STATE OF MICHIGAN

COURT OF APPEALS

GEORGE TESSERIS and ALEX VANIS, Plaintiffs-Appellants,	UNPUBLISHED July 27, 1999
v	No. 194963 Michigan Tax Tribunal
MERIDIAN TOWNSHIP, Defendant-Appellee.	LC No. 00125184

Before: Fitzgerald, P.J., and Holbrook, Jr., and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted from a Michigan Tax Tribunal order upholding a special assessment levied against their property by defendant for a drain improvement project. We affirm in part and reverse in part.

I

This is the second time this matter has been before this Court. Plaintiffs own 9.34 acres of land in Meridian Township. In 1989, defendant levied a special assessment on plaintiffs' property in the amount of $162,362.07. Plaintiffs appealed to the Michigan Tax Tribunal, which affirmed the special assessment. On appeal to this Court, plaintiffs argued that the special assessment was excessive because (1) it was substantially and unreasonably disproportionate to the enhanced value of the property , and (2) it was improperly calculated. In an unpublished memorandum opinion, this Court concluded that although the method of computing the assessment was valid, the Tax Tribunal erred in failing "to resolve the factual questions whether there was an enhanced value to petitioners' property after the completion of the project and whether the assessment was proportional to the enhanced value." *Tesseris v Meridian Twp*, unpublished memorandum opinion of the Court of Appeals, issued December 9, 1994 (Docket No. 153304). On remand, the Tax Tribunal concluded (1) that as a result of the drain project, plaintiffs' property had increased in value by $90,000, and (2) that the special assessment was proportionate to the enhanced value.

II

A

Plaintiffs argue that the tribunal failed to properly address the issues of whether there was an increased value to plaintiffs' property as a result of the drain improvement and whether the special assessment was proportionate to that increase. We disagree. Whether the tribunal failed to adequately address these issues is a question of law that will be reviewed de novo. *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995).

In *Oldenburg v Dryden Twp*, 198 Mich App 696, 700-701; 499 NW2d 416 (1993), we indicated that the Tax Tribunal's findings of fact must be detailed enough to facilitate "meaningful appellate review" and that they must enable us to "ascertain what evidence and reasoning was relied upon by the tribunal." Here, despite the tribunal's failure to give reasons for adopting defendant's pre- and post-improvement property appraisal values over plaintiffs' appraisal values, there still exists the possibility that we can determine whether the tribunal's decision to accept $90,000 as the increased value of plaintiffs' land was based on "competent, material, and substantial evidence on the record as a whole." *Id.* at 698. The lower court record, including the specific methodology of the two appraisers, is lengthy and detailed. Moreover, the tribunal indicated—albeit in a conclusory fashion—its findings of fact, as separated from the law it applied. See *Holden v Ford Motor Co*, 439 Mich 257, 269 n 20; 484 NW2d 227 (1992). Therefore, we reject plaintiffs' assertion that the tribunal failed to adequately address the issue of whether there was an increased value to plaintiffs' property. We also reject plaintiffs' assertion that the tribunal failed to address the issue of proportionality. The record reveals that the tribunal explicitly addressed the proportionality issue in its opinion on remand, concluding that the special assessment was proportionate and providing reasons for this conclusion.

B

Next, plaintiffs argue that the Tax Tribunal erred in concluding that plaintiffs' property had increased in value by $90,000 as a result of the drain improvement. We again disagree. "In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong legal principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994).

Special assessments assigned by municipal agencies enjoy a presumption of validity. *Storm v City of Wyoming*, 208 Mich App 45, 46; 526 NW2d 605 (1994). In order to challenge a special assessment, a plaintiff must "present credible evidence to rebut the presumption that the assessment [is] valid." *Kadzban v Grandville*, 442 Mich 495, 505; 502 NW2d 299 (1993); *Storm, supra* at 46. If no such evidence is presented, the Tax Tribunal may not modify a special assessment. *Storm, supra* at 46-47. Here, plaintiffs rebutted the presumption of validity by presenting the testimony of an

experienced appraiser, who opined that the value of the land did not increase as a result of the drain improvement.

Given that plaintiffs rebutted the presumption of validity, we next examine whether the trial court's adoption of the $90,000 figure given by defendant's appraiser was appropriate. After reviewing the record, we conclude that the $90,000 figure is supported by competent, material and substantial evidence. *Kadzban, supra* at 502.

C

Finally, plaintiffs argue that the special assessment levied against their property was disproportionate. We agree. As stated in *Dixon Rd Group v Novi*, 426 Mich 390, 403; 395 NW2d 211 (1986), "while decisions made by municipalities with respect to special assessments generally should be upheld, this Court will intervene where there is a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements." The *Dixon* Court held that because the special assessment it was faced with was 2.6 times the increase in market value of the parcel of property, the special assessment at issue was substantially or unreasonably disproportionate. *Id.* Here, the special assessment was approximately 1.8 times the increase in market value of the property. The Tax Tribunal concluded that this proportionality was reasonable.

In discussing the proportionality issue, the *Dixon* Court stated the following:

> There is general agreement that there must be some proportionality between the amount of the special assessment and the benefit derived therefrom. Although various formulations of this relationship have been stated, the concept of proportionality is not new in Michigan. In *Fluckey v Plymouth*, 358 Mich 447; 100 NW2d 486 (1960), this Court found that no benefits accrued to the property as a result of the special assessment, but *the Court also stated that the amount of the property increased in value as a result of the expenditure had to be at least equal to the amount of the assessment*. . . . In another case we stated that there must be reasonable proportionality between the amount of the assessment and the value of the benefits. . . . We have also suggested that we would not invalidate a special assessment unless there was a "substantial excess" between the cost of an improvement and the benefits accruing to the land as a result. . . .
>
> While *we certainly do not believe that we should require a rigid dollar-for-dollar balance between the amount of the special assessment and the amount of the benefit*, a failure by this Court to require a reasonable relationship between the two would be akin to the taking of property without due process of law. . . . [*Id.* at 401-403 (emphasis added) (footnote deleted).]

Accordingly, while pursuant to *Dixon* some variation between the assessment amount and the increased value is acceptable, we conclude that a special assessment 1.8 times the increase in value is

unreasonably disproportionate.[1] Therefore, we hold the special assessment invalid. See *Michigan Bell, supra* at 476.

Affirmed in part and reversed in part. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell