STATE OF MICHIGAN

COURT OF APPEALS

PIRATE LOGISTICS, INC.,

Petitioner-Appellant,

v

CITY OF ROMULUS,

Respondent-Appellee.

UNPUBLISHED
November 29, 2012

No. 307262
Tax Tribunal
LC No. 00-415046

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

PER CURIAM.

Petitioner appeals as of right from an order of the Michigan Tax Tribunal denying the parties' stipulation for entry of a consent judgment and dismissing the case. The tribunal determined that it had no jurisdiction over petitioner's assessment appeal for the tax years in question because the assessments were not timely appealed and that, despite the parties' stipulation, neither a "clerical error" nor a "mutual mistake of fact" within the meaning of MCL 211.53a had occurred. We affirm.

The standard of review applicable to decisions of the Tax Tribunal is summarized in *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527-528; 817 NW2d 548 (2012), as follows:

> Review of decisions by the Tax Tribunal is limited. *Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Const 1963, art 6, § 28. The Tax Tribunal's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record. *Id.; Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 482; 473 NW2d 636 (1991). If the facts are not disputed and fraud is not alleged, our review is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle. *Meadowlanes*, 437 Mich at 482-483.

The powers and jurisdiction of the Tax Tribunal are set forth in the Tax Tribunal Act. There is no dispute that petitioner did not timely invoke the Tax Tribunal's jurisdiction under MCL 205.735a(6). Thus, petitioner relied on MCL 211.53a as it provides a different limitations

period for filing a petition with the tribunal. *Briggs Tax Serv, LLC v Detroit Pub Schools*, 485 Mich 69, 77; 780 NW2d 753 (2010).

MCL 211.53a states:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

Thus, MCL 211.53a provides a three-year limitations period for a refund claim under particular circumstances.

For purposes of MCL 211.53a, a "mutual mistake of fact" is "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.'" *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006). The mistake must be "mutual," "[t]hat is, it must be shared and relied on by the assessing officer and the taxpayer." *Briggs Tax Serv, LLC*, 485 Mich at 78.

In the present case, the parties' stipulation does not include any facts indicating a "mutual mistake of fact." The parties stipulated that the total cost of the office equipment at petitioner's leased premises was less than $2,000 and referred to an "incorrect assessment." The parties agreed that the assessments for tax years 2008 and 2009 should be reduced from $286,500 and $287,200, respectively, to $500 for both years. The parties also agreed that the notices named the wrong taxpayer and were mailed to the wrong address. The stipulation indicates that the assessments were in error, but it does not indicate a mistake of fact on the part of petitioner, much less a mutual mistake.[1] The Tax Tribunal did not make an error of law or adopt a wrong legal principle in its determination that the facts did not show a mutual mistake of fact.

As for the meaning of "clerical error" in MCL 211.53a, the Tax Tribunal relied on *Int'l Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104; 548 NW2d 668 (1996). In that case, this Court discussed the meaning of "clerical error" as used in a former version of MCL 211.53b. After noting that the Legislature did not define "clerical error" and therefore resort to dictionary definitions was appropriate, this Court stated:

> Black's Law Dictionary (6th ed), p 252, defines "clerical error" as generally "a mistake in writing or copying." See also *Webster's Third New International Dictionary, Unabridged Edition* (1966), p 421; *Webster's New Twentieth Century Dictionary, Unabridged Edition* (1983), p 338. Furthermore,

[1] Cf. *Ford Motor Co*, 475 Mich at 442-443, in which the assessor relied on the taxpayer's erroneous personal property statement and the Court concluded that the taxpayer "stated valid claims under MCL 211.53a because the parties shared and relied on their erroneous beliefs about material facts that affected the substance of the assessments."

> reading the statute in context, the reference to a clerical error or mutual mistake is directly referenced to use of the correct assessment figures, the taxation rate, and the mathematical computation relating to the assessment of taxes. MCL 211.53b; MSA 7.97(2). Thus, the statute itself refers to errors of a typographical, transpositional, or mathematical nature. [*Int'l Place Apartments-IV*, 216 Mich App at 109.]

The parties do not contest the tribunal's use of that definition in the present case.

The parties' stipulation provided facts showing that an error had occurred, but lacked facts to show that it was a "clerical error." The stipulation indicates that the assessment figures were excessive. The stipulation also indicates that instead of the assessment notices being mailed to the petitioner's address of 28777 Goddard Road, Suite 208, Romulus, the notices "were mailed to 28529 Goddard (wrong address)." The parties stipulated that the notices named Team Worldwide, rather than petitioner, as the taxpayer. The facts suggest confusion about the ownership of the parcel and address of the owner. The mistake may have been attributable to a "clerical error" in linking the parcel number, the taxpayer, the property, and the address. However, the mistake may also have arisen for other reasons, such as petitioner's failure to provide notice of a transfer. In response to petitioner's motion for reconsideration, the Tax Tribunal provided the parties with the opportunity to present documentation and an explanation to support the request for relief under MCL 211.53a. The parties presented some of the requested documents, but did not present an explanation of the circumstances that led to the assessment. Even on appeal, the parties do not explain how the assessments were the product of a clerical error. Under the circumstances, the Tax Tribunal did not make an error of law or adopt a wrong principle in its determination that the facts did not show a "clerical error."

Petitioner also argues that the increase in the assessment is invalid because the mailing of the assessment increase notices to an address that petitioner did not occupy did not satisfy MCL 211.24c(1). But the stipulation for entry of a consent judgment cited and prayed for relief on the basis of MCL 211.53a. It did not seek relief on the basis of deficient notice under MCL 211.24c. Petitioner raised the issue of deficient notice in its motion for reconsideration. In general, an issue that is first raised in a motion for reconsideration is not properly preserved. *Vushaj v Farm Bureau Gen Ins Co*, 284 Mich App 513, 519; 773 NW2d 758 (2009). "Although this Court need not address an unpreserved issue, it may overlook preservation requirements when the failure to consider an issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 387; 803 NW2d 698 (2010).

MCL 211.24c(1) states, in pertinent part:

> The assessor shall give to each owner or person or persons listed on the assessment roll of the property a notice by first-class mail of an increase in the tentative state equalized valuation or the tentative taxable value for the year.

Petitioner cites *Rochester Meadows Apartments v City of Rochester*, 112 Mich App 319; 316 NW2d 242 (1982). In that case, the appellant-owner's name and the name of the United States

Department of Housing and Urban Development (HUD) appeared on the tax rolls. For two years, the assessment was increased, but notice was sent to HUD and not appellant. This Court explained that compliance with the notice requirement was a precondition to a valid increase in a tax assessment. *Id*. at 324. Because the assessment dispute had not been timely protested to the board of review, this Court affirmed the tribunal's dismissal of the appellant's petition for review. *Id*. However, the Court also declared that "the increase in assessment is invalid and unenforceable." *Id*.

In the present case, after petitioner raised the issue of deficient notice in its motion for reconsideration, the Tax Tribunal requested documentation, which the parties partially provided. In denying petitioner's motion for reconsideration, the tribunal stated, in pertinent part:

> [T]he facts alleged indicate that Petitioner failed to both properly notify Respondent of a transfer of ownership or address change and timely file the required personal property statements. Further, Respondent's submission of an assessment change to the last know [sic] owner of record at that owner's address would, in fact, be sufficient for purposes of MCL 211.24c under the facts in *Rochester Meadows Apartments.*

Petitioner's brief on appeal does not address the basis of the Tax Tribunal's ruling with respect to notice. "[R]espondent's obligation to send the required notices extends to those names that appear on the assessment roll, whether they are the owner or an owner's agent." *Walgreen Co v Macomb Twp*, 280 Mich App 58, 64; 760 NW2d 594 (2008). Based on the documentation submitted by the parties, the tribunal concluded that respondent had complied with the notice requirements. Petitioner does not contend that the tribunal's evaluation was flawed in this regard. Instead, petitioner ignores the tribunal's reasoning and does not discuss the documents on which the tribunal relied. Petitioner's failure to address the basis for the tribunal's decision precludes appellate relief. *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987) (appellate relief is precluded where the appellant fails to address the basis of the trial court's decision); *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004).

Finally, petitioner argues that when the parties submitted the stipulation in which they agreed that the facts showed a clerical error and a mutual mistake of fact there was no issue for the Tax Tribunal to decide. Petitioner contends that the tribunal erred by deciding a controversy that had been rendered "moot." Mootness, like standing, presents a question of law that is reviewed de novo. *Mich Chiropractic Council v Comm'r of Ins*, 475 Mich 363, 369-370; 716 NW2d 561 (2006) (YOUNG, J.), overruled in part on other grounds, *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 371; 792 NW2d 686 (2010).

Mootness is one of the "justiciability doctrines" that has been developed "to ensure that cases before the courts are appropriate for judicial action." *Mich Chiropractic Council*, 475 Mich at 371 n 15 (YOUNG, J.). "Mootness precludes the adjudication of a claim where the actual controversy no longer exists, such as where the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Id*. (citations and internal quotation marks omitted). The doctrine stems from the limitations on the powers of a court and the judicial branch.

"Mootness" does not provide a basis for reversing the Tax Tribunal's dismissal of the case. "[A] court hearing a case in which mootness has become apparent would lack the power to hear the suit." *City of Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 255 n 12; 701 NW2d 144 (2005). Where one of several issues presented becomes moot, but other issues have not, the case as a whole continues because "the remaining live issues supply the constitutional requirement of a case or controversy." *Powell v McCormack*, 395 US 486, 496-497; 89 S Ct 1944; 23 L Ed 2d 491 (1969); *Univ of Texas v Camenisch*, 451 US 390, 394; 101 S Ct 1830; 68 L Ed 2d 175 (1981). This case began with a stipulated consent judgment that, according to petitioner, resolved the issues. To the extent that the action could be considered "moot" because of the stipulation, that determination would support the tribunal's dismissal of the action, rather than show that the tribunal's dismissal of the action was improper.

Although petitioner casts its argument in terms of "mootness," petitioner is essentially arguing that the Tax Tribunal was required to give effect to the parties' stipulation. In general, stipulated facts are binding on a court, but stipulations of law are not. *People v Metamora Water Serv, Inc*, 276 Mich App 376, 385; 741 NW2d 61 (2007); *In re Finlay Estate*, 430 Mich 590, 595-596; 424 NW2d 272 (1988). In *Signature Villas, LLC v City of Ann Arbor*, 269 Mich App 694, 706; 714 NW2d 392 (2006), the parties had submitted stipulated facts to the Tax Tribunal and the appellant contended that the tribunal erred by considering unstipulated documentary evidence in ruling on the parties' motions for summary disposition. This Court recognized that "'[i]n general, when a case is submitted to a governmental agency on stipulated facts . . . those facts are to be taken as conclusive.'" *Id*. at 706, quoting *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). This Court further explained:

> It does not indicate, however, that the record is necessarily limited to the stipulation. Where the parties' stipulation is not contradicted, it is with the discretion of the tribunal to permit or consider additional proofs supplementing the same. [*Id*.]

In the present case, the Tax Tribunal evaluated the parties' stipulation and found it lacking in the facts that would support the relief requested. In response to the motion for reconsideration, the tribunal requested that the parties submit additional documentation. After evaluating that documentation, the tribunal still found that the facts did not support the relief requested. The tribunal's evaluation of the facts is not challenged on appeal. To the extent that the parties were attempting to a stipulation of the law, it was not binding on the tribunal. The parties' assertion that the tribunal erred in failing to give effect to the stipulation is unpersuasive.

Affirmed.

/s/ Stephen L. Borrello
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens