STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH KASBERG,

Petitioner-Appellant,

and

NATIONAL CHURCH RESIDENCES OF WIN YPSILANTI,

Appellant

v

YPSILANTI TOWNSHIP,

Respondent-Appellee.

FOR PUBLICATION
March 16, 2010

No. 287682
Michigan Tax Tribunal
LC No. 00-338289

Before: Markey, P.J., and Bandstra and Murray, JJ.

MARKEY, J. (*dissenting*).

I respectfully dissent. While appellants appealed a property tax assessment "under the property tax laws of this state," their sole basis for relief was a claim to an exemption that did not arise "under the property tax laws of this state." Consequently, I would affirm. The Tax Tribunal could not grant an exemption that the Legislature has plainly entrusted to the State Housing Development Authority (SHDA) to grant. MCL 125.1415a. Moreover, even if the tribunal has jurisdiction, I would still affirm because appellant did not obtain its certified § 1415a exemption until 2007, the tax year at issue. Appellants could not have complied with § 1415a by filing its exemption "with the local assessing officer before November 1 of the year *preceding* the tax year in which the exemption is to begin." *Id.*

Petitioner originally filed this appeal with the Tax Tribunal asserting respondent wrongfully denied a property tax exemption known as a "payment in lieu of taxes" (PILOT) pursuant to MCL 125.1415a. Petitioner asserted that National Church Residences of Win Ypsilanti (National) is "a non-profit charitable corporation, which makes it PILOT eligible." The materials filed with this appeal indicate that in late 2006, National acquired the subject property from an entity that had for many years been certified by the SHDA as PILOT eligible. After closing, the SHDA processed and granted National PILOT certification in early 2007. Respondent assessed National for property taxes for the 2007 tax year because National had not complied with the provisions of MCL 125.1415a. Respondent moved the tribunal for summary

disposition pursuant to MCR 2.116(C)(4), on the ground that it lacked jurisdiction, asserting that the PILOT exemption is a creature of the state's police power, not of the General Property Tax Act, MCL 211.1 *et seq*. The hearing officer agreed with respondent and dismissed the appeal.

Whether the Tax Tribunal has jurisdiction is a question of law subject to review de novo. *W A Foote Mem Hosp v Dep't of Pub Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995). "[A] court is continually obliged to question sua sponte its own jurisdiction over a person, the subject matter of an action, or the limits of the relief it may afford . . . ." *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 399; 651 NW2d 756 (2002). This is so because any actions of a court regarding a matter over which it lacks jurisdiction are void. *Fox v Univ of Michigan Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965).

The Legislature has granted the Tax Tribunal "exclusive and original jurisdiction" over certain proceedings, including the following:

> (a) 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*.
>
> (b) A proceeding for a refund or redetermination of a tax levied *under the property tax laws of this state*. [MCL 205.731; Emphases added.]

In *Wikman v City of Novi*, 413 Mich 617, 635-636; 322 NW2d 103 (1982), our Supreme Court held that some special assessments that are "exacted through the state's police power as part of the government's efforts to protect society's health and welfare," or that "may be collected in connection with a regulatory program to defray the cost of such regulation . . . are not ones under the property tax laws and are not within the jurisdiction of the Tax Tribunal." This Court has applied the reasoning of the *Wikman* Court in determining the Tax Tribunal lacked jurisdiction regarding a tax exemption granted under the authority of the Michigan Energy Employment Act MCL 460.801 *et seq*. See *Beattie v East China Twp*, 157 Mich App 27, 35; 403 NW2d 490 (1987).

I find *Beattie*, *supra*, decided before the operative date of the conflict rule, MCR 7.215(J)(1), and therefore not binding on this Court, persuasive. Appellants' petition calls for interpretation of part of the State Housing Development Authority Act, MCL 125.1401 *et seq*., not any part of the General Property Tax Act, MCL 211.1 *et seq*. I would hold that the Tax Tribunal properly concluded that it did not have jurisdiction to determine whether petitioner qualified for the exemption or to grant relief on the basis of an interpretation of MCL 125.1415a.

The majority holds that because appellants frame this appeal as one seeking review of an assessment of property under the general property tax laws of this state, this case falls within the plainly expressed exclusive jurisdiction of the Tax Tribunal. MCL 205.731(a) and (b). But when examining the question of jurisdiction, "'this Court will look beyond a plaintiff's choice of labels to the true nature of the plaintiff's claim.'" *Michigan's Adventure, Inc v Dalton Twp*, ___ Mich App ____; ___ NW2d ___ (Docket No. 287682, January 14, 2010), slip op at 3, quoting *Manning v Amerman*, 229 Mich App 608, 613; 582 NW2d 539 (1998). A court's jurisdiction "is the power to hear and determine a cause or matter." *Bowie v Arder*, 441 Mich 23, 36; 490 NW2d

568 (1992). "A court has subject-matter jurisdiction to hear a case if the law has given the court the power to grant the rights requested by the parties." *Cipri v Bellingham Frozen Foods, Inc*, 213 Mich App 32, 39; 539 NW2d 526 (1995).

