

STATE OF MICHIGAN
COURT OF APPEALS

BILLIE PARKER, JR.,

Petitioner-Appellant,

v

CITY OF DETROIT,

Respondent-Appellee.

UNPUBLISHED
October 23, 2012

No. 304436
Tax Tribunal
LC No. 00-361642

Before: SHAPIRO, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Petitioner appeals as of right a Michigan Tax Tribunal (MTT) order dismissing his claims against respondent in this special assessment action. We affirm.

Petitioner filed a petition with the MTT on April 25, 2009, alleging that it was unlawful under MCL 123.261, and unconstitutional as an equal protection violation, for respondent to have levied in 2006 a garbage tax only on commercial properties and not residential properties. Petitioner is the owner of commercial real property in Detroit. Petitioner had previously filed a similar petition in Wayne Circuit Court in February 2007. That court held that the MTT had exclusive jurisdiction over the claim and granted summary disposition in favor of respondent under MCR 2.116(C)(4) for lack of subject-matter jurisdiction. Petitioner appealed and this Court affirmed. The panel held that the garbage tax was within the MTT's exclusive jurisdiction because it was a special assessment. *Parker v Detroit*, unpublished opinion per curiam of the Court of Appeals, issued April 23, 2009 (Docket No. 282427).

The MTT dismissed petitioner's claim based on a lack of jurisdiction because petitioner failed to timely file his challenge to the 2006 solid waste tax bill. The court explained that the 2006 solid waste fee was included in the July tax bill and that petitioner did not file his petition with the MTT until April 25, 2009, after the 35-day window for filing after receipt of the tax bill had closed.

Petitioner first argues on appeal that the MTT is not authorized to dismiss claims for lack of jurisdiction without holding a hearing. We disagree.

This Court's review of a decision of the MTT is limited to whether the MTT erred in its application of the law or adoption of a wrong legal principle. *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). The Court reviews interpretation and

application of statutes de novo. *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 528; 817 NW2d 548 (2012).

The MTT must dismiss a case for lack of subject-matter jurisdiction; any proceedings undertaken without subject-matter jurisdiction are void. *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW2d 215 (2002). In his first argument, petitioner challenges not the correctness of the MTT's decision to dismiss his claim but, rather, the MTT's inherent authority to dismiss a claim for lack of subject-matter jurisdiction without first holding a hearing. In support of his argument, petitioner cites MCL 205.734, which provides: "One or more members of the tribunal may hear and decide proceedings." Petitioner emphasizes the word "hear," asserting that its inclusion mandates the MTT to hold a hearing before taking any action. However, MCL 205.734 merely governs the proper procedure and numerical composition of the MTT in cases properly before it. Nothing in the statute imposes an affirmative duty on the MTT to hold a hearing on the issue of subject-matter jurisdiction before making a determination on that issue.

Petitioner further argues that ex parte dismissals are not expressly authorized under the Michigan Administrative Code rules governing the MTT and, in support of this proposition, cites *Grand Blanc Twp Supervisor v Genesee Co Bd of Comm'rs*, 104 Mich App 260, 270; 304 NW2d 543 (1981). However, *Grand Blanc Twp Supervisor* did not hold that ex parte dismissals (meaning, in that case, a dismissal upon motion without an opportunity for the opposing party to respond) were *not permitted*, merely that they were *not expressly authorized* and that opposing parties generally have 20 days to respond to a written motion. *Id.* In that case, respondents filed a motion to dismiss based on lack of jurisdiction and petitioners' lack of capacity. *Id.* at 265. The Court found that the MTT's dismissal of the case before petitioners had an opportunity to respond to the motion did not prejudice petitioners and thus did not warrant reversal. *Id.* at 270. The Court further noted that oral argument is not generally allowed on motions under Michigan Administrative Code Rule 205.1230. *Id.* Here, no motion had even been filed to which petitioner would ordinarily have been entitled to respond and, even if there had been such a motion, oral argument was not allowed unless expressly ordered by the MTT. *Id.*; Rule 205.1230(4). Instead, the MTT merely dismissed on the pleadings. Accordingly, petitioner's argument that he was entitled to a hearing before dismissal lacks merit.

Petitioner also argues on appeal that the MTT erred in holding that petitioner's challenge was not timely filed and thus did not invoke the MTT's jurisdiction. We disagree.

The MTT based its decision to dismiss petitioner's claim on his failure to file his challenge within 35 days of receiving his tax bill. Although the trial court cited no statutory provision for this conclusion, it appears the court was referring to MCL 205.735a(6), which 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, ruling, or determination." It treated the tax bill as a "final decision, ruling, or determination" and found that petitioner did not meet the jurisdictional requirement because he did not file his petition challenging the 2006 tax with the MTT until April 25, 2009, well after the closing of the 35-day window. However, the 35-day window requirement is a catch-all provision put in place for matters in dispute besides those regarding property specifically classified under MCL 211.34c. MCL 205.735a(6) states that, to invoke the MTT's jurisdiction for assessment disputes with respect to property classified as

commercial real property, a party must file a written petition “on or before May 31 of the tax year involved.” Petitioner admits the property involved in this dispute is classified as commercial real property. Accordingly, to dispute a 2006 assessment, as he asserts he is doing, he needed to have filed a written petition by May 31, 2006. Petitioner did not file his petition with the MTT until April 25, 2009. Even if he could base his argument on his earlier filing in circuit court, petitioner states he filed his first petition in circuit court on February 6, 2007. This still does not meet the May 31, 2006, deadline. Accordingly, dismissal was proper. A MTT’s ruling may be upheld when the right result was reached but for the wrong reason. See *Dep’t of Environmental Quality v Bulk Petroleum Corp.*, 276 Mich App 654, 660; 741 NW2d 857 (2007).

Petitioner also argues that the statute of limitations to dispute an assessment does not begin to run until payment of the assessment. However, the cases he cites in support of this proposition were decided before passage of the Tax Tribunal Act in 1973 and are therefore inapplicable in light of the act’s controlling provisions. Petitioner also argues that respondent cannot assert the statute of limitations as a defense because the city of Detroit did not hold a hearing to confirm the special assessment, which is a necessary event to trigger the running of the statute of limitations. MCL 205.735a(5) states that, “[f]or a special assessment dispute, the special assessment shall be protested at the hearing held for the purpose of confirming the special assessment roll before the tribunal acquires jurisdiction of the dispute.” However, we decline to address this argument because petitioner’s claim was properly dismissed under MCL 205.735a(6). Additionally, whether the city held a hearing is a factual question that cannot be resolved on the pleadings.

Petitioner finally challenges on appeal the MTT’s holding that the garbage tax levied was not, as the Court of Appeals held in the earlier appeal from circuit court, a special assessment, and that the MTT did not, therefore, have jurisdiction to hear this claim. Petitioner claims that the MTT failed to properly follow the law of the case with respect to this issue. Because the MTT engaged in this analysis only for the sake of argument, dismissal did not turn on the issue, and dismissal was proper on another ground, we decline to address this argument.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Elizabeth L. Gleicher
/s/ Amy Ronayne Krause