

[Cite as *Palladino v. Kennedy*, 2016-Ohio-115.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103115

MARY C. PALLADINO

PLAINTIFFS-APPELLANTS

vs.

**DENNIS G. KENNEDY,
CUYAHOGA COUNTY FISCAL OFFICER**

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-12-779802

BEFORE: Celebrezze, P.J., Kilbane, J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: January 14, 2016

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FRANK D. CELEBREZZE, JR., P.J.:

{¶1} Appellant, Mary C. Palladino, brings this appeal challenging the common pleas court's affirmance of the decision of the Cuyahoga County Board of Revision maintaining the appraised value of her property at \$93,300 for the 2010 tax year. She argues that she presented sufficient evidence of value to trigger the common pleas court's duty to independently assign a value of \$40,000. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶2} Appellant owns real property located at 1534 Parkhill Road in Cleveland Heights, Ohio. She filed a valuation complaint with the Cuyahoga County Board of Revision ("BOR") challenging the value set for the home for real estate tax purposes for the 2010 tax year. She sought a reduction in value of \$53,300. From the record before this court, it does not appear that she attached to her complaint any evidence supporting her valuation. The BOR conducted a hearing where Palladino was represented by counsel. In support of her claimed value of \$40,000, she called Vladimir Victor, a friend who owned property in the same general area of Cleveland Heights. Victor offered testimony that the home on the property had been vacant for approximately two years. He also asserted that the home had been invaded by thieves who stole the copper plumbing and caused significant water damage. He also asserted that the furnace in the home was not operational, and the roof over the detached garage had collapsed. He showed pictures of the condition of the home that were contained in his cell phone, but

were not available to be submitted to the BOR. Although Victor did not offer evidence that he had any expertise in valuing real estate, he offered what he determined was a comparable sale for a home located on Wood Road in Cleveland Heights for \$6,000.

{¶3} The BOR rejected the evidence offered by Palladino based on numerous deficiencies. These deficiencies include the lack of testimony indicating how any defects in the property affected its value, the lack of competent testimony offering an appraisal of value based on accepted real estate valuation methods, and the lack of evidence of the condition of the property on the tax lien date of January 1, 2010.

{¶4} Palladino then appealed to the common pleas court.¹ She did not submit additional evidence, but asked the common pleas court to take judicial notice of several county public records including home sales in the area. After Palladino and a legal representative from Cuyahoga County submitted briefs, the court, in a six-page opinion, affirmed the valuation assigned by the fiscal officer on substantially the same grounds as the BOR. Palladino then filed the instant appeal assigning two errors:

- I. The Common Pleas Court erred in concluding that Palladino failed to come forward with evidence sufficient to meet her evidentiary burden.
- II. The Common Pleas Court erred by not independently weighing and evaluating all evidence properly before it and then making an independent determination concerning the valuation of the Property.

¹ Dennis G. Kennedy currently serves as the Cuyahoga County Fiscal Officer. Wade Steen held that position at the time this litigation commenced and his name was originally included in the caption of this case before the BOR and the common pleas court.

II. Law and Analysis

A. Evidence of Value at the Tax Lien Date

{¶5} Palladino first claims the common pleas court erred when it found her evidence insufficient to substantiate her claim that she was entitled to a decrease in the appraised value of the property.

{¶6} Palladino is appealing from a decision of the common pleas court sitting as an appellate court reviewing an administrative determination issued by the BOR. The standard of review for the common pleas court is set forth in R.C. 5717.05. On appeal from a decision of a board of revision, the common pleas court must perform an independent investigation and re-evaluation of the board's decision. *In re Complaint Against the Valuation of Real Property of Houston*, 12th Dist. Madison No. CA2004-01-003, 2004-Ohio-5091, ¶ 6, citing *Black v. Bd. of Revision of Cuyahoga Cty.*, 16 Ohio St.3d 11, 475 N.E.2d 1264 (1985), paragraph one of the syllabus. This court then reviews that determination for an abuse of discretion. *Id.* An abuse of discretion is denoted by a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶7} Palladino must prove the right to the value asserted because she is the party requesting a change in value. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 68 Ohio St.3d 336, 626 N.E.2d 933 (1994). The sale price of a property in an arm's length transaction is the best evidence of value. *See, e.g., Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d

782. The Ohio Supreme Court has pointed out, “such information is not usually available, and thus an appraisal becomes necessary.” *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412, 195 N.E.2d 908 (1964). Addressing its own standard of review from decision of the Board of Tax Appeals, the Ohio Supreme Court stated “[t]he fair market value of property for tax purposes is a question of fact, the determination of which is primarily within the province of the taxing authorities, and this court will not disturb a decision * * * unless it affirmatively appears from the record that such decision is unreasonable or unlawful.” *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572, 574, 635 N.E.2d 11 (1994), quoting *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision*, 44 Ohio St.2d 13, 336 N.E.2d 433 (1975), paragraphs three and four of the syllabus.

