

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-236

DECEMBER TERM, 2003

Mark Boivin, Paul Boivin, and	}	APPEALED FROM:
No-Mon-E Farms Assoc.	}	
	}	
v.	}	Addison Superior Court
	}	
Town of Addison	}	DOCKET NO 190 194 195-9-00 Ancv
	}	
	}	Trial Judge: Helen M. Toor
	}	

In the above-entitled cause, the Clerk will enter:

Taxpayers own three parcels of real property in Addison, Vermont. This appeal concerns the listed value, for the year 2000, the Addison Superior Court established for the property after a de novo appeal from the Addison Board of Civil Authority. We affirm.

Taxpayers are brothers who jointly own three lots in the Town of Addison. Parcel one is a 289 acre lot with a dwelling and farm buildings. The Town of Addison originally assessed parcel one at \$372,700 in 2000. Parcels two and three consist of 98 and 80 acres respectively. In 2000, Addison assessed parcel two at \$106,300 and parcel three at \$88,700. All three parcels are used for dairy farming, although they were last enrolled in Vermont= s current use program in 1996.

Contending that Addison= s valuation of their property was too high, taxpayers sought relief from the Addison Board of Civil Authority, and later from the superior court under 32 V.S.A. ' 4461(a). The superior court took evidence on the matter over two days in January 2003 after visiting the property the previous month. At trial, Addison offered an appraisal of the three parcels from a licensed real estate appraiser, Justus DeVries, who also testified in support of his work. Taxpayer Mark A. Boivin testified on his and his brother= s behalf. Although Boivin is not a licensed appraiser, he holds a college degree in business administration and finance, and he offered his opinion on the value of the property. Boivin based his opinion on analyses he conducted using three valuation methods ultimately rejected by the superior court.

On April 29, 2003, the superior court issued a written decision on taxpayers= appeal. The court found the fair market value of parcel one was \$408,000. For parcels two and three, the court found fair market values of \$122,500 and \$96,000 respectively. The court found the proper equalization ratio to be 93.02%. Applying that ratio to the properties= fair market value resulted in a listed value of \$379,521 for parcel one, \$113,949 for parcel two, and \$89,299 for parcel three. The superior court entered judgment accordingly, and this appeal followed.

Taxpayers present several arguments as to why the superior court= s decision should be reversed. Principally, they complain that the court erred by rejecting Boivin= s analyses in favor of the testimony and appraisal offered by Addison through its expert witness DeVries. To put taxpayers= specific claims of error in context, we briefly address the legal requirements applicable to tax appeals in superior court and the standard of review in this Court from judgments rendered in such appeals.

An appeal under 32 V.S.A. ' 4461(a) requires the superior court to determine, de novo, the correct value of the property at issue. 32 V.S.A. ' 4467. If the superior court A finds that the listed value of the property subject to appeal does not

correspond to the listed value of comparable properties within the town, . . . the court shall set said property in the list at a corresponding value. @ Id. On appeal, we will uphold the court= s conclusions if they are supported by the findings, which in turn must be supported by the evidence. Kachadorian v. Town of Woodstock, 149 Vt. 446, 448, 450 (1988). The court is, however, sole arbiter of evidentiary credibility, weight, and persuasiveness. See Scott Constr., Inc. v. City of Newport, 165 Vt. 232, 236 (1996) (in appeal of tax assessment, court is free to weigh any relevant, competent, and probative evidence of valuation); Harte v. Town of Bennington, 153 Vt. 256, 258 (1989) (persuasiveness of testimony in tax appeal is for court to determine). Because the court= s decision is presumptively correct, taxpayers bear the burden to demonstrate that the court= s exercise of discretion was clearly erroneous. See Lake Morey Inn Golf Resort, Ltd.P= ship v. Town of Fairlee, 167 Vt. 245, 248 (1997).

A two-step process determines whether a property= s listed value for tax purposes corresponds to the listed value of comparable properties within a town. Kachadorian, 149 Vt. at 447. The first step involves establishing the property= s fair market value. Id. A property= s fair market value is the price the property would bring in the market taking into account the property= s potential uses, availability, and limitations. Id. at 448. The Court will not disturb a fair market valuation absent a showing of clear legal error. Id. at 448-49.

The second step in the process involves equalizing the property= s fair market value A to insure comparable listing with other corresponding properties. @ Id. at 447. This step depends upon the existence of comparable properties within the town. Id. Where comparable properties exist in the town, the equalization ratio is derived from a comparison between the comparable properties= current market value and their listed value. Id. If no properties comparable to the taxpayer= s exist in the town, the equalization ratio used is the common ratio of all properties in the town. Id. at 448.

Taxpayers first argue that the court should have accepted Boivin= s analyses of fair market value because he complied with the directive in 32 V.S.A. ' 4041 and DeVries did not. Contending that the statute required him to do so, Boivin inspected each comparable used in his analysis to determine which items of personal property, like tools and equipment, must be deducted from the total value of the comparable to ascertain its true value. While DeVries inspected each comparable he used in his analysis, he relied on the price set forth in property transfer tax forms, without further deductions for personalty included in the sale, because the tax is imposed only on real property. Taxpayers argue that DeVries violated ' 4041, and thus, the court should have rejected his appraisal.

Section 4041 requires town listers to appraise property at its fair market value, and to inspect such property to the extent necessary to make that determination. 32 V.S.A. ' 4041; In re Town of Essex, 125 Vt. 170, 172 (1965). Nothing in the language of the statute requires the town, or its appraiser, to inspect each comparable property for items of personalty that may have been included in the sales price of the comparable, and then to determine whether the seller and buyer properly allocated the price between real and personal property on the property transfer tax return. The superior court did not accept Boivin= s approach because he rejected the values listed on the state= s property transfer tax returns for reasons the court found unpersuasive. The court explained that,

[a]lthough it is true the parties to the sale may have motives to value the real estate higher or lower than its actual value, the buyer and seller have opposing positions with regard to whether a higher or lower value is desirable, and they are required to accurately list the value on the returns.

The court also noted that Boivin= s approach would result in a fair market value of parcels two and three that are significantly lower than the values of those parcels in 1990 and 1996. In sum, taxpayers= first claim goes to the weight of the evidence, a matter committed to the trial court= s discretion. Scott Constr., Inc., 165 Vt. at 236. Taxpayers first argument is, therefore, unavailing.

Taxpayers next argue that the superior court erred by excluding Boivin= s equalization studies from its consideration. They contend that Boivin= s equalization studies comply with the law, and thus it was an abuse of discretion for the court not to apply them. Like taxpayers= first argument, their second claim goes to the weight the trial court accorded the evidence, a decision we will not disturb on appeal. See id. Even if we were to find error in the court= s decision to discount Boivin= s equalization studies, we would find the error harmless and not subject to reversal on appeal. See V.R.C.P. 61 (court must disregard any error not affecting a party= s substantial rights). The equalization ratio the court

ultimately used B 93.02% B is less than the ratio Boivin suggested was appropriate. Thus, had the court accepted Boivin's equalization ratio, the result would have been a higher listed value for each parcel than the values set forth in the court's final judgment.

The third claim taxpayers raise concerns the court's rejection of Boivin's discounted cash flow (DCF) analysis to determine fair market value. This approach seeks to value the property by determining its profitability. The DCF method is used for the state's current use program, a program in which taxpayers were no longer enrolled after 1996. The court declined to utilize the DCF method because it found that the method is not generally used for farms. The court's finding that the DCF method is not properly used to establish the fair market value of farms is supported by the evidence, and is not clearly erroneous. As such, we find no reason to disturb the court's ruling.

We note that the court's decision to weigh more heavily DeVries's appraisal was based on its assessment that Boivin's analyses were flawed. As the court explained, Boivin

did not use accepted appraisal methods. He mixed listed values with sales values, and made adjustments to sales prices based upon theories the court does not accept. . . .

. . . [H]e did not use standard appraisal methods in selecting or comparing them to the parcels at issue. He used parcels that were not operating farms, and ones without the more modern free-stall barn and milking parlor on Parcel 1. He did not weight the properties according to their assets and liabilities, as Mr. DeVries did, but instead averaged them to reach his valuations. . . . Moreover, Mr. Boivin's calculations lead to values for Parcels 1 and 2 that are significantly lower than their values in 1996 and 1990, respectively. This further demonstrates the invalidity of his calculations.

Taxpayers have failed to demonstrate reversible error here.

Taxpayers attack the trial court's finding that DeVries uses the Uniform Standards of Professional Appraisal Practice when doing appraisals. They do not contend that the evidence does not support the finding, but, rather, assert that DeVries did not adhere to the standards set forth in the Uniform Standards. The problem with taxpayer's argument is two-fold. First, absent a showing that the finding lacks any evidentiary support, it must stand. Kachadorian, 149 Vt. at 450. Second, taxpayers fail to demonstrate that adherence to the Uniform Standards of Professional Appraisal Practice is necessary to determine fair market value. In other words, unless the law requires the court to rely on those standards, its failure to do so alone is not reversible error. See id. at 448-49 (unless an error of law exists, Court will not disturb the superior court's determination of fair market value). In this case, the court was faced with conflicting evidence of fair market value. It sorted through that evidence and gave more weight to the evidence offered by Addison. Although there may be flaws in the appraisal DeVries performed, it was ultimately up to the trial court to arrive at a fair market value based on the evidence. See Lake Morey Inn, 167 Vt. at 249 (trier of fact's decision on fair market value must be based on evidence and supported by findings, but it is not error to weigh evidence of one party more heavily). Taxpayers have not shown that the court's determination is without basis, and we therefore decline to disturb its ruling based on a single finding about DeVries's use of the Uniform Standards of Professional Appraisal Practice.

The fifth issue taxpayers raise relates to the effect of A sales chasing@ by Addison. According to taxpayers, A sales chasing@ involves reappraising or adjusting listed values of some properties that have sold within a town while not reappraising the remaining properties in the same class. Addison responds that the issue of A sales chasing@ was not preserved for review. Aside from Boivin's comment at trial that he believed Addison was engaged in A sales chasing,@ the issue was neither the subject of evidence nor argument before the trial court. Thus, we agree with Addison that the issue was not preserved for appeal, and we decline to address it. Harrington v. Dep= t of Employ. & Training, 152 Vt. 446, 448 (1989); see also V.R.A.P. 28(a)(4) (appellant's brief must explain how issues were presented below and preserved for appellate review).

Taxpayers claim that the superior court erroneously increased, over Addison's original assessment, the fair market and listed values for parcels two and three. They claim that the increase is without evidentiary support and point to flaws in

DeVries= s testimony and analysis. If taxpayers were correct that the court= s findings on fair market value and listed value lacked any support in the evidence, we would agree that reversal is required. In this case, the court had a lengthy written appraisal supporting the values it ultimately found, in addition to explanatory testimony from the expert who prepared the appraisal. A When the evidence is conflicting, the credibility of witnesses, weight of the evidence and its persuasive effect are matters for the exclusive determination of the trier of fact.@ Gilbert v. Davis, 144 Vt. 459, 461 (1984). Taxpayers had the opportunity to present their criticisms of Addison= s evidence to the trial court, which resolved the evidentiary conflict against taxpayers. Because the court= s decision is grounded in the evidence and is supported by its findings, we will not overturn it.

Taxpayers= final claim is similarly unavailing. They argue that the court= s decision to accord Boivin= s testimony little or no weight is reversible error because a property owner may testify as to the fair market value of his property. Taxpayers correctly point out that Vermont law does not require a particular valuation method or evidence to support that method. Lake Morey Inn, 167 Vt. at 248-49; Sondergeld v. Town of Hubbardton, 150 Vt. 565, 567 (1988). Once the court admits evidence as to fair market value, however, it is A under no obligation to accept, interpret, or apply evidence in accordance with the views of either party.@ Kruse v. Town of Westford, 145 Vt. 368, 374 (1985). The court properly admitted Boivin= s testimony and considered it. In resolving the differences between Boivin= s testimony and DeVries= s testimony the court could consider that DeVries was a professional appraiser and Boivin was not. Consideration of the professional qualifications of a witness is not discrimination against the witness without those qualifications.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice