STATE OF MICHIGAN

COURT OF APPEALS

DAVID S. BELL and MARY E. BELL, Petitioners-Appellants,	UNPUBLISHED February 9, 2012
v	No. 300148 Tax Tribunal
COUNTY OF BERRIEN, Respondent-Appellee.	LC No. 00-382473

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

MURPHY, C.J. (*dissenting*).

Because I find that petitioners' appeal to the Michigan Tax Tribunal (MTT) regarding their entitlement to a principal residence exemption (PRE)[1] was timely under MCL 211.7cc(6) and MCL 205.735a(6) and that the MTT therefore had jurisdiction, I respectfully dissent. I would reverse the MTT's ruling and remand the case for further proceedings.

In the absence of fraud, our review of a decision issued by the MTT is limited to determining whether it erred in applying the law or adopted a wrong principle, and the MTT's factual findings are conclusive if, on the whole record, they are supported by competent, material, and substantial evidence. *Klooster v City of Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011); *Mich Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994); *Eldenbrady v City of Albion*, __ Mich App __; __ NW2d __ (2011), slip op at 2.

The MTT found that it lacked authority to hear petitioners' appeal under MCL 211.7cc and MCL 205.735a because the petition was not filed within the requisite 35-day appeal period. An untimely filing deprives the MTT of jurisdiction to consider a petition, necessitating dismissal. *Leahy v Orion Twp*, 269 Mich App 527, 532; 711 NW2d 438 (2006). The MTT "is at liberty to raise and decide the question of its own jurisdiction on its own motion and at any time." *Id.*

[1] The PRE is also known as the homestead exemption and is governed by MCL 211.7cc and MCL 211.7dd, which are provisions contained in the General Property Tax Act (GPTA), MCL 211.1 *et seq.* *Eldenbrady v City of Albion*, __ Mich App __; __ NW2d __ (2011), slip op at 3.

MCL 211.7cc(6) provides, in part, that "the assessor may deny a new or existing [PRE] claim by notifying the owner and the department of treasury in writing of the reason for the denial and advising the owner that the denial may be appealed to the residential and small claims division of the Michigan tax tribunal within 35 days after the date of the notice." MCL 205.735a(6) provides, in part, that in matters not involving assessments, "the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination." Reading these provisions together in harmonious fashion,[2] a taxpayer has 35 days to file an MTT appeal by way of petition commencing from the date of a notice which reflected that a final decision or determination to deny a PRE had been made.

I have reviewed the Michigan Department of Treasury forms (Notice of Denial of Homeowner's PRE) dated June 8, 2009, which were mailed to petitioners. These forms provided that the PRE "has been denied," "was denied," and that an appeal filed within 35 days of the notice date could be pursued if there was disagreement with "this denial." Accordingly, the notice in the standard treasury forms reflected that a final decision or determination to deny a PRE had been made. However, the cover letters sent by the Berrien County Treasurer that accompanied the standard treasury notice forms stated that "we *believe* the homestead exemption . . . *should be* denied" and that petitioners could call the treasurer's office if they had "any questions or concerns." (Emphasis added.) This language arguably suggests that a *final* decision or determination to deny a PRE had yet to be made and that petitioners could have some input on any final resolution. That said, if all that we had were these documents, the standard treasury notice forms and the respondent county's cover letters, I would agree with the majority's holding.[3] However, petitioners and the county itself executed a stipulation that was submitted to the MTT and which provided that respondent county "did not make the determination as to the residency status of Petitioners until either September 10, 2009, or September 11, 2009[.]" This concession by the county effectively indicated that it had not made a final decision or determination to deny a PRE back on June 8, 2009, or that, if a preliminary decision or determination had been made on June 8, 2009, the county contemplated reassessing its position, accepted further documentation and information on the matter, and then waited until September 10 or 11, 2009, to make a final decision or determination to deny a PRE.

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[2] Statutes that share a common purpose or relate to the same subject are *in pari materia* and must be read together as one law, even if the statutes contain no reference to one another and were enacted on different dates. *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998). If two statutory provisions lend themselves to a construction that is harmonious and avoids conflict, such a construction controls. *In re Project Cost & Special Assessment Roll for Chappel Dam*, 282 Mich App 142, 148; 762 NW2d 192 (2009); *Walters v Leech*, 279 Mich App 707, 710; 761 NW2d 143 (2008). "The object of the *in pari materia* rule is to effectuate the legislative purpose as found in harmonious statutes." *Id.*

[3] I recognize that the cover letters also provided, "An invoice for the non-homestead tax, interest, and penalty will be generated for each year denied 35 days from the date of this letter."

I acknowledge that with respect to subject-matter jurisdiction, i.e., the power to hear a case, a party may not stipulate to, waive, or consent to jurisdiction. *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011). However, respondent county stipulated not to jurisdiction but to the date on which it made a final decision or determination regarding a PRE, which certainly is a matter within the province of the county's authority. Who would know better than the county itself regarding when it made a final decision or determination on the PRE. The fact that the stipulation impacts resolution of the jurisdictional question is of no consequence. Moreover, given that the county disagrees substantively with petitioners on whether a PRE is available and that the county would not benefit by a finding that the MTT has jurisdiction, I cannot view the county's stipulation as constituting a questionable and improper maneuver in an attempt to circumvent the statutory scheme. There is no dispute that if September 10 or 11, 2009, was the date on which the 35-day period commenced running, the appeal was timely, where the petition was filed on October 13, 2009.

Finally, I note the following language in MCL 211.7cc(6):

> If the assessor denies an existing claim for exemption, the assessor shall remove the exemption of the property and, if the tax roll is in the local tax collecting unit's possession, amend the tax roll to reflect the denial and the *local treasurer shall within 30 days of the date of the denial issue a corrected tax bill* for any additional taxes with interest at the rate of 1.25% per month or fraction of a month and penalties computed from the date the taxes were last payable without interest or penalty. If the tax roll is in the county treasurer's possession, the tax roll shall be amended to reflect the denial and the *county treasurer shall within 30 days of the date of the denial prepare and submit a supplemental tax bill for any additional taxes*, together with interest at the rate of 1.25% per month or fraction of a month and penalties computed from the date the taxes were last payable without interest or penalty. [Emphasis added.]

If June 8, 2009, was indeed the definitive date on which the county made a final decision or determination to deny a PRE, the county would have been required to issue and submit corrected or supplemental tax bills to petitioners on or about July 8, 2009. This did not occur. The record contains corrected or supplemental tax bills for the years 2006 through 2008, and they are all dated September 11, 2009. This further supports the conclusion that a final decision or determination to deny a PRE did not actually occur on June 8, 2009, but instead occurred on September 10 or 11, 2009, as the county itself so stipulated.[4]

[4] I note that in petitioners' appellate brief, they state that they contacted the county shortly after receiving the June 2009 documents to discuss the matter "and commenced an ongoing dialogue regarding the residency status of Petitioners." Although petitioners did not submit an affidavit to that effect, the presence of ongoing communications and discussions between the parties would explain why the county did not issue corrected or supplemental tax bills in July 2009. Moreover, in an August 2009 letter from petitioners' counsel to the county treasurer, which was more than a year before the stipulation was signed, counsel wrote, "*Per your request*, please find enclosed the

For the reasons stated above, I would reverse the MTT's ruling and remand for further proceedings considering that the MTT erred in applying the law with respect to its jurisdiction. Accordingly, I respectfully dissent.

/s/ William B. Murphy

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following information relating to David and Mary Bell's [PRE][.]" (Emphasis added.) In an October 2009 letter from petitioners' counsel to the county, counsel stated, "The purpose of this letter is to confirm our discussion which took place on September 10, 2009, wherein you indicated that our discussions and additional evidence . . . had not changed the . . . decision to deny the [PRE]." In my opinion, there were clearly communications, discussions, and negotiations between the county and petitioners between June and September 2009 and that it was not until September 2009 that a *final* decision was made to deny the PRE.