

STATE OF MICHIGAN
COURT OF APPEALS

HERMAN T. CULKAR,

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,

Defendant-Appellee.

UNPUBLISHED

June 27, 1997

No. 192062

Ingham Circuit Court

LC No. 95-081698-AW

Before: Gribbs, P.J., and Sawyer and Young, JJ.

PER CURIAM.

Plaintiff appeals by right the opinion and order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(4) on the basis that the court lacked subject matter jurisdiction. Plaintiff brought this action, designated as a petition for mandamus, asking the court to order defendants, the Michigan Department of Treasury and Douglas B. Roberts, State Treasurer, to reissue tax refund and credit checks that it had previously issued to plaintiff but were allegedly stolen. Plaintiff also requested an award of \$10,000 in actual damages and an award of \$100,000 in punitive damages. The court dismissed the case for lack of subject matter jurisdiction based on its determination that the Court of Claims, rather than the circuit court, had subject matter jurisdiction of plaintiff's claim because it sought to collect damages from the state. We affirm.

Plaintiff argues that the trial court erred in deciding that it lacked subject matter jurisdiction. We disagree. Plaintiff characterizes this suit as an action for mandamus and then relies on MCL 600.4401; MSA 27A.4401 and MCR 3.305(A)(1) to argue that the circuit court had subject matter jurisdiction. However, in his complaint plaintiff requested three things: (1) issuance of a writ of mandamus ordering defendant to reissue him checks to replace the ones allegedly stolen; (2) an award to plaintiff of \$10,000 in actual damages; and (3) an award to plaintiff of \$100,000 in punitive damages. Such an action may only be filed in the Court of Claims "because that is the sole forum that is capable of deciding the whole case." *Silverman v University of Michigan Bd of Regents*, 445 Mich 209, 217; 516 NW2d 54 (1994). Further, MCL 205.22(4); MSA 7.657(22)(4) specifically provides that a decision of the Department of Treasury, if not appealed before the Tax Tribunal or Court of Claims, is not reviewable in any court by mandamus. Thus, plaintiff's arguments are without merit.

Plaintiff attempts to avoid this result by arguing that the circuit court had jurisdiction because the case raised constitutional issues. Plaintiff did not raise any constitutional issue below and this aspect of his argument is not preserved. Further, while the circuit court would have jurisdiction to consider the constitutionality of the tax law generally, it does not have subject matter jurisdiction to review income tax determinations. *Kostyu v Dep't of Treasury*, 170 Mich App 123, 127-128; 427 NW2d 566 (1988). Consequently, where plaintiff's complaint does not challenge the constitutionality of the tax law, but rather a determination of the Department of Treasury that plaintiff was not entitled to the refund and credits, his argument would be without merit, even if it had been preserved below.

As plaintiff argues, MCL 205.7; MSA 7.657(7) provides that a taxpayer may be awarded damages when the Department of Treasury intentionally or recklessly disregards a rule of law or guideline or procedure in connection with a determination regarding a refund. However, that section does not give subject matter jurisdiction to the circuit court or authorize a petition for mandamus.

Plaintiff also cites MCL 600.6419(4); MSA 27A.6419(4) to demonstrate that the trial court erred in finding that it lacked subject matter jurisdiction. That section generally provides that the circuit courts continue to have jurisdiction over claims brought (1) under the general sales tax act, MCL 205.51-205.78; MSA 7.521-7.549; (2) for declaratory or equitable relief; (3) against a state agency under any statute specifically providing that the circuit court has jurisdiction; or (4) to review findings as provided under the Michigan employment security act, MCL 421.1-421.72; MSA 17.501-17.569(22). However, in light of the specific mandate in MCL 205.22; MSA 7.657(22) that a taxpayer may not receive relief from a Department of Treasury determination by writ of mandamus, § 600.6419(4) is not a basis for a finding of error.

Plaintiff also argues that even if subject matter jurisdiction is only proper in the Court of Claims, because the trial judge was an Ingham Circuit judge and therefore was a judge of the Court of Claims pursuant to MCL 600.6404; MSA 27A.6404, he personally had subject matter jurisdiction over this case. Plaintiff cites to MCL 600.6407; MSA 27A.6407, which allows the Court of Claims to hold session in various other circuits. Plaintiff essentially argues that because the judge can travel to and hold a session of the Court of Claims in other circuits, he carries the powers of the Court of Claims, including subject matter jurisdiction, with him wherever he goes and, therefore, that even if a claim is filed in circuit court when only the Court of Claims has jurisdiction, a judge on the Ingham Circuit bench would still have subject matter jurisdiction over the case. However, MCL 600.6404; MSA 27A.6404 provides in relevant part:

The court of claims is created as a function of the circuit court for the thirtieth judicial circuit. A circuit judge of the thirtieth judicial circuit and any judge assigned into the thirtieth judicial circuit by the state court administrator may exercise the jurisdiction of the court of claims as provided by law.

This section provides that the judge may exercise the jurisdiction “of the court.” Subject matter jurisdiction is not personally conferred on the judge. Rather, the jurisdiction lies with the court and the judge is authorized to exercise the court’s jurisdiction as provided by law. Thus, plaintiff’s argument is without merit.

Plaintiff additionally argues that MCL 205.22; MSA 7.657(22) does not bar his mandamus action because actions for mandamus are governed by MCL 600.4401; MSA 27A.4401. However, as we noted earlier, MCL 205.22; MSA 7.657(22) specifically precludes such mandamus actions.

Affirmed.

/s/ Roman S. Gibbs

/s/ David H. Sawyer

/s/ Robert P. Young, Jr.