

STATE OF MICHIGAN
COURT OF APPEALS

HILLSDALE COUNTY SENIOR SERVICES
CENTER, INC., ELLA ASARO, LYLE GREEN,
RUTH GREEN, DONELDA POTTS, JOHN
POTTS, and KERBY RUSHING

UNPUBLISHED
January 3, 2012

Plaintiffs-Appellees,

v

COUNTY OF HILLSDALE,

Defendant-Appellant.

No. 301607
Hillsdale Circuit Court
LC No. 10-000703-CZ

Before: MARKEY, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Defendant Hillsdale County appeals as of right an amended judgment for mandamus that ordered defendant to levy in tax years 2010 through 2022, inclusive, the entire .5 mill limitation authorized by the voters of Hillsdale County in 2008 for the purpose of providing services to older persons in Hillsdale County through plaintiff Hillsdale County Senior Services Center, Inc., a Michigan non-profit organization d/b/a Perennial Park. The individually named plaintiffs are residents of Hillsdale County who receive services from Perennial Park.¹ We reverse.

Perennial Park is organized for such charitable purposes as planning, coordinating, evaluating and providing services to older persons. Perennial Park provides education and offers services to help senior remain at home and independent. It offers services such as Meals on Wheels for homebound elderly, lunch sites, homemaking, personal care, in-home respite care, immunization clinics, lifelong learning and enrichment classes, legal services, counseling and support groups, transportation, and more. Perennial Park is funded by grants, private donations, and fees for service, as well as funds provided by defendant.

Under the Activities or Services to Older Persons Act, MCL 400.571, “[a] local unit of government may appropriate funds to public or private nonprofit corporations or organizations for the purposes of planning, coordinating, evaluating, and providing services to older persons.”

¹ Use of the singular “plaintiff” in this opinion refers to Perennial Park.

MCL 400.573. Pursuant to MCL 400.576, the Hillsdale County Board of Commissioners (the board), as the governing body in which the legislative powers of the county are vested, submitted a millage proposition in August 2008 to the electorate to levy up to .5 mill for services to older persons.² The following ballot language was placed on the ballot:

Shall the limitation on the amount of taxes on the general ad valorem taxes within the County of Hillsdale imposed under Article IX, Section 6, of the Michigan Constitution be increased for said County by .5 mill (\$0.50 per \$1000 of taxable value) for the period of 2008 to 2022, inclusive, for the intended purpose of planning, coordinating and providing services to older persons by Hillsdale County Senior Services Center, Inc., as provided by Public Act 39 of 1976? Shall the county levy such increase in millage for this purpose during such period which will raise in the first year and [sic] estimated \$676,532?

The millage was passed at the August 5, 2008, election. Because Hillsdale County voters had previously passed a senior services millage for authority to levy .5 mill for the time period of 2005-2024, Hillsdale County has current taxing authority totaling a maximum of 1 mill that may be levied by the board to provide services for the older persons of Hillsdale County.

In November 2009 Perennial Park and Hillsdale County entered into a contract for Perennial Park to provide services for seniors from January 1, 2009, through December 31, 2010. The contract provided in part:

II. COUNTY COMPENSATION

A. It is expressly understood and agreed that in no event will the annual compensation to be paid by the County to the Center under this Agreement from the Senior Citizens Millage Fund exceed the sum of revenue from the two millages, unless this Agreement is formally amended. While the July 28, 2005 Lease Agreement between the parties remains in effect, the total compensation paid to the Center shall not be less than the revenue received by the County from the 2004 millage, being one-half (1/2) mill less applicable State required rollbacks (e.g., Headlee/Proposition A).

IV. BUDGET

An annual appropriation request, including available programmatic and financial data, the planned activities of the Center and the services to be provided during the upcoming fiscal year, and the Center's anticipated costs shall be submitted to County on or before September 1st of each year. . . .

² An older person is defined in the act as an individual 60 years of age or older. MCL 400.572(d).

The Center understands that the appropriation request to be provided as described herein shall be one of the factors used for the County Commission's determination of the amount of the approved voted millage to be spread (levied) for the calendar year in question. The County Board of Commissioners['] determination of the amount of the approved voted millage to be spread for the calendar year in question shall consider the appropriation request provided, the needs of senior citizens within Hillsdale County, the general, health, safety and welfare of the citizens of Hillsdale County, and the financial status of the county and the community. [Emphasis added.]

For the 2009-2010 fiscal year, the board approved a budget and appropriated to Perennial Park the sum of \$836,463.00. To satisfy this appropriation, the board levied the full permissible millage from the 2004 millage and an additional .15 mill of the maximum sum authorized under the 2008 millage. For the 2010-2011 fiscal year, the board tentatively budgeted and proposed to appropriate to Perennial Park the sum of \$924,517.00, which included the full millage from the 2004 millage and an additional .25 mill of the maximum sum authorized under the 2008 millage.

On October 28, 2010, plaintiffs filed a "Verified Complaint for Mandamus with Request for Temporary Restraining Order, Order to Show Cause, and Request for Preliminary Injunction" seeking to compel the board to levy and pay the full .5 mill authorized by the 2008 millage. Essentially, plaintiff's position was that the 2008 ballot proposal required the county to levy the full .5 mill each year and that the proposal did not give the county discretion to levy less than .5 mill. Defendant filed an answer, affirmative defenses, and brief in opposition to plaintiffs' request for mandamus and in opposition to plaintiffs' motion for preliminary injunction. Following a hearing, the trial court granted plaintiff's request for mandamus. The trial court found under the plain language of the ballot proposal the voters approved a full .5 millage and, therefore, the board must levy the full .5 mill. In an amended judgment for mandamus dated November 30, 2010, the trial court ordered in relevant part as follows:

IT IS HEREBY ORDERED AND ADJUDGED that the Plaintiffs' Writ for Mandamus shall be granted and Defendant shall levy the entire 0.5 mill forthwith, to be reflected on the December, 2010, tax notices and every year hereafter until 2022, inclusive, as set forth in the voter approved 2008 ballot proposal.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiffs' Writ for Mandamus to compel the Defendant to levy the entire 0.5 mill for the two prior years shall be and the same is hereby denied as there is no legal remedy at law to order the restitution of unlevied taxes for those years.

The county argues that the circuit court lacked subject matter jurisdiction over plaintiff's claim. Whether a court has subject matter jurisdiction over an action is a question of law that this Court reviews de novo. *Harris v Vernier*, 242 Mich App 306, 309; 617 NW2d 764 (2000).

Although defendant included lack of subject-matter jurisdiction as an affirmative defense, defendant neither briefed nor argued the issue of subject-matter jurisdiction in the trial court. Consequently, the trial court did not rule on whether it had subject-matter jurisdiction. However,

the “[l]ack of jurisdiction of the subject matter may be raised at any time and the parties to an action cannot confer jurisdiction by their conduct or action nor can they waive the defense by not raising it.” *Paulson v Secretary of State*, 154 Mich App 626, 630-631; 398 NW2d 477 (1986).

Under MCL 600.605, circuit courts have “original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state. MCL 205.731(a) provides that the Tax Tribunal has exclusive jurisdiction over [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. “The tribunal’s jurisdiction is based either on the subject matter of the proceeding (e.g., a direct review of a final decision of an agency relating to special assessments under property tax laws) or the type of relief requested (i.e., a refund or redetermination of a tax under the property tax laws).” *Wikman v City of Novi*, 413 Mich 617, 631; 322 NW2d 103 (1982).

The question raised by plaintiff’s complaint is whether defendant properly levied less than the .5 mill limitation approved in 2008 by the voters of Hillsdale County for services for older persons. In *Jackson Dist Library v Jackson Co*, 428 Mich 371; 408 NW2d 801 (1987), voters approved a millage proposal in 1977 that read as follows:

Shall the limitation on the total amount of taxes which may be imposed upon all property in the County of Jackson be increased by 1.00 mill on each dollar (\$1.00 per \$1,000.00) of the assessed valuation, as equalized, for a period of twenty (20) years, 1977 to 1996, inclusive, said millage increase to be used exclusively for the purpose of establishing and operating a single public library system in Jackson County?

In 1982, the library filed a complaint in circuit court alleging that the county’s board of commissioners rolled back the millage pursuant to MCL 211.24e. The library maintained that the levy was expressly exempt from a rollback and that it was separate from the county’s operating funds and, therefore, the board had no authorization to take this action. The complaint was subsequently amended to add a second count seeking a declaratory judgment as to whether the one-mill levy was subject to the statute. These two counts were dismissed for lack of subject matter jurisdiction, and a petition containing two virtually identical counts was filed with the Tax Tribunal. The Tax Tribunal granted the county’s motion for summary disposition on the ground that the tribunal did not have subject-matter jurisdiction over the library’s claims and that the library had failed to state a claim for which relief could be granted. On appeal, this Court found that the Tax Tribunal had subject-matter jurisdiction. *Jackson Dist Library*, 428 Mich at 377; see also *Jackson Dist Library v Jackson Co #2*, 146 Mich App 412; 380 NW2d 116 (1985), rev’d on other grounds, 428 Mich 371. Specifically, this Court held:

The act defines a “proceeding” as an “appeal”. MCL 205.703(d); MSA 7.650(3)(d). An “agency” includes “a board, official, or administrative agency” empowered to make decisions, findings, rulings, assessments, determinations, or orders which are subject to review under the tribunal’s jurisdiction. MCL 205.703(b); MSA 7.650(3)(b).

Petitioner's claim fits the act's jurisdictional requirement. Petitioner appealed from a final determination of respondent board to rollback a tax levy pursuant to MCL 211.24e; MSA. § 7.24(5). Respondent board may be viewed as an "agency" for such purpose. The appeal related to a determination of rates under the property tax laws, since respondent board's action was characterized as a tax rate rollback and petitioner asserted that public hearings were held to determine if one mill should be levied. Accordingly, the tribunal had exclusive jurisdiction over petitioner's claim pursuant to MCL 205.731(a); MSA 7.650(31)(a). [*Jackson Dist Library*, 146 Mich App at 417-418.]

This Court's jurisdictional finding was not raised on appeal to the Supreme Court.

In *Jackson Dist Library*, 146 Mich App 412, the plaintiffs sought direct review of a "final decision, finding, ruling, determination or order of an agency." In the present case, plaintiffs sought an order of mandamus to compel the county to levy the full amount of the millage approved by voters. However, the gist of plaintiff's action concerns whether the county has authority to levy less than the millage limitation approved by voters. A jurisdictional claim "should be determined not by how the plaintiff phrases its complaint, but by the relief sought and the underlying basis of the action." *Colonial Village Townhouse Cooperative v Riverview*, 142 Mich App 474, 477-478; 370 NW2d 25 (1985). As in *Jackson Dist Library*, the question presented by plaintiffs' action relates to direct review of a determination of rates under the property tax laws.³ Accordingly, the Tax Tribunal has subject-matter jurisdiction and the circuit court lacked jurisdiction to enter a judgment of mandamus.

³ Contrary to plaintiff's suggestion, the assessment for services to older persons was not imposed pursuant to defendant's police power. The assessment was imposed by defendant "under property tax laws" at that phrase is used in MCL 205.731. MCL 400.576 grants the governing body of a local unit of government the authority to submit a millage proposition to the voters to levy up to 1 mill against the assessed valuation of all property in the area for which services for older persons will be provided. Thus, the activities and services to older persons act specifically contemplates that all property in an area will be taxed. Accordingly, the assessment is "in the nature of a property tax" as it is "assessed against real property according to the benefits received." *Wikman*, 413 Mich at 635. Therefore, the assessment was levied under the property laws.

The circuit court's judgment for mandamus is reversed and the order is vacated for lack of subject-matter jurisdiction.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello