STATE OF MICHIGAN

COURT OF APPEALS

RAVENNA CASTINGS CENTER, Petitioner-Appellant,	UNPUBLISHED May 6, 2004
v	No. 242286 Michigan Tax Tribunal
TOWNSHIP OF RAVENNA, Respondent-Appellee.	LC No. 00-288443

Before: O'Connell, P.J., and Jansen and Murray, JJ.

PER CURIAM.

Petitioner appeals as of right the order of the Michigan Tax Tribunal (MTT) dismissing its petition. We affirm.

Petitioner contends that the MTT erred in dismissing the petition for failing to properly invoke the tribunal's subject matter jurisdiction. It argues that because the petition alleged that its 2000 personal property tax assessment contained clerical errors, the MTT had jurisdiction pursuant to MCL 211.53a. We review decisions of the MTT to determine whether the MTT erred as a matter of law or adopted an erroneous legal principle. *Michigan Bell Tel Co v Treasury Dep't*, 445 Mich 470, 476; 518 NW2d 808 (1994). The MTT's factual findings are accepted as final if those findings are "supported by competent, material, and substantial evidence on the whole record." *Id.* Additionally, we review the decision to grant or deny summary disposition de novo. *Sun Communities v Leroy Twp*, 241 Mich App 665, 668; 617 NW2d 42 (2000); *Walker v Johnson & Johnson Vision Products, Inc*, 217 Mich App 705, 708; 552 NW2d 679 (1996). "When reviewing a motion for summary disposition under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the respondent was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact." *Id.*

Petitioner argues that the MTT erred in finding that it lacked jurisdiction over petitioner's petition under MCL 205.735. We disagree. The MTT has exclusive and original jurisdiction to review final decisions relating to assessments or valuations under the property tax laws. MCL 205.731(a). Under MCL 205.735(1), before the MTT acquires jurisdiction over "an assessment dispute as to the valuation of property" under MCL 205.735(2), a party must first protest the assessment before the local board of review. *Manor House Apartments v City of Warren*, 204

Mich App 603, 604-606; 516 NW2d 530 (1994). MCL 205.735(2) sets forth the time limits as follows:

> The *jurisdiction* of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved. Except in the residential property and small claims division, a written petition is considered filed by June 30 of the tax year involved if it is sent by certified mail on or before June 30 of that tax year. . . . All petitions required to be filed or served by a day during which the offices of the tribunal are not open for business shall be filed by the next business day. In all other matters, the *jurisdiction of the tribunal* is invoked by a party in interest, as petitioner, filing a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review. . . [emphasis added].

"The time requirements contained in MCL 205.735(2) are jurisdictional in nature." *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 543; 656 NW2d 215 (2002). If a petitioner fails to file its petition within the time limit provided and cites no other statutes granting a longer period, the MTT is without jurisdiction to consider the petition and must dismiss it. *Id.*, citing *Szymanski v Westland*, 420 Mich 301, 305; 362 NW2d 224 (1984). Once a court determines that it has no jurisdiction, it "should not proceed further except to dismiss the action." *Id.* at 544-545, citing *Fox v Bd of Regents of the Univ of Michigan*, 375 Mich 238, 243; 134 NW2d 146 (1965). A party's failure to correct assessments and evaluations in the manner and time provided by statute precludes later attack upon the assessment. *Auditor General v Smith*, 351 Mich 162, 168; 88 NW2d 429 (1958).

The instant case involves a dispute concerning petitioner's tax assessment for the year 2000. Under MCL 205.735(2), petitions concerning assessment disputes must be filed by June 30 of the tax year involved. But petitioner alleges that its assessment was changed at the December 2001 meeting of the board of review and challenges the resulting tax bill. Because petitioner challenges the board's action in making this change, the fourth sentence of MCL 205.735(2) applies, giving petitioner thirty days from the time of the board's determination to seek review before the MTT. However, petitioner failed to file its petition with the MTT until January 11, 2002, thirty-one days from the board's determination. Therefore, the petition was not timely filed and the MTT did not have jurisdiction to hear the case. *Electronic Data Systems Corp, supra* at 543.

Petitioner argues that the MTT erred in finding that its petition was untimely under MCL 205.735. Rather than stating that the petition was untimely based on the assessment made at the December 2000 board of review, the order dismissing the petition held that the "letter of appeal was filed more than 30 days after the issuance of notice of the action taken by respondent's 2001 December Board of Review." Petitioner contends that it never received notice of this decision and that the December 14, 2001 letter from respondent's assessor to the state tax commission indicates that the matter was still pending on that date. However, even if petitioner's claim is correct, the MTT properly dismissed the petition for lack of subject matter jurisdiction because petitioner failed to file a petition within thirty days of the December 2001 decision.

Petitioner asserts that the MTT had jurisdiction because the petition was timely filed under MCL 211.53a. That statute 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.

In *Wolverine Steel Co v Detroit*, 45 Mich App 671, 674; 207 NW2d 194 (1973), this Court interpreted the term "mutual mistake" as used in MCL 211.53a, and in doing so, examined the relationship between MCL 211.53a and MCL 211.53b, which are in pari materia. *Id.* This Court noted that MCL 211.53b listed errors in assessment figures, application of the proper tax rate, and mathematics as the types of errors or mistakes with which it was intended to deal, and concluded that those were the types of errors or mistakes contemplated by MCL 211.53a. *Id.* at 674-675.

This Court further interpreted MCL 211.53b in *Int'l Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104, 109; 548 NW2d 668 (1996), in which we stated as follows:

> The mistake in the case at bar was not limited to merely recording a number incorrectly on the assessment rolls or performing a mathematical error in arriving at the final assessment figure. Rather, the figure recorded on the assessment rolls was accurate in the sense that it was the number intended by the assessor, albeit that the assessor may well have erred in the determination of what that number should be by failing to consider all relevant facts.

Although MCL 211.53b allows for correction of clerical errors of a "typographical or transpositional nature," the statute does not permit reappraisal or reevaluation in cases in which the assessor failed to consider all relevant data, "even if the root of the assessor's error may have been a ministerial mistake such as the misfiling of a document." *Id.* Based on *Wolverine Steel, supra* at 674, this interpretation also applies to MCL 211.53a.

In the instant case, petitioner's initial petition alleged that due to confusion over the status of its tax abatement, clerical error, and mistake, its 2000 personal property assessment was in error. Petitioner asserted that the error occurred when the township assessor changed petitioner's assessment so that some of its equipment was double assessed. Petitioner first requested relief pursuant to MCL 211.53a, alleging that "due to a clerical error, the December 2000 assessment was added to the prior assessments resulting in an erroneous tax bill being generated." But petitioner does not allege that this double assessment occurred due to an error of a typographical or transpositional nature. As in *Int'l Place Apartments, supra* at 109, the figure recorded on the assessment rolls was accurate in the sense that it was the number intended by the assessor. Although the assessor may have relied on mistaken information or failed to consider all of the relevant facts, MCL 211.53a does not permit reappraisal or reevaluation of such errors. *Id.*; *Wolverine Steel, supra*. Therefore, the MTT properly held that MCL 211.53a did not apply.

Therefore, respondent was entitled to judgment as a matter of law and summary disposition pursuant to MCR 2.116(C)(4) was appropriate.[1]

Petitioner's final argument is that the MTT erred in denying its motion for reconsideration. We review a trial court's denial of a motion for reconsideration for an abuse of discretion. *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 82; 669 NW2d 862 (2003); *In re Beglinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997).

Under MCR 2.119(F)(3), the party moving for reconsideration "must show that the trial court made a palpable error and that a different disposition would result from correction of the error." *Herald Co, supra* at 82. Furthermore, a motion for reconsideration that merely presents the same issues already ruled on by the court generally will not be granted. *Id.* In *Herald Co*, this Court found that the MTT did not abuse its discretion in denying the respondents' motion for reconsideration because it "did not raise any error that misled the court or the parties, but rather questioned the trial court's reasoning and its decisions on issues of law already decided by the court." *Id.* at 83.

In the instant case, petitioner's motion for reconsideration stated that the first amended complaint alleged that an overpayment occurred due to a clerical error by the township assessor. Like the motion in *Herald Co*, petitioner's motion for reconsideration merely questions the MTT's reasoning in its earlier decision refusing to correct petitioner's assessment pursuant to MCL 211.53a. Thus, the tribunal did not abuse its discretion in denying the motion for reconsideration.

Nevertheless, petitioner asserts that the tribunal erred in stating that the there was "no mutuality given petitioner's preparation of the personal property statement at issue." It contends that this created a per se rule that any error arising out of a personal property statement cannot provide the basis for a mutual mistake of fact. In asserting that this constitutes error, petitioner cites the following description of a mutual mistake of fact from *Wolverine Steel, supra* at 674:

> We believe [section 211. 53a] alludes to questions of whether or not the taxpayer had listed all of its property, or listed property that it had already sold or not yet received, etc.

As petitioner argues, these examples constitute mistakes that would arise in the context of a personal property statement prepared by a taxpayer. To the extent that the MTT's decision states that such statements can never provide the source of a mutual mistake of fact, it is in error. But petitioner never asserted the existence of a mutual mistake of fact as a basis for invoking MCL 211.53a. Rather, its first amended petition and motion for reconsideration only allege the existence of a clerical error and a "mistake." As noted above, the error asserted does not

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[1] Petitioner has suggested that it should be entitled to produce evidence to the MTT to establish that a mutual mistake occurred. However, petitioner had that opportunity when respondent filed its motion for summary disposition, but petitioner did not file a response to that motion. Petitioner's own failure to submit a response cannot be a ground for reversal on appeal.

constitute the type of clerical error for which MCL 211.53a provides a remedy. The MTT correctly held that the purported error was not of a typographical or transpositional nature as required by *Int'l Place Apartments, supra* at 109. We find that petitioner has failed to show the existence of a palpable error and that a different disposition would result from correction of the error as required by MCR 2.119(F)(3). Therefore, the MTT did not abuse its discretion.

We have not ignored petitioner's argument that the MTT decision was inequitable. After all, it is undisputed that respondent has received a double payment of taxes from petitioner. However, the MTT's powers are limited to those granted by statute, *Federal-Mogul Corp v Dep't of Treasury,* 161 Mich App 346, 359; 411 NW2d 169 (1987), and because no statute authorizes the MTT to base it's decision on equity, it could not consider petitioner's pleas (had it filed a response to the motion) based on that theory. *Id.*; *Electronic Data Systems Corp, supra* at 547-548.[2]

Affirmed.

/s/ Kathleen Jansen
/s/ Christopher M. Murray

[2] The dissent incorrectly asserts that the parties agree that a "mutual mistake" occurred, for respondent has surely made no such concession. Respondent instead concedes that a mistake was made, but argues that it was not a mutual mistake as defined under the statute. Finally, contrary to the dissent, we believe petitioner lost its opportunity to prove mutual mistake when it failed to file a response to respondent's motion to dismiss.