

STATE OF MICHIGAN
COURT OF APPEALS

PETER KANEFSKY, JOHN RIS, JR., MICHAEL
TASICH, AMELIA TASICH, ALBERT
LATINSKY, LUBOR LATINSKY, GAYLE
MCGREGOR, MICHAEL MCGREGOR, GREG
LESHMAN, STEPHEN CRANE, JACK DOUSE,
MARY DOUSE and LINDA FISHER,

Plaintiffs-Appellants,

v

VINCENT ALESSI a/k/a VINCE ALESSI,
STEVE GEORGE and UPPER LONG LAKE
WOODS CIVIC ASSOCIATION,

Defendants,

and

LAKE IMPROVEMENT BOARD OF UPPER
LONG LAKE, CHARTER TOWNSHIP OF
BLOOMFIELD and CHARTER TOWNSHIP OF
WEST BLOOMFIELD

Defendants-Appellees.

Before: Davis, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted an order granting partial summary disposition in favor of the municipal defendants pursuant to MCR 2.116(C)(4), on the grounds that the Michigan Tax Tribunal had exclusive subject matter jurisdiction over the claims addressed in the order.¹ The

¹ These claims are counts I through VI of plaintiffs' First Amended Complaint. The record shows that plaintiffs agreed to dismiss Count VII voluntarily, and the remaining counts are not at issue in this appeal.

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sole issue before us is whether the trial court correctly determined that it lacked subject matter jurisdiction. We affirm.

This appeal arises from the area around Upper Long Lake, a private lake that lies partially in Bloomfield Township and partially in West Bloomfield Township, in Oakland County. Several streams or canals connect to Upper Long Lake, including the Mallard Court Canal, at the northwest corner of the lake, in West Bloomfield Township. The plaintiffs in this matter are allegedly all property owners who live in “Upper Long Lake Woods Subdivision or Upper Long Lake Subdivision No. 1” and who have access to Upper Long Lake itself by virtue of outlots, but they have no frontage on Mallard Canal. Defendant Lake Improvement Board of Upper Long Lake (the Lake Board) was established in March of 1984 by a petition of 2/3 of the property freeholders around Upper Long Lake and resolutions of the two townships, pursuant to MCR 324.90902 of the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq.* In 2006, the Lake Board had apparently commenced a dredging project in another canal on Upper Long Lake and determined that, because the contractor was already on-site and because “mobilization costs” were a large portion of the total cost, it would probably make sense to dredge all of the canals at once. The Lake Board held public hearings on the topic of dredging Mallard Court Canal, and, over plaintiffs’ formal objections, the Lake Board determined that it would proceed with dredging the Mallard Court Canal. On October 23, 2007, the Lake Board confirmed a special assessment roll to fund the dredging.

The gravamen of this lawsuit is that plaintiffs do not want the dredging to take place. The counts of plaintiffs’ complaint at issue in this appeal each contained, among other requests for mostly declaratory relief to the effect that the municipal defendants had acted contrary to law, requests to “set aside the assessment roll confirmed by Defendant Lake Board on October 23, 2007.” They also all contained requests to order the municipal defendants to comply with MCL 324.30901, MCL 324.30902, or MCL 324.30903 before the Lake Board “may proceed and cause any new petition to be made for the Mallard Court Canal dredging and/or any other assessment.” The municipal defendants moved for summary disposition on, in relevant part, the grounds that the remaining claims were within the exclusive and original jurisdiction of the Michigan Tax Tribunal. The trial court held a hearing and agreed.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). “In reviewing a grant of summary disposition pursuant to MCR 2.116(C)(4) or (C)(10), we consider the affidavits, pleadings, depositions, admissions and other documentary evidence submitted to determine whether the defendant 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 to warrant a trial.” *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). This Court likewise reviews de novo questions of statutory construction, with the fundamental goal of giving effect to the intent of the Legislature. *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 347; 656 NW2d 175, amended on other grounds 468 Mich 1216 (2003).

The jurisdiction of the Michigan Tax Tribunal is specified by statute in MCL 205.731, which provides in relevant part as follows:

The tribunal has exclusive and original jurisdiction over all of the following:

(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 the property tax laws of this state.

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

The circuit court retains exclusive jurisdiction over constitutional matters and granting of “equitable relief to enforce decisions of the tax tribunal,” but MCL 205.731 divests the circuit court of jurisdiction over the subject matter and type of requested relief specified therein. *Johnston v Livonia*, 177 Mich App 200, 204-206; 441 NW2d 41 (1989). Special assessments of the kind at issue here, levies against property by a municipality for local public improvements, are within the Tax Tribunal’s jurisdiction; furthermore, that jurisdiction is not restricted “only to the ministerial acts involved in the collection of special assessments.” See *Wikman v Novi*, 413 Mich 617, 630-640; 322 NW2d 102 (1982).

Plaintiffs contend that their claims are not a direct challenge to the special assessment, notwithstanding their prayers for relief. However, the plain language of MCL 205.731(a) extends the Tax Tribunal’s exclusive jurisdiction to more than just assessments *per se*. Indeed, our Supreme Court summarized *Wikman*, *supra*, as a case in which “the plaintiffs sought injunctive relief in the circuit court, alleging that the special assessments imposed on them had been determined in an arbitrary and capricious manner,” and that this amounted to a claim seeking direct review of a decision concerning a special assessment.” *Highland-Howell Dev Co v Marion Twp*, 469 Mich 673, 676-677; 677 NW2d 810 (2004). Significantly, the Tax Tribunal’s expertise “can be seen to relate primarily to questions concerning the factual underpinnings of taxes,” thus making it suited to evaluate “whether the [special] assessments are levied according to the benefits received” and “other questions concerning the lawfulness of challenged special assessments,” but not how any funds so collected may be used. *Romulus City Trasurer v Wayne Co Drain Comm’r*, 413 Mich 728, 737-739; 322 NW2d 152 (1982).

Notwithstanding plaintiffs’ protestations to the contrary, the complaint simply does not allege any sort of common-law tort claim. It does allege that defendants failed to follow proper statutory procedures in deciding to conduct the Mallard Canal dredging project. However, the decision to undertake the Mallard Canal dredging project is fundamentally a decision relating to a special assessment. In fact, the statutory provisions that defendant allegedly violated (MCL 324.30901, MCL 324.30902, or MCL 324.30903) are part of a statutory scheme for inland lake improvement entailing *establishment of a special assessment district* to do so. See MCL 324.30908² and, more significantly, MCL 324.30920.³ Plaintiffs’ challenge to the defendants’

² “The lake board, when instructed by resolution of the local governing body, shall determine the scope of the project and shall establish a special assessment district, including within the special assessment district all parcels of land and local units which will be benefited by the improvement
(continued...) ”

conduct under MCL 324.30901, MCL 324.30902, or MCL 324.30903 constitutes a challenge to decisions relating to the special assessment.

Irrespective of the equitable nature of the relief plaintiffs seek, the claims at issue in this appeal are all fundamentally challenges to a special assessment. The trial court correctly determined that the Michigan Tax Tribunal had exclusive and original subject-matter jurisdiction over those claims, and it therefore properly granted summary disposition pursuant to MCR 2.116(C)(4).

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Karen M. Fort Hood

(...continued)

of the lake...”

³ “Whenever, in the opinion of the lake board, any special assessment is invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction adjudges such assessment illegal, the lake board, whether the improvement has been made or not and whether any part of the assessment has been paid or not, may proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on that reassessment and for the collection of the assessment shall be conducted in the same manner as provided for the original assessment. Whenever an assessment or any part of an assessment levied upon any premises has been set aside, if the assessment or part of an assessment has been paid and not refunded, the payment shall be applied upon the reassessment.”