

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

RICHARD BERNER

:

Plaintiff-Appellant

:  
C.A. CASE NO.  
2010 CA 40

v.

: T.C. NO.  
09CV382

GEORGE A. SODDERS, et al.

:

(Civil appeal from  
Common Pleas Court)

Defendants-Appellees

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**OPINION**

Rendered on the 8<sup>th</sup> day of October, 2010.

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FROELICH, J.

{¶ 1} Richard Berner appeals from a judgment of the Clark County Court of Common Pleas, which found that the Clark County Board of Revisions (“BOR”) had improperly reduced the values of three properties owned by Berner and reinstated the County Auditor’s value as to each property. For the following reasons, the judgment of the trial court will be affirmed in part and reversed in part.

## I

{¶ 2} On March 27, 2008, Berner filed a Complaint Against Valuation of Real Property, which listed three properties in Springfield: 615-617 W. Main Street (Parcel No. 340-06-00004-206-007), 619-621 W. Main Street (Parcel No. 340-06-00004-206-006), and 625 W. Main Street (Parcel No. 340-06-00004-206-005). At that time, the properties were valued at \$91,200, \$201,400, and \$67,160, respectively. Berner sought to have the values reduced to \$25,000, \$45,000, and \$40,000, respectively. In his complaint, Berner indicated his intention to present evidence from a “local independent appraiser” with respect to the values of these properties. He also noted that no improvements had been made to the properties in over ten years.

{¶ 3} On May 9, 2008, the Springfield City School Board of Education (“the School Board”) filed a Counter-Complaint claiming that no adjustment in the property valuation was warranted. The County Auditor, who served as Secretary of the BOR, scheduled a hearing on February 11, 2009.

{¶ 4} At the hearing, Berner presented letters from Ronald C. Mumma, a realtor and auctioneer. With respect to 625 W. Main Street, “known as Berner’s Furniture and Appliance Store,” Mumma stated: “Building has approximately 2300 sq. ft. Lot size is 49 x 144. There is no water to this building. My appraisal of this building is \$40,000.” With

respect to the other properties, Mumma stated:

{¶ 5} “615-617 W. Main St. is used only for storage. It has no electric, gas or water service. My appraisal of this property is \$25,000.

{¶ 6} “619-621 W. Main St. is also used for storage. The bottom portion of 621 is a rental unit and does have electric, gas and water service. The remainder of the building is used for storage. The rear portion of 621 is a block storage building with no utilities.

{¶ 7} “My appraisal of this property is \$45,000.”

{¶ 8} Mumma was not present at the hearing.

{¶ 9} Berner testified about two of the properties. He stated that 615-617 was used for storage except that “the front windows are used for a show place” to show furniture. He testified that, until recently, part of the building had been rented to a single tenant, but that he (Berner) no longer intended to rent any part of the property and would use it all for storage. Regarding 619-621 W. Main, Berner testified that the property had been rented to a “generator shop” business in the past, but that he did not intend to rent it out again; he intended to use it for storage. There were two upstairs apartments in this building that had been vacant for years and were used for storage at the time of the hearing. Berner had not tried to sell any of the properties and did not plan to do so as long as he was in good health. He referred to himself as a “pack rat” with a need for storage. Berner did not testify about 625 W. Main.

{¶ 10} The School Board did not present any evidence about the value of the properties at the BOR hearing, but counsel for the School Board did question Berner about the Auditor’s values for the properties and Berner’s recent rental income from 619-621 W. Main. John Ebert, a representative of Cama Resources & Technologies, LLC (a consulting firm engaged by the Auditor) stated at the hearing that Cama “recommended” \$107,500 as a

possible value for 619-621 W. Main based on “the information that we had at hand with regard to other kinds of properties, et cetera.” Ebert emphasized, however, that the \$107,000 figure was not an appraisal, “just as [Mumma’s] 45,000 is not a bona fide appraisal.” Ebert also suggested that, at some point before Mumma’s “letter of opinion,” “there was a prior resolved value” of \$95,000 with respect to 619-621 W. Main, “probably when [Berner] came in and talked with somebody in the auditor’s office.” There is no further clarification of this reference to a “prior resolved value” in the record.

{¶ 11} Following the hearing, “[a]fter consideration of the information and evidence, which [Berner] presented, as well as the recommendation of the appraiser,” the BOR reduced the values of the properties as follows:

{¶ 12} 615-617 W. Main Street: value reduced from \$91,200 to \$45,640.

{¶ 13} 619-621 Main Street: value reduced from \$201,400 to \$95,030.

{¶ 14} 625 W. Main Street: value reduced from \$67,160 to \$40,860.

{¶ 15} (See Chart below.)<sup>1</sup>

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	<b>Auditor’s value</b> (reinstated by the trial court)	<b>BOR’s value</b>	<b>Berner’s value</b>	<b>Cama</b> (consulting for Auditor)
615-617 W. Main (Parcel 340-06-00004-206 -007)	\$91,200	\$45,640	\$25,000	N/A
619-621 W. Main (Parcel 340-06-00004-206 -006)	\$201,400	\$95,030	\$45,000	\$107,000 ("recommended") \$95,000 (alleged "prior resolved value")

{¶ 16} On March 19, 2009, Berner appealed from the decision of the BOR with respect to the properties located at 615-617 W. Main and 619-621 W. Main only, reasserting his claim that the properties should have been valued at \$25,000 and \$45,000, respectively. Neither party appealed the BOR’s valuation of the property located at 625 W. Main. Berner requested a hearing in the trial court, but the trial court instructed the parties to brief the issues and did not hold a hearing. Berner and the School Board filed briefs with the court. On March 15, 2010, the trial court concluded that there had been “no reliable or probative evidence warranting the BOR’s reduction in value.” It reversed the decision of the BOR and reinstated the Auditor’s original values of all three properties.

{¶ 17} Berner appeals from the trial court’s ruling, raising three assignments of error. We will address these assignments in a manner that facilitates our discussion.

## II

{¶ 18} Berner’s second assignment of error states:

{¶ 19} “THE TRIAL COURT ABUSED ITS DISCRETION BY MODIFYING THE TAXABLE VALUE OF REAL PROPERTY FOR WHICH THE TRIAL COURT LACKED JURISDICTION.”

{¶ 20} Berner contends that the trial court erred in reviewing the BOR’s decision with respect to 625 W. Main because neither party appealed from that decision.

{¶ 21} A trial court acquires jurisdiction to review the BOR’s decision on property

625 W. Main (Parcel 340-06-00004-206 -005)	\$67,160	\$40,860	\$40,000	N/A
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valuation only through an appeal by one of the parties. See R.C. 5717.05. Because neither Berner nor the School Board appealed the BOR decision with respect to 625 W. Main, the trial court did not have jurisdiction to review that valuation. Accordingly, the trial court erred in reviewing the BOR's decision and in reinstating the Auditor's valuation with respect to this property.

{¶ 22} Berner's second assignment of error is sustained.

### III

{¶ 23} Berner's first and third assignments of error state:

{¶ 24} "THE TRIAL COURT ABUSED ITS DISCRETION BY REVERSING THE DECISION OF THE CLARK COUNTY BOARD OF REVISION AND IMPOSING HIGHER TAXABLE VALUES ON THE SUBJECT REAL ESTATE."

{¶ 25} "THE TRIAL COURT ABUSED ITS DISCRETION IN INCREASING THE TAXABLE VALUE OF REAL PROPERTY WHEN (i) NO PARTY TO THE PROCEEDINGS FILED AN APPEAL TO INCREASE THE TAXABLE VALUES AND (ii) NO EVIDENCE WAS PRESENTED TO SUPPORT AN INCREASED VALUE."

{¶ 26} Berner contends that the trial court erred in reversing the decision of the BOR and reinstating the Auditor's value for the properties located at 615-617 and 619-621 W. Main. because his evidence supported the BOR's valuation or a lower value.

{¶ 27} R.C. 5717.05 sets forth the parameters of an appeal from a county board of revision to the court of common pleas. It provides that the court "may hear the appeal on the record and evidence thus submitted, or, in its discretion, may consider additional evidence. The court shall independently determine the taxable value of the property whose valuation or assessment for taxation is complained of \*\*\*." R.C. 5717.05; *Black v. Bd. of Revisions of*

*Cuyahoga Cty.* (1985), 16 Ohio St.3d 11, 13.

{¶ 28} Berner did request a hearing, but he did not assign the court's denial of the hearing as error. It is within the sound discretion of the court whether to consider additional evidence by a hearing or otherwise. See, e.g., *Diversified Mtge. Investors, Inc. v. Athens Cty. Bd. of Revision* (1982), 7 Ohio App.3d 157, 158. It is unclear if Berner's request for a hearing was to argue the case or to submit additional testimony and evidence. If Berner had additional evidence, the procedure would have been to file a request to supplement the record, accompanied by the supporting evidence. *Leber v. Greene Cty. Bd. of Revision*, Greene App. No. 2007-CA-39, 2008-Ohio-613, ¶21. "In effect, R.C. 5717.05 contemplates a *decision de novo*. It does not \*\*\* provide for an original action or a trial *de novo*." (Emphasis sic.) *Black*, 16 Ohio St.3d at 14.

{¶ 29} An appellate court should not question the trial court's independent judgment of a property's value absent a showing of abuse of discretion. *Id.* at 14. An abuse of discretion implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. The Ohio Supreme Court has noted that most abuses of discretion result in decisions that are unreasonable, rather than arbitrary or unconscionable; a decision is unreasonable if it lacks a sound reasoning process. *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*(1990), 50 Ohio St.3d 157, 161.

{¶ 30} In Berner's case, the trial court did not consider additional evidence; it decided the appeal "on the record and the evidence thus submitted," in accordance with R.C. 5717.15. This record consisted of the following: 1) Mumma's opinions about the values of the properties; 2) Berner's testimony about the way in which he used the properties; and 3)

Ebert's references to a "prior resolved value" for 619-621 W. Main and to some type of comparison of properties conducted by Cama.

{¶ 31} After reviewing the record, the trial court commented that "there is no evidence in the record \*\*\* that Mr. Mumma is a certified real estate appraiser, nor do his letters appear to constitute appraisals." The court also observed that Mumma did not testify and was not subject to cross-examination, and that his letters contained "no data or support for the figures set forth therein." The court did not specifically comment on Berner's or Ebert's statements at the BOR hearing. The court found that "the record contained no reliable or probative evidence warranting the BOR's reduction in value."

{¶ 32} Berner contends that, even if the trial court acted within its discretion in rejecting his argument that the property values should have been lower than those adopted by the BOR, the court erred in reimposing the Auditor's property values because no evidence had been offered in support of those values and because the School Board did not appeal from the BOR's decision.

{¶ 33} On an appeal from a decision of a board of revision, the trial court independently weighs and evaluates the evidence presented to make a determination regarding the valuation of a property. R.C. 5717.05 ("[t]he court \*\*\* shall determine the taxable value of the property whose valuation \*\*\* by the county board of revision is complained of"); *Black*, 16 Ohio St.3d 11, 14 ("the court should \*\*\* determine the taxable value through its independent judgment."). See, also, *Dayton-Montgomery Cty. Port Authority v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, ¶24



(discussing the BTA's fact-finding role<sup>2</sup> on appeal from the board of revision's valuation determination). Determinations of the board of revisions are not accorded a presumption of validity. *Dayton-Montgomery* at ¶24; *Wellington Square LLC v. Auditor of Clark Cty.*, Clark App. No. 2009-CA-87, 2010-Ohio-2928, ¶47. If the trial court finds that the evidence on which the BOR relied was not reliable or probative, as it did in this case, it may reject the BOR's conclusion.

