

STATE OF MICHIGAN
COURT OF APPEALS

IRON MOUNTAIN INFORMATION
MANAGEMENT, INC.,

Plaintiff-Appellee,

v

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

Defendants-Appellants,

and

JAMES RUSHTON and PITTSFIELD CHARTER
TOWNSHIP,

Defendants.

CVS PHARMACY, INC.,

Plaintiff-Appellee,

v

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

Defendants-Appellants,

and

GLENN LEMMON and CITY OF NOVI,

Defendants.

FOR PUBLICATION
December 29, 2009
9:20 a.m.

No. 291579
Washtenaw Circuit Court
LC No. 09-001208-AS

Advance Sheets Version

No. 291586
Oakland Circuit Court
LC No. 2008-096365-AS

NES RENTAL HOLDINGS, INC.,

Plaintiff-Appellee,

v

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

Defendants-Appellants,

and

Linda Bade and CITY OF DETROIT,

Defendants.

IRON MOUNTAIN INFORMATION
MANAGEMENT, INC.,

Plaintiff-Appellee,

v

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

Defendants-Appellants,

and

Linda Bade and CITY OF DETROIT,

Defendants.

IRON MOUNTAIN INFORMATION
MANAGEMENT, INC.,

Plaintiff-Appellee,

v

ROBERT NAFTALY, DOUGLAS ROBERTS,

No. 291729
Wayne Circuit Court
LC No. 08-017048-AS

Advance Sheets Version

No. 291730
Wayne Circuit Court
LC No. 08-017053-AS

No. 291731

FREDERICK MORGAN, and STATE TAX
COMMISSION,

Wayne Circuit Court
LC No. 08-017061-AS

Defendants-Appellants,

and

Sherron Schultz and CITY OF LIVONIA,

Defendants.

Advance Sheets Version

IRON MOUNTAIN INFORMATION
MANAGEMENT, INC.,

Plaintiff-Appellee,

v

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

No. 291732
Wayne Circuit Court
LC No. 08-017065-AS

Defendants-Appellants,

and

Sherron Schultz and CITY OF LIVONIA,

Defendants.

IRON MOUNTAIN INFORMATION
MANAGEMENT, INC.,

Plaintiff-Appellee,

v

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

No. 291733
Wayne Circuit Court
LC NO. 08-017072-AS

Defendants-Appellants,

and

Tom Yack and CANTON TOWNSHIP,

Defendants.

IRON MOUNTAIN INFORMATION
MANAGEMENT, INC.,

Advance Sheets Version

Plaintiff-Appellee,

v

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

Defendants-Appellants,

No. 291734
Wayne Circuit Court
LC No. 08-017075-AS

and

Linda Bade and CITY OF DETROIT,

Defendants.

MIDLAND COGENERATION VENTURE
LIMITED PARTNERSHIP,

Plaintiff-Appellee,

v

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

Defendants-Appellants.

No. 291907
Midland Circuit Court
LC No. 08-005246-AS

Before: GLEICHER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

In each of these consolidated appeals the plaintiff disputed the classification of subject parcels of property and protested the assigned classification to the March board of review. Each plaintiff then appealed the decision of the March board of review by filing a classification complaint petition with the State Tax Commission (STC) pursuant to MCL 211.34c(6) of the General Property Tax Act, MCL 211.1 *et seq.* In each case the STC agreed with the assessor's classification and issued its decision by way of a letter to the plaintiffs from the STC's executive secretary. Each plaintiff filed a complaint in circuit court seeking, in part, a writ of mandamus or superintending control to compel the STC to (1) issue a valid order, and (2) classify the plaintiff's subject parcel or parcels in a particular manner. The STC moved for summary disposition, asserting, in part, that the circuit court does not have jurisdiction to review the STC's decision in a property classification appeal under MCL 211.34c(6), and that, even if the court did have jurisdiction under MCL 24.306 of chapter 6 of the Administrative Procedures Act, MCL 24.301 *et seq.*, plaintiffs' appeals to the circuit court were untimely because the plaintiffs did not file their appeals within 21 days of receipt of the letters from the STC. The trial court in each case denied the STC's motion for summary disposition and ordered the STC to submit a proper order complying with MCL 209.105.¹ None of the trial courts directly addressed the STC's jurisdictional challenge. We reverse.

I. STANDARD OF REVIEW

"Whether a trial court has subject-matter jurisdiction is a question of law that this Court reviews de novo." *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 472; 628 NW2d 577 (2001). This Court also reviews de novo legal issues of statutory construction. *In re Petition of Attorney General for Investigative Subpoenas*, 274 Mich App 696, 698; 736 NW2d 594 (2007).

II. ANALYSIS

The goal in statutory construction is to discern and give effect to the Legislature's intent. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). The intent of the Legislature is most reliably shown through the words used in the statute. *Id.* If the language in the statute is unambiguous, judicial construction is neither required nor permitted. *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005).

This Court in *Hopkins v Parole Bd*, 237 Mich App 629, 637-638; 604 NW2d 686 (1999), stated that,

[g]enerally, three potential avenues of review exist by which an aggrieved party may challenge an administrative body's decision: (1) review pursuant to a procedure specified in a statute applicable to the particular agency, (2) the method of review for contested cases under the Administrative Procedures Act (APA), MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.*, or (3) an appeal pursuant to § 631

¹ In Docket Nos. 291579, 291586, and 291907, the trial courts also issued a writ of mandamus for the STC to classify the plaintiffs' properties in a specific manner.

of the Revised Judicature Act, MCL 600.631; MSA 27A.631, and Const 1963, art 6, § 28, in conjunction with MCR 7.104(A).

A

Under MCL 211.34c(6), which is the applicable statute in this case,

[a]n 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.]

The plain language of MCL 211.34c(6) clearly states that an appeal may not be taken from the STC's decision in a property classification appeal. The Legislature has effectively barred appeals from the STC's decision in such an appeal.

B

Review under MCL 24.301 of the APA is not applicable, because these cases do not involve a contested case. Under the APA, "contested case" means "a proceeding, including rate-making, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing." MCL 24.203(3). Under MCL 211.34c(6), the STC arbitrates the petition on the basis of the written petition and the written recommendations of the assessor and the STC's staff. Thus, the STC's review of a decision of a local board of review in a property classification dispute does not involve a contested case.

C

Under MCL 600.631 of the Revised Judicature Act,

[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.

MCR 7.104(A) states with regard to appeals under MCL 600.631 "An appeal in the circuit court under MCL 600.631 is governed by MCR 7.101 and 7.103, except that the bond requirements do not apply." MCR 7.101(A)(3) provides that "This rule does not restrict or

enlarge the right of review provided by law or make an order or judgment reviewable if it is not otherwise reviewable.” Because the Legislature has specifically provided that the STC’s final decision on a property classification appeal under MCL 211.34c(6) is not reviewable, no right of review of the STC’s decision by the circuit court exists under MCR 7.101.

D

Lastly, Const 1963, art 6, § 28 provides, 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*. [Emphasis added.]

In *McAvoy v H B Sherman Co*, 401 Mich 419, 443; 258 NW2d 414 (1977), the Court construed art 6, § 28, regarding the phrase “as provided by law,” stating:

It would be inaccurate to contend that art 6, § 28, guarantees an unencumbered, *de novo* right to appeal. The very wording of the provision states otherwise. Article 6, § 28, specifically provides that such rulings “shall be subject to direct review by the courts *as provided by law*.” (Emphasis added.)

The phrase “as provided by law” clearly vests the Legislature with the authority to exert substantial control over the mechanics of how administrative decisions are to be appealed.

Through the express language of MCL 211.34c(6), the Legislature exerted control over the mechanics of how administrative decisions are to be appealed by providing that an appeal of an STC decision on a property classification appeal is precluded “for the year of the petition.”² This Court can find nothing in that statute that renders it constitutionally infirm.³

Reversed and remanded for entry of an order granting summary disposition in favor of defendants in each case. Jurisdiction is not retained.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder

² The Legislature did not preclude review by other mechanisms. For example, a party could pay the property taxes due for a subject parcel, and then file a claim in the Michigan Tax Tribunal for a refund of taxes paid because of an improper classification.

³ In light of our conclusion, we need not address plaintiffs’ argument that the letter from the executive secretary of the STC to each plaintiff advising of its determination on the property classification appeal was not a valid order under MCL 209.105 because it was not signed by the chairman of the commission and the seal of the commission was not affixed to the letter.