

STATE OF MICHIGAN
COURT OF APPEALS

JIM HOUDEK,

Plaintiff-Appellee,

v

GARFIELD TOWNSHIP,

Defendant-Appellant.

UNPUBLISHED

April 28, 2000

No. 216951

MTT

LC No. 249035

Before: Wilder, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Defendant appeals as of right from an order of the Michigan Tax Tribunal (MTT) vacating a special assessment. We reverse.

Defendant sought to create a special assessment district for the installation of street lights. On October 24, 1996, defendant accepted an initiatory petition containing the signatures of approximately thirty percent of the homeowners in the proposed district. Defendant held public hearings, and circulated a mail-in ballot to gauge the extent of public support for creation of the district. On March 13, 1997, defendant's township board confirmed the creation of the special district via adoption of a resolution.

On September 16, 1997, plaintiff filed an appeal with the Small Claims Division of the MTT, alleging that defendant failed to collect a sufficient number of signatures to support the creation of the district. In an order entered on December 30, 1998, the MTT concluded that the special assessment district was invalid. The MTT found that the district had not been created in accordance with various statutory requirements. The MTT rejected defendant's assertion that plaintiff's appeal was not timely filed.

We review a decision of the MTT to determine if the tribunal made an error of law or applied a wrong principle. We are bound by the MTT's factual determinations, and may consider only questions of law under Const 1963, art 6, § 28. However, an MTT decision that is not supported by competent, material, and substantial evidence on the whole record is an error of law within the meaning of Const

1963, art 6, § 28. *Great Lakes Div of National Steel Corp v City of Ecorse*, 227 Mich App 379, 388; 576 NW2d 667 (1998).

Defendant argues that the MTT erred by vacating the special assessment. We agree, and reverse the MTT's decision. The special assessment district was created when defendant confirmed the district via adoption of Resolution No. 4 on March 13, 1997. An appeal must be filed within thirty days after the final decision of which review is sought. MCL 205.735(2); MSA 7.650(35)(2). Any challenge to the creation of the district filed by plaintiff on January 10, 1997, was premature, as a final decision had not yet been made. Plaintiff's appeal of the final decision, filed on September 16, 1997, was untimely. The MTT erred as a matter of law by finding that plaintiff's appeal was filed in a timely manner. That finding is not supported by competent, material, and substantial evidence on the whole record. *Great Lakes, supra*.

Given our resolution of the threshold issue of the timeliness of plaintiff's appeal to the MTT, we do not address defendant's remaining argument regarding the MTT's conclusion that the special assessment district was not created in accordance with statutory requirements. The MTT had no jurisdiction to consider an untimely appeal, the soundness of any arguments advanced by plaintiff notwithstanding. *Szymanski v City of Westland*, 420 Mich 301, 303; 362 NW2d 224 (1984).

Reversed.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey