

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

CHARLES J. CATTELL,	:	OPINION
Appellant,	:	
- vs -	:	CASE NO. 2009-L-161
LAKE COUNTY BOARD OF REVISION, et al.,	:	
Appellees.	:	

Administrative Appeal from the Court of Common Pleas, Case No. 09 CV 002437.

Judgment: Reversed and remanded.

Kevin Wayne Rumes, 2062 McClaren Lane, Broadview Heights, OH 44147 (For Appellant).

Charles E. Coulson, Lake County Prosecutor, and *Eric A. Condon*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Appellees).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Charles J. Cattell, appeals from the judgment of the Lake County Court of Common Pleas, which affirmed a decision by the Lake County Board of Revision (“BOR”). For the following reasons, we reverse the decision of the trial court.

{¶2} Appellant filed a complaint against the valuation of three parcels of property with the BOR seeking to reduce the auditor’s appraised valuation of each property. Appellant maintained that, based on his recent purchase of the three

properties, the fair market value of each property should be reduced. Appellant submitted settlement statements documenting the contract sales price of each property. Specifically, appellant argued that parcel no. 15-B-005-A-00-011-0, located at 325 Willow Drive (“parcel one”), should be valued at \$41,000; parcel no. 14-A-018-0-00-019-0, located at 216 Orchard Drive (“parcel two”), should be valued at \$57,500; and parcel no. 34-B-025-F-00-061-0, located at 248 Shelton Boulevard (“parcel three”), should be valued at \$32,000. The three parcels of land were purchased from a bank, which had previously purchased them at a sheriff’s sale.

{¶3} After a hearing was conducted, the BOR adjusted the appraised values of the three properties. In a letter dated June 24, 2009, the BOR notified appellant that it had reduced parcel one from \$59,220 to \$51,180; parcel two from \$105,610 to \$83,780; and parcel three from \$98,630 to \$82,800. These findings were made for the 2008 tax year. The BOR notified appellant that he had a right to file an appeal with either the state of Ohio Board of Tax Appeals or with the Lake County Court of Common Pleas.

{¶4} Appellant filed an appeal in the Lake County Court of Common Pleas alleging the BOR erred by not accepting the sale price, pursuant to R.C. 5713.03, which governs taxable valuation of real property. The trial court found appellant’s appeal not well-taken and upheld the decision of the BOR.

{¶5} Appellant filed a timely appeal and asserts the following assignment of error:

{¶6} “The Trial Court erred in allowing and engaging in extra-legal analysis and allowing evidence (including erroneous affidavits) where a statute clearly establishes the proper procedure for assessing property valuation, by the Lake County Board of

Revision, for tax purposes. The statute, not being ambiguous and thereby requiring external information to interpret, should have solely dictated the valuation procedure utilized in assessing property valuation for tax purposes.”

{¶7} During the pendency of this case, appellant has maintained that the sale price is the true value for tax assessment purposes of the three parcels of land purchased. Appellant argues that he purchased the subject parcels in an arm’s length transaction, and, therefore, the sales price of each parcel constitutes their true value for taxation purposes. Appellant notes that each parcel was for sale in an open market for a considerable length of time, was listed on the Multiple Listing Service (MLS), and was available to any qualified purchaser. To support this argument, appellant cites R.C. 5713.03, which governs taxable valuation of real property and provides, in pertinent part:

{¶8} “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 shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes.”

{¶9} Appellees have not argued, either at the trial court or the appellate level, that the sales of the subject parcels were not within a reasonable length of time. Initially, appellees focused their argument on whether the three parcels of land were the subject of an arm’s length transaction. Specifically, appellees argued that the purchase price was not indicative of the true fair market value, as the three parcels of land were not the subject of an arm’s length transaction. Appellees cite to the declining housing

market at the time of appellant's purchase. Appellees attached affidavits of James P. Hease, an appraisal assistant for the Lake County Auditor. In his affidavits, Mr. Hease outlined the sales activity of each parcel listing the mortgage at the time of foreclosure, the sheriff's sale price to Wachovia Bank, the price appellant paid for each parcel from Wachovia Bank, and the sale price of three comparable properties.

{¶10} The trial court issued a decision based on the record and briefs filed by each party and affirmed the decision of the BOR. See R.C. 5717.05. The trial court found that appellant "failed to produce any competent and probative evidence and merely argues that the BOR should have used the prices that he paid for the properties as their Fair Market Value."

{¶11} With respect to parcel one and parcel two, the trial court stated:

{¶12} "The Court finds that the prices Appellant paid for each of these two properties are not accurate bases for the value of the property. While the transactions may technically have been arms-length in that the parties did not enjoy a special relationship, the Court does not find that these transactions are proper evidence of the properties' values. In each situation, Appellant purchased the property from a bank, who had purchased the property at Sheriff's Sale. The Court finds these prices to be unreliable, as the Court notes that the amount of money Appellant spent to make each property liveable was minimal and the sale prices of comparable homes far exceed the values asserted by Appellee. The Court will therefore not consider the prices Appellant paid for each of these two properties as evidence of the market value of each properties."

{¶13} With respect to parcel three, the trial court stated:

{¶14} “The Court notes that while Appellant argues that the value of the property should be \$32,000, he sold the property for nearly three times that amount less than one year after he purchased it.¹ The Court therefore is not persuaded by Appellant’s assertion regarding the value of the property and shall uphold the adjusted value found by the BOR.”

{¶15} “When reviewing an appeal from the board (of revision), a common pleas court must independently weigh and evaluate all the evidence properly before the court, and make an independent determination of the taxable value of the property. *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11, 13 ***. R.C. 5717.05 effectively contemplates a decision de novo. *Id.* at 14. On the other hand, an appellate court should only disturb the trial court’s independent judgment upon an abuse of discretion. *Id.*” *JRB Holdings, LLC v. Wayne Cty. Bd. of Revision*, 9th Dist. No. 05CA0048, 2006-Ohio-1042, at ¶6, quoting *Fairlawn Assoc., Ltd. v. Summit Cty. Bd. of Revision and Fiscal Officer*, 9th Dist. No. 22238, 2005-Ohio-1951, at ¶10. (Parallel citation omitted.)

{¶16} An abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, at ¶62, quoting *Black’s Law Dictionary* (8 Ed.Rev.2004) 11.

{¶17} It is clear that the critical threshold issue to be decided is whether the purchases by appellant were arm’s length transactions. Appellees argued before the trial court, as they did in their appellate brief, that the sales at issue were distressed sales. At oral argument, however, appellees acknowledged that the sales were, in fact,

1. This apparently is in error. Appellees concede that appellant did not sell the property for \$98,630. Instead, appellant conveyed the property to his wife for \$1.00. A conveyance fee was assessed based on a sale of \$98,630 since that was the 2006 Auditor’s value.

arm's length transactions as contemplated by the statute. We analyze the trial court's ruling in light of appellees' apparent change of position. The trial court agreed with the initial argument of appellees—that is, the sales at issue were distressed.

{¶18} Appellees maintain that even if the transactions are deemed arm's length, this court can consider extraneous evidence if it demonstrates that the sale prices of the properties are not reflective of their true value. As authority for this proposition, appellees have cited and argued the case of *Berea City School Dist. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. However, as discussed herein, it is clear that *Berea* does not stand for such a proposition.

{¶19} In construing R.C. 5713.03, the Supreme Court of Ohio has held that “[t]he best evidence of the ‘true value in money’ of real property is an actual, recent sale of the property in an arm's length transaction.” *Conalco, Inc. v. Monroe Cty. Bd. of Revision* (1977), 50 Ohio St.2d 129, at paragraph one of the syllabus. In *Berea*, supra, at ¶13, the Supreme Court of Ohio held:

{¶20} “In accordance with the plain language of R.C. 5713.03 and our decision in [*Columbus Bd. of Edn. v. Fountain Square Assoc. Ltd.* (1984), 9 Ohio St.3d 218], today we *** hold that when the property has been the subject of a recent arm's length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxations purposes.’”

{¶21} The court in *Berea* overruled *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, 61, a case where the Supreme Court “changed [the] bright-line rule, concluding: ‘Although the sale price is the “best evidence” of true value of real property for tax purposes, it is not the only evidence. A review of independent appraisals

evaluating the cash equivalency of the sale price is appropriate where it is shown that the sale price does not reflect the true value.” *Berea*, supra, at ¶10. The *Berea* Court emphasized that “[f]or more than 20 years, the law in this area had been well settled: a recent arm’s-length sale of property evidenced its true value.” *Id.* In their brief, appellees also rely on *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62 to support their argument that distressed sales can be considered when determining the true value of a property. *Pingue*, however, relied on *Ratner*, supra, which, as noted, has been overruled by *Berea*, supra.

{¶22} In the past few years, the Supreme Court decided *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203; *St. Bernard Self-Storage, LLC v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249; and *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595, all of which reiterated the holding in *Berea*.

{¶23} Although there is a presumption that the sale price is the best evidence of the true value, that presumption may be rebutted where there is evidence that the sale was not an arm’s length transaction. *Cummins Prop. Servs. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶41. (Citation omitted.) Appellees have maintained that appellant’s purchases of the three properties “were unreliable short sales.” However, these clearly were not “short sales” in the typical sense. In the “short sale” scenario, there is a mortgage holder who allows the sale to take place from the mortgagee to a third party even though the mortgage holder does not receive the full amount due on the mortgage. No such sale took place here. The purchase was made directly from the seller who had openly marketed the properties. The Supreme Court

has defined an arm's length sale as one that is characterized by the following elements: "it is voluntary, *i.e.*, without compensation or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, at syllabus.

{¶24} Appellees cited to *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604, 606, where the Supreme Court listed "abnormal economic conditions" as a factor that can "affect the use of the sale price of property as evidence of its true value." In so stating, the *Zazworsky* Court cited to *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59. However, as previously mentioned, the Supreme Court has since overruled *Ratner* to the extent it "changed the bright-line rule[.]" *Berea*, *supra*, at ¶10.

{¶25} The instant case presents no evidence to support appellees' argument. While the BOR characterizes the sale of each property as a short sale, the properties at issue had already been the subject of foreclosure proceedings. In this case, the bank had purchased all three properties at a sheriff's sale. Further, although the homes were purchased by the bank at a sheriff's sale, they were listed for sale with a realtor on the open market. Each property was listed on the MLS. Accordingly, each transaction took place on the open market between a willing buyer and a willing seller, neither of which were under duress or coercion. See, *Walters*, *supra*.

{¶26} In *Walters*, *supra*, at 23, the appellees purchased six vacant lots in a lake resort and recreational area. The appellees purchased said lots at an auction that was published in a newspaper. *Id.* The appellees purchased these six lots well below the auditor's value. *Id.* Evidence was presented that property values for non-lakefront

property had been declining. *Id.* The appellant argued that the sales were not conducted at arm's length. *Id.* The Supreme Court found this argument without merit and determined the valuation for tax purposes to be the purchase price of the six lots. *Id.* at 26.

{¶27} Based on the evidence presented in the instant case, we determine that the sale of each property was an arm's length sale.

{¶28} It appears the trial court gave weight to the fact that appellant made certain "improvements" to the properties subsequent to the relevant sales. This could be significant because R.C. 5713.03 specifically provides that the sale price should not be the value of the property if "[a]n improvement is added to the property" subsequent to the sale. R.C. 5713.03(B). In its entry, the trial court stated that appellant spent approximately \$5,000 to improve each property. Appellant testified at the hearing that, after he bought the property, he spent between \$4,000-\$5,000 on each parcel for carpet and paint. R.C. 5713.03(B), however, is not applicable to the instant case as the evidence failed to demonstrate that an improvement, as used in the statute, was added to the property.

{¶29} As defined by R.C. 5701.02(D), "[i]mprovement' means, with respect to a building or structure, a permanent addition, enlargement, or alteration that, had it been constructed at the same time as the building or structure, would have been considered a part of the building or structure." As recognized by the Supreme Court of Ohio, "tax statutes include the term 'improvement' together with permanent additions to realty." *Developers Diversified v. Cuyahoga Cty. Bd. of Revision* (1998), 84 Ohio St.3d 32, 36. "[I]n context with other statutes and under statutory and dictionary definitions, an

'improvement' is a relatively permanent structure attached to, or located on, land." Id. As the evidence does not demonstrate that an "improvement" was added to the property subsequent to the sale date, R.C. 5713.03(B) is inapplicable to the instant case. Consequently, as there is clear evidence of an arm's length transaction within a reasonable time, the sale price of each property should have been used to determine the value.

{¶30} Based on the foregoing, appellant's assignment of error is with merit. The judgment of the Lake County Court of Common Pleas is hereby reversed and remanded for proceedings consistent with this opinion.

MARY JANE TRAPP, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.