STATE OF MICHIGAN

COURT OF APPEALS

REMA VILLAGE MOBILE HOME PARK, d/b/a EAGLE LAKE ESTATES, Petitioner-Appellant,	UNPUBLISHED February 4, 2010
v	No. 287166 Michigan Tax Tribunal
ONTWA TOWNSHIP, Respondent-Appellee.	LC No. 00-273828

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

PER CURIAM.

Petitioner appeals as of right the tax tribunal's judgment, which granted petitioner's request for a refund of payments made on an invalid special assessment, but denied petitioner's requests to cancel a sewer-usage fee and capital cost assessment, to refund amounts previously paid for those items, and to order costs and attorney fees. We affirm.

This is the third time that the parties are before this Court on this matter. In *Rema Village Mobile Home Park v Ontwa Twp (Rema Village I)*, unpublished opinion per curiam of the Court of Appeals, issued October 27, 2005 (Docket No. 256295), petitioner appealed the tax tribunal's judgment affirming respondent's special assessment of $204,050 for a municipal sewer system. In affirming the special assessment, the tax tribunal concluded that "the municipal sewer system and the special assessment imposed on petitioner to pay for it resulted in a decrease in the value of petitioner's property," but found further that the special assessment was valid, because a municipal sewer system promoted better public health. *Id*., at slip op 2. This Court reversed the tax tribunal's legal conclusion regarding the special assessment, because the special assessment decreased the true cash value of petitioner's property. *Id.* slip op at 4.

Petitioner subsequently moved the tax tribunal "for entry of order to refund special assessment," requesting that the tribunal cancel the special assessment against petitioner's property and issue a refund for the amounts previously paid thereon, and that the tax tribunal cancel the monthly sewer-usage fee, issue a refund for the amounts already paid for that fee, and award a recovery of legal expenses from respondent. See *Rema Village Mobile Home Park v Ontwa Twp (Rema Village II)*, 278 Mich App 169, 171; 748 NW2d 896 (2008). The tax tribunal denied petitioner's motion, "concluding that it lacked jurisdiction 'over this issue' because this Court 'did not remand the case to the Tribunal.'" *Id.* On appeal, this Court concluded that the tax tribunal erroneously held that it lacked jurisdiction over petitioner's motion, which

substantially sought to enforce this Court's previous decision regarding the special assessment, explaining that, "[i]t is enough for this limited issue that the Tax Tribunal's order denying petitioner's motion on jurisdictional grounds is vacated, that the Tax Tribunal's jurisdiction over enforcement proceedings is reiterated, and that the case is remanded to the Tax Tribunal for proceedings to enforce this Court's earlier decision." *Id*., at 172. This Court also rejected petitioner's request for attorney fees, because petitioner cited no legal authority or doctrine to support its request. *Id.* at 173.

Following the second appeal, petitioner again moved the tax tribunal for entry of order to refund special assessment, requesting that the tribunal cancel the special assessment against petitioner's property, issue a refund for the amounts previously paid for the special assessment, cancel the monthly sewer-usage fee, refund amounts previously paid for that fee, cancel all capital costs for petitioner, refund amounts previously paid for the capital costs, and award costs and attorneys fees in favor of petitioner against respondent.[1] The tribunal determined that petitioner was "entitled to a refund of all monies paid toward the invalid special assessment," but it denied petitioner's requests relating to payment of the monthly sewer-usage fees and the capital costs and it denied petitioner's request for costs and attorneys fees.

On appeal, petitioner first claims that respondent filed three specific documents in violation of MCR 2.114(D)[2]: the June 21, 2002 valuation disclosure, the September 28, 2006 answer to petitioner's motion for entry of order to refund special assessment, and the March 8, 2008 motion for evidentiary hearing, and that, consequently, petitioner is entitled to sanctions pursuant to MCR 2.114(E).[3] We disagree. Petitioner cites two filings by respondent that

---

[1] The "capital costs" are a portion of the monthly sewer-usage fee.

[2] MCR 2.114(D) provides:

> The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
>
> (1) he or she has read the document;
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

[3] MCR 2.114(E) provides:

> If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to

(continued…)

occurred before we issued our published opinion in *Rema Village II*, 278 Mich App at 173, where we expressly rejected petitioner's request for legal expenses. Therefore, we conclude that the law of the case doctrine bars petitioner from recovering costs and attorney fees resulting from these filings. See *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 91; 662 NW2d 387 (2003). Further, petitioner did not make any claim for costs and fees relating to the third of respondent's filings about which petitioner now complains before the tax tribunal and the tax tribunal did not address or decide whether sanctions were appropriate for that filing. Therefore, the issue whether sanctions should be granted for the filing of that document is unpreserved, and we need not consider it further. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 721; 706 NW2d 426 (2005). Nevertheless, we have reviewed the record and conclude that none of the challenged filings cited by petitioner were in violation of MCR 2.114(D), and therefore petitioner was not entitled to sanctions pursuant to MCR 2.114(E).

Petitioner also argues on appeal that the monthly sewer-usage fee and capital costs assessed by respondent are invalid under *Bolt v City of Lansing*, 459 Mich 152; 587 NW2d 264 (1998). However, this *Bolt* argument was not raised before, addressed or decided by the tax tribunal; thus, it is not preserved for appellate review. *Polkton Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). As such, we need not consider it. *Royal Prop Group, LLC*, 269 Mich App at 721; *Polkton*, 265 Mich App at 95. Further, petitioner's cursory treatment of this issue constitutes abandonment on appeal. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). We also note that the tax tribunal essentially concluded that it did not have jurisdiction of petitioner's claim regarding the monthly sewer-usage fee. We agree. MCL 205.731 provides a specific grant of jurisdiction, which does not include fees. And, if a user fee is invalid under *Bolt*, 459 Mich at 161-162, 169, then it is a tax in violation of the Headlee Amendment. The tax tribunal does not have jurisdiction to entertain a claim of such a violation. Const 1963, art 9, § 32; MCL 600.308a(1). Finally, the statute of limitations has run on any Headlee Amendment violation claim, where petitioner began paying the monthly sewer-usage fee on June 25, 2001, and did not challenge that fee until September 7, 2006. "A taxpayer shall not bring or maintain an action under [MCL 600.308a, the statute regarding actions under the Headlee Amendment] unless the action is commenced within 1 year after the cause of action accrued." MCL 600.308a(3).

We affirm.

/s/ Richard A. Bandstra
/s/ David H. Sawyer
/s/ Donald S. Owens

(…continued)

pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.