539, 541; 716 NW2d 598 (2006) (citation omitted). "The tribunal's factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record." *Id.* (citation omitted). "Substantial evidence must be more than a scintilla, although it may be substantially less than a preponderance . . ." *Leahy v Orion Twp*, 269 Mich App 527, 529-530; 711 NW2d 438 (2006) (internal block quote and citation omitted).

Statutory interpretation presents a question of law that is reviewed de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). But "this

Court will generally defer to the Tax Tribunal's interpretation of a statute that it is charged with administering and enforcing." *Twentieth Century Fox Home Entertainment, Inc, supra*, p 541 (internal quotation marks, brackets and citation omitted).

"MCL 211.7o creates the ad valorem property tax exemption for charitable institutions." *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 199; 713 NW2d 734 (2006). It provides, in pertinent part: "Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act." MCL 211.7o(1). To qualify for an exemption from ad valorem property taxation, a claimant must satisfy three elements:

- (1) The real estate must be owned and occupied by the exemption claimant;
- (2) The exemption claimant must be a nonprofit charitable institution; and
- (3) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated. [*Wexford Medical Group, supra*, p 203.]

Although there is no dispute that Pheasant Ring owns the subject property, the Township contests both Pheasant Ring's status as a charitable institution and contends that Pheasant Ring's lease of the property precludes it from meeting the requirement of having "occupied" the property for purposes of obtaining the exemption.

The meaning of "charitable institution" is not legislatively defined in MCL 211.7o(1), but has been developed through case law. The Michigan Supreme Court has ruled that the proper test for determining whether a charitable institution exemption applies can be found in the definition of charity adopted 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):

[C]harity . . . [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. [*Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 671; 378 NW2d 737 (1985).]

Accordingly, specific factors have been identified as determining whether an institution is a "charitable institution" under MCL 211.7o, including:

- (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. [*Wexford Medical Group, supra*, p 215.]

Evaluating Pheasant Ring, in accordance with the above factors, demonstrates that it is a charitable institution. Pheasant Ring’s Articles of Incorporation denote that its is organized as a nonprofit “to carry on exclusively educational and other charitable activities . . . including, but not limited to establishing and supporting a transitional community for persons with autism which provides an environment, preferably in a rural setting, in which such persons will be able to fulfill their individual potential with respect to socialization, education, recreation and vocation and, within that setting, to provide each such person with quality care at the level of his or her individual needs on a consistent basis.” The Township has failed to produce any evidence that Pheasant Ring has failed to actively pursue its stated mission or has any other reason or basis for its existence. In addition, although the Township asserts that Pheasant Ring only offers services to select individuals within its target population, it fails to substantiate this claim. The record is devoid of any evidence to suggest that Pheasant Ring offers its services “on a discriminatory basis.” With regard to factor (4), *supra*, the stated purpose of Pheasant Ring’s facility is to assist individuals with autism “to establish themselves for life.” In addition, the services provided by Pheasant Ring serve to “lessen the burdens of government” by assisting the State in addressing the needs of this specific population of disabled individuals.

The primary dispute centers on the Township’s assertion that Pheasant Ring does not qualify as a “charitable institution” based on its acceptance of rents from residents at the Waterford home. The acceptance of rental payments or imposition of fees by Pheasant Ring does not preclude its status as a “charitable institution,” “as long as the charges are not more than what is needed for its successful maintenance.” *Wexford Medical Group, supra*, p 215. Further, to be deemed a “charitable institution,” Pheasant Ring “need not meet any monetary threshold of charity to merit the . . . exclusion.” *Id.* “[A] nonprofit corporation will not be disqualified for a charitable exemption because it charges those who can afford to pay for its services as long as the charges approximate the cost of the services.” *Retirement Homes, supra*, p 350 n 15. A review of Pheasant Ring’s financial statement verifies that revenues obtained from rent neither meet nor exceed expenses incurred in maintaining and running their homes.

The Township next contends that Pheasant Ring does not qualify as a “charitable institution” because it does not personally occupy the subject home but, instead, rents the property to its clientele. The MTT found that “the property is occupied by the Petitioner” The General Property Tax Act does not define “occupied.” MCL 211.1 *et seq.* In the absence of a statutory definition, this Court references dictionary definitions. *Willett v Waterford Twp*, 271 Mich App 38, 51; 718 NW2d 386 (2006). *Random House Webster’s College Dictionary* (1997) defines “occupy” to mean, “to have, hold, or take as a separate space; possess, reside in or on, or claim.” Similarly, *Black’s Law Dictionary* (8th ed) defines “occupancy” as “the act, state, or condition of holding, possessing, or residing in or on something; actual possession, residence or tenancy The period or term during which one owns, rents, or otherwise occupies property.”

The Township asserts that Pheasant Ring does not “occupy” the property because the location of its offices is not physically on the subject property and it rents the property to tenants. This interpretation of the requirements for tax exemption is too narrow and restrictive. There is no dispute that Pheasant Ring owns the subject property. Although Pheasant Ring does not use the property for its own offices, the property is occupied by tenants of Pheasant Ring in furtherance of its charitable purpose. This Court, in determining whether a charitable organization “occupied” a subject property, for purposes of qualification for a tax exemption, has determined that “[t]he proper test is whether the entire property was used in a manner consistent with the purposes of the owning institution.” *Holland Home v Grand Rapids*, 219 Mich App 384, 398; 557 NW2d 118 (1996). Based on this criterion, Pheasant Ring “occupied” the subject residence.

The township’s final argument is that the opinion and judgment fails to comply with MCL 205.751(1), because it does not (1) state under exactly which subsection Pheasant Ring is claiming an exemption, or (2) contain an adequate statement of facts. Specifically, MCL 205.751(1) requires:

A decision and opinion of the tribunal shall be made within a reasonable period, shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately and, upon order of the tribunal, shall be officially reported and published.

“The purpose of the Tax Tribunal’s opinion is to facilitate appellate review, but the Tax Tribunal Act and the APA only require a concise statement of facts and conclusions.” *Great Lakes Div of Nat’l Steel Corp v Ecorse*, 227 Mich App 379, 402; 576 NW2d 667 (1998).

Although the administrative law judge’s findings of fact and conclusions of law are not exceptionally detailed, they are sufficient to afford meaningful appellate review. The judge summarized the relative arguments and evidence presented by both parties and made preliminary findings of fact pertaining to the property. In addition, the administrative law judge provided conclusions of law, with supporting legal citations, in determining Pheasant Ring’s tax-exempt status. While our review would have been facilitated by the provision of a more detailed

opinion, it was sufficient for the administrative law judge to provide her findings of fact and conclusions of law in a concise manner, with supporting authority, and an explanation of her reasoning.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey