COURT OF APPEALS
DECISION
DATED AND FILED

June 30, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1066 **Cir. Ct. No. 2012CV476**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

MICHAEL C. CONNOR,

PLAINTIFF-APPELLANT-CROSS-RESPONDENT,

V.

VILLAGE OF HOLMEN,

DEFENDANT-RESPONDENT-CROSS-APPELLANT.

APPEAL and CROSS-APPEAL from an order of the circuit court for La Crosse County: SCOTT L. HORNE, Judge. *Affirmed.*

Before Lundsten, Sherman and Blanchard, JJ.

¶1 PER CURIAM. Michael Connor appeals, pro se, the circuit court's order determining that Connor's Village of Holmen property should have been assessed at $220,700 for the year 2011. The Village cross-appeals. Connor argues that the court erred by refusing to adopt as the assessed value the 2010 sales price

of the property, $78,750. The Village argues that the court erred by refusing to uphold the original assessment of $289,900. We affirm the $220,700 figure determined by the circuit court.

Background

¶2 The property in question consists of land and a home that was acquired by a bank in foreclosure proceedings and was then sold to Connor in 2010. The bank listed the property for sale in April 2010 at a price of $146,520. The property did not sell, and the bank reduced the price to $88,815 in August 2010. Connor purchased the property for $78,750 in late November or early December 2010.[1]

¶3 The Village's assessor assessed the property at $289,900 as of January 1, 2011. Connor challenged the assessment as excessive before the Village's board of review, but he was unsuccessful.

¶4 Connor then brought an excessive assessment claim in the circuit court. He argued that the December 2010 sale of the property for $78,750 was an arm's-length transaction at market value and, therefore, the property should have been assessed at the sales price. The Village maintained that the sale was not an arm's-length transaction and that the assessor's $289,900 figure should stand.

[1] There was testimony indicating that Connor closed on the property in late November 2010, but Connor asserts that the sale date was December 5, 2010. The precise date does not matter to our decision. Following Connor's lead, we will refer to December 2010 as the sale date. We also note that both parties sometimes use dollar figures that differ somewhat from those proven at trial. For this decision, we use the trial figures.

¶5 The case proceeded to a bench trial. At the conclusion of the trial, the circuit court made several findings of fact and, based on those findings, rejected both parties' positions as untenable. The court rejected Connor's $78,750 value based on the court's finding that the December 2010 sale was not an arm's-length, market rate transaction. The court rejected the Village assessor's $289,900 valuation because the assessor failed to account for the fact that the property was in "extremely poor condition," necessitating an estimated $50,000 or more in repairs. The court determined that the assessed value of the property should have been $220,700. We reference additional facts as needed below, including additional details of the circuit court's decision.

Discussion

¶6 We begin by noting that, when a circuit court determines that an assessment is excessive, the court must order reassessment unless the court makes certain findings, including a finding that "proceeding to judgment is in the parties' best interests." *See* ***West Capitol, Inc. v. Village of Sister Bay***, 2014 WI App 52, ¶52, 354 Wis. 2d 130, 848 N.W.2d 875 (citing WIS. STAT. § 74.39(3)).[2] Here, the parties do not seek reassessment, nor do they argue that the court erred by failing to make required findings. In any event, we conclude that the circuit court properly determined a value, instead of ordering a reassessment.[3]

[2] All references to the Wisconsin Statutes are to the current, 2013-14 version. The parties do not suggest that there have been any pertinent changes in the applicable statutes during times relevant here.

[3] More specifically, we agree that the circuit court did not err by failing to order further assessment. The circuit court initially appointed an independent assessor to assist in valuing the property. However, that assessor determined that he was unable to make an accurate assessment.

¶7 In an excessive assessment claim, courts owe no deference to the board of review. *See* ***Nankin v. Village of Shorewood***, 2001 WI 92, ¶25, 245 Wis. 2d 86, 630 N.W.2d 141. Rather, as occurred here, the taxpayer may contest the assessment in a full court trial, and the court may make an independent determination of assessed value. *See* ***id.***, ¶¶24-25.

¶8 Thus, our focus is on the circuit court's valuation. Each party challenges the court's determination that the correct 2011 assessed value for Connor's property was $220,700, but the parties assert error for different reasons.

¶9 As we shall see, both parties' assertions of error largely boil down to unpersuasive challenges to the circuit court's fact finding. We uphold the circuit court's findings of fact unless those findings are clearly erroneous. ***Bloomer Hous. Ltd. P'ship v. City of Bloomer***, 2002 WI App 252, ¶12, 257 Wis. 2d 883, 653 N.W.2d 309. We review de novo whether the court erred in its application of the legal standards for assessing property. *See* ***id.***, ¶¶11-12; ***Great Lakes Quick Lube, LP v. City of Milwaukee***, 2011 WI App 7, ¶14, 331 Wis. 2d 137, 794 N.W.2d 510 (WI App 2010).

Connor's Appeal

¶10 In his appeal, Connor takes issue with the circuit court's finding that the December 2010 sale for $78,750 was not an arm's-length, market rate transaction. Connor argues, as we understand it, that this finding was clearly erroneous and, therefore, that the court erred in refusing to adopt $78,750 as the assessed value. We disagree.

¶11 To put Connor's argument in context, we begin with a short summary of the three-tier methodology that is used to assess real property. If

there is a recent arm's-length sale of the property, then the property is assessed at the sales price. *See* ***Nestlé USA, Inc. v. DOR***, 2011 WI 4, ¶28, 331 Wis. 2d 256, 795 N.W.2d 46. If there is no recent arm's-length sale, then the property is assessed based on reasonably comparable sales. *See* ***id.*** If there is no recent arm's-length sale and no reasonably comparable sales, then the property is assessed considering "'all the factors collectively which have a bearing on value of the property in order to determine its fair market value.'" *See* ***id.***, ¶29 (quoted source omitted).

¶12 Applying that methodology here, if the December 2010 sale was an arm's-length transaction, then Connor's property would be assessed at $78,750. This brings us to the standards for determining whether a sale is arm's-length within the meaning of property assessment law.

¶13 "Arm's-length" in this context means that the sale was "'made under normal conditions so as to lead to the conclusion that the price paid was that which could ordinarily be obtained for the property.'" ***Doneff v. City of Two Rivers Bd. of Review***, 184 Wis. 2d 203, 216, 516 N.W.2d 383 (1994) (quoted source omitted). The taxpayer challenging an assessment has the burden of proving that a sale was an arm's-length transaction. ***Id.***

¶14 To demonstrate that the sale was an arm's-length transaction, the taxpayer must show that the sale met six requirements. ***Id.*** at 211-12 & n.3, 216. In this case, the dispute focuses on only one of the requirements: whether the sale involved "a willing buyer and a willing seller, with neither party compelled to

act." *See* ***id.*** at 212.[4] We agree with the Village that the circuit court reasonably found that the bank was "compelled to act" within the meaning of this case law and, therefore, the court also reasonably found that the December 2010 sale was not an arm's-length, market rate transaction.

¶15 To begin, the trial evidence included testimony about the reasons why banks, as a general matter, often sell foreclosed properties for less than market rate. This testimony is consistent with statements in the Wisconsin Property Assessment Manual suggesting that bank sales of foreclosed properties typically have not been treated as market rate transactions. *See* WISCONSIN PROPERTY ASSESSMENT MANUAL, at 14-2 (revised Dec. 2010). Courts adhere to the Assessment Manual, absent conflicting law. *See* ***Nestlé***, 331 Wis. 2d 256, ¶26. The Assessment Manual acknowledges that this traditional approach to foreclosed properties may no longer apply in some instances, most notably when foreclosures are "predominant" in a given area. *See* WISCONSIN PROPERTY ASSESSMENT MANUAL, at 14-2 (revised Dec. 2010). However, Connor does not argue that foreclosures were predominant in the relevant area here.

¶16 In addition, even without this general approach to foreclosed properties, here there is specific evidence showing that the particular sale at issue, the December 2010 sale to Connor, was compelled and not arm's-length. In short, there was testimony that, if the vacant and already-damaged property remained

[4] The other requirements are: that the property was exposed to the open market for a period of time typical of the turnover time for the type of property involved; that the buyer and seller are knowledgeable about the real estate market; that the buyer and seller are knowledgeable about the uses of the property; that payment for the property was in cash or by typical or normal financing and payment arrangement prevalent in the market for the type of property involved; and that the sale price included all rights, privileges, and benefits of the property. *See* ***Doneff v. City of Two Rivers Bd. of Review***, 184 Wis. 2d 203, 212, 516 N.W.2d 383 (1994).

unsold over winter, the property would suffer further serious damage, significantly reducing the property's value. The real estate agent that listed the property for the bank when Connor purchased it in December 2010 testified: "[W]ith winter coming on, we felt that with the ongoing damage already existing in the property, it was the bank's position and our position that they should drop the price in order to get it gone before it went into winter and had more damage as a result of being left vacant ...." The same agent further testified as follows:

> If a bank has got a house that's in good shape, they're getting pretty close to the assessed values. If they've got a property that's ongoing some stress because of damage, then the ongoing weather can make that damage multiply daily. So in this case is how they had a house with a leaking roof, you had plumbing that had froze, and then somebody had turned on the power switch which then fried some of the electronics …, and so every day that property sat there[,] there w[ere] factors that [were] making this potentially more risky and more exposure for them to lose more money. So our job was to reduce that risk of being on the market longer which would cause them to lose even more money.

This and other evidence amply supported the circuit court's finding that the bank was compelled to act, as well as the court's broader finding that the sale to Connor was not an arm's-length, market rate transaction.

¶17 We acknowledge that the record contains competing evidence that might have supported different findings, but, under our standard of review, the existence of competing evidence is not a reason to overturn a circuit court's findings. Factual findings are clearly erroneous only if those findings are against the "'great weight and clear preponderance of the evidence.'" *See* ***Phelps v. Physicians Ins. Co. of Wisconsin, Inc.***, 2009 WI 74, ¶39, 319 Wis. 2d 1, 768 N.W.2d 615 (quoted source omitted).

¶18 Connor relies on dictionary definitions of "compel" as cited in the property assessment case of ***Martinsen v. Board of Review of Town of Iron River***, 163 Wis. 2d 807, 817, 472 N.W.2d 574 (Ct. App. 1991), *overruled on other grounds by* ***Doneff***, 184 Wis. 2d at 218. These definitions are "'to drive or urge forcefully or irresistibly'" and "'to cause to do or occur by overwhelming pressure.'" *See* ***Martinsen***, 163 Wis. 2d at 817 (quoted source omitted). As we understand it, Connor argues that the evidence here was not sufficient to meet these definitions. Assuming this is Connor's argument, we disagree. Moreover, ***Martinsen*** does not say that these definitions are the *only* permissible definitions of "compel" in the context of what makes for an arm's-length transaction. *See* ***id.***

¶19 Before proceeding to the Village's cross-appeal, we note that Connor appears to make an additional argument that we deem undeveloped. To give this argument context, we now provide more detail regarding the circuit court's decision.

¶20 As we understand the circuit court's decision, given the absence of an arm's-length sale or reasonably comparable sales, the court applied the third tier of property assessment methodology. In keeping with this third-tier approach, the circuit court considered a number of factors, including the condition of the property, the cost of needed repairs, the value of much smaller properties in the neighborhood ranging from $90,000 to $150,000, and the unusually large size of Connor's property for the area. Ultimately, however, the court determined the property's value by adding the value of the land, $32,700, to the amount of insurance Connor carried, $188,000, to arrive at the total of $220,700. The court appeared to view this $220,700 figure as a reasonable approximation of the property's value after considering several factors having bearing on the property's value.

¶21 Connor argues that the court erred by determining the value of the improvement based on the insurance amount. He asserts that this amount represents the cost to rebuild, not what the property could have sold for on the open market. This argument amounts to criticism without presenting a better approach. We agree with the circuit court that Connor's only affirmative argument, that the court should have adopted the $78,750 sales price, is unreasonable because that price significantly undervalues the property. For that matter, Connor does not persuasively argue why the court's reliance on the insurance amount or cost to rebuild would be impermissible when these are both permissible factors to consider under the third-tier approach of assessment methodology. *See* ***Nestlé***, 331 Wis. 2d 256, ¶29 (factors include replacement value and amount of insurance carried). Thus, Connor's assertions regarding the insurance amount is not a developed argument, and we consider this line of argument no further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not consider undeveloped arguments); *see also* ***Waushara Cty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (although the court may make some allowances for pro se litigants, "[t]hey are bound by the same rules that apply to attorneys on appeal").

Village's Cross-Appeal

¶22 Turning to the Village's cross-appeal, we repeat that one of the circuit court's findings of fact was that the assessor failed to take into account the "extremely poor condition" of the house that required an estimated $50,000 or more in repairs. The Village argues that there was no evidence to support the court's finding that the property needed $50,000 in repairs and, therefore, the court erred in rejecting the assessor's original $289,900 assessed value. We disagree.

¶23 We first note that the Village effectively concedes that the court's finding regarding needed repairs, if upheld, supports the court's rejection of the assessor's $289,900 figure. That is, the Village does *not* argue that the assessor's $289,900 figure took into account that the property was in extremely poor condition or that the property needed $50,000 or more in repairs. Rather, the Village's argument, as noted, is that there is no evidentiary support for this amount of needed repairs.

¶24 We conclude that the circuit court's findings as to the property's condition and needed repairs are amply supported by the evidence, in particular, by the testimony of the two real estate agents who listed the property for the bank. Both agents testified to serious problems with the property's condition. This included a leaky roof that needed to be replaced, plumbing that had frozen, broken pipes, electrical issues, and a water heater that did not work. One of the agents, who had over 35 years of experience and specialized in foreclosure properties, estimated that the property needed "well in excess of $50,000" in repairs. That agent also testified that, based on the property's condition, other interested buyers had been unable to obtain traditional financing and would have needed to obtain a construction loan.

¶25 It is true that the record contains evidence that might have supported a finding that the needed repairs were not as extensive as the circuit court found. However, to repeat, under our deferential review of fact finding, the existence of competing evidence does not provide a sufficient basis for us to undercut the circuit court.

¶26 The Village argues that the evidence relied on by the circuit court was not sufficiently detailed. The Village asserts that Connor presented "no

supporting evidence of the necessary repairs by way of photographs, cost estimates or actual repair costs." But the Village cites no authority for the proposition that this level of specificity was needed. Moreover, while the Village correctly points out that a taxpayer must submit "significant contrary evidence" to overcome the presumption of correctness that courts give to assessor determinations, *see* ***West Capitol***, 354 Wis. 2d 130, ¶47, the Village does not demonstrate that the real estate agents' testimony does not meet this standard.

¶27 We turn finally to an alternative argument that the Village makes. The Village argues that, even if it is true that the property needed $50,000 in repairs, then the court should have arrived at a higher assessed value than $220,700. Specifically, the Village argues that the court should have subtracted the $50,000 repair amount from the assessor's original $289,900 figure to arrive at an assessed value of $239,900. We decline to consider this argument on the merits for two reasons.

¶28 First, the argument was not timely raised before the circuit court and, thus, is forfeited. It is true that, *after* trial, the Village took the position that the court's findings of fact might require the court to set the assessed value at $239,900. However, we see no indication that the Village was willing at that time to *accept* the $239,900 figure. Rather, in post-trial filings, the Village continued to dispute the circuit court's findings that might serve as a basis for this assessed value. As far as we can tell, the Village only now on appeal takes the position that the $239,900 figure might be acceptable to the Village.

¶29 Second, even if the Village did not forfeit this alternative argument, we would deem it insufficiently developed. The argument consists of one paragraph, and cites no legal authority. As with Connor's assertion regarding the

insurance amount, the Village's proposed subtraction method is not a developed argument regarding the circuit court's application of the third tier of assessment methodology. In particular, the Village's argument does not explain why, under that multi-factor methodology, a dollar-for-dollar subtraction of repair costs from the assessor's original $289,900 figure should be seen as a more accurate representation of value than the circuit court's $220,700 figure.

Conclusion

¶30 For the reasons stated above, we affirm the circuit court's order setting the assessed value of Connor's property for 2011 at $220,700.

¶31 No costs to either party.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.