

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

John E. Kaiser et al.,	:	
Appellants-Appellants,	:	
v.	:	
Franklin County Auditor and the	:	No. 10AP-909
Franklin County Board of Revision,	:	(C.P.C. No. 10CVF-03-3529)
Appellees-Appellees.	:	(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on March 1, 2012

Susan M. Hollanshead, and Timothy A. Pirtle, for appellants.

Ron O'Brien, Prosecuting Attorney, and William J. Stehle, for appellees.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Appellants-appellants, John E. Kaiser and Mary A. Kaiser, appeal from a judgment of the Franklin County Court of Common Pleas upholding a decision of the Franklin County Board of Revision setting the tax valuation of their residential property.

{¶ 2} The Kaisers initiated this matter with a complaint before the board of revision contesting the taxable value assigned to the subject property for 2008 by the Franklin County Auditor. The subject property lies in the New Albany-Plain Local tax district in Franklin County, and is identified as parcel No. 222-001234, with a street address of 7504 Ogden Woods Boulevard. The subject property is improved with a 4,731 square foot single family home constructed in 1995. The initial complaint also contested the valuation of a second property that is no longer at issue in the current appeal.

{¶ 3} For 2008 the auditor assessed the land at \$171,000 and improvements at \$604,000 for a total true value of \$775,000. In their complaint, the Kaisers asserted that the property should be valued at \$550,494.

{¶ 4} The board of revision granted an oral hearing at which the Kaisers did not present expert testimony. Instead, the Kaisers relied upon their own assessment of the real estate market in the area and their own analysis of sales that they deemed comparable in order to establish that the auditor's valuation was excessive. Mrs. Kaiser testified personally that she had attempted to sell the subject property, either by her own means or through a real estate agent, for several years without receiving an acceptable offer. She further testified that the property was again offered for sale in 2009, at which time they received only a single offer, which moreover was so burdened with conditions and required improvements prior to sale that the actual monetary value amounted to \$575,000.

{¶ 5} In response, the auditor's representative argued before the board of revision that Mrs. Kaiser was not a qualified appraiser, and that some of her other statements regarding her hoped-for selling price and recent appraisals conflicted with her assertions regarding the actual value of the property.

{¶ 6} As a result of the hearing, the board of revision maintained the property value offered by the auditor. The Kaisers then filed an appeal, pursuant to R.C. 5717.05, from the board of revision to the Franklin County Court of Common Pleas. The common pleas court denied the Kaisers request for an oral hearing and, based upon the reasons given by the board of revision, upheld the valuation by the board of revision and the auditor for the subject property.

{¶ 7} The Kaisers have timely appealed and bring the following assignments of error:

First Assignment of Error

The Franklin [County] Court of Common Pleas erred in failing to grant the appellants' request for an evidentiary hearing.

Second Assignment of Error

The Franklin [County] Court of Common Pleas erred in relying on the appellants' listing price of the property in determining value.

Third Assignment of Error

The Franklin [County] Court of Common Pleas erred in relying on an appraisal that was not presented to the BOR.

Fourth Assignment of Error

The Franklin [County] Court of Common Pleas erred in finding that Mrs. Kaiser was not competent to testify as to the value of her property.

Fifth Assignment of Error

The Franklin [County] Court of Common Pleas erred in affirming the decision of the BOR without exercising its own independent judgment.

Sixth Assignment of Error

The Franklin [County] Court of Common Pleas' decision is against the manifest weight of the evidence.

{¶ 8} The Kaisers' first assignment of error asserts that the court of common pleas erred in denying their motion for an evidentiary hearing allowing them to present evidence to establish a lower value for their home. They argue that they were not represented by counsel before the board of revision, were under the impression that no independent appraisal would be required to present their case before the board of revision, and that there was some confusion before the board of revision because that proceeding also addressed the value of a second, separate property that is not at issue in the present appeal. All of these factors, the Kaisers argue, made it imperative for the court of common pleas to accept additional evidence before deciding their appeal.

{¶ 9} A party may appeal a decision of a county board of revision to the court of common pleas under R.C. 5717.05 as an alternative to an appeal to the Ohio Board of Tax Appeal pursuant to R.C. 5717.01. An appeal under R.C. 5717.05, while requiring more than a mere review of the decision of the board of revision by the court of common pleas, is properly limited to a comprehensive consideration of the existing evidence and, at the court's discretion, to an examination of additional evidence. R.C. 5717.05; *Black v. Bd. of Revision of Cuyahoga Cty.*, 16 Ohio St.3d 11, 14 (1985). The court of common pleas should consider the evidence heard by the board of revision, any additional evidence

heard at the court's discretion, and apply its independent judgment to determine the taxable value of the subject property. *Id.* R.C. 5717.05. thus does not mandate a trial de novo. *Selig v. Bd. of Revision, Mahoning Cty.*, 12 Ohio App.2d 157, 165 (7th Dist.1967). Upon further appeal to this court, our review is limited to a determination of whether the court of common pleas abused its discretion in determining the matter. We will accordingly not reverse the court of common pleas' judgment unless it is unreasonable, arbitrary or unconscionable. *Tall Pines Holdings, Ltd. v. Testa*, 10 Dist. No 04AP-372, 2005-Ohio-2963, ¶ 19.

{¶ 10} The question before us, therefore, is whether the court of common pleas abused its discretion when it declined to grant a discretionary hearing and accept new evidence in the case. R.C. 5715.19(G) provides that a litigant who has failed to present evidence before the board of review may present it to a reviewing court if good cause is shown:

A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision.

{¶ 11} In the context of this case, it was not an abuse of discretion for the trial court to decline to grant an evidentiary hearing to allow submission of an appraisal that the property owners were clearly capable of producing in proceedings before the board of revision. The Kaisers' first assignment of error is accordingly overruled.

{¶ 12} The Kaisers' second assignment of error asserts that the court of common pleas erred in relying on Mrs. Kaiser's statements regarding her current listing price when the court assessed the accuracy of the auditor's valuation. The Kaisers accurately argue that a listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value. *Rankin v. Ottawa Cty. Bd. of Revision*, Bd. of Tax Appeals No. 1989-B-473 (June 30, 1992). There is no indication in

the present case, however, that the court of common pleas conclusively relied upon the Kaisers admitted listing price of "low 700's" at the board of revision's hearing to the exclusion of all other evidence of property value. The court indicated its reliance on other factors and, even if the court of common pleas had considered this statement in connection with the Kaisers' credibility in assessing property value, the court was free to do so.

{¶ 13} As property owners, the Kaisers bore the burden of proof to establish the value asserted before the board of revision. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 68 Ohio St.3d 336 (1994). Unaccepted offers for purchase do not constitute a "sale price" and do not establish a presumption of lesser value for the property. *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). The fact that listing prices and offered prices are not conclusive evidence of value does not mean, however, that a court or the board of revision may not consider them in assessing value. In the present case, even if the board of revision and the court of common pleas took note of the current asking price for the property, there is no evidence that they did so to the exclusion of all other factors used in determining value. It was not an abuse of discretion for the court of common pleas to make its determination without expressly stating that it would in no way rely upon the property's listing value, since both the court and the board of revision were free to assess this as one factor among many others. The Kaisers' second assignment of error is accordingly overruled.

{¶ 14} The Kaisers' third assignment of error asserts that the court of common pleas abused its discretion in relying on the existence of a higher appraisal value that was not presented to the board of revision. This is based upon Mrs. Kaiser's sworn testimony that an appraisal (which she considered deeply flawed) had been made placing the value of the subject property at \$800,000. Having forthrightly admitted to existence of this appraisal, however unreliable she might consider it, Mrs. Kaiser nonetheless declined to introduce it as evidence. In response, the board of revision offered Mrs. Kaiser two weeks to furnish a copy of the appraisal with her assessment of the reasons for which it should not be considered. No further clarification of the appraisal was forthcoming.

{¶ 15} For the reasons stated above, and the connection with the Kaisers' second assignment of error, there is no indication that either the board of revision or the court of common pleas substantially relied upon this appraisal that was not in evidence. If the

Kaisers had presented the appraisal along with an analysis to demonstrate its inaccuracy or irrelevance, the question might be better developed before us, but as the record now stands, the admitted existence of this appraisal outside the record may have at best impacted the board of revision's assessment of witness credibility. The Kaisers' third assignment of error is accordingly overruled.

{¶ 16} The Kaisers' fourth assignment of error asserts that the court of common pleas erroneously found that Mrs. Kaiser was not competent to testify regarding the value of her property. The proceedings before the court of common pleas reflect no such determination. For the reasons that will be stated below in connection with our analysis of the Kaisers' fifth and sixth assignments of error, the court of common pleas considered and ultimately did not find probative Mrs. Kaiser's testimony. There is no indication that the court considered her incompetent to testify in toto. "While an owner may testify as to the value of his or her property, there is no requirement that the finder of fact accept that value as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32 (1996). The Kaisers' fourth assignment of error is accordingly overruled.

{¶ 17} The Kaisers' fifth assignment of error asserts that the court of common pleas failed to exercise its own independent judgment, and the sixth assignment of error asserts that the decision of the court of common pleas is against the manifest weight of the evidence. These two assignments of error will be addressed together. Because the phrasing of the sixth assignment of error inherently suggests an improper standard of review, we will reiterate that our review is limited to a determination of whether the court of common pleas abused its discretion, not whether the decision is against the manifest weight of the evidence.

{¶ 18} The court of common pleas' decision notes that the court independently reviewed the record, including all evidence and testimony from the hearing before the board of revision. Analyzing Mrs. Kaiser's testimony, which was the principle evidence presented on behalf of the property owners, the court noted that the Kaisers paid \$600,000 for the home in March 1996. In order to establish the comparative evidence of home sales, Mrs. Kaiser stated that she had averaged the sale price per square foot of 11 other properties that she considered comparable, and then applied this to the square

footage of her own home. The comparable sales presented were in some cases widely separated by time and date from the valuation of the subject property in 2009.

{¶ 19} "As for mere listing of sales spanning a considerable time frame, such information is of little utility in determining a property's value. The purpose of the sales comparison approach, one of three commonly employed methods of appraising property, is to derive an estimate of value by comparing the property under consideration to similar properties recently sold within the market place." *Kaiser v. Lorain Cty. Bd. of Revision*, BTA No. 09-V-1090 (Nov. 2, 2010), *citing Speca v. Montgomery Cty. Bd. of Revision*, BTA No. 2006-K-2144 (Mar. 25, 2008) (rejecting similar use of comparative sales as superficial). This approach fails to adjust for other meaningful differences between properties, and the board of revision and court of common pleas could properly limit their reliance of the proposed comparable sales.

{¶ 20} Because "the board of revision (or auditor) bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies * * * [the board of tax appeals] is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Colonial Village Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23. As a result, the taxpayer's failure to sustain a burden of persuasion will justify approving the board of revision's valuation of the property even where no evidence is adduced in support of the validity of the auditor's valuation. *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 48 (1998).

{¶ 21} After conducting our own review of the methodologies presented in support of these comparables at the board of revision hearing, we find that the court of common pleas did not abuse its discretion in upholding the determination of the board of revision. The Kaisers' fifth and sixth assignments of error are accordingly overruled.

{¶ 22} In summary, the Kaisers' six assignments of error are overruled and the judgment of the Franklin County Court of Common Pleas upholding the determination of the Franklin County Board of Revision is affirmed.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.
