STATE OF MICHIGAN

COURT OF APPEALS

HINO MOTORS MANUFACTURING USA,

Plaintiff-Appellee,

v

ROBERT NAFTALY, DOUGLAS ROBERTS, FREDERICK MORGAN and MICHIGAN STATE TAX COMMISSION,

Defendants-Appellants,

and

DEAN BABB and CITY OF FARMINGTON HILLS,

Defendants.

UNPUBLISHED
September 13, 2011

No. 292527
Oakland Circuit Court
LC No. 08-096364-AS

Before: MARKEY, P.J., and SAAD and GLEICHER, JJ.

PER CURIAM.

Defendants, Robert Naftaly, Douglas Roberts, Frederick Morgan, and the Michigan State Tax Commission ("STC"),[1] appeal as of right the circuit court's order granting a writ of mandamus in favor of plaintiff, Hino Motors Manufacturing USA, directing defendants to reclassify certain personal property. We affirm in part and reverse in part.

Defendants first argue that the circuit court lacked subject-matter jurisdiction to issue the writ of mandamus because the STC's determinations were not appealable. Whether a lower court had subject-matter jurisdiction over a dispute is a question of law that we review de novo. *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004).

[1] Naftaly, Roberts, and Morgan, members of the STC, were sued in their official capacity. We refer to them, along with the STC, collectively as "defendants."

This Court previously held this case in abeyance pending our Supreme Court's decisions in *Midland Cogeneration Venture Ltd Partnership v Naftaly ("Midland")*, ___ Mich ___; ___ NW2d ___ (Docket No. 140814, issued May 23, 2011), and *Iron Mountain Info Mgt, Inc v Naftaly*, ___ Mich ___; ___ NW2d ___ (Docket No. 140824, issued May 23, 2011),[2] which were part of a group of nine consolidated cases that the Supreme Court decided under the name of *Midland*. In accordance with *Midland*, we hold that the circuit court had subject-matter jurisdiction to decide plaintiff's appeal.

Similar to this case, the plaintiffs in *Midland*, slip op at 7, sought reclassification of their property as industrial personal property, and the STC denied their requests. They then obtained relief in circuit court and the defendants appealed, challenging the circuit courts' jurisdiction over the disputes. *Id.* at 7-8. This Court held that the circuit courts lacked jurisdiction because MCL 211.34c(6) bars appeals from decisions of the STC. *Iron Mountain Info Mgt, Inc v State Tax Comm*, 286 Mich App 616, 622-623; 780 NW2d 923 (2009), rev'd sub nom *Midland*. MCL 211.34c(6) provides:

> An owner of any assessable property who disputes the classification of that parcel shall notify the assessor and may protest the assigned classification to the March board of review. An owner or assessor may appeal the decision of the March board of review by filing a petition with the state tax commission not later than June 30 in that tax year. The state tax commission shall arbitrate the petition based on the written petition and the written recommendations of the assessor and the state tax commission staff. *An appeal may not be taken from the decision of the state tax commission regarding classification complaint petitions and the state tax commission's determination is final and binding for the year of the petition*. [Emphasis added.]

In *Midland*, slip op at 16, our Supreme Court declared the final sentence of MCL 211.34c(6) unconstitutional as violative of article 6, § 28 of the Michigan Constitution, which states, in relevant part:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law . . . .

Our Supreme Court recognized that "[a]rticle 6, § 28 is not an absolute guarantee of judicial review of every administrative decision[,]" and that, "[i]n order for it to apply, (1) the administrative decision must be a 'final decision' of an administrative agency, (2) the agency

[2] *Hino Motors Mfg USA v Naftaly*, unpublished order of the Court of Appeals, entered September 20, 2010 (Docket No. 292527).

must have acted in a 'judicial or quasi-judicial' capacity, and (3) the decision must affect private rights or licenses." *Midland*, slip op at 10. The Court analyzed these factors as follows:

> First, it is uncontested that the challenged STC decisions are final decisions of an administrative agency. In each of these cases, the STC sent a letter to the plaintiff advising it that the STC's decision was final because MCL 211.34c(6) provides for no appeal of it.
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> Second, in order for article 6, § 28 to apply, the STC must have acted in a judicial or quasi-judicial capacity in rendering its classification decisions. Decisions of the STC are not judicial decisions. The dispositive question is whether they are quasi-judicial in nature.
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> This Court has employed the term "quasi-judicial" broadly: "When the power is conferred by statute upon a commission such as the public utilities, or a board such as the department of labor and industry, to ascertain facts and make orders founded thereon, they are at times referred to as *quasi*-judicial bodies . . . ." The Court of Appeals has referred to Black's Law Dictionary to define "quasi-judicial":
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> > "A term applied to the action, discretion, etc., of public administrative officers, who are required to investigate facts, or ascertain the existence of facts, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature."
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> An STC classification decision is not a general rulemaking or advisory decision. The STC resolves disputed factual claims on a case-by-case basis. This entails an evaluation of evidence and dispute resolution, which are quasi-judicial functions. Furthermore, MCL 211.34c(6) styles the STC's actions as arbitrations in which the STC considers written petitions and "arbitrates" matters. Thus, in rendering property classification decisions, the STC acts as an arbitrator adjudicating disputed claims. It is well settled that an arbitrator's function is quasi-judicial in nature.
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> Third, in order for article 6, § 28 to apply to STC classification decisions, they must "affect private rights or licenses." This case does not involve a license. Therefore, we must determine whether STC classification decisions affect private rights.
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> Taxpayers do not have "a vested right in a tax statute or in the continuance of any tax law." We defined a vested right as "an interest that the government is compelled to recognize and protect of which the holder could not be deprived without injustice." In contrast, article 6, § 28 of the constitution recognizes and protects administrative decisions that "affect private rights." Black's Law Dictionary defines a "private right" as "a personal right, as opposed to a right of

the public or the state." Black's defines "right" as "[t]he interest, claim, or ownership that one has in tangible or intangible property."

We conclude that taxpayers have a private right to ensure that their property is taxed the same as similarly situated property. As applied to this case, the classification of plaintiffs' property will determine whether plaintiffs are entitled to the same tax treatment received by owners of similarly classified property. Plaintiffs have an interest in the proper interpretation of the statutory definitions of "industrial personal property," "commercial personal property," and "industrial real property." An erroneous interpretation of the statutory definitions could impermissibly increase their tax burden and thus affect their private right. Hence, the STC classification decisions in question affect private rights. [*Midland*, slip op at 11-13.]

Having determined that the STC's decisions are final, quasi-judicial decisions that affect private rights, the Court next addressed the significance of the phrase "as provided by law" in article 6, § 28. The Court opined:

Defendants argued that "as provided by law" means that the Legislature has the authority to limit the jurisdiction of the circuit courts. The Court of Appeals agreed and, in reliance on that language, held that MCL 211.34c(6) prevents an STC classification decision from being appealed in a court. It relied solely on this Court's 1977 decision in *McAvoy v H B Sherman Co*[, 401 Mich 419, 443; 258 NW2d 414 (1977).]

McAvoy held that the Legislature may "exert substantial control over the mechanics of how administrative decisions are to be appealed." It does not stand for the proposition that the Legislature can limit the jurisdiction of the circuit courts. Rather, *McAvoy* held that "as provided by law" contemplates that the Legislature will provide the manner in which judicial review shall occur. It recognized the Legislature's ability to dictate "how," "when," and "what" type of appeal of an agency decision is permitted. Acknowledging that the Michigan Constitution mandates review, *McAvoy* opined that "as provided by law" permits the Legislature only to prescribe the details of that review. For example, the Legislature can prescribe time frames for filing an appeal, dictate whether a party may obtain a stay pending appeal, and set forth the controlling standard of review.

MCL 211.34c(6) is not an exercise of control over the "mechanics" of an appeal to the courts of an STC classification decision. Rather, it is a complete prohibition of court review of STC classification decisions. There is a significant difference between dictating the mechanics of an appeal and preventing an appeal altogether. Thus, the Court of Appeals erred by concluding that MCL 211.34c(6) is concerned merely with mechanics.

The Legislature may not eradicate a constitutional guarantee in reliance on the language "as provided by law." Because MCL 211.34c(6) eliminates any appeal of a final administrative decision that is quasi-judicial in nature and affects

private rights, it runs afoul of the guarantee in article 6, § 28. This conclusion assumes that there is no other mechanism for direct review by the courts.

The Court of Appeals and defendants have failed to make a persuasive case that an alternative mechanism exists with which to appeal an STC classification decision. The Court suggested that a plaintiff could pay the tax and then seek a refund in the Michigan Tax Tribunal. However, nothing in the Tax Tribunal Act grants the Tax Tribunal jurisdiction over STC classification decisions. Indeed, in 2010, the Tax Tribunal ruled that it lacks jurisdiction over STC classification decisions. Hence, as a result of that decision and the Court of Appeals' opinion, plaintiffs are left with no forum in which to challenge STC classification decisions, notwithstanding their constitutional right to judicial review.

Therefore, we hold that the phrase "as provided by law" in article 6, § 28 does not grant the Legislature the authority to circumvent the protections that the section guarantees. If it did, those protections would lose their strength because the Legislature could render the entire provision mere surplusage. And given that no other mechanism for review of STC classification decisions exists, the last sentence of MCL 211.34c(6) violates article 6, § 28. [*Midland*, slip op at 13-15.]

Finally, the Court concluded:

Without the final sentence of MCL 211.34c(6), the General Property Tax Act is silent as to plaintiffs' right to appeal an adverse STC classification decision. As we have held, however, article 6, § 28 of the Michigan Constitution mandates that plaintiffs be afforded this right. Thus, we must consider what remedy is available to plaintiffs absent a specific legislative directive.

The Revised Judicature Act specifically allows appeals of decisions by state agencies when judicial review "has not otherwise been provided by law."[37] Because MCL 211.34c(6) precluded judicial review in violation of article 6, § 28, judicial review "has not otherwise been provided by law," and MCL 600.631 applies. Therefore, the circuit court has subject matter jurisdiction over appeals of a decision of the STC regarding property classifications.

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[37] MCL 600.631 states:

> An appeal shall lie from any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such

> appeals shall be made in accordance with the rules of the supreme court.
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> [*Midland*, slip op at 16-17.]

The instant case presents the same factual scenario as in *Midland* and is thus indistinguishable. Accordingly, the circuit court had subject-matter jurisdiction to decide plaintiff's appeal.

Defendants next contend that the circuit court erred by issuing a writ of mandamus ordering the STC to reclassify plaintiff's property. We review for an abuse of discretion a trial court's decision regarding a writ of mandamus. *Casco Twp v Secretary of State*, 472 Mich 566, 571; 701 NW2d 102 (2005).

> [A] writ of mandamus is an extraordinary remedy and will only be issued where: (1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result. [*Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 284; 761 NW2d 210 (2008), aff'd 482 Mich 960 (2008).]

Regarding the third requirement, a ministerial act is one where the law prescribes and defines the duty with such precision and certainty that nothing is left for the exercise of judgment or discretion. *Keaton v Village of Beverly Hills*, 202 Mich App 681, 683; 509 NW2d 544 (1993); see also *Odom v Wayne Co*, 482 Mich 459, 475-476; 760 NW2d 217 (2008) (in the context of governmental immunity and tort liability, stating that ministerial acts involve mere obedience to orders, while discretionary acts require personal deliberation, decision, and judgment).

Here, pursuant to MCL 211.34c(6), the STC has the duty to "arbitrate" property classification disputes. "Arbitrate," in turn, means, "to decide [or act] as an arbitrator or arbiter." *Random House Webster's College Dictionary* (2nd ed 1997), p 68. Additionally, "arbitrator" is defined as follows: "A person empowered to decide a dispute or settle differences . . . ." *Id.* It is clear from the above definitions that the STC's acts of reviewing appeals from various boards of review is discretionary and not ministerial. The statute clearly empowers the STC to decide property classification disputes. Plaintiff argues that, because there is only one correct outcome in making the classification in this case, the act is ministerial. A ministerial versus discretionary distinction cannot lie, however, on the fact that there is only one correct outcome. The fact that a person, board, or entity is empowered to make a *decision* is enough to categorize the act as discretionary. See *Odom*, 482 Mich at 476 ("Discretion . . . implies the right to be wrong. Discretionary acts require personal deliberation, decision and judgment." [internal quotation marks and footnotes omitted]). Thus, assuming arguendo, that the STC was in fact presented

with a situation in which there was only one "correct" outcome, its act in deciding the matter was nevertheless discretionary, thus removing it from the realm of a writ of mandamus.[3]

Therefore, because the act at issue in this dispute, i.e., the STC's reclassification decision, is a discretionary act, the trial court abused its discretion by issuing a writ of mandamus.[4] We note, however, that plaintiff sought the writ as an alternative form of relief and primarily sought from the circuit court an order reversing the STC's decision and reclassifying the property as industrial personal property. Although we take no position regarding the propriety of issuing such an order, we note that the circuit court has subject-matter jurisdiction to do so, as discussed previously.

Affirmed in part and reversed in part. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Elizabeth L. Gleicher

[3] As another example of a discretionary decision-maker, take the role of a trial judge. Assume that one party seeks to admit evidence at trial that by law is inadmissible. The trial judge still has discretion to decide whether to admit the evidence even though the law states that there is only one correct outcome. No one would suggest that the trial judge's act of deciding this question is purely ministerial merely because the law mandates a certain outcome. In fact, this Court reviews such decisions for an *abuse of discretion*. *Campbell v Dept of Human Services*, 286 Mich App 230, 235; 780 NW2d 586 (2009).

[4] We note that that STC owed plaintiff a duty to make a determination. Thus, if the STC failed to decide the matter, a writ of mandamus could have issued, forcing the STC to arbitrate the case, but it would have been inappropriate to force the STC to come to a particular decision. See *Teasel v Dept of Mental Health*, 419 Mich 390, 410; 355 NW2d 75 (1984) ("[M]andamus will lie to compel the exercise of discretion, but not to compel its exercise in a particular manner.")