

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

AMERIMAR CANTON OFFICE,
LLC ET AL.

Appellants

-vs-

STARK COUNTY BOARD OF
REVISION, ET AL.

Appellees

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 2014CA00162

O P I N I O N

NUNC PRO TUNC

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2013CV03210

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 8, 2015

APPEARANCES:

For Appellees

For Appellants

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Hoffman, J.

{¶1} Appellants Amerimar Canton Office, LLC, et al. appeal the August 4, 2014 Judgment Entry entered by the Stark County Court of Common Pleas, which affirmed the Stark County Board of Revision's decision determining the taxable value of two properties owned by Appellants. Appellee is the Canton City School District ("Canton City").

STATEMENT OF THE FACTS AND CASE

{¶2} Appellants are the owners of properties located at 220 and 223 Market Avenue, South, Canton, Ohio. An office building known as the Huntington Bank Building is located on the property at 220 Market Avenue, South ("the 220 property"). A five-level parking garage is located on the property at 223 Market Avenue, South ("the 223 property").

{¶3} Appellants began negotiations to purchase these properties in the fall of 2012. For the 2012 tax year, the Stark County Auditor valued the 220 property at \$3,168,800, and the 223 property at \$1,861,500. Appellants purchased the properties on January 18, 2013, paying \$8,900,000, and \$3,175,200, respectively.

{¶4} On March 28, 2013, Canton City filed a valuation complaint with the Stark County Board of Revisions ("the Board"), challenging the Auditor's January 1, 2012 valuations and seeking an increase in the values of the properties based upon the recent sale prices. The Board conducted a hearing on the complaint on September 12, 2013.

{¶5} At the hearing, Canton City presented certified copies of the conveyance fee statements and the general warranty deeds relative to the sale transactions.

Appellants presented the testimony of Stephen D. Marshall, a partner in both of Appellants' entities, and Tina Zenedes, a local real estate agent. Marshall testified regarding the negotiations and subsequent purchases of the properties. Marshall explained, at the time of the purchases, Appellants were looking for property that was either "mismanaged or lacking investment dollars." Marshall acknowledged his company did not have its own appraisals done on the properties, and admitted the appraisals conducted for the lender supported the purchases prices Appellants paid. Marshall is not certified to conduct appraisals. His only appraisal experience was as an intern while he was in college. Marshall and Zenedes both maintained the reported sale prices of the properties were not the best evidence of the value of said properties. Zenedes opined Appellants had overpaid for the properties. Zenedes' limited testimony focused primarily on the impact of a tax increase on tenants.

{¶6} The Board issued decisions on November 18, 2013, setting the total market value of the 220 property at \$8,900,000, and the 223 property at \$3,175,200. Appellants filed an appeal pursuant to R.C. 5717.05 with the Stark County Court of Common Pleas. The parties submitted briefs in support of their respective positions. Via Judgment Entry filed August 4, 2014, the trial Court affirmed the decisions of the Board.

{¶7} It is from this judgment entry Appellants appeal, raising the following assignments of error:

{¶8} "I. THE TRIAL COURT ERRED BY FAILING TO APPLY THE CORRECT EVIDENTIARY STANDARD MANDATED BY THE OHIO SUPREME COURT IN ITS RECENT DECISION IN WORTHINGTON CITY SCHOOLS BD. OF ED. V. FRANKLIN

CO. BD. OF REVISION REGARDING THE COMPETENCE OF CERTAIN EVIDENCE WITH RESPECT TO THE OWNER'S OPINION OF THE VALUE OF THE HUNTINGTON BUILDING AND PARKING STRUCTURE.

{¶9} "II. THE TRIAL COURT ERRED BY AFFIRMING THE DECISION OF THE STARK COUNTY BOARD OF REVISION BY NOT FINDING THAT COMPETENT, CREDIBLE AND PROBATIVE EVIDENCE WAS SUBMITTED BY THE APPELLANT, AMERIMAR OFFICE, LLC AS TO THE TRUE MARKET VALUE OF THE HUNTINGTON BANK BUILDING.

{¶10} "III. THE TRIAL COURT ERRED BY AFFIRMING THE DECISION OF THE STARK COUNTY BOARD OF REVISION BY NOT FINDING THAT COMPETENT, CREDIBLE AND PROBATIVE EVIDENCE WAS SUBMITTED BY AMERIMAR PARKING, LLC AS TO THE TRUE MARKET VALUE OF THE PARKING STRUCTURE."

STANDARD OF REVIEW

{¶11} Pursuant to R.C. 5717.05, a trial court may hear an appeal from the decision of the county's Board of Revision. R.C. 5717.05 requires more than a mere review of the decision of the Board of Revision. *Black v. Bd. of Revision of Cuyahoga Cty.* (1985), 16 Ohio St.3d 11, 14. In reviewing the Board's decision, "the common pleas court is to give the * * * decision no deference." *Lockhart Dev. Co. v. Summit Cty. Bd. of Revision*, 9th Dist. No. 25728, 2011-Ohio-5000, ¶ 8. "Under [R.C.] 5717.05, a common pleas court must 'independently weigh and evaluate all evidence properly before it' in order to 'make an independent determination concerning the valuation of the property at issue.' " *Id.* at ¶ 8, quoting *Black*, *supra* at 13. "On the other hand, an appellate court

should only disturb the trial court's independent judgment upon an abuse of discretion.” *JRB Holdings, L.L.C. v. Wayne Cty. Bd. of Revision*, 9th Dist. No. 05CA0048, 2006-Ohio-1042, ¶ 6. An abuse of discretion means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

I

{¶12} In the first assignment of error, Appellants assert the trial court erred in failing to apply the correct evidentiary standard relating to the testimony of Stephen D. Marshall.

