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IN THE INDIANA TAX COURT

MONROE COUNTY ASSESSOR, Petitioner, v. KIM STRYCHALSKI and RICHARD STRYCHALSKI, Respondents.	)	Cause No. 20T-TA-00011

ON APPEAL FROM A FINAL DETERMINATION
OF THE INDIANA BOARD OF TAX REVIEW

FOR PUBLICATION
August 31, 2021

WENTWORTH, J.

The Monroe County Assessor challenges the Indiana Board of Tax Review's final determination that Kim and Richard Strychalski were entitled to a standard homestead deduction for their Unionville, Indiana property during the 2015, 2016, and 2017 tax years. Upon review, the Court finds that they were not.

FACTS AND PROCEDURAL HISTORY

In 2014, Kim and Richard Strychalski, a married couple, purchased a residential property in Unionville, Indiana. (See Cert. Admin. R. at 18-19, 33.) Prior to purchasing

their Indiana property, they lived at a house in Beach Park, Illinois. (See Cert. Admin. R. at 18, 33.) When they closed on the Illinois house, their attorney filled out the Illinois homestead exemption[1] paperwork, putting it in Kim and Richard Strychalski's names. (See Cert. Admin. R. at 34.)

In 2019, the Monroe County Auditor initiated a homestead audit and found the Strychalskis had claimed two homestead deductions for multiple years, one in Illinois and one in Indiana. (See Cert. Admin. R. at 34, 39.) The Auditor then issued a "Homestead Standard Deduction Audit Questionnaire" seeking information from the Strychalskis for the 2015, 2016, and 2017 tax years. (See Cert. Admin. R. at 18-19, 34.) Kim Strychalski completed the questionnaire stating that (1) they owned both the Indiana and Illinois properties, (2) the Illinois property receives a deduction, (3) they "live at both [the Indiana and Illinois] properties," (4) they filed Illinois, not Indiana tax returns, (5) had Illinois driver's licenses, and (6) were registered to vote in Illinois. (See Cert. Admin. R. at 18-19.) (See also Cert. Admin. R. at 20-23, 34-36.) Based on those responses, the Strychalskis were notified that they would not be eligible for Indiana's homestead deduction for each of the years at issue. (See Cert. Admin. R. at 7-9, 12-16, 34.)

The Strychalskis appealed the revocation to the Monroe County Property Tax Assessment Board of Appeals ("PTABOA"), which denied their claim. (See Cert. Admin. R. at 7-9.) The Strychalskis appealed the PTABOA's denial to the Indiana Board, explaining in their July 29, 2019, petition for review:

> Our [Indiana] home is in a trust and we have the rights to occupy under the terms of the trust. A homestead we think is defined as a legal owner of record and name listed on the

[1] Illinois classifies its property tax benefit for homesteads as an "exemption." See generally 35 ILL. COMP. STAT. 200/15-175 (2015). To reduce confusion, the Court will refer to both Illinois's homestead exemption and Indiana's homestead deduction as "deductions."

> deed to the property. Both of these are true for our property. We consider this as our primary residence. We also have a home in Illinois that [is] also owned by our son Theodore. We spend time there. His name is on the deed and he has the homestead [deduction] and pays the taxes.

(Cert. Admin. R. at 2 (emphasis added).)

At the Indiana Board hearing on February 27, 2020, Kim Strychalski stated:

> It is our understanding that we have been, our homestead [deduction] has been revoked and that's based on us not being, not living in the house. I think that's based on, from our hearing, that it's based on documents from our old address that haven't been changed. So, we're here today to kind of explain that our understanding of being occupants is that you live there. We do, in fact, live the majority of the year in the house and we don't have a homestead [deduction] anywhere else and we think we should have one.

(Cert. Admin. R. at 17, 32.) Kim Strychalski further testified that when they purchased their Indiana home in 2014, they were "juggling between houses," but spent most, if not all their time, beginning in 2015, at the house in Indiana. (Cert. Admin. R. at 33.)

The Assessor responded that the Auditor properly revoked the Strychalskis' Indiana homestead deduction because they had indicated on the questionnaire that their principal place of residence was Illinois and that they had two homestead deductions, one in Illinois and one in Indiana, during the years at issue. (See Cert. Admin. R. at 34-35, 37-38.) Accordingly, the Assessor argued that the Strychalskis were not entitled to an Indiana homestead deduction for those years. (See Cert. Admin. R. at 34, 38.)

On May 11, 2020, the Indiana Board issued its final determination stating that "[t]he Strychalskis used the [Indiana] property as their principal place of residence for the years under appeal[, and a]lthough they were originally receiving an additional homestead deduction in Illinois, that was an error they have since corrected." (Cert. Admin. R. at 25,

29 ¶ 13.) Consequently, the Indiana Board found the Strychalskis' Indiana property was entitled to the homestead deduction. (Cert. Admin. R. at 29 ¶ 13.)

On June 24, 2020, the Monroe County Assessor initiated an original tax appeal. On November 4, 2020, the Court took the matter under advisement. Additional facts will be provided as necessary.

STANDARD OF REVIEW

The party seeking to overturn an Indiana Board final determination must demonstrate to the Court that it is invalid. Kellam v. Fountain Cnty. Assessor, 999 N.E.2d 120, 122 (Ind. Tax Ct. 2013), review denied. To prevail in her appeal, the Assessor must demonstrate that the Indiana Board's final determination is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of or short of statutory jurisdiction, authority or limitations; without observance of procedure required by law; or unsupported by substantial or reliable evidence. See IND. CODE § 33-26-6-6(e)(1)-(5) (2021). Here, the Assessor asks the Court to reverse the Indiana Board's final determination because the Indiana Board abused its discretion. (See Pet'r Br. at 9, 11.)

In reviewing a final determination, the Court cannot usurp the Indiana Board's prerogative as the trier of fact by reweighing the evidence or judging the credibility of witnesses absent an abuse of discretion. See Fisher v. Carroll Cnty. Assessor, 74 N.E.3d 582, 587 (Ind. Tax Ct. 2017). Nonetheless, "[t]he Court will review any questions of law arising from the Indiana Board's factual findings de novo." Purdom v. Knox Cnty. Assessor, 141 N.E.3d 83, 85 (Ind. Tax Ct. 2020) (citing Kellam, 999 N.E.2d at 122).

LAW

All real property in Indiana is subject to assessment and taxation on the statutorily prescribed assessment date. See IND. CODE §§ 6-1.1-2-1, -1.5(a) (2015). "Each year a homestead is eligible for a standard deduction from the assessed value of the homestead for an assessment date." IND. CODE § 6-1.1-12-37(b) (2015).

A "homestead" is a person's "principal place of residence[ ] that is located in Indiana" and that "the individual owns[.]" I.C. § 6-1.1-12-37(a)(2)(A), (B)(i). The term "principal place of residence" is not defined in Indiana Code § 6-1.1-12-37, but it is defined in an administrative regulation as "an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." 50 IND. ADMIN. CODE 24-2-5 (2015) (See http://www.in.gov/legislative/iac/). An individual or married couple may not have more than one homestead deduction in the same year. See I.C. § 6-1.1-12-37(h).

ANALYSIS

On appeal, the Assessor asserts that the Indiana Board abused its discretion by determining the Strychalskis were entitled to Indiana's homestead deduction during the years at issue. (See Pet'r Br. at 9, 11.) To prevail on her claim, the Assessor must show that "[t]he Indiana Board['s] . . . final determination is clearly against the logic and effect of the facts and circumstances before it or [] it misinterprets the law." Kooshtard Prop. I v. Monroe Cnty. Assessor, 38 N.E.3d 750, 753 (Ind. Tax Ct. 2015) (emphasis added). The Assessor argues that the evidence shows the Strychalskis' principal place of residence was in Illinois during the years at issue. (See Pet'r Br. at 11-18.) Moreover, the Assessor claims the evidence also shows the Strychalskis had two homestead deductions, in each of the years at issue, violating the one deduction requirement under Indiana Code § 6-1.1-12-37(h). (See Pet'r Br. at 9-11.) The Court will address the

Assessor's arguments in turn.

I. Principal Place of Residence

The Assessor asserts that the evidence in the record does not support the Indiana Board's finding that the Strychalskis' Indiana property was their principal place of residence during the years at issue. (See Pet'r Br. at 11-18.) In support, the Assessor references the Strychalskis' answers in the Monroe County Auditor's questionnaire, stating that their driver's licenses, voter registrations, and tax return filings were all in Illinois for those years. (See Pet'r Br. at 11-12.) (See also Cert. Admin. R. at 18-19.) Moreover, Kim Strychalski confirmed at the Indiana Board hearing that as of 2019, they still had not changed their Illinois voter registrations. (See Cert. Admin. R. at 37.)

As evidence of one's principal place of residence, county auditors may request from a property owner "a state income tax return, a valid driver's license, or a valid voter registration card showing that the residence for which the deduction is claimed is the individual's principal place of residence." I.C. § 6-1.1-12-37(j) (emphasis added). See also Kellam, 999 N.E.2d at 124 (acknowledging that the property's mailing address, voter registration, driver's license, bank statements, and tax returns were all indications of one's intent that a property is their principal place of residence). Here, the Strychalskis' driver's licenses, state income tax returns, and voter registration cards indicate that their principal place of residence was in Illinois. A conclusion based on this limited evidence, however, may not be dispositive if other evidence persuades to the contrary that another residence is one's true, fixed, and permanent home where the individual intends to return to after an absence. See 50 I.A.C. 24-2-5; See also Kellam, 999 N.E.2d at 124 (stating that "[t]he legal standard for determining an individual's principal place of residence [ ] depends on

the 'intention' to return to the property after an absence").

Although the Strychalskis did not couch their claim that they are entitled to the Indiana homestead deduction in terms of their "intent to return," they did state in their appeal to the PTABOA that they considered the Indiana property to be their "primary residence." (See Cert. Admin. R. at 2.) Moreover, Kim Strychalski testified at the Indiana Board hearing that they live the majority of the year at the Indiana house, having spent most, if not all, of their time there starting in 2015. (See Cert. Admin. R. at 32-33, 38.) She explained that she should have brought to the hearing all of the bills, credit cards, and "tons and tons of documents" that are mailed to and received at her Indiana house every day. (See Cert. Admin. R. at 32-33.) "I live there," she proclaimed. (Cert. Admin. R. at 33.)

The Indiana Board determined that the Indiana property was the Strychalskis' principal place of residence during the years at issue, stating that even though the Strychalskis still retained Illinois voter registrations, which was "some indication that they did not intend to permanently reside in Indiana," it was not dispositive. (See Cert. Admin. R. at 28-29 ¶¶ 11, 13.) Instead, the Indiana Board concluded without explanation that "[o]verall, the evidence shows that the subject property was their home." (Cert. Admin. R. at 28 ¶ 11.)

Although the Court may have weighed the evidence differently, it cannot reweigh the evidence or judge anew the credibility of witnesses. See Fisher, 74 N.E.3d at 587. Moreover, the Assessor has not persuaded the Court that the Indiana Board's finding regarding the Strychalskis' principal place of residence was clearly against the logic and effect of the facts and circumstances presented in the record or that the Indiana Board

misinterpreted the law. Accordingly, the Court will not disturb the Indiana Board's discrete finding that the Indiana property was the Strychalskis' principal place of residence during the years at issue.

II. Two Homestead Deductions

The Assessor has also asserted that the Strychalskis are ineligible for the Indiana homestead deduction because they simultaneously claimed homestead deductions on both the Illinois and Indiana properties during the years at issue. (See Pet'r Br. at 10-11.) Thus, the Assessor explains, the Indiana Board's final determination violates Indiana Code § 6-1.1-12-37(h), which prohibits an individual or married couple from claiming more than one homestead deduction in the same year. (See Pet'r Br. at 10 (citing I.C. § 6-1.1-12-37(h)).)

In its final determination, the Indiana Board expressly found that "for the years under appeal[, the Strychalskis] claimed a homestead deduction on the Illinois property in violation of Ind[iana] Code § 6-1.1-12-37(h)."[2] (Cert. Admin. R. at 28 ¶ 11.) This factual finding is supported by the record, which is replete with the Strychalskis' acknowledgements and confirmations that they received a homestead deduction on their

[2] The Indiana Board explained, in addition to the other reasons supporting its conclusion, that granting a homestead deduction, in this case, is not improper because the facts and circumstances fail to summon the evil Indiana Code § 6-1.1-12-37(h) is intended to prevent. (See Cert. Admin. R. at 28 ¶ 12) (explaining that the circumstance, in this case, is not one that the Legislature intended to prevent when it enacted Indiana Code § 6-1.1-12-37(h)). The Indiana Board stated that the statute's purpose "is to prevent a person or married couple from claiming a homestead deduction on more than one property, such as a vacation home in addition to a primary residence[, but that] is not the case here." (Cert. Admin. R. at 28 ¶ 12.) The Court finds this unpersuasive, however, because it failed to cite any authority for its interpretation of the Legislature's intent in enacting this statute or to explain its reasons why the instant facts and circumstances are not the type that the Legislature intended to prevent. See Kokomo Urban Dev. v. Heady, 125 N.E.3d 15, 19 (Ind. Tax Ct. 2019) (explaining that the best evidence of legislative intent is found in the plain language of the statute itself).

Illinois property during the years at issue. (See, e.g., Cert. Admin. R. at 18, 34, 38-39.) At the hearing, however, Kim Strychalski also explained that the Illinois deduction was erroneously in their names during the years at issue, stating that "[w]hen we closed on the [Illinois] house, the attorney filled out the [homestead deduction] paperwork and [] put our two names on it and not our son's name even though he's an owner of the house." (Cert. Admin. R. at 34 (emphasis added).)

In apparent agreement, the Indiana Board summarily concluded the Strychalskis' violation of Indiana Code § 6-1.1-12-37(h) was due to an error. (Cert. Admin. R. at 28 ¶ 12 (stating "[w]hile the Illinois deduction was originally in the Strychalski's [sic] name, that appears to have been an error").) The Indiana Board's conclusion that an error was made is founded in part on its determination that the Strychalskis' son was also an owner of the Illinois property. (See Cert. Admin. R. at 28 ¶ 12.) This ownership determination, however, directly contradicts the Indiana Board's other finding of fact that "the ownership of the Illinois property is somewhat unclear." (Cert. Admin. R. at 26 ¶ 6.) Despite this obvious incompatibility, the Indiana Board did not provide any reasoning or explanation about how it resolved its own contrary findings. (Cert. Admin. R. at 28 ¶¶ 11-12.)

In any event, the Indiana Board relies on this conclusory finding to determine that the Strychalskis' son would have been entitled to the Illinois homestead deduction during the years at issue. (See Cert. Admin. R. at 28 ¶ 12 (stating that "[t]here is no indication that their son, as an owner and a resident of the Illinois property, would not have been entitled to the Illinois homestead deduction for the years under appeal").) The Indiana Board's reliance on the absence of contrary evidence to show the son would be entitled to the Illinois homestead deduction wrongly turns the burden of proof concept on its head.

Indeed, at the administrative level, the Strychalskis, who challenged their assessments, bore the burden to prove they were entitled to Indiana's homestead deduction; the Assessor was not required in the first instance to prove they were not. See Fisher, 74 N.E.3d at 588 (explaining that when a taxpayer appeals its property tax assessment, they bear the burden of proof); Orange Cnty. Assessor v. Stout, 996 N.E.2d 871, 873 (Ind. Tax Ct. 2013) (explaining that a taxpayer generally bears the burden of proving an assessment is incorrect). Furthermore, other than Kim Strychalski's conclusory statement that the Illinois homestead deduction was mistakenly recorded in their names rather than their son's, there is no additional testimony or other evidence to show their son would have been eligible for the Illinois homestead deduction during the years at issue.[3] (See Cert. Admin. R. at 27 ¶ 8.) Accordingly, this bald testimony, particularly in light of the Indiana Board's uncertainty regarding the son's ownership of the Illinois property, carries no probative value because the Strychalskis' failed to walk the Indiana Board through every element of their analysis. See Long v. Wayne Twp. Assessor, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005), review denied (stating it is the taxpayer's duty to walk the Indiana Board and this Court through every element of its analysis or the evidence carries no probative value).

Regardless of whether their names were put on the Illinois homestead deduction in error, the Strychalskis' names were listed as the recipients of a homestead deduction

[3] The Indiana Board noted that normally when a violation of Indiana Code § 6-1.1-12-37(h) occurs, "taxpayers should cancel the incorrect deduction and pay any taxes due." (Cert. Admin. R. at 28 ¶ 11 (citing Kellam v. Fountain Cnty. Assessor, 999 N.E.2d 120 (Ind. Tax Ct. 2013)).) Although no evidence or argument of this type was submitted by either party, the Indiana Board speculated that "the Strychalskis appear to claim that no additional taxes are due on the Illinois property because their son was actually entitled to that homestead deduction for the years under appeal." (Cert. Admin. R. at 28 ¶ 12.) The Court gives no credence to this speculation.

on their Illinois property during the years at issue. Indeed, Kim Strychalski testified that "when we got the paperwork from [Monroe County] that said the [Illinois homestead deduction] was in our name not [our son's] name, we went back [to Illinois] and had it corrected because he lives in the house. He pays the taxes and the [deduction] is now in his name[.]" (Cert. Admin. R. at 34 (emphasis added).) She continued, "I'd like to have on the record that [the Illinois homestead deduction] is no longer in our name[.]" (Cert. Admin. R. at 39 (emphasis added).) The Strychalskis presented no other evidence as proof or confirmation that the correction was made. (See Cert. Admin. R. at 35.)

All the evidence showing a correction had been made has the same infirmities as the Strychalskis' other conclusory claims – an absence of supporting evidence and lack of any reasoning walking the Indiana Board through the analysis. Most importantly, however, is the lack of evidence, conclusory or otherwise, that a correction was made for the years under appeal. The sum of the evidence, without contradiction, establishes that the Illinois correction was done for the year the Strychalskis made the change at the Illinois office and prospectively. No evidence relates the correction, however, to the years at issue. Indeed, the Strychalskis did not dispute the Assessor's statement at the administrative hearing that

> you don't any longer have a homestead [deduction] in your name in Illinois. But the years under [appeal] are . . . '15, '16, '17. You did then. So, retroactive, you did have them. So, that's a moot point that you no longer have it. You would have had to not have it for '15, '16, '17[.]

(Cert. Admin. R. at 39.) Accordingly, the Strychalskis did not show that Illinois removed their names from the homestead deduction or that Illinois retroactively placed the homestead deduction in their son's name for the years at issue. (See e.g., Cert. Admin.

R. at 35 (acknowledging that the Strychalskis did not have any documentation showing the Assessor in Illinois corrected the homestead deduction).) Therefore, the Court finds that the Strychalskis had more than one homestead deduction in their names for the years at issue in violation of Indiana Code § 6-1.1-12-37(h).

CONCLUSION

The Indiana Board's final determination that the Strychalskis are entitled to the homestead deduction for their Indiana property for 2015, 2016, and 2017 tax years is conclusory, unsupported by probative evidence, and an abuse of discretion because it is clearly against the logic and effect of the facts and circumstances in this matter and misapplies the law. Because the evidence shows that the Strychalskis had two homestead deductions during the years under appeal in violation of Indiana Code § 6-1.1-12-37(h), the Court REVERSES the Indiana Board's final determination. Accordingly, the matter is REMANDED to the Indiana Board to cause the Assessor to adjust the Strychalskis' property tax assessments for 2015, 2016, and 2017 to reflect the removal of the Indiana homestead deduction.