

STATE OF MICHIGAN
COURT OF APPEALS

ELM INVESTMENT CO,

Petitioner-Appellant,

v

CITY OF DETROIT,

Respondent-Appellee.

UNPUBLISHED

August 7, 2007

No. 267999

Tax Tribunal

LC No. 00-320438

Before: Smolenski, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

In this dispute over the collection of property taxes, Elm Investment Company (Elm) appeals as of right the January 2006 order of the tax tribunal dismissing his case for lack of jurisdiction. We reverse and remand.

In September 2005, Elm purchased a property located in the City of Detroit (the City) at a tax foreclosure auction for \$1,400. Elm recorded the deed on October 6, 2005. Thereafter, the City billed Elm for property taxes assessed against the property for all of 2005. Elm apparently paid the taxes and then, in November 2005, appealed the collection before the Michigan Tax Tribunal.

In January 2006, the tax tribunal dismissed Elm's appeal for lack of jurisdiction. Specifically, the tax tribunal concluded that matters dealing with tax foreclosures must be brought before the circuit court.

This appeal followed.

As a preliminary matter, we shall address our jurisdiction to hear this appeal. Resolution of this issue involves the proper interpretation of the court rules, which this Court reviews de novo. *Haliw v Sterling Hts*, 471 Mich 700, 704; 691 NW2d 753 (2005).

This Court is an error-correcting court, see *Burns v Detroit (On Remand)*, 253 Mich App 608, 615; 660 NW2d 85 (2002), that has jurisdiction to hear appeals as of right by aggrieved parties. MCR 7.203(A). Hence, in order to invoke this Court's jurisdiction, a litigant must demonstrate an injury arising from the actions of the lower court. *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 292; 715 NW2d 846 (2006); see also *Lewis v LeGrow*, 258 Mich App 175, 210; 670 NW2d 675 (2003) (noting that error warranting reversal must be predicated

on the trial court's actions). In the present case, the tax tribunal's only action was to enter an order dismissing Elm's appeal for lack of jurisdiction.

Although Elm is the appellant before this Court, Elm does not argue that the tax tribunal erred when it dismissed its claim. Instead, Elm argues that the tax tribunal *correctly* concluded that the Circuit Court had exclusive jurisdiction to hear petitioner's claims. Despite the fact that Elm agrees with the tax tribunal's conclusion and resolution of its claim, Elm nevertheless asks this Court to review the tax tribunal's decision and issue an opinion expressly holding that the Circuit Court has exclusive jurisdiction to decide whether the City may properly collect property taxes, interest and penalties from the purchaser of a property at a tax foreclosure sale when the taxes, interest and penalties were assessed against a property before the purchaser obtained title to the property.

In contrast to Elm's position, the City, as the appellee in this case, argues that the tax tribunal is vested with original and exclusive jurisdiction to decide Elm's claim of error. Indeed, the City argues that the tax tribunal erred when it determined that Elm's claim involved tax foreclosure issues that could only be decided in the circuit court and asks this Court to hold that the tax tribunal has jurisdiction over Elm's request for a tax refund.¹

Although Elm was adversely affected by the tax tribunal's decision to dismiss its claim of appeal, because Elm does not allege any error on the part of the tax tribunal, it is unclear if Elm is an aggrieved party within the meaning of MCR 7.203(A). Nevertheless, the City does argue that the tax tribunal erred when it concluded that the circuit court had jurisdiction to hear Elm's claim of appeal. Consequently, it is an aggrieved party. Furthermore, the parties agree that Elm has attempted to pursue a similar claim, although apparently for a different property, before the circuit court only to have that suit dismissed because the circuit court concluded that the tax tribunal had exclusive jurisdiction.² Thus, it appears that neither the circuit court nor the tax tribunal is willing to decide the merits of Elm's claim. Because the parties have been unable to obtain a proper hearing before either the circuit court or the tax tribunal and this matter is likely to arise again, we conclude that it would be just to exercise our authority under MCR 7.216(A)(2) to treat the City as the appellant and Elm as the appellee. Therefore, we shall proceed to address the parties' arguments concerning whether the tax tribunal has the exclusive jurisdiction to determine the issue presented.

In the present case, we must determine whether the circuit court or the tax tribunal had jurisdiction to hear Elm's claim that the City could not properly require purchasers of tax foreclosed properties to pay taxes accrued before the date of purchase. "Jurisdiction is a court's power to act and its authority to hear and decide a case." *Riverview v Sibley Limestone*, 270 Mich App 627, 636; 716 NW2d 615 (2006). The existence of jurisdiction is a question of law,

¹ The City also asks this Court to affirm the circuit court's earlier dismissal of Elm's prior suit on the basis of lack of jurisdiction. However, that case is not now before us.

² Although Elm attached a copy of its complaint and the circuit court's order dismissing its suit against the City, these items are not part of the lower court record. See MCR 7.210.

which this Court reviews de novo on appeal. *Trostel, Ltd v Treas Dep't*, 269 Mich App 433, 440; 713 NW2d 279 (2006).

“The circuit court possesses ‘broad original jurisdiction over all matters, particularly civil, so long as jurisdiction is not expressly prohibited by law.’” *Derderian v Genesys Health Sys*, 263 Mich App 364, 375; 689 NW2d 145 (2004), quoting *Campbell v St John Hosp*, 434 Mich 608, 613; 455 NW2d 695 (1990). However, circuit courts do not have jurisdiction to hear civil claims or remedies over which the constitution or a statute confers exclusive jurisdiction on another court. *Ammex, Inc v Treasury Dep't*, 272 Mich App 486, 494; 726 NW2d 755 (2006), citing MCL 600.601 and MCL 600.605. Thus, in the present case, the circuit court will have jurisdiction over Elm’s claim, unless it falls within the exclusive jurisdiction of the tax tribunal. See *Citizens for Common Sense in Gov’t v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000) (“[I]f the Legislature has expressed an intent to make an administrative tribunal’s jurisdiction exclusive, then the circuit court cannot exercise jurisdiction over those same areas.”).

Under MCL 205.731, the tax tribunal has exclusive and original jurisdiction over:

- (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.

Thus, under MCL 205.731, the “tribunal’s jurisdiction is based either on the subject matter of the proceeding . . . or the type of relief requested” *Wikman v Novi*, 413 Mich 617, 631; 322 NW2d 103 (1982). Because the tax tribunal’s jurisdiction over these matters is exclusive, the circuit courts cannot exercise jurisdiction over a proceeding involving direct review of final decision of an agency relating to property tax or a proceeding for refund or redetermination of tax. *Id.* at 645; see also MCL 205.774 (abolishing the right to sue any agency for a refund of taxes other than by a proceeding before the tax tribunal). Further, where a party is aggrieved by a tax tribunal decision, the aggrieved party does not appeal to the circuit court, but rather directly to this Court. *Ammex, supra* at 494.

Although the circuit court’s jurisdiction over tax matters is limited by the grant of exclusive jurisdiction to the tax tribunal, circuit courts retain jurisdiction “‘to entertain constitutional issues concerning the validity of tax laws.’” *Id.* at 494-495, quoting *Kostyu v Dep’t of Treasury*, 170 Mich App 123, 128; 427 NW2d 566 (1988). Indeed, the tax tribunal is without the authority to find a statute unconstitutional or invalid. *Wikman, supra* at 646-647; *Ammex, supra* at 495. However, merely couching a claim in terms of a constitutional question is insufficient to divest the tax tribunal of its exclusive jurisdiction. Instead, the tax tribunal retains jurisdiction when the constitutional claim does not involve the validity of a statute, but involves whether the assessment of taxes was “arbitrary and without foundation.” *Wikman, supra* at 647.

On appeal, Elm contends that this case involves a constitutional issue regarding the interpretation of the foreclosure statutes and their connection to the property tax statutes. Pursuant to MCL 211.78h, the circuit courts are integrally involved in the foreclosure process. By June 15 of each year, a foreclosing governmental unit must file a petition with the local

circuit court listing all properties forfeited and not redeemed by the original owner that are subject to foreclosure. MCL 211.78h(1). The circuit court clerk then schedules hearings regarding the foreclosures on the properties. MCL 211.78h(5). At the hearing, the original property owner has the right to appear and contest the “validity or correctness” of the unpaid taxes, fees, interest, or penalties. MCL 211.78k(2).³ Following the hearing, the circuit court must enter a “final judgment” of foreclosure. MCL 211.78k(5). That judgment must give the foreclosing governmental unit fee simple title to the property. MCL 211.78k(5)(b). The statute provides for the extinguishing of liens against the property, in relevant part, as follows:

That all liens against the property, including any lien for unpaid taxes or special assessments, . . . are extinguished, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section. [MCL 211.78k(5)(c).]

In conducting a tax foreclosure sale, the minimum bid must include “[a]ll delinquent taxes, interest, penalties, and fees due on the property” and any expenses related to the sale of the property. MCL 211.78m(11).

Elm contends that the City could not charge it for property taxes accumulated from the beginning of the tax period before it took title by deed to the property. Elm argues that its challenge against respondent’s practice of charging such taxes is a challenge against the method of collection of taxes as done in *Joy Mgt Co v Detroit*, 176 Mich App 722; 440 NW2d 654 (1989), overruled on other grounds by *Detroit v Walter*, 445 Mich 682, 698 n 20; 520 NW2d 135 (1994). In *Joy Mgt Co*, the plaintiff owed the city for back property taxes. The plaintiff’s building burned to the ground and it became entitled to insurance proceeds. The defendant contacted the insurance provider to inform it of the outstanding property tax lien. Accordingly, the insurance provider issued the check for the insurance proceeds to the plaintiff and the defendant jointly. To force the payment of the back taxes, the defendant refused to endorse the check without payment of the back taxes. *Id.* at 724-725.

The plaintiff filed suit in the circuit court, arguing that the defendant lacked the authority to seize personal property, such as insurance proceeds, to collect taxes. *Id.* at 725. The plaintiff did not argue that it did not actually owe the amount of taxes sought. *Id.* The defendant filed a motion for summary disposition for lack of subject matter jurisdiction, contending that the plaintiff was merely seeking a refund of the taxes paid, an issue within the tribunal’s exclusive jurisdiction. *Id.* at 725-726. The circuit court denied the defendant’s motion and retained jurisdiction over the case. *Id.*

This Court agreed with the circuit court’s decision. In doing so, this Court reasoned:

³ Further, the original property owner must be given notice sufficient to satisfy the requirements of due process. *In re Petition by Wayne Co Treas*, 478 Mich 1; 732 NW2d 458 (2007).

[P]laintiff has not challenged a final decision regarding valuation, rates, allocation or assessment, nor is plaintiff asking for a refund or a redetermination of a tax. Rather, plaintiff has challenged the legality of the *method* used by defendant to enforce collection of the property taxes. Resolution of this issue depends not on findings of fact, but on conclusions of law based upon the construction of § 47 [MCL 211.47]. This is clearly within the scope of the circuit court’s jurisdiction. [*Id.* at 728 (emphasis in original).]

Respondent, on the other hand, compares this case to *Wikman, supra*, and contends that jurisdiction is proper in the tribunal. In *Wikman*, the plaintiffs owned land abutting Taft Road and filed an appeal before the tax tribunal challenging the city’s special assessment of property taxes to improve the road. The plaintiffs asserted that the special assessment was “determined in an arbitrary and inequitable manner” and that their properties were not “especially benefited” by the improvement. *Wikman, supra* at 630. Accordingly, the plaintiffs sought a preliminary injunction to enjoin the collection of the taxes during the pendency of the case. *Id.* The issue was whether the tribunal or circuit court had jurisdiction to consider the validity of a “special assessment.” *Id.* at 626, 631.

Our Supreme Court determined that the tribunal had exclusive jurisdiction over special assessments of property taxes given that the authority was expressly granted in MCL 205.731. *Wikman, supra* at 632-634. The Court further determined that the special assessment at issue was levied as a property tax. *Id.* at 635. Moreover, the Court concluded that jurisdiction did not vest with the circuit court based upon the “constitutional” issue raised by the plaintiffs. The plaintiffs did not challenge the validity of a statute allowing special assessments of property taxes. Rather, the plaintiffs contended that the particular special assessment was “arbitrary and without foundation.” The Court determined that the resolution of this issue would involve many factual determinations that were within the unique expertise of the tribunal. *Id.* at 646-647. Although, the Court agreed that the tribunal lacks the power to issue injunctions as requested by the plaintiffs, it determined that the tax tribunal could grant the plaintiffs adequate relief through a “writ, order, or directive” as provided in MCL 750.732. *Id.* at 647-648. Further, should the defendant fail to adequately respond to the tribunal’s order, the Court noted that the plaintiffs could seek equitable relief in the circuit court to enforce the tribunal’s order. *Id.*

Based on *Wikman*, we conclude that the tribunal has original and exclusive jurisdiction over the present case. Elm’s challenge to the collection of property taxes accumulated between July 2005 and September 2005 is a challenge to an assessment under property tax laws. MCL 205.731(a). Further, Elm is seeking a refund of those taxes. MCL 205.731(b). Although Elm argues that the resolution of its claims involve the interpretation of the foreclosure statutes, Elm does not challenge the validity of the statutes. Hence, the circuit court does not retain jurisdiction on that basis. See *Wikman, supra* at 646-647; *Ammex, supra* at 494-495. Rather, Elm’s argument is simply that the City lacks the authority to collect the taxes under the relevant statutes.

We find *Grosse Ile Committee for Legal Taxation v Twp of Grosse Ile*, 129 Mich App 477; 342 NW2d 582 (1983), instructive on this issue. In *Gross Ile Committee for Legal Taxation*, this Court found that the tribunal had jurisdiction to hear a case where both the circuit court and tribunal had earlier dismissed the case for lack of subject matter jurisdiction. *Id.* at 485-486. The plaintiff challenged the defendant’s collection of taxes, contending that the taxes

exceeded the limits of Const 1963, art 9, § 6. *Id.* at 483. The defendant countered that it was entitled to impose taxes above the constitutional limit because a majority of the electors had approved the increase under the Headlee Amendment. *Id.* at 485. This Court found that the plaintiff's claim amounted to a challenge of the amount of taxes collected and that the constitutional issues involved were only affirmative defenses. *Id.* at 486. Therefore, this Court found that the tribunal had exclusive and original jurisdiction because "individual property owners [were] contest[ing] the legality of the tax bills they receive[d]" *Id.*

It is true that the tribunal lacks the power to issue injunctive relief to prevent future attempts to collect taxes accumulated before a purchaser at tax foreclosure obtains ownership of property. See *Wikman, supra* at 647-648 (noting that quasi-judicial agencies lack judicial powers such as the power to grant an injunction unless expressly granted by the Legislature). However, should the tribunal rule in petitioner's favor and award it a refund, it could enter an order declaring the collection of such taxes to be illegal. Thereafter, Elm could seek equitable relief in the circuit court if respondent tried to collect illegally accumulated property taxes in the future. See *id.* at 648. Accordingly, the tax tribunal should have retained jurisdiction and considered Elm's challenge.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Kurtis T. Wilder

I concur in result only.

/s/ Brian K. Zahra