{¶13} Specifically, Appellants maintain the trial court incorrectly determined Marshall’s testimony was not competent credible evidence of the market value of the properties, in contravention of the Ohio Supreme Court’s recent decision in *Worthington City Schools Bd. of Ed. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014 - Ohio- 3620. Appellants cite *Worthington*, supra, for the proposition an owner’s testimony giving an opinion of the value of real property is persuasive evidence of the property’s true value. We disagree with Appellants’ interpretation of *Worthington*.

{¶14} In *Worthington*, the Ohio Supreme Court held a qualified employee of the owner of real estate was competent to give opinion testimony regarding valuation of property. *Id.* at para. 29. The School District in *Worthington* appealed a decision from the Board of Revision which had granted a reduction in value. *Id.* at para. 1. The issue on appeal was whether the testimony of the owner’s employee represented competent testimony such to prohibit the BTA from simply issuing an order reinstating the auditor’s

initial value. *Id.* at para. 25. The Ohio Supreme Court found the testimony of an owner's employee may be competent evidence. *Id.* at para. 29.

{¶15} The *Worthington* Court noted, "Ohio law has long recognized that an owner of either real or personal property is, by virtue of such ownership, competent to testify as to the market value of the property." *Id.* at para. 19. (Citation omitted). The Ohio Supreme Court did not, however, go further and find such value testimony was irrefutable.

{¶16} We have reviewed the trial court's decision. Contrary to Appellants' assertion, we find the trial court did not find Marshall was not competent to testify. The trial court found Marshall's testimony was not sufficient to overcome Canton City's evidence as to the value of the properties. Marshall's opinion as to the value of the property was not supported by a professional appraisal, nor could Marshall explain how he arrived at the \$1,342,738 value he placed on the 223 property.

{¶17} Appellants' first assignment of error is overruled.

II, III

{¶18} Because Appellants' second and third assignments of error require similar analysis, we shall address said assignments together. In the second assignment of error, Appellants argue the trial court erred in affirming the Board's decision by failing to find Appellants presented competent, credible and probative evidence as to the true market value of the 220 property. In the third assignment of error, Appellants contend the trial court erred in affirming the Board's decision by failing to find Appellants presented competent, credible and probative evidence as to the true market value of the 223 property.

{¶19} R.C. 5713.03 provides, in pertinent part:

In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes.

{¶20} The Ohio Supreme Court has consistently held the best evidence of true value for real estate taxation purposes is a recent sale in an arm's-length transaction between a willing seller and a willing buyer. *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604. See, also, *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, ¶ 13; *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, ¶ 13; *Hillard City School Bd. of Edn v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57.

{¶21} Typically, a Board of Education makes a prima facie showing of value by presenting the conveyance-fee statement showing the sale and the price. See, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932, ¶ 28–29. Moreover, when a sale price has been reported on the conveyance-fee statement, the party opposing the use of that price typically bears the burden of showing that the reported price is not the proper value. *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010–Ohio–1921, ¶ 25. Although presenting documentation of the sale price generally raises the

presumption that the sale price reflects the value of the property, that presumption can be rebutted if the recency or the arm's-length character of the sale is successfully challenged. *N. Royalton School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, 950 N.E.2d 955, ¶ 30.

{¶22} Appellants challenge the use of the sale prices, arguing more than 12 months had passed between the Auditor's valuation of January 1, 2012, and the actual sale date.

{¶23} Recency encompasses temporal proximity to the date of the sale, as well "all factors that would, by changing with the passage of time, affect the value of the property." *Cummins Property Servs., LLC, v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, ¶ 35. The Courts of this State have looked at the recency component and found sales such as the one at issue herein are well within the time period in which a sale can be determined to be the best evidence of value. In *Cincinnati Trophy, LLC v. Board of Education*, 2013-Ohio-5387, the First District Court of Appeals found a 20 month elapse between the sale and the tax lien date did not by itself demonstrate the sale was not recent. Further, the Ohio Supreme Court found a sale occurring 21 months after the tax lien was recent within the meaning of the statute. *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, 843 N.E.2d 757. In another case, the Ohio Supreme Court found a sale 20 months prior to the tax lien date met the recency requirement. *Bd. of Edn. of the Worthington City Schools v. Franklin Cty. Bd. of Revision*, 129 Ohio St.3d 3, 2011-Ohio-2316, 949 N.E.2d 986.

{¶24} At the hearing, Marshall stated the purchase price for the properties was based solely on future projections, citing optimism at the time that the demand for commercial real estate would increase. Appellants contend the purchase price did not reflect the true market value of the properties; therefore, should not be utilized to determine the tax valuation. The trial court found Marshall did not bring real expertise which was relevant to the challenge and could not adequately explain how the figures he suggested were calculated. The trial court concluded Appellants did not present sufficient evidence to persuade the court to overlook the purchase price of the properties. We find no abuse of discretion in the trial court's determination.

{¶25} Appellants' second and third assignments are overruled.

{¶26} The judgment of the Stark County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Wise, J. concur

