

STATE OF MICHIGAN
COURT OF APPEALS

GERALD T. VAN SICKLE and CRYSTAL A.
VAN SICKLE,

UNPUBLISHED
May 31, 2005

Plaintiffs-Appellants,

v

No. 260068
Court of Claims
LC No. 03-000119-MM

DEPARTMENT OF TREASURY,

Defendant-Appellee.

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from an order granting summary disposition to defendant on the ground that plaintiffs failed to invoke properly the jurisdiction of the Court of Claims. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs' tax returns for 1999 through 2001 listed no taxable income or tax liability. Rebuffing plaintiffs' progressive complaints challenging the operations of the taxing authorities, defendant billed plaintiffs for taxes, penalties, and interest due for those three tax years. Plaintiffs brought suit in the Court of Claims, seeking a declaration that the Income Tax Act, MCL 206.1 *et seq.*, is repugnant to our state constitution and seeking a refund of the taxes withheld for 1999. Defendant persuaded the court to grant summary disposition under MCR 2.116(C)(4) (lack of jurisdiction). Jurisdiction is a question of law that this Court reviews *de novo*. *W A Foote Memorial Hosp v Dep't of Public Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995).

MCL 205.22(2) specifies that "[i]n an appeal to the court of claims, the appellant shall first pay the tax, including any applicable penalties and interest, under protest and claim a refund as part of the appeal." There is no dispute that plaintiffs did not pay the assessments. Plaintiffs thus failed to perfect, or invoke, the jurisdiction of the Court of Claims. See *Montgomery Ward & Co v Dep't of Treasury*, 191 Mich App 674, 680-682; 478 NW2d 745 (1991).

Plaintiffs do not squarely address MCL 205.22(2), but argue strenuously that the Court of Claims' refusal to reach the merits of their claims left important questions unanswered. However, we note that a court has a standing duty to question its own jurisdiction. *Straus v Governor*, 230 Mich App 222, 227; 583 NW2d 520 (1998), *aff'd* 459 Mich 526; 592 NW2d 53 (1999). "When a court is without jurisdiction of the subject matter, any action with respect to

such a cause, other than to dismiss it, is absolutely void.” *Fox v Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965).

The jurisdiction of the Court of Claims is itself a creature of statute. Accordingly, plaintiffs’ failure to fulfill statutory requirements for invoking that tribunal’s jurisdiction left it without authority to act, other than to dismiss the case. The Court of Claims thus properly took the latter course without addressing the substance of plaintiffs’ claims.¹

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter

¹ Moreover, this Court will not, in its appellate capacity, consider plaintiffs’ constitutional claims as if this were an original action. See *Rinaldi v Civil Service Comm*, 69 Mich App 58, 69; 244 NW2d 609 (1976) (“[w]e will not undertake a constitutional analysis when we can avoid it”).