

STATE OF MICHIGAN
COURT OF APPEALS

JAMES LOOMIS,

Petitioner-Appellant,

v

NEWBERG TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED

December 11, 2008

No. 279802

Michigan Tax Tribunal

LC No. 00-306163

Before: Saad, C.J., and Fitzgerald and Beckering, JJ.

PER CURIAM.

In this property tax dispute, petitioner appeals as of right the July 6, 2007, decision of the Michigan Tax Tribunal on remand from this Court dismissing petitioner's claims for lack of jurisdiction. We reverse and remand for further proceedings.

Our review of a tribunal decision is very limited. *Walgreen Co v Macomb Twp*, 280 Mich App 58, 61; ___ NW2d ___ (2008). We review tribunal decisions "to determine whether they are authorized by law and whether the factual findings are supported by competent, material, and substantial evidence on the whole record." *APCOA, Inc v Dep't of Treasury*, 212 Mich App 114, 117; 536 NW2d 785 (1995).

First, petitioner argues that the tribunal erred in failing to consider his poverty exemption claim for 2004. We disagree. "The law of the case doctrine provides that if an appellate court has decided a legal issue and remanded the case for further proceedings, the legal issue determined by the appellate court will not be differently decided on a subsequent appeal in the same case where the facts remain materially the same." *Grace v Grace*, 253 Mich App 357, 362; 655 NW2d 595 (2002). In petitioner's first appeal to this Court, we unambiguously ruled that petitioner failed to timely file his 2004 poverty exemption application with the respondent township and remanded for further proceedings on his 2005 application alone. *Loomis v Newberg Twp*, unpublished opinion per curiam of the Court of Appeals, issued March 27, 2007 (Docket No. 265866), slip op at 3. Because we issued a final ruling on petitioner's 2004 poverty exemption claim and he does not argue that any new facts should be considered, we will not readdress the issue. *Grace, supra* at 362.

Second, petitioner raises two allegations of fraud: 1) the tribunal's initial finding that petitioner did not file a poverty exemption application for 2005; and 2) the tribunal's determination on remand that it lacked jurisdiction over petitioner's 2005 poverty exemption

claim because he failed to appeal respondent's denial of the claim in the tribunal. Petitioner's first allegation is moot because we already held that such an application was filed and vacated the tribunal's decision in that regard. *Loomis, supra*, slip op at 3. A claim is moot when it presents an issue that does not rest on existing facts or when an event occurs that renders it impossible for a reviewing court to grant relief. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

As to the second allegation, "the plain language of the Tax Tribunal Act, MCL 205.701 *et seq.*, vests the Tax Tribunal with exclusive jurisdiction to hear claims for exemptions under [MCL 211.7u] following a taxpayer's unsuccessful request for the exemption before a board of review." *Nicholson v Birmingham Bd of Review*, 191 Mich App 237, 239; 477 NW2d 492 (1991). MCL 205.735(3) states that "the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision" We conclude, however, that the tribunal mistakenly relied on MCL 205.735(3) and *Loomis, supra*, slip op at 3 n 1, in determining that it lacked jurisdiction over petitioner's 2005 poverty exemption claim. We conclude that the tribunal had jurisdiction over petitioner's claim pursuant to MCL 205.737(5).

MCL 205.737(5) states, in pertinent part:

(5) A motion to amend a petition to add subsequent years is not necessary in the following circumstances:

* * *

(b) If the residential property and small claims division of the tribunal has jurisdiction over a petition, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition. The residential property and small claims division *shall* automatically add to an appeal of a final determination of a claim for exemption of a principal residence or of qualified agricultural property each subsequent year in which a claim for exemption of that principal residence or that qualified agricultural property is denied. [Emphasis added.]

"The goal of statutory interpretation is to discern and give effect to the intent of the Legislature from the statute's plain language." *Houdek v Centerville Twp*, 276 Mich App 568, 581; 741 NW2d 587 (2007). "If the meaning of a statute is clear and unambiguous, then judicial construction to vary the statute's plain meaning is not permitted." *Id.* "A necessary corollary to the plain meaning rule is that courts should give the ordinary and accepted meaning to the mandatory word 'shall' and the permissive word 'may'" *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982).

The tribunal initially held that petitioner had not filed a 2005 poverty exemption application, but that it had jurisdiction over his poverty exemption claims for 2003 and 2004 because he timely appealed respondent's denial of those claims. *Loomis v Newberg Twp*, unpublished opinion of the Tax Tribunal, issued September 30, 2005 (Docket No. 306163), p 15. Based on the plain language of MCL 205.737(5)(b), petitioner's appeal of his 2005 poverty exemption denial was automatically added when the tribunal addressed his 2003 and 2004

poverty exemption denials, and MCL 205.735(3) no longer governed petitioner's appeal. Accordingly, we conclude that the tribunal had jurisdiction over petitioner's 2005 poverty exemption claim and reverse the tribunal's decision.

Third, petitioner argues that he is entitled to a review of the guidelines used by respondent to determine if a poverty exemption should be granted. We decline to address this issue. There is no indication in the record that petitioner raised this issue before the tribunal and we need not address issues raised for the first time on appeal. *Herald Co v Kalamazoo*, 229 Mich App 376, 390; 581 NW2d 295 (1998). Moreover, petitioner has provided no basis from which we can conclude that a review of the guidelines is necessary. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *Vanderwerp v Plainfield Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008).

Reversed and remanded for further proceedings on petitioner's 2005 poverty exemption claim. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering