

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

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ESTATE OF SHARON WALTERS,  
  
Petitioner-Appellant,

UNPUBLISHED  
August 16, 2012

v

TOWNSHIP OF LINCOLN,  
  
Respondent-Appellee.

No. 305374  
Michigan Tax Tribunal  
LC No. 00-413531

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Before: TALBOT, P.J., and WILDER and RIORDAN, JJ.

PER CURIAM.

The Estate of Sharon Walters (“the Estate”) appeals as of right from the Michigan Tax Tribunal’s (“MTT”) order dismissing the Estate’s petition to recover taxes that it erroneously paid in 2007 for tax years 2002 through 2006. We affirm.

Richard Chapman gifted Sharon Walters two parcels of real estate located at 281 South Street, Bertha Lake, Michigan (“the property”) when Chapman died in 2006. The property was transferred by means of quitclaim deed, which was recorded with the Clare County Register of Deeds on April 12, 2007. The Estate mistakenly believed that the property was transferred to Walters on August 7, 2001, the date when Chapman executed, but did not deliver, the quitclaim deed to Walters. Accordingly, on May 25, 2007, the Township of Lincoln (“the Township”) uncapped the property from 2002 through 2007 and charged the Estate \$7,670 in excess tax liability. It appears that Walters paid the taxes sometime after October 8, 2007, which was the date that the Township notified her that she owed outstanding property taxes.

Walters passed away on January 26, 2008. The Estate contacted the Township on May 3, 2010, less than three years later, to request a refund of the overpaid taxes in order to recover those funds for the benefit of the Estate. The Estate argued that Walters could not be charged taxes on the property from 2002 through 2006 because the property did not transfer to Walters until the deed was delivered by means of recordation with the register of deeds. The Estate reasoned that MCL 211.53a permitted recovery of the overpaid taxes because the payment was predicated on a mutual mistake of fact and the Estate’s request was made within three years of the date of payment. While the Township conceded that the tax assessment from 2002 through 2007 was erroneous, it asserted that it only had the authority to correct assessment errors going back to 2007.

During the July 2010 Board of Review, the Estate was awarded a refund of \$1,050.11, which was the amount of overpaid taxes from 2007. The Board agreed with the Township's assertion that it only had authority to correct uncapping errors from 2007 through 2010, so it could not award recovery of the amount overpaid from 2002 through 2006. As a result, the Estate filed a petition with the MTT on August 27, 2010, challenging the Board's decision and seeking recovery of the outstanding balance of \$6,619.89.

On May 12, 2011, the MTT dismissed the Estate's petition without addressing the merits of the claim under MCL 211.53a. The MTT noted that it only had jurisdiction to correct assessment errors regarding the uncapping of property for the current taxable year and the immediately preceding three years (back to 2007). Because the July Board of Review already corrected the Estate's overpayment for 2007, the MTT held that it could not grant the Estate its requested relief, regardless of whether the Estate could establish the right to recovery under MCL 211.53a.

On appeal, the Estate claims that it was entitled to recover the amount it paid in 2007 for tax years 2002 through 2006 because the payment was based on a mutual mistake of fact and because the appeal to the MTT was timely.<sup>1</sup> We disagree. In the absence of fraud, this Court examines the MTT's actions for "misapplication of the law or adoption of a wrong legal principle."<sup>2</sup> Jurisdictional matters and the interpretation of statutes are reviewed de novo on appeal.<sup>3</sup> When interpreting a statute, this Court's goal is to "give effect to the intent of the Legislature."<sup>4</sup> Unless ambiguous, statutory language should be given its ordinary meaning and "the Legislature is presumed to have intended the meaning expressed in the statute."<sup>5</sup>

Under the General Property Tax Act ("GPTA"), the MTT has exclusive and original jurisdiction over "proceedings" involving refunds, redeterminations of tax liabilities, or final decisions by taxing agencies involving assessments or valuations of property under Michigan tax law.<sup>6</sup> Generally, a party must file a written petition with the MTT no later than July 31 of the tax year involved—or within 35 days of a final decision from the taxing unit—in order to invoke the MTT's jurisdiction in a residential real property assessment dispute.<sup>7</sup> "However, when another

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<sup>1</sup> MCL 211.53a.

<sup>2</sup> *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010).

<sup>3</sup> *Id.*; *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008).

<sup>4</sup> *City of Mt. Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007) (citation omitted).

<sup>5</sup> *Id.*

<sup>6</sup> MCL 205.731.

<sup>7</sup> MCL 205.735a(6).

statute provides a different limitations period for filing a petition with the [MTT], that statute controls and MCL 205.735 does not apply.”<sup>8</sup>

The Estate argues that the overpayment was a result of a qualified error under MCL 211.53a. Our Supreme Court in *Briggs Tax Service, LLC*, held that the specific limitations period in MCL 211.53a superseded the general limitations period in MCL 205.735, which is now MCL 205.735a(6).<sup>9</sup> MCL 211.53a provides as follows:

Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

Although our Courts have not interpreted the meaning of “clerical error” in the context of MCL 211.53a, this Court previously established that under MCL 211.53b, a clerical error only applies to “errors of a typographical, transpositional, or mathematical nature.”<sup>10</sup> Our Supreme Court defined “mutual mistake of fact” as “an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.”<sup>11</sup>

Rather than applying MCL 211.53a to this case, the MTT held that MCL 211.27a established the proper limitations period in which the Estate could challenge the Township’s uncapping of Walters’s property. Following a transfer of ownership, MCL 211.27a(3) permits taxing units to uncap and adjust the taxable value of real property. MCL 211.27a(4) provides in relevant part as follows:

If the taxable value of property is adjusted . . . and the assessor determines that there had not been a transfer of ownership, the taxable value of the property shall be adjusted at the July or December board of review. Notwithstanding the limitation provided in [MCL 211.53b(1)] on the number of years for which a correction may be made, the July or December board of review may adjust the taxable value of property under this subsection for the current year and for the 3 immediately preceding calendar years.

As Walters paid the erroneous tax bill no earlier than October 8, 2007, and the Estate initiated this action with the MTT on August 27, 2010, it is undisputed that the Estate commenced this suit within three years of the date of the overpayment. That notwithstanding, this Court holds that the MTT correctly determined that it lacked authority to grant the Estate’s

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<sup>8</sup> *Briggs Tax Serv*, 485 Mich at 76.

<sup>9</sup> *Id.*

<sup>10</sup> *Int’l Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104, 109; 548 NW2d 668 (1996).

<sup>11</sup> *Briggs Tax Serv*, 485 Mich at 77, quoting *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006) (quotation marks omitted).

requested relief. A specific provision prevails “over any arguable inconsistency with the more general rule.”<sup>12</sup> As MCL 211.27a(4) specifically addresses how a party may adjust the taxable value of property following a mistaken, nonexistent transfer of ownership, the Estate may not bypass this specific jurisdictional requirement by simply characterizing the overpayment as the result of a mutual mistake of fact under MCL 211.53a. Further, MCL 211.53a merely grants the tribunal power to refund overpaid taxes. In order to recover the overpaid taxes, a taxpayer must first correct the erroneous tax rolls; otherwise, the Estate has no “correct and lawful amount” from which to recover from the Township under MCL 211.53a. Because MCL 211.27a(4) only permits the adjustment of tax rolls after an erroneous transfer of ownership for the current and immediately preceding three tax years—where the taxpayer fails to timely challenge the uncapping before the July or December board of review—the Estate has nothing to recover from the Township.

This reasoning is supported by this Court’s decision in *Leahy v Orion Twp* in which the taxpayer was not permitted to invoke MCL 211.53a by construing a valuation dispute as a “clerical error” or a “mutual mistake of fact.”<sup>13</sup> Although this Court in *Eltel Assoc, LLC v City of Pontiac*<sup>14</sup> held that a mistaken belief regarding the transfer date of real property could qualify as a mutual mistake of fact under MCL 211.53a, the taxpayer in that case only attempted to correct the mistake for tax years within the three year clawback provision, and thus did not run afoul of the limitations period in MCL 211.27a(4).

Due to the Estate’s failure to timely challenge the uncapping of Walters’s property, the only tax years that the MTT could have adjusted were 2007 through 2010. Therefore, the Estate could only recover the amount overpaid from the 2007 tax year, which was \$1,050.11. Because the board of review already granted this relief, the Township is entitled to judgment as a matter of law.<sup>15</sup>

Affirmed.

/s/ Michael J. Talbot  
/s/ Michael J. Riordan

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<sup>12</sup> *Miller v Allstate Ins Co*, 481 Mich 601, 613; 751 NW2d 463 (2008) (citation and internal quotation marks omitted).

<sup>13</sup> *Leahy v Orion Twp*, 269 Mich App 527, 528, 532; 711 NW2d 438 (2006).

<sup>14</sup> *Eltel Assoc, LLC v City of Pontiac*, 278 Mich App 588, 591-592; 752 NW2d 492 (2008).

<sup>15</sup> MCR 2.116(I)(1).