STATE OF MICHIGAN

COURT OF APPEALS

ROBERT ALLESEE, Petitioner-Appellant,	UNPUBLISHED February 15, 2011
v	No. 295188 Tax Tribunal
TOWNSHIP OF BLOOMFIELD, Respondent-Appellee.	LC No. 00-355602

Before: MURPHY, C.J., and WHITBECK and MURRAY, JJ.

PER CURIAM.

Petitioner Robert Allesee appeals as of right orders by the Michigan Tax Tribunal that granted summary disposition in favor of respondent Bloomfield Township (township), that denied petitioner's motion for summary disposition, and that denied petitioner's motion to set aside the dismissal in this case involving a real property tax dispute relative to petitioner's home. We affirm.

We shall begin with a brief overview of the relevant tax law. In 1994, Michigan adopted Proposal A, amending Const 1963, art 9, § 3,[1] which limited increases in property taxes absent a transfer of ownership. *Klooster v City of Charlevoix*, 286 Mich App 435, 438; 781 NW2d 120 (2009), lv gtd 486 Mich 932 (2010). Proposal A capped the amount that the taxable value of

[1] This constitutional provision states in part:

> For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value.

property could increase each year, even if the property's true cash value, or actual market value, rose at a greater rate. *Id.* The *Klooster* panel further explained:

> Consequently, the [General Property Tax Act (GPTA), MCL 211.1 *et seq*.] was amended in order [to] carry out the mandate of Proposal A, and it now governs the processes by which property is taxed consistent with Proposal A's mandate. Thus, under the GPTA, when a transfer of ownership of a parcel of property does not occur, the taxable value of a parcel of property will be the lesser of (1) the property's current state equalized value or (2) the prior year's taxable value less any losses, "multiplied by the lesser of 1.05 or the inflation rate, plus all additions." MCL 211.27a(2). This provision functions to limit, or "cap," property tax increases when there has been no transfer of ownership. However, when there is a transfer of ownership, the taxable value is "uncapped" and a reassessed taxable value is set on the basis of the state equalized value in the year following the transfer of ownership. MCL 211.27a(3); *Signature Villas, LLC v City of Ann Arbor*, 269 Mich App 694, 697; 714 NW2d 392 (2006). "Uncapping" typically results in a higher tax assessment, as is the case here.
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> Given the foregoing, whether a property's taxable value remains capped is intrinsically linked to whether there has been a "transfer of ownership." The GPTA defines "transfer of ownership" to mean "the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest." MCL 211.27a(6). The GPTA provides a nonexhaustive list of events that will constitute a transfer of ownership, MCL 211.27a(6), and events that do not constitute such a transfer, MCL 211.27a(7). [*Klooster*, 286 Mich App at 438-439.]

Pertinent here, a transfer of ownership includes "[a] conveyance by land contract." MCL 211.27a(6)(b).

We next examine the events that transpired in the case at bar. Petitioner's step-sister and her husband, the Cookes, once owned the house and land at issue. In 2002, petitioner and the Cookes agreed that petitioner could reside in the home, that petitioner would assume responsibility for utilities and other household services, and that the Cookes would pay taxes and insurance on the home for a year, which matter would be reevaluated thereafter based on petitioner's income levels. They also agreed that petitioner would pay the Cookes $700 per month, which would represent a "lease-to-own payment," that the home would be available to the Cookes and their children when they were in Michigan, usually five weeks a year, and that petitioner would have free reign over the home when the Cookes were present, except for the bedrooms belonging to the Cookes and their children. This agreement was memorialized in a handwritten note from Mr. Cooke to petitioner, which note also provided, "We'll have more discussion on the plan for eventual sale to you once we're certain this is working for everyone concerned." In 2007, the Cookes executed a warranty deed conveying the property to petitioner for $200,000. At the top of the deed, there is language that appears to indicate that petitioner drafted the deed, but an affidavit executed by Mr. Cooke, an attorney, averred that the warranty deed "was prepared and given to" petitioner. Our holding, ultimately, is not dependent on who drafted the deed. Of importance here, the warranty deed also referenced a 2002 "*Land Contract*

between the parties hereto pursuant to which this deed is given." (Emphasis added.) Seizing on the warranty deed and accompanying property transfer affidavit, and specifically the reference to a land contract in the deed, the township's assessor, in May 2007, sent a letter to petitioner which stated that the land contract had never been recorded in 2002, nor was a property transfer affidavit filed with the register of deeds at the time, and that a "transfer of ownership should have taken place for tax year 2003." The letter included a table that set forth the taxable values of the property with no uncapping and with uncapping with respect to tax years 2003 through 2007, which reflected, as typical, that the taxable values were higher with uncapping. The letter indicated that a correction would be made to reflect an ownership transfer back in 2002 and to adjust the taxable values for previous years in order to show the uncapping status. The county treasurer's office would bill petitioner with the corrected tax liability for these years. Petitioner was billed, and he paid the reassessed or additional taxes as demanded.

Petitioner failed to file a challenge to the township's actions with the Tax Tribunal until July 2008, more than a year after receiving notice of the increases in the property's taxable value for the years at issue. The petition alleged that there was no property transfer until the warranty deed was executed in 2007 and that "[t]here was a mutual mistake of fact as to whether or not there had been a transfer of ownership in 2002." The township answered, arguing that there had been a transfer of ownership in 2002 and that there was no mutual mistake of fact. The parties' focus on whether there was a mutual mistake of fact was driven by a need for petitioner to couch his suit within the confines of MCL 211.53a, which provides:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a *clerical error or mutual mistake of fact made by the assessing officer and the taxpayer* may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest. [Emphasis added.]

Petitioner needed to rely on MCL 211.53a because he missed the 35-day appeal period found in MCL 211.27b(6),[2] nor could he comply with MCL 205.735a(6), which provides the Tax Tribunal with jurisdiction over non-assessment disputes when a party files a written petition

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[2] MCL 211.27b(6) provides:

> If the taxable value of property is increased under this section, the appropriate assessing officer shall immediately notify by first-class mail the owner of that property of that increase in taxable value. A buyer, grantee, or other transferee may appeal any increase in taxable value or the levy of any additional taxes, interest, and penalties under subsection (1) to the Michigan tax tribunal within 35 days of receiving the notice of the increase in the property's taxable value. An appeal under this subsection is limited to the issues of whether a transfer of ownership has occurred and correcting arithmetic errors. A dispute regarding the valuation of the property is not a basis for appeal under this subsection.

within 35 days after a final decision, ruling, or determination. The Tax Tribunal summarily dismissed the case *sua sponte*,[3] finding that the petition was not filed within the requisite 35-day timeframe, MCL 211.27b(6) and 205.735a(6), that there was no clerical error for purposes of MCL 211.53a, and that there was no mutual mistake of fact under MCL 211.53a, given that petitioner believed that there was no transfer of ownership in 2002. Petitioner filed motions to set aside the order of dismissal and to grant summary disposition in favor of petitioner. Petitioner argued in part that there was a mutual mistake of fact, where the township's assessor mistakenly believed that the warranty deed was accurate, thereby erroneously believing that ownership had been transferred by land contract in 2002, and where petitioner also mistakenly believed that the warranty deed was accurate, thereby erroneously believing that ownership was transferred by land contract in 2002. The Tax Tribunal rejected the argument that there was a mutual mistake of fact, reasoning that the township relied on the deed to establish a 2002 transfer by land contract, while petitioner merely relied on the deed to show that he received title to the premises, and that petitioner's argument was internally inconsistent where he drafted the warranty deed. The Tax Tribunal also ruled that petitioner provided no affidavit or other evidence supporting his claim that he thought, at one time, that the deed was accurate or that there had been a land contract, and it ruled that had petitioner initially believed that a land contract was formed, he should have recorded the land contract in 2002, which would have resulted in an uncapping of the property's value.

On appeal, petitioner argues that there was a mutual mistake of fact, where he and the assessor relied on the warranty deed, and where "[t]he underlying 'fact' stated in the deed was that the property was subject to a land contract." Petitioner continues, "Therefore, there was a mutual reliance on the so called fact that the property was conveyed pursuant to a land contract . . . [and] this belief was erroneous and mutual." Petitioner does not dispute the Tax Tribunal's ruling that it did not have jurisdiction over the case pursuant to MCL 211.27b(6) or MCL 205.735a(6), nor its ruling that there was no clerical error under MCL 211.53a. Accordingly, we shall not consider those statutory provisions.

"If fraud is not claimed, this Court reviews the Tax Tribunal's decision for misapplication of the law or adoption of a wrong principle." *Briggs Tax Service, LLC v Detroit Pub Schools*, 485 Mich 69, 75; 780 NW2d 753 (2010). The Tax Tribunal's factual findings are deemed conclusive if they are supported by competent, material, and substantial evidence on the entire record. *Id.* When statutory interpretation is involved, this Court reviews the Tax Tribunal's decision de novo. *Id.* A ruling on a motion for summary disposition is also reviewed de novo. *Id.*

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[3] "[T]he Tax Tribunal is at liberty to raise and decide the question of its own jurisdiction on its own motion and at any time." *Leahy v Orion Twp*, 269 Mich App 527, 532; 711 NW2d 438 (2006), citing *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW2d 215 (2002).

Under MCL 211.53a, "the Legislature has provided taxpayers with two situations in which a three-year limitations period applies: (1) cases in which there is a 'clerical error' and (2) cases in which the assessing officer and the taxpayer made a mutual mistake of fact." *Id.* at 76-77. The phrase "mutual mistake of fact" has acquired a particular legal meaning under Michigan caselaw. *Id.* at 77. "[A] 'mutual mistake of fact' is 'an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.'" *Id.*, quoting *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006). The mistake of fact must be mutual in order to implicate MCL 211.53a. *Briggs Tax Service*, 485 Mich at 78 (finding that no such mutuality existed).

The statute envisions a scenario in which a taxpayer believes that certain facts are true and pays taxes based on such belief which is ultimately found to be erroneous, with the taxing municipality accepting the tax proceeds under the same mistaken belief with respect to those facts. See *Ford Motor Co*, 475 Mich at 429 (finding a mutual mistake of fact where Ford paid taxes after mistakenly reporting information in its personal property statements, which overstated the quantity of taxable property owned, and where the assessors accepted and relied on Ford's statements as being accurate when calculating the tax and accepting the payments).

Under petitioner's theory, the alleged erroneous belief shared and relied on by the parties concerned the accuracy of the warranty deed and the underlying fact referenced in the warranty deed that the property was transferred in 2002 by way of a land contract. The problem with petitioner's argument is two-fold. First, his petition never clearly alleged that he mistakenly believed that the warranty deed was accurate, that a land contract had been entered into in 2002, or that there had been a transfer of property in 2002, which erroneous belief petitioner relied upon in paying the additional tax amounts. More importantly, and as noted twice in the Tax Tribunal's opinion, petitioner failed to submit an affidavit or any documentary evidence whatsoever indicating that, when petitioner paid the additional taxes, *he* mistakenly believed that the warranty deed was accurate, that a land contract had been entered into in 2002, or that there had been a transfer of property in 2002, which erroneous belief petitioner relied upon in paying the reassessed tax amounts. Petitioner only submitted the affidavit of Mr. Cooke, which had no bearing on whether petitioner himself had an erroneous belief regarding whether a land contract had existed. An erroneous belief on the part of petitioner, not Mr. Cooke, was a necessary component of establishing a mutual mistake of fact. And even Mr. Cooke's affidavit did not indicate that petitioner mistakenly or erroneously believed that a land contract existed or that a property transfer occurred in 2002, causing petitioner to pay the taxes. Rather, Mr. Cooke averred, "Said deed mistakenly refers to our informal agreement as a 'land contract,' when in fact it was a non-binding rental agreement, with a non-binding option for [petitioner] to purchase the premises." It could be inferred from this language that the Cookes and petitioner never believed that the 2002 arrangement constituted a land contract. We see no reason why petitioner could not have simply submitted a supporting affidavit, other than that petitioner could not truthfully make the necessary averments. It is plausible that petitioner made the tax payments merely because he did not want to litigate the matter at the time, despite believing that there was never a land contract, nor a transfer of ownership in 2002. On this record, this case appears to entail a straightforward dispute regarding "whether a transfer of ownership ha[d] occurred" in 2002, and therefore petitioner was required to file an appeal with the Tax Tribunal "within 35 days of receiving the notice of the increase in the property's taxable value," which was not accomplished. MCL 211.27b(6). Additionally, the 35-day jurisdictional period in MCL

205.735a(6) was not satisfied. While we are a bit hesitant to affirm, considering that there does appear to be some merit to petitioner's argument that no transfer of ownership occurred in 2002, the statutory scheme and the failure by petitioner to submit the most basic of supporting proofs leave us with no other choice. Accordingly, because there has been no showing of a *mutual* mistake of fact, MCL 211.53a was not implicated and the Tax Tribunal did not err in dismissing the petition.

Affirmed.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Christopher M. Murray