

STATE OF MICHIGAN
COURT OF APPEALS

ASHLAND TOWNSHIP,

Plaintiff-Appellee,

v

BAM EXCAVATING,

Defendant-Appellant.

UNPUBLISHED

May 18, 2010

No. 289723

Newaygo Circuit Court

LC No. 08-013917-AV

Before: BANDSTRA, P.J., and FORT HOOD and DAVIS, JJ.

PER CURIAM.

Defendant BAM Excavating appeals by leave granted from the circuit court order affirming a money judgment in favor of plaintiff Ashland Township arising from a collection action for unpaid personal property taxes. We affirm.

Plaintiff township filed a collection action in district court to recover unpaid personal property taxes. Defendant answered the complaint, asserting that plaintiff township could only assess tangible personal property within its jurisdiction and that it failed to ascertain the location of the property. Shortly before trial, the parties stipulated to resolve the case by cross-motions for summary disposition. The district court granted plaintiff township's motion for summary disposition and denied defendant's motion for summary disposition. Defendant appealed the decision, but the circuit court affirmed, holding that the challenge to the assessment was within the exclusive jurisdiction of the Tax Tribunal. In its application for leave to appeal, defendant asserted that the legality of the assessment was subject to collateral attack in the trial court, and we granted the application for leave to appeal.

In 1973, the Legislature enacted the Tax Tribunal Act. *State Treasurer v Eaton*, 92 Mich App 327, 333; 284 NW2d 801 (1979). The conditions of the Tax Tribunal Act "are effective notwithstanding the provisions of any statute, charter, or law to the contrary." MCL 205.707. MCL 205.731 sets forth the jurisdiction of the Tax Tribunal:

The tribunal's exclusive and original jurisdiction shall be:

(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 property tax laws.

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

The Tax Tribunal Act was designed to secure the prompt and fair resolution of disputes addressing the collection of government revenues. *Wikman v Novi*, 413 Mich 617, 626; 322 NW2d 103 (1982). Before the Tax Tribunal Act, the taxpayer could appeal a decision to the State Tax Commission or pay the tax under protest and bring an action in circuit court for a refund, but special assessments were governed by a different standard. *Id.* at 627-628. The breadth of available remedies led to forum shopping and increased the potential for inconsistent decisions. *Id.* at 628. To rectify these issues, the Tax Tribunal Act was passed with its reservation of exclusive jurisdiction. *Id.* at 628-629. The legislative purpose in vesting the tax tribunal with broad authority over property tax assessment questions was to assure that tax disputes would be resolved “in the first instance by an expert body.” *State Treasurer*, 92 Mich App at 333. The primary functions of the tribunal are to find facts and review the decisions of agencies within its jurisdiction. *Wikman*, 413 Mich at 629. Members of the tribunal must have special qualifications to ensure that it possesses the necessary expertise to resolve the cases efficiently. *Id.* Judicial restraint must be exercised when courts are called upon to interfere with the jurisdiction of an administrative agency. *Judges of the 74th Judicial District v Bay Co*, 385 Mich 710, 727; 190 NW2d 219 (1971). The expediency of the administrative process must function to its capacity without judicial interference. *Id.* at 727-728. This restraint from intrusion allows “the fullest utilization of the technical fact-finding expertise of the administrative agency and permits the fullest expression of the policy of the statute, while minimizing the burden on court resources.” *Id.* at 728.

In *State Treasurer*, 92 Mich App at 329-330, the petitioner sought to sell certain lands belonging to the defendant taxpayer after taxes assessed on the property were unpaid. The defendant challenged the validity of the taxes, contending that he had protested the issue before the board of review only to be referred to other offices. The petitioner acknowledged that the defendant appeared before the board of review to protest the assessment, but noted that the defendant did not seek any other administrative review. The circuit court concluded that the defendant’s property had been overvalued and overassessed and reduced the amount of the taxes. This Court held that the recent creation of the Tax Tribunal precluded circuit court jurisdiction:

We hold that [the] defendant was entitled to collateral review of his tax assessment to determine its validity, but that the circuit court did not have jurisdiction to review the question. By virtue of the provisions of the recently enacted Tax Tribunal Act, the exclusive forum for such review is now the tax tribunal. Because of our decision on this issue, we need not determine whether there was a sufficient showing and finding of fraud below to support the circuit court’s redetermination of [the] defendant’s taxes. [*State Treasurer*, 92 Mich App at 331.]

Contrary to the assertion raised by defendant, the appropriate forum for a collateral attack to the validity of an assessment is the Tax Tribunal, the entity assigned exclusive jurisdiction.

Similarly, in *In re Petition of the Wayne Co Treasurer*, 286 Mich App 108, 109-110; 777 NW2d 507 (2009), the Prayer Temple owned a single parcel of property that contained a church, an activity center, and an outreach center. The treasurer assessed taxes against the property and

the assessment included delinquent water and sewer charges. When the taxes were not paid, a foreclosure action was commenced. The Prayer Temple asserted that the property was used for religious purposes, and therefore, it was exempt from property taxes. The circuit court agreed. On appeal, the issue was whether the circuit court had subject matter to determine whether the property at issue was exempt. This Court held that the Michigan Tax Tribunal had exclusive jurisdiction:

The Prayer Temple specifically argues that the property tax assessment is invalid because the “houses of public worship” exception, MCL 211.7S, applies. The basis for the property tax assessment in this case was the Prayer Temple’s outreach center, which had been leased to a private party at least until 2003. The Treasurer argues that the outreach center falls outside the “houses of public worship” exception in MCL 211.7s. Under the circumstances, we find that resolving this challenge—to a parcel’s exemption status—involves the kind of factual issues that require the Tax Tribunal’s expertise, and it is simply a direct challenge to a tax assessment per se. It therefore falls squarely within the Tax Tribunal’s exclusive jurisdiction. Similar to the Court in *State Treasurer v Eaton*, 92 Mich App 327; 284 NW2d 801 (1979), we conclude that the Tax Tribunal provides the exclusive forum to determine whether the property is exempt from property tax. See *Simmons Airlines, Inc v Negaunee Twp*, 192 Mich App 456, 460-462; 481 NW2d 760 (1992).

This matter is a direct challenge to a tax bill and thus within the Tax Tribunal’s jurisdiction. *Grosse Ile Comm for Legal Taxation v Grosse Ile Twp*, 129 Mich App 477, 486; 342 NW2d 582 (1983). As a matter of law, the circuit court lacked jurisdiction to declare the parcel exempt from property tax. [*Wayne Co Treasurer*, 286 Mich App at 113-114.]

The challenge raised in the present case is a tax bill that was presented for collection. Plaintiff’s township assessor estimated the tax due and owing because defendant failed to timely file documentation. Additionally, after the estimates, defendant informally communicated with plaintiff township, but did not attend hearings before the board of review or the Tax Tribunal. The subject matter of this dispute is within the exclusive jurisdiction of the Tax Tribunal. *Wayne Co Treasurer*, 286 Mich App at 113-114.

Defendant contends that this case is governed by *Continental Motors Corp v Muskegon Twp*, 375 Mich 13, 16; 133 NW2d 163 (1965). In *Continental Motors*, it was *conceded* that the personal property at issue was not taxable at that time. Therefore, when an assessment was void at the outset, the aggrieved party was entitled to attack it directly or collaterally. *Id.* at 18. However, defendant fails to recognize that the Tax Tribunal was created eight years after *Continental Motors* was decided, and the tribunal was given the authority to resolve property tax assessment questions in a timely manner before an expert body and granted exclusive jurisdiction to address assessment issues. *State Treasurer*, 92 Mich App at 333; MCL 205.731(a).

Furthermore, appellate review of Tax Tribunal decisions is very limited. *Columbia Associates, LP v Dep’t of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). Absent a claim of fraud, the Tax Tribunal’s decision is reviewed for misapplication of the law or adoption

of a wrong legal principle. *Briggs Tax Service, LLC v Detroit Public Schools*, ___ Mich ___; ___ NW2d ___ (2010), slip op p 7. The Tax Tribunal’s factual findings are deemed conclusive if supported by competent, material, and substantial evidence on the whole record. *Id.* A direct or collateral challenge to taxation issues in courts of general jurisdiction when exclusive jurisdiction is reserved for the Tax Tribunal will burden court resources, lead to unnecessary delay, and circumvent the limited standard of review applied to tax decisions. Accordingly, the circuit court did not err in affirming the judgment in favor of plaintiff township.¹

Affirmed.

/s/ Richard A. Bandstra

/s/ Karen M. Fort Hood

/s/ Alton T. Davis

¹ We note that defendant’s statement of the issues challenged the legality of the collection action by asserting that jurisdiction was lacking over the property or the taxpayer, erroneous reliance on an amendment to the personal property tax statutes resulted in double taxation, and the availability of a defense. “Generally, an issue is not properly preserved if it is not raised before, addressed, or decided by the circuit court or administrative tribunal.” *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). The issues, as stated by defendant, were not preserved for appellate review because they were not decided by the circuit court. Rather, the circuit court ruled that jurisdiction rested with the Tax Tribunal, and we agree. We note that defendant contends that the personal property at issue was not located in plaintiff township on tax day. When the circuit court questioned whether the factual basis for jurisdiction was in dispute, defendant asserted that there was no factual dispute because the affidavits were un rebutted. Defendant’s assertion is incorrect. “Summary disposition is suspect where motive and intent are at issue or where the credibility of a witness is crucial.” *Foreman v Foreman*, 266 Mich App 132, 135-136; 701 NW2d 167 (2005). When the truth of a material factual assertion is contingent upon credibility, summary disposition should not be granted. *Id.* at 136. Inconsistencies in statements made by witnesses cannot be ignored. *White v Taylor Distributing Co*, 482 Mich 136, 139; 753 NW2d 591 (2008). Review of the documentation submitted in the lower court reveals that plaintiff township corresponded through email with defendant’s representative. It was asserted that the personal property at issue was moved to a different jurisdiction in a tax-free zone, but plaintiff township obtained an affidavit that contradicted defendant’s representation. Additionally, there was no evidence that defendant was burdened with double taxation, and the availability of defenses could have been presented to the Tax Tribunal. The resolution of the underlying factual issues was a matter for the Tax Tribunal.