Here, the relief petitioner sought from the Tax Tribunal was a determination that National was exempt from property taxation for the 2007 tax year under MCL 125.1415a; such relief cannot be granted "under the property tax laws of this state" as that phrase is used in MCL 205.731(a) and (b). Further, the Legislature has plainly vested the power to certify whether a property owner is eligible for a PILOT exemption with the SHDA: "The owner of a housing project eligible for the exemption shall file with the local assessing officer a notification of the exemption, which shall be in *an affidavit form as provided by the authority*. The completed affidavit form first shall be submitted to the authority *for certification by the authority that the project is eligible for the exemption*." MCL 125.1415a (emphasis added). Consequently, the tribunal does not have the authority to grant petitioner a PILOT exemption when the SHDA has not certified one for petitioner. Moreover, the tribunal may not ignore the requirement of the statute that a certificate of exemption be filed "with the local assessing officer before November 1 of the year *preceding* the tax year in which the exemption is to begin." MCL 125.1415a (emphasis added). Because appellants underlying claim is to an exemption under a non-tax statute, I conclude the Tax Tribunal lacked jurisdiction to determine petitioner's claim to the exemption or to grant the relief petitioner sought.

As noted already, my conclusion is supported by our Supreme Court's decision in *Wikman, supra*. The majority diminishes *Wikman* by referring to its discussion of the meaning of the phrase, "under the property tax laws of this state," as dictum. Statements contained in an opinion that pertain to law not essential to a determination of the case are dictum and do not have the force of an adjudication. See *Reynolds v Bureau of State Lottery*, 240 Mich App 84, 95; 610 NW2d 597 (2000). But the *Wikman* Court's discussion of the meaning of "under the property tax laws of this state" *was* essential to its opinion and differentiated its conclusion from that of the dissent. See *Wikman, supra* at 633-636, 638-640 (Coleman, C.J.); 655 (Levin, J., dissenting). Indeed, the *Wikman* Court held that the phrase "under the property tax laws of this state" modified the words "special assessment" in the jurisdictional grant of MCL 205.731. *Wikman, supra* at 633. While noting that some special assessments do not arise from the property tax laws, the ones at issue "levied against property owners for public improvements to realty which especially benefit their property are special assessments under the property tax laws for the purposes of the Tax Tribunal Act." *Id*. at 636. Hence, the Court held that MCL 205.731 granted the Tax Tribunal exclusive jurisdiction over direct review of a municipal special assessment for a public improvement. *Id*. at 626. The clear lesson of the *Wikman* decision is that a matter that *does not arise* "under the property tax laws of this state" cannot be within the jurisdiction of the Tax Tribunal under MCL 205.731(a) and (b). *Wikman, supra* at 635-636.

I also find *In re Petition of the Wayne Co Treasurer for Foreclosure*, 286 Mich App 108; ___ NW2d ___ (2009), inapposite. That case held that whether the petitioner was entitled to a tax exemption under the General Property Tax Act, specifically, MCL 211.7s, regarding houses of public worship, was a factual determination within the exclusive jurisdiction of the Tax Tribunal. But, as discussed *supra*, appellants' claimed exemption here flows from the State Housing Development Authority Act, MCL 125.1401 *et seq*., not the General Property Tax Act.

The Legislature declared that it enacted the State Housing Development Authority Act to address myriad concerns, including the need for "safe and sanitary dwelling accommodations within the financial means of low income or moderate income families or persons," and that "the existence of blight, the inability to redevelop cleared areas, and the lack of economic integration is detrimental to the general welfare of the citizens of this state and the economic welfare of municipalities in this state," and in order to "promote the financial and social stability of housing for families and persons of low and moderate income." MCL 125.1401(1). The Legislature additionally determined "that it is a proper public purpose to prevent the erosion of the supply of existing low and moderate cost housing available for occupancy by certain persons with disabilities and elderly persons by taking appropriate action to prevent the displacement of those persons with disabilities and elderly persons from existing low and moderate cost housing . . . ." MCL 125.1401(2). These and many other purposes set forth in MCL 125.1401 clearly establish that the State Housing Development Authority Act arises not from the tax laws of this state, but from "the state's police power as part of the government's efforts to protect society's health and welfare." *Wikman, supra* at 635-636. Accordingly, appellants claim to an exemption under MCL 125.1415a, payment in lieu of taxes, stems from the state's police powers, not its property tax laws. The Tax Tribunal properly recognized that it lacked jurisdiction in this case and properly dismissed this case for that reason. *Beattie*, *supra* at 35.

Additionally, even if the majority were correct in concluding the Tax Tribunal erred in ruling it lacked jurisdiction, I would still affirm because appellant did not obtain certification of its § 1415a exemption until 2007, the tax year at issue in this appeal. Petitioner could not have filed "the certified notification of the exemption with the local assessing officer before November 1 of the year *preceding* the tax year in which the exemption is to begin." MCL 125.1415a. This Court will affirm a lower court when it reaches the correct result even if for the wrong reason. *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005).

I would affirm.

/s/ Jane E. Markey