STATE OF MICHIGAN

COURT OF APPEALS

CLIFFORD J. DOVITZ,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED
November 26, 2013

No. 314059
Tax Tribunal
LC No. 00-448699

Before: METER, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Petitioner appeals as of right from an order of the Michigan Tax Tribunal granting respondent's motion for summary disposition under MCR 2.116(C)(10). Because the assessment was not timely appealed and is thus statutorily final and not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack, we affirm.

On March 28, 2011, respondent issued Cherry Hill Land Development, LLC ("Cherry Hill") a final assessment for $4,645.91 in unpaid 2008 Michigan Business Tax (MBT) liability, penalties, and interest. It thereafter issued an intent to assess the above against petitioner, an individual member and corporate officer of Cherry Hill. On August 7, 2012, at petitioner's request, the parties had a hearing before an informal conference referee, who recommended that petitioner be held liable for Cherry Hill's unpaid taxes as a responsible corporate officer under MCL 205.27a(5).[1] As a result, on August 27, 2012, respondent issued petitioner a final tax bill based on the underlying assessment issued against Cherry Hill. On September 28, 2012, petitioner petitioned the tribunal for review. Thereafter, respondent filed a motion to dismiss pursuant to MCR 2.116(C)(10), arguing that petitioner did not deny any of the factual elements of respondent's prima facie case. The tribunal agreed, specifically noting that Cherry Hill failed to appeal its MBT assessment in a timely manner rendering that assessment final and that petitioner conceded his corporate officer status, thus requiring affirmance of his corporate officer liability. It therefore granted respondent's motion. On appeal, petitioner again attempts to challenge the validity of the final assessment.

[1] Petitioner does not challenge that he is a responsible corporate officer under MCL 205.27a(5).

Our review of a decision of the tribunal is "limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle." *Michigan Milk Producers Ass'n v Dept of Treasury*, 242 Mich App 486, 490-491; 618 NW2d 917 (2000). We will not disturb the tribunal's factual findings if "they are supported by competent, material, and substantial evidence." *Id.* We review a trial court's granting of summary disposition de novo. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475; 776 NW2d 398 (2009).

Summary disposition of a claim may be granted when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." MCR 2.116(C)(10). In determining whether a genuine issue of material fact exists, the court must consider all documentary evidence in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If the court finds any issue upon which reasonable minds could differ, then a genuine issue of material fact exists. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). Courts should be liberal in finding a factual dispute sufficient to withstand summary disposition. *Ragin*, 285 Mich App at 476.

Under MCL 205.22(1), "[a] taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days, or to the court of claims within 90 days after the assessment, decision, or order." Should a taxpayer fail to appeal an assessment within these strict time constraints, under MCL 205.22(4) the assessment "is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack."

Respondent issued the final assessment in issue on March 28, 2011. Therefore, MCL 205.22(1) required petitioner to challenge the assessment by May 2, 2011, in the tribunal, or by June 26, 2011, in the court of claims. Petitioner failed to meet these deadlines by more than 16 months, first challenging the assessment in the tribunal on September 28, 2012. As a result, MCL 205.22(4) precludes petitioner from challenging the validity of the underlying assessment on any grounds.[2]

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Michael J. Riordan

[2] Petitioner's supplemental authority has no bearing on the ultimate resolution of this matter, as it, too, concerns a challenge to the validity of the underlying assessment.