2011 Ill. App. (2d) 110100-U
No. 2-11-0100
Order filed December 23, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PHILLIP E. MOLL,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09-MR-0855
	)	
ILLINOIS PROPERTY TAX APPEAL BOARD	)	
and LAKE COUNTY BOARD OF REVIEW,	)	Honorable
	)	Christopher C. Starck,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

Held: Plaintiff failed to prove any factual errors undermined the validity of the assessment of his property; plaintiff did not prove that his property was assessed in a manner that was not uniform with other comparable property; and a number of plaintiff's arguments were forfeited due to his failure to provide adequate citation to the record or pertinent legal authority.

¶1 Plaintiff, Phillip E. Moll, appeals an order of the circuit court of Lake County affirming a decision of defendant, the Illinois Property Tax Appeal Board (Board), that found that plaintiff had not proven an overvaluation or lack of uniformity in the assessed value of his property or that he was entitled to a reduction in his assessment based on the correction of certain alleged errors underlying

the assessment (the Lake County Board of Review is also a named defendant in this case). This action pertains to plaintiff's assessments for the years 2005 and 2006. The circuit court of Lake County affirmed the Board's decision. For the reasons that follow, we affirm the order of the circuit court affirming the Board's decision.

¶2 We set forth the following background information to facilitate an understanding of this appeal. Plaintiff sought administrative review of an adverse decision of the Board regarding an increase in the assessed value of his property. This resulted in an increase in his property taxes of 58%. The majority of properties in Cuba Township (where plaintiff's property lies) saw an increase of 4.34% due to the application of an equalization factor. However, properties in plaintiff's neighborhood, including plaintiff's property, were reassessed using the "ProVal" mass appraisal system. Dinah Binder, Chief Deputy Assessor for Cuba Township, explained that the entire township was reassessed between 2005 and 2007. Plaintiff's neighborhood was the first to be reassessed because it was the worst in terms of properties being over assessed and under assessed. This neighborhood consisted of 517 properties. Binder testified that the properties in this neighborhood were treated equally. Plaintiff contends that by proceeding in this manner, the township violated the uniformity clause of the Illinois constitution (Ill. Const. 1970, art. IX, §2). He also alleges his assessments were based in part on certain errors in the age and size of his house and that county and township databases contained various errors. Finally, he argues that "the "agency(s) denied [him] due process, did not properly preserve the issues and the public interest has been disenfranchised." The trial court rejected plaintiff's contentions, and he now seeks review in this court.

¶3 The parties are aware of the facts, and we will not recite them in further detail here. Instead, we will discuss them as they pertain to the issues raised by the parties. We will address the issues

in the order they are presented in plaintiff's opening brief. Before progressing, we note that plaintiff asks that we grant him "a degree of latitude in presentation" due to his *pro se* status. This we cannot do, as it is well established that a *pro se* litigant must abide by the same standards as an attorney. *Multiut Corp. v. Draiman*, 359 Ill. App. 3d 527, 534 (2005).

¶4 I. STANDARDS OF REVIEW

¶5 In an action for administrative review, it is the decision of the agency, rather than the trial court, that we review. *Peacock v. Property Tax Appeal Board*, 339 Ill. App. 3d 1060, 1068 (2003). Questions of fact are reviewed using the manifest-weight standard. *Oakridge Development Co. v. Property Tax Appeal Board*, 405 Ill. App. 3d 1011, 1013 (2010). Hence, we will disturb such a decision only if an opposite conclusion is clearly apparent. *Roti v. LTD Commodities*, 355 Ill. App. 3d 1039, 1051 (2005). Assigning weight to evidence and assessing the credibility of witnesses is a matter primarily for the agency hearing the matter—here, the Board. *King v. Justice Party*, 284 Ill. App. 3d 886, 888 (1996). Questions of law are, of course, subject to *de novo* review. *Oakridge Development Co.*, 405 Ill. App. 3d at 1014. Generally, before the trier of fact, a plaintiff must prove the elements of his or her claim by a preponderance of the evidence (see, *e.g.*, *Winnebago County Board of Review v. Property Tax Appeal Board*, 313 Ill. App. 3d 179, 183 (2000)), that is, "that the evidence presented renders a fact more likely than not" (*People v. Brown*, 229 Ill. 2d 374, 385 (2008)). However, a claim that an assessment violates the uniformity clause (Ill. Const. 1970, art. IX, §2) must be proven by clear and convincing evidence (*Cook County Board of Review v. Property Tax Appeal Board*, 403 Ill. App. 3d 139, 145 (2010)), which means a "quantum of proof that leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question." *In re Wendy T.*, 406 Ill. App. 3d 185, 192 (2010). Furthermore, on appeal, it is the burden of the appellant—plaintiff in this case—to affirmatively demonstrate the existence of error in the

proceedings below. *TSP Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008). Finally, we may affirm on any basis apparent in the record, regardless of the reasoning set forth by a lower tribunal. *Ahmad v. Board of Education of the City of Chicago*, 364 Ill. App. 3d 155, 162 (2006). With these standards in mind, we now turn to plaintiff's arguments.

¶6 II. ERRORS IN THE BASIS OF THE ASSESSMENT

¶7 Plaintiff argues that several factual errors exist in the basis of his assessment. He asserts that the incorrect size and age was used in assessing his property. He also contends that certain databases maintained by the township and county contained inaccurate information. We will first address the former contention.

¶8 Plaintiff first argues that the valuation of his property was based on factual errors regarding both the effective age and the size of the property. We initially note that Dinah Binder, Chief Deputy Assessor for Cuba Township (where plaintiff's property lies), testified that the value of plaintiff's property had not been altered due to its effective age until 2007(effective age is a hypothetical age based upon the original age of the property and the age of subsequent improvements). Plaintiff does not explain why the Board was not entitled to accept Binder's testimony on this point. Since plaintiff's actions concern the years 2005 and 2006, this alteration is not relevant to the present action. As the Board's decision finds evidentiary support in the record (Binder's testimony), the decision is not contrary to the manifest weight of the evidence.

¶9 Thus, we will confine our analysis to plaintiff's complaints about errors in size. To this end, plaintiff points out that, initially, his house was listed as having a size of 7,775 square feet, while later, it was listed as having a size of 7,577 square feet. Defendant concedes that the initial number was erroneous. The trial court agreed when it first heard the matter, and remanded to the Board to make further findings based on the correct size. The Board did so and found that, based on the

smaller size, the square-foot value of plaintiff's house increased to $37.39 for 2005 and $38.62 (from $36.43) for 2006. Nevertheless, the Board noted that these changes left the value of plaintiff's property within an acceptable range of the value relative to comparable properties, which were $37.16 to $38.87 for 2005 and $38.62 to $40.40 for 2006. Given that the value of some of the comparables remained higher than the value of plaintiff's house, this error, which was ultimately corrected, does not compel reversal.

¶10 Plaintiff also complains that the value of his real property was not reduced for a governmental easement that lies upon a portion of it. Plaintiff points to the following provision from the Illinois Constitution in support of his argument:

> "Any depreciation in the value of real estate occasioned by a public easement may be deducted in assessing such property." Ill. Const. 1970, art. IX, §4(c).

It is well established that laws concerning taxation "are to be construed strictly in favor of the taxing body and against exemption." *North Shore MRI Centre v. Illinois Department of Revenue*, 309 Ill. App. 3d 895, 900-901 (1999). Here, we note that the provision is permissive, stating that depreciation due to the easement *may* be deducted. See *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 611 (2011). Thus, the notion that this provision *requires* a reduction in the value of plaintiff's property rests on dubious ground. Further, we note the Binder testified that no property owners in Cuba Township were allowed reductions in their assessments as the result of such easements. As such, plaintiff's claim that his property is being treated dissimilarly—which he was required to prove by clear and convincing evidence (*Cook County Board of Review*, 403 Ill. App. 3d at 145)—is not well founded. Defendant points out that plaintiff failed to submit any admissible evidence on this issue. Plaintiff did submit a survey, which defendant contends lacked a foundation, and then simply made a *pro rata* deduction to the value of his property. We note that even if we

were to accept the survey as evidence of the easement, plaintiff has not established that a *pro rata* deduction is warranted. That is, plaintiff presents no reason to suppose that the existence of the easement devalues his property precisely proportionately to its size.

¶11 Plaintiff also complains of what he terms "Errors in Township and County Databases." As we understand plaintiff's argument, the Board should have considered comparables he selected and this would have shown that those used in his assessment were inadequate due to various unspecified errors in certain databases containing data about them. He complains, for example his wood-frame house was valued at only 70 cents per square foot less than newer property of all brick construction. Plaintiff, however, provides no expert testimony—from an appraiser, for example—to show that this differential is unreasonable. While such valuations need not be the subject of expert testimony, the experience of the person offering the opinion is relevant to the weight to which it is entitled. *Department of Transportation v. Zabel*, 47 Ill. App. 3d 1049, 1052 (1977). Here, plaintiff sets forth neither his qualifications nor the basis for his opinion. As such, we cannot say they are entitled to such weight that the Board's decision is contrary to the manifest weight of the evidence. See *Roti*, 355 Ill. App. 3d at 1051 (a decision is contrary to the manifest weight of the evidence only where an opposite conclusion is clearly apparent). Moreover, aside from the distance between plaintiff's property and the comparables, plaintiff does not identify the purported problems with the comparables used for the assessment. As for distance, plaintiff does not explain why a qualified appraiser could not account for this variable and establish a fair value for his house. Plaintiff's arguments raise more questions than answers, which is problematic for plaintiff as it is his burden on appeal to affirmatively show the trial court and the Board erred (*TSP Hope, Inc.*, 382 Ill. App. 3d at 1173). To the extent this section of plaintiff's brief can be read as setting forth any additional arguments, we find them ill taken or waived (see *In re Estate of Doyle*, 362 Ill. App. 3d 293, 301

(2005) ("[A] court of review is entitled to have issues clearly defined with pertinent authority cited and coherent arguments presented or the inadequately presented argument is deemed forfeited.")).

¶12 In short, we do not find plaintiff's arguments regarding the size or age of his property or the alleged errors in the databases of the township or county to be persuasive.

¶13 II. ERRORS OF LAW IN THE METHOD USED TO ASSESS PLAINTIFF'S PROPERTY

¶14 Plaintiff next contends that the Board's decision violates both the Property Tax Code and the uniformity clause of the Illinois' constitution (Ill. Const. 1970, art. IX, §2). Questions of law are subject to *de novo* review. *Oakridge Development Co.*, 405 Ill. App. 3d at 1014. We note that plaintiff's arguments also raise certain factual questions, which we will review using the manifest-weight standard. *Oakridge Development Co.*, 405 Ill. App. 3d at 1013. Plaintiff contends that his property was not assessed in a uniform manner relative to other comparable property.

¶15 According to plaintiff, this disparity is the result of the fact that a quadrennial assessment had not been conducted for a substantial period of time (plaintiff does not specify how long; however, we will accept, for the purpose of resolving this appeal, that it was long enough to make certain assessments inaccurate). Instead, a mass appraisal system was used for an extended time, which resulted in inