

STATE OF MICHIGAN
COURT OF APPEALS

TYSON FOODS, INC.,

Plaintiff-Appellee,

v

DEPARTMENT OF TREASURY,

Defendant-Appellant.

UNPUBLISHED

March 15, 2011

No. 295710

Court of Claims

LC No. 05-000159-MT

Before: SHAPIRO, P.J., and HOEKSTRA and TALBOT, JJ.

PER CURIAM.

This case presents us with a procedural issue regarding the authority of a trial court to re-open a case following this Court’s reversal of its ruling. We affirm.

A short history regarding this matter is useful. In August 2005, Tyson Foods, Inc. (Tyson) filed an action seeking to obtain a refund of taxes paid. The lawsuit alleged several counts pertaining to the authority of the Treasury Department (Treasury) to issue a second assessment to the same taxpayer covering the same time period after a final assessment had been paid. Tyson asserted such action was a violation of its right to due process and equal protection rights, without statutory authorization, barred by res judicata and collateral estoppel, and other related assertions. While the legal theory for each count varied, the relief sought by Tyson under each count was identical, a full refund of the disputed taxes, penalties and interest.

Tyson sought summary disposition premised on its assertion that the Treasury lacked the statutory authority to issue the second assessment. There was no designation or indication in the written motion or at argument that Tyson was seeking partial summary disposition. The trial court granted Tyson’s motion and ordered the Treasury to refund monies as requested by Tyson in its prayer for relief. The order also included the following wording: “In compliance with MCR 2.602(A)(3), this Court finds that this decision resolves the last pending claim and closes the case.” This order was subsequently amended to clarify the ruling to include an interest provision. The “resolves the last pending claim” language remained in the modified order.

The Treasury petitioned this Court as an appeal of right from a final judgment. No mention was made in the briefs submitted or in argument to challenge jurisdiction or to suggest that any claims remained unresolved in the trial court. This Court reversed the trial court based solely on its finding that the Treasury was statutorily authorized to issue a second assessment.¹ Although this Court reversed the trial court's ruling, the opinion did not indicate a remand to the lower court. Tyson's motion for reconsideration in this Court was also denied. An application to the Michigan Supreme Court was denied² along with reconsideration of that denial.³ None of the appellate orders or opinions referenced or indicated that the matter was to be remanded to the trial court.

Subsequently, Tyson attempted to negotiate a settlement with the Treasury, but the Treasury refused asserting the case was closed following the exhaustion of appellate remedies. The Court of Claims confirmed the case had been closed and Tyson filed a motion seeking to re-open the case on the basis of alternative claims that had not been addressed. The trial court ordered the case to be reopened based in part on concerns pertaining to the statute of limitations and indicating, "It does look like I made a mistake in my order because there were other pending claims." We recognize, as raised by the Treasury, that over two years have elapsed between this Court's issuance of an opinion and Tyson's motion seeking to re-open the case in the lower court. "This Court reviews for an abuse of discretion a trial court's decision concerning a motion to reinstate an action."⁴

The Treasury challenges the re-opening of the case by the Court of Claims based, in part, on the untimely nature of Tyson's request. The Treasury notes that Tyson never objected to the final order language until three years after its entry and the completion of the appellate process. Throughout all of the proceedings Tyson remained silent and never suggested that additional issues remained for litigation. The Treasury contends that it was improper for the trial court to re-open the litigation as the initial ruling appealed to this Court comprised a final order as there was no other relief available to Tyson following the lower court's ruling.

Tyson responds that summary disposition was granted based on only one theory of relief – the lack of statutory authorization. None of the alternative claims for relief raised by Tyson were considered or addressed in the lower court or on appeal. Closing of the case was simply a ministerial error, as was the trial court's inclusion of the standard "final order" language. As the case should not have been closed, it was not an abuse of discretion for the trial court to re-open it.

¹ *Tyson Foods, Inc v Dep't of Treasury*, 276 Mich App 678; 741 NW2d 579 (2007).

² *Tyson Foods, Inc v Dep't of Treasury*, 480 Mich 1137; 746 NW2d 75 (2008).

³ *Tyson Foods, Inc v Dep't of Treasury*, 482 Mich 899; 753 NW2d 161 (2008).

⁴ *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 138; 624 NW2d 197 (2000) (citation omitted).

This case presents an unusual procedural circumstance and both parties can be attributed with a lack of diligence in how this matter has been handled. The Treasury is correct that the Court of Claims lacks the authority to alter a ruling from this Court. As recognized many years ago, recognizing the finality of appellate rulings on lower courts:

An appeal brings a . . . case to this court for hearing de novo, and, whether the decree of the . . . court be affirmed, reversed, or modified, the decree in the case becomes the decree of this court and the . . . court has no jurisdiction to change it without leave of this court first obtained.⁵

Commensurately:

[i]t is undoubtedly true that the circuit court has no power to modify in any material respect a judgment in any manner inconsistent with the decision of this court . . . it appears that the error was not discovered until after the decision of this court, and that no point decided in the case by this court turned on the form of the verdict or judgment . . .⁶

In the circumstances presented, the trial court's re-opening of the case was not an abuse of discretion and will not violate preclusions regarding this Court's previous ruling. First, the trial judge implicitly acknowledged that his inclusion of the "final judgment" language on the order was a ministerial error. Second, neither party is without fault in their lack of diligence to assure the conclusion of this matter as neither Tyson nor the Treasury appears to have taken action to effectuate this Court's ruling in a timely manner. Third, this Court's ruling did not preclude the pursuit of alternative theories for Tyson's claim as the only claim addressed and resolved and, therefore, not subject to a revisit by the Court of Claims is the statutory authority of the Treasury to issue a second assessment after a final assessment had been paid by Tyson.

By re-opening the case, the Court of Claims may only address those alternative bases for relief raised by Tyson in its complaint. The court cannot revisit or address the Treasury's statutory authority as that issue has been conclusively resolved and is not subject to review at this point in this litigation. The continuation of the case in the lower court does not result in an improper challenge to this Court's authority as we did not address Tyson's alternative claims. This may also be the most efficient use of judicial resources to resolve these matters as it can be

⁵ *Woodliff v Citizens' Bldg & Realty Co*, 245 Mich 292, 295-296; 222 NW 730 (1927).

⁶ *Salter v Sutherland*, 125 Mich 662, 664; 85 NW 112 (1901).

anticipated that Tyson's status as a taxpayer will continue and these same issues may arise in the future.

Affirmed.

/s/ Douglas B. Shapiro

/s/ Joel P. Hoekstra

/s/ Michael J. Talbot