

STATE OF MICHIGAN
COURT OF APPEALS

SHELLY RAYMENT, GARY RAYMENT and
SHIRLEY LAYMAN,

UNPUBLISHED
December 4, 2003

Plaintiffs-Appellants,

v

DAVISON TOWNSHIP,

No. 239880
Genesee Circuit Court
LC No. 01-069871-CZ

Defendant-Appellant.

Before: Whitbeck, C.J., and Gage and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant's motion for summary disposition. We affirm.

In 1964, defendant assessed one mill¹ to establish and maintain a police department. In 1971, the millage was supplemented by .5 mill for the same purpose. Defendant levied the assessments until 2001. In March 2001, plaintiffs filed a complaint in circuit court alleging that the 1964 and 1971 levies had expired in 1984 and 1991 respectively, pursuant to the twenty-year limitation imposed on such levies pursuant to 1963 Const, art 9, § 6.² Accordingly, plaintiff

¹ A "millage" is "the tax rate, as for property, assessed in mills per dollar." A "mill" is "a money of account equal to .001 of a U.S. dollar." *Random House Webster's College Dictionary* (2001). Therefore, a millage of 1.5 mills means that a property owner would pay \$1.50 tax for every \$1,000 of the property's taxable value.

² Const 1963, art 9, § 6 provides, in part:

Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate for which shall not exceed 18 mills on each dollar of such valuation, may be adopted

(continued...)

maintained that defendant continued to collect the levies after they had expired, and that defendant's taxpayers were entitled to "a return, disgorgement and refund of any and all monies wrongfully assessed and collected." Also, in an amended motion for class action certification, plaintiffs alleged that the 1964 levy was void from inception because the ballot proposal did not state an expiration date. Further, plaintiffs also alleged that 1971 levy was constitutionally infirm and void from inception because no ballot proposal was submitted to defendant's registered voters. Following the hearing on the parties' respective motions for summary disposition, the trial court determined that the Tax Tribunal had exclusive jurisdiction over the controversy and granted defendant's motion for summary disposition.

On appeal, plaintiffs argue that summary disposition was inappropriate because their claims were constitutional and equitable in nature, and that the Tax Tribunal did not have subject matter jurisdiction over such claims. We disagree. Generally, this Court reviews de novo a trial court's decision on a motion for summary disposition. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001). "Jurisdictional questions under MCR 2.116(C)(4) are questions of law that are also reviewed de novo." *Id.* "When reviewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show there was no genuine issue of material fact." *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000).

MCL 600.605 provides that "[c]ircuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 205.731 provides:

The [tax] tribunal's exclusive and original jurisdiction shall be:

- (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 property tax laws.
- (b) A proceeding for refund or redetermination of a tax under the property tax laws.

Further "[t]he [Tax] [T]ribunal's jurisdiction is based either on the subject matter of the proceeding (*e.g.*, a direct review of a final decision of an agency relating to special assessments under property tax laws) or the type of relief requested (*i.e.*, a refund or redetermination of a tax

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and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, *for a period not to exceed 20 years at any one time*, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question. [Emphasis added.]

under the property tax laws).” *Wikman v Novi*, 413 Mich 617, 631; 322 NW2d 103 (1982). In this case, plaintiffs requested, “a return, disgorgement and refund of any and all monies wrongfully assessed and collected” for each claim asserted in their complaint. Therefore, plaintiffs’ request for a refund falls squarely within the jurisdiction of the Tax Tribunal, pursuant to MCL 205.731(b).

Plaintiffs also allege that the procedure by which defendant assessed and collected the levies was in violation of due process and therefore not within the jurisdiction of the Tax Tribunal. We disagree. “[T]he Tax Tribunal does not have jurisdiction over constitutional questions and has no authority to hold statutes invalid.” *WPW Acquisition Co v City of Troy*, 254 Mich App 6, 8; 656 NW2d 881 (2002), citing *Meadowbrook Village Assoc v Auburn Hills*, 226 Mich App 594, 596, 574 NW2d 924 (1997). “Rather, the circuit court has jurisdiction to consider such matters.” *Id.*, citing *Meadowbrook*, *supra* at 596-597. However, plaintiffs do not “challenge the use of the taxes or the constitutional validity of the authorizing statute.” *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). Therefore, plaintiffs allege only a violation of Const 1963, art 9, § 6. “Where individual property owners contest the legality of the tax bills they receive, the Legislature intended such matters to be heard in the Tax Tribunal.” *Grosse Ile Comm for Legal Taxation v Grosse Ile*, 129 Mich App 477, 486; 342 NW2d 582 (1983). Thus, plaintiffs’ allegations that defendant violated the provisions of Const 1963, art 9, § 6 are properly within the Tax Tribunal’s jurisdiction. Further, in *Johnston*, *supra* at 208, this Court stated:

While the circuit court has been recognized to have jurisdiction over purely constitutional claims affecting taxation, the mere fact that a particular issue might be framed in constitutional terms does not grant jurisdiction to the circuit court to the exclusion of the Tax Tribunal. If this were the case, virtually every matter submitted to the Tax Tribunal could find its way to circuit court since any inaccurate or improper assessment of a tax could be said to violate the taxpayer’s constitutional rights as a taking without due process. Rather, what must be recognized is that the Tax Tribunal has original and exclusive jurisdiction over those tax issues which involve the accuracy and methodology of the property tax assessment.

Therefore, plaintiffs’ pleading of their claims in constitutional terms does not strip the Tax Tribunal of original and exclusive jurisdiction over these claims that request a refund of taxes that plaintiffs allege defendant illegally collected.

Plaintiffs next argue that the assessments defendant levied for establishing and maintaining a police department are not assessments arising under property tax laws and therefore do not come within the jurisdiction of the Tax Tribunal. MCL 205.731(b). Rather, plaintiffs contend that the levies were imposed pursuant to defendant’s police power. We disagree. “Taxes levied (or exemptions created), under the state’s police powers do not fall within the realm of property tax laws and are thus not within the jurisdiction of the Tax Tribunal.” *Beattie v East China Charter Twp*, 157 Mich App 27, 35; 403 NW2d 490 (1987).

The assessments levied by defendant were imposed “under property tax laws” as the phrase is used in MCL 205.731. MCL 41.801 grants townships the authority to levy millage against the assessed valuation of all property in the area for which fire or police protection is to be furnished to provide for the operation of police and fire departments. Thus, the township act

specifically contemplates that all property in an area will be taxed. Accordingly, the assessments are “in the nature of a property tax” as they are “assessed against real property according to the benefits received.” *Wikman, supra* at 635. Therefore, the assessments were levied under property laws, and the Tax Tribunal has original and exclusive jurisdiction over plaintiffs’ claims.

In addition, plaintiffs’ requested the equitable remedy of mandamus to prevent defendant from continuing to levy 1.5 mill. However, before the trial court rendered its decision, defendant’s voters approved a ten year, 1.5 mill assessment for the operation and maintenance of the police department. The request for mandamus was moot. Therefore, the trial court did not err by granting summary disposition to defendant pursuant to MCR 2.116(C)(4).

Plaintiffs last argue that the trial court erred by denying their motion for class certification. We disagree. Since the trial court properly granted defendant summary disposition for lack of subject matter jurisdiction, the trial court properly denied plaintiffs’ motion for class certification. “Once a court concludes that it lacks subject-matter jurisdiction, it is powerless to do more than dismiss the action.” *Board of Co Road Comm’rs of Eaton Co v Schultz*, 205 Mich App 371, 375 n 2; 521 NW2d 847 (1994), citing *Altman v Nelson*, 197 Mich App 467, 472-473, 495 NW2d 826 (1992).

Affirmed.

/s/ William C. Whitbeck

/s/ Hilda R. Gage

/s/ Brian K. Zahra