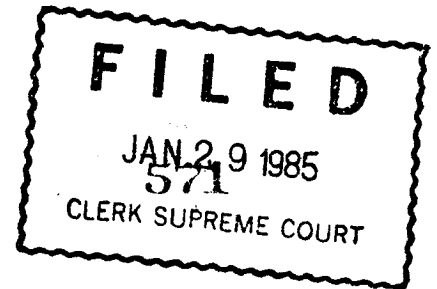


IN THE COURT OF APPEALS OF IOWA



GARY E. WENELL,

)

Plaintiff-Appellee,

)

Filed January 29, 1985

vs.

)

4-478
84-332

BOARD OF REVIEW OF SIOUX CITY,
IOWA; E. H. SCHILL, CHAIRMAN;
AND EACH OF ITS MEMBERS, JAMES
DUFFY, JOHN C. GRAVES, GLENN G.
KNIPFER AND DEAN CHAPMAN,

)

)

)

Defendants-Appellants.

)

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul,
Judge.

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

Jeffrey E. Lamson, Charles D. Hunter, and Dennis J. Nagel of Belin, Harris,
Helmick, Heartney & Tesdell, Des Moines, for defendants-Appellants.

Karen M. McCarthy of Baron & Wenell, Sioux City, for plaintiff-appellee.

Considered by Oxberger, C.J., Snell, and Schlegel, JJ.

The board of review of Sioux City has appealed from a trial court decision which reduced the property tax assessment of plaintiff's home. We affirm.

Our review is de novo. Wunschel v. Board of Review, Carrol County, 217 N.W.2d 576, 577 (Iowa 1974). In a de novo review we are not bound by the trial court findings of fact, although we give weight to them, particularly where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

The residence owned by Gary Wenell in Sioux City was assessed at a value of \$123,069 in 1982 and sold for approximately that amount to an out-of-state hospital in October of that year. The hospital held the property for six months and then sold it to Wenell for \$89,500 in April 1983. The 1983 value of the home was placed at \$123,069 by the assessor. Plaintiff appealed, and the board reduced the assessment to \$112,000. Plaintiff again appealed to district court, where the assessment was reduced further to \$89,500.

The board alleges there was error in that the trial court: (1) did not properly consider the 1982 sale as evidence of the value of the property; (2) should not have used the 1983 sales price in reaching its figure, or should have adjusted the price for abnormalities in the sale; (3) improperly did not consider evidence of comparable sales; and (4) improperly held that the plaintiff had carried his burden of proof to show the valuation by the assessor was improper.

The court should have taken into account the 1982 sale, the board says. Appellants say this sale was closer to the January 1983 assessment date than the 1983 sale. Wenell counters by saying only sales in the year of the assessment should be considered, citing Foreman & Clark of Iowa v. Board of Review of the City of Cedar Rapids, 286 N.W.2d 169 (Iowa 1979). We find no authority for this contention in the Foreman case. Rather, the argument has been rejected by this court. Dowden v. Dickinson County Board of Review, 338 N.W.2d 719, 723-24 (Iowa Ct. App. 1983). Nevertheless, we find no basis for the assertion of appellant that the court did not consider the 1982 sale in making its decision. The sale is referred to in the court's findings of fact. The court reviewed this factor, along

In describing market value, the Code indicates that adjustments must be made in any sales that are abnormal. Iowa Code § 441.21(1)(b)(1983). The April sale was abnormal, the board contends, because the seller was an out-of-state hospital not in the business of owning homes, and because the house was sold at a loss six months after purchase. The board also says it is relevant that the house was listed with several realtors in the six-month period prior to sale.

Appellants have agreed that in the absence of evidence to the contrary, all sales are between willing buyers and sellers.

We hold with the trial court that the board has not shown that the sale was abnormal. While sales of houses by hospitals might be infrequent, there is nothing in this fact, or the fact it was sold within six months that points to an abnormality that affected the price. No connection has been made between the circumstances of the sale and an abnormally low sale price.

The appellant and appellee also argue over whether the court should consider comparable sales as well as sales of the house. Appellant says such sales must be considered, and were ignored by the court. Appellee claims authorities show sales of comparable property are not to be considered if there is a sale of the property being assessed. In that instance, Wenell says, the sale price of the property assessed is the only value pertinent for tax assessment, citing White v. Board of Review of Polk County, 244 N.W.2d 765, 770 (Iowa 1976).

Appellant is correct that comparable sales, if available, should be considered. The court in White did not say only sales of the property may be considered, but that the first step in valuation is to use the willing-buyer, willing-seller approach. Id. at 770. This approach uses sales prices of the property and comparable property to reach a figure. Id.; Foreman & Clark at 173. It is this willing-buyer, willing-seller approach which is preferred, and which must be used, unless no sales occurred. Foreman & Clark at 173-74. If no sales are available, then the "other factors" approach is used. Id.

While appellant is correct in its contention, we again find no support for the claim the court failed to consider the comparable sales in its decision. Rather the court stated, "The evidence as to comparables, while considered by the Court, does not persuade us that the sale of this very property in April of 1983 is not the true market value of the property in 1983."

The taxpayer had the burden of proof in this case, because he did not present the testimony of two disinterested witnesses on the value of the home. Ruan Center Corp. v. Board of Review of the City of Des Moines, 297 N.W.2d 538, 540 (Iowa 1980). The board says Wenell did not carry this burden of proof. The board criticizes the witness for Wenell, saying he had no professional certification as an appraiser, submitted no written report, and could not pinpoint which comparables he used to determine the market value. The board also says the witness should have made various adjustments to his figures of comparable sales. The board says its witness, a real estate appraiser, has considerable experience in appraising, and used market sales of comparable property. He also considered as a major factor that the house was located in a "prestigious area." He did not consider the April 1983 sale in making his determination of market value.

Wenell criticizes the witness for the board for not considering the April sale price, and points out that the values he gave to comparable homes were considerably more than the actual sale prices of those homes. The appellee also points out that since sale prices of the property in question were available, this willing-buyer, willing-seller approach must be used, and the additional consideration of the "neighborhood factor" was an improper variable added to the sales price.

We give weight to the trial court's findings regarding credibility of witnesses. Iowa R. App. P. 14(f)(7). We agree with the trial court that, considering the sales price of the home, and the testimony of the witnesses, that the plaintiff carried his burden to show the assessment was improper.

AFFIRMED.