

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EXETER FINANCE CORP.,

Plaintiff-Appellant,

v

STATE TREASURER, STATE OF MICHIGAN,  
and DEPARTMENT OF TREASURY,

Defendants-Appellees.

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UNPUBLISHED  
July 24, 2018

No. 341704  
Court of Claims  
LC No. 17-000270-MT

Before: RONAYNE KRAUSE, P.J., and GLEICHER and LETICA, JJ.

PER CURIAM.

Plaintiff appeals by right the order of the Court of Claims granting summary disposition in favor of defendant under MCR 2.116(C)(4) (lack of subject-matter jurisdiction). We affirm.

Plaintiff is a “financing company that financed the purchase of motor vehicles from various dealers in Michigan.” Plaintiff filed a refund claim with the Department of Treasury (“the Department”) for certain “bad debts” pursuant to MCL 205.541. The Department denied the request, and pursuant to MCL 205.22, plaintiff therefore had 90 days to appeal that denial to the Court of Claims. Plaintiff’s deadline was September 20, 2017, but it did not succeed in delivering the appeal to the Court of Claims until October 2, 2017. Plaintiff’s attorneys practiced out of an office in Jacksonville, Florida, which was affected by the 2017 Hurricane Irma. Plaintiff’s attorneys anticipated the hurricane’s disruption; all necessary materials for the appeal were diligently prepared well in advance, and FedEx picked up those materials for mailing on September 6, 2017. Unfortunately, the address labels were for some reason reversed. Therefore, instead of being sent to Lansing, FedEx delivered the complaint back to counsel’s office the very next day. Although counsel’s legal assistant received an emailed delivery notification on September 7, 2017, that indicated this mix-up,<sup>1</sup> in an affidavit she averred that she believed that

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<sup>1</sup> Although the delivery notification email did not contain a specific address, it did prominently display the fact that both the pickup location and the delivery location were in Jacksonville, Florida.

the complaint had been properly received and filed in the Court of Claims. The office was closed the next day, and Hurricane Irma subsequently made landfall<sup>2</sup> in Florida.

Plaintiff's law firm officially reopened on September 14, 2017. The attorney handling the materials, however, did not come in to the office and, a few days later, travelled to Texas for a conference and then worked from home for some time. When he returned to the office on September 29, 2017, for the first time since the complaint was placed with FedEx, he discovered the returned FedEx envelope on his desk. He asserts that at no time before this "did [he] receive any indication of a problem associated with the timely filing of the Complaint." He immediately mailed the appeal materials, and the Court of Claims received them on October 2, 2017.

The next day, October 3, 2017, plaintiff filed a motion in the Court of Claims, asking it to exercise its equitable discretion to treat the complaint as timely filed. In the motion, plaintiff maintained that there was "no question that Hurricane Irma played an important role in the late filing of the Complaint." In lieu of an answer, the Department filed a motion for summary disposition pursuant to MCR 2.116(C)(4). The Court of Claims granted defendant's motion, finding that it was bound by MCL 205.22, that the case did not represent sufficient "unusual circumstances" to warrant the invocation of equity, and that the "hurricane played a smaller role" than was alleged.

Plaintiff argues that the trial court erred by declining to exercise its equitable powers to accept its appeal after the 90-day period prescribed by MCL 205.22. We disagree. We review 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.* We also review questions of statutory interpretation de novo. *Inter Co-Op Council v Dep't of Treasury*, 257 Mich App 219, 222; 668 NW2d 181 (2003). "When reviewing a grant of equitable relief, an appellate court will set aside a trial court's factual findings only if they are clearly erroneous, but whether equitable relief is proper under those facts is a question of law that an appellate court reviews de novo." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

Initially, we reject the Department's assertion that the Court of Claims lacks inherent equitable powers.<sup>3</sup> The Court of Claims is "a legislative court . . . [that] derives its powers only from the act of the Legislature and is subject to the limitations therein imposed." *Okrie v Michigan*, 306 Mich App 445, 456; 857 NW2d 254 (2014) (quotation marks and citation omitted). "Unless expressly authorized, a legislative tribunal does not have equitable jurisdiction." *Bd of Ed of Benton Harbor Area Sch v Wolff*, 139 Mich App 148, 156; 361 NW2d 750 (1984). MCL 600.6419(1) provides the Court of Claims the "power and jurisdiction" over, among other things, "any demand for monetary, equitable, or declaratory relief . . ." Clearly, the Legislature has expressly authorized the Court of Claims to exercise equitable jurisdiction. Additionally, "[c]ase law exists indicating that the constitution places some limitations on the

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<sup>2</sup> See <https://www.weather.gov/tae/Irma2017> (accessed June 21, 2018).

<sup>3</sup> The trial court regarded its equitable powers as "limited" rather than nonexistent.

Legislature’s power to divest the court completely of equity jurisdiction . . . ” *Wikman v Novi*, 413 Mich 617, 648; 322 NW2d 103 (1982). Accordingly, “there may be an extraordinary case which justifies the exercise of equity jurisdiction in contravention of a statute . . . ” *Id.*

However, simply because the Court of Claims possesses equitable power, it does not follow that it must exercise that power whenever requested. “Although courts undoubtedly possess equitable power, such power has traditionally been reserved for unusual circumstances such as fraud or mutual mistake.” *Devillers v Auto Club Ins Ass’n*, 473 Mich 562, 590; 702 NW2d 539 (2005) (quotation marks and citation omitted). A court is not free to “cast aside” a plain and unambiguous statute “under the guise of equity . . . simply because the court views the statute as ‘unfair.’ ” *Id.* at 591. “Statutes lose their meaning if an aggrieved party need only convince a willing judge to rewrite the statute under the name of equity.” *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 407; 738 NW2d 664 (2007) (quotation marks and citation omitted). “Regardless of how unjust [a] statutory penalty might seem to this Court, it is not our place to create an equitable remedy for a hardship created by an unambiguous, validly enacted, legislative decree.” *Stokes v Millen Roofing Co*, 466 Mich 660, 672; 649 NW2d 371 (2002) (quotation marks and citation omitted).

Plaintiff contends that this case is “extraordinary” because Hurricane Irma played a critical role in the late filing. Hurricane Irma clearly played *some* role in the late filing. However, not only was plaintiff’s counsel on notice<sup>4</sup> that the package had been misdirected, plaintiff’s attorneys’ law office was open for several days prior to the filing deadline, during which time the returned envelope was apparently sitting unregarded and unnoticed. No allegations suggest that the hurricane precluded anyone from going to the office and physically discovering the returned envelope with enough time to mail it prior to the deadline, especially in light of the tracking notification. The trial court held:

Had Hurricane Irma entirely prevented plaintiff from complying with the 90-day deadline, plaintiff’s case would be decidedly more sympathetic and the case for the Court to exercise its limited equitable jurisdiction would be much stronger. However, on the facts of this case, it is apparent that the hurricane played a smaller role than plaintiff’s counsel alleges.

The trial court therefore declined to grant plaintiff’s request for equitable relief. We find no clear error in the trial court’s factual assessment, and therefore agree with the trial court that invoking equity would have been improper.

Timing requirements are considered jurisdictional, and a failure to timely file a complaint deprives the court or tribunal of subject-matter jurisdiction. *Trostel, Ltd v Dep’t of Treasury*, 269 Mich App 433, 440-442; 713 NW2d 279 (2006). An aggrieved taxpayer must appeal the Department’s decision in the Tax Tribunal within 60 days or in the Court of Claims within 90 days. MCL 205.22(1). The decision of the Department of Treasury becomes “final and is not

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<sup>4</sup> We note that whether plaintiff’s counsel or his legal assistant made the mistake, a lawyer remains responsible for his or her nonlawyer assistants. MRPC 5.3.

reviewable by any court by mandamus, appeal, or other method of direct or collateral attack” if the aggrieved taxpayer does not appeal the decision “in accordance with this section.” MCL 205.22(4). Because there is no dispute that plaintiff’s filing was untimely, and we agree that the trial court did not improperly refuse to invoke equity, defendant’s MCR.2.116(C)(4) motion was properly granted.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Elizabeth L. Gleicher

/s/ Anica Letica