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TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000217-MR

BORDERS SELF-STORAGE
& RENTALS, LLC — APPELLANT

v.

APPEAL FROM LAWRENCE CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 17-CI-00161

KENTUCKY TRANSPORTATION
CABINET, DEPARTMENT
OF HIGHWAYS — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, JONES, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Borders Self-Storage & Rentals, LLC (Borders) brings this appeal from a December 6, 2018, Trial Order and Judgment of the Lawrence Circuit Court awarding Borders $140,000 as compensation for the taking of its real property by eminent domain. We affirm.

The Kentucky Transportation Cabinet, Department of Highways, (Transportation Cabinet) filed a petition to condemn certain real property owned by Borders for a highway project. Kentucky Revised Statutes (KRS) 416.570. The circuit court appointed three commissioners to determine the fair market value of the real property. KRS 416.580. The Commissioners determined the fair market value of Borders' real property to be $168,623 at the time of taking and $25,000 thereafter, for a difference of $143,623. Borders filed exceptions to the Commissioners' report and demanded a trial by jury. KRS 416.620.

A jury trial was conducted. Borders sought to introduce as evidence the assessed tax value ($230,000) of the real property as reflected by records held by the Lawrence County Property Valuation Administrator (PVA). The circuit court ruled that the PVA's tax assessment could not be introduced into evidence by Borders.

Ultimately, the jury found the fair market value immediately before the taking to be $157,000, and the fair market value immediately after the taking to be $17,000, for a difference of $140,000. In a Trial Order and Judgment entered December 6, 2018, the circuit court awarded Borders $140,000 as compensation for the condemnation of its real property by the Transportation Cabinet. This appeal follows.

The sole issue on appeal centers upon whether the circuit court properly excluded evidence of the PVA's assessed tax value of the condemned real property that Borders sought to introduce. Borders contends that the circuit court committed reversible error by excluding such evidence:

> After purchasing the property, Borders spent approximately $80,000 for site preparation, construction of storage lockers, and other costs necessary to prepare the property for the operation of the storage business at that location[.] Reuben then caused an appraisal to be performed by Paul David Brown of Redd, Brown & Williams Real Estate Services, an experienced appraiser with offices in Paintsville and Louisa . . . . Mr. Brown appraised the property at $230,000.00 as of October 5, 2016.
>
> As required by KRS 132.220(1)(b)1, Reuben Lycans filed a copy of the appraisal with the Lawrence County PVA, who assessed the property at $230,000 in accordance with the appraisal.
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> . . . .
>
> The appellant now respectfully contends that if a low assessment is an admission against his interest in receiving a higher award in a condemnation case, the declaration of a high value by Borders is an admission against Borders's [sic] interest in keeping its tax bill at a low amount.
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> . . . .
>
> In the case at bar, there is absolutely no dispute that the assessment was fixed by the landowner. The issue of whether the reported value was an admission against interest is just as obvious.

> The purpose of the statutory requirement to report the value of one's property, and to report any changes in value caused by the addition of improvements, is, of course, to determine the value at which the property is taxed.
>
> In the case at bar, the property owner met its statutory responsibility by reporting the result of the appraisal and by paying taxes based on that amount.
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> The appellant respectfully contends that it is in one's interest to keep his tax bill as low as possible and the high reported value goes against that interest, and on that basis, it should be admitted into evidence.
>
> . . . .
>
> [T]he appellant respectfully contends that the same declaration is admissible for the landowner as a declaration against his own interest based on the obvious fact that a high declaration subjects the landowner to higher property taxes. This line of thinking was discussed in *Rankin*, *supra*, and appellant contends that it is inequitable and "hardly fair" for the Commonwealth to charges [sic] taxes based on the higher assessment but to deny the accuracy of that figure when taking the property. By disallowing the tax assessment, the trial court has prevented the jury from hearing the logic applied by the High Court in *Rankin*, *supra*, that it is unfair for the Commonwealth to accept tax payments based on the assessment but to deny the accuracy of the valuation when condemning the same property.

Brief at 4, 8, 9, 11, 12 (citations omitted) (footnote omitted). Although we view appellant's argument as compelling, we are bound to follow Supreme Court precedent and affirm the circuit court. Rules of the Supreme Court (SCR) 1.030(8)(a).

In a highway condemnation proceeding, the assessed tax value of the condemned real property is admissible if such assessed value was fixed by the landowner and offered into evidence by the Commonwealth.[1] In such circumstance, the assessed tax value is considered an admission against the interest of the landowner and may be so utilized by the Commonwealth. *Commonwealth, Department of Highways v. Brooks*, 436 S.W.2d 499, 500-01 (Ky. 1969). However, the Kentucky Supreme Court has clearly held that evidence of assessed tax value of real property may not be introduced into evidence by the landowner. *Culver v. Commonwealth, Department of Highways*, 459 S.W.2d 595, 597-98 (Ky. 1970); *Brooks*, 436 S.W.2d at 500-01. Accordingly, pursuant to *Culver*, 459 S.W.2d 595, and *Brooks*, 436 S.W.2d 499, we are compelled to conclude that the circuit court properly excluded evidence of assessed tax value sought to be introduced by Borders.

While bound by Supreme Court precedent, we may, nonetheless, express our disagreement therewith. SCR 1:030(8)(a); *Special Fund v. Francis*, 708 S.W.2d 641, 642 (Ky. 1986). The exclusion of the assessed tax value of real property when offered into evidence by the landowner, as opposed to the Commonwealth, strikes us as fundamentally unfair and legally unsound. Herein,

[1] In this case, Borders Self-Storage & Rentals, LLC, submitted the appraised value of the real property to the Lawrence County Property Valuation Administrator pursuant to Kentucky Revised Statutes 132.220.

Borders submitted the appraised value of the real property to the PVA who reviewed and accepted the valuation. This appraised value became the tax assessment for the real property. The assessed tax value offered by Borders is directly relevant to the fair market value of its real property and should have been admitted into evidence.[2] At minimum, it is evidence that a jury should be allowed to consider. Any challenge to the assessed tax value as not representing the fair market value of the real property should properly go to the weight of the evidence and not the admissibility thereof. We encourage the Supreme Court to reconsider its precedents holding otherwise.

For the foregoing reasons, the Trial Order and Judgment of the Lawrence Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Nelson T. Sparks
Louisa, Kentucky

BRIEF FOR APPELLEE:

Stacy D. Conley
Kentucky Transportation Cabinet
Pikeville, Kentucky

[2] Before the Supreme Court opinions in *Culver v. Commonwealth, Department of Highways*, 459 S.W.2d 595 (Ky. 1970) and *Commonwealth, Department of Highways v. Brooks*, 436 S.W.2d 499 (Ky. 1969), it recognized that assessed tax value fixed by the landowner "is competent as evidence, not as an admission by the owner as fixing its amount, but yet as evidence tending to show its worth" in *Franklin County v. Bailey*, 250 Ky. 528, 63 S.W.2d 622, 628 (1933).