IN THE COURT OF APPEALS OF IOWA

FILED
FEB 26 1986
CLERK SUPREME COURT

Filed February 26, 1986

5-557
85-468

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**WM. J. SEIFERT and JAMES F. SEIFERT,**

Petitioners-Appellees,

vs.

**WASHINGTON COUNTY BOARD OF REVIEW, A.C. PETERSON, CHAIRMAN**

Respondents-Appellants.

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Appeal from the Iowa District Court for Washington County (No. CE 1300) - Daniel Morrison, Judge.

Appeal by respondent, county board of review, from trial court's order modifying their valuation of a commercial property. **AFFIRMED.**

Richard S. Bordwell, Washington, for petitioners-appellees.

Michael R. Mullins, of Day & Meeker, Washington, for respondents-appellants.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

This appeal concerns the valuation of a commercial property in downtown Washington, Iowa owned by appellees William and James Seifert.

The Washington County Assessor valued the property at $134,600. The Seiferts petitioned the board seeking an adjustment in the assessed value but no adjustment was made. They appealed to district court. The court found the fair market value of the property to be $120,000 based on the record as a whole.

Appellant Washington County Board of Review appeals the district court's ruling. They claim the trial court erred: (1) in finding that the burden of proof shifted to appellants under section 441.21(3); (2) in finding the value of the subject property based on the sales or market approach to value when the evidence failed to show sales of comparable property; (3) in allocating only 55 percent of the remodeling costs to the property; (4) in holding the values stated by respondent's experts were not equitable when compared to assessments of similar property; and (5) in finding the value of the property to be $120,000.

Our review of a court decree in a tax protest proceeding is de novo. BHC Co. v. Board of Review of Cedar Rapids, 351 N.W.2d 523, 524 (Iowa 1985).

**I. Burden of Proof**

Washington County argues the trial court erred in finding the burden of proof shifted to them under Iowa Code section 441.21(3). That section provides in part:

> 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. [emphasis added].

Iowa Code § 441.21(3)(1983). Washington County contends the Seifert's two disinterested witnesses did not offer competent evidence sufficient to shift the burden.

The standard under which the burden of proof may shift is explained as follows:

> For there to be "competent evidence" through the opinions of "two disinterested witnesses," it was necessary for plaintiffs first to establish a foundation for the witnesses' opinions. See Bartlett & Co. Grain v. Board of Review, 253 N.W.2d 86, 88 (Iowa 1977). This means plaintiffs were required to offer a sufficient factual basis for the opinions to take them out of the realm of mere speculation and conjecture. See Osborn v. Massey-Ferguson, Inc., 290 N.W.2d 893, 899 (Iowa 1980). Therefore if any element of the ground of protest was not supported by substantial evidence, the foundation would be insufficient to support an expert opinion on the ultimate issue.

Riso v. Pottawattamie Board of Review, 362 N.W.2d 513, 518 (Iowa 1985).

In Riso, the court found the record void of even a scintilla of evidence of the actual value of the properties alleged to be comparable. Id. The court concluded the burden of proof did not shift and the plaintiffs did not show the assessed valuations were inequitable. Id.

This case is distinguishable from Riso. The Seiferts called two disinterested witnesses, Richard Anderson and Walter Lance. Anderson had been a real estate broker in Washington for four years. Prior to that he was a loan officer at a local bank where his duties included valuing real estate. Anderson had listed and sold four commercial properties as a realtor and had owned commercial properties in the Washington square area. Anderson valued the Seiferts' property at $103,600. He based his valuation on the price the property might reasonably be expected to sell for within ninety days on the market. In determining this figure, Anderson took into account the property's marketability, prior sales

in the downtown area, possible rental income, the building's sale frontage, and retail floor area.

Lance had been a licensed real estate broker in Washington since 1976. In 1982 Lance sold approximately 25 properties and in 1983 sold approximately fifteen properties. Over the years, Lance had sold three properties in the Washington downtown business district. Lance testified there were not any comparable building sales in the Washington downtown area to use for a valuation analysis. Lance valued the property at $116,900. His valuation was based upon a $20.15 per square foot cost. He computed the cost on a replacement cost approach minus depreciation.

We find the Seiferts established a foundation for their witnesses' opinions and offered a sufficient factual basis to take the opinions out of the realm of mere speculation and conjecture. The Seiferts offered competent evidence by two disinterested witnesses that the market value of the property is less than the market value determined by the assessor. The trial court properly found that the burden shifted to Washington County to uphold their assessed valuation.

**II. Failure to Show Sales of Comparable Property**

Washington County claims the trial court erred in finding the Seiferts' property value was based on the sales or market approach since there was no evidence presented to show sales of comparable property. Washington County contends that the "other factors" approach should have been used. The trial court made the following find of fact:

> 11. All four appraisers used the sales price or market approach to determine their valuations. Appellee's "experts" used other methods which the court finds to be less accurate and not favored in Iowa law.