{¶8} “On appeal, a taxpayer ‘may successfully challenge a determination of a Board of Revision only where the taxpayer produces competent and probative evidence to establish the correct value of the subject property.’” *Scranton-Averell, Inc. v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga Nos. 98493 and 98494, 2013-Ohio-697, ¶ 23, quoting *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572, 574, 635 N.E.2d 11 (1994).

{¶9} The evidence Palladino offered included testimony of Victor concerning the condition of the property. Victor failed to put forth any evidence of his expertise in appraising real estate nor did he set forth a sufficient basis to arrive at any conclusions of value for the property. The common pleas court could not review pictures of the

property that were shown to the BOR by him because they were not properly submitted as they existed only on Victor's cell phone. Similarly, those pictures are not in the record before this court.

{¶10} Victor's testimony listed a series of defects in the property without any indication of the effect on the value of the property. Further, a single comparator was offered involving the sale of a home less than a half-mile away without any explanation or adjustment for differences between the comparator and Palladino's property. The comparator was sold for \$6,000, but Palladino sought a value for her property of \$40,000 without any indication as to how that number was determined. Further, Victor testified that he was familiar with bidding on distressed properties in Cleveland Heights but did not support his expertise in valuing real property with any other information. This evidence is not sufficient to demonstrate that the common pleas court erred in retaining the appraised value of the property set by the taxing authority.

{¶11} Appellant asked the common pleas court and this court to take judicial notice of several things including comparable sales and other evidence of a general decline in value of property in Cleveland Heights. Unadjusted sales figures do not offer any indication of value for the subject property. Further, the proper time to submit this evidence was at the BOR hearing.

{¶12} R.C. 5715.19(G) provides:

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 of evidence to the board of revision.

{¶13} Palladino was free to present evidence of a general decline of property values in Cleveland Heights and how that decline affected her property at the BOR hearing and failed to do so. She was also not prevented from offering this evidence. Palladino asks this court and the lower court to take notice of additional evidence without demonstrating why she was prevented from developing a sufficient record before the BOR. The record on appeal is the record Palladino created below. Reviewing the lower court's determination for an abuse of discretion as we must, it would be inappropriate for this court to consider evidence not provided in the record below.²

B. Independent Review

{¶14} Palladino also claims the common pleas court did not undertake an independent review and arrive at its own valuation for the property.

{¶15} An appeal to the common pleas court requires the court to "determine the taxable value of the property whose valuation or assessment for taxation by the county board of revision is complained of * * *." R.C. 5717.05.

{¶16} The evidence offered by Palladino did not give the common pleas court the ability to find a value contrary to the one affirmed by the BOR. Without substantial,

² Palladino claims that this court's review is other than an abuse of discretion because there is no indication the common pleas court fulfilled its duty to undertake an independent evaluation of the evidence. The common pleas court's cogent six-page opinion belies that argument.

credible evidence to rely on, the common pleas court would simply be guessing. The court must be provided with a basis to set a new value that is a close approximation to the “true value” of the property. See R.C. 5713.01(B). “‘True value’ means either the amount the property recently sold for on the open market or the amount of an appraisal predicting what that sale price would be.” *Dublin City School Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940, 11 N.E.3d 222, ¶ 25. The party seeking a reduction in value has the burden of submitting evidence establishing entitlement to the lower value. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 68 Ohio St.3d 336, 626 N.E.2d 933 (1994).

{¶17} Based on the record in this case, this court cannot say that the common pleas court erred in upholding the BOR’s decision. Appellant did not provide sufficient evidence of a lower valuation. As the trial court recognized,

Palladino’s only witness to testify at the BOR, Victor, testified about the overall condition of the property. However, without an appraisal or some other information Victor’s testimony fails to show the impact that these defects may have upon the property’s value. Additionally, although Victor did testify about the sale of one other property, the record is devoid of any corroborating evidence that would enable this court to determine that the sale was at arm’s length and that the properties were indeed comparable.

{¶18} Palladino’s evidence does not provide any solid foundation for the trial court to depart from the valuation set by the county. There is no clear indication of the

condition of the property in the record and how any testified defects would affect value. Further, the sole real estate sale comparison offered by Palladino did not include any information about the comparison property other than the location and the sale price. Victor testified the property was in worse shape, but without any elaboration. If this is to be believed, then Palladino's property would be worth less than \$6,000, but Palladino sought a value of \$40,000. Further, no documentation regarding this sale exists in the record because it was not submitted to the BOR. Based on the state of the record before this court, the trial court did not err in affirming the decision of the BOR.

III. Conclusion

{¶19} The evidence offered by Palladino failed to establish that she was entitled to a change in value. Therefore, the common pleas court did not err in retaining the value set by the taxing authority of \$93,300.

{¶20} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
SEAN C. GALLAGHER, J., CONCUR