[Cite as *Kent v. Atkinson*, 2011-Ohio-6204.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

THE CITY OF KENT,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2010-P-0084**
- vs -	:	
LLOYD E. ATKINSON, et al.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2008 CV 1568.

Judgment: Modified and affirmed as modified.

Antonios C. Scavdis, Sr. and *Antonios C. Scavdis, Jr.*, Scavdis & Scavdis, L.L.C., 261 West Spruce Avenue, P.O. Box 978, Ravenna, OH 44266 (For Plaintiff-Appellee).

S. David Worhatch, Law Offices of S. David Worhatch, 4920 Darrow Road, Stow, OH 44224-1406; and *Ralph L. Oates*, 217 East Main Street, Kent, OH 44240 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Lloyd E. Atkinson, appeals the judgment entered by the Portage County Court of Common Pleas. Following a jury trial in an appropriations matter, the magistrate and the trial court entered judgment that Atkinson's real property was subject to appropriation and worth $100,000, the amount asserted by appellee, the city of Kent ("the city"). In addition, the magistrate and trial court overruled Atkinson's motion for a new trial.

{¶2} The city approved the Crain Street bridge project. The project involved constructing a new bridge for motor vehicle traffic over the Cuyahoga River. The project required several private real estate parcels to be acquired.

{¶3} Atkinson owned real property on East Water Street in Kent, on the east side of the Cuyahoga River. Atkinson's property was .153 acres. The property was used for commercial purposes, as Atkinson operated a service garage on the site. The building, constructed in 1945, was a 1500-square foot, concrete-block structure with four vehicle service bays and a small office area. Since Atkinson's property was located where the new bridge was being constructed, his property was one of the parcels that needed to be acquired.

{¶4} The city initiated this action by filing a petition and complaint for appropriation of real property against Atkinson.[1] Atkinson filed an answer to the complaint, wherein he asserted that "the proposed appropriation constitutes an unconstitutional taking without just compensation."

{¶5} Atkinson and the city agreed to have the matter referred to a magistrate for purposes of conducting the jury trial, as well as ruling on pretrial and post-trial matters.

{¶6} Prior to trial, the city filed several motions in limine. The motions sought to exclude the presentation of certain evidence, including: (1) Atkinson's loss of business income from the taking of his real property; (2) the total cost of the bridge project; (3) a recent real estate transaction involving a Sheetz gas station; and (4) the prices the city paid to land owners in other appropriations actions related to the bridge project. The

1. Steve Shanafelt, the Portage County Treasurer, was also named in the complaint. Shanafelt has not filed an appellate brief and is not a party to this appeal.

magistrate conducted a brief hearing on the motions immediately prior to the start of the trial. The magistrate ruled that evidence of the total cost of the bridge project would be admissible. The magistrate granted the motion in limine with respect to loss of business income. In regard to the real estate transaction and the prices the city paid to land owners in other appropriations actions related to the bridge project, the magistrate held that this evidence would not be admissible unless Atkinson provided expert testimony establishing that the properties in question were comparable.

{¶7} A jury trial was held before the magistrate. Rhonda Boyd, a senior engineer with the city, testified regarding the general nature of the bridge project. Thomas Roe, a real estate appraiser, testified for the city regarding the value of Atkinson's property. He valued the property at $92,500 based on the income approach and $103,000 based on the replacement cost approach. Roe gave a final appraisal of the property at $100,000, after evaluating the two figures. Atkinson testified on his own behalf regarding the value of his property, opining that it was worth $288,000 to $325,000. Atkinson did not present an expert witness.

{¶8} The jury determined Atkinson was entitled to $100,000 as compensation for the city taking his property.

{¶9} Atkinson filed a motion for new trial pursuant to Civ.R. 59. In addition, Atkinson submitted affidavits from himself and his attorneys, Ralph Oates and S. David Warhatch. Atkinson's affidavit was captioned "affidavit of Lloyd E. Atkinson and defendant's proffer." In his affidavit, Atkinson explained the evidence he would have presented at trial had the magistrate not ruled it inadmissible. The magistrate conducted a hearing on Atkinson's motion for a new trial. The magistrate issued a

document captioned "magistrate decision and journal entry" denying Atkinson's motion for a new trial. Atkinson filed objections to the magistrate's decision. The trial court overruled Atkinson's objections and adopted the magistrate's decision as its own.

{¶10} Atkinson filed a timely notice of appeal. Atkinson raises four assignments of error, which we address out of numerical order. His first assignment of error is:

{¶11} "The elected judge assigned to this appropriation action erroneously regarded the Magistrate's decision overruling defendant's motion for new trial as a 'final order' that arguably could excuse her from addressing defendant's objections to that decision."

{¶12} The magistrate issued a ruling denying Atkinson's motion for a new trial on June 23, 2010. On October 1, 2010, a hearing was held on Atkinson's objections to the magistrate's decision. During that hearing, the city raised the issue of whether the magistrate's June 23, 2010 ruling constituted a final order that needed to be appealed. After permitting the parties to brief the issue, the trial court concluded that the magistrate's June 23, 2010 ruling was a final order.

{¶13} On October 14, 2009, the parties entered into a consent agreement for the matter to be tried before a magistrate, which provided:

{¶14} "Pursuant to Civ.R. 53 and Loc.R. 21.02(i), the parties unanimously consent to the Magistrate presiding at the trial of this case to a jury, entering judgment, and ruling upon all pre-trial and post-trial matters. The Magistrate shall have the same authority as a judge to make any and all rulings during the jury trial."

{¶15} Atkinson argues that the agreement was not valid because a party to the action, the Portage County Treasurer, did not sign the document. Pursuant to Loc.R.

21.02 of the Portage County Court of Common Pleas, in addition to items set forth in the civil and criminal rules, several matters may be referred to a magistrate, including "(i) trials with a jury where the parties consent in writing." Atkinson argues that this rule requires the "consent of *all* parties." (Emphasis sic.) The word "all" is not in the rule. Loc.R. 21.02 of the Portage County Court of Common Pleas. In this matter, the Portage County Treasurer was a nominal, ancillary party. He did not participate in the trial and did not participate in this appeal. As such, we do not deem his failure to sign the agreement to be material. Moreover, there is no dispute that Atkinson's counsel signed the agreement on his behalf. Thus, he has failed to demonstrate why he should not be bound by its terms.

{¶16} The parties' agreement clearly stated that the magistrate had authority to rule upon all "post-trial matters." This language would include a motion for a new trial. Thus, the magistrate had the authority to issue a final ruling on Atkinson's Civ.R. 59 motion for a new trial.

{¶17} That being said, for the reasons that follow, we conclude the magistrate did not exercise that authority but, instead, issued his ruling on the Civ.R. 59 motion in the form of a magistrate's decision. The June 23, 2010 ruling by the magistrate is captioned "magistrate decision and journal entry." The document concludes with the following language:

{¶18} "If a party files objections to this decision, such objections must be filed within fourteen days of the date of this decision. Pursuant to Civil Rule 53(E)(3)(d), a party shall not assign as error on appeal the trial court's adoption of any finding of fact

or conclusion of law unless the party has objected to that finding or conclusion under Civil Rule 53.

{¶19} "If a party files objections to this decision pursuant to Civil Rule 53(E)(3) and a transcript is needed to support the objections, a statement that such transcript has been ordered must accompany the objections. ***

{¶20} "The Clerk is directed to serve upon all parties notice of this decision and its date of entry upon the journal in accordance with Civil Rule 53(E)(1) ***."

{¶21} The magistrate repeatedly referred to the document as a "decision"; referenced Civ.R. 53, which pertains to magistrates, on multiple occasions; and reiterated the importance of filing timely objections to the magistrate's decision. In addition, the parties treated the ruling as a magistrate's decision. Atkinson filed objections to the magistrate's decision. The city filed a "reply brief to [Atkinson's] objections to the magistrate's decision" and, therein, did not note any objection to the document being referenced as a magistrate's decision. Most significantly, the trial court treated the June 23, 2010 ruling as a magistrate's decision. The trial court granted Atkinson's motion for an extension of time to file his objections to the magistrate's decision. Also, the trial court issued an entry permitting Atkinson additional time to supplement his objections to the magistrate's decisions.

{¶22} The trial court, in its October 21, 2010 final order, concluded that the Magistrate's June 23, 2010 ruling was a final order, which caused "time to run on the filing of any appeal." Despite this ruling, the trial court independently reviewed the magistrate's decision, overruled Atkinson's objections to the magistrate's decision, and adopted the magistrate's decision as its own.

{¶23} If permitted to stand, the trial court's language on page two of its October 21, 2010 order would require Atkinson to have filed an appeal of the June 23, 2010 magistrate's decision by the end of July 2010. See App.R. 4(B)(2). Since no notice of appeal was filed by that time, this court would have been without jurisdiction to hear the merits of this matter. Instead, we conclude that the trial court's October 21, 2010 judgment entry was the order that disposed of Atkinson's motion for a new trial; thus, the time to file his appeal began at that time. See App.R. 4(B)(2).

{¶24} Since the parties, the magistrate, and the trial court all treated the magistrate's June 23, 2010 ruling as a magistrate's decision, we hereby modify the trial court's October 21, 2010 judgment entry by striking the last two full paragraphs of page two of the document.

{¶25} Atkinson's first assignment of error has merit to the extent indicated.

{¶26} Atkinson's fourth assignment of error is:

{¶27} "The court below erred in concluding that defendant had not preserved his post-trial remedies or claims for relief on appeal for want of an offer of proof."

{¶28} On appeal, Atkinson asserts the trial court erred by ruling that he failed to make a proffer.

{¶29} Immediately prior to trial, the magistrate conducted a hearing on the city's motions in limine. The trial court ruled that evidence of property values from sales or appropriations would not be admitted unless Atkinson presented expert testimony to show those properties were comparable to his property.

{¶30} "A motion in limine is a preliminary request for the trial court to exclude certain evidence. *** Accordingly, '(a) party who has been restricted from introducing

evidence by means of a motion in limine must seek to introduce the evidence by proffer or otherwise at trial to preserve the issue on appeal.' *** This is because 'a proffer assists a reviewing court when determining whether the trial court's exclusion of evidence affected a substantial right of the appellant as required by Evid.R. 103.' ***" *Ross v. Nappier*, 185 Ohio App.3d 548, 2009-Ohio-6995, at ¶19. (Internal citations omitted.)

{¶31} The proffer requirement is set forth in Evid.R. 103(A)(2), which provides, in part:

{¶32} "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

{¶33} "***

{¶34} "(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked."

{¶35} During Atkinson's testimony, he began to mention an appraisal of another property, when the city promptly objected. At a side bar on the issue, the magistrate ruled that evidence would not be admitted regarding "other people's appraisals and values they received from property." Thus, the magistrate reiterated his position and specifically excluded this evidence during the trial. Moreover, it was apparent from the context of the dialog what evidence Atkinson sought to introduce. While Atkinson did not specifically call other lay witnesses to testify regarding their property values, we believe the combination of the magistrate's specific ruling during the hearing on the motions in limine the morning of the first day of the jury trial and the magistrate's ruling

during Atkinson's testimony on the issue of property values adequately preserved this issue for appeal.

{¶36} Atkinson submitted a proffer of evidence with his motion for new trial. In denying Atkinson's motion for a new trial, the magistrate and the trial court both noted that Atkinson did not make a proffer. However, there is no additional explanation as to whether the trial court considered Atkinson's post-trial proffer. We note there is authority for the proposition that, in certain circumstances, a post-trial proffer may be sufficient to preserve issues for appeal. See, e.g., *Martin v. Nguyen*, 8th Dist. No. 84771, 2005-Ohio-1011, at ¶16; *Nelson v. Ford Motor Co.* (2001), 145 Ohio App.3d 58, 65. However, for purposes of this appeal, we need not specifically rule on the adequacy of Atkinson's post-trial proffer, since it does not provide any additional insight to our determination regarding the magistrate's evidentiary rulings. While the proffer is more detailed and contains specific property values, it does not address the primary concern of the magistrate—the failure to offer expert testimony to show the properties in question were comparable.

{¶37} In this matter, the basis of the magistrate's evidentiary rulings is apparent from the context of the colloquy during trial. Below, this court fully addresses Atkinson's assigned errors regarding the exclusion of evidence on their merits. Thus, it is not necessary for us to address Atkinson's claimed error regarding the adequacy of his proffer. See App.R. 12(A)(1)(c).

{¶38} Atkinson's fourth assignment of error is moot.

{¶39} Atkinson's third assignment of error is:

{¶40} "The court below erred in excluding lay witness testimony offered by defendant on the grounds that defendant's witnesses were incompetent to testify unless they could be qualified as experts under Evid.R. 702 and in failing to grant a new trial to correct that error."

{¶41} Atkinson sought to present several witnesses who would testify regarding the amount of the offers the city made to them as part of the bridge project.

{¶42} The admission of evidence lies within the discretion of the trial court. *Peters v. Ohio State Lottery Comm.* (1992), 63 Ohio St.3d 296, 299. (Citations omitted.) Thus, this court will not disturb the trial court's evidentiary rulings unless it is demonstrated that the trial court abused its discretion. Id. An abuse of discretion is the trial court's "'failure to exercise sound, reasonable, and legal decision-making.'" *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, at ¶62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11.

{¶43} "'In determining fair market value (for appropriation purposes), there are three recognized methods of appraisal: (1) cost of reproducing property less depreciation, (2) market data approach utilizing recent sales of comparable property, and (3) income or economic approach based on capitalization of net income.'" *Proctor v. N & E Realty LLC*, 11th Dist. No. 2005-T-0051, 2006-Ohio-3078, at ¶18. (Citations omitted.)

{¶44} An owner of real property is competent to testify regarding his or her opinion of the value of that property. *Kister v. Ashtabula Cty. Bd. of Revision*, 11th Dist. No. 2007-A-0050, 2007-Ohio-6943, at ¶18, citing *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572, 574. This is known as the owner-opinion rule. See

Procter v. Hall, 4th Dist. Nos. 05CA3 & 05CA8, 2006-Ohio-2228, at ¶36. (Citations omitted.)

{¶45} When ruling on the city's motion in limine to exclude evidence of the value of other offers or purchases of real estate in the vicinity of Atkinson's property, the magistrate stated:

{¶46} "However, I'll tell you this right now, [Atkinson] is not to provide any witnesses in regards to similar purchases or similar offers in that specific neighborhood unless there's an expert witness who can establish that they are comparable in nature, comparable property, and would have some value or relevance to this action. So, unless some expert does that, then that's not to be introduced or mentioned."

{¶47} The magistrate ruled that evidence of the value of other properties would not be admissible unless evidence was presented showing the property in question was "comparable" to Atkinson's property. A "comparable" property is a term of art in real estate appraisals. As the Fifth Appellate District has held:

{¶48} "A trial court, before permitting evidence of the 'comparable sale' price, should require the party offering such evidence to show that:

{¶49} "(a) The sale was between a willing seller and a willing buyer, neither of whom is required to buy or sell;

{¶50} "(b) It was an 'arm's length' transaction;

{¶51} "(c) It is sufficiently similar in construction, size, location, date of sale, age, condition, and use so as to make it comparable to the property being appropriated." *Procter v. Dennis*, 5th Dist. No. 05-CA-82, 2006-Ohio-4442, at ¶30. (Citation omitted.)

{¶52} The magistrate's ruling hinged on a relevancy determination. Pursuant to Evid.R. 402, only relevant evidence is admissible. Essentially, the magistrate determined that comparable property values were relevant and admissible, while non-comparable properties were not.

{¶53} The First Appellate District has held that evidence regarding other property is admissible, and the question of whether the property is comparable is left to the trier of fact when determining the probative value of the evidence. *Cincinnati v. Banks* (2001), 143 Ohio App.3d 272, 292. However, the Fifth Appellate District disagreed with the holding in *Cincinnati v. Banks*, when it concluded that permitting testimony regarding non-comparable property inappropriately "expand[s] the parameters of the 'owner opinion rule.'" *Procter v. Bader*, 5th Dist. No. 03 CA 51, 2004-Ohio-4435, at ¶33. We agree.

{¶54} As mentioned in the city's brief, to hold otherwise would permit a property owner to submit valuations for *any* other property. Then, it would be up to the appropriating entity, on cross-examination, to attempt to demonstrate why the properties in question are *not* comparable. However, at that point, the evidence would already be in front of the jury.

{¶55} Next we turn to the question of whether an expert witness was required to establish that the properties were comparable.

{¶56} A lay witness may testify pursuant to Evid.R. 701, which provides:

{¶57} "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1)

rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue."

{¶58} A witness may testify as an expert if all of the following apply:

{¶59} "(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

{¶60} "(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

{¶61} "(C) The witness' testimony is based on reliable scientific, technical, or other specialized information. ***" Evid.R. 702.

{¶62} The Supreme Court of Ohio has held: "[i]n appropriation proceedings, it is error for the court to exclude, on direct examination of one's own *expert* witness, evidence of sales prices of other comparable real property as substantive proof of the fair market value[.]" (Emphasis added.) *Masheter v. Hoffman* (1973), 34 Ohio St.2d 213, syllabus. This language suggests that an expert witness is necessary to introduce comparable property values.

{¶63} The instant matter concerned *commercial* property values. There are several factors that may more-significantly affect commercial property values such as zoning designations, location, income/expense analysis, and traffic patterns and volume. Thus, the opinion as to whether two commercial properties are comparable for purposes of real estate appraisals is an inquiry that is beyond the knowledge and understanding of a typical lay person.

{¶64} In the case sub judice, the magistrate clearly annunciated that an expert witness would be required to demonstrate that other properties were comparable. Atkinson did not present an expert, did not attempt to establish himself as an expert, and did not seek a continuance in order to obtain an expert.

{¶65} An additional reason the magistrate prohibited the witnesses from testifying was that an offer in an appropriation transaction is not reflective of the fair market value. As stated by the Supreme Court of Ohio:

{¶66} "In an appropriation proceeding, the price paid by an appropriating authority in the purchase of other property is ordinarily not sufficiently voluntary to represent a dependable index of the fair market value, and it is error for the court to admit such prices in evidence as substantive proof of the fair market value of property being appropriated." *Masheter v. Brewer* (1974), 40 Ohio St.2d 31, syllabus.

{¶67} Such transactions are "'forced' sales," which are not probative of the fair market value of the property. *Procter v. Hall*, 2006-Ohio-2228, at ¶36. This is because, in these situations, there is no willing buyer or willing seller. *Masheter v. Brewer* (1974), 40 Ohio St.2d 31, 33. The buyer may be induced to pay an inflated price, or the seller may feel coerced to act too quickly. Id.

{¶68} Atkinson focuses on the term "ordinarily" in the syllabus of *Masheter v. Brewer* to support his argument that the price paid by an appropriating agency in the purchase of other property is not per se inadmissible but, in certain circumstances, may be admissible. The United States District Court for the Southern District of Ohio has addressed the situation in which such evidence may be admissible—in cases where a proper foundation is laid showing that the transaction was sufficiently voluntary and

otherwise consistent with an arms-length transaction. *Rockies Express Pipeline, LLC v. 4.895 Acres of Land* (S.D.Ohio 2009), 2009 U.S. Dist. LEXIS 41935, at *17. In this matter, Atkinson did not lay a proper foundation to demonstrate that the values in the other appropriations actions represented a fair market value.

{¶69} Atkinson argues that the rule announced in *Masheter v. Brewer* is no longer applicable in light of the 2007 statutory changes to R.C. Chapter 163. Atkinson has failed to demonstrate why this court should not continue to follow the precedent established by the Supreme Court of Ohio. Even after the statutory changes to R.C. Chapter 163, appropriations actions are still involuntary and, thus, in the absence of a proper foundation, should not generally be admissible to demonstrate fair market value. See, e.g., *Procter v. Hall*, 2006-Ohio-2228, at ¶36.

{¶70} The magistrate did not abuse his discretion by prohibiting the lay witnesses from testifying regarding the value of their properties without accompanying expert testimony that those properties were comparable to Atkinson's property.

{¶71} This court reviews a trial court's decision on a motion for new trial under the abuse of discretion standard of review. *Effingham v. XP3 Corp.*, 11th Dist. No. 2006-P-0083, 2007-Ohio-7135, at ¶18. (Citations omitted.) Since we have found no abuse of discretion in the underlying evidentiary ruling excluding this evidence, the trial court did not abuse its discretion in denying Atkinson's motion for a new trial.

{¶72} Atkinson also argues that the magistrate erred by excluding evidence of "per-bay" rental prices from other owners of service garages. This issue arose during the hearing on the motions in limine. Atkinson's attorney informed the magistrate that he sought to bring in witnesses to testify to the amounts for which they rented their

garages. In his post-trial proffer, Atkinson asserted that he intended to use these figures, and subsequent calculations based upon them, in support for the valuation of his garage based on the income approach. The problem is that, during the pretrial hearing, the magistrate specifically deferred ruling on this issue stating, "[w]e'll address that when it happens." During the actual trial, Atkinson briefly began to testify regarding his price-per-bay approach, but was interrupted by his attorney and his testimony went to a different topic. The city did not object to this line of testimony, and the trial court did not make an evidentiary ruling on it. In addition, Atkinson did not attempt to present other witnesses on the price-per-bay rental value issue. Since there was no adverse ruling on this issue by the magistrate, either during the pretrial hearing or during the trial, Atkinson has not demonstrated that he was precluded from presenting this evidence.

{¶73} Atkinson's third assignment of error is without merit.

{¶74} Atkinson's second assignment of error is:

{¶75} "The court below erred in excluding evidence of the contemporaneous 'good faith' offers made by the appropriating authority to the owners of neighboring parcels in the same appropriation process that was proffered in corroboration of defendant's opinion of the value of his own property and in failing to grant a new trial to correct that error."

{¶76} Atkinson claims the trial court erred when it precluded him from testifying to the value of other offers for real estate that were made in the appropriations action.

{¶77} There are two evidentiary hurdles that prevented Atkinson from testifying to these figures. First, as noted above, without the testimony of an expert, there was no

evidence that the properties in question were comparable to Atkinson's property. Second, Atkinson's testimony regarding the figures others were offered by the city or the sales prices of other property would be hearsay.

{¶78} Hearsay is an out of court statement, offered for the truth of the matter asserted. Evid.R. 801(C). Appraisals, almost by definition, are the collection and analysis of hearsay. See *Weir v. Miller* (Apr. 13, 1983), 12th Dist. No. 82-04-0044, 1983 Ohio App. LEXIS 11971, at *6. (Citation omitted.) An expert witness may testify regarding his or her valuation of property, regardless of whether his or her opinion is based on hearsay. Id. at *5-6. The Twelfth Appellate District specifically declined to extend this rule to lay persons, holding:

{¶79} "The landowner of property being appropriated, although he may have knowledge of the unique characteristics of his land and its particular value to him, is not an expert who can assimilate various asking prices of other similar property and render an unbiased, so-called 'expert' opinion as to the value of his property based upon these other figures." Id. at *6. See, also, *Procter v. Bader*, 5th Dist. No. 03 CA 51, 2004-Ohio-4435, at ¶31, and *Procter v. Hall*, 2006-Ohio-2228, at ¶36.

{¶80} Atkinson asserts he is entitled to testify regarding other offers and actual sales because he is permitted to give his justification for arriving at a value pursuant to the owner-opinion rule. Atkinson cites *Columbus v. Papageorgiou*, where the Tenth District held that a property owner is permitted to testify to factors that formed the basis of her opinion. *Columbus v. Papageorgiou* (Sept. 3, 1987), 10th Dist. No. 86AP-1157, 1987 Ohio App. LEXIS 8554, at *6. However, the Tenth District justified its holding by noting that the landowner in that case "was well acquainted with various methods of

evaluating real estate from her experience and training in real estate, as well as from the ownership of several investment/income producing properties." Id. at *6-7. Thus, the *Columbus v. Papageorgiou* case is distinguishable from the case sub judice. See *Procter v. Bader*, 5th Dist. No. 03 CA 51, 2004-Ohio-4435, at ¶30.

{¶81} An owner may testify to certain characteristics of his or her property such as the age and condition of improvements and to the property's location. *Procter v. Bader*, 2004-Ohio-4435, at ¶34. (Citation omitted.) However, a lay witness is not permitted to testify about the sales prices of other properties and the degree to which those properties are comparable to the subject property. Id.

{¶82} The magistrate did not abuse his discretion in precluding Atkinson from testifying to the values of the other properties. Further, since we have found no abuse of discretion in the underlying evidentiary ruling excluding this evidence, the trial court did not abuse its discretion in denying Atkinson's motion for a new trial.

{¶83} Atkinson's second assignment of error is without merit.

{¶84} The judgment of the Portage County Court of Common Pleas is modified in a manner consistent with this opinion. The trial court's judgment is affirmed as modified.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.