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IN THE COURT OF APPEALS OF IOWA

498

Filed December 26, 1984

4-442
84-455

MARIAN C. SCHUTTE,

Plaintiff-Appellee,

vs.

COUNTY BOARD OF REVIEW OF THE COUNTY OF ALLAMAKEE,

Defendant-Appellant.

Appeal from the Iowa District Court for Allamakee County, L. John Degnan, Judge.

Defendant appeals from judgment for plaintiff-property owner in an appeal from a property tax assessment. AFFIRMED.

William S. Hart, County Attorney, for defendant-appellant.

Barry S. Mueller of Kelly & Mueller Law Office, P.C., Postville, for plaintiff-appellee.

Considered by Oxberger, C.J., Donielson, and Sackett, JJ.

OXBERGER, C.J.

The defendant County appeals from judgment in favor of the plaintiff-property owner. Plaintiff prevailed at trial in a challenge to the county property tax assessment. We affirm.

Plaintiff's property in Postville was assessed at a value of $50,930 in 1975 and $82,319 in 1979. She unsuccessfully appealed to defendant board from a 1981 assessment valuing the property at $100,440. The property was assessed at a value of $102,410 in 1983, but the board reduced that assessment to $96,910. Her appeals to district court from the 1981 and 1983 assessments were consolidated.

Plaintiff's husband and two expert witnesses testified that under a market value approach the value of the property was between $75,000 and $80,000. Two expert witnesses testified for defendant that the assessed value was correct. Defendant unsuccessfully moved to dismiss the petition at the close of presentation of plaintiff's evidence and again at the end of trial.

At the close of trial defendant sought to reopen evidence for the purpose of introducing an exhibit and was told to make it a part of the brief and argument that the court indicated could be filed within ten days. The court, however, entered judgment three days later before any posttrial briefs were filed. The court ordered that the assessment be reduced to $85,000 without specifying whether it referred to the year 1981, the year 1983, or both.

The County asserts its motions to dismiss should have been granted, saying plaintiff failed to carry her burden of proof, and that several errors occurred when the court did not hear the arguments counsel wished to present in its closing brief, and when it did not state which assessment is effected by its judgment that the value of the property is $85,000.

Since this action is based in equity, our review is de novo, and although we give weight to the findings of the court, especially where credibility of witnesses is involved, we are not bound by its determinations. Iowa R. App. P. 14(f)(7). When a motion to dismiss is presented, the evidence is viewed in a light most favorable to the party against whom the motion is made. Curtis v. Board of Supervisors of Clinton County, 270 N.W.2d 447, 448 (Iowa 1978).

Defendant agrees that the burden of proof initially rests with the plaintiff, and its burden shifts to the defendant once a proper presentation of proof of its claim is made. Iowa Code § 441.21(3)(1983). However, it is the County's contention that the evidence presented by the plaintiff did not rise to a sufficient level to shift the burden to the County. Therefore, the plaintiff should not prevail because she has not met her burden of proof.

In order for the burden of proof to shift, the person challenging the tax assessment must offer "competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor..." Id. C.f. Ruan Center Corp. v. Board of Review of the City of Des Moines, 297 N.W.2d 538, 540 (Iowa 1980); Equitable Life Insurance Co. v. Board of Review of the City of Des Moines, 281 N.W.2d 821, 823 (Iowa 1978). The defendant County claims the Ruan case cited by plaintiff should not apply here because that case dealt with income-producing property. However, the language of that case did not limit to income-producing property its conclusion that the burden shifts upon such a showing. Ruan at 540. Rather, such a determination was properly based upon the language of the statute. Id.

The actual value of property for the purposes of taxation is defined in the Code as:

> [T]he fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property.

Marian Schutte here presented the testimony of one interested witness, her

spouse, and two disinterested expert witnesses. A licensed real estate broker living in the same town where the property in question is located presented his opinion. Douglas Smith told the court he has sold real estate since 1975. He personally inspected the property, and based his opinion upon what he thought he could receive for the property, considering buyers available in the area. Such a consideration is proper in reaching a conclusion on value of the property. Iowa Code § 441.21(1)(b)(1983). Smith also considered the income approach, and replacement cost, less depreciation. He decided the value of the property was $75,000.

The other disinterested witness was real estate broker E. L. Dean. His office is also located in Postville, and he has been a broker for thirty years. Included in his determination of the value of the property was its poor location, personally viewing the house, and the market conditions of the area. He testified that real estate sales began to decline in 1979. He believed a buyer might purchase the house for $75,000 to $80,000.

We believe the evidence is adequate to shift the burden to the County to show this assessment was proper.

Further, there are numerous doubts raised by the testimony of the County's witnesses showing it did not meet its burden to prove the assessment was accurate.

The Allamakee County Assessor who made the original assessments testified that he had made determinations of values showing an increase in the value of the home from 1975 to 1983, but admitted on cross-examination that values in the area had actually decreased since 1980. He also agreed that his cost figures used were interrelated and an error in one part of his calculations would result in an erroneous total valuation. He testified his calculations were based on the property being constructed of brick, when it was instead a wood frame house with brick veneer.

The other County witness, Robert Kocer, said he was not familiar with property in Allamakee county. He said he used comparable sales between 1978 and 1980 in deciding the value of the property, although the other County witness, Mr. Moellers, testified that the market value could not be determined from comparable sales in 1979 and 1980 because extreme adjustments to the figures would be necessary. He also did not consider as a factor the availability of potential buyers in the area.

Considering the various problems with the proof presented by the County, we agree with the trial court the County did not meet its burden, that the court properly refused the motions to dismiss, and the court's ruling in favor of plaintiff was proper.

Defendant County claims the court erred in not receiving its brief and an additional exhibit. However, we agree with the plaintiff that the weight of authority shows a decision to reopen a case at the close of evidence is entirely within the discretion of the trial court, and we will reverse the decision only if there is a clear abuse of discretion. Davidson v. Van Lengen, 266 N.W.2d 436, 440 (Iowa 1978); 5 A. L. R. 4th 1001 (1980). No abuse of discretion is evident from the record.

Defendant also says the court's conclusion is confusing because two separate assessments were appealed, but the court ruled only that the property was worth $85,000, without indicating if this figure applied to the 1981 assessment, the 1983 assessment, or both.

Plaintiff responds by saying that the appeals from the board's decisions were consolidated, and the amount stated by the court therefore refers to both appeals.

In either case, the defendant has cited no authority to the effect that this case should be reversed or remanded on this basis. Instead, our courts have held that when a finding of fact such as this is challenged, it should be preceded below

by a motion to enlarge or amend the findings of fact, conclusions of law, pursuant to Iowa Rule of Civil Procedure 179(b). Nowlin v. Scurr, 331 N.W.2d 394, 396 (Iowa 1983); Arnold v. Lang, 259 N.W.2d 749, 753 (Iowa 1977). No such action was taken by the defendant prior to this appeal. Accordingly, there is nothing presented for our review on this question.

AFFIRMED.