

STATE OF MICHIGAN
COURT OF APPEALS

JOHN GOSS,

Petitioner-Appellant,

v

TOWNSHIP OF WHITEWATER,

Respondent-Appellee.

UNPUBLISHED
November 20, 2012

No. 306925
Tax Tribunal
LC No. 00-374305

CHERYL WALTON,

Petitioner-Appellant,

v

TOWNSHIP OF WHITEWATER,

Respondent-Appellee.

No. 306926
Tax Tribunal
LC No. 00-374303

Before: CAVANAGH, P.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

Petitioners in these consolidated appeals challenge as of right an order of the Michigan Tax Tribunal (MTT) dismissing their petitions as untimely under MCL 205.735a. We affirm.

On August 17, 2006, the Whitewater Township Board adopted a resolution setting the assessment roll for a special assessment district established to pay for improvements to five local roads. On September 12, 2006, petitioners filed a civil action against respondent in the circuit court challenging the creation of the special assessment district as unauthorized by statute. That case was dismissed for lack of subject-matter jurisdiction because, pursuant to MCL 205.731(a), the MTT has exclusive jurisdiction over challenges to the validity of special assessments. On October 16, 2008, this Court affirmed the circuit court's dismissal on the same grounds. *Cheryl Walton v Whitewater Township*, unpublished opinion per curiam of the Court of Appeals, issued October 16, 2008 (Docket No. 274969), unpublished op at 2-3. On May 27, 2009, our Supreme Court denied petitioners' application for leave to appeal. On or about June 15, 2009, petitioners filed their special assessment appeal petitions in the MTT challenging the validity of the special

assessment district. The MTT dismissed the petitions for lack of jurisdiction because, pursuant to MCL 205.735a, they were untimely. This appeal followed.

Although petitioners raise several issues on appeal, the dispositive issue is whether the MTT properly concluded that it lacked jurisdiction over their appeals. After de novo review of this question of law, we affirm the MTT's conclusion that it lacked jurisdiction. See *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006); *In re Wayne Co Treasurer*, 265 Mich App 285, 290; 698 NW2d 879 (2005).

The MTT dismissed petitioners' appeals, holding that it lacked jurisdiction because the petitions were filed "more than 35 days of the date of confirmation of the roll. See MCL 205.735a." It appears that the MTT was referring to MCL 205.735a(6), which provides 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."¹ In this case, the final decision was respondent's confirmation of the special assessment roll, MCL 41.726(3), which occurred on August 17, 2006. But petitioners did not file their challenges in the MTT, they filed a civil action in the circuit court 26 days later, on September 12, 2006. The action was timely; thus, as our Supreme Court held in *Wikman v City of Novi*, 413 Mich 617, 654; 322 NW2d 103 (1982), the filing of the legal action tolled the limitations period for filing a petition in the MTT, as set forth in MCL 600.5856. See also *Malburg v City of Sterling Heights (On Remand)*, 152 Mich App 484, 489-490; 394 NW2d 455 (1986).

After the circuit court dismissed petitioners' civil action, they filed a claim of appeal in this Court, challenging the circuit court's dismissal for lack of jurisdiction. Again, it appears that the limitations period for filing a petition in the MTT was tolled while the appeal was pending. See *Riza v Niagara Machine & Tool Works, Inc*, 411 Mich 915 (1980). After this Court resolved petitioners' appeal, they filed an application for leave to appeal with our Supreme Court, apparently tolling the limitations period until "after the disposition of the case by the Supreme Court." *Grievance Administrator v Fieger*, 476 Mich 231, 248; 719 NW2d 123 (2006), quoting MCR 7.215(F)(1)(a). Our Supreme Court denied leave to appeal on May 27, 2009, and that order became effective on the same date. MCR 7.317(D).

On June 15, 2009, 19 days later, petitioners filed their special assessment appeal petitions in the MTT. Prior to the filing of the circuit court action, 26 days had passed from the confirmation of the roll. Thus, even assuming all available tolling, the petitions were not filed until 45 days after the confirmation. Accordingly, petitioners did not file written petitions "within 35 days after the final decision, ruling, or determination." MCL 205.735a(6). The time requirements for filing appeal petitions are jurisdictional; thus, the MTT correctly held that it lacked jurisdiction to consider the untimely petitions. See *W A Foote Mem'l Hosp v City of Jackson*, 262 Mich App 333, 338; 686 NW2d 9 (2004).

¹ Because no other statute provided for a longer limitation period, MCL 205.735 applied. See *Wikman v City of Novi*, 413 Mich 617, 653; 322 NW2d 103 (1982).

Further, 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); see also *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992). Accordingly, we agree with the MTT's conclusion that the proceedings conducted by the hearing referee regarding the validity of the special assessment roll were void. In light of our resolution of this dispositive issue, we need not consider petitioners' other issues on appeal related to the void proceedings because they are moot.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Douglas B. Shapiro