

BRIAN R. SULLIVAN, Petitioner-Appellant,
v.
CITY OF GROSSE POINTE FARMS, Respondent-Appellee.

No. 316384.

Court of Appeals of Michigan.

September 16, 2014.

Before: DONOFRIO, P.J., and OWENS and BORRELLO, JJ.

UNPUBLISHED

PER CURIAM.

Petitioner appeals as of right from a final opinion and judgment of the Michigan Tax Tribunal (MTT) establishing the true cash value, state equalized value, and taxable value of real property located in the city of Grosse Pointe Farms ("respondent") for the 2012 tax year. For the reasons set forth in this opinion, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In March 2011, petitioner purchased residential real property located in Grosse Pointe Farms, Michigan ("subject property"), for \$528,900. The original taxable value of the subject property for the 2012 tax year was \$343,400. Petitioner protested the original taxable value of the subject property for the 2012 tax year before the 2012 March Board of Review. After a hearing, the Board of Review lowered the taxable value of subject property to \$300,000 due to a reduction in the square footage.

Petitioner appealed the Board of Review's decision to the MTT and asserted that the true cash value of the subject property for the 2012 tax year is \$529,000, and the taxable value for the 2012 tax year is \$264,500. Respondent and petitioner both submitted sales comparables to the MTT, and after a hearing, a proposed opinion and judgment was entered. Petitioner filed objections to the proposed opinion and judgment; however, the MTT upheld the Board of Review's assessment of the subject property. The MTT determined that the subject property's true cash value, state equalized value, and taxable value for the 2012 tax year are \$600,000, \$300,000, and \$300,000, respectively. The MTT entered a final opinion and order that adopted the proposed opinion and judgment and incorporated it by reference. It is from this final opinion and order that petitioner appeals.

II. STANDARD OF REVIEW

Our review of a decision of the MTT is narrow. Absent fraud, our Court's review of a MTT decision is limited to determining whether the MTT made an error of law or adopted a wrong legal principle. Const 1963, art 6, § 28; *Meijer, Inc v City of Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). The MTT's factual findings are upheld unless they are not supported by competent, material, and substantial evidence. *Georgetown Place Co-op v City of Taylor*, 226 Mich App 33, 43; 572 NW2d 232 (1997). The MTT's failure to base its decision on competent, material, and substantial evidence is an error of law requiring reversal. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993). Substantial evidence is any evidence that reasonable minds would accept as sufficient to support the MTT's decision. *Detroit Lions, Inc v City of Dearborn*, 302 Mich App 676, 691; 840 NW2d 168 (2013), citing *In re Grant*, 250 Mich App 13, 18-19; 645 NW2d 79 (2002). Moreover, substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Meijer, Inc*, 240 Mich App at 5.

III. ANALYSIS

As was argued before the MTT, on appeal, petitioner argues that he met the burden of establishing that the true cash value of the subject property for the 2012 tax year is \$528,900, and that the MTT committed an error of law in excluding the purchase price of the subject property from consideration.

The Michigan Constitution provides that the true cash value is necessary to determine a property's proper tax. Const 1963, art 9, §3. The "true cash value" of a property is defined as:

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. [MCL 211.27(1).]

The "true cash value" of property is synonymous with the "fair market value" of the property. Huron Ridge, LP v Ypsilanti Twp, 275 Mich App 23, 28; 737 NW2d 187 (2007). "[T]he purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred." MCL 211.27(6). The term "purchase price" means "the total consideration agreed to in an arms-length transaction and not as a forced sale paid by the purchaser of the property." *Id*.

The burden of establishing the "true cash value" is on the petitioner. MCL 205.737(3). Even if the petitioner fails to meet its burden, the MTT must determine the property's true cash value "utilizing an approach that provides the most accurate valuation under the circumstances. . . ." Jones & Laughlin Steel Corp v City of Warren, 193 Mich App 348, 353; 483 NW2d 416 (1992). The MTT is not bound to accept either party's theory of valuation, and has a duty to make an independent determination of true cash value. Great Lakes Div of Nat'l Steel Corp v City of Ecorse, 227 Mich App 379, 390; 576 NW2d 667 (1998). Because MCL 211.27(1) does not mandate a single method to arrive at the true cash value, our Supreme Court recognizes certain appraisal methods as the traditionally favored methods of calculating a property's true cash value. However, "[a]ny method which is recognized as accurate and reasonably related to fair market valuation is an acceptable indicator of true cash value." Huron Ridge, LP, 275 Mich App at 28. As a result of the broad legislative definition, "it has fallen to the courts to approve or disapprove of specific methods of determining true cash value, guided by those available expressions of legislative intent." Antisdale v Galesburg, 420 Mich 265, 276; 362 NW2d 632 (1984). See also, Huron Ridge, LP, 275 Mich App at 28-29.

Petitioner paid \$528,900 for the subject property in March 2011 after successfully bidding on the property as a part of a private sale. Although petitioner provided evidence that the price he paid for the property was "the total consideration agreed to in an arms-length transaction and not as a forced sale paid by the purchaser of the property," MCL 211.27(6), his argument disregards the time at which the sale occurred. Petitioner purchased the subject property in March of 2011 for \$528,900, which is nine months before the 2012 tax day on MCL 211.2(2),^[1] December 31, 2011. Moreover, he attached as evidence of the true cash value the appraisal of the subject property at the time the sale was consummated, but did not provide any evidence of the true cash value of the home as of December 31, 2011. Given that the true cash value of a property is measured at the time of the tax day, and petitioner presented no evidence of the value of the property on that particular date, we cannot find that the MTT erred in finding that petitioner failed to meet the burden of establishing the true cash value of the subject property for the 2012 tax year.

Furthermore, contrary to petitioner's arguments on appeal, the MTT did not entirely dismiss petitioner's purchase price when reaching its decision. Rather, the MTT concluded that the subject property was purchased significantly before the tax day and was not time adjusted. Accordingly, we are compelled to affirm the decision of the MTT because the date of the sale was considered in determining how relevant the purchase price was to the valuation of the property for the 2012 tax year. Furthermore, although the MTT held that the purchase price of the subject property is not the presumptive true cash value, we note that prior decisions of this Court do not require the MTT to accept petitioner's theory of the true cash value. Jones & Laughlin Steel Corp, 193 Mich App at 353. Consequently, given our standard of review on such matters, we cannot hold that the MTT committed an error of law when it rejected petitioner's theory that true cash value of the subject property was the purchase price. *Id*.

Petitioner next contends that the MTT erred in a number of its findings concerning the valuation of the subject property.

Petitioner first argues that the MTT improperly treated respondent's broker price opinions ("BPOs") as comparables and then erroneously held that they were "better" than his comparables due to their location. On appeal, petitioner fails to provide any legal authority in support of his contention that it is an error of law for the MTT to find that a BPO is more reliable than an appraisal. Because a party may not merely announce a position and provide no legal authority to support it, this issue is waived. Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd, 275 Mich App 256, 265; 739 NW2d 121 (2007).

However, even if we were to consider this argument, the record reveals that the MTT made an independent determination that the true cash value of the subject property, as adjusted for the change in square footage and size of the garage, supports the Board of Review's assessment. Therefore, petitioner is not entitled to relief on this issue.

Petitioner next argues that the MTT erred when it treated the location of comparables as dispositive in determining the valuation of the subject property. However, our review of the record evidence leads us to a contrary conclusion. The MTT did not solely rely on the location of the comparables used by petitioner and respondent in their respective valuations of the subject property. Rather, the MTT found the comparables used by respondent to be more reliable than the comparables used by petitioner for several reasons apart from location, including the date of sale, size, and quality. Again, our review of the record reveals that the MTT found that respondent's comparables were more reliable because they were sold closer to the relevant tax date. This was not error. MCL 211.2(2). The MTT further found that even if it were to remove the location adjustment from respondent's comparables, those adjusted sales prices would still support the current assessed and taxable values of the subject property. Therefore, the MTT did not treat location of the comparables alone as dispositive, and petitioner is not entitled to relief on this issue.

Next, petitioner asserts that respondent's assessor improperly and arbitrarily adjusted the value of the subject property upward in order to account for the difference in value between the subject property and comparables. However, we cannot glean from petitioner's appeal a sufficient factual basis for his claim. Our review of the record leads us to conclude that respondent's sales comparison analysis indicates that respondent's assessor made adjustments to the comparables on the basis of location, quality of construction, age, room count and gross living area, garage size, and the number of fireplaces. Therefore, a review of the record indicates that the adjustments were not merely arbitrary and baseless. Accordingly, petitioner is not entitled to relief on this issue.

Petitioner also argues that the MTT erred in concluding that he benefited from the purchase of the subject property. In the final opinion and judgment, MTT specifically held:

although Petitioner contends that the condition of the subject property warrants a further reduction, Petitioner benefited from this when he purchased the subject property, Petitioner's appraisal indicates that the condition of the subject property is "average" as compared to competing homes (and in fact states that the cost to cure for repairs would only be \$2,250), and even if the Tribunal were to apply the \$75,000 adjustment that Petitioner's appraisal applied for the comparables that were considered "good" to Respondent's adjusted sales prices of \$674,020-\$741,380, which includes an adjustment to account for the subject property only having 5,000 square feet and a three-car garage, the adjusted sales price minus a \$75,000 adjustment would still support the values as determined by the Board of Review.

Although the MTT stated that petitioner benefited from the condition of the property when he purchased it, this was not the basis from which the MTT made its determination of the true cash value and taxable value of the subject property. The MTT recognized that petitioner's appraisal indicated that the subject property was in average condition, as opposed to respondent's determination that the subject property was in good condition. The MTT held that even if it were to apply the \$75,000 reduction in value that petitioner's appraiser applied to comparables that were in good condition, the adjustment to respondent's comparables for the change in the condition would still support the assessment values as determined by the Board of Review. Given that petitioner's own appraisal when the subject property was purchased in March 2011 listed the condition of the subject property as average, and the reduction in value to respondent's comparables still supported the MTT's determination of the value of the subject property, the MTT's findings were supported by competent, material, and substantial evidence. *Georgetown Place Co-op*, 226 Mich App at 43.

Petitioner next contends that the MTT committed legal error in concluding that he benefited from the purchase price and taxed the subject property as if maintenance had been provided.

MCL 211.27(2) provides, in pertinent part:

The assessor shall not consider the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold.

Despite petitioner's assertion that the MTT accepted respondent's argument that the assessment for the subject property should be higher due to maintenance that will be conducted in the future, nothing in the record supports this claim. As

discussed above, the MTT's statement that petitioner benefited from the condition of the property when he purchased it had no effect on the valuation of the subject property. The MTT did not make any specific reference to increasing the true cash value as a result of expenditures for normal repairs, replacement, and maintenance. MCL 211.27(2). Instead, the MTT emphasized that petitioner's comparables were not reliable indicators of the true cash value based on the time in which the comparables were sold. The MTT also stated that any adjustment to the location and condition of the property would have no effect of the Board of Review's determination of the valuation of the property. Therefore, the MTT did not tax petitioner on the basis that expenditures for normal repairs and maintenance would be made to the subject property, and accordingly, petitioner is not entitled to relief on this issue.

Affirmed. No costs are awarded. MCR 7.219(A).

[1] The taxable status of real property for a tax year is determined by the value of the property on December 31 of the immediately preceding year, which is considered the "tax day."

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