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STATE OF MICHIGAN

COURT OF APPEALS

MCLAREN HEALTH CARE CORPORATION,

Petitioner-Appellant,

v

GRAND BLANC TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED
April 22, 2021

No. 353804
Tax Tribunal
LC No. 20-000069-TT

Before: CAMERON, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

Petitioner-appellant, McLaren Health Care Corporation (McLaren), appeals a March 17, 2020 order of dismissal, which was entered in favor of respondent-appellee, Township of Grand Blanc (the Township).[1] We affirm.

I. BACKGROUND

This appeal concerns real and personal property located at 3373 Regency Park Drive, Grand Blanc, Michigan 48439. McLaren purchased the land and the personal property in August 2016 "to build a new corporate building." McLaren opened its offices at the property in October 2017. At all relevant times, the property was classified as commercial.

[1] McLaren purports to appeal as of right a May 21, 2020 order, which denied McLaren's motion for reconsideration. However, the May 21, 2020 order was not "the final order or decision of the tribunal" from which McLaren could appeal as of right. See MCL 205.753(1) and (2). Specifically, the March 17, 2020 order is not "the first judgment or order that dispose[d] of all the claims and adjudicate[d] the rights and liabilities of all the parties[.]" See MCR 7.202(6)(a)(i). Rather, the March 17, 2020 order was the final order of the Tribunal, and the May 21, 2020 order did not disturb the March 17, 2020 order of dismissal in any respect. Thus, McLaren's statement that it is appealing the May 21, 2020 order as of right is inaccurate.

In 2018, McLaren requested from the Township an exemption from property taxes under MCL 211.7o (non-profit charitable institution) for the 2018 tax year. On February 14, 2018, the Township denied the request, and McLaren did not immediately take steps to challenge this decision. In 2019, McLaren requested property-tax exemptions under MCL 211.7o and MCL 211.7r (clinical, hospital, or public health property) for the 2019 tax year. On October 1, 2019, the request was denied.

On November 5, 2019, McLaren filed a petition in the Tribunal, disputing the property's exemption status for tax years 2018 and 2019. McLaren alleged that it was entitled to property-tax exemptions on the property and that the Township had made a qualified error under MCL 211.53b by denying its requests. On November 14, 2019, the Tribunal entered an order of partial dismissal, concluding that it lacked jurisdiction over the claim concerning the 2018 tax year. McLaren's claim concerning the 2019 tax year was permitted to proceed.

McLaren then sought to protest the Township's decision to deny the requested exemptions for tax years 2018 and 2019 before the board of review. On December 10, 2019, the board of review simply noted "NO JURISDICTION/PENDING TRIBUNAL APPEAL." McLaren then filed another petition in the Tribunal. The allegations contained in the January 10, 2020 petition were entirely consistent with the allegations contained in the 2019 petition.

After being served with the 2020 petition, the Township filed a motion to strike the petition and for summary disposition under MCR 2.116(C)(6) (another action between the same parties involving the same claim) and (C)(7) (res judicata). To support that striking the petition was proper, the Township argued that the 2020 petition was "redundant" because the 2019 and 2020 petitions sought the same relief. The Township also noted that the claim concerning the 2019 tax year was already pending before the Tribunal in relation to the 2019 petition and that the Tribunal had already dismissed the claim concerning the property's 2018 status based on a lack of jurisdiction. McLaren opposed the motion, arguing that the 2019 and 2020 petitions were distinct and that the doctrine of res judicata did not apply.

On March 17, 2020, the Tribunal entered an order, denying the Township's motion to strike but dismissing the 2020 petition. In doing so, the Tribunal noted that the Township's "denial letter" was dated February 14, 2018, and that McLaren "was required to file a petition within 35 days of that date." The Tribunal concluded that, "[b]ecause the Tribunal's jurisdiction is original and exclusive, the Board of Review had no authority to consider the 2018 tax year, and thus the Tribunal has no authority to consider the Board's denial." With respect to the claim concerning the 2019 tax year, the Tribunal concluded that "it was already under appeal before the Tribunal in" relation to the 2019 petition. The Tribunal dismissed the 2020 petition.

On May 7, 2020, McLaren filed a motion for reconsideration of this decision. The Tribunal denied the motion, concluding that it was not timely filed under Mich Admin Code, R 792.10257(1). This appeal followed.

II. APPELLATE JURISDICTION

At the outset, it is necessary to address a jurisdictional matter. Although the parties have not challenged this Court's jurisdiction, "[a] court is, at all times, required to question sua sponte

its own jurisdiction." *Tyrrell v Univ of Mich*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 349020); slip op at 3, lv pending. We conclude that McLaren failed to timely file an appeal as of right from the March 17, 2020 order of dismissal.

This Court generally has jurisdiction of an appeal of right from "[a] final judgment or final order of the circuit court, or court of claims, as defined in MCR 7.202(6)[.]" See MCR 7.203(A)(1). This Court also has jurisdiction to hear appeals of right from "[a] judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule." MCR 7.203(A)(2). MCL 205.753(1) provides that "the tribunal is the final agency for the administration of property tax laws." A party has an appeal by right in this Court from "the final order or decision of the tribunal," which "may be taken by filing an appeal in accordance with the Michigan court rules after the entry of the order or decision appealed from or after denial of a motion for rehearing timely filed." MCL 205.753(2).

In this case, McLaren did not file the claim of appeal within 21 days of the entry of the March 17, 2020 order of dismissal. See MCR 7.204(A)(1)(a). Rather, McLaren filed a motion for reconsideration of the March 17, 2020 order. However, as discussed later in this opinion, the motion was not "filed within the initial 21-day appeal period," and review of the May 21, 2020 order denying the motion for reconsideration supports that the Tribunal did not allow for further time. See MCR 7.204(A)(1)(b). Consequently, MCR 7.204(A)(1)(b) did not extend the timeline for McLaren to file an appeal as of right from the March 17, 2020 order. Indeed, because the motion for reconsideration was not timely filed, MCR 7.204(A)(1)(b) does not apply in this case.

Therefore, McLaren was required to comply with MCR 7.204(A)(1)(a) and file its claim of appeal within 21 days of the March 17, 2020 order. McLaren failed to do so, thereby depriving this Court of jurisdiction to consider the appeal as of right. See *Chen v Wayne State Univ*, 284 Mich App 172, 192-193; 771 NW2d 820 (2009) ("failure to comply with the timing requirements for an appeal as of right deprives this Court of jurisdiction to consider the appeal as of right"). Nonetheless, we will treat the March 17, 2020 order as having come to this Court by way of application for leave to appeal. See *Wardell v Hincka*, 297 Mich App 127, 133 n 1; 822 NW2d 278 (2012). In the interest of judicial economy, we grant leave. See *id*. See also MCR 7.216(A)(7).

III. ORDER OF DISMISSAL

A. THE CLAIM RELATING TO THE 2018 TAX YEAR

McLaren argues that the Tribunal erred by dismissing its claim concerning the 2018 tax year because McLaren was not required to protest the 2018 decision before the board of review. We conclude that the Tribunal did not err by dismissing this claim.

1. STANDARDS OF REVIEW

In *New Covert Generating Co, LLC v Twp of Covert*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket Nos. 348720; 348721); slip op at 8, lv pending, this Court observed:

> This Court's review of agency decisions involving property tax valuations is quite limited: "In the absence of fraud, error of law or the adoption of wrong

> principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Const 1963, art 6, § 28 . . . . This Court reviews de novo whether the Tax Tribunal erred as a matter of law when interpreting and applying statutes. *Makowski v Governor*, 317 Mich App 434, 441; 894 NW2d 753 (2016). Agency interpretations of a statute are entitled to "respectful consideration, but they are not binding on courts and cannot conflict with the plain meaning of the statute." *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 117-118; 754 NW2d 259 (2008).

"Whether a court has subject-matter jurisdiction is a question of law that this Court reviews de novo." *Teran v Rittley*, 313 Mich App 197, 205; 882 NW2d 181 (2015). "Defects in subject-matter jurisdiction cannot be waived and may be raised at any time." *Electronic Data Sys Corp v Twp of Flint*, 253 Mich App 538, 544; 656 NW2d 215 (2002). Furthermore, "[t]he lack of subject-matter jurisdiction is so serious a defect in the proceedings that a tribunal is duty-bound to dismiss a [petitioner's] claim even if the [respondent] does not request it." *Id*.

2. ANALYSIS

"The Michigan Tax Tribunal was created by the Tax Tribunal Act," MCL 205.701 *et seq*. *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 541; 817 NW2d 548 (2012). The Tribunal has "exclusive jurisdiction to decide various property tax matters based on either the subject matter of the proceeding . . . or the type of relief requested[.]" *In re Petition of Wayne Co Treasurer*, 286 Mich App 108, 110-111; 777 NW2d 507 (2009) (quotation marks and citation omitted). The tribunal's primary functions "are to find facts and review the decisions of agencies within its jurisdiction. The Tax Tribunal specializes in reviewing these determinations." *Wikman v City of Novi*, 413 Mich 617, 629; 322 NW2d 103 (1982). "The jurisdiction of the Tax Tribunal is granted by statute[.]" *Nicholson v Birmingham Bd of Review*, 191 Mich App 237, 239; 477 NW2d 492 (1991). Thus, in the absence of statutory authority, the Tribunal lacks subject-matter jurisdiction and "should not proceed further except to dismiss the action." *Electronic Data Sys Corp*, 253 Mich App at 544.

The general statutory timeframe for challenging tax assessments after December 31, 2006, is contained in MCL 205.735a. Statutes are interpreted according to their plain language, and we "must give effect to every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory." *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018) (quotation marks and citations omitted). MCL 205.735a states, in relevant part, as follows:

> (3) Except as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6).
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> * * *

(6) The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property is invoked by a party in interest, as petitioner, filing a written petition on or before May 31 of the tax year involved . . . . In all other matters, 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.

MCL 205.735a(3) and (6) must be read together. See *Mays v Snyder*, 323 Mich App 1, 43; 916 NW2d 227 (2018). When doing so, it is clear that, to invoke the Tribunal's jurisdiction over an assessment dispute, one must (1) file a protest before the board of review unless an exception applies and then, if the protest is unsuccessful, (2) file a petition in the Tribunal within the relevant timeframe contained in MCL 205.735a(6).

As noted in the plain language of the statute, there are exceptions to MCL 205.735a(3)'s general rule that parties must appear before the board of review before filing a petition in the Tribunal. Such exceptions apply in this case. Specifically, MCL 205.735a(4) provides as follows:

(a) For an assessment dispute as to the valuation or exemption of property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial real property, industrial real property, or developmental real property, the assessment may be protested before the board of review *or* appealed directly to the tribunal without protest before the board of review as provided in subsection (6).

(b) For an assessment dispute as to the valuation or exemption of property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial personal property, industrial personal property, or utility personal property, the assessment may be protested before the board of review *or* appealed directly to the tribunal without protest before the board of review as provided in subsection (6), if a statement of assessable property is filed[.] [Emphasis added.]

The property in question was classified as commercial at all relevant times. Therefore, McLaren could either protest the assessment as to the exemption of its property "before the board of review or appeal[] directly to the tribunal without protest before the board of review[.]" See *New Covert Generating Co, LLC*, ___ Mich App at ___; slip op at 13-15 (interpreting MCL 205.735a(4)(a) and (b)).[2] However, McLaren still had to comply with the requirements contained

[2] McLaren argues that it was not required to challenge the 2018 decision before the board of review based on certain language contained in MCL 211.53b(1), which concerns the correction of qualified errors. Specifically, McLaren notes that, in relevant part, MCL 211.53b(1) provides as follows: "Except as otherwise provided in subsection (6) and [MCL 211.27a], a correction under this subsection may be made for the current year and the immediately preceding year only."

in MCL 205.735a(6). See *id*. at ___; slip op at 13-14. Specifically, McLaren had to file its written petition before the Tribunal "within 35 days after the final decision, ruling, or determination." See MCL 205.735a(6).

With respect to whether the February 14, 2018 decision or the December 10, 2019 decision was "the final decision, ruling, or determination," on February 14, 2018, the Township denied McLaren's request for an exemption in relation to the 2018 tax year. McLaren did not seek to challenge that decision before the board of review. Instead, McLaren filed the 2019 petition in the Tribunal, which it was permitted to do under MCL 205.735a(4)(a) and (b). Importantly, however, McLaren did not file the 2019 petition until 20 months after the February 14, 2018 decision. Based on a lack of jurisdiction, the Tribunal dismissed the portion of the 2019 petition that concerned the 2018 tax year. McLaren then protested the February 14, 2018 decision before the board of review. When this was unsuccessful, McLaren filed the 2020 petition.

We conclude that MCL 205.735a(4)(a) and (b) do not contemplate—much less permit—the course of action taken by McLaren. Rather, review of the plain language indicates that the Legislature intended for a party to choose between "protest[ing] before the board of review" and "appeal[ing] directly to the tribunal without protest before the board of review[.]" There is no indication that the Legislature intended for a party to be able to create subject-matter jurisdiction where it did not previously exist by protesting an assessment before the board of review *after* the party's petition had already been dismissed by the Tribunal because of the party's failure to comply with the requirements contained in MCL 205.735a(6). Indeed, permitting such a result would essentially render MCL 205.735a(6)'s timing requirements meaningless in situations such as the one at bar. See *South Dearborn Environmental Improvement Ass'n, Inc*, 502 Mich at 361 ("When interpreting a statute, we must . . . avoid an interpretation that would render any part of the statute surplusage or nugatory.") (quotation marks and citations omitted). Consequently, we conclude that the relevant "final decision, ruling, or determination" is the Township's February 14, 2018 decision.

McLaren filed its 2020 petition on January 10, 2020, which was more than 22 months after the February 14, 2018 decision. Consequently, the Tribunal lacked jurisdiction over the claim concerning the 2018 tax year, and we conclude that the Tribunal did not err by dismissing that portion of the 2020 petition. See *WA Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 338; 686 NW2d 9 (2004) ("An untimely filing . . . deprives the Tax Tribunal of jurisdiction to consider the petition and it is therefore properly dismissed."). Although McLaren complains that it is deprived of having its claim heard, "[t]he Tax Tribunal's powers are limited to those authorized by statute, . . . and the Tax Tribunal does not have powers of equity[.]" *Electronic Data Sys Corp*, 253 Mich App at 547-548. After properly concluding that it lacked subject-matter jurisdiction

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However, this provision does not speak to the Tribunal's jurisdiction and instead operates as a limiting provision. See MCL 211.27a(4); *Mikelonis v Alabaster Twp*, 307 Mich App 606, 611; 861 NW2d 354 (2014). Moreover, MCL 211.53b(1) is contained in the General Property Tax Act, MCL 211.1a *et seq*., as opposed to the Tax Tribunal Act. Therefore, MCL 211.53b(1) does not support McLaren's argument that it was permitted to directly appeal to the Tribunal.

over McLaren's claim, the Tribunal was "duty-bound" to dismiss McLaren's claim with respect to the 2018 tax year. See *id*. at 544.

Although we need not consider it, we note that the Township argues that the Tribunal properly dismissed the claim concerning the 2018 tax year because it was barred by res judicata. We disagree, however, because the Tribunal did not resolve the claim concerning the 2018 tax year when it entered the November 2019 order of partial dismissal with respect to the 2019 petition. Rather, the Tribunal dismissed that claim on the basis of lack of jurisdiction. Because the November 2019 order was not an adjudication on the merits of that claim, the Township's res judicata argument fails. See *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 414; 733 NW2d 755 (2007).

III. CLAIM CONCERNING THE 2019 TAX YEAR

A. STANDARD OF REVIEW

This Court "review[s] de novo a . . . decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). In deciding whether summary disposition under MCR 2.116(C)(6) is appropriate, a court must consider "the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties[.]" MCR 2.116(G)(5).[3]

B. ANALYSIS

Summary disposition under MCR 2.116(C)(6) is appropriate where "[a]nother action has been initiated between the same parties involving the same claim." MCR 2.116(C)(6) "is a codification of the former plea of abatement by prior action." *Fast Air, Inc v Knight*, 235 Mich App 541, 545; 599 NW2d 489 (1999). "The plea of abatement protected parties from being harassed by new suits brought by the same plaintiff involving the same questions as those in pending litigation." *Frohriep v Flanagan*, 275 Mich App 456, 464; 739 NW2d 645 (2007), rev'd in part on other grounds by 480 Mich 962 (2007). "[T]o abate a subsequent action, the two suits must be based on the same or substantially same cause of action, and as a rule the same relief must be sought." *Id*.

With respect to whether the same parties and the same claims are involved, the parties in both actions were McLaren and the Township. Additionally, review of the 2019 and 2020 petitions establishes that the claims were the same. Indeed, the 2020 petition references the facts outlined in the 2019 petition, and the petitions' prayers for relief are identical. The only substantial difference is the fact that the 2020 petition included allegations concerning the board of review's

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[3] Although the Tribunal did not specify under what rule it was dismissing the claim concerning the 2019 tax year, the Township moved for summary disposition under MCR 2.116(C)(6) and (C)(7). It would have been erroneous for the Tribunal to dismiss that claim on the basis of res judicata because the claim concerning the 2019 tax year was still pending in relation to the 2019 petition. See *Adair v State of Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004) (holding that res judicata requires that "the prior action was decided on the merits").

December 10, 2019 decision. Although McLaren argued in its response to the Township's motion for summary disposition that "the petitions were based upon separate claims and determinations," we fail to see how the fact that McLaren sought to challenge a different "determination" in relation to the 2020 petition establishes that the claims were different. Indeed, McLaren acknowledged that it was seeking the same relief: property-tax exemptions for the 2019 tax year.

Additionally and importantly, McLaren acknowledges on appeal that the 2019 petition concerning the property's 2019 status is still pending in the Tribunal, thereby supporting that the 2019 action was still pending at the time the March 17, 2020 order of dismissal was entered by the Tribunal in relation to the 2020 petition. See *Fast Air, Inc*, 235 Mich App at 549 ("summary disposition cannot be granted under MCR 2.116(C)(6) unless there is another action between the same parties involving the same claims currently initiated and pending at the time of the decision regarding the motion for summary disposition"). While there is no indication that McLaren filed the 2020 petition to harass the Township, the fact of the matter is that McLaren filed the 2020 petition after the 2019 petition and both actions involve the same parties and the same claim in relation to the property's 2019 status. Therefore, the Tribunal did not err by dismissing the claim concerning the 2019 tax year.

III. MOTION FOR RECONSIDERATION

McLaren argues that the Tribunal erred by concluding that its motion for reconsideration was not timely filed. We disagree.

A. STANDARDS OF REVIEW

We review a decision on a motion for reconsideration for an abuse of discretion. *In re Ingham Co Treasurer for Foreclosure*, 331 Mich App 74, 77; 951 NW2d 85 (2020). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes. A court by definition abuses its discretion when it makes an error of law." *Id*. at 77-78 (quotation marks and citations omitted). Additionally, we "review de novo the construction of an administrative rule." *Brang, Inc v Liquor Control Comm*, 320 Mich App 652, 660; 910 NW2d 309 (2017).

B. ANALYSIS

"Just as with statutes, the foremost rule in construing an administrative rule, and our primary task, is to discern and give effect to the administrative agency's intent." *Id*. at 661. Mich Admin Code, R 792.10257(1), which concerns motions for reconsideration and motions for rehearing in the Tribunal, provides as follows:

> The tribunal may order a rehearing or reconsideration of any decision or order upon its own initiative or the motion of any party filed within 21 days of the entry of the decision or order sought to be reheard or reconsidered.

Thus, under Rule 792.10257(1), the Tribunal had discretion to reconsider the March 17, 2020 decision if McLaren filed a motion for reconsideration of that decision within 21 days. See *New Covert Generating Co, LLC*, ___ Mich App at ___; slip op at 13 (noting that "may" designates

discretion and that "or" is a disjunctive term). As relevant to this appeal, Mich Admin Code, R 792.10219(5) provides, in relevant part, as follows:

> Submissions by mail are considered filed on the date indicated by the U.S. postal service postmark on the envelope containing the submissions. Submissions by commercial delivery service are considered filed on the date the submissions were given to the commercial service for delivery to the tribunal as indicated by the receipt date on the package containing the submissions.

The FedEx envelope that was filed with the motion for reconsideration reveals that the package containing the motion was not "shipped" until May 7, 2020, which is well past the 21-day deadline. Although McLaren argues that the motion for reconsideration was filed on April 6, 2020, there is no record evidence to support this assertion. There is also no support for McLaren's argument that the Tribunal extended the deadlines for filing motions as a result of Executive Orders that were entered as a result of the COVID-19 pandemic. Rather, the document to which McLaren refers specifically states that parties were not precluded "from filing petitions, answers, and motions prior to the expiration of the 'stay home, stay safe' order." We conclude that the Tribunal did not err by determining that the motion for reconsideration was not timely filed and consequently did not abuse its discretion by denying the motion.[4]

Affirmed.

/s/ Thomas C. Cameron
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly

[4] Even if the motion for reconsideration had been timely filed, denial of the motion would have been proper. The arguments contained in the motion for reconsideration are entirely consistent with McLaren's arguments on appeal. For the reasons already discussed, the arguments are without merit.