

OF MICHIGAN
COURT OF APPEALS

DAVID JAMES KIRCHER,

Plaintiff-Appellant,

v

STEWART BEAL and TAX COMMISSION,

Defendants-Appellees.

UNPUBLISHED

June 22, 2010

No. 286720

Ingham Circuit Court

LC No. 07-000992-AV

Before: SAAD, P.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals as of right the dismissal for lack of standing of his challenge to defendant Michigan State Tax Commission's grant of an Obsolete Property Rehabilitation Exemption Certificate to Historic Equities Fund, L.L.C., of which defendant Stewart Beal is president. We hold that, because Kircher lacks appellate standing, we have no jurisdiction over the appeal, and we dismiss.

This Court has jurisdiction over appeals of right "filed by an aggrieved party." MCR 7.203(A). "An aggrieved party is not one who is merely disappointed over a certain result." *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 291; 715 NW2d 846 (2006). In order for a party to be aggrieved for the purposes of appellate standing, "one must have some interest of a pecuniary nature in the outcome of a case" *In re Trankla's Estate*, 321 Mich 478, 482; 32 NW2d 715 (1948). "A party who could not benefit from a change in the judgment has no appealable interest." *Ford Motor Co v Jackson*, 399 Mich 213, 226; 249 NW2d 29 (1976) (citation omitted).

While appellee has not raised the issue of appellate standing, like standing in the trial court, appellate standing "may be raised at any stage in the proceedings, even sua sponte, and may not be waived by the parties." *Chiropractic Council v Comm'r of the Office of Financial & Ins Services*, 475 Mich 363, 374; 716 NW2d 561 (2006) (opinion of YOUNG, J.). Unlike standing in the trial court where one must show an injury arising from the underlying facts of the case, in order to have standing in this Court, one must demonstrate an injury arising from the actions of the court below. *Federated Ins Co*, 475 Mich at 292. If a court finds a lack of standing, it must "recognize its lack of jurisdiction and act accordingly by staying proceedings, dismissing the action, or otherwise disposing thereof, at any stage of the proceeding." *In re Fraser's Estate*, 288 Mich 392, 394; 285 NW 1 (1939).

Kircher was not injured by the action of the Tax Commission in granting a tax exemption to Beal.¹ The relief sought in both the trial court and this Court, a setting aside of the exemption, would not benefit Kircher. No court has concluded that Kircher continues to own the property, and whether or not Kircher owns the property, he has no pecuniary interest in the outcome of this case. If a court, at some future time, holds that Kircher is the owner of the building, the certificate would no longer be with Beal. And, since Beal is the current owner, Kircher is not injured by Beal being awarded the certificate. Thus, Kircher would not benefit from a change in the judgment. Just as Kircher was not injured by the grant of an OPRE Certificate to Beal, neither was he aggrieved by the circuit court's dismissal of his challenge to the grant of the OPRE Certificate to Beal. Kircher thus has no standing to appeal the circuit court's decision.

Because we lack jurisdiction, the claim of appeal is dismissed. Appellee Tax Commission has requested in its brief requested damages for a vexatious appeal pursuant to MCR 7.216(C). However, because a separate motion is required by MCR 7.211(C)(8) and MCR 7.216(C)(1), that request is not properly before us.

Appellee may tax costs, having prevailed in full. MCR 7.219(A).

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray

¹ At oral argument before this Court, Kircher's counsel indicated that Kircher's success or failure in separate appeals pending in this Court in Docket Nos. 288616, 288641, 288645, and 288646 would determine in large part the fate of this appeal. Kirchner did not succeed in those other appeals. See *Ypsilanti Fire Marshall v Kircher*, unpublished opinion per curiam of the Court of Appeals, issued April 15, 2010 (Docket Nos. 288616, 288641, 288645 & 288646).