Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-351

JANUARY TERM, 2018

Henry B. Shipman* v. Town of Plymouth	}	APPEALED FROM:
	}	
	}	Superior Court, Windsor Unit,
	}	Civil Division
	}	
	}	
	}	DOCKET NO. 531-11-16 Wrcv
		Trial Judge: Robert P. Gerety, Jr.

In the above-entitled cause, the Clerk will enter:

Taxpayer appeals pro se from the trial court's determination of the fair market value (FMV) of his property for purposes of the 2016 Town of Plymouth Grand List. He raises numerous arguments. We affirm.

We begin with an overview of the shifting burdens at play in property tax appeals. A presumption of validity attaches to the Town's assessment in appeals to the superior court. See Kruse v. Town of Westford, 145 Vt. 368, 371 (1985). A taxpayer can overcome the presumption by introducing "credible evidence fairly and reasonably tending to show that [the] property was appraised at more than its fair market value." Id. at 371-72. "Even after the presumption of validity disappears, the burden of persuasion on all contested issues remains with the taxpayer." Id. at 372 (explaining that "burden of persuading the trier of fact that his property is over-assessed, which is the underlying issue, remains with the taxpayer throughout the entire proceeding"). If a taxpayer overcomes the presumption of validity, "the town must produce evidence to justify its appraisal." Id. The factfinder must then weigh the competing evidence. "The town can prevail by either demonstrating that the method of appraisal substantially complied with the relevant constitutional and statutory requirements, or by substantiating the appraisal with independent evidence relative to the fair market value of the subject property and the listed value of comparable properties within the town." Id. at 372-73 (quotation and brackets omitted). As set forth below, the court here concluded that taxpayer overcame the presumption of validity, but that neither party presented credible evidence as to the FMV of taxpayer's property for 2016.

The court's findings and conclusions included the following. Taxpayer owns a farmhouse and approximately 62.19 acres of land in Plymouth. Taxpayer's land falls on both sides of Route 100. The land on the easterly side of the road includes frontage on Woodward Reservoir. A single-family home is located on the westerly side of Route 100 immediately across from the land bordering the reservoir. Taxpayer does not use the home as his primary residence.

Taxpayer's property was assessed at $309,184 between 2013 and 2015. A court set the value for purposes of tax years 2013-2015 following a contested hearing (which occurred in 2014). In 2016, the Town conducted a townwide reappraisal and increased the FMV of taxpayer's property to $309,800. Taxpayer grieved this assessment, and the Board of Civil Authority (BCA) reduced the FMV to $309,184. The BCA used the value previously established by the court for purposes of the 2013 tax year and did not otherwise explain its decision.

Taxpayer appealed to the trial court, arguing that the FMV of his property should be $195,000. To reach this value, taxpayer relied on some of the prior court's findings in the 2013 tax appeal, including the per-acre value of his property. He implicitly argued, however, that the court's 2013 FMV determination was wrong. The trial court found that taxpayer offered no rationale for why it should accept the 2013 findings but reach a substantially different conclusion as to FMV. The court rejected the argument that the earlier case fixed the per-acre value of taxpayer's property or established a binding "legal value" for purposes of his 2016 appeal. It found no material changes in taxpayer's property between 2013 and 2016. It noted that the total grand list value for the Town had been slightly reduced by the townwide reappraisal, but that did not explain the significant reduction in value that taxpayer proposed.

The court explained that the Town's method for assessing FMV included a base per-acre value for a two-acre house site and a separate base per-acre value for all "excess acreage" over two acres. The Town appraised all residential property over two acres in this manner. The Town adjusted the value of the two-acre house site based on "influence factors," to account for considerations affecting market value, including the quality of the location, topography, water frontage, easements, and ease of access. The Town did not apply influence factors to the base per-acre value of the excess acreage.

Taxpayer attempted to show that the Town's appraisal method was faulty and wrongly applied, but he used the Town's general method of appraisal, albeit with changes regarding base values and house-site acreage. Taxpayer argued that rather than using two acres as the house site, the Town should individually determine how much acreage was reasonably necessary for a particular property to be used as a residence. Taxpayer used a one-acre house site for his property. This modification of the Town's methodology reduced the FMV by nearly $102,060, and the court found that it created an anomalous and incorrect valuation. The court rejected taxpayer's opinion of FMV as not credible because taxpayer failed to justify such a precipitous drop in value between 2013 and 2016 and because taxpayer's re-engineering of the Town's general appraisal method was unwarranted and likely to produce inaccurate and unlawful valuations as illustrated by taxpayer's evidence.

At the same time, the court deemed the Town's evidence insufficient to allow the court to assess if its appraisal method was likely to produce reasonably accurate FMV determinations. The court found that the Town's methodology appeared to produce inaccurate FMV determinations. It could not determine how the Town determined the base values used for the house site and the excess acreage. Additionally, the Town did not adjust the base value for excess acreage to reflect different characteristics, which could create unfair results. Given the potential for substantial inaccuracies and the lack of adequate explanation about the Town's methodology, the court concluded that the Town's evidence of FMV was not credible and it did not support a finding of

fact regarding the FMV of taxpayer's property. The court rejected the Town's opinion testimony as not credible as well.

Although the court concluded that taxpayer's evidence regarding the deficiencies in the Town's appraisal of his property was sufficient to defeat the presumption of validity that attaches to the Town's assessment, it also concluded that given the state of the evidence it could not make a finding of fact regarding the FMV of taxpayer's property in 2016. It thus set the property in the 2016 Grand List at the same value entered for the 2015 Grand List, which was $309,184. See Bloomer v. Town of Danby, 135 Vt. 56, 58-59 (1977) (holding that where presumption of validity had disappeared, and where town failed to produce evidence demonstrating that its appraisal was appropriate, taxpayer was entitled to decision reinstating grand list figure at assessment for previous year). Taxpayer appealed.

Taxpayer raises numerous arguments. He asserts that because the 2016 townwide reappraisal reduced the Town's total 2016 Grand List by "probably" 8%, the FMV of his property should be reduced by the same amount. Taxpayer next contends that a negative influence factor for topography should have been applied to his excess acreage.[1] Taxpayer also questions the Town's use of a two-acre homesite, rather than the amount of land "reasonably necessary for the use of the dwelling," and argues that his house site location has changed per the applicable current use value map, such that the prior valuation of the house site value is no longer appropriate. Finally, taxpayer asserts that the court was biased against him, which impacted its view of the evidence.

We review the trial court's findings for clear error and its legal conclusions de novo. M.T. Assocs. v. Town of Randolph, 2005 VT 112, ¶ 6, 179 Vt. 81 (citations omitted). We find no error here.

First, we reject taxpayer's argument that an overall reduction in the total value of the 2016 Grand List means that the FMV value of his property must be reduced by the same percentage. Taxpayer fails to draw a reasonable correlation between these values. To the extent that he is arguing that his property was assessed at a higher percentage of FMV compared to other comparable properties in Plymouth, he did not raise this argument below and the court expressly found that he presented no evidence presented on that issue. He thereby waived such argument. See Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459 (2000) ("Contentions not raised or fairly presented to the trial court are not preserved for appeal."). The fact that, on average, the townwide reappraisal resulted in an 8% reduction in assessed residential property values does not mean that an 8% reduction must apply to taxpayer's individual property; in the reappraisal, some assessments likely fell by more than 8%, some by less, and some may have increased relative to the prior assessment of record.

[1] Taxpayer asserts that the BCA has previously applied a negative influence factor for topography to his excess acreage. As support for this assertion, he cites to his testimony in the 2013 tax appeal. That testimony concerned the admission of certain exhibits. In the instant case, the Town presented evidence that it never applies negative influence factors to excess acreage and the court so found. The finding is not clearly erroneous. Even if the Town had done so sometime in the past, we are here concerned with the Town's methodology in 2016.

As to the Town's failure to apply influence factors in determining the value of the excess acreage, and its use of a two-acre home site in the calculation, the trial court agreed with taxpayer that the Town failed to show that its methodology led to accurate assessments of FMV. Among other things, the court faulted the Town for failing to adjust the base value for excess acreage to reflect varying property characteristics, and concluded that the Town's approach could create unfair results. With respect to the size of the "house site" component of the FMV calculation, the court concluded that the Town was neither required nor prohibited by statute from using a two-acre house-site as a tool in determining FMV. The court concluded that the statutory definitions of "house site" for the purposes of the state education tax calculation and property tax income sensitivity adjustments do not regulate a Town's use of the concept of a "house site" as part of its overall appraisal methodology.[2] To the extent that taxpayer's appeal rests on its critiques of the Town's appraisal methodology, the trial court agreed to a large extent with taxpayer's arguments.[3]

However, the court reasonably found that taxpayer's proposed approach would create arbitrary results as well. Taxpayer argues that the court should have used the Town's methodology, but should have applied influence factors to the base value in setting the per-acre value of the excess property, and that the Town should have valued the "house site" component of its calculation differently to account for the feature of the house site. The trial court was not bound to credit taxpayer's opinions and argument on these points. It is for the trial court to weigh the evidence and assess the credibility of the witnesses. See Harte v. Town of Bennington, 153 Vt. 256, 258 (1989) (noting that persuasiveness of testimony in tax appeal is for court to determine). We do not reweigh the evidence on appeal. As set forth above, the court explained in detail why it could not credit either side's evidence in determining FMV for 2016. While it is true that resulting FMV is the same as that found by the BCA in this particular case, the court made clear

[2] Because the court rejected the Town's valuation, and the Town has not cross-appealed, we need not review the court's reasoning on this point.

[3] Taxpayer also suggests that a lister's card that he received from the Town during the appeal proceedings which contained very different data shows that the listers engaged in a calculated attempt to adjust their numbers to arrive at a pre-ordained FMV. The Town acknowledged, and the court found, that the information that had been provided to taxpayer was riddled with significant errors. The Town presented testimony that the errors appeared to have been caused by a software glitch. The court recognized that the document had caused great confusion to taxpayer and that it contributed to a breakdown in taxpayer's ability to trust that the Town was performing competent and accurate appraisal work. Nevertheless, the court found that the errors were corrected and the Town had introduced a data card that was an accurate record of the recorded characteristics of the property at issue, and the per-acre and total valuations determined by the Town after applying certain influence factors based on the property's characteristics. To the extent that taxpayer argues that the court should not have credited the Town's explanation for the discrepancy in the information reflected on the lister's card previously provided to him as compared to the one offered by the Town as evidence in the hearing, we will not disturb the trial court's findings as to witness credibility. See Kanaan v. Kanaan, 163 Vt. 402, 405 (1995) (trial court's findings entitled to deference on review because it is in unique position to assess the credibility of witnesses and weigh the evidence presented).

that due to the dearth of credible evidence, it was using the value entered in the 2015 Grand List. We find no basis to disturb its decision.

Finally, we reject taxpayer's claim that the court was biased against him and that this alleged bias influenced the court's evaluation of the evidence. The record does not support this claim. See Gallipo v. City of Rutland, 163 Vt. 83, 96 (1994) (stating that judicial bias cannot be demonstrated based on adverse rulings alone); Ball v. Melsur Corp., 161 Vt. 35, 45 (1993) (stating that "bias or prejudice must be clearly established by the record," and "that contrary rulings alone, no matter how numerous or erroneous, do not suffice to show prejudice or bias"). The various discretionary rulings with which taxpayer takes issue did not ultimately impact the trial court's analysis. Even if the trial court had exceeded its discretion in these rulings—a conclusion we do not reach—those rulings did not impact the trial court's ultimate findings and conclusions.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice