

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Timothy J. Monti and Kelly A. Monti :
Trustees of the Monti Living Trust, :
Appellants :
 : No. 2562 C.D. 2010
v. :
 : Submitted: September 13, 2011
Northumberland County Board of :
Assessment, Milton Area School :
District and West Chillisquaque :
Township :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: December 8, 2011

Timothy J. Monti and Kelly A. Monti, Trustees of the Monti Living Trust (the Montis), appeal from the November 4, 2010, order of the Court of Common Pleas of Northumberland County (trial court) denying their petition for review of an assessment by the Northumberland County Board of Assessment (Board).

The Montis are the owners of property located at 4305 State Route 45 in West Chillisquaque Township, Milton, Pennsylvania. The property consists of approximately 12.482 acres, is zoned AP-Ag Preservation, and contains a new home and new barn. Following construction of this new home and barn in March of 2009, the property was assessed at \$77,450. The Montis appealed to the Board under a

theory of equalization as set forth in section 602(a) of the now-repealed The Fourth to Eighth Class County Assessment Law (Assessment Law).¹ The Board slightly reduced the Montis' assessment to \$75,660. The Montis thereafter filed a petition for review of the Board's assessment with the trial court. However, the Montis only challenged the assessment of their barn and its overhang.

The trial court conducted a hearing on April 7, 2010. During his testimony, Kelly Monti explained comparisons she and her husband had done based upon a review of county tax records. Kelly Monti indicated that the prices per square foot of her barn and overhang were \$7.15 and \$3.69, respectively, while the county prices per square foot for similar barns and overhangs averaged \$3.32 and \$0.44.² The Board presented the testimony of Marshall Hummel, a field assessment supervisor for Northumberland County responsible for maintaining the County's assessment records. Hummel actually assessed the Montis' property and he explained his valuation of the same. Hummel noted that the barn contained a second level and a concrete floor and that the overhang exceeded 400 square feet, all of which increased the respective valuations. During this testimony, the Board

¹ Act of May 21, 1943, P.L. 571, as amended, 72 P.S. §5453.602(a), *repealed by* section 6(1)(ii) of the Act of October 27, 2010, P.L. 895, effective January 1, 2011. The Assessment Law was replaced by the Consolidated County Assessment Law, 53 Pa. C.S. §§8801-8868, also effective on this date. A similar provision can be found at section 2 of the Consolidated County Assessment Law, 53 Pa. C.S. §8842. Both provisions state that the county assessment office shall attempt to accomplish equalization of similar properties within the county.

² Kelly Monti indicated that she relied solely on the County's tax assessment records, which include replacement value and square footage, in making her calculations. Regarding her property, she simply divided the replacement value of her barn by the barn's actual square footage to arrive at the price per square foot ($20,110 \div 2,812 = 7.15$). Kelly Monti noted that the overhang was assessed separately but she utilized the same formula in calculating the price per square foot.

introduced into evidence a copy of the property assessment card for the Montis' property.

By order dated April 12, 2010, the trial court held that it could not make proper findings regarding the market value of the property or the applicable common level ratio (CLR), as required by then section 702(b)(1) and (2) of the Assessment Law, 72 P.S. §5453.702(b)(1), (2). Hence, the trial court stated that the matter would be further heard, upon the request of either party, to provide additional evidence. On August 3, 2010, the Montis filed a petition with the trial court requesting a hearing to present additional evidence and raising a uniformity challenge, i.e., alleging that the assessment to value ratio of their property was nearly three times that of comparable properties. In support of this allegation, the Montis attached to this petition a recent appraisal with comparisons of purportedly similar properties. The Board responded by asserting that the Montis should be precluded from raising a uniformity challenge until the next tax appeal period because they failed to raise this issue in their initial appeal, wherein they only raised an equalization issue.

Nevertheless, the trial court granted the Montis' petition and conducted a hearing on October 26, 2010. At this hearing, the parties stipulated the Montis' property had an appraised value of \$530,000. Timothy Monti testified regarding the assessment of his property and the calculated assessment to value ratio of 14.3%, which he calculated by dividing the assessed value (\$75,660) by the appraised value (\$530,000). Timothy Monti noted that, based upon County tax assessment records, the assessment to value ratio of four comparable properties was 9.0%, 5.6%, 4.9%, and 3.2%. The Montis also presented the testimony of their appraisal expert, Mary Beth Rodriguez. Rodriguez discussed her appraisal report and the four comparable properties contained therein. Rodriguez indicated that she visited all of the

properties, reviewed recent sales information contained on a multiple listing service, reviewed assessment cards and deeds, and spoke to the buyers, sellers, or appraiser involved with three of the four properties.

The Board again presented the testimony of Hummel. Hummel testified that each month the County provides the State Tax Equalization Board (STEB) with a record of every real property transaction that occurs within the County and that STEB compiles an annual report based upon this data. Hummel noted that he personally keeps a database of every sale for the last three years. Hummel compiled from this database a list of 65 higher end residential sales within the County over the last three years, i.e., properties that were sold for \$250,000 or more. Hummel explained that the list contains the parcel number, township, sales price, assessed value, and assessment to value ratio for each of these sales. Hummel indicated that the average assessment to value ratio for the 65 properties was 13.05%, compared to 14.3% for the Montis' property.³ Hummel also indicated that the CLR for the tax year at issue was 22.6%. On cross-examination, Hummel acknowledged that his list of properties was only comparable to the Montis' property in that they are all higher end quality homes. Hummel did not refute the testimony of Rodriguez regarding the four properties that she used as comparables.

By opinion and order dated November 4, 2010, the trial court denied the Montis' petition for review and adopted the Board's assessment. The trial court noted that the list presented by Hummel included a large number of high end residential properties with assessment to value ratios between 13.25% and 20.75%. The trial court identified three properties from Hummel's list which closely matched

³ The list compiled by Hummel included a wide range of assessment to value ratios, from as low as 3.24% to as high as 21.88%.

the assessed value of the Montis' property and, based on assessment to value ratio of these properties, which averaged 20.16%, as well as the high number of properties above 13.25%, concluded that there was no unfairness as to the Montis' tax burden. Moreover, the trial court indicated that an assessment reduction of the Montis' property would be unfair given that the property appears to be undervalued by its assessment. The trial court explained that while the parties agreed that the value of the property was \$530,000, when the CLR of 22.6% is applied to the actual assessment of \$75,660, the value of the property is calculated at \$334,778 ($\$75,660$ divided by 22.6%).

The Montis filed a notice of appeal with the trial court raising the same issues that are currently before this Court. In a statement in lieu of formal opinion dated December 30, 2010, the trial court dismissed each of these arguments. Regarding the Montis' argument that the assessment was arbitrary, excessive, unfair, unconstitutional, and unequal as compared to other similar properties, the trial court reiterated that the Board actually undervalued the property at \$334,778 and there is no basis to conclude that the property was unequally or unfairly assessed. Regarding the Montis' argument that there was no testimony presented by the Board that the properties on Hummel's list were comparable or similar, the trial court indicated that the Montis' property was in the same category as those on the list, i.e., a higher priced parcel than those typically sold in the County, and that three of the four properties used by the Montis' appraisal expert were included on this list.

Regarding the Montis' argument that the trial court erred in selecting three properties from Hummel's list which were not comparable, the trial court indicated that the use of these properties was by way of comparison, the same way the Montis picked three properties to include in their own comparison. The trial court

noted that the Montis picked the three lowest taxed properties on the list for comparison and that the vast majority of the properties on the list were closer in value, and assessment to value ratio, to the three properties it selected. Regarding the Montis' argument that the trial court erred in permitting the Board to introduce an exhibit which was only first provided to the Montis at the hearing, the trial court discerned no prejudice, noting that the list/exhibit was properly admitted as rebuttal evidence on the issue of uniformity and was relevant and material evidence. Finally, the trial court dismissed the Montis' blanket assertion that its decision was based on insufficient evidence, was against the weight of the evidence, and was contrary to law, noting that its November 4, 2010, decision and order fully explains the rationale for the conclusions it reached after consideration of all the evidence presented by both sides.

As noted above, the Montis raise the same issues on appeal to this Court that they raised before the trial court.⁴ Because this Court agrees with the trial court's November 4, 2010, opinion, as well as its December 30, 2010, statement in lieu of formal opinion, and further concludes that Judge Charles H. Saylor's opinion thoroughly discusses and properly disposes of the arguments raised on appeal to this Court, we adopt the analysis in Judge Saylor's opinion for purposes of appellate review.

Accordingly, we affirm the trial court's order based on the opinion in Timothy J. Monti and Kelly A. Monti, Trustees of the Monti Living Trust v.

⁴ Our scope of review of the trial court's order is limited to determining whether the trial court abused its discretion, committed an error of law or whether the decision is unsupported by the evidence. Expressway 95 Business Center, LP v. Bucks County Board of Assessment and Bensalem Township School District, 921 A.2d 70 (Pa. Cmwlth. 2007).

Northumberland County Board of Assessment, Milton Area School District and West
Chillisquaque Township, (No. CV-09-2838, filed November 4, 2010).

PATRICIA A. McCULLOUGH, Judge

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ORDER

AND NOW, this 8th day of December, 2011, the order of the Court of Common Pleas of Northumberland County, dated November 4, 2010, is hereby affirmed. This Court hereby adopts the analysis in Judge Charles H. Saylor's opinion for the purposes of appellate review and affirms the trial court's order on the basis of the opinion issued in Timothy J. Monti and Kelly A. Monti, Trustees of the Monti Living Trust v. Northumberland County Board of Assessment, Milton Area School District and West Chillisquaque Township, (No. CV-09-2838, filed November 4, 2010).

PATRICIA A. McCULLOUGH, Judge