STATE OF MICHIGAN

COURT OF APPEALS

COUNTY ROAD ASSOCIATION OF MICHIGAN and CHIPPEWA COUNTY ROAD COMMISSION,

Plaintiffs-Appellees,

v

GOVERNOR OF MICHIGAN, DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION, DEPARTMENT OF TRANSPORTATION, DIRECTOR OF THE DEPARTMENT OF MANAGEMENT AND BUDGET, DEPARTMENT OF MANAGEMENT AND BUDGET, STATE BUDGET DIRECTOR, STATE TREASURER, DEPARTMENT OF TREASURY, SECRETARY OF STATE, and STATE OF MICHIGAN,

Defendants-Appellants,

and

MICHIGAN PUBLIC TRANSIT ASSOCIATION, ANN ARBOR TRANSPORTATION AUTHORITY, CAPITAL AREA TRANSPORTATION AUTHORITY, and SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION,

Intervening Plaintiffs-Appellees.

UNPUBLISHED
January 13, 2004

No. 245931
Ingham Circuit Court
LC No. 02-000308-CZ

Before: Talbot, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

We granted defendants leave to appeal from the trial court's order issuing a preliminary injunction to preclude the State from transferring pursuant to executive order $20 million from the Michigan Transportation Fund ("MTF") to the Department of State or to the state general fund as expenses incurred in the collection of sales taxes. We also stayed the court-ordered

preliminary injunction.[1] On appeal, defendants argue that the trial court abused its discretion in ruling that the state employed a cost allocation methodology that inaccurately assessed the amount of expenses incurred from the collection of sales taxes, and that the court improperly imposed a substitute allocation methodology. We affirm in part, reverse in part and remand.

I. Facts and Procedural History

On November 6, 2001, former Governor John Engler issued Executive Order 2001-9, to reduce state expenditures by a total amount of $319 million. The expenditure reductions included the transfer of a total amount of $144 million from various revenue funds to the state's general fund for Fiscal Year 2001-2002. The executive order was issued pursuant to Const 1963, art 5, § 20, which mandates the Governor, with the approval of the appropriating legislative committees, to reduce expenditures when actual revenues for a fiscal year are expected to fall below the revenue estimates upon which the fiscal year appropriations were based. In this case, the executive order was issued with the concurrence of the appropriation committees of the House and Senate.

The MTF was established by § 10 of 1978 PA 444 as the depository for sales taxes on motor vehicles and motor fuels. See *Southeastern Michigan Transportation Authority v Secretary of State*, 104 Mich App 390, 405; 304 NW2d 846 (1981). Plaintiffs consist of governmental agencies who receive funding from the MTF. Plaintiffs filed suit to challenge the constitutionality of the executive order with respect to the transfer of several funds. The single issue on this appeal relates to plaintiffs' claim in their request for a preliminary injunction that the MTF was overcharged by $40 million in costs for the collection of the sales taxes. The trial court determined that only $20 million of the disputed amount of costs were not necessary collection expenses, and the court issued a preliminary injunction enjoining the transfer of that amount of the funds.

II. Analysis

We review a trial court's decision to grant a preliminary injunction for an abuse of discretion. *Alliance for Mentally Ill of Michigan v Dep't of Community Health*, 231 Mich App 647, 661; 588 NW2d 133 (1998). A trial court's findings of fact will be sustained unless they are clearly erroneous or we are convinced that we would have reached a different result. *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 9; 596 NW2d 620 (1999). In deciding whether to grant a preliminary injunction, a court must consider (1) the likelihood that the party seeking

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[1] This appeal is submitted together with an appeal from the same case below, *County Road Ass'n of Michigan v Governor of Michigan*, ___ Mich App ___; ___ NW2d ___ (published opinion of the Court of Appeals, issued 01/__/2004 (Docket No. 245767), where intervening plaintiffs, a group of state agencies who received benefits from the Comprehensive Transportation Fund, intervened to challenge the constitutionality of the transfer of $12,750,000 from Comprehensive Transportation Fund to the state general fund. The trial court granted intervening plaintiffs' request for a preliminary injunction enjoining the transfer. In that decision, we vacated the preliminary injunction.

the preliminary injunction will prevail on the merits, (2) the danger that party will suffer irreparable harm if the injunction is not issued, (3) the risk that the party would be harmed more by the absence of an injunction than the opposing party would be by the granting of the injunction, and (4) harm to the public interest if the injunction is issued. *Fruehauf Trailer Corp v Hagelthorn*, 208 Mich App 447, 449; 528 NW2d 778 (1995). The court's decision must not be arbitrary and must be based on the facts of the particular case. *Ins Comm'r v Arcilio*, 221 Mich App 54, 77; 561 NW2d 412 (1997). On appeal, defendants challenge only the first prong of the above considerations by asserting that the trial court abused its discretion when it determined that plaintiffs were likely to prevail on the merits because the state's methodology used in determining the cost of collecting the taxes was flawed.

Const 1963, art 9, § 9 governs the distribution of revenues collected from the sales taxes of motor vehicles and motor vehicle parts, accessories and fuel. It provides that, after the payment of "necessary collection expenses," the revenues must be used exclusively for transportation purposes. In this case, plaintiffs presented the testimony of Bruce Berend, a certified public accountant. He testified that the collection of sales taxes was part of the same overall transaction that collected motor vehicle title transaction and registration fees. He stated that the state's methodology in determining the cost for the sales tax collection allowed the MTF to be charged for the costs related to the collection of motor vehicle title transaction and registration fees that are not sales taxes specifically dedicated to the MTF. According to Berend's calculations, the MTF was improperly billed for $8,073,000 in costs not related to the collection of sales taxes. He also testified that another $4,400,000 was overcharged to the MTF for some type of overhead costs related to the collection of sales taxes that are unclear from the record. In addition to the above two estimates, Berend testified that the state's methodology improperly allowed the MTF to be billed for the costs of processing automobile dealer licensing, driver improvement programs, and drivers' license appeals, which are not part of the necessary costs of collecting sales taxes. According to Berend, these costs added up to an additional $7.3 million overcharge to the MTF. Berend calculated the total overcharge at $20 million. While he faulted the allocation of other costs to the MTF in the course of his testimony, he did not assign any dollar figure to those amounts. Rather, he acknowledged that his estimate of amounts improperly charged to the MTF was based only on the sales tax collection and the costs for automobile dealer licensing, driver improvement programs, and drivers' license appeals. It is evident that the trial court's preliminary injunction to enjoin the transfer of $20 million from the MTF was based only on the three figures provided by Berend.

With respect to the total amounts of $8,073,000 and $4,400,000 that plaintiffs claim were overcharged sales tax collection expenses, Const 1963, art 9, § 9 plainly allows the deduction of "necessary collection expenses" in obtaining tax revenue that it otherwise dedicates to transportation purposes. Nothing in the language of Const 1963, art 9, § 9 directs the exclusion of necessary collection expenses if they incidentally further other governmental functions. While Berend testified that the Department of State collects sales taxes as an incidental part of vehicle titling transactions, he never described any additional incremental costs incurred from the collection of the incidental fees. Thus, the evidence does not support a conclusion that plaintiffs are likely to prevail on the merits with regard to those costs.

With respect to the cost for processing automobile dealer licensing, driver improvement programs, and driver's license appeals, it is undisputed, for purposes of considering the

preliminary injunction at issue, that the Department of State charged the MTF $7,300,000 for these activities as part of its alleged necessary collection expenses. Defendants make no argument as to how the costs for these activities could possibly be reasonably characterized as expenses incurred in the collection of sales taxes. Rather, defendants present nothing to dispute the accuracy of Berend's testimony on the matter. Thus, we conclude that the trial court properly determined that plaintiffs were likely to prevail on the merits with respect to $7,300,000 of the $20 million covered by the preliminary injunction at issue.

Defendants next argue that the steering committee, charged by 1996 PA 341 to adopt the state's methodology for determining the necessary costs for the collection of sales taxes, was entitled to deference in adopting the state's cost allocation methodology. We disagree. No reasonable standard of deference could sustain a conclusion that the costs for licensing automobile dealers, driver improvement programs, and drivers' license appeals are necessary expenses for the collection of sales taxes. Further, the two cases upon which defendants rely in support of their argument, *In re Kurzyniec Estate*, 207 Mich App 531; 526 NW2d 191 (1994), and *J & P Market, Inc v Liquor Control Comm*, 199 Mich App 646; 502 NW2d 374 (1993), are not on point because they each involve essentially adjudicative or quasi-judicial decisions by an administrative tribunal or agency as opposed to the type of state budgetary decision at issue here.

Finally, defendants argue that plaintiffs' claim for injunctive relief should be considered barred by the doctrine of laches because plaintiffs did not challenge until the year 2002 the methodology that has been used since 1996. Laches is an equitable defense that may be invoked when the delay in bringing a claim prejudices the other party. *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 577; 485 NW2d 129 (1992). Given that plaintiffs brought their suit during FY 2001-02, the same fiscal year in which the executive order directed the transfer of funds from the MTF, we see no reasonable basis for charging plaintiffs with undue delay that prejudiced defendants. Thus, defendants' argument is without merit.

Affirmed in part, reversed in part and remanded. We direct the trial court on remand to modify the December 23, 2002, preliminary injunction at issue so that it only applies to the amount of $7,300,000. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Karen M. Fort Hood