{¶ 34} In its letter to Berner regarding the reduction of his property values, the BOR stated that it had relied, at least in part, on the “appraiser’s” recommendation. The trial court concluded that Mumma’s “appraisals” were unreliable; they did not include any information about his qualifications to offer an opinion about the properties’ values or any detailed information about his methods for arriving at the numbers, and Mumma had not been available for cross-examination about his conclusions. Furthermore, Berner did not state his own opinion as to the value of the properties. And Ebert’s assertion that “other kinds of properties, et cetera” would suggest a value of \$107,000 for 619-621 W. Main and that the parties’ had previously agreed to a value of \$95,000 for this property, under circumstances that are unclear, were entitled to little, if any, weight. Given the lack of reliable evidence in support of a lower valuation, the trial court acted within its discretion in rejecting the BOR’s conclusions about reducing the property values of 615-617 and 619-621 W. Main.

{¶ 35} Having rejected the BOR’s determination of the property values, the trial court

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<sup>2</sup>A property owner may appeal a board of revisions’ decision to the board of tax appeals or to the court of common pleas, but a governmental entity, such as the county auditor, any board, or a public official may only appeal to the board of tax appeals (BTA). R.C. 5717.01 and 5717.05; *Fuchs v. Cuyahoga Cty. Bd. of Revision* (March 15, 1990), Cuyahoga App. No. 56723. Thus, the cases discussing the proper procedures for review of such a decision may refer to either the trial court or the BTA as the factfinder.

could have reached its own conclusion as to the value of the properties, or it could have reinstated the auditor's assessed value. "The Ohio Supreme Court has said that 'when a county auditor acts "within the limits of the jurisdiction conferred by law," the auditor's action is "presumed, in the absence of proof to the contrary, to be valid and to have been done in good faith and in the exercise of sound judgment." ' *Dayton-Montgomery* at ¶13 (citation omitted). See, also, *Colonial Village Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, noting that the auditor has 'no burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof at the BTA.' Id. at ¶23, citing *Dayton-Montgomery* at ¶15; *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 48; and *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342." *Wellington Square* at ¶43. In this case, the trial court, in its opinion, was not presented with sufficient evidence to support either Berner's or the BOR's valuations for the properties. Because an Auditor's action is generally presumed to be the result of sound judgment, the trial court did not abuse its discretion in holding that Berner failed to sustain his burden of proving that such Auditor's valuations were not accurate and in ordering that the properties at 615-617 and 619-921 W. Main should revert to the Auditor's values.

{¶ 36} We are not unaware that Berner would have been better off had he not appealed two of the cases from the BOR to the Common Pleas Court. However, our understanding of the law is that once jurisdiction is with the court, the valuation decision is within the court's discretion based on the evidence. "The statutory mandate is simple. It places neither minimum nor maximum limitations on the court's determination of value, and

there are none save the jurisdictional requirement that the determination be supported by the evidence.” *Jones & Laughlin Steel Corp. v. Lucas Cty. Bd. of Revision* (1974), 40 Ohio St.2d 61, 63. This is not totally unprecedented. See, e.g., Shoot, *Dependent on the Kindness of Strangers* (2010), 73 Albany L. Rev. 829, 842 (observing that a defendant who appeals from certain judgments must realize that an affirmance is not the worst case scenario and that perfection of the appeal could result in an increase in a defendant’s liability, even if the plaintiff did not – and could not – appeal).

{¶ 37} We also appreciate many of the facts and issues raised by counsel at oral argument, but we are limited to the record on appeal.

{¶ 38} The first and third assignments of error are overruled.

#### IV

{¶ 39} The judgment of the trial court will be affirmed in part and reversed in part.

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DONOVAN, P.J. and FAIN, J., concur.

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