

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gerald Nesvold and  
Elizabeth Nesvold, his wife

:  
: No. 561 C.D. 2014  
: Submitted: October 6, 2014

v.

Schuylkill County Board of Assessment  
Appeals, Schuylkill County  
Commissioners, Borough of Girardville  
and North Schuylkill School District

Appeal of: Schuylkill County Board  
of Assessment Appeals and  
Schuylkill County Commissioners

BEFORE: HONORABLE DAN PELLEGRINI, President Judge  
HONORABLE BERNARD L. MCGINLEY, Judge (P.)  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION

BY SENIOR JUDGE FRIEDMAN<sup>1</sup>

FILED: November 17, 2014

The Schuylkill County Board of Assessment Appeals (Board) appeals from the March 6, 2014, order of the Court of Common Pleas of Schuylkill County (trial court), which directed Schuylkill County (County) to amend its records to reflect a fair market value of \$3,000 for property located at 18 Ogden Street in the Borough of Girardville (Property). We affirm.

On January 14, 2013, the Schuylkill County Tax Claim Bureau (Bureau) filed a petition for a judicial sale of the Property. On April 16, 2013, the Bureau advertised the judicial sale in the appropriate publications with a sale amount of \$810. At the judicial sale on May 17, 2013, Gerald and Elizabeth Nesvold made an opening

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<sup>1</sup> This Opinion was reassigned to the author on October 28, 2014.

bid of \$810. The bidding escalated until the Nesvolds ultimately purchased the Property for \$3,000.<sup>2</sup>

The County's records indicated that the current fair market value of the Property was \$17,021, of which \$6,570 was attributable to land and \$10,451 was attributable to improvements, and the total assessed value was \$8,510. The Nesvolds appealed the County's assessment to the Board, which denied the Nesvolds' request to set the fair market value at \$3,000. The Nesvolds appealed to the trial court.

The trial court held a *de novo* hearing on January 16, 2014.<sup>3</sup> The parties stipulated to most of the relevant facts. The Board presented the County's records reflecting the Property's fair market value as \$17,021. Gerald Nesvold then testified to his personal knowledge of the Property's condition. He explained that the Property was "part of a three house row. My wife and I own No. 14 and 16 which is adjoining this 18 West Ogden Street." (N.T., 1/16/14, at 6.) Nesvold testified that he had seen squatters stay for a short period of time at the Property and then leave. (*Id.* at 7.) With respect to the Property's value, Nesvold stated, "My opinion is it was worth

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<sup>2</sup> If no one had purchased the Property, it would have returned to the Bureau's repository for unsold properties, where the Bureau could have accepted an offer of any price. Section 627(a) of the Real Estate Tax Sale Law (RETSL), Act of July 7, 1947, P.L. 1368, *as amended*, added by section 43 of the Act of July 3, 1986, P.L. 351, 72 P.S. §5860.627(a). Once a property is sold from the repository, the sale price is deemed to be the fair market value of the property for tax assessment purposes. Section 628 of RETSL, added by section 43 of the Act of July 3, 1986, P.L. 351, 72 P.S. §5860.628.

<sup>3</sup> "The duty of the trial court in hearing a tax assessment appeal *de novo* is to independently determine the fair market value of the parcel on the basis of the competent, credible and relevant evidence presented by the parties." *Westinghouse Electric Corporation v. Board of Property Assessment, Appeals and Review of Allegheny County*, 652 A.2d 1306, 1311 (Pa. 1995) (citation omitted).

\$3,000 to me because I own the other houses. The value of the property I would say was maybe a thousand dollars. There isn't a square corner. There isn't a plumb wall. There isn't a level floor. It's atrocious." (*Id.* at 8-9.) Nesvold further explained the condition of the Property as follows:

[T]he electrical was substandard in that cables were just hanging out loose. There was no water hookup. There was no sewer hookup. There's a hole in the floor in the basement about a foot or so in diameter that's full of water and then rises into the basement by several inches whenever there's a little bit of rain.

There is as I've already indicated the condition of the walls and ceilings were deplorable. In fact, it's called a plank house. There are no studs in the walls, absolutely no studs. So if you want to run electrical wire or pipes it has to be on the surface, the inside surface.

(*Id.* at 12-13.) Nesvold also testified that the Property had no working heat, all of the radiators were broken, and some plumbing had been removed. (*Id.* at 13.) Nesvold reiterated his opinion that the fair market value of the Property was \$3,000, the price he paid for it. (*Id.* at 14.)

By order dated March 14, 2014, the trial court accepted the Nesvolds' valuation of the Property and directed the County to amend its records to reflect the fair market value as \$3,000. The trial court specifically credited Gerald Nesvold's testimony regarding the Property's condition and current fair market value. The trial court concluded:

[T]he judicial sale price of \$3,000 was not the sole or controlling factor in our determination that the [P]roperty's fair market value is \$3,000. Rather, it was Dr. Nesvold's testimony regarding the current condition of the [P]roperty that we found most relevant, credible and sufficient to

overcome the presumed correctness of the Board's assessment. . . . It appeared to this Court that Nesvold had knowledge of the value of the [P]roperty, and testified that in his opinion it was actually worth \$1,000. The Nesvolds paid more than that at the judicial sale because the \$3,000 was set by active public bidding. The owner may have had to sell the [P]roperty under duress, but the judicial price was set at \$810 by the [Bureau], not the owner, and the [P]roperty was exposed to public active bidding which resulted in a sale price at \$3,000. If the [P]roperty had not been sold at the judicial sale, it would have been returned to the Bureau's repository, and offered for sale at \$810, and if the Nesvolds had then agreed to purchase the [P]roperty from the Bureau for \$810, that by law is deemed to be the fair market value of the [P]roperty for tax assessment purposes. 72 P.S. §§ 5860.627, 5860.628. The Board and the Nesvolds stipulated to this prior to the hearing. It does not make sense to say that a \$3,000 sales price, arrived at through active public bidding at a judicial sale, cannot be accepted as fair market value, but an \$810 sales price can be, if the [P]roperty fails to sell at a judicial sale.

(Trial Ct. Op. at 5-6.) The Board now appeals from that decision.<sup>4</sup>

On appeal, the Board asserts that the trial court erred in determining that the fair market value of the Property was \$3,000 because the Nesvolds failed to present sufficient evidence to overcome the Board's *prima facie* case. *See Timber Trails Community Association v. County of Monroe*, 614 A.2d 342, 345 (Pa. Cmwlth. 1992) (stating that once the county establishes a *prima facie* case as to valuation, the burden shifts to the taxpayer to present sufficient, competent, and credible evidence

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<sup>4</sup> “In a tax assessment appeal, our scope of review is limited to determining whether the trial court abused its discretion or committed an error of law or whether its decision is supported by substantial evidence.” *Church of the Overcomer v. Delaware County Board of Assessment Appeals*, 18 A.3d 386, 388 n.1 (Pa. Cmwlth. 2011) (*en banc*).

of the fair market value). The County's assessment records reflected a fair market value of \$17,021 and an assessed value of \$8,510. Under section 8842(b)(1)(i) of the Consolidated County Assessment Law, 53 Pa. C.S. §8842(b)(1)(i), in determining a property's value, "the price at which any property may actually have been sold, either in the base year or in the current taxable year, shall be considered but shall not be controlling." Thus, the Board contends that the Nesvolds were required to present evidence of the Property's value other than the sale price, which they failed to do. We disagree.

We conclude that the Nesvolds presented sufficient, credible evidence to overcome the Board's *prima facie* case. The trial court did not rely solely on the final sale price to set the fair market value. The trial court also relied on Gerald Nesvold's testimony regarding the actual condition of the Property, which the trial court found credible and competent. (Trial Ct. Op. at 5-6.) As the owner of the Property and the adjacent properties, Nesvold was competent to offer his opinion as to the Property's value based on his first-hand knowledge of its condition. *See Silver v. Television City, Inc.*, 215 A.2d 335, 339 (Pa. Super. 1965) (stating that an owner of real property "is competent to testify as to its value" unless "it plainly appears that the owner has no knowledge of the value he expresses an opinion about"). The Board admits that it offered no evidence to rebut Nesvold's testimony. (Board's Br. at 12.) "Where the taxpayer's testimony is relevant, credible and un-rebutted [sic], the court must give it due weight and cannot ignore it in determining a property's fair market value." *Koppel Steel Corporation v. Board of Assessment Appeals of Beaver County*, 849 A.2d 303, 307 (Pa. Cmwlth. 2004). The trial court did not err or abuse its discretion in setting the fair market value of the Property at \$3,000.

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 17<sup>th</sup> day of November, 2014, we hereby affirm the March 6, 2014, order of the Court of Common Pleas of Schuylkill County.

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ROCHELLE S. FRIEDMAN, Senior Judge