STATE OF MICHIGAN

COURT OF APPEALS

ANDRE RENIER,

Petitioner-Appellant,

v

ROME TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED
April 18, 2024

No. 365721
Tax Tribunal
LC No. 22-002722-TT

Before: GADOLA, C.J., and BORRELLO and PATEL, JJ.

PER CURIAM.

Petitioner appeals as of right the final judgment of the Michigan Tax Tribunal Small Claims Division (the MTT) determining the true cash value (TCV), state equalized value (SEV), and taxable value (TV) for petitioner's real property for the 2022 tax year. For the reasons set forth in this opinion, we vacate the MTT's opinion and judgment and we remand for further proceedings.

I. BACKGROUND

The appellate record in this property tax dispute is limited since we have not been provided with a transcript of the hearing that took place in the MTT. Our review is further hampered by the fact that respondent Rome Township has failed to file a brief in this matter, apparently deeming this matter of insufficient importance to warrant its participation.

Nonetheless, we are able to glean the following facts from the record before us. This matter involves a dispute over the township's assessment of the TV for the subject parcel of agricultural real property for the tax year 2022. Petitioner's connection to the subject property is unclear. Petitioner's name does not appear as the property owner on the petition to the Board of Review (BOR), which preceded petitioner's present filing in the MTT challenging the BOR's decision. Petitioner is also not listed as the property owner on the valuation reports for the subject property that the township submitted into evidence. Neither the petition to the BOR nor the valuation reports provide any indication of petitioner's alleged connection to, or interest in, the subject property.

Nevertheless, petitioner filed a petition in the MTT challenging the 2022 assessment. According to the MTT's written opinion in this matter, petitioner testified at the hearing that he purchased the subject property in 2015.[1] There appears to be no dispute that petitioner made repairs and additions to buildings on the subject property at some point. The township apparently contended at the hearing that it discovered new agricultural buildings, an equestrian arena, and additional asphalt on the subject property. It is unclear when these discoveries were made. Petitioner apparently claimed that repairs and improvements were completed in 2017. It seems that repairs were necessary as a result of storm damage and that petitioner also expanded and replaced certain outbuildings on the property. Petitioner argued that pursuant to MCL 211.34d, the calculation of the proper TV for tax year 2022 should begin with a consideration of his losses and additions in 2017 and that the properly calculated 2017 TV should then be carried forward as the basis for calculating the proper 2022 TV. Petitioner apparently contended that the township improperly treated the additions as if they had been made in 2021.

The MTT found that the subject property had "additions/losses for 2022" but that it was unable to ascertain from the record exactly when those additions were made, and when the losses occurred, between 2017 and 2022. Additionally, the MTT found that petitioner had failed to provide any evidence to distinguish his alleged repairs from additions to the property and that petitioner had admitted to making additions in the form of new outbuildings. The MTT concluded:

> Respondent's valuation evidence provided the most reliable and credible evidence for the subject's additions/losses for 2022. Respondent's 2016 and 2020 aerial photographs, 2020-2022 record card valuation reports, 2022 ECF sales study, 2022 land sales study, and sales comparison adjustment grid are persuasive and meaningful to this tax appeal matter. Therefore, Respondent's cumulative valuation evidence (with the calculation for the 2022 TV) is given weight and credibility in the 2022 assessment for the subject property.
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> As noted in the Findings of Fact, the subject property had additions/losses for 2022. On the other hand, the subject property did not sell in 2021. Likewise, there were no clerical errors or mutual mistakes of fact. Again, the subject's TV only changed as a result of new outbuildings to the subject property. Respondent has not committed an error in abiding by the legally mandated calculation for the subject's 2022 assessment for TCV, SEV/AV, and TV. In summary, Petitioner's testimonial evidence is not more persuasive than Respondent's testimonial and documentary evidence in this tax appeal matter.

Accordingly, the MTT ruled that the subject property's 2022 TV was properly determined to be $208,034. This appeal followed.

II. STANDARD OF REVIEW

[1] However, as we have already noted, a different person was listed as the owner of the subject property on written documents in the record. We express no opinion at this juncture on the resolution of this factual discrepancy.

This Court's review of the MTT's decision is limited. *Emagine Entertainment, Inc v Dep't of Treasury*, 334 Mich App 658, 662; 965 NW2d 720 (2020); *New Covert Generating Co, LLC v Twp of Covert*, 334 Mich App 24, 45; 964 NW2d 378 (2020). " 'In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.' " *New Covert*, 334 Mich App at 45, quoting Const, 1963, art 6, § 28. "The MTT's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record, but when the facts are not disputed and fraud is not alleged, our review is limited to whether the MTT made an error of law or adopted a wrong principle." *Emagine Entertainment*, 334 Mich App at 662. "An agency commits an error of law or adopts wrong principles when the agency's findings are not supported by competent, material, and substantial evidence on the whole record." *New Covert*, 334 Mich App at 71. The substantial evidence test, although it does not allow for de novo review, nonetheless requires a "thorough" review that considers the entire record and not just the evidence supporting the Tribunal's decision. *Id.*

> This Court has characterized the substantial-evidence test as requiring evidence that a reasoning mind would accept as sufficient to support a conclusion. Evidence that a reasoning mind would accept as sufficient is more than a scintilla but less than a preponderance. Further, it is not this Court's place to resolve conflicts in the evidence or pass on the credibility of witnesses—that is, if there is adequate evidence to support the agency's decision, then this Court cannot substitute its judgment for the agency's judgment. [*Id.* at 72 (quotation marks and citations omitted).]

This Court's review is de novo with respect to the interpretation and application of statutes. *West Mich Annual Conference of the United Methodist Church v City of Grand Rapids*, 336 Mich App 132, 137; 969 NW2d 813 (2021). In construing a statute, our goal is to ascertain the Legislature's intent and enforce unambiguous statutory language as written. *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 628-629; 765 NW2d 31 (2009).

III. ANALYSIS

As relevant to this matter, MCL 211.27a provides:

> (2) . . . for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
>
> (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. . . .
>
> (b) The property's current state equalized valuation.

In its written opinion, the MTT adopted the township's calculation of the 2022 TV and stated that "the subject's TV only changed as a result of new outbuildings to the subject property." The MTT concluded that for the tax year 2022, the TCV for the subject property was $447,000, the SEV was $223,500, and the TV was $208,034. It is thus evident that the relevant method for calculating the TV for the subject property in this matter is the formula contained in MCL

211.27a(2)(a) since the TV was less than the SEV for the parcel. However, the record does not appear to contain any evidence that the township made the calculation set forth in MCL 211.27a(2)(a) to arrive at the property's TV. Instead, there is evidence that the township conducted an analysis of the fair market value of the property,[2] and the township merely stated in its answer to the petition that "[i]t is the belief of respondent that the assessment of the subject property represents 50% of True Cash Value." The MTT also did not include any explanation showing its purported calculation under MCL 211.27a(2)(a).

Although we do not have the benefit of any argument from the township in this matter, it appears from the MTT's reasoning in support of its ruling, as well as the MTT's summary of the facts and the positions taken by the parties in the MTT proceedings, that there is no dispute in this matter that the TV for the subject property was increased based on "additions" to the property. The property's 2022 TV is the "property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions." MCL 211.27a(2)(a). The definition of "additions" for purposes of MCL 211.27a is contained in MCL 211.34d, which provides in relevant part as follows:

> (1) As used in this section or section 27a, or section 3 or 31 of article IX of the state constitution of 1963:
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> * * *
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> (b) For taxes levied after 1994, "additions" means, except as provided in subdivision (c), all of the following:[3]
>
> (*i*) Omitted real property. As used in this subparagraph, "omitted real property" means previously existing tangible real property not included in the assessment. Omitted real property does not increase taxable value as an addition unless the assessing jurisdiction has a property record card or other documentation showing that the omitted real property was not previously included in the assessment. The assessing jurisdiction has the burden of proof in establishing whether the omitted real property is included in the assessment. Omitted real property for the current and the 2 immediately preceding years, discovered after the assessment roll has been completed, must be added to the tax roll pursuant to the procedures established in section 154[, i.e., MCL 211.154]. For purposes of

[2] "Michigan courts have considered 'true cash value' as being synonymous with 'fair market value.' " *President Inn Properties, LLC v City of Grand Rapids*, 291 Mich App 625, 637; 806 NW2d 342 (2011); see also MCL 211.27(1) (generally providing in relevant part that "[a]s used in this act, 'true cash value' means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale . . .").

[3] See also MCL 211.27a(11)(a), which provides that for purposes of MCL 211.27a, the term "additions" means "that term as defined in section 34d." MCL 211.27a(11)(a).

determining the taxable value of real property under section 27a, the value of omitted real property is based on the value and the ratio of taxable value to true cash value the omitted real property would have had if the property had not been omitted.

* * *

(*iii*) New construction. As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in section 27(2)(a) to (q). For purposes of determining the taxable value of property under section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.

* * *

(*v*) Replacement construction. As used in this subparagraph, "replacement construction" means construction that replaced property damaged or destroyed by accident or act of God and that occurred after the immediately preceding tax day to the extent the construction's true cash value does not exceed the true cash value of property that was damaged or destroyed by accident or act of God in the immediately preceding 3 years. Except as otherwise provided in this subparagraph, for purposes of determining the taxable value of property under section 27a, the value of the replacement construction is the true cash value of the replacement construction multiplied by a fraction, the numerator of which is the taxable value of the property to which the construction was added in the immediately preceding year and the denominator of which is the true cash value of the property to which the construction was added in the immediately preceding year, and then multiplied by the lesser of 1.05 or the inflation rate. However, after December 31, 2011, for purposes of determining the taxable value of property under section 27a, if the property's replacement construction is of substantially the same materials as determined by the state tax commission, if the square footage is not more than 5% greater than the property that was damaged or destroyed, and if the replacement construction is completed not later than December 31 in the year 3 years after the accident or act of God occurred, the replacement construction's taxable value is equal to the taxable value of the property in the year immediately preceding the year in which the property was damaged or destroyed, adjusted annually as provided in section 27a(2). Any construction materials required to bring the property into compliance with any applicable health, sanitary, zoning, safety, fire, or construction codes or ordinances must be considered to be substantially the same materials by the state tax commission for the sake of replacement construction under this section.

Here, the parties appeared to dispute when the additions were made to the subject property. The MTT's resolution of this factual discrepancy was equivocal, stating at one point that it could not make such a determination on the current record and stating at another point that the "subject

property did have additions/losses for 2022." There was no transfer of ownership in 2021. The MTT, while seemingly finding that there were additions to the property justifying the TV calculation, never determined what type of "additions" had been made under MCL 211.34d (1)(b). The factual circumstances that we are able to glean from the minimal record in this matter potentially implicated the categories of "omitted property," "new construction," or "replacement construction," each of which provides different methods and procedures for determining the subject property's TV. However, the MTT completely failed to address the legal effect of MCL 211.34d and completely failed to make factual findings that would allow this Court to apply the statutory language of MCL 211.34d, thereby hampering our appellate review. The MTT thus committed an error of law, and we vacate the MTT's opinion and judment and remand for further proceedings not inconsistent with this opinion. *Emagine Entertainment*, 334 Mich App at 662. In light of this disposition, we need not address petitioner's additional argument regarding the weight and credibility the MTT assigned to petitioner's hearing testimony.

Vacated and remanded. We do not retain jurisdiction. No costs are awarded. MCR 7.219(A).

/s/ Michael F. Gadola
/s/ Stephen L. Borrello
/s/ Sima G. Patel