STATE OF MICHIGAN

COURT OF APPEALS

JON STAUDACHER AND KATHY STAUDACHER,

Plaintiffs-Appellants,

v

TOWNSHIP OF BANGOR,

Defendant-Appellee.

UNPUBLISHED
October 11. 1996

No. 181709
LC No. 175774

Before: McDonald, P.J., and Fitzgerald and M. J. Matuzak*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a tax tribunal hearing referee's judgment revising their property tax assessments for 1993 and 1994. We vacate the judgment and remand for further proceedings consistent with this opinion.[1]

The property at issue is 11.5 acres of residential, unimproved property located in Bangor Township, Bay County, Michigan, parcel number 90-010-030-400-030-15. In March 1992, plaintiffs paid $100,000 for a larger parcel which included this property. Subsequent to their purchase, they donated a portion of the land to the State of Michigan to be added to the Bay City State Park. Plaintiffs claim that the 1992 purchase price of the 11.5 acres they retained was $89,000. In 1993, this 11.5 acres was assessed at $115,000 with the true cash value being set at $230,000. Plaintiffs appealed the assessment, claiming that the true cash value was $89,000 and not $230,000. Plaintiffs also noted that the Department of Natural Resources offered to purchase 6.9 acres of the retained land for $52,800, and that if the amount per acre under that calculation was applied to the whole 11.5 acres, the value would be approximately $89,000. While the case was pending, plaintiffs added a challenge to their 1994 assessment, which was again set at $115,000. Respondent claimed that the assessments were proper, and that the market value as reflected by the purchase price was not conclusive of the true cash value, especially since the seller of the property was under duress when he sold the land to plaintiffs. Respondent estimated that eight buildable lots could be made out of the 11.5 acres and sold for

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* Circuit judge, sitting on the Court of Appeals by assignment.

$35,000 each. Respondent argued that the value of the land was therefore $280,000 (8 x $35,000), minus the $75,000 cost of extending a sewer.

The referee rejected both parties' proposed valuations, finding the assessed value of the property for 1993 and 1994 to be $81,000 with a true cash value of $162,000. He compared the parties' valuations and determined $162,000 was reasonable, purporting to base the assessment on the market method, modified to take into consideration that the purchase price resulted from duress.

On appeal, plaintiffs first assert that the referee's method of valuation was "most likely not allowed by law." The method of valuation actually used is not clear from the record.

The decision of the tribunal must include a concise statement of facts and conclusions of law. MCL 205.751(10); MSA 7.650(51)(1). *Granader v Southfield Twp,* 145 Mich App 585; 377 NW2d 893 (1985). Since no transcript is prepared for proceedings in the small claims division, MCL 205.762(3); MSA 7.650(62)(3), it is crucial that the evidence relied upon and the reasoning for the conclusions of law be set out in order to allow for meaningful appellate review of the true cash value at issue. See *Oldenburg v Dryden Twp,* 198 Mich App 696; 499 NW2d 416 (1993), and *First City Corp v City of Lansing*, 153 Mich App 106; 395 NW2d 26 (1986). Here, the referee claimed that he utilized a modified market method and compared the values offered by each party, but did not explain how he arrived at an assessment of $162,000. The referee's statement that he utilized "reasoned judgment" is insufficient to permit this Court to determine whether there was competent, material and substantial evidence to support this conclusion of law. *Oldenburg, supra* at 698. Accordingly, we remand this case to the tribunal to clarify the basis for its decision. If the tribunal can reissue its opinion and judgment setting forth its reasoning, without conducting a new hearing, it may do so. *Kern v Pontiac Twp,* 93 Mich App 612; 287 NW2d 603 (1979). Otherwise, a new hearing should be conducted. *Id.*

Second, plaintiffs contend that the referee should have utilized the selling price to determine true cash value. Since selling price is not conclusive evidence of a property's value, the referee was not bound to accept it as the true cash value. See *First City Corp, supra* at 155, and *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992).

Third, plaintiffs claim that some of the tribunal's factual conclusions are unsupported, including the determination that the seller was under duress when plaintiffs purchased the property. Although findings of fact by the tax tribunal will be accepted as final if they are supported by "competent, material, and substantial evidence," *Jones, supra* at 352, the record presented to this Court is sparse, contains conclusory statements and does not provide sufficient information upon which this Court can review the challenged factual determinations. Accordingly, we remand for clarification of the facts and evidence upon which the referee relied in making his findings of fact. *First City Corp, supra* at 113.

Finally, plaintiffs claim that their 1994 assessment actually set the true cash value at $154,000. On appeal, they submit their assessment notice to support this contention. The referee, however, specifically noted that the 1994 assessment set the true cash value at $230,000. The referee revised the

assessment based on the latter value. On remand, the referee should clarify the 1994 true cash value. Contrary to plaintiffs' contention, the referee would not be bound by the lower appraisal, but could increase or decrease the assessment. *Clark Equipment Co v Leoni Twp*, 113 Mich App 778; 318 NW2d 586 (1979). However, the referee should clarify the basis for his decision.

We vacate the judgment and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs to either party.

/s/ Gary R. McDonald
/s/ E. Thomas Fitzgerald
/s/ Michael J. Matuzak

[1] Defendant's claim that this Court does not have jurisdiction is incorrect. When plaintiffs filed their claim of appeal, the argument that this Court did not have jurisdiction was made. This Court remanded the case for a determination as to when the motion for rehearing was filed. A subsequent order of determination by the tax tribunal held that plaintiffs' motion for rehearing filed on November 4, 1994, was timely. Therefore, the claim of appeal, filed after the denial of a rehearing on December 13, 1994, was also timely. Defendant's reasserted claim that it was not timely and that, therefore, this Court does not have jurisdiction must fail.