STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1815

David Thompson, et al.,
Appellants,

vs.

City of Kasson,
Respondent.

Filed June 8, 2020
Affirmed
Connolly, Judge

Dodge County District Court
File No. 20-CV-17-350

Anthony J. Moosbrugger, Moosbrugger Law Office, PA, Kasson, Minnesota (for appellants)

Melanie J. Leth, Timothy A. Woessner, Weber, Leth & Woessner, PLC, Dodge Center, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellants challenge the district court's affirmance of a special assessment levied against their property. Because the record supports the district court's factual findings and it did not err in applying the law, we affirm.

FACTS

In 2017, respondent City of Kasson passed a resolution adopting an assessment aimed at improving several local streets. The project included road construction, replacement of city-owned and private sewer pipes, water-services replacement, and installation of new sub-drain service tiles. Appellants Phillis and David Thompson, who own real property on one of the affected streets, objected to the assessment.

The project's total cost was $7,314,803.44, of which respondent assessed $1,046,427.30 in roadway-improvement costs against 148.5 benefited residential estate units.[1] As a result, $7,046.65 of the improvement costs were assessed against appellants, who timely filed a notice of appeal to the district court. *See* Minn. Stat. § 429.081 (2018).

After a two-day bench trial, the district court issued a written order upholding the assessment because appellants' property received an $8,000 benefit from the $7,046.65 assessment. The district court also concluded that appellants had not introduced competent evidence to overcome the assessment's presumption of validity.

[1] Under its policy, respondent paid all costs associated with sewer and water repairs, 70% of the costs associated with road-improvement, and assessed the remaining 30%.

Appellants now argue that the district court made erroneous factual findings and misapplied the law.

D E C I S I O N

I. The district court's factual findings are not clearly erroneous

First, appellants argue that the district court clearly erred in making several factual findings. As an appellate court, we may not make or amend factual findings. *Dunn v. Nat'l Beverage Corp.*, 745 N.W.2d 549, 555 (Minn. 2008). Rather, the clearly erroneous standard governs our review of a district court's factual findings. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). To deem a factual finding clearly erroneous, the reviewing court must be "left with the definite and firm conviction that a mistake has been made." *Gjovik v. Strope*, 401 N.W.2d 664, 667 (Minn. 1987).

Many of appellants' arguments about the district court's factual findings rest on testimony from their own witnesses. But conflicting testimony or evidence does not make a factual finding clearly erroneous. For example, appellants fault the district court for crediting the testimony from respondent's expert and discrediting their expert's testimony. This court will not reassess witness credibility or expert witness opinions. *DeSutter v. Township of Helena*, 489 N.W.2d 236, 240 (Minn. App. 1992), *review denied* (Minn. Sept. 30, 1992); *see also Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) ("In an appeal from a bench trial, we do not reconcile conflicting evidence."), *review denied* (Minn. June 26, 2002). And appellants' other arguments simply highlight conflicting testimony or evidence, rather than show that the challenged findings lack any record support.

After a careful review, we conclude that the district court did not clearly err in making any of the challenged factual findings. Rather, the record supports the challenged findings. *See Rasmussen*, 832 N.W.2d at 797 (explaining that an appellate court considers whether there is any reasonable evidence in the record to support the district court's findings).

II. The district court applied the law correctly

Second, appellants argue that the district court made several errors in reaching its legal conclusions. In the special-assessment context, an appellate court reviews whether the district court's factual findings support its legal conclusions and ultimate decision. *Carlson-Lang Realty Co. v. City of Windom*, 240 N.W.2d 517, 521 (Minn. 1976). To justify reversal, the evidence must contradict the district court's findings. *Dosedel v. City of Ham Lake*, 414 N.W.2d 751, 756 (Minn. App. 1987).

A special assessment constitutes a tax, aimed at imposing local improvement costs on those who benefit from an improvement. *Buettner v. City of St. Cloud*, 277 N.W.2d 199, 201 (Minn. 1979). State law grants municipalities the power to impose these assessments. *See* Minn. Stat. § 429.051 (2018). Three conditions limit a municipality's assessment power: "(1) the land must receive a special benefit from the improvement being constructed; (2) the assessment must be uniform upon the same class of property; and (3) the assessment may not exceed the special benefit." *David E. McNally Dev. Corp. v. City of Winona*, 686 N.W.2d 553, 558 (Minn. App. 2004) (citing *Carlson-Lang Realty Co.*, 240 N.W.2d at 519).

The legislative nature of special assessments entitles them to a presumption of validity. *Am. Oil Co. v. City of St. Cloud*, 206 N.W.2d 31, 36 (Minn. 1973). And "introduction of the assessment roll into evidence constitutes prima facie proof that the assessment does not exceed [the] special benefit." *Tri-State Land Co. v. City of Shoreview*, 290 N.W.2d 775, 777 (Minn. 1980) (quotation omitted). A party can overcome a special assessment's presumption of validity by submitting competent evidence that the property did not benefit from the improvement. *Buettner*, 277 N.W.2d at 204. To defeat this presumption, challenging parties must introduce competent evidence that the assessment exceeds their property's market-value increase from the improvement. *Tri-State Land Co.*, 290 N.W.2d at 777. If their evidence meets this burden, and the assessing municipality also submits evidence that the assessment is less than or equal to the market-value increase, the district court must make a factual decision. *Carlson-Lang Realty Co.*, 240 N.W.2d at 519-20.

Appellants challenge the district court's legal conclusion that "[a]n appraiser in a special assessment case values the property before and after the public improvements." But that language matches our analysis from *Eagle Creek Townhomes LLP v. City of Shakopee*, which the district court cited here. 614 N.W.2d 246, 250-51 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000). We see no error in this legal conclusion.

Appellants also assert that the district court erred by failing to conduct an independent inquiry to determine the market-value increase in their property. For support, they rely in part on the testimony of appellant David Thompson. A property owner's opinion that his property received no increase in market value from an assessment can rebut

the presumption of validity. *E.H. Wilmmus Prop., Inc. v. Village of New Brighton*, 199 N.W.2d 435, 437-38 (Minn. 1972). In *E.H. Wilmmus*, the property owner had an "extensive background in real estate and industrial development," and testified that his property received no special benefit or increase in market value after installation of a water main. *Id.* at 437.

Here, the record reveals that David Thompson had an associate degree in real estate sales, possesses a real estate license, has sold real estate for years, and has bought and sold "a few properties." He testified that he "periodically" kept up with the real-estate market since his retirement. These facts distinguish his qualifications from those of the property owner in *E.H. Wilmmus*.

Even if David Thompson had an extensive background in real estate, a district court is not required to credit a property owner's testimony about the assessment exceeding the benefit to the property. *See David E. McNally Dev. Corp.*, 686 N.W.2d at 559 ("The caselaw indicates that *if the experience and background of the property owner warrants*, the district court *can* give substantial weight to the property owner's testimony [and] that such testimony alone is sufficient to rebut the presumption created by the approval of the assessment roll . . . ." (emphasis added)). In short, the district court did not need to credit David Thompson's testimony even though he had some real-estate experience.[2] And the record shows that the district court also rejected David Thompson's testimony based on his

[2] Appellants argue that the district court erred in limiting David Thompson's testimony. Even though the district court sustained an objection to a question asked of him on direct examination, it later overruled this objection and allowed him to answer the question. This argument presents no basis for reversal.

claim that the improvements caused his property to lose value, which defies logic and lacks record support. *See Schumacher v. City of Excelsior*, 427 N.W.2d 235, 238 (Minn. 1988) ("Usually, if property receives better municipal services and amenities, it is worth more.").

Appellants also contend that testimony from their appraisal expert constituted competent evidence requiring that the district court make a factual determination about the assessment's impact to the market value of their property. The district court evaluated testimony and appraisal reports from both experts. Based on our limited scope of review, we conclude that the record supports its findings and its ultimate conclusion that appellants' expert's testimony did not provide competent evidence sufficient to overcome the assessment's presumption of validity. *See Carlson-Lang Realty Co.*, 240 N.W.2d at 521. While appellants claim that their expert used the better appraisal methodology, we cannot alter the district court's amply supported findings. *See DeSutter*, 489 N.W.2d at 240 ("We will not reassess the experts' opinions on appeal."); *Dosedel*, 414 N.W.2d at 756 ("As fact finder, the [district] court was not bound by the testimony of an expert.").

Because the district court's findings support its conclusion that appellants failed to submit competent evidence to counter the assessment's presumption of validity, we reject appellants' argument that the district court erred in failing to independently determine the assessment's impact on their property's market value.

Affirmed.