

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

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KENNETH J. SPEICHER and MARIE A.  
SPEICHER,

Plaintiffs-Appellants,

v

HAROLD MANNING, LARRY BURGETT,  
TOWNSHIP OF COLUMBIA, COLUMBIA  
TOWNSHIP TAX BOARD OF REVIEW, and  
RONALD HENRY,

Defendants-Appellees.

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KENNETH J. SPEICHER and MARIE A.  
SPEICHER,

Petitioners-Appellants,

v

HAROLD J. MANNING, LARRY BURGETT,  
TOWNSHIP OF COLUMBIA, COLUMBIA  
TOWNSHIP TAX BOARD OF REVIEW, and  
RONALD HENRY,

Respondents-Appellees.

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Before: Saad, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

UNPUBLISHED  
September 7, 2001

No. 222815  
Van Buren Circuit Court  
LC No. 99-045310-NZ

No. 224333  
Van Buren Circuit Court  
MTT 00-272747

I. Facts and Proceedings

In these consolidated cases, plaintiffs, Kenneth J. Speicher and Marie A. Speicher, appeal as of right from two circuit court orders granting summary disposition under MCR 2.116(C)(4) to

defendants Harold Manning, Larry Burgett, Columbia Township, the Columbia Township Tax Board of Review and Ronald Henry. Plaintiffs also appeal an order of the Michigan Tax Tribunal dismissing their claims.

Plaintiffs own five parcels of real property in Columbia Township. Between 1991 and 1998, plaintiffs claim that the Columbia Township tax assessor, Harold Manning, intentionally over-assessed their property taxes on all five properties.<sup>1</sup> The Columbia Township Tax Board of Review (Review Board) denied several of plaintiffs' claims regarding the over-assessments and plaintiffs appealed some of those decisions to the Michigan Tax Tribunal (Tax Tribunal). Plaintiffs did not appeal the Tax Tribunal decisions to this Court; instead, on March 8, 1999, plaintiffs filed a complaint against defendants in Van Buren Circuit Court, alleging fraudulent representation, negligence, promissory estoppel, intentional infliction of emotional distress, violation of plaintiffs' state and federal rights to equal protection, violation of plaintiffs' due

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<sup>1</sup> According to their complaint, Manning over-assessed an essentially worthless trailer on their "Mora Lot" in 1993 through 1996. The Columbia Township Tax Board of Review (Review Board), denied plaintiffs' claim in 1994 and, in 1995, the Michigan Tax Tribunal (Tax Tribunal) denied plaintiffs' claim for reassessment. In 1997 and 1998, plaintiffs sought review of Manning's refusal to allow them to join the Mora Lot with the East Saddle Lake lot from 1993 to 1997 and that, once joined, Manning gave the new lot an inflated value. The Review Board declined to hear plaintiffs' claim on this issue.

In 1994, plaintiffs claim that the Review Board denied their claim, without explanation, that Manning overassessed their lot on East Saddle Lake. In 1997, after their cottage on the East Saddle Lake lot sustained damage in a rainstorm, plaintiffs claim they made a number of repairs, relying on Manning's assurance that the repairs would qualify for nonconsideration under the Mathieu-Gast Home Improvement Act, MCL 211.27(2). However, thereafter, Manning and the township subsequently denied plaintiffs nonconsideration for the cottage repairs.

Regarding the Wetland lot, plaintiffs allege that Manning considered too many feet of lake frontage when calculating its assessed value when plaintiffs' actual use was restricted by the Department of Environmental Quality. Plaintiffs protested the assessments in 1994, 1997 and 1998. In 1997, the Review Board denied plaintiffs a hearing and, in 1998 declined to address the claim because their case was pending before the Tax Tribunal.

Plaintiffs further claim that, before 1995, Manning refused to grant non-homestead properties nonconsideration under the Mathieu-Gast Home Improvement Act, MCL 211.27(2) for their West Saddle Lake property. However, in 1993, pursuant to a State Tax Commission instruction, Manning allowed plaintiffs nonconsideration for repairs made from 1987 through 1991 on this lot. However, plaintiffs claim that Manning's failure to grant the nonconsideration back in 1990 rather than in 1995 resulted in a much higher State Equalized Value (SEV) than the actual SEV. Plaintiffs protested the assessment and taxable value to the 1997 and 1998 Review Boards, but were denied relief.

Plaintiffs also protested the assessments of their residence, which they built in 1996. Plaintiffs claimed its estimated value was \$120,000 and that their 1996 SEV should have been \$60,000. In 1997, the Review Board denied plaintiffs a hearing and, in 1998, declined to consider the claim because the issue was pending before the Tax Tribunal.

process rights, conspiracy to deny procedural due process, and constitutional and intentional torts.

Thereafter, defendants filed motions for summary disposition under MCR 2.116(C)(4) and MCR 2.116(C)(7), arguing that the circuit court lacked subject matter jurisdiction and that *res judicata* barred plaintiffs' claims. The circuit court granted defendants' motions and ruled that the Tax Tribunal has exclusive jurisdiction over claims arising from the over-assessment of real property taxes. Plaintiffs claim that, relying on the circuit court's summary disposition orders, they filed a petition with the Tax Tribunal and raised the same claims they asserted in the circuit court. However, the Tax Tribunal dismissed plaintiffs' claims and ruled that, despite the circuit court's decision, it lacked subject matter jurisdiction over plaintiffs' claims regarding Manning's allegedly tortious and intentional conduct because its jurisdiction is "limited to property and non-property tax matters as provided by MCL 205.731." The Tax Tribunal also found that it had already considered and decided plaintiffs' property assessments from 1991 to 1998, and that plaintiffs' only remedy was to appeal that decision to the Court of Appeals as required by the Michigan court rules.

## II. Analysis

### A. Plaintiffs' Assessment Claims

Plaintiffs contend that the circuit court erroneously dismissed their claims regarding their property assessments for lack of subject matter jurisdiction. We disagree.

We review the grant or denial of a motion for summary disposition *de novo*. *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000). "When reviewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show there was no genuine issue of material fact." *Id.* "Whether subject-matter jurisdiction exists is a question of law." *Id.*

Plaintiffs acknowledge in their circuit court complaint that, following final decisions by the township Review Board, they appealed their property tax assessments in the Tax Tribunal for the Mora and Wetland lots, the properties on East and West Saddle Lake and for their residence. Generally, the Court of Appeals reviews a "decision of the Tax Tribunal to determine whether the tribunal made an error of law or adopted a wrong legal principle." *Credit Acceptance Corp v Department of Treasury*, 236 Mich App 478, 482; 601 NW2d 109 (1999). As noted above, plaintiffs failed to file a timely appeal in this Court to challenge the decisions of the Tax Tribunal. Instead, plaintiffs filed a complaint in the circuit court, raising multiple claims concerning the same overassessments.

"Circuit courts are courts of general jurisdiction, and have original jurisdiction over all civil claims and remedies 'except where exclusive jurisdiction is given by the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.'" *Farmers Ins Exchange v South Lyon Community Schools*, 237 Mich App 235, 241, 602 NW2d 588 (1999), quoting MCL 600.605. Under MCL 205.731, the Tax Tribunal's exclusive and original jurisdiction shall be:

(a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment valuation, rates, special assessments, allocation, or equalization, under property tax laws.

(b) A proceeding for refund or redetermination of a tax under the property tax laws.

Based on well-established case law, the circuit court correctly ruled that a challenge to the validity of a tax assessment falls within the exclusive jurisdiction of the Tax Tribunal, whether the challenge goes to the method of the assessment or to its accuracy. *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). Accordingly, plaintiffs' due process claims regarding the overassessments, their equal protection claims that other parcels received lower assessments and their constitutional tort claims fall within the Tax Tribunal's exclusive jurisdiction because, notwithstanding plaintiffs' assertion that they involve constitutional protections, the claims clearly constitute requests for review the accuracy and method used to determine the property tax assessments. *Syntex Laboratories v Dep't of Treasury*, 233 Mich App 286, 289-290; 590 NW2d 612 (1998); *Johnston, supra*, at 207. The circuit court did not have jurisdiction to address these issues and, following the Tax Tribunal's rulings, plaintiffs' available avenue of relief was to file a timely appeal in this Court, not in the circuit court. MCL 205.753. Accordingly, we affirm the circuit court's dismissal of plaintiffs' tax assessment claims for lack of subject matter jurisdiction.

We also affirm the Tax Tribunal's dismissal of plaintiffs tax assessment claims. "In the absence of fraud, this Court's review of a decision of the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle." *Alma Piston Co v Department of Treasury*, 236 Mich App 365, 367; 600 NW2d 144 (1999). Because the Tax Tribunal decided plaintiffs' claims regarding the assessments for each property in prior decisions, the tribunal correctly applied the principles of res judicata in dismissing plaintiffs' claims. *Baraga County v State Tax Comm'n*, 243 Mich App 452, 455; 622 NW2d 109 (2000). Accordingly, the Tax Tribunal properly dismissed plaintiffs' claims on that basis.

#### B. Plaintiffs' "Tort" Claims

Plaintiffs contend that the circuit court improperly dismissed their claims of fraudulent representation, intentional infliction of emotional distress, promissory estoppel, and negligence for lack of subject matter jurisdiction because plaintiffs do not seek a review of their tax assessments, but allege intentional or negligent conduct by Manning in telling plaintiffs that they would not be assessed for repairs to the East Saddle Lake cottage. We disagree.

Plaintiffs' tort claims revolve around their assertion that, after the cottage sustained rain damage in June 1997, Manning verbally assured them that any repairs they made would receive nonconsideration under the Home Improvement Act, MCL 211.27(2). Plaintiffs allege that they relied on Manning's promise when they made the repairs and the record indicates that, on December 27, 1997, plaintiffs filed a request for nonconsideration for repairs or replacements of the roof, siding, masonry, windows, wiring and plumbing.

However, plaintiffs were denied nonconsideration and, on March 4, 1998, apparently following their tax assessment, plaintiffs filed a claim with the Review Board and protested the assessed value and the tentative taxable value of the cottage. Plaintiffs asserted on their written

claim form that the township consented to the construction and agreed that the repairs would qualify for nonconsideration. On March 19, 1998, the Review Board denied plaintiffs' claim and simply stated that the construction plaintiffs performed did not qualify for nonconsideration. Rather than appealing this decision to the Tax Tribunal, plaintiffs included the nonconsideration issue in the complaint filed in the Van Buren Circuit Court, alleging various tort claims regarding Manning's actions.

Upon a thorough review of the record and applicable case law, we hold that, regardless of the label plaintiffs used to assert their claims in their circuit court complaint, it is clear that those claims challenge the validity of and the method used to determine their tax assessment for the cottage. Indeed, in their claim to the Review Board regarding the cottage repairs, plaintiffs specifically indicate that their dispute pertained to the assessed value of the cottage. Moreover, in their circuit court complaint, plaintiffs specifically assert that the property was overassessed and request relief from the assessment. Clearly, plaintiffs' complaint concerns the assessment practices of the township and the township assessor, an issue clearly within the jurisdiction of the Tax Tribunal.

Matters involving nonconsideration fall within the Tax Tribunal's jurisdiction. *Fisher v Sunfield Twp*, 163 Mich App 735; 415 NW2d 297 (1987). Regardless whether plaintiffs couch their claims in terms of some tortious conduct by Manning, the Tax Tribunal has jurisdiction to hear claims of fraud or improper assessment practices through its general equitable powers. *Turner v Lansing Twp*, 108 Mich App 103, 111-112; 310 NW2d 287 (1981); see also *Colonial Village Townhouse Co-op v City of Riverview*, 142 Mich App 474, 478; 370 NW2d 25 (1985). Accordingly, where, as here, plaintiffs assert that facts will show that they received the township's approval for nonconsideration, through Manning, their claim of improper assessment practices is within the jurisdiction of the Tax Tribunal. Further, no case law suggests that the Tax Tribunal is precluded from considering evidence and making a factual determination regarding plaintiffs' claim that the repairs were already approved by the assessment office for nonconsideration. Moreover, plaintiffs have not shown that the Tax Tribunal's review would have been futile and this Court presumes that the Tribunal, "if given a chance to pass upon the matter, will decide correctly and will not fail in the performance of its duty." *Turner, supra*, at 110.

Following the Review Board's decision to deny plaintiffs' request for reassessment, plaintiffs' avenue of appeal was to file a claim with the Tax Tribunal, by June 30 of the tax year involved, 1998. MCL 205.735. Plaintiffs failed to exercise that opportunity and they may not circumvent the rules for timely filing by attempting to "appeal" the Review Board's assessment a year later in the circuit court under the guise of various tort claims.

Because the basis for and nature of plaintiffs' allegations regarding the consideration of the cottage repairs constitute a request for review of the township's tax assessment practices, the Tax Tribunal had exclusive jurisdiction to address the issues. Because this matter is not within

the class of claims upon which the circuit court has the power to act, we hold that the circuit court did not err in dismissing plaintiffs' claims for lack of subject matter jurisdiction.<sup>2</sup>

Affirmed.

/s/ Henry William Saad  
/s/ E. Thomas Fitzgerald  
/s/ Peter D. O'Connell

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<sup>2</sup> Plaintiffs do not argue on appeal that the Tax Tribunal improperly dismissed their "tort" claims for lack of subject matter jurisdiction. Nonetheless, we find that the tribunal reached the correct result, but for a different reason: plaintiffs' appeal to the tribunal on this issue, which was essentially a petition for review of the Review Board's denial of reassessment, was not timely because plaintiffs filed it more than one and a half years after the cottage assessment and the board of review's denial of relief. See *Holland Home v City of Grand Rapids*, 219 Mich App 384, 400; 557 NW2d 118 (1996).