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IN THE COURT OF APPEALS OF IOWA

IRVIN W. WEBB AND HELEN F. WEBB,)
Plaintiff-Appellee,) Filed October 27, 1981
vs.)
CITY OF GREENFIELD, IOWA,) 1-332 / 2-65505
Defendant-Appellant.)

Appeal from Adair District Court - Ray A. Fenton, Judge.

The defendant city appeals from trial court's adverse judgment in special assessment appeal in which the trial court ruled that the special assessment imposed by the city was in excess of the special benefits conferred upon the property of the plaintiffs. AFFIRMED.

C. W. Carlberg of Don Carlos, Carlberg & Mackaman, Greenfield, Iowa, for defendant-appellant.

Lewis H. Jordan, Winterset, Iowa, for plaintiffs-appellees.

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

PER CURIAM

The defendant city appeals from the trial court's adverse judgment in special assessment appeal in which the trial court ruled that the special assessment imposed by the city was in excess of the special benefits conferred upon the property of the plaintiffs. The city claims on appeal that the trial court erred in ruling that plaintiffs had overcome the presumption that the special assessment was correct and not in excess of the special benefits conferred on the property. We affirm the trial court.

Plaintiffs are the owners of a rectangular tract of land in the defendant city. The tract extends 340 feet north-south and 198 feet east-west. Noble Street is located in an east-west direction along the south side of plaintiffs' property and Southeast 3rd Street extends in a north-south direction along the western boundary of the property. The plaintiffs' residence is located on the northern 110 feet of the tract. The evidence indicates that the undeveloped portion of plaintiffs' property can be developed into three residential lots. In the fall of 1976, the city indicated that they were going to pave the portion of Noble Street abutting plaintiffs' property and Third Street as it abuts the south 230 feet of plaintiffs' property. That portion of Third Street abutting the north 110 feet of plaintiffs' property had previously been paved.

In 1977, the defendant passed a resolution of necessity for the paving project. On January 3, 1978, the city adopted the final schedule of assessments. The city council determined the values of property affected by the paving project. The council's valuation of plaintiffs' property was $32,000.

The total cost of the paving project was about $216,000 of which about $65,000 was considered as constituting general benefits consisting of intersections, sewers, and certain deficiencies, and the remainder of the cost was assessed against the abutting property owners. The assessment on plaintiffs' property was $7,978.33.

Plaintiffs' request for relief from that assessment and the trial court's order granting such relief are founded upon section 384.61, The Code 1977, which provides, in part, "The total cost of a public improvement . . . must be assessed against all lots within the assessment district in accordance with the special benefits conferred upon the property, and not in excess of such benefits." In application of this statute, the trial court found that the special benefits conferred upon plaintiffs' property as a result of the paving project did not exceed $4,500. Both parties offered expert testimony in the trial court as to the extent of these benefits and plaintiffs also testified with respect thereto. This evidence was in sharp conflict. The city's evidence suggested that the value of the benefits conferred upon plaintiffs' property as a result of the project might be as high as $16,000. The plaintiffs' evidence would indicate that the value of said benefits did not exceed the value found by the trial court. Obviously, the trial court found plaintiffs' evidence to be more persuasive.

This case having been tried in equity, we review the evidence **de novo** but give weight to the trial court's findings crediting plaintiffs' evidence. Iowa R. App. P. 4, 14(f)(7); Mulford v. City of Iowa Falls, 221 N.W.2d 261, 267 (Iowa 1974). Upon our review of the entire record, we find that plaintiffs sustained the burden of overcoming the presumption that the assessment made by the council was correct and did not exceed the special benefits to plaintiffs' property. We further find that the trial court's determination of the extent of the special benefits conferred upon plaintiffs' property is sustained by the evidence. The judgment of the trial court reducing the assessment is therefore affirmed.

AFFIRMED.