STATE OF MICHIGAN

COURT OF APPEALS

STATE TREASURER,

Petitioner-Appellee,

v

RITA C. FERGUSON,

Respondent-Appellant.

UNPUBLISHED
September 18, 2007

No. 269669
Livingston Circuit Court
LC No. 05-021494-CZ

Before: Bandstra, P.J., Zahra and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from a foreclosure judgment against her real property. Respondent is the former record owner of the property, and in two prior actions before the Michigan Tax Tribunal, she challenged the propriety of a special assessment against the property by Hamburg Township (the township), where the property is located. We affirm.

Respondent owned a four-unit apartment building (the property) in the township. In April 2000, the township informed potentially-affected property owners by mail that it was proposing a sanitary sewer special assessment district. According to respondent, she met with the township supervisor shortly after receiving the letter and informed him that she had a new address, and he assured her that her address would be changed in the tax assessment records. The township then sent affected property owners two notices of public hearings at which owners would have the opportunity to challenge the placement of their property in the special assessment district. Respondent denied receiving those notices. She also denied that a township engineer orally informed her of any public hearings. In December 2001, respondent received her 2001 winter tax bill and an amortization schedule providing that a charge of $3,740.75 for the special assessment district was then due, and that the total charge of $38,073.79 against the property would be amortized over 20 years.

In May 2002, respondent (then petitioner) appealed to the Michigan Tax Tribunal, challenging the special assessment against the property for lack of proper notice and an opportunity to be heard. The Tribunal sua sponte dismissed respondent's appeal for lack of jurisdiction under MCL 05.735(2) because she failed to appeal within 30 days of the notice of the assessment. In *Ferguson v Twp of Hamburg*, unpublished opinion per curiam of the Court of Appeals, issued April 13, 2004 (Docket No. 243852) (*Ferguson I*), slip op at 2-3, another panel of this Court rejected respondent's argument that the jurisdictional constraints of MCL 205.735 did not apply because she had not received effective legal notice. This Court reasoned that under MCL 41.724a(5) and MCL 211.744, there was sufficient evidence to support the tribunal's

dismissal of the appeal because, in fact, there was evidence before the tribunal to show that respondent received notice of at least one public hearing and had paid the December 2001 portion of the assessment.[1]

Beginning in 2004, respondent began receiving utility/sewage bills for services purportedly provided to the property, and later received a 2004 winter tax bill for $8,974.78, which included a charge of $3,510.64 for the special assessment. In January 2005, respondent (then petitioner) again filed an action with the Tax Tribunal, which was again dismissed for lack of jurisdiction under MCL 205.735. In *Ferguson v Twp of Hamburg*, unpublished opinion per curiam of the Court of Appeals, issued August 8, 2006 (Docket No. 267597) (*Ferguson II*), slip op at 2-4, another panel of this Court affirmed, reasoning that respondent's claims were barred by res judicata and precluded by collateral estoppel.

In 2006, petitioner sought to foreclose on the property for unpaid taxes. The trial court ultimately entered a judgment of foreclosure.

Respondent relies on MCL 211.78k(2)(c) in arguing that the special assessment should be invalidated as illegally levied because she failed to receive adequate notice of the special assessment hearings. She argues that she was denied due process and that the trial court erred by failing to directly address her argument. We disagree.

Whether an individual has been afforded due process presents a question of law that we review de novo. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005). We also review de novo questions of statutory interpretation. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). The primary goal of statutory interpretation is to effectuate the intent of the Legislature, and this is accomplished by examining the plain language of the statute. *Id.* at 526-527. A state cannot deprive an individual of property without due process of law. *Reed*, *supra* at 159. Due process affords individuals whose property interests are at stake notice and an opportunity to be heard. *Dusenbery v United States*, 534 US 161, 167; 122 S Ct 694; 151 L Ed 2d 597 (2002).

Under MCL 41.721, townships have the authority to make certain improvements to land and to defray the costs of these improvements by collecting special assessments from those property owners who benefit as a result. MCL 41.724 outlines the requirements for a township board to proceed depending on the type of improvement desired, and mandates that a property owner receive notice, as outlined under MCL 41.724a, and a hearing in which she has the opportunity to contest the assessment. MCL 41.724a details the notice requirements, but also provides in subsection (5) that "[a] special assessment shall not be declared invalid as to any property if the owner or the party in interest of that property actually received notice, waived notice, or paid any part of the assessment." MCL 211.744 similarly provides that a special assessment hearing is validated if any of the three circumstances listed in MCL 41.724a(5) is satisfied. When respondent (then petitioner) filed her first petition with the Tax Tribunal,

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[1] The assessment was paid by plaintiff's mortgagee, who was authorized to do so pursuant to the terms of the mortgage agreement.

MCL 205.735 required that she file the petition within 30 days of the final decision in order to challenge the decision.

In *Ferguson I*, *supra*, this Court concluded that the Tax Tribunal's decision that it lacked subject matter jurisdiction by operation of MCL 205.735 was supported by substantial evidence. In making this conclusion, this Court relied on MCL 41.724a(5) and MCL 211.744 to reject respondent's (then petitioner's) argument that she never received proper notice of the hearings. *Ferguson I*, *supra*, slip op at 2-3. This Court reasoned that the Tribunal's findings were conclusive because the township's engineer gave respondent oral notice of at least one public hearing, and because respondent's mortgage company paid a portion the special assessment. *Id.*

In light of *Ferguson I*, *supra*, we conclude that respondent's claims, except for one, are barred by res judicata. Res judicata "bars a second, subsequent action when (1) the prior action was decided on the merits, (2) the actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first case." *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004). Res judicata is broadly applied, and bars "not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Id.*

Here, as was concluded in *Ferguson II*, *supra*, res judicata bars respondent from contesting the validity of the special assessment hearings and the special assessment for statutory purposes because those issues were raised and decided in *Ferguson I*, *supra*, for purposes of determining whether the Tax Tribunal had jurisdiction to hear respondent's claim. See *Ferguson II*, *supra*, slip op at 2-3. Further, by operation of this Court's conclusion in *Ferguson I*, *supra*, that there was evidence that respondent received actual notice of a public hearing, res judicata bars respondent from arguing that she was not afforded due process in regard to the special assessment hearings and resulting special assessment against her property. *Ferguson I*, *supra*, at 2. Although not directly decided in *Ferguson I*, *supra*, a necessary corollary of providing someone with actual notice of a hearing is that the individual was provided with due process, i.e., the individual was apprised of the hearing and thereby afforded an opportunity to be heard. Moreover, all the issues raised on appeal, save one, could have been resolved in the initial appeal but for respondent's failure to attend the hearing and to file a timely petition. The one exception is the allegation that the township improperly assessed a lien against the property for sewage services that were never provided, contrary to MCL 123.162. However, even assuming arguendo that the lien for sewage system services was improperly levied against the property, a property may be foreclosed upon for unpaid taxes that are validly assessed. Accordingly, the foreclosure judgment was properly entered against the property based on the delinquent assessment payments. MCL 41.730; MCL 211.78a.

Affirmed.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra
/s/ Donald S. Owens