NO. 12-10-00021-CV
NO. 12-10-00050-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

THOMAS D. SELGAS AND MICHELLE L. SELGAS, APPELLANTS	***§***	***APPEAL FROM THE 173RD***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE HENDERSON COUNTY APPRAISAL DISTRICT, APPELLEE	***§***	***HENDERSON COUNTY, TEXAS***

MEMORANDUM OPINION

Thomas D. Selgas and Michelle L. Selgas appeal from summary judgments granted in favor of the Henderson County Appraisal District (HCAD) in their suits contesting the valuation of their real property.[1] In two issues, the Selgases contend they raised a fact question regarding the market value of their property, the trial court abused its discretion by striking their expert's testimony, and HCAD failed to prove that the purchase price of the real property was not the price shown in the sales contract. We affirm.

BACKGROUND

On January 31, 2008, the Selgases purchased two tracts of land in Henderson County, totaling about thirty-six and one-half acres. Paragraph 11 of the contract, entitled "Special Provisions," provides that "Buyer shall tender purchase price in gold coin as described in Exhibit 'A.'" That exhibit is entitled "Property Payment in Lawful Money $10 American Gold Eagle Coins." Below the title are the words "PAYMENT CLAUSE." Section (b) provides that

> [p]ayment for the sale and purchase of the Subject Property shall be valued at sixteen thousand six-hundred seventy (16,670) "dollars" of coined gold, each such "dollar" to consist of twenty-five one-thousandths (0.025) of a Troy ounce of fine gold in the form of the coins hereinafter specified in Section (c) of this PAYMENT CLAUSE.

[1] The Selgases filed a separate case for each of two tracts of land. The two cases were disposed of simultaneously at trial and consolidated for briefing on appeal.

Pursuant to section (c), "[p]ayment for the sale and purchase of the Subject Property shall consist only . . . of one thousand six hundred sixty-seven (1,667) American Eagle 'ten dollar gold coin[s],'" each of which contains one-quarter troy ounce of fine gold. Section (e) provides the disclaimer that the payment clause is not to be construed for the purpose of an abusive tax shelter or other unlawful means to avoid any lawful tax.

After receiving notice of the 2008 appraised value of their property, the Selgases filed a protest with HCAD. The Henderson County Appraisal Review Board refused to change the valuations and determined that the 2008 total market value of tract 3F was $251,630.00 and the total market value of tract 3 was $40,240.00. Again, in 2009, the Selgases protested the valuation of their property and again the review board refused to change the valuations. The 2009 valuation for tract 3F was $354,040.00 and for tract 3, it was $53,480.00. The Selgases filed suit against HCAD complaining of the valuations and asking the district court to fix the market value of tract 3F at $14,370.00 and fix the market value of tract 3 at $2,300.00. They also asked the court to render judgment compelling imposition of these assessed values and correlating taxes.

HCAD filed a combination no evidence and traditional motion for summary judgment with supporting evidence in each case. It contends there is no evidence that the two tracts have been over appraised in United States dollars as represented by Federal Reserve Notes. HCAD further argues that, because the Selgases admit that the gold dollars which they paid for the property exchange for Federal Reserve Notes at about twenty-five to one, there is no material issue of fact as to the valuation of the property. The Selgases filed a response, with supporting evidence, arguing that HCAD failed to provide evidence negating their evidence of market value and that they have provided evidence to show a material fact question regarding determination of market value. HCAD objected to the testimony of the Selgases' expert, Dr. Edwin Vieira, asserting that the testimony is an inadmissible legal opinion and he is unqualified to offer any opinion on the value of the property. The trial court granted the objection. The trial court also granted both of HCAD's motions for summary judgment and rendered judgment that the Selgases take nothing in their suits against HCAD.

STANDARD OF REVIEW

We review the trial court's decision to grant summary judgment de novo. ***Tex. Mun. Power Agency v. Pub. Util. Comm'n***, 253 S.W.3d 184, 192 (Tex. 2007). After adequate time for discovery, a party without the burden of proof at trial may move for summary judgment on

the ground that there is no evidence of one or more essential elements of a claim or defense. TEX. R. CIV. P. 166a(i). Once a no evidence motion has been filed in accordance with Rule 166a(i), the burden shifts to the nonmovant to bring forth evidence that raises a fact issue on the challenged element. *See* ***Macias v. Fiesta Mart, Inc.***, 988 S.W.2d 316, 317 (Tex. App.–Houston [1st Dist.] 1999, no pet.). A no evidence summary judgment is essentially a pretrial directed verdict, which may be supported by evidence. ***Timpte Indus., Inc. v. Gish***, 286 S.W.3d 306, 310 (Tex. 2009).

When reviewing a no evidence summary judgment, we "review the evidence presented by the motion and response in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not." ***Id***. (quoting ***Mack Trucks, Inc. v. Tamez***, 206 S.W.3d 572, 582 (Tex. 2006)). An appellate court reviewing a no evidence summary judgment must consider whether reasonable and fair-minded jurors could differ in their conclusions in light of all of the evidence presented. ***Goodyear Tire & Rubber Co. v. Mayes***, 236 S.W.3d 754, 755 (Tex. 2007) (per curiam).

The movant for traditional summary judgment has the burden of showing that there is no genuine issue of material fact concerning one or more essential elements of the plaintiff's claims and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); ***Nixon v. Mr. Prop. Mgmt. Co.***, 690 S.W.2d 546, 548 (Tex. 1985). Once the movant has established a right to summary judgment, the nonmovant has the burden to respond to the motion and present to the trial court any issues that would preclude summary judgment. *See* ***City of Houston v. Clear Creek Basin Auth.***, 589 S.W.2d 671, 678–79 (Tex. 1979). Review of a summary judgment under either a traditional standard or no evidence standard requires that the evidence be viewed in the light most favorable to the nonmovant disregarding all contrary evidence and inferences. ***Walmart Stores, Inc. v. Rodriquez***, 92 S.W.3d 502, 506 (Tex. 2002); ***Nixon***, 690 S.W.2d at 548-49.

When a party moves for both a no evidence and a traditional summary judgment, we first review the trial court's summary judgment under the no evidence standard of Rule 166a(i). ***Ford Motor Co. v. Ridgway***, 135 S.W.3d 598, 600 (Tex. 2004). If the no evidence summary judgment was properly granted, we need not reach arguments under the traditional motion for summary judgment. *See* ***id***.

APPLICABLE LAW

The Texas constitution mandates that no property in this state shall be assessed for ad valorem taxes at a greater value than its fair cash market value. TEX. CONST. art. VIII, § 20.

"Market value" means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if (a) exposed for sale in the open market with a reasonable time for the seller to find a purchaser; (b) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and (c) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other. TEX. TAX CODE ANN. § 1.04(7) (West 2008). The market value of the property shall be determined by the application of generally accepted appraisal methods and techniques. TEX. TAX CODE ANN. § 23.01(b) (West Supp. 2010). A property owner is entitled to protest before the appraisal review board the determination of the appraised value of the owner's property. TEX. TAX CODE ANN. § 41.41(a)(1) (West 2008). A property owner is entitled to appeal an order of the appraisal review board determining his protest. TEX. TAX CODE ANN. § 42.01 (West 2008). Review is by trial de novo in the district court. TEX. TAX CODE ANN. § 42.23 (West 2008). The district court may fix the appraised value of property in accordance with the requirements of law. TEX. TAX CODE ANN. § 42.24(1) (West 2008). If the court determines that the appraised value of the property according to the appraisal roll exceeds the appraised value required by law, the property owner is entitled to a reduction of the appraised value on the appraisal roll to the appraised value determined by the court. TEX. TAX CODE ANN. § 42.25 (West 2008).

SUMMARY JUDGMENT

In their first issue, the Selgases contend the trial court erred in granting HCAD's no evidence motion for summary judgment. They assert that they presented more than a scintilla of evidence raising a fact question on the market value of their property. They contend that the purchase price shown on the sales contract is the market value. They assert that they paid $16,670.00 for both tracts. Additionally, they contend the trial court abused its discretion by striking the deposition testimony of their expert witness, Dr. Edwin Vieira, Jr. They argue that Dr. Vieira's qualifications were properly proven by the Selgases, but not properly challenged by HCAD. Further, they assert that Dr. Vieira's testimony is critical on the issue of "the standard of measure" used by the Selgases in assessing the market value of their property and "his opinions are not merely opinions of law, but rather of fact." They argue that his testimony presents a mixed question of law and fact and the trial court should have required a hearing before striking his testimony.

In their second issue, the Selgases contend the trial court erred in granting HCAD's traditional motion for summary judgment. They argue that HCAD did not "prove that the

purchase price of the real property was not the purchase price shown on the real property sales contract, [and] the recorded warranty deed, and attested to by both the Seller and Appellants."

HCAD's Combined No Evidence and Traditional Motion

In its motion for no evidence summary judgment, HCAD asserted that, after discovery, the Selgases identified "no evidence that their property . . . is over appraised in United States dollars as represented by Federal Reserve Notes." HCAD interpreted the Selgases' allegations as a claim that HCAD should be utilizing gold dollars for appraisal instead of Federal Reserve Notes. In its traditional motion for summary judgment, HCAD asserted that it properly appraised the property in Federal Reserve Notes and that the evidence shows, as a matter of law, that the real value of the property is in excess of that at which HCAD assessed the property. In support of the motion, HCAD presented the affidavit of Bill Jackson, Chief Appraiser of HCAD, deposition testimony of Thomas Selgas and Michelle Selgas, and the Selgases' discovery responses.

Jackson stated that HCAD appraises property in United States dollars as represented by Federal Reserve Notes. He affirmed that the 2008 market value of tract 3F was $251,630.00, but it received an open space appraisal and was therefore assessed at $187,890.00. He also explained that the 2008 market value of tract 3 was $40,240.00, but assessed at $1,600.00 due to application of the open space appraisal.

In his deposition testimony, Thomas Selgas testified that he paid $16,670.00 total for the two tracts of land. Specifically, he stated that he and the seller agreed that he would pay 1,667 ten dollar gold coins, each containing one-quarter troy ounce of gold. He explained that both the Federal Reserve Bank and the Department of Treasury are required by law to redeem Federal Reserve Notes for lawful money, including gold coins. For example, ten one dollar Federal Reserve Notes should be given for one ten dollar coin or ten one dollar coins as equivalents to maintain equal purchasing value. Thus, if he is redeeming a coin or a note, the face of the coin or note should indicate what he is redeeming it for.

On the other hand, he explained, the Department of Treasury will redeem gold coins through a national dealer at an exchange rate. Thus, he said a purchase and an exchange are two different things. He further explained that if a person exchanged a ten dollar gold coin for Federal Reserve Notes, he would probably receive "25 Federal Reserve Notes for each dollar unit of lawful money," or, in other words, 250 Federal Reserve Notes for one ten dollar gold coin. He opined that there is no "profit motive" associated with an exchange, whereas there is a "profit motive" associated with a purchase. Selgas said that the unit of value he used was the ten dollar coin as defined by Title 31, Section 5112(a)(9) of the United States Code. He stated that

the purchase price of his property was $16,670.00, which he considered to be market value. The farm and ranch contract was attached as an exhibit to Selgas's deposition.

HCAD also presented Michelle Selgas's deposition in which she explained that they sued HCAD because it appraised their property in Federal Reserve Notes, and they did not pay for it in Federal Reserve Notes. She also said the sellers were asking "approximately 400-something-thousand Federal Reserve Notes."

In their response to interrogatories, the Selgases said the total value of their property is $16,670.00, and they paid 1,667 American Eagle ten dollar gold coins, each one containing one-quarter troy ounce of fine gold.

The Selgases' Response

In their response to HCAD's motion, the Selgases asserted that HCAD failed to provide evidence negating their evidence of market value and that they provided evidence showing an issue of material fact regarding the determination of market value. They submitted the following exhibits: the general warranty deed to their property, the purchase contract, property tax notice of protest for 2008 and 2009, the affidavit and deposition of Bill Jackson, HCAD's supplemental responses to their request for admissions, the deposition and resume´ of their expert, Dr. Edwin Vieira, and affidavits of Thomas Selgas and JoAnn Bryant.

The warranty deed provides that Richard and JoAnn Bryant sold the property in consideration for 1,667 American Eagle ten dollar gold coins, "which collectively shall constitute the sole and exclusive medium of exchange, lawful money, currency, and legal tender, and other good and valuable consideration." Pursuant to the contract for the sale of the property, payment "shall be valued at sixteen thousand six-hundred seventy (16,670) 'dollars' of coined gold, each such 'dollar' to consist of twenty-five one-thousandths (0.025) of a Troy ounce of fine gold" to be paid through physical delivery of one thousand six hundred sixty-seven American Eagle ten dollar gold coins, each containing one-quarter troy ounce of gold. The contract specifies that this constitutes "the sole and exclusive medium of exchange, money, currency, and legal tender for the purposes of this PAYMENT CLAUSE."

The Selgases filed a notice of protest in 2008 asserting that they paid "$16,670.00 in lawful (current) money," and therefore that is the current fair market value of the property. In 2009, they filed another notice of protest explaining that they paid $16,670.00 and have made $2,500.00 in improvements. Therefore, they argued, the market value of their property is $19,170.00. They also argued that Federal Reserve Notes are legal tender, but not current lawful money, and cannot be used in payment of debts. They also explained that the Owen-Glass Act, which created the Federal Reserve System, is unconstitutional and they are not required to participate in it.

The Selgases offered the deposition testimony of Bill Jackson, HCAD's Chief Appraiser. Jackson testified that HCAD appraises property at market value. It looks at similar properties that have sold. HCAD uses the dollar as the unit of measure of value and "depend(s) on the dollar being fixed as we know it to be." In its responses to the Selgases' request for admissions, HCAD admitted only that it lacks any legal power to set or otherwise regulate the value in "dollars" of any United States money, currency, or coin.

Deposition testimony of Dr. Edwin Vieira, the Selgases expert, was offered, but the trial court sustained HCAD's objection to the testimony.

The Selgases presented Thomas Selgas's December 4, 2009 affidavit in which he stated that he and his wife purchased the property based on prevailing market conditions, paying cash in the amount of "$16,670 dollars," which he stated was the fair market value of the property. Likewise, JoAnn L. Bryant stated in her affidavit of the same date that she and her husband sold the property to the Selgases for "$16,670 dollars, in American Eagle Gold Coin, lawful money of the United States." She claimed this was the fair market value of the property.

Vieira's Testimony

Dr. Edwin Vieira, an attorney who focuses on constitutional law issues in the fields of money, banking, and homeland security, testified by deposition. HCAD objected to Vieira's testimony in its entirety, contending that he offered only legal testimony, is unqualified to offer an opinion on the ultimate issue in the case, and his opinions are irrelevant. The trial court granted the objection.

An appellate court reviews a trial court's ruling that sustains an objection to summary judgment evidence for an abuse of discretion. ***Cantu v. Horaney***, 195 S.W.3d 867, 871 (Tex. App.–Dallas 2006, no pet.). An appellant has the burden to bring forth a record that is sufficient to show the trial court abused its discretion when it sustained the objections to the summary judgment evidence. ***Cruikshank v. Consumer Direct Mortg., Inc.***, 138 S.W.3d 497, 499 (Tex. App.–Houston [14th Dist.] 2004, pet. denied). As a prerequisite to presenting a complaint for appellate review, the record must show the complaint was made to the trial court by a timely request, objection, or motion. *See* TEX. R. APP. P. 33.1(a). When a party fails to object to the trial court's ruling that sustains an objection to his summary judgment evidence, he has not preserved the right to complain on appeal about the trial court's ruling. ***Cantu***, 195 S.W.3d at 871.

The record shows that the objections were filed December 11, 2009, and they were considered at the hearing on HCAD's motions for summary judgment on December 14. The trial court did not sign the orders granting the objections until January 4, 2011. The Selgases have not identified where, in this record, it is shown that they objected to the trial court's ruling. Our

review of the record revealed no such objection. We conclude that the Selgases have waived their right to complain that the trial court sustained HCAD's objections to Vieira's testimony. *See **id***. Accordingly, we do not consider Dr. Vieira's testimony for any reason.

Analysis - Evidence of Valuation

HCAD argued that it was entitled to summary judgment because there is no evidence that the Selgases' property is over appraised in United States dollars as represented by Federal Reserve Notes. The burden then shifted to the Selgases to raise a fact issue on the element of over appraisal. *See **Macias***, 988 S.W.2d at 317. Selgas, in his deposition, stated that he paid fair market value for the property, that is, he paid "$16,670 dollars" in one-quarter troy ounce gold eagle coins. The Selgases assert that Congress established the value of the "1/4 ounce gold eagle coins" at "ten dollars" pursuant to 31 U.S.C. §§ 5101, 5102, 5103, and 5112(a)(9).

Ten dollar gold coins are legally a form of currency. 31 U.S.C.S. §§ 5103, 5112(a)(9) (Matthew Bender & Co., LEXIS through 2010 legislation). A gold coin has intangible value based on its representative value as currency, its face value. ***Sanders v. Freeman***, 221 F.3d 846, 856 (6th Cir. 2000). The face value of currency in circulation is prima facie evidence of its value. ***Burton v. Commonwealth***, 708 S.E.2d 444, 448 (Va. Ct. App. 2011). Moreover, value is inherent in the precious metals. ***Bronson v. Rodes***, 74 U.S. (7 Wall.) 229, 249 (1869). Thus, a gold coin also has intrinsic value based on its metal content, that is, its market value. ***Sanders***, 221 F.3d at 856. This intrinsic value is determined by weight and purity. ***Bronson***, 74 U.S. at 249. Evidence can be presented to prove that money has a value different than its redeemable value as legal tender. ***Burton***, 708 S.E.2d at 449 n.3. The true value of coins is affected by their market value to numismatics and the intrinsic value of the coins' precious metal content. ***Id***. Notably, the United States Secretary of the Treasury is required by statute to sell gold coins minted by the federal government at market value. 31 U.S.C.S. § 5112(i)(2)(A) (Mathew Bender & Co., LEXIS through 2010 legislation).

A gold coined dollar and a Federal Reserve Note dollar are not the actual equivalent of each other. ***Bronson***, 74 U.S. at 252. Coined dollars are worth more than note dollars. ***Id***. Therefore, for example, an amount due in coin dollars pursuant to a contract cannot be satisfied by an offer to pay their nominal equivalent in Federal Reserve Note dollars. ***Id***. at 253. The contract would have to be paid in an amount equal to the actual value of the gold demanded in the contract. ***Id***. at 250.

The contract pursuant to which the Selgases purchased the property from the Bryants is prima facie evidence that they paid $16,670.00 for the land. *See **Burton***, 708 S.E.2d at 448. However, there is evidence showing that the value of the 1,667 ten dollar gold coins paid to purchase the property is greater than face value. In his deposition, Selgas explained that one ten

dollar gold coin is worth approximately $250.00 in Federal Reserve Notes. He stated that he paid 1,667 ten dollar gold coins for the property. Michelle Selgas explained that the sellers' asking price was "approximately 400-something-thousand Federal Reserve Notes."

Therefore, the record shows that 1,667 ten dollar gold coins are worth approximately $416,750.00, which happens to be consistent with the sellers' asking price. The number of ten dollar gold coins offered was clearly determined based on their intrinsic value according to their weights as precious metals, not their face value. A sales price of $416,750.00 is considerably more than the 2008 market value assessed by HCAD, before application of the appraisal formula for open space land. Likewise, the 2008 sales price of $416,750.00 is even greater than the 2009 assessment of $407,520.00. Based on this record, reasonable jurors, knowing that the Selgases paid in gold, could disregard Selgas's testimony that he paid "$16,670 dollars." *See* ***Tamez***, 206 S.W.3d at 582. Thus, the Selgases' evidence did not raise a fact question on whether the property was over appraised. The no evidence summary judgment was proper because the evidence establishes conclusively the opposite of the challenged element. *See* ***Taylor-Made Hose, Inc. v. Wilkerson***, 21 S.W.3d 484, 488 (Tex. App.–San Antonio 2000, pet. denied). Accordingly, the trial court did not err in granting HCAD's no evidence motion for summary judgment. Likewise, the evidence establishes as a matter of law that there is no issue of fact regarding whether the assessed value of the property is higher than the market value of the property. Accordingly, the trial court did not err in granting HCAD's traditional motion for summary judgment. *See* ***Nixon***, 690 S.W.2d at 548. We overrule the Selgases' first and second issues.

SANCTIONS

HCAD has asked this court to impose sanctions on the Selgases, contending that this appeal is frivolous. *See* TEX. R. APP. P. 45. Under Rule 45, this court may award just damages to a prevailing party if it determines that an appeal is frivolous. ***Id***.; ***Durham v. Zarcades***, 270 S.W.3d 708, 720 (Tex. App.–Fort Worth 2008, no pet.). Whether to award damages is within this court's discretion. ***Id***. Sanctions should be imposed only in egregious circumstances. ***Id***. We do not believe that this case warrants sanctions; therefore, we decline to impose monetary sanctions under Rule 45.

DISPOSITION

As the trial court did not err in granting HCAD's combined no evidence and traditional motion for summary judgment, we ***affirm*** the trial court's judgment.

BRIAN HOYLE
Justice

Opinion delivered November 16, 2011.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

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