STATE OF MINNESOTA

IN SUPREME COURT

A17-0962

Tax Court — Lillehaug, J.

Court Park Company, et al.,

Respondents,

vs.

Filed: February 14, 2018
Office of Appellate Courts

County of Hennepin,

Relator.

Kay Nord Hunt, Michael R. Moline, Lommen Abdo, P.A., Minneapolis, Minnesota, for respondents.

Michael O. Freeman, Hennepin County Attorney, Jane N.B. Holzer, Rebecca Holschuh, Assistant County Attorneys, Minneapolis, Minnesota, for relator.

S Y L L A B U S

1. When determining whether a petitioning taxpayer has produced evidence sufficient to overcome the statutory presumption that a property tax assessment is valid, the tax court may consider only the evidence presented by the taxpayer.

2. The tax court did not abuse its discretion in denying the County's motion to dismiss by holding, in the alternative, that the evidence presented by the taxpayer overcame the statutory presumption.

Affirmed.

O P I N I O N

LILLEHAUG, Justice.

Respondents Court Park Company and Camir II, LLC ("the taxpayer") contested relator Hennepin County's ("the County") assessment of the fair market value of the taxpayer's parking ramp. At the close of the taxpayer's case-in-chief, the County moved to dismiss. The tax court deferred ruling on the County's motion. After both parties' cases were fully presented, the tax court denied the County's motion, basing its decision on evidence presented in the County's case. On certiorari, we are asked to determine on what evidence the tax court may rely in deciding whether the taxpayer has overcome the presumptive validity of the County's assessment. Because the relevant law permits only the taxpayer's evidence to be considered, we conclude that the tax court erred in considering the County's evidence to decide the motion. Nevertheless, because the tax court did not abuse its discretion by holding in the alternative that the taxpayer's evidence overcame the presumptive validity of the assessment, we affirm.

FACTS

This case is about the fair market value of a parking ramp located next to Hennepin County Medical Center in downtown Minneapolis. In 2014, the County assessed the

parking ramp's value at $8,429,800. In 2015, it assessed the value at $9,323,200. The taxpayer appealed both assessments to the tax court.[1]

At trial, the tax court received into evidence an appraisal report and testimony from the taxpayer's expert, Daniel Boris. Appraiser Boris opined that the value of the parking ramp was $5,775,000 in 2014 and $6,000,000 in 2015.

At the close of the taxpayer's case, the County moved to dismiss under Minnesota Rule of Civil Procedure 41.02,[2] arguing that the taxpayer had "failed to overcome the prima facie validity of the assessment." The parties agreed that a decision on the County's motion should be decided post-trial, and thus, the trial continued, with the presiding judge taking testimony "subject to the County's motion."

The County then called Brian Kieser, the chief appraiser for the City of Minneapolis Assessor's Office, to testify. He opined that the value of the parking ramp was $8,000,000

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[1] The taxpayer's consolidated appeals in the tax court were initially brought by Allied Parking. Allied Parking is the operator of the parking ramp, but has no ownership interest in it. Because the party appealing to the tax court must have an "estate, right, title, or interest in or lien upon" the land, the parties agreed to substitute Court Park Company and Camir II, LLC as parties. *Court Park Co. v. County of Hennepin*, 27-CV-15-07133, 2017 WL 1750326, at *1 n.2 (Minn. T.C. May 3, 2017) (quoting Minn. Stat. § 278.01, subd. 1(a) (2016)). We refer to these owners as the "taxpayer."

[2] Rule 41.02 provides, in relevant part: "After the plaintiff has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law, the plaintiff has shown no right to relief. In an action tried by the court without a jury, the court as trier of the fact may then determine the facts and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence." Minn. R. Civ. P. 41.02(b).

in 2014 and $8,900,000 in 2015. Notably, these values were each approximately $400,000 less than the County's assessment. Kieser's appraisal report was admitted into evidence.

The tax court issued a combined order that (1) denied the County's motion to dismiss, (2) determined the market value of the parking ramp as of 2014 and 2015, and (3) ordered a judgment in favor of the taxpayer. The court denied the County's motion "because when viewing all of the evidence, and thereby considering the County's appraisal report, there is substantial evidence that the market value of the subject property was less than its assessed value." *Court Park Co. v. County of Hennepin*, 27-CV-15-07133, 2017 WL 1750326, at *4 (Minn. T.C. May 3, 2017). In a footnote, the court provided an alternative ground for denying the County's motion, noting that even if it had considered only the evidence introduced during the taxpayer's case-in-chief—primarily Boris's opinion—the taxpayer's evidence was sufficient to overcome the presumption that the assessment was correct. *Id.* at *4 n.22. Only after the court considered Kieser's appraisal did it conclude that Boris's sales comparison approach was "unreliable." *Id.* In other words, the evidence at the close of the taxpayer's case was sufficient to survive a motion to dismiss.

Having denied the County's motion, the court found that the parking ramp's fair market value was $6,510,500 in 2014 and $7,325,500 in 2015.[3] *Id.* at *28. The County petitioned this court for a writ of certiorari, which we issued.

[3] The County has not appealed the tax court's determination of the parking ramp's values.

ANALYSIS

I.

On appeal from the tax court, we "determine only whether the tax court lacked jurisdiction, whether the tax court's order is supported by the evidence and is in conformity with the law, and whether the tax court committed any other error of law." *S. Minn. Beet Sugar Coop. v. County of Renville* (*SMBSC*), 737 N.W.2d 545, 551 (Minn. 2007); *see also* Minn. Stat. § 271.10, subd. 1 (2016) (same). Here we are asked to determine on what evidence the tax court may rely to decide whether a taxpayer has overcome the presumptive validity of the County's assessment. This is a legal determination that we review de novo. *SMBSC*, 737 N.W.2d at 551.

The County argues that the burden is on the taxpayer to present "substantial evidence" to overcome the presumptive validity of its assessment, and thus the tax court may consider only the taxpayer's evidence to decide a motion to dismiss under Rule 41.02. The taxpayer argues that Rule 41.02 authorizes the tax court to consider all of the evidence presented before and after the motion to dismiss is brought.

Two statutes, and our decision in *SMBSC* interpreting them, control here. Minnesota Statutes § 271.06 provides that "an appeal to the Tax Court may be taken . . . from any official order of the commissioner of revenue respecting any tax . . . or assessment." Minn. Stat. § 271.06, subd. 1 (2016). The tax court must "hear, consider, and determine without a jury every appeal de novo," and "[a]ll . . . parties shall have an opportunity to offer evidence and arguments at the hearing; *provided*, that the order of the commissioner or the appropriate unit of government in every case *shall be prima facie*

valid." *Id.*, subd. 6(a) (2016) (emphasis added). Section 272.06, which governs the property tax assessment at issue here, further provides that "[a]ll such assessments . . . shall be presumed to be legal *until the contrary is affirmatively shown*." Minn. Stat. § 272.06 (2016) (emphasis added).

We have read these two statutes together as creating "a presumption of validity for the county's assessment." *SMBSC*, 737 N.W.2d at 557. "[T]o defeat the prima facie validity of the assessment, *the taxpayer must* offer evidence to invalidate the assessment." *Id.* at 558 (emphasis added). This evidence must be "substantial." *Conga Corp. v. Comm'r of Revenue*, 868 N.W.2d 41, 53 (Minn. 2015). For evidence to be "substantial," it must be "credible evidence that the assessor's estimated market value is incorrect." *Guardian Energy, LLC v. County of Waseca*, 868 N.W.2d 253, 258 n.6 (Minn. 2015).

In short, our precedent is clear that "the burden is on the party challenging the assessment to show that it does not reflect the true market value of the property." *Gale v. County of Hennepin*, 609 N.W.2d 887, 890 (Minn. 2000). This has been the law in our state for nearly 100 years. *See In re Delinquent Real Estate Taxes for Year 1920*, 199 N.W. 968, 969 (Minn. 1924) ("The owner objecting to the amount of the tax has the burden of proving that his property was overvalued."). The statutes and our precedent plainly require that the *taxpayer* present substantial evidence to overcome the statutory presumption that the unit of government's assessment is valid.

Thus, it follows that, when determining whether the taxpayer has overcome the presumptive validity of the County's assessment, the tax court must consider only the taxpayer's evidence. In this case, when it relied on evidence presented by *the County*, after

the taxpayer's case-in-chief, to conclude that the taxpayer had satisfied its burden, the tax court improperly shifted the burden of production from the taxpayer to the County. Therefore, the tax court erred when it considered the County's appraisal report to decide whether "substantial evidence" had been offered to overcome the presumptive validity of the assessments.[4]

II.

This conclusion does not end our inquiry. After using the County's own evidence to deny the County's motion, in a footnote the court stated that, in the alternative, "[e]ven if we examined only evidence introduced during [the taxpayer's] case-in-chief, we would still deny the County's motion because there was insufficient evidence in [the taxpayer's] case-in-chief to discredit Mr. Boris's sales approach." *Court Park Co.*, 2017 WL 1750326, at *4 n.22. We view this statement by the tax court to be an alternative holding, not dictum

[4] The County brought its motion to dismiss under Rule 41.02(b) of the Minnesota Rules of Civil Procedure. The parties dispute what evidence Rule 41.02(b) authorizes the court to consider when deciding a motion to dismiss. The civil rules apply to tax court proceedings, *Langer v. Comm'r of Revenue*, 773 N.W.2d 77, 80 (Minn. 2009), but only to the extent that no conflict exists between the rules and the tax statutes. *See* Minn. Stat. § 271.06, subd. 7 (2016); Minn. R. Civ. P. 81.01(a). Where a conflict exists, the tax statutes control. *See Bond v. Comm'r of Revenue*, 691 N.W.2d 831, 836 (Minn. 2005) ("The Minnesota Rules of Civil Procedure apply to tax proceedings where they are not inconsistent with tax court procedures."). To the extent that Rule 41.02 could be read to allow a court to consider *the movant's* evidence in deciding a motion to dismiss—a question we need not decide—the Rule would conflict with the statutes that place the burden of overcoming the presumptive validity of the assessment solely on the taxpayer. Because the tax statutes control in the event of a conflict, we need not separately interpret Rule 41.02(b). *Cf. State v. Kuhlman*, 729 N.W.2d 577, 584 (Minn. 2007) (declining to address an issue that would not alter the outcome of the case). As we do not reach this issue, we also need not address each party's argument that the other had waived the issue.

as the County contends. The alternative holding is based on the testimony and report of the taxpayer's expert.

We afford the tax court "broad discretion" to rely upon or disregard the evidence presented at trial. *Menard, Inc. v. County of Clay*, 886 N.W.2d 804, 813 (Minn. 2016); *see also Archway Mktg. Servs. v. County of Hennepin*, 882 N.W.2d 890, 896 (Minn. 2016) ("Ordinarily, we defer to the tax court's credibility determinations."); Minn. R. Civ. P. 52.01 ("[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.").

In this case, the testimony and report of Boris, the taxpayer's expert, were based on a sales comparison approach, a recognized method of determining the market value of real estate. *Menard, Inc.*, 886 N.W.2d at 813. The tax court, in the alternative holding set out in footnote 22, determined that the sales comparison approach used by Boris, based on evidence of transactions involving five properties he considered comparable, was enough for the taxpayer to survive a motion to dismiss. As we read the tax court's decision, the tax court rejected Boris's five comparables only *after* considering Kieser's testimony and report, presented during the County's case. With respect to each of Boris's comparables, the tax court stated: "We credit Mr. Kieser's testimony." *Court Park Co.*, 2017 WL 1750326, at *8, *9, *10.

Even though the tax court ultimately rejected Boris's report and testimony, we cannot say that it was an abuse of discretion for the tax court, at the close of the taxpayer's case-in-chief, to conclude that the evidence presented was sufficiently "credible evidence

that the assessor's estimated market value [was] incorrect." *Guardian Energy*, 868 N.W.2d at 258 n.6. Therefore, we must affirm based on the tax court's alternative holding.

CONCLUSION

For the foregoing reasons, based solely on the tax court's alternative holding, we affirm the tax court's denial of the motion to dismiss.

Affirmed.