

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY R. LEAHY,

Plaintiff-Appellant,

v

TOWNSHIP OF ORION,

Defendant-Appellee.

UNPUBLISHED

December 14, 2004

No. 250406

Oakland Circuit Court

LC No. 2003-047928-CH

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition to defendant pursuant to MCR 2.116(C)(4) (lack of jurisdiction) in this action that purports to raise a constitutional issue concerning defendant's determination of the taxable value of plaintiff's property. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The circuit court correctly concluded that plaintiff's claim was within the original and exclusive jurisdiction of the Tax Tribunal. MCL 205.731. "[T]he Tax Tribunal has original and exclusive jurisdiction over those tax issues which involve the accuracy and methodology of the property tax assessment." *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). However, "the Tax Tribunal does not have jurisdiction over constitutional questions and has no authority to hold statutes invalid." *WPW Acquisition Co v City of Troy (On Remand)*, 254 Mich App 6, 8; 656 NW2d 881 (2002). Rather, the circuit court has jurisdiction to consider those matters. *Id.* Although "subject-matter jurisdiction is determined only by reference to the allegations in the complaint," *Grubb Creek Action Comm v Shiawassee Co Drain Comm'r*, 218 Mich App 665, 668-669; 554 NW2d 612 (1996), the label a party uses for his action is not determinative of whether the action is within the jurisdiction of the circuit court or the Tax Tribunal, *Johnston, supra*, 208. Where a claim does not involve the validity of a statute or actions by the tribunal, the framing of a claim in constitutional terms does not remove a case from the exclusive jurisdiction of the Tax Tribunal. *Wikman v Novi*, 413 Mich 617, 646-647; 322 NW2d 103 (1982).

The allegations in plaintiff's complaint assert a dispute over valuation. Plaintiff's complaint alleges that there was an addition during 2001 that permitted an increase in taxable value of \$13,125 for 2002, which should have resulted in a total taxable value of \$116,222, rather than \$137,910 as assessed by defendant. Although plaintiff's complaint refers to the

“basis” on which defendant increased plaintiff’s taxable value as being unconstitutional, in substance it challenges defendant’s methodology and calculation of the taxable value. These are matters that are within the exclusive jurisdiction of the Tax Tribunal. *Johnston, supra* at 208.

In opposing defendant’s motion and on appeal, plaintiff attempts to raise a constitutional issue that is inconsistent with the allegations in his complaint. Despite alleging that “[t]he addition to Plaintiff’s property during 2001 is \$26,250, permitting an increase in the taxable value for 2002 of \$13,125,” he now asserts that his position is that there was no “addition,” as that term is used in the Const 1963, art 9, § 3. Even if the allegations in the complaint were consistent with this argument, this is not a constitutional issue over which the circuit court has jurisdiction to the exclusion of the Tax Tribunal. The argument does not contest the validity of a statute implementing Const 1963, art 9, § 3. Cf. *Meadowbrook Village Associates v City of Auburn Hills*, 226 Mich App 594; 574 NW2d 924 (1997), and *WPW Acquisition Co v City of Troy*, 466 Mich 117; 643 NW2d 564 (2002).

Plaintiff’s reliance on *Kok v Cascade Charter Twp*, 255 Mich App 535; 660 NW2d 389 (2003), is misplaced. In *Kok*, this Court reviewed the Tax Tribunal’s decision affirming a township’s calculation of taxable value. This Court’s decision provides some guidance concerning the meaning of the term “addition” as used in Const 1963, art 9, § 3, in situations where new construction occurs over more than one year. The decision may have been helpful to plaintiff had he properly challenged his assessment before defendant’s board of review. But the decision does not support plaintiff’s view that a challenge to an assessment based on interpretation of the term “addition” is a constitutional issue within the jurisdiction of the circuit court. It implicitly supports the contrary view because the challenged ruling was that of the Tax Tribunal; there is no indication that this Court believed the tribunal lacked jurisdiction to decide the issue.

For these reasons, the circuit court properly concluded that it lacked jurisdiction over plaintiff’s claim and that defendant was therefore entitled to summary disposition pursuant to MCR 2.116(C)(4).

Plaintiff’s stated issues also refer to the circuit court’s award of sanctions to defendant. Because plaintiff has not briefed that issue, it is abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly