IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 5-186 / 94-1409

NANCY E. RILEY,

Appellant.

vs.

IOWA CITY BOARD OF REVIEW,

Appellee.

Appeal from the Iowa District Court for Johnson County, William L. Thomas, Judge.

Riley appeals the district court's ruling dismissing her petitions challenging the Board of Review's determinations that property tax assessments of plaintiff's apartment complex were correct. **REVERSED.**

Peter C. Riley of Tom Riley Law Firm, P.C., Cedar Rapids, for appellant.

Sarah E. Holecek, Assistant City Attorney, for appellee.

Heard by Hayden, P.J., and Sackett and Cady, JJ.

HAYDEN, P.J.

In January 1992, Nancy Riley, complainant, purchased an apartment complex in Iowa City for $1,640,000. The Iowa City assessor determined the January 1, 1992, tax assessment for the property was $1,834,530. The assessments were challenged before the board of review in 1992 and 1993, and the board affirmed the assessments. Riley appealed the board's determinations for both years to the trial court.

The appeals were consolidated. At the trial, Riley presented evidence the fair-market value of the property should be the purchase price she paid for the property in January 1992. The board presented evidence consisting of testimony from the assessor and two certified appraisers, which supported the assessor's valuation. The assessor claimed the January 1992 sale was abnormal and did not reflect market value.

On June 14, 1994, the trial court entered a decision dismissing Riley's petitions and affirming the board. The trial court concluded Riley failed to meet her burden of proof to show valuation accepted by the board was excessive and the property was properly assessed.

On June 24, 1994, Riley timely served a motion for enlargement pursuant to Iowa Rule of Civil Procedure 179(b). The motion was denied on July 25, 1994.

On August 25, 1994, Riley filed a notice of appeal.

I. <u>Scope of Review</u>.

In tax assessment cases such as this, our review is de novo. *Post-Newsweek Cable, Inc. v. Board of Review*, 497 N.W.2d 810, 812 (Iowa 1993); *Richards v. Hardin*

County Bd. of Review, 393 N.W.2d 148, 150 (Iowa 1986). We give the trial court's fact findings consideration -- especially as to witness credibility -- but we are not bound by them. Iowa R. App. P. 14(f)(7); *Post-Newsweek Cable*, 497 N.W.2d at 812-13. "We decide the ultimate issues involved." *Post-Newsweek Cable*, 497 N.W.2d at 813 (citation omitted). In doing so, we -- like the trial court -- follow the statutory rule "there shall be no presumption as to the correctness of the valuation of assessment appealed from." Iowa Code § 441.39 (1993).

II. Burden of Proof.

In tax assessment cases such as this,

> The burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable or capricious; however, in protest or appeal proceedings when the complainant offers 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, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

Iowa Code § 441.21(3). The burden of proof referred to is one of persuasion. *See Wunschel v. Board of Review*, 217 N.W.2d 576, 578 (Iowa 1974) (citations omitted). Riley admits she did not present two disinterested witnesses, and acknowledges she consequently has the burden of proof. Riley must prove by a preponderance of evidence the challenged valuation is excessive, inadequate, or capricious. *See Post-Newsweek Cable*, 497 N.W.2d at 813; *Wunschel*, 217 N.W.2d at 578.

III. Valuation.

For the purposes of Iowa Code chapter 441, assessable property includes "all real and tangible personal property subject to taxation." Iowa Code § 441.21(1)(a). Such property must be assessed "at its actual value." *Id.* Iowa Code section 441.21(1)(b) defines the actual value of assessable property as "the fair and reasonable market value of such property." That section defines market value as

> the 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.

Id. In arriving at a property's market value, an assessor must take into consideration the "sales prices of the property [itself] or comparable property in normal transactions reflecting market value." *Id.*

In this case, the record is devoid of any evidence the January 1992 sale was not a good faith, arm's length transaction. The board of review relied on "comparables" in establishing this as an abnormal sale. However, the comparables are not truly comparable because they are more heavily weighted to two or three-bedroom units, and because the comparables are relatively small in size. Based on the record, we conclude the complainant met her burden of proof. We determine the challenged valuation is excessive. We decrease the assessment for January 1, 1992, to the purchase price of $1,640,000. Costs on appeal are taxed to the board.

REVERSED.

Sackett, J., concurs; Cady, J., dissents.

CADY, J. (dissenting)

I respectfully dissent. A good faith, arm's length transaction does not necessarily establish the fair and reasonable market value of the property. Property can be bought and sold at a bargain. In this case, an experienced city assessor and two expert appraisers testified that Riley received a bargain when she purchased the property for 1.64 million dollars. I find their testimony convincing. Riley's testimony in support of her claim was limited to herself and her husband.

Our task on appeal is to consider and weigh all the evidence presented at trial. On my review of the record, I would conclude Riley failed in her burden to prove the valuation was excessive.