FILED
OCT 21 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RICHARD K. RICHARDS,)

Plaintiff-Appellant,) Filed October 21, 1980

vs.)

HARDIN COUNTY BOARD OF REVIEW) 0-134
2-64021

Defendant-Appellee.)

Appeal from Hardin District Court - Newt Draheim, Judge.

Taxpayer appeals denial of post-trial motion concerning property tax assessment by Hardin County Board of Review. - AFFIRMED.

Richard K. Richards, Ames, pro se.

Jon E. Heitland, Hardin County Attorney, Eldora, for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff-taxpayer, Richards, appeals trial court's denial of a post-trial motion concerning property tax assessments by defendant, Hardin County Board of Review. We affirm.

Taxpayer-Richards filed a petition in equity challenging the Board's assessment of three tracts of agricultural land and buildings thereon as being inequitable and excessive. The matter was tried to the court based on trial testimony, stipulations and post-trial depositions. The trial court found that Richards had not shown sufficient evidence of comparable tracts of land assessments as required in section 441.37-1, The Code 1979, and upheld the Board's determination on the land. The trial court found the building valuations to be excessive, but ordered a higher valuation on one building site and made no valuation provision for another building site in question. Richards moved the court to either reconsider its order or grant a new trial based on errors of fact.[1] The trial court overruled this motion on the basis that rehearing in the district court was not available on this matter, appeal to the Supreme Court of Iowa being the proper remedy. Richards appealed that ruling. Appeals from tax assessment controversies are generally heard de novo by this court. However, Richards has appealed only the order denying his post-trial motion and not the prior judgment on the merits of the tax assessment. Therefore, our review of this action stemming from an equitable proceeding will be limited to the issues raised in the overruled motion and not to the entire assessment controversy. See Lotz v. United Food Markets, 225 Iowa 1397, 283 N.W. 99 (1939).

I. A. Initially, we are asked by the Board to dismiss the appeal because 1) the brief, appendix and record are inadequate for the court's consideration according to the Iowa Rules of Appellate Procedure, 2) the amount in controversy is jurisdictionally insufficient; and, 3) rulings on motions to reconsider are not appealable.

There are insufficiencies including the paucity of authorities presented as support in appellant's brief. While issues may be deemed waived by the failure to state, argue or cite authority, this court has the discretion and resources to examine and consider issues adequately raised and preserved even though thorough presentation in the brief may be lacking.

---

[1] See § I.C. of this opinion for discussion of Richards' motion.

Our review will proceed to the extent that the record presents those issues. See DeCook v. Environmental Security Corp., 258 N.W.2d 721 (Iowa 1977).

B. The Board next urges that the actual amount in controversy is the tax difference that would be assessed on the properties and that this amount is insufficient for appeal. We find the controversy to be as originally pleaded: the valuation of the properties; therefore, the jurisdictional amount is met.

C. The Board moves for dismissal because the overruled motion being appealed was termed a motion to reconsider and as such would not be appealable. Stover v. Central Broadcasting Co., 247 Iowa 1325, 78 N.W.2d 1 (1956). This court will look to the substance of a motion and not the name. Kagin Numismatic Auctions v. Criswell, 284 N.W.2d 224 (Iowa 1979). Richards requested a new trial in the body of the motion and referred to this request in his notice of appeal. Denials of motions for new trial are final decisions and appealable. Iowa R. App. P. 1. The Board's motion to dismiss is denied.

II. The second issue raised of inconsistencies between the conclusions and order concerning the building valuations has been determined. We ordered limited remand on August 26, 1980, to the trial court to issue a supplemental decree showing the precise valuations intended but omitted in the original order. Such supplemental decree has been presented to this court and has resolved that issue.

III. The question now before this court is whether a new trial should have been granted because of mistakes in the findings concerning the representative number of comparable land tracts.

The purpose of a new trial is to make corrections in trial proceedings to assure a fair hearing. The trial court is vested with considerable discretion in passing on a motion for new trial. Grefe v. Ross, 231 N.W.2d 863 (Iowa 1975). Only when evidence clearly shows trial court abused its discretion in overruling a motion for new trial will a court of review interfere. See e.g., Thomas Truck & Caster Co. v. Buffalo Caster & Wheel Corp., 210 N.W.2d 532 (Iowa 1973); Schall v. Lorenzen, 166 N.W.2d 795 (Iowa 1969).

The trial court found no basis to grant a rehearing according to Iowa R. Civ. P. 244. Richards argues the court erred in finding only one representative, comparable property in evidence to provide grounds for protest pursuant to section 441.37-1, The

Code 1977. More than one comparable property is necessary to sustain a taxpayer's protest and to shift the burden to the Board. Maxwell v. Shivers, 257 Iowa 575, 133 N.W.2d 709 (1965). Richards asserts there was evidence of three properties and the incorrect finding was a mistake of fact which materially affected his substantial rights. Iowa R. Civ. P. 244(h). On the record presented to us, we find insufficient evidence to support Richards' allegation. Richards provided charts showing valuations on three properties in his post-trial brief, but evidence of only one tract was presented at the trial. Richards did not base his new trial motion on newly discovered evidence, so that even if the charts could meet that criteria, they were not before the court to be considered on the motion. Iowa R. Civ. P. 244(g). The trial court did not err in denying rehearing on the grounds of an incorrect finding.

Finding no error in the lower ruling, we affirm that decision.

AFFIRMED.