

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

---

CHERYL WALTON and JOHN GOSS,

Plaintiffs-Appellants,

v

WHITEWATER TOWNSHIP,

Defendant-Appellee.

---

UNPUBLISHED

October 16, 2008

No. 274969

Grand Traverse Circuit Court

LC No. 06-025443-CZ

Before: Wilder, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the order dismissing this action for lack of subject-matter jurisdiction and denying injunctive relief. We affirm.

This action for injunctive relief arose after defendant Whitewater Township received two separate petitions at different times to pave certain roads located within the township. The first petition listed four roads to be paved while the second petition added a fifth road. Thereafter, bids for the tentative construction project were received, and, on August 1, 2006, a public hearing was held before the township board, which ultimately adopted a resolution creating a special assessment district to pave all five roads at an estimated cost of \$2,500,000. The township board also determined that the petitions were properly signed by owners of land whose frontage constituted more than 50 percent of the total frontage upon the proposed improvement, as required under MCL 41.723(3)(b). On August 17, 2006, the township board adopted a resolution setting the assessment roll for the special assessment district and establishing the duration of the special assessment.

On September 12, 2006, plaintiffs filed this action against the township for injunctive relief, challenging the validity of the special assessment based primarily on the fact that the majority of the petitioners signed the petition to pave only four roads, while only a few signed the petition to pave five roads. Among other arguments, plaintiffs also challenged the township's decision to allow certain owners of larger parcels an option to reduce their special assessment liability by giving the township a recordable covenant waiving development rights for 15 years; plaintiffs argued that this disproportionately raised the assessment against those landowners who did not have or were not given the option. In lieu of filing an answer, the township moved for summary disposition under MCR 2.116(C)(1) and (4), asserting that the Tax Tribunal had exclusive subject-matter jurisdiction over the challenged special assessment under MCL 205.731(a), and it also moved under subrule (C)(7), asserting that plaintiffs' complaint was

untimely under MCL 41.725. Ultimately, the trial court dismissed this action for lack of subject-matter jurisdiction based on MCL 205.731(a) and denied injunctive relief, reasoning that plaintiffs had an adequate remedy at law if they were to prevail before the Tax Tribunal. This appeal followed.

Plaintiffs challenge the trial court's decision to dismiss this action for lack of jurisdiction. "Whether a court has subject-matter jurisdiction is a question of law subject to review de novo." *In re Wayne Co Treasurer*, 265 Mich App 285, 290; 698 NW2d 879 (2005). Moreover, resolving this issue involves questions of statutory interpretation, which are also reviewed de novo. *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005). "The primary goal of statutory interpretation is to ascertain and give effect to the Legislature's intent," and "[t]he Legislature is presumed to have intended the meaning it plainly expressed." *Linsell v Applied Handling, Inc*, 266 Mich App 1, 15; 697 NW2d 913 (2005). If statutory language is clear and unambiguous, then a court is required to apply the statute as written. *Id.*

MCL 205.731(a), part of the Tax Tribunal Act, MCL 205.701 *et seq.*, provides the Tax Tribunal with exclusive jurisdiction over a "direct review of a final decision . . . relating to . . . special assessments . . . ." The Tax Tribunal generally has exclusive jurisdiction over a challenge to a governmental unit's decision concerning a special assessment for a public improvement, even when the challenge is couched in constitutional terms, but it lacks jurisdiction to decide constitutional questions or to find statutes unconstitutional. *Wikman v Novi*, 413 Mich 617, 645-647; 322 NW2d 103 (1982). Further, a challenge based on the defendant's alleged failure to follow statutory procedures with regard to the assessment of real property is within the exclusive jurisdiction of the Tax Tribunal. See *Johnston v Livonia*, 177 Mich App 200, 207-208; 441 NW2d 41 (1989), and *Jackson Dist Library v Jackson Co No 2*, 146 Mich App 412, 417-418; 380 NW2d 116 (1985), *rev'd on other grounds* 428 Mich 371 (1987). However, when injunctive relief is sought and a constructive fraud claim is brought to challenge the use of funds collected from a special assessment, and the claim is not related to the factual underpinnings of the relevant assessments, the Tax Tribunal lacks jurisdiction. *Romulus City Treasurer v Wayne Co Drain Comm'r*, 413 Mich 728, 737-739; 322 NW2d 152 (1982). Further, the Tax Tribunal does not have exclusive jurisdiction to resolve common-law tort or contract claims. *Highland-Howell Dev Co, LLC v Marion Twp*, 469 Mich 673, 678; 677 NW2d 810 (2004).

Plaintiffs claim that the Tax Tribunal did not have exclusive jurisdiction here, arguing that the "partial abatement in exchange for covenants" scheme and the use of the two different petitions related to constitutional or common-law claims that are not within the purview of that agency's expertise. We disagree.

A court will look beyond a plaintiff's labels to determine the true gravamen of the claims alleged in the pleadings. *Klein v Kik*, 264 Mich App 682, 686; 692 NW2d 854 (2005). Plaintiffs' complaint partly involved a challenge to the board's adoption of the two petitions as one petition, allegedly in violation of MCL 41.723. Similar in pertinent respects to the challenge in *Jackson Dist Library*, *supra* at 415-418, plaintiffs asserted that the creation of the special assessment district was unauthorized by statute, given the two separate petitions. Accordingly, we conclude that this claim was within the Tax Tribunal's exclusive jurisdiction over challenges to the validity of special assessments. *Johnston*, *supra* at 207-208.

On appeal, plaintiffs also mention the township's decision to allow certain owners of large parcels the option to reduce their special assessment liability by giving the township a recordable covenant; plaintiffs claim that this was unauthorized by statute and case law. Again, similar to the challenge in *Jackson Dist Library, supra* at 415-418, plaintiffs' challenge was within the Tax Tribunal's exclusive jurisdiction over challenges to the validity of special assessments. See also *Johnston, supra* at 207-209. Plaintiffs also challenge the township board's actions as affecting the special assessment roll by allocating a disproportionate share of the cost of improvements to their property; this claim was also within the Tax Tribunal's exclusive jurisdiction. See *Highland-Howell, supra* at 676 n 4.

Plaintiffs, in their appellate briefs, have failed to provide any persuasive arguments indicating that the trial court erred in concluding that it lacked subject-matter jurisdiction. Given that we are upholding the lack of subject-matter jurisdiction, plaintiff's remaining claims on appeal are moot.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ William B. Murphy  
/s/ Patrick M. Meter