IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Robert L. Chapman	:	
	:	
v.	:	No. 553 C.D. 2014
	:	
Upset Sale Tax Claim Bureau of Wayne County, PA Held On September 9, 2013	:	Argued: December 8, 2014
	:	
Appeal of: Robert L. Chapman	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: January 15, 2015**

Robert L. Chapman (Taxpayer) appeals from the Order of the Court of Common Pleas of Wayne County (trial court) that denied Taxpayer's Exceptions and Objections (Objections) to the tax upset sale of his property (Property) by the Tax Claim Bureau of Wayne County (Tax Claim Bureau). On appeal, Taxpayer argues that the Tax Claim Bureau did not meet its burden of proving that it posted the Property in accordance with Section 602(e)(3) of the Real Estate Tax Sale Law[1]

[1] Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. § 5860.602(e)(3). Section 602(e)(3) requires that "[e]ach property scheduled for [tax upset] sale shall be posted at least ten (10) days prior to the sale." Id.

(Tax Sale Law), and that the trial court erred and/or abused its discretion in admitting and relying on the evidence offered by Wayne Tigue (Purchaser), who purchased the Property at the tax upset sale.[2] Discerning no error or abuse of discretion, we affirm.

I. Factual Background

The Tax Claim Bureau sold the Property, a 32.284 acre parcel located in Damascus Township, Wayne County (County), at a tax upset sale on September 9, 2013. (Objections ¶ 1, R.R. at 1a.) Taxpayer filed the Objections, asserting that the Tax Claim Bureau did not post the Property in accordance with Section 602(e)(3) because the tax upset sale notice (Notice) "was not affixed in a reasonable secured manner on the . . . [P]roperty in a conspicuous location." (Objections ¶ 8, R.R. at 2a.) The trial court held a hearing on March 4, 2014.

The Tax Claim Bureau presented the testimony of an employee of the County Assessment Office, Kenneth Crum, whose job duties include posting notices of tax upset sales on the properties being sold. (Trial Ct. Op. at 2.) Mr. Crum explained that, to locate the property being sold, he uses a Geographical Information System (GIS) and the County tax map, which are accessible on his vehicle's computer, but does not look at the property's deed. (Trial Ct. Op. at 2.) According to Mr. Crum, the GIS provides the rough boundary lines of a particular property. (Trial Ct. Op. at 2.) Mr. Crum testified that, on August 13, 2013, he posted the Notice of the sale of the Property on a large maple tree covered in poison ivy (Tree) which, by his calculations, was within fourteen to eighteen feet

[2] Purchaser intervened before the trial court.

of the Property's boundary line abutting Marks Road. (Trial Ct. Op. at 2.) Mr. Crum indicated that he stapled the four corners of the Notice to the Tree with one-half inch staples. (Trial Ct. Op. at 2.) Mr. Crum stated that the Tree also had a Chant Realty sign affixed to it. (Trial Ct. Op. at 2.)

Purchaser presented the testimony of Alfred Bucconear, a professional land surveyor, and Dale O'Dell, who has spent twenty-five years as Mr. Bucconear's surveyor's assistant. (Trial Ct. Op. at 2-3.) Mr. O'Dell testified that Mr. Bucconear sent him to roughly mark the Property's southeastern boundary line and find the relationship between that point and the Tree on which the Notice was posted. (Trial Ct. Op. at 3.) Because the Property had never been surveyed, Mr. O'Dell stated he used the Property's deed, tax maps, and the surveys of adjacent properties to complete his task. (Trial Ct. Op. at 3 & n.1.) Mr. O'Dell testified he visited the Property on December 26, 2013 and, based on his observations and research, he concluded the Tree was located on the Property and was thirteen feet from the Property's southeastern property line. (Trial Ct. Op. at 3.) Mr. O'Dell drew a sketch of the Tree's location on the Property based on his research and observations, which was admitted into evidence over Taxpayer's objection as Exhibit Tigue J (Sketch). (Trial Ct. Op. at 3.) The Sketch was not to scale. (Trial Ct. Op. at 3.) Mr. Bucconear testified he "conducted a general review of Mr. O'Dell's work," and concurred with Mr. O'Dell's field work. (Trial Ct. Op. at 3.) Mr. Bucconear indicated that the Sketch reflected a general review of the plans, maps, and records used in determining the relationship between the Property's boundary lines and the Tree on which the Notice was posted. (Trial Ct. Op. at 3-4.)

Taxpayer offered the testimony of Elaina Nouri, a licensed realtor for Chant Realty, who Taxpayer engaged to sell the Property. (Trial Ct. Op. at 4.) Ms. Nouri testified that, because no survey of the Property existed, she used an aerial map obtained from the County planning department to ascertain the location of the Property. (Trial Ct. Op. at 4.) Ms. Nouri explained that, using that map, she concluded the Tree was on the Property, and she attached the "For Sale" sign for the Property to the Tree. (Trial Ct. Op. at 4.)

The trial court found that the Tree is located on the Property, and the Tax Claim Bureau's posting of the Notice thereon complied with Section 602(e)(3) of the Tax Sale Law. (Trial Ct. Order.) Taxpayer argued in its Concise Statement of Errors Complained of on Appeal (Statement) that the Tax Claim Bureau did not meet its burden of proof and the trial court erred in admitting, and relying upon, the Sketch and Mr. Bucconear's testimony to deny the Objections. (Statement, R.R. at 16a-17a.) In response, the trial court stated that its findings were supported by the testimony of Mr. Crum, Mr. O'Dell, and Mr. Bucconear, all of whom used multiple means to ascertain the location of the Property and the Tree. (Trial Ct. Op. at 4.) The trial court held that it properly admitted the Sketch into evidence because its author, Mr. O'Dell, testified regarding its creation and the procedures he used in its creation. (Trial Ct. Op. at 4.) Taxpayer's appeal is now before this Court.[3]

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[3] "Our scope of review in tax sale cases is limited to determining whether the trial court abused its discretion, rendered a decision with a lack of supporting evidence, or clearly erred as a matter of law." Plank v. Monroe County Tax Claim Bureau, 735 A.2d 178, 181 n.6 (Pa. Cmwlth. 1999).

II. Taxpayer's Appeal to this Court

On appeal, Taxpayer argues that the trial court erred in holding the Tax Claim Bureau met its burden of proving that it posted the Property with the Notice because the Tax Claim Bureau did not produce evidence showing with certitude that the Tree is located within the Property's boundaries. Taxpayer asserts that the record is devoid of any definitive proof that the Tree is on the Property because: (1) Mr. Crum testified that the maps he used were not surveyor's maps and, when asked on cross-examination to identify the public road referred to in the Property's deed, he could not do so; and (2) Ms. Nouri was not absolutely certain that the Tree to which she attached the For Sale sign is on the Property. Taxpayer also argues that Purchaser's evidence should not be given any weight because Mr. O'Dell is not a licensed surveyor, the Sketch was not drawn by a licensed surveyor, and Mr. Bucconear had no firsthand knowledge of the location of the Property or the Tree, but based his expert opinion solely on Mr. O'Dell's inadmissible opinions, reports, and drawings.

Section 602(e)(3) requires that "[e]ach property scheduled for [tax upset] sale shall be posted at least ten (10) days prior to the sale." 72 P.S. § 5860.602(e)(3). Section 602(e)(3) does not set forth a particular method of posting a property, but we have interpreted that section as "mean[ing] that the method of posting must be *reasonable* and *likely* to inform the taxpayer of an intended real property sale." In re Tax Sale of 2003 Upset, 860 A.2d 1184, 1188 (Pa. Cmwlth. 2004) (emphasis added). A posted notice must be conspicuous enough to notify both the taxpayer and the public at large of the impending tax upset sale of the property. Ban v. Tax Claim Bureau of Washington County, 698 A.2d 1386, 1389 (Pa. Cmwlth. 1997). In reviewing whether a posting is reasonable, "this Court has

taken a practical and commonsense approach" that considers "the nature and location of the property and, of course, the placement of the [n]otice." Wiles v. Washington County Tax Claim Bureau, 972 A.2d 24, 28 (Pa. Cmwlth. 2009). The Tax Sale Law's notice provisions must be strictly construed, and it is the tax claim bureau that bears the burden of proving that it strictly complied with the notice provisions of the Tax Sale Law. Ban, 698 A.2d at 1388.

Although Taxpayer appears to challenge the reasonableness of the Tax Claim Bureau's posting of the Notice on the Tree, he is really challenging the weight and credibility the trial court gave to the testimony and evidence in this matter. It is well-settled that, in tax sale cases, the trial court is the finder of fact and "has exclusive authority to weigh the evidence, make credibility determinations and draw reasonable inferences from the evidence presented." In re Sale of Real Estate by Lackawanna County Tax Claim Bureau, 986 A.2d 213, 216 (Pa. Cmwlth. 2009).

Here, Mr. Crum and Ms. Nouri testified that, based on the multiple County maps and resources they used, the Tree on which the Notice was posted is on the Property. Mr. Crum concluded that the Tree is fourteen to eighteen feet within the Property's borders by: using the GIS mapping system, which he always uses to identify properties for tax upset sales; looking at the County Tax Map; measuring the road frontage of the Property to identify the Property's boundaries; and cross-referencing the Notice with Taxpayer's name, the tax map number, the control number, an aerial map of the Property, and the GIS map of the Property. (Hr'g Tr. at 5, 7-10, 14-20, R.R. at 61a-64a.) Ms. Nouri testified that: Taxpayer hired her to find a buyer for the Property; Taxpayer could not tell her where the Property was

and he did not have a survey of it; she went to the County's planning department and obtained an aerial map to find the Property; and using that map and a barn across the street as a guide she "believe[d she] put the sign on a tree on [Taxpayer's] property." (Hr'g Tr. at 91-93, R.R. at 82a-83a.)

Taxpayer asserts this testimony should not be relied upon because the witnesses acknowledged there is no survey map or deed description that absolutely places the Tree on the Property, and expressed some uncertainty in their conclusions. However, such matters go to the weight and credibility of a witness's testimony. See Commonwealth ex rel. Rook v. Myers, 167 A.2d 274, 276 (Pa. 1961) (stating "[a] mere variance in testimony, or the fact that a witness may have made contradictory statements, goes to the question of the credibility of the witness"); Commonwealth v. Grahame, 482 A.2d 255, 259 (Pa. Super. 1984) (holding that any uncertainty or indefiniteness in a witness's testimony goes to its weight). This testimony alone supports the trial court's finding that the Tree is on the Property, particularly because Taxpayer presented no evidence that the Tree is *not* on the Property.[4]

Applying the "practical and commonsense approach" that considers "the nature and location of the property and, of course, the placement of the [n]otice," Wiles, 972 A.2d at 28, the above testimony establishes that the Tax Claim Bureau took reasonable steps to identify the location of the Property and placed the Notice

[4] Other than Ms. Nouri's testimony, Taxpayer relied upon portions of the Property's deed to cross-examine Mr. Crum, Mr. O'Dell, and Mr. Bucconear in an attempt to create uncertainty regarding the Property's location.

in a conspicuous place on the Property that was reasonable and likely to inform the public at large and Taxpayer of the upcoming tax upset sale of the Property. In fact, Taxpayer's attempt to require the Tax Claim Bureau to present evidence showing the location of the Property with certitude and definitive proof, which we read as requiring absolute certainty as to the Property's location, is impractical and unreasonable. Accordingly, we find that the Tax Claim Bureau met its burden of proving that it posted the Property in accordance with Section 602(e)(3), and the trial court did not err in denying Taxpayer's Objections.

Notwithstanding this conclusion, we will address Taxpayer's claims, citing various rules of the Pennsylvania Rules of Evidence,[5] that the trial court erred and abused its discretion when it admitted and relied upon the Sketch and the opinions of Mr. O'Dell and Mr. Bucconear. "The admission of evidence is a matter vested

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[5] Taxpayer cites, *inter alia*, Rules 602, 701, and 702 of the Pennsylvania Rules of Evidence, Pa. R.E. 602, 701, 702. Rule 602 requires that a witness have personal knowledge of the matter about which the witness is going to testify. Pa. R.E. 602. Rule 701 provides, in relevant part, that "a witness [who] is not testifying as an expert" may not provide an opinion that is "based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Pa. R.E. 701. Rule 702 states that:

> [a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
>
> (a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;
>
> (b) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact at issue; and
>
> (c) the expert's methodology is generally accepted in the relevant field.

Pa. R.E. 702.

within the sound discretion of the trial court, and such a decision shall be reversed only upon a showing that the trial court abused its discretion." Commonwealth v. Reid, 811 A.2d 530, 550 (Pa. 2002).

In Miller v. Brass Rail Tavern, Inc., 664 A.2d 525 (Pa. 1995), our Supreme Court explained:

> It is well established in this Commonwealth that the standard for qualification of an expert witness is a liberal one. The test to be applied when qualifying an expert witness is whether the witness has **any** reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight given to such testimony is for the trier of fact to determine. . . . It is also well established that a witness may be qualified to render an expert opinion based on training and experience. . . . Formal education on the subject matter of the testimony is not required, . . . nor is it necessary that an expert be . . . licensed. . . . It is not a necessary prerequisite that the expert be possessed of all of the knowledge in a given field, . . . only that he possess more knowledge than is otherwise within the ordinary range of training, knowledge, intelligence or experience.

Id. at 528 (citations omitted) (emphasis in original). Applying this standard, our Supreme Court, in Miller, held that a trial court abused its discretion in refusing to qualify a non-physician coroner to testify as an expert regarding the time of death of a decedent because he did not have a medical degree. Id. at 528-29. The Supreme Court concluded that the coroner, who had twenty-seven years' experience as a licensed mortician and fifteen years' experience as a coroner, "may have specialized knowledge regarding the time of death which would not otherwise be known to a lay individual" and, therefore, the trial court abused its discretion in not allowing him to be qualified as an expert. Id. at 529.

Taxpayer argues that Mr. O'Dell does not qualify, by either education or experience, as an expert witness and, therefore, the trial court should not have relied upon his opinions and Sketch.[6] However, Mr. O'Dell testified that he had twenty-five years of experience as a surveyor's assistant for Mr. Bucconear, which required him to perform deed research, mapping, and field work. (Hr'g Tr. at 44, R.R. at 70a.) Mr. Bucconear confirmed Mr. O'Dell's twenty-five year employment as his surveyor's assistant. (Hr'g Tr. at 65, R.R. at 76a.) Mr. O'Dell explained that field work required him to "[d]etail [the] location of the property lines in the field" by "[l]ocating fences, stone walls, iron pins, property corners, center line[s] of road[s]." (Hr'g Tr. at 44, R.R. at 70a.) Mr. O'Dell was not required to have any formal education or a surveyor's license. Miller, 664 A.2d at 528. He only had to show that he had more knowledge than a lay person. Id. This Court concludes that Mr. O'Dell's description of his twenty-five years of experience satisfies the liberal standard described in Miller. Thus, the trial court did not err or abuse its discretion in relying on Mr. O'Dell's opinion, based on his research and field work, that the Tree is located on the Property. Similarly, because Taxpayer challenges the Sketch based on Mr. O'Dell's lack of specialized knowledge, the trial court did not err or abuse its discretion in admitting and considering the Sketch.

Taxpayer next argues the trial court erred and abused its discretion in considering Mr. Bucconear's expert opinions under Rule 602 of the Pennsylvania

[6] In his brief, Taxpayer asserts that the facts in Miller and the matter before us are similar and support his argument that Mr. O'Dell's opinion is inadmissible. (Taxpayer's Br. at 19-20.) However, the language Taxpayer relies upon is from the Superior Court's decision that upheld the trial court's decision, which our Supreme Court reversed. Miller, 664 A.2d at 527-29.

Rules of Evidence because Mr. Bucconear had no firsthand knowledge of the Property and he unreasonably relied upon Mr. O'Dell's non-expert field work and Sketch. However, Rule 602 "does not apply to a witness's expert testimony under Rule 703" of the Pennsylvania Rules of Evidence. Pa. R.E. 602. Rule 703 specifically provides that "[a]n expert may base an opinion on facts or data in the case that the expert *has been made aware of* or personally observed." Pa. R.E. 703 (emphasis added). Thus, Mr. Bucconear was not required to have firsthand knowledge to render an expert opinion.

Taxpayer finally claims that the trial court abused its discretion because Mr. Bucconear did not come to his own conclusion, but simply restated Mr. O'Dell's conclusion. Primavera v. Celotex Corporation, 608 A.2d 515, 521 (Pa. Super. 1992) (stating "[a]n 'expert' should not be permitted simply to repeat another's opinion or data without bringing to bear on it his own expertise and judgment"). An examination of Mr. Bucconear's testimony reveals, however, that Mr. Bucconear conducted a "[g]eneral review of all the evidence, as far as record evidence being maps, deeds, the field work that was done and the relationship and how they correlate to each other," and, based on that review, he agreed with Mr. O'Dell's opinion that the Tree was on the Property. (Hr'g Tr. at 65-66, R.R. at 76a.) Mr. Bucconear further explained that, in producing the Sketch, he reviewed "the particular plans and maps of record relating to the procedure that Mr. O'Dell used in order to create [the] boundary line to show the relationship between the [P]roperty line and . . . the [Tree] with the posting." (Hr'g Tr. at 67, R.R. at 76a.) For these reasons, we conclude that the trial court did not err or abuse its discretion

in considering Mr. Bucconear's opinions regarding the Tree's location on the Property.

Although not necessary, the opinions of Mr. O'Dell and Mr. Bucconear, as well as the Sketch, substantiate the testimony of Mr. Crum and Ms. Nouri. That evidence also provides additional support for the trial court's finding that the Tree is located on the Property and its conclusion that the Tax Claim Bureau complied with Section 602(e)(3) of the Tax Sale Law.

Accordingly, the trial court's Order is affirmed.

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RENÉE COHN JUBELIRER, Judge

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v.	:	No. 553 C.D. 2014
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Appeal of: Robert L. Chapman	:	

ORDER

NOW, January 15, 2015, the Order of the Court of Common Pleas of Wayne County, in the above-captioned matter, is hereby **AFFIRMED**.

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RENÉE COHN JUBELIRER, Judge