

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICHARD SABLE, Personal Representative of the  
Estate of LEONARD FORSTER, deceased,

UNPUBLISHED  
July 12, 1996

Plaintiff-Appellant,

v

No. 184109  
LC No. 94-5955 CZ

THOMAS McTAVISH, AUDITOR GENERAL OF  
THE STATE OF MICHIGAN, COUNTY OF  
MACOMB, SHELBY TOWNSHIP, and UTICA  
COMMUNITY SCHOOLS,

Defendants-Appellees.

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Before: Murphy, P.J., and O'Connell and M.J. Matuzak,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition in this tax case. We affirm.

Plaintiff brought an action against defendants in circuit court, seeking a declaratory judgment that the taxes against his property were unconstitutionally levied since the property had no value and claiming that title to the property should be returned to him without any further assessment of taxes. Defendant Utica Community Schools brought a motion for summary disposition pursuant to MCR 2.116(C)(4), (7) and (8), to which all defendants joined. The trial court granted defendants' motion for summary disposition on the grounds that it was without jurisdiction, since the Tax Tribunal has exclusive jurisdiction over challenges regarding the assessment of taxes.

The jurisdiction of the Tax Tribunal is set forth in MCL 205.731; MSA 7.650(31), which provides:

The tribunal's exclusive and original jurisdiction shall be:

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\* Circuit judge, sitting on the Court of Appeals by assignment.

(a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws.

(b) A proceeding for refund or redetermination of a tax under the property tax laws.

Thus, the Tax Tribunal's jurisdiction is based either on the subject matter of the proceeding (a direct review of a final agency decision relating to assessment, valuation, rates, special assessments, allocation, or equalization under the property laws) or the type of relief requested (a refund or redetermination of a tax under the property tax laws). *Johnston v City of Livonia*, 177 Mich App 200, 204-206; 441 NW2d 41 (1989). In *Johnston*, this Court stated:

While the circuit court has been recognized to have jurisdiction over purely constitutional claims affecting taxation, the mere fact that a particular issue might be framed in constitutional terms does not grant jurisdiction to the circuit court to the exclusion of the Tax Tribunal. If this were the case, virtually every matter submitted to the Tax Tribunal could find its way to circuit court since any inaccurate or improper assessment of a tax could be said to violate the taxpayer's constitutional rights as a taking without due process. Rather, what must be recognized is that the Tax Tribunal has original and exclusive jurisdiction over those tax issues which involve the accuracy and methodology of the property tax assessment. [*Id.*, 207-208.]

Plaintiff asserts that the Auditor General and local officials acted fraudulently in assessing, levying and selling the taxes on his property because they knew or should have known that the property had no value due to severe contamination. The property was used as a landfill for chemical and hydrocarbon waste in the 1950s and 1960s, and has been dangerous to human and animal habitation for a long time. Plaintiff argues that the circuit court had jurisdiction over this claim because he raised a constitutional issue.<sup>1</sup> Although plaintiff frames his claims in terms of a constitutional issue, he does not challenge the constitutional validity of any statute or of the laws authorizing assessment of taxes on his property. Rather, he challenges the validity of the assessment of taxes on property that he asserts is without value. The ultimate issue to be resolved is whether his property had any value and what that value was. Only when the value of plaintiff's property is determined can it be decided whether the assessment of taxes was proper. This involves a factual determination of the accuracy of assessment and the method of assessing his property. That he avers that the taxes were fraudulently assessed, levied and sold does not change the fact that he is challenging the amount of taxes imposed, as opposed to the validity of the tax laws because his claim relates directly to the amount of taxes that were assessed to his particular property. Accordingly, the Tax Tribunal, not the circuit court, has exclusive jurisdiction over plaintiff's claim.

Moreover, the fact that plaintiff brought a claim for declaratory judgment does not remove jurisdiction from the Tax Tribunal and place it in the circuit court.<sup>2</sup> Since circuit courts have no

jurisdiction over property tax disputes, which have been consigned by the legislature to the exclusive jurisdiction of the Tax Tribunal, they are without power to make declaratory judgments in such disputes. *Michigan Consolidated Gas Co v China Twp*, 114 Mich App 399, 404; 319 NW2d 565 (1982). Furthermore, although the Tax Tribunal lacks equitable powers, it has broad statutory powers and is authorized to grant such relief or issue such writs, orders, or directives which it deems necessary or appropriate in the process of disposition of a matter over which it may acquire jurisdiction. *Johnston, supra*, 204-206. Thus, plaintiff's claim was properly within the exclusive jurisdiction of the Tax Tribunal.<sup>3</sup>

Plaintiff also argues that the Tax Tribunal does not have jurisdiction over his case because it does not involve review of a prior agency decision. In order to invoke the jurisdiction of the Tax Tribunal for an assessment dispute as to the valuation of property, the assessment must first be protested before the local board of review. MCL 205.735(1); MSA 7.650(35)(1); *Manor House v Warren*, 204 Mich App 603, 604-606; 516 NW2d 530 (1994). The petitioner must then file a written petition within thirty days after the final decision, ruling, determination, or order which the petitioner seeks to review. MCL 205.736(2); MSA 7.650(35)(2); *Simmons Airlines v Negaunee Twp*, 192 Mich App 456; 481 NW2d 760 (1992). However, since the issue on appeal in this case involves only whether the circuit court properly determined that it did not have jurisdiction, the procedure that plaintiff would have had to follow to invoke the jurisdiction of the Tax Tribunal is irrelevant. In any event, there is no evidence that plaintiff took any action to invoke the jurisdiction of the Tax Tribunal because he neither requested a review by the local board of review nor filed any petition with the Tax Tribunal. Therefore, although plaintiff will be without a remedy if this Court affirms the trial court's grant of summary disposition, plaintiff failed to take appropriate action in a timely fashion to invoke the jurisdiction of the Tax Tribunal, and consequently he is barred from asserting his claim in circuit court.

Defendants argue that even if the circuit court did have jurisdiction over plaintiff's claim, it would be barred by res judicata. However, this Court need not address that issue since we determined that the circuit court did not have jurisdiction over plaintiff's claim.

Finally, defendants urge this Court to impose sanctions on plaintiff by requiring him to pay defendants' costs and attorney fees, pursuant to MCR 7.216(C), for bringing a vexatious claim. MCR 7.216(C) provides in relevant part:

(1) The Court of Appeals may, on its own initiative or the motion of any party, assess actual and punitive damages or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because

(a) the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal.

The rule under MCR 7.216(C)(1)(a) is similar to MCR 2.114, which allows this Court to assess actual and punitive damages against one bringing a vexatious appeal. *Briarwood v Faber's Fabrics, Inc.*, 163 Mich App 784, 795; 415 NW2d 310 (1987). The party's arguments must be well grounded in fact, warranted by existing law, based on a good faith argument for the extension, modification or reversal of existing law, and not made for the purpose of unnecessary delay or needless increase in the cost of litigation. *Rapaport v Rapaport*, 158 Mich App 741, 753-754; 405 NW2d 165, modified 429 Mich 876 (1987).

We find that plaintiff did not bring a vexatious claim because his argument was warranted by existing law. Although plaintiff's claim was not constitutional for purposes of the circuit court's jurisdiction, he did assert in apparent good faith that the imposition of taxes on property which the Auditor General knew or should have known was without value was fraudulent and in violation of his constitutional rights.

Therefore, the trial court properly granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(4) because the Tax Tribunal had exclusive jurisdiction over plaintiff's claim.

Affirmed.

/s/ William B. Murphy

/s/ Peter D. O'Connell

/s/ Michael J. Matuzak

<sup>1</sup> Plaintiff does not explain why the alleged fraudulent actions of the local officials was unconstitutional. However, we assume that by arguing that the taxes were fraudulently assessed, he implies that he was deprived due process of law.

<sup>2</sup> Plaintiff cites *Town & Country Dodge v Dep't of Treasury*, 420 Mich 226; 362 NW2d 618 (1984) for the proposition that the circuit court has concurrent jurisdiction with the Tax Tribunal to render declaratory judgments. However, that was not a holding in that case. The Court merely noted in dicta, in a footnote, that the appellants did not preserve their constitutional claim because they did not raise it before the Tax Tribunal or in the circuit court in an action for declaratory judgment. *Id.*, 228 n 1.

<sup>3</sup> See also *Kostyu v Dep't of Treasury*, 170 Mich App 123; 427 NW2d 566 (1988), where this Court held that the taxpayer's claim, which sought a declaratory judgment was within the jurisdiction of the Tax Tribunal and not the circuit court. *Id.*, 129-130.