Iowa Code section 441.21(6) states:

> The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided

> in this section. "Market value" is defined 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. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

Iowa Code §441.21(6) (1983) (emphasis added).

> Two approaches for ascertaining market value are provided in the statute, the "sales prices" approach and the "other factors" approach. The sales prices approach depends upon the availability of sales prices of the property or comparable property in normal transactions. When market value cannot be readily established in that manner, the other factors approach is to be used. See Maytag Company v. Partridge, 210 N.W.2d 584, 587 (Iowa 1973); § 441.21(1) ("In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may consider its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor.").

Equitable Life Ins. Co. v. Board of Review, 281 N.W.2d at 823 (emphasis added).

From a review of the record, the evidence is clear all four appraisals used either the market, cost, or income approach or some combination. The Seiferts' witness Anderson used a combination of the market and income approaches to arrive at a value of $103,600, and witness Lance used a cost approach to arrive at a value of $116,900. Washington County's witness Kocer used the market, cost, and income approaches to arrive at a value of $135,400,

and witness Mogged used the market and cost approaches to arrive at a value of $133,000. Implicit in this evidence is an assumption by the parties that market value for the property could not readily be established through the "sales prices" approach alone but had to be determined by use of the "other factors" approach. See Equitable Life Ins. Co. v. Board of Review, 281 N.W.2d at 825. We find this assumption is warranted.

The record supports the trial court's conclusion. If the trial court reaches the right result, any error in its reasoning or findings is deemed not prejudicial. Denniston and Partridge Co. v. Mingus, 179 N.W.2d 748, 755 (Iowa 1970); see also Kelly v. Brewer, 239 N.W.2d 109, 113 (Iowa 1976).

**III. Remodeling Costs**

The Seiferts bought the property in 1978 for $75,000. In 1982 the Seiferts remodeled it and an adjoining building they rent. They use the two buildings together as a single unit for a retail store. The property owners estimate the cost of remodeling was $195,850.

Washington County next argues the trial court erred in finding remodeling costs would be 50 to 60 percent higher than new costs and that the trial court erred in allocating 55 percent of the remodeling costs to the value of the property. The trial court made findings of fact:

> 6. The building was extensively remodeled in 1980 thru 1982, including the removal of part of the east wall so that an adjacent property might be utilized (not owned by appellants).
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> 7. The use of the building by Seiferts is unique in that extra expense was incurred in order to properly house their computer and corporate offices.
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> 8. There would most likely be no other retail business in Washington that could utilize all of the improvements in this building. The remodeling expenses exceeded by a substantial amount any increase in value to the property.
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> 15. Appellee[1] apparently made no computations for the uniquness and "overcost remodelling" which was

[1] "Appellee" at the district court level was Washington County Board of Review.

> obviously done, or for the cost of replacing part of the wall. Vanguard[2] indicates that in his opinion, it would not be unusual for the increased costs to be 20% to 40% higher than new construction costs. The court believes that the estimate is understated and that a more acceptable figure would be that the remodelling costs would be 50 to 60% higher than new costs. [footnotes added].

In its ruling the trial court stated:

> Using the Vanguard appraisal formula for the market approach, utilizing 55% of the improvements as against the appellant's building and using a figure of 60% increased costs due to uniquness of the remodeling and the age and obsolescence of the building, a figure of $116,915 is arrived at as the valuation. Obviously, this is merely changing valuation by changing assumptions based on experience or more likely an appraisal guide. The formula used does not factor in many of the problems discussed by appellants' experts concerning how the building would actually sell in Washington.
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> Based on the record as a whole, the fair market value of the real estate as of January 1, 1983 appears to be $15,000 for land and $105,000 for improvements.

The court found the remodeling costs exceeded the value added to the building. We determine on our de novo review that the evidence upholds this finding. Although Washington County presented evidence through its expert witnesses that 60 percent of these construction costs should be added to the property value, the trial court is not bound by this evidence and can make its own independent findings of fact based upon the trial court's assessment of the evidence. See Brandstra v. International Harvester Co., 367 N.W.2d 282 (Iowa App. 1985)(as with any opinion testimony, trier of fact can consider credibility of expert and is at liberty to reject testimony). The trial court considered the evidence and added 55 percent of the remodeling costs to the value of the property. The trial court's findings are supported by the evidence in the record.

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2 Washington County's witness Korcer was employed at Vanguard Appraisal's, Inc.

## IV. Valuation

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Washington County finally contends the trial court erred in finding their experts' valuations were not equitable when compared to assessments of similar properties and erred in finding the value of the property to be $120,000. There was credible evidence presented the valuation of the property was less than the assessed value. Washington County failed to show sufficient evidence to uphold their valuation. The trial court weighed the evidence presented and arrived at a property valuation of $120,000. On de novo review of the record, we affirm the trial court's valuation.

**AFFIRMED.**