

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS P. ALBERTS,

Plaintiff-Appellee,

v

CITY OF ORCHARD LAKE,

Defendant-Appellant.

UNPUBLISHED

January 31, 1997

No. 187882

Michigan Tax Tribunal

LC No. 00-2100025

Before: Doctoroff, C.J., and Corrigan and R.J. Danhof,* JJ.

PER CURIAM.

Respondent appeals as of right from a decision of the Michigan Tax Tribunal revising the 1994 property tax assessment for petitioner's residential property. We reverse and remand.

The property at issue is improved, lake-front property containing a 1.75 story home with approximately 7,025 square feet of living space, 4-1/2 bathrooms, a three car garage, four fireplaces, a deck and several porches. The property was sold in 1992 for \$850,000. In July 1993, petitioner purchased the property from the 1992 buyer for \$750,000. Respondent assessed the property for the 1994 tax year at \$536,800, based on a true cash value of \$1,073,600.

Petitioner filed a petition with the Michigan Tax Tribunal requesting that the assessed value be revised to \$375,000, based on a true cash value of \$750,000, in accordance with the July 1993, purchase price. A hearing was conducted in the small claims division of the Tax Tribunal. In support of its assessment, respondent submitted an appraisal that employed the sales comparison approach to determine the true cash value of the property. Petitioner conducted a separate analysis of the same properties used by respondent in its appraisal. Following the hearing, the Tax Tribunal issued its opinion and judgment determining that the true cash value of the property for 1994 was \$750,000. In reaching its decision, the tribunal stated that it found petitioner's market analysis "to be the most accurate and thus the best indication of the property's value." This appeal followed.

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

When fraud is not alleged, this Court reviews a decision of the Tax Tribunal to determine whether the tribunal committed an error of law or adopted a wrong legal principle. Const 1963, art 6, § 28; *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 482; 473 NW2d 636 (1991). All factual findings are final if supported by competent and substantial evidence. *Id.*

Respondent first argues that petitioner's market analysis was based on an erroneous application of the sales comparison approach and, therefore, the tribunal adopted a wrong legal principle when it measured true cash value in reliance on petitioner's market analysis. We agree.

The Tax Tribunal is required to make an independent determination of the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). Cash value means the usual selling price of the property at the time of assessment, being the price that could be obtained for the property at a private sale. MCL 211.27; MSA 7.27; *Jones & Laughlin Steel Corp, supra*.

In this case, both parties looked to the sales comparison approach to determine the true cash value of petitioner's property. The sales comparison approach attempts to determine true cash value

. . . by analyzing recent sales of similar properties, comparing them with the subject property, and adjusting the *sales price* of the comparable properties to reflect differences between the two properties. *Meadowlanes Limited Dividend Housing Ass'n, supra* at 485, n 19. [Emphasis added.]

The record indicates that petitioner's market analysis was not performed according to this method. Rather, after petitioner made his adjustments to account for alleged differences between the property in question and the comparable properties, he applied those adjustments to the *assessed* true cash value of the comparable properties instead of the actual *sales price*. Employing this method, petitioner arrived at an average net value of \$744,899 for the property in question. The record indicates that if petitioner's adjustments were applied to the actual sales price of the comparable properties, as required under a proper application of the sales comparison approach, the resulting average net value would be \$912,080. Because petitioner's methodology was based on an improper application of the sales comparison approach, the tribunal adopted a wrong principle when it measured the property's true cash value using petitioner's approach. See *Meadowlanes Limited Dividend Housing Ass'n, supra* at 494.

Petitioner contends that reversal is not required because the tribunal determined true cash value in reliance upon the 1993 purchase price of the property, not his market analysis. To be sure, in its decision the tribunal stated, "The price paid by Petitioner for the property in question is accepted as the better measure of value in this matter." However, the tribunal also stated:

Valuation method most indicative of the true cash value for the subject property:
The Tribunal recognizes Petitioner's market methodology to be the most accurate and
thus the best indication of the property's true cash value.

The tribunal's decision fails to reconcile the above statement with the statement accepting the 1993 purchase price of \$750,000 as the true cash value of the property. We note that while the purchase price of a particular piece of property constitutes evidence of its value, it is not conclusive. *Antisdale v City of Galesburg*, 420 Mich 265, 278; 362 NW2d 632 (1984); *Jones & Laughlin Steel Corp*, *supra* at 354. Although it is unclear from the record, the tribunal may have accepted the 1993 purchase price as the true cash value of the property because that amount closely resembled the \$744,899 average net value reflected in petitioner's market analysis. In any event, because the tribunal clearly indicated in its decision that it relied upon petitioner's market analysis as a measure of the property's true cash value, and because that analysis is legally flawed, reversal is required.

Respondent also argues that the tribunal erred in allowing petitioner to testify regarding various items of value without being qualified as an expert witness knowledgeable in such matters. Our review of this issue is hindered, however, due to the absence of explicit findings of fact.

A decision of the tribunal must include a concise statement of the facts and conclusions of law, stated separately. MCL 205.751(1); MSA 7.650(51)(1). Adequate findings are particularly important in proceedings before the small claims division, *Oldenburg v Dryden Twp*, 198 Mich App 696, 699; 499 NW2d 416 (1993); *Granader v Southfield Twp*, 145 Mich App 585, 588; 377 NW2d 893 (1985), inasmuch as MCL 205.762(3); MSA 7.650(62)(3) provides that "[a] formal record need not be taken of [small claims] proceedings."

Here, while the tribunal summarized the arguments of the parties and the evidence presented, it failed to make explicit findings of fact based on those arguments or evidence. We note that a lay witness is generally regarded as competent to testify concerning the value of property if the witness is familiar with the property and has knowledge of the value of the property or of other lands in the immediate vicinity. *Grand Rapids v Terryberry Co*, 122 Mich App 750, 753; 333 NW2d 123 (1983); *Equitable Building Co v City of Royal Oak*, 67 Mich App 223, 226-227; 240 NW2d 489 (1976). In this case, however, because of the absence of a formal record and the lack of explicit findings of fact, we are unable to ascertain the exact testimony given by petitioner, nor are we able to determine whether petitioner possessed sufficient knowledge of the matters involved such that he was competent to testify. On remand, we remind the tribunal that a concise statement of facts will aid this Court in reviewing decisions of the tribunal. *Granader, supra* at 588-589.

Respondent also complains that the tribunal erroneously treated the statements of petitioner's attorney as evidence. In its decision, the tribunal referred to the statements of petitioner's attorney as evidence in the case. It is well established that the arguments of counsel are not evidence. *Zantop International Airlines, Inc v Eastern Airlines*, 200 Mich App 344, 364; 503 NW2d 915 (1993); SJ12d 3.04. Although petitioner contends that his attorney gave no factual testimony and only made appropriate legal arguments based on the evidence presented, the absence of a formal record precludes

us from verifying the accuracy of this representation. Once again, we remind the tribunal that a concise statement of facts will aid this Court in determining whether the tribunal's decision was predicated on only properly considered evidence.

Finally, respondent argues that the tribunal erred by failing to consider its appraisal. In its decision, the tribunal summarized the evidence presented by respondent as follows:

Respondent presented the following evidence at the hearing: testimony of assessing personnel; and the assessment record card for the subject property.

The tribunal's opinion and judgment does not specifically refer to respondent's appraisal, thereby making it unclear to what extent the appraisal was considered, if at all. Although the tribunal is not bound to accept respondent's appraisal, a cursory rejection without any discussion of why the appraisal does not reflect the true cash value of the property would be erroneous. See *Jones & Laughlin Steel Corp, supra* at 354-356.

Accordingly, for the foregoing reasons, we reverse the decision of the Tax Tribunal and remand the case to the tribunal for a redetermination of the true cash value of the subject property in a manner consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Maura D. Corrigan

/s/ Robert J. Danhof