Court of Appeals, State of Michigan

ORDER

Workers Comp Agency Director v MacDonalds Industrial Products Inc

Docket No. 311184

LC No. 07-001035-CZ

Deborah A. Servitto
Presiding Judge

William C. Whitbeck

Donald S. Owens
Judges

The Court orders that the motion for reconsideration is GRANTED for clarification purposes, and this Court's opinion issued January 28, 2014 is hereby VACATED. A new opinion is attached to this order.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 27 2014
Date

Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

DIRECTOR, WORKERS COMPENSATION AGENCY,

Plaintiff,

v

MACDONALD'S INDUSTRIAL PRODUCTS INC., and CREDITOR TRUST AND SECURITY AGREEMENT OF MACDONALD'S INDUSTRIAL PRODUCTS, INC.,

Defendants.

UNPUBLISHED
January 28, 2014

No. 311184
Ingham Circuit Court
LC No. 07-001035-CZ

THOMAS E. WOODS, RECEIVER,

Appellant,

v

CITY OF KENTWOOD and KENT COUNTY,

Intervening-Appellees,

and

BUIST ELECTRIC, INC., DYKEMA EXCAVATORS, INC., FLOW AUTOMATION SYSTEMS CORP, GENERAL MOTORS CORP, LEAR CORP, DEPARTMENT OF ENVIRONMENTAL QUALITY, and DEPARTMENT OF TREASURY,

Intervenors.

Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Thomas E. Woods, receiver of defendant, MacDonald's Industrial Products Inc. (MacDonald's), appeals as of right the circuit court's order denying in part Woods's motion to recover property taxes that Woods paid to intervening appellees, City of Kentwood (Kentwood) and Kent County. We affirm.

I. FACTS

A. EXEMPTION CERTIFICATES

MacDonald's was an automotive parts supplier. In 1999, the State Tax Commission (the Commission) issued MacDonald's an industrial facilities exemption certificate for its facility located on 44th Street in Kentwood. In pertinent part, the exemption certificate exempted MacDonald's from certain real and personal property taxes from December 30, 1999, to December 30, 2007, and permitted it to instead pay a lower tax known as the Industrial Facilities Tax.[1] The Commission conditioned the exemption certificate on MacDonald's creating and retaining jobs at its 44th Street property, and the certificate was subject to revocation if the jobs were not created or maintained. In 2004, the Commission issued MacDonald's a second certificate, under substantially similar conditions, that was to run from December 31 2004, to December 30, 2005.

MacDonald's ceased operations in 2006. In October 2006, Kentwood requested that the Commission revoke the exemption certificates. In a letter dated December 1, 2006, the Department of Treasury notified MacDonald's that the Commission had revoked its certificates at a meeting held on November 29, 2006, and that if MacDonald's did not request a hearing on the matter, the Commission would issue an order revoking its certificates, effective December 30, 2006. MacDonald's did not request a hearing and the Commission issued an order on February 5, 2007, informing MacDonald's that its certificates had been revoked, effective December 30, 2006.

B. SALE OF THE PROPERTIES

On August 22, 2007, on request of the Worker's Compensation Agency, the circuit court appointed Woods as receiver of MacDonald's' business and property. In March 2008, Woods sought permission to sell MacDonald's property on Oak Industrial Drive in Grand Rapids. The circuit court granted him permission to sell the property free and clear of mortgages, liens, and other encumbrances, but required him to pay "all outstanding property tax liabilities." Woods sold the property, and paid the property's unpaid property taxes, interest, and penalties out of the proceeds of the sale.

In March 2011, Woods sought permission to sell MacDonald's 44th Street property. The circuit court's order permitted him to sell the property free and clear of mortgages, liens, and other encumbrances, but required him to pay the property's "real property taxes" and to escrow "statutory interest, fees and penalties." Woods sold the property in compliance with the order.

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[1] MCL 207.551 *et seq*.

C. MOTION TO RECOVER ASSETS

On October 10, 2011, Woods moved to recover assets of the receivership and distribute proceeds. In parts pertinent to this appeal, Woods asserted that (1) Kentwood and Kent County had impermissibly included interest and penalties in the tax liens, and (2) the Commission had improperly revoked MacDonald's exemption certificates. The circuit court denied Woods's motion in part, concluding that (1) Woods was not entitled to reimbursement because the tax liens in 2006 and summer 2007 included the interest and penalties and were perfected before he possessed the property and (2) Commission could retroactively revoke the exemption certificate.

II. THE TAX LIENS

A. STANDARD OF REVIEW

This Court reviews de novo questions of law, including questions involving the statutory priority of payments involved in a receivership.[2] We review de novo questions of statutory interpretation.[3] We review for clear error a circuit court's factual findings, and review de novo its legal conclusions.[4]

B. LEGAL STANDARDS

MCL 211.44(3) authorizes localities to add late penalty charges, administration fees, and interest to uncollected taxes. MCL 211.40 provides that unpaid taxes become liens:

> The amounts assessed for state, county, village, or township taxes on any interest in real property shall become a lien on the real property on December 1, on a day provided for by the charter of a city or village, or on the day provided for in [MCL 211.40a]. The lien for those amounts, and for all interest and charges on those amounts, shall continue until paid.

Concerning summer taxes, MCL 211.44a similarly provides that "[t]axes authorized to be collected shall become a lien against the property on which assessed" on July 1.[5]

C. PENALTIES AND INTEREST

Woods contends that the first sentence in the portion of MCL 211.40 quoted above creates a lien for property taxes but does not create a lien for penalties and interest, and the second sentence in MCL 211.40 does not actually create any liens but merely provides that liens

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[2] *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 218; 821 NW2d 503 (2012).

[3] *Id.*

[4] *Id.*

[5] MCL 211.44a(3) and (4).

on interest and charges shall continue until paid. We cannot adopt Woods's reading of this statute.

When interpreting a statute, our goal is to give effect to the intent of the Legislature.[6] The language of the statute is the primary indication of the Legislature's intent.[7] If the language of the statute is unambiguous, we must enforce it as written.[8] This Court reads the provisions of statutes "reasonably and in context."[9] We will not expand the scope of a tax law through forced construction, and construe doubtful tax laws in favor of the taxpayer.[10]

As stated above, the plain language of MCL 211.40 provides that

> [t]he amounts assessed for state, county, village, or township taxes on any interest in real property shall become a lien on the real property on December 1, on a day provided for by the charter of a city or village, or on the day provided for in [MCL 211.40a]. *The lien for those amounts, and for all interest and charges on those amounts,* shall continue until paid.[11]

Considering the provisions of this statute reasonably and in context, we conclude that the lien that the statute creates in the first sentence includes the amounts, interests, and charges in the lien that it mentions "shall continue" in the second sentence. Woods's proposed interpretation of the statute—that the Legislature meant to *continue* a lien for interests and charges that it had not actually *created*—is not reasonable. Reading the sentences together, the only reasonable interpretation is that the Legislature meant to indicate that interests and charges are included, along with amounts assessed, in the lien that it created. We conclude that the plain meaning of MCL 211.40 is that the amount assessed, including interest and charges, is part of the lien against a property on which taxes remain unpaid.

D. 2006 AND 2007 TAX LIENS PRIOR TO WOODS' APPOINTMENT

Woods contends that the circuit court erred when it required him to pay taxes that were assessed in 2006 and 2007, before the circuit court appointed him as the receiver for MacDonald's. We disagree.

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[6] *US Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 13; 795 NW2d 101 (2009).

[7] *Id.*

[8] *Id.*

[9] *McCahan v Brennan*, 492 Mich 730, 739; 822 NW2d 747 (2012).

[10] *Ameritech Publishing, Inc v Dep't of Treasury*, 281 Mich App 132, 136; 761 NW2d 470 (2008).

[11] Emphasis supplied.

We conclude that Woods took the property subject to the liens. In *In re Ever Krisp Food Products Co*, the Michigan Supreme Court held that in a receivership, "a receiver takes property subject to *prior* and *existing* liens . . . ."[12] Unpaid property taxes automatically become liens on the real property on the first of December, for winter taxes, and the first of July, for summer taxes.[13]

Here, the 2006 and summer 2007 tax liens attached to the property before Woods's appointment as receiver. Because these liens were created prior to Woods's appointment as receiver and they continued to exist when he took the property, Woods took the property subject to the liens. We conclude that the circuit court properly determined that Woods took the 44th Street property subject to the 2006 and summer 2007 tax liens.

Woods also contends that the Michigan Supreme Court modified its prior decision in *In re Ever Krisp* with its holding in *In re Rite-Way Tool & Manufacturing Co*.[14] We disagree.

In *In re Rite-Way Tool & Manufacturing Co*, the receiver operated the business for three years before the trial court authorized him to liquidate the business's assets.[15] During that time, the trial court's order required the receiver to pay the business's taxes.[16] The City of Detroit attempted to argue that the taxes were "'expenses of administration'" of the receivership, which had first priority of distribution under the trial court's order.[17]

The Michigan Supreme Court held that the taxes were administration expenses of the receivership because the taxes were assessed while the receiver was conducting the business.[18] The Court distinguished its prior decision in *In re Ever Krisp* on the basis that, in *In re Ever Krisp*, the taxes were assessed against the owner of the property before the receiver was appointed.[19]

In re Rite-Way Tool involved a case in which the State assessed the tax against the receivership.[20] But *In re Ever Krisp* involved a case in which the State assessed the taxes against

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[12] *In re Dissolution of Ever Krisp Food Products Co*, 307 Mich 182, 196; 11 NW2d 852 (1943) (emphasis in original).

[13] MCL 211.40; MCL 211.44a(3) and (4).

[14] *In re Rite-Way Tool & Mfg Co*, 333 Mich 551; 53 NW2d 373 (1952).

[15] *Id*. at 553.

[16] *Id*. at 554.

[17] *Id*. at 553-554.

[18] *Id*. at 556.

[19] *Id*. at 557.

[20] *Id*. at 554.

the owner of the property, before the trial court appointed the receiver.[21] The Court in *In re Rite-Way Tool* specifically referred to its prior decision in *In re Ever Krisp* and determined that *In re Ever Krisp* was "not controlling of decision in the case at bar because there is a controlling factual difference . . . ."[22] Thus, the Michigan Supreme Court did not *modify* its holding in *In re Ever Krisp*. Rather, the Michigan Supreme Court *distinguished* that decision. We conclude that the Michigan Supreme Court's decision in *In re Rite-Way Tool* did not modify its holding in *In re Ever Krisp*.

Woods also contends that *In re Rite-Way Tool*—not *In re Ever Krisp*—applies to the facts in this case, and thus the trial court erred by applying the holding in *In re Ever Krisp*. We disagree.

Here, the taxes were assessed against the 44th Street property before the circuit court appointed Woods as receiver. Unlike in *In re Ever Krisp*, Kentwood did not assess the taxes while Woods was operating the business. Thus, we conclude that the circuit court did not err by applying *In re Ever Krisp* because *In re Rite-Way Tool* does not apply to the facts in this case.

III. REVOCATION OF EXEMPTION CERTIFICATES

A. STANDARD OF REVIEW

This Court reviews de novo issues of the interpretation and application of statutes.[23] If the plain and ordinary meaning of a statute's language is clear, we enforce the statute's language as written.[24] When interpreting a statute, our goal is to give effect to the intent of the Legislature.[25] The language of the statute itself is the primary indication of the Legislature's intent.[26]

B. THE POSITIONS OF THE PARTIES

Woods contends that the Commission improperly revoked the exemption certificates retroactive to December 2006, and that the circuit court erred by concluding that the Commission could revoke those certificates retroactively. Woods contends that, since the Commission did not actually enter a signed revocation order until February 5, 2007, according to the statute that order became effective for taxes arising only on and after December 31, 2007. Thus, Woods argues, the Commission's revocation of the certificates had no valid effect on the exemptions for

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[21] *In re Dissolution of Ever Krisp Food Products Co*, 307 Mich at 196.

[22] *In re Rite-Way Tool & Mfg Co*, 333 Mich at 557.

[23] *Adair v Michigan*, 486 Mich 468, 477; 785 NW2d 119 (2010).

[24] *US Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 12; 795 NW2d 101 (2009).

[25] *Id*. at 13.

[26] *Id*.

2006 (since the revocation was not signed and did not become effective prior to December 31, 2006) or for 2007 (since the revocation only became effective for taxes arising on or after December 31, 2007). Simply put, it is Woods's position that the Commission's revocation of the certificates is void as to 2006 and 2007 taxes.

The City of Kentwood contends on appeal, as it argued below, that even if the Commission erred by retroactively revoking Woods's exemption certificates, Woods's challenge is improper. According to the City, because MacDonald's failed to appeal the Commission's decision to the circuit court within 60 days as provided by law,[27] his later challenge is an impermissible collateral attack on that decision. We conclude that Woods's challenge is an impermissible collateral attack.

C. STATUTORY PROVISIONS

MCL 207.565(4) provides that:

> The order of the commission revoking the certificate shall be effective on the December 31 next following the date of the order and the commission shall send by certified mail copies of its order of revocation to the holder of the certificate, to the local legislative body, to the assessor of the assessing unit in which the facility is located, and to the legislative body of each taxing unit which levies taxes upon property in the local governmental unit in which the facility is located.

MCL 207.565(4) thus provides that an order revoking an exemption certificate "shall be effective on the December 31 next following the date of the order . . . ." We also note that all orders made or issued by the Commission are to be signed by the chairman and sealed with the seal of the Commission.[28] A taxpayer aggrieved by the Commission's decision to revoke an exemption certificate may appeal the order to the circuit court within 60 days.[29]

D. THE EFFECTIVE DATE OF THE REVOCATION ORDER

Our first task in unraveling this issue is to determine the effective date of the Commission's revocation order. If the action that the Commission took at its meeting on November 29, 2006, to revoke the certificates and the Department of Treasury's notification to MacDonald's of this action on December 1, 2006, are valid, then December 31, 2006, is the date "next following" the revocation and the notification. Therefore, under this view, December 31, 2006, is the effective date of the Commission's revocation order. And, it follows, this revocation order would revoke the exemption for 2007 onward.

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[27] MCL 207.570; MCL 24.304(1).

[28] MCL 209.105.

[29] MCL 207.570; MCL 24.304(1).

However, if no valid action of the Commission took place until February 5, 2007, the date that the chairperson of the Commission actually signed the revocation order, December 31, 2007 is the date "next following" that signature. Therefore, under this view, December 31, 2007, is the effective date of the Commission's revocation order. And, it follows, this revocation order would revoke the exemption for 2008 onward.

We conclude that the latter formulation is the correct one. Construing both MCL 207.565(4) and MCL 209.105 together, we conclude that the effective date of the Commission's revocation order is December 31, 2007.

We first note that such a conclusion comports with the plain language of the two statutes. The plain language of MCL 207.465(4) precludes retroactive revocation by providing a specific time, *subsequent to the date of the order*, when that revocation becomes effective. By definition, therefore, the effective date of revocation order must be *subsequent* to the entry date of such a revocation order; that is, on the December 31 "next following" the date of the revocation order. And the mandatory "shall" of MCL 209.105 *requires* that the chairman of the Commission sign all orders that the Commission issues.[30] Again by definition, such orders are not valid until the chairman signs them.

Secondly, this conclusion is in accord with more general jurisprudential principles. It is black letter law, as Woods points out, that when a court makes a ruling and later enters an order effectuating that ruling, the order is only effective when the judges signs it and it is entered.[31] And, as Woods again points out, courts cannot automatically enter an order *nun pro tunc* as of the date of a particular ruling.[32] And, again, it follows that administrative agencies enjoy no broader power than do courts to give retroactive effect to their actions.

Thirdly, this conclusion is also in accord with principles of administrative law. As Woods points out, administrative agencies are creatures of statute. They have only the powers the statutes expressly grant, and we must strictly construe any statute claimed to supply such powers.[33] Similarly, the Commission possesses only those powers the statutes confer and has no

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[30] See *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1987) (use of the world "shall" indicates mandatory language).

[31] See *Tiedman v Tiedman*, 400 Mich 571, 576-577; 255 NW2d 632 (1977) ("The rule is well established that courts speak through their judgments and decrees, not their oral statements or written opinions. Generally, a judgment or order is reduced to written form . . .; until reduced to writing and signed, the judgment did not become effective **. . . ." (**footnote omitted**.))**

[32] See *Shifferd v Gholston*, 184 Mich App 240, 243; 457 NW2nd 58 (1990)("An entry *nunc pro tunc* is proper to supply an omission in the record of action already had, but omitted through inadvertence or mistake."). See also *Freeman v Wayne Probate Judge*, 230 Mich 455, 460; 203 NW 158 (1925) (the purpose of entering an order *nunc pro tunc* is not to supply an omitted action of a trial court).

[33] *Consumers Power Co v Pub Serv Comm*, 460 Mich 148, 155-156; 596 NW2d 126 (1999).

implied powers whatsoever. As held in *Topps of Warren v City of Warren*, 27 Mich App 59, 61-62; 183 NW2d 310 (1970):

> Plaintiff contends that the jurisdiction of the State Tax Commission is purely statutory, that the statutes must be strictly construed, and that if the commission had jurisdiction it lost it through the passage of time. We agree. The State Tax Commission possesses only those powers conferred on it by statute. *Detroit Edison Co v City of Detroit*[,297 Mich 583; 298 NW 290 (1941)]. These statutes must be strictly construed. In *In re Dodge Brothers*[,241 Mich 665, 669; 217 NW 777 (1928)], the Court said, "The scope of tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, is not resolved against the taxpayer."[34]

Rather obviously, there is nothing in the relevant statutes that empowers the Commission to make its revocation orders effective retroactively. Indeed, the plain language of MCL 207.465(4) precludes such retroactive revocation. And, therefore, the Commission's attempted retroactive revocation of the exemption certificates is a nullity[35] as a matter of law, despite the trial court's conclusion to the contrary.

E. COLLATERAL ATTACK

1. WHETHER WOODS'S ATTACK IS COLLATERAL

Our second task, once we have determined as we have above that the trial erred in concluding that the Commission could retroactively revoke the exemption certificates, is to determine whether Woods's position in this proceeding is a collateral attack.

It is well-established in Michigan that, assuming competent jurisdiction, a party cannot use a second proceeding to attack a tribunal's decision in a previous proceeding:

> The final decree of a court of competent jurisdiction made and entered in a proceeding of which all parties in interest have due and legal notice and from which no appeal is taken cannot be set aside and held for naught by the decree of another court in a collateral proceeding commenced years subsequent to the date of such final decree.[36]

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[34] *Topps of Warren v City of Warren*, 27 Mich App 59,61-62; 183 NW2d 310 (1970). See also *Bd of Ed of Grand Rapids v State Tax Comm*, 291 Mich 50, 54-58; 288 NW 331 (1939).

[35] See *Deadwyler v Consolidated Paper Co*, 260 Mich 130, 132; 244 NW 484 (1932).

[36] *Dow v Scully*, 376 Mich 84, 88-89; 135 NW2d 360 (1965), quoting *Loesch v First National Bank of Ann Arbor*, 249 Mich 326, 329-330; 228 NW 717 (1930).

Here, there is no question that the Commission had the authority to revoke the exemption certificates.[37] MacDonald's could have appealed that decision to the circuit court.[38] MacDonald's also could have contested the tax assessment itself before the local board of review, claiming an exemption, or before the tax tribunal or the circuit court.[39] MacDonald's had notice of the proceeding, but elected not to request a hearing or take an appeal. In other words, the Commission had the requisite general authority to revoke the exemption certificates and MacDonald's had legal notice and elected not to take an appeal, but Woods now is challenging the Commission's decision—years subsequent—in this new proceeding. We conclude that Woods's attack on the Commission's decision is a collateral attack.

2. PROPRIETY OF COLLATERAL ATTACK

Having determined that Woods's attack on the Commission's decision in this case is a collateral attack, our third task is to determine whether Woods's collateral attack is a *proper* collateral attack.

Woods contends not that the Commission lacked the general authority to revoke the exemption certificates, but that the Commission acted outside its statutory authority in making its order *retroactive*. As we have outlined above, we agree with that contention. But we still must consider whether an action outside an agency's authority is void and subject to collateral attack at any time, even subsequent to the expiration of the relevant direct appeal period, or whether it may only be attacked by way of a direct appeal.

We start with the proposition that a wrong decision is not void; it is merely voidable.[40] And only void decisions are subject to collateral attack.[41] Again as we have outlined above, we conclude that the Commission's and the trial court's retroactivity decisions were wrong. And we have concluded that the Commission's attempt to apply its order retroactively to a date prior to its actual signing was a nullity. But these conclusions do not directly address the contention that the Commission's decision was void, rather than merely voidable.

We conclude that the Commission's decision was void as a matter of law because the Commission lacked statutory jurisdiction to render its decision. An order that a tribunal enters without jurisdiction is void.[42]

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[37] MCL 207.565.

[38] See MCL 207.570; MCL 24.304(1).

[39] MCL 205.735(1); *Parkview Mem Ass'n v City of Livonia*, 183 Mich App 116, 118-120; 454 NW2d 169 (1990).

[40] *Morris*, 253 Mich at 337.

[41] *Morris v Baker*, 253 Mich 334, 337; 253 NW2d 174 (1931); *Jackson City Bank & Trust Co v Fredrick*, 271 Mich 538, 544-545; 260 NW 908 (1935).

[42] *In re Hague*, 412 Mich 532, 544; 315 NW2d 524 (1982).

In *Lake Township v Millar*, 257 Mich 135, 137; 241 NW 237 (1932), the plaintiffs sought to declare drain proceedings "fraudulent and void." The drain in that case did not fall within the statutory definition of a drain, but was instead a sewer.[43] The defendants contended that "plaintiffs not having attacked the regularity of the proceedings here involved by certiorari [ ], are estopped from questioning their regularity in this proceeding."[44] The Michigan Supreme Court disagreed on the grounds that the drain commissioner lacked legal authority to construct a sewer, and therefore his actions exceeded his authority under the statute.[45] It therefore determined that the commissioner's collateral estoppel arguments had no merit because

> [t]he rule is that errors and irregularities in drain proceedings must be taken advantage of by certiorari, but an entire want of jurisdiction may be taken advantage of at any time. The drain commission had no jurisdiction to construct a sewer any more than to construct a Covert road. . . . The proceedings are void for want of jurisdiction.[46]

This case is similar to the proceedings in *Lake Township*. As in *Lake Township*, Woods has contended, successfully, that the proceedings were void for lack of statutory jurisdiction. As stated above, the Commission did not have statutory authority to issue a retroactive decision and its actions did not fall within its statutory authority. Therefore, the Commission's decision was void.

This conclusion, however, does not end our inquiry. A collateral attack "is permissible only if the court never acquired jurisdiction over the persons or the subject matter."[47] "[W[hile an error in the *exercise* of a court's jurisdiction is not subject to collateral attack, *want of jurisdiction* renders a judgment void."[48] Thus, collateral attack is not permissible against any void decision; collateral attack is proper only against those decisions that are void *because of* a lack of personal or subject matter jurisdiction.

A tribunal's subject matter jurisdiction depends on the kind of the case before it, not on the particular facts of the case:

> Jurisdiction of the subject matter is the right of the court to exercise judicial power over a class of cases, not the particular case before it; to exercise the abstract power to try a case of the kind or character of the one pending. The

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[43] *Lake Twp v Millar*, 257 Mich at 139.

[44] *Id*. at 141.

[45] *Id*. at 141-142.

[46] *Id*. at 142.

[47] *Edwards v Meinberg*, 334 Mich 355, 358; 54 NW2d 684 (1952). See *Altman v Nelson*, 197 Mich App 467, 472-473; 495 NW2d 826 (1992).

[48] *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992) (emphasis supplied).

> question of jurisdiction does not depend on the truth or falsity of the charge, but upon its nature: it is determinable on the commencement, not at the conclusion, of the inquiry. Jurisdiction always depends on the allegations and never upon the facts.[49]

Once a tribunal has subject matter jurisdiction, it has jurisdiction to make an incorrect decision.[50] There is a difference between a court having no *jurisdiction* to take an action, and having no *legal right* to take the action.[51]

Here, at the commencement of the action, the Commission had the abstract power to determine whether to revoke MacDonald's exemption certificate. The Commission has the power to determine whether to revoke exemption certificates generally. However, the Commission then erred in its *exercise* of that jurisdiction: it determined that it had the legal right to revoke the exemption certificate retroactively when, in actuality, it had no right to do so. While this renders the Commission's decision void, it does not render it void for lack of subject matter jurisdiction. Because the Commission had subject matter jurisdiction over this type of case, its decision is not subject to collateral attack.

We conclude that this Commission's decision—incorrect, improper, and outside of its statutory authority to issue—was subject to direct attack on appeal, but was not properly the subject of a collateral attack in because the Commission did not lack subject matter jurisdiction.

IV. CONSIDERATION OF THE EQUITIES

A. STANDARD OF REVIEW

This Court reviews de novo a court's decision concerning whether equitable relief is appropriate under specific facts, and reviews for clear error the court's factual findings.[52]

B. LEGAL STANDARDS

Funds from a receivership are first distributed to pay "[a]ll taxes legally due and owing by the assignor to the United States, state, county or municipality[,]" and are only then

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[49] *Altman*, 197 Mich App at 472 (citations omitted).

[50] *Id*. at 473.

[51] *Bowie*, 441 Mich at 40; *Buczkowski v Buczkowski*, 351 Mich 216, 222; 88 NW2d 416 (1958).

[52] *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008); *Eller v Metro Indus Contracting, Inc*, 261 Mich App 569, 571; 683 NW2d 242 (2004).

distributed to pay "[t]he cost of administration[.]"[53] "When the Legislature has prescribed the order of priority, courts may not vary that order by resorting to equity."[54]

C. APPLYING THE STANDARDS

Relying on *In re Wagner Estate*,[55] Woods contends that the circuit court should have declined to hold him liable for the interest and penalties on the taxes as a form of equitable relief, because his failure to pay the taxes was in good faith since he had no assets with which to pay the taxes. We disagree.

In *In re Wagner Estate*, this Court affirmed a trial court's decision to waive penalties and interest related to an estate tax.[56] There, the Michigan Estate Tax Act granted the probate court the right to determine all questions arising under that act's provisions.[57] Thus the probate court had the authority to review the Department of Treasury's decision not to waive the plaintiff's penalties and interest on the late tax payments.[58]

In re Wagner Estate is distinguishable because this case does not involve a provision of the Estate Tax Act and the statute at issue here does not provide the circuit court any discretion regarding the order of priority for payments from a receivership distribution. Here, as discussed above, MCL 600.5251 provides that the circuit court must first distribute the proceeds of a receivership to pay "[a]ll taxes legally due and owing" to municipalities. Further, MCL 600.5251 uses the word "shall." The word "shall" indicates a mandatory requirement and "expresses a directive, not an option."[59] Thus, the circuit court did not have the discretion to vary this statutory mandate by resorting to equity. We conclude that the circuit court properly declined to forgive the interest and penalties as a form of equitable relief.

V. CONTEMPT OF COURT

Generally, a party must raise an issue before the trial court to preserve it for our review.[60] "[P]roceedings for contempt committed outside the presence of the court must be initiated

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[53] MCL 600.5251(1)(a) and (b).

[54] *In re Receivership of 11910 South Francis Rd*, 492 Mich at 224 n 37. Cf *Stokes v Millen Roofing Co*, 466 Mich 660, 673; 649 NW2d 371 (2002) (equitable relief cannot defeat a statutory ban on compensation).

[55] *In re Wagner Estate (After Remand)*, 224 Mich App 400; 568 NW2d 693 (1997).

[56] *Id*. at 402.

[57] *Id*. at 401; MCL 205.210.

[58] *In re Wagner Estate*, 224 Mich App at 401.

[59] *Wolverine Power Supply Coop, Inc v Dep't of Environmental Quality*, 285 Mich App 548, 561; 777 NW2d 1 (2009).

[60] *Polkton Charter Twp v Pelegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

pursuant to the procedure set forth at MCR 3.606."[61] MCR 3.606 provides that contempt proceedings are initiated by a motion. Here, Woods did not move the circuit court to hold Kentwood or Kent County in contempt for violating its orders. Therefore, this issue is unpreserved.

This Court may review an unpreserved issue "if it presents a question of law and all the facts necessary for its resolution are before the Court."[62] A court must follow a particular process before sanctioning a party for contempt.[63] This process includes making findings of fact at a contempt hearing in order to determine whether a party committed contempt.[64] Here, Kentwood and Kent County's alleged contempt took place outside the presence of the court, but the circuit court has not held a contempt hearing and thus there are no findings of fact available on the record. We conclude that we cannot review this unpreserved issue because not all the facts that would be necessary for our review are available to this Court.

VI CONCLUSION

We conclude that the circuit court properly denied Woods's motion to exclude the 2006 and summer 2007 taxes, including penalties and interest, from its distribution to Kentwood and Kent County. We also conclude that the Commission erred when it determined that it would revoke MacDonald's exemption certificates retroactively. Its decision to do so was outside of its statutory authority. However, because the Commission had subject matter jurisdiction to determine whether to revoke MacDonald's exemption certificates, this void decision is not subject to collateral attack in this case. The remainder of Woods's assertions lack merit.

We affirm.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Donald S. Owens

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[61] *In re Contempt of McRipley*, 204 Mich App 298, 301; 514 NW2d 219 (1994).

[62] *Macatawa Bank v Wipperfurth*, 294 Mich App 617, 619; 822 NW2d 237 (2011).

[63] *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 713; 624 NW2d 443 (2000).

[64] See *Id*. at 712-714.