STATE OF MICHIGAN

COURT OF APPEALS

ASHLEY ANN ARBOR, LLC, Plaintiff-Appellant,	FOR PUBLICATION December 27, 2012
v	No. 304904 Washtenaw Circuit Court
PITTSFIELD CHARTER TOWNSHIP, Defendant-Appellee.	LC No. 10-001345-CZ; 11-000574-CZ

Before: GLEICHER, P.J., and SAAD and BECKERING, JJ.

SAAD, J. (*dissenting*).

I respectfully dissent. Because binding Michigan Supreme Court precedent clearly and unequivocally provides that, as here, a township's tax assessment against a local property owner falls within the exclusive and original jurisdiction of the Tax Tribunal, our Court, as an inferior or subordinate, intermediate appellate court, has no authority to overrule that precedent. The doctrine of vertical stare decisis compels our Court to simply reaffirm this longstanding principle of law and hold that the circuit court had no jurisdiction to hear this landowner's challenge to the special property tax assessment made by the township under the township public improvement act. MCL 41.721, *et seq.*

The majority holds that the 1992 amendment to the tax tribunal act, MCL 205.703(f), changed the law regarding jurisdiction to hear local property owners' challenges to township assessments, so that the circuit court, not the Tax Tribunal, now has exclusive jurisdiction over those claims. Were it true that this is the effect of the 1992 amendment—an assertion which I believe misapprehends the reason and meaning of the amendment—it would be within the province of the Supreme Court to so hold and overrule its own precedent. Our Court is constrained to follow Supreme Court precedent and we are not at liberty to exceed our power and overrule it, even if we were to correctly guess how the Supreme Court would rule under these facts in light of the 1992 amendment. And, here, in my view, the majority's guess is incorrect.

In my view, the 1992 amendment simply codified and clarified the holdings in *Wikman v Novi*, 413 Mich 617; 322 NW2d 103 (1982), *Eyde v Lansing Charter Twp*, 420 Mich 287; 363 NW2d 277 (1984), and *Charter Twp of Windsor v Eaton Cty Drain Comm'r*, 181 Mich App 481; 449 NW2d 689 (1989), to prevent suits by local property owners against drain boards in the Tax Tribunal. In *Eyde*, 420 Mich at 292, our Supreme Court held that all challenges to special assessments on personal property are within the exclusive and original jurisdiction of the Tax

Tribunal. Thus, it determined that a challenge to a special assessment that was imposed by a township on private property in order to pay for the township's financial obligations to the drainage board arose under the property tax laws of the state, and that the Tax Tribunal had exclusive and original jurisdiction over such a dispute. *Id.* Consequently, *Eyde* holds that the Tax Tribunal, not the circuit court, has jurisdiction over plaintiff's claims. *Id.* In contrast, if a special assessment is against a township as a "public body in general, rather than . . . upon property owned by the township," it does not fall under the property tax laws under MCL 205.731, because the assessment is against a public corporation. *Windsor*, 181 Mich App at 482, 485. In other words, first level disputes over intragovernmental special assessments are not real property assessments contemplated by the property tax laws, and are handled in circuit court for myriad reasons, including the need for finality and prompt appellate review, particularly in cases addressing drain projects, which often involve jurisdictional questions, bond issues, and pressing public health concerns. *Id*. at 484-487, citing *Eyde v Lansing Twp*, 109 Mich App 641, 644-649; 311 NW2d 438 (1981).

It does not render the township's assessment as one arising under the drain code merely because the township assessed property taxes against a local property owner to defray the cost of a drain board's charge against the township for a drain project. On the contrary, while the charge by the drain board against the township does arise out of and is authorized by the drain code, the township's power and ability to pass this cost on to local property owners is derived from and arises out of the authority granted to it by the public improvement act. MCL 41.721, *et seq*. Indeed, in *Wikman*, 413 Mich at 631-634, our Supreme Court held that MCL 205.731(a) clearly expresses the legislative intent that the Tax Tribunal's exclusive and original jurisdiction extends to challenges to special assessments that are levied by a public corporation, such as a township, for public improvement projects like the one here. In my view, the drain code unambiguously states that if the township decides to impose a special assessment on private property owners, it must do so pursuant to authority that is outside of the drain code. See MCL 280.490(2). In any event, the Legislature's 1992 amendment simply does not provide that claims contesting tax bills by local property owners—via the public improvement act or otherwise—should be heard in circuit court instead of the Tax Tribunal, where they have historically been adjudicated.

Again, the majority comes to the opposite conclusion, but even if my interpretation of the 1992 amendment is incorrect, this simply reinforces that it is for our Supreme Court to make the judgment about the effect of the amendment. As an intermediate appellate Court, we have the dual obligation, under the rule of law, to faithfully interpret legislative enactments and to also respect vertical stare decisis. And, when, as here, these two roles possibly conflict and there is legitimate disagreement about a legislative change, we must be careful to do justice to both roles and not give short shrift to either. Our case law instructs that, because *Eyde* addressed the same issue and constitutes binding precedent, we are bound to follow it. This Court may not overrule or modify decisions of the Michigan Supreme Court, even when a statute has been amended in a way that may change the holding of a decision or otherwise render the decision obsolete. *Paige v Sterling Heights*, 476 Mich 495, 523-524; 720 NW2d 219 (2006), citing *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993), overruled on other grounds *Karaczewski v Farbman Stein & Co*, 478 Mich 28; 732 NW2d 56 (2007), overruled on other grounds *Bezeau v Palace Sports & Entertainment, Inc*, 487 Mich 455; 795 NW2d 797 (2010). See also *Pellegrino v AMPCO Sys Parking*, 486 Mich 330, 354 n 17; 785 NW2d 45 (2010); *People v Mitchell*, 428 Mich 364, 369; 408 NW2d 798 (1987) ("[a]n elemental tenet of our jurisprudence, stare decisis,

provides that a decision of the majority of justices of this Court is binding upon lower courts."). In *Paige*, 476 Mich at 524, our Supreme Court held that this Court could not overrule a decision of the Michigan Supreme Court, and that

> [t]he obvious reason for this is the fundamental principle that only this Court has the authority to overrule one of its prior decisions. Until this Court does so, all lower courts and tribunals are bound by that prior decision and must follow it even if they believe that it was wrongly decided or has become obsolete.

Moreover, in *Boyd*, 443 Mich at 523, the Michigan Supreme Court stated that "it is the Supreme Court's obligation to overrule or modify case law if it becomes obsolete, and until this Court takes such action, the Court of Appeals and all lower courts are bound by that authority." The Court explained in *Mitchell*, 428 Mich at 370, that if this Court finds that a Michigan Supreme Court decision is no longer viable, it may state its disagreement with the case, but it is bound to follow it nonetheless. Thus, because the Michigan Supreme Court's decision in *Eyde* has not been overruled subsequent to the amendment of MCL 205.703, this Court is bound by the decision. *Id.* See also *Paige*, 476 Mich at 524.

The majority cites cases for the ostensible proposition that this Court may ignore Supreme Court precedent whenever the Legislature amends a statute, but the cases are simply inapposite. In *Stand Up v Secretary of State*, 492 Mich 588, 606-607; ___ NW2d ___ (2012), our Supreme Court ruled that its *own prior opinion* was superseded by statute on the basis of new "clear guidance" by the Legislature. In *Bush v Shabahang*, 484 Mich 156, 165-166; 772 NW2d 272 (2009), the Supreme Court reconsidered its *own prior decisions*, both of which "relied on language of a statute that is no longer in existence . . . ." In *In re Nestorovski Estate*, 283 Mich App 177, 196 n 6; 769 NW2d 720 (2009), the majority denied that it was overruling Supreme Court precedent but, as here, rebuffed the doctrine of stare decisis based on *Lamp v Reynolds*, 249 Mich App 591, 604; 645 NW2d 311 (2002) and *People v Pfaffle*, 246 Mich App 282, 303-304; 632 NW2d 162 (2001). However, as with the majority's other citations, *Lamp* relied on cases in which the Supreme Court declared that it could modify or overrule *its own decisions*, and not that this Court could modify or overrule decisions of the Michigan Supreme Court. See *Lamp*, 249 Mich App at 604, citing *Robinson v Detroit*, 462 Mich 439, 464; 613 NW2d 307 (2000) and *Brown v Manistee Co Rd Comm*, 452 Mich 354, 367-368; 550 NW2d 215 (1996), overruled *Rowland v Washtenaw County Rd Comm*, 477 Mich 197 (2007). And the Court in *Pfaffle*, 246 Mich App at 303-304, declined to overrule or ignore a prior Supreme Court decision, observing that the issues addressed in the Supreme Court opinion were wholly different than those at issue in *Pfaffle* and addressed a statute that "no longer exists in even a roughly similar form."

For these reasons, the majority's reliance on these decisions is misplaced. More importantly, however, because the holding in *Paige* has not been overruled, this Court is bound by the rule set forth therein and may not overrule a decision of the Michigan Supreme Court if it concludes that a subsequent amendment to a statute renders the Michigan Supreme Court decision obsolete. *Pellegrino*, 486 Mich at 353-354.

Notwithstanding our Supreme Court's mandate that lower courts must abide by its decisions in situations precisely like this one, the majority declines and, instead attempts to

characterize the 1992 amendment as though a statute has been repealed, replaced, or completely nullified when the reality is obviously far more complicated. Disregarding the application of Supreme Court precedent speaks not only to a disregard of the rules of vertical stare decisis, but to an indifference to the true complexity of the jurisdictional issue presented, as evidenced by the record itself. Plaintiff originally filed this action in the Tax Tribunal and, while pending, filed a challenge to the tax assessment in circuit court. On the basis of plaintiff counsel's training to become a Tax Tribunal hearing referee, he believed the case should be transferred out of the Tax Tribunal entirely and heard in the circuit court. The Tax Tribunal initially denied plaintiff's transfer petition, at first believing that it had jurisdiction over the challenge to the tax assessment, and then, on reconsideration, granted the transfer to circuit court. Thereafter, with two separate cases pending before two different judges—plaintiff's original complaint and the transferred case—the circuit court ruled that, indeed, it lacks jurisdiction to consider any of plaintiff's challenges to the tax assessment by defendant and the case should have been heard in the Tax Tribunal. Thus, while the majority simply dismisses *Eyde* as superseded and without effect, the legal significance and application of the 1992 amendment confounded not only the litigants and their counsel, but also the trial court and the Tax Tribunal.

Moreover, contrary to the majority's position, the amendment does not exist in isolation, but intersects with many other statutory sections that remain and impact how tax assessments may be imposed and challenged. The drain code, the property tax laws, and the public improvement act are comprised of hundreds of statutory sections with myriad requirements, procedures and levels of hearings and challenges by both governmental entities and individual property owners. How the 1992 amendment fits within them and existing precedent, is, at best, a complex question of jurisdiction and procedure which I believe should be addressed by our Supreme Court. And, again, the very fact that there is serious disagreement here about the impact of the amendment underscores the importance of deferring to the Supreme Court as the doctrine of stare decisis says we must.

Accordingly, I dissent and would hold that the circuit court lacked subject matter jurisdiction over plaintiff's claims and that the trial court correctly granted summary disposition to Pittsfield Township.

/s/ Henry William Saad