IN THE COURT OF APPEALS OF IOWA

No. 8-087 / 97-0558
Filed April 24, 1998

WILLIAM MINER and LORI MINER,
Appellees,

vs.

STORY COUNTY BOARD OF REVIEW,
Appellant.

Appeal from the Iowa District Court for Story County, Carl Baker, Judge.

The Story County Board of Review appeals the district court's ruling reducing the valuation of plaintiffs' property. **REVERSED AND REMANDED.**

C. Roderick Reynolds, Nevada, for appellant.

Donald G. Juhl, Nevada, for appellees.

Heard by Cady, C.J., and Sackett and Huitink, JJ.

HUITINK, J.

The Story County Board of Review appeals the district court's ruling reducing the valuation of William and Lori Miner's property. We reverse and remand.

I. Background Facts and Proceedings.

In 1995, William and Lori Miner's home and surrounding ten acres of property was assessed at $160,230. In 1996, the Story County Assessor increased the assessment of Miners' home to $222,600. The Miners protested this assessment to the Story County Board of Review (the Board) claiming it was excessive. The Board determined the market value of the Miner's property was $192,600. The Miners sought judicial review of the Board's assessment. The district court found the Board's assessment was excessive and reduced it to $180,000.

On appeal, the Board argues the court erred in: (1) admitting expert opinion testimony of Donald Haugo; (2) shifting the burden of proof from the Miners to the Board and (3) reducing the Board's assessment from $192,600 to $180,000.

II. Standard of Review.

We hear appeals from the district court's determination of a tax assessment in equity. Iowa Code § 441.39. Our review is therefore de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

An appeal from the board of review is a two-step process. *Heritage Cablevision v. Bd. of Review*, 457 N.W.2d 594, 598 (Iowa 1990). First, the challenging party must show the board's valuation is excessive, inadequate, inequitable, or capricious. *Id.* (citing *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986)). Second, the party must establish the correct valuation. *Id.* When the taxpayer offers competent evidence from two or more disinterested witnesses that the property's market value is less than the value determined by the assessor, the burden of proof shifts from the taxpayer to the party seeking to uphold the assessed valuation. Iowa Code § 441.21(3) (1991); *Excel Corp. v. Pottawattamie County Bd. of Review*, 492 N.W.2d 225, 229 (Iowa App. 1992).

III. Donald Haugo's Testimony.

The Board contends the district court erred in admitting the valuation testimony of Haugo, because the Miners failed to disclose him as an expert witness during discovery.

We review the district court's denial of discovery sanctions for an abuse of discretion. *Stephenson v. Furnas Electric Co.*, 522 N.W.2d 828, 831 (Iowa 1994). An abuse of discretion requires a showing the court exercised its discretion on grounds clearly untenable or to an extent clearly unreasonable. *Security Mut. Ins. Co. v. Bd. Of Review*, 467 N.W.2d 301, 306 (Iowa App. 1991).

The Board served the Miners two interrogatories relevant to this issue. Interrogatory number two requested the name, address, and telephone number of all witnesses the Miners intended to call to testify at trial and the substance of their testimony. The Miners answered: "Mr. Robert Carey [address and telephone number]

Cert. Real Estate Appraiser/ discuss current appraisal completed. Mr. Don Haugo [address and telephone number]- Realtor at Friedrichs [sic] Realty/ discuss other Wausua [sic] listings, selling difficulties encountered with the sale of Wausua [sic] homes." Interrogatory number three asked for the name, qualifications, mental impressions, and opinions of any expert the Miners intended to call to testify at trial. The Miners listed Carey, but not Haugo. The record indicates these answers were served October 16, 1996, one hundred twenty-seven days before trial.

Rule 125(c) provides, in part,

> If the identity of an expert witness and the information [described herein] are not disclosed in compliance with this rule [as soon as practicable, but in no event less than thirty days prior to the beginning of trial, except on leave of the court], *the court in its discretion may exclude or limit the testimony of such expert* . . . .

Iowa R. Civ. P. 125(c)(emphasis supplied). Therefore, the district court has "considerable discretion over the admission of all or part of expert testimony that is disclosed late or not at all." *Security Mut. Ins. v. Bd. of Review*, 467 N.W.2d at 306.

On appeal the Board does not contend it was prejudiced by the admission of Haugo's testimony. Neither does the Board alter its theory on appeal based on Haugo's valuation of the Miners' property. The Board simply argues the Miners' noncompliance with rule 125 warrants exclusion of Haugo's testimony.

While we do not condone a party's noncompliance with the rules of civil procedure, we conclude the district court did not abuse its broad discretion in admitting Haugo's testimony. *See id.* ("Because the [appellants'] theory on appeal was not altered by these expert appraisers whose primary task was placing a dollar value on the property, it is not clear that they were prejudiced . . . we hold that the district court did not abuse its discretion); *see also* Iowa R. Civ. P. 125(c). We affirm the district court on this issue.

Competent evidence in the tax assessment arena requires the proponent first establish a factual foundation for the witness' opinion. *Riso v. Pottawattamie County Bd. of Rev.*, 362 N.W.2d 513, 518 (Iowa 1985). Speculation and conjecture cannot form the basis of competent evidence. *Id.* Competent testimony must also comply with the statutory scheme for tax assessment valuations. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 279 (Iowa 1995). Iowa's assessment statute requires the comparable sales approach be used where possible. Iowa Code § 441.21(1). Evidence is competent under this approach if the witness' opinion of market value is based on the sales of comparable property. *Bartlett & Co. Grain v. Bd. of Review of City of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977).

The record indicates Haugo is an experienced and successful real estate agent in Story County. Although his method of determining the value of Miner's home differed from the appraisal format used by other experts in this case, it nevertheless included comparable sales. We do not believe his price analysis rendered him incompetent to testify. The distinctions noted by the Board go to the weight rather than the admissibility of Haugo's testimony. Miners have offered the evidence necessary to shift the burden of upholding the assessment to the Board.

IV. Assessed Valuation.

We initially reject any notion that the district court or this court on appeal is without authority to make its own fair market valuation. Iowa Code section 441.39 provides:

> The court shall hear the appeal [from the Board] in equity and determine anew all questions in equity and determine anew all questions arising from the Board which relate to the liability of the property to assessment or the amount thereof.

Similarly, if we find the assessment is excessive, we are "obliged to determine a fair market value from a de novo review of the record." *Equitable Life Ins. Co. v. Board of Review*, 281 N.W.2d 821, 827 (Iowa 1979) (citations omitted).

As noted earlier, the valuation of Miners' property ranged from $160,000 to $222,600. The disparate valuations of Miners' home are attributable to each witness's assessment of its quality. Because the Miners' home is a manufactured Wausau home, their witnesses discounted its value in comparison to conventional "stick-built" homes.

The assessor arrived at the highest evaluation based on a "mass appraisal cost approach." Under this method, actual sales and land improvement are measured against known sales of similar properties. This approach, however, did not include consideration of the fact Miners' home was manufactured and not "stick-built." A similar analysis factoring in sales of manufactured homes resulted in a reduced assessment of $194,548.

Haugo's pricing analysis was price focused. As a result, it did not expressly account for details the assessor relied on and was less comprehensive in scope. The result ($165,000-$175,000) was only a ball park figure the property could bring if sold.

Robert Carey, the Miners' other expert, appraised the property at $160,000. Although more detailed than Haugo's, Carey's appraisal is suspect because of multiple factual errors. Carey also included an unrealistically low increase in value, twenty-five percent, compared to similar properties that increased in value from sixty-two percent to ninety-four percent during the relevant time period.

We find the assessor's $194,548 valuation is the best indicator of the property's fair market value. The credibility of this assessment is bolstered by its detailed consideration of all factors, such as size, location, comparable sales, and quality, influencing the value of the property. Our confidence in the accuracy of the assessor's appraisal is also enhanced by its accommodation of those factors Miners' claimed decreased the value of their property. We conclude the Board's $192,000 assessment was not excessive. Accordingly, the judgment of the district court holding otherwise is reversed. This case is remanded for entry of judgment affirming the decision of the Story County Board of Review.

REVERSED AND REMANDED.