STATE OF MICHIGAN

COURT OF APPEALS

ELEANOR RECHSTEINER,

Plaintiff-Appellee,

v

TOWNSHIP OF BLUMFIELD,

Defendant-Appellant.

UNPUBLISHED
February 22, 2002

No. 224775
Tax Tribunal
LC No. 00-246853

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

Defendant township appeals as of right from an opinion and judgment of the Tax Tribunal that revised a special assessment on plaintiff's real property from $7,500 to $5,100. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff owns property in a special assessment district created to install a water main through a portion of defendant township. The special assessment levied against the affected property owners was $7,500 payable over twenty years. Plaintiff challenged the special assessment as invalid as applied to her because it was unreasonably disproportionate to the increased value of her property attributable to the installation of the water main.

A special assessment is a levy designed to recover the costs of improvements that confer local and peculiar benefits on property within a defined area. *Kadzban v Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993). Two requirements must be met in order for a special assessment to be deemed valid: (1) the improvement funded by the special assessment must confer a special benefit upon the assessed properties beyond that provided to the community as a whole, and (2) the amount of special assessment must be reasonably proportionate to the benefits derived from the improvement. *Ahearn v Bloomfield Twp*, 235 Mich App 486, 493; 597 NW2d 858 (1999); *Dixon Rd Group v Novi*, 426 Mich 390, 398-403; 395 NW2d 211 (1986). In order for an improvement to be considered to have conferred a "special benefit," it must cause an increase in the market value of the land. *Ahearn*, *supra* at 493. An increase in market value is also relevant to the inquiry whether the benefit is proportional to the cost incurred. *Id.*

At a hearing before the Tax Tribunal, both sides presented expert testimony regarding the increase in value to the property as a result of the availability of municipal water. Plaintiff's appraiser testified that the average increase in value attributable to having municipal water was $2,500. Defendant's appraiser testified that the availability of municipal water increased the

market value an average of $5,100. Other evidence primarily addressed water quality in the area and the health, safety, and economic benefits of municipal water availability.

Municipal decisions regarding special assessments are presumed to be valid. *Kadzban, supra* at 502. To effectively challenge a special assessment, a plaintiff must at a minimum present credible evidence to rebut the presumption that the assessments are valid. *Storm v Wyoming*, 208 Mich App 45, 46; 526 NW2d 605 (1994). In this case, the Tax Tribunal found that plaintiff overcame her burden by showing the disproportionality between the amount of the special assessment and the value that accrued to the subject property. With respect to the proportionality inquiry, the tribunal compared the state equalized value of plaintiff's property in 1997 and 1998, and reasoned that the property had

> a 1997 state equalized value (SEV) of $21,142.00, reflecting a true cash value of $42,284.00. The 1998 assessed value is $22,161.00, a $1,019.00 increase over 1997, reflecting a $2,038.00 increase in TCV [true cash value] or 4.82%. The special assessment of $7,500.00 represents 17.74% of the 1997 TCV of the subject property or 3.68 times larger than the increase realized in TCV between 1997 and 1998. The Tribunal finds the cost of improvements exceeded the increase in value derived by substantially more than the 2.6 times the Court found to be disproportional in *Dixon, supra.*
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> Respondent's own appraisal determined . . . the . . . value accrued to property at $5,100.00 or $2,400.00 less than the special assessment. The special assessment spread of $7,500.00 is over 47% more than Respondent's own appraisal determined . . . [the] increased value to be.

Finally, the tribunal found plaintiff's $2,500 appraisal "unpersuasive" and concluded that while it had no basis to completely strike down the special assessment, defendant's $5,100 valuation was supported. Accordingly, it revised plaintiff's special assessment to that figure.

On appeal, defendant contends that the Tax Tribunal erred as a matter of law in revising the special assessment and substituting its judgment for that of the township. A decision of the Tax Tribunal regarding a special assessment is reviewed to determine whether it is supported by competent, material, and substantial evidence on the whole record. *Bates v Genesee Co Rd Comm*, 133 Mich App 738, 743; 351 NW2d 248 (1984).

We agree with defendant. As noted above, a municipality's decisions regarding a special assessment are presumed to be valid. Plaintiffs must, at a minimum, present credible evidence to rebut the presumption that the assessment is valid, and without such evidence, the Tax Tribunal has no basis to strike down a special assessment. *Storm, supra* at 46; *Kadzban, supra* at 505. In this case, plaintiff's evidence consisted of her own testimony regarding the quality of her well water and her appraiser's estimate, deemed unpersuasive by the Tax Tribunal, that the increased value of her property was $2,500. That evidence was insufficient to overcome the presumption that the assessment was valid. Compare *Storm, supra* at 47-48. While the assessor's cards used by the Tax Tribunal to ascertain the SEV of plaintiff's property were attached to an appraisal prepared by plaintiff's witness, plaintiff never specifically offered them as evidence of disproportionality and she never argued that the special assessment was disproportional when compared to the assessed value of the property. In any event, as defendant argues and plaintiff

concedes, the Tax Tribunal's SEV-based analysis was fundamentally flawed because the change in the SEV could be attributable to any number of unspecified factors and not necessarily to the water main construction. For this reason, we conclude that the finding of disproportionality was not based on competent evidence.

Plaintiff argues that the tribunal's erroneous use of the SEV to conclude that the special assessment was disproportional was harmless because the Tax Tribunal also compared the testimony that plaintiff's property increased in value by $5,100 to the special assessment amount and found that the forty-seven percent discrepancy was disproportional. This argument is premised on facts not placed into evidence by plaintiff, however; the $5,100 appraisal was part of defendant's case. Plaintiff also recognizes this problem, but claims that it is overcome by this Court's mandate to view the evidence on the whole record. However, that reasoning essentially destroys the presumption that special assessments are valid and the concomitant requirement that plaintiffs come forward with evidence rebutting that presumption. We therefore conclude that the error was not harmless.

Reversed.

/s/ Michael R. Smolenski
/s/ Martin M. Doctoroff
/s/ Donald S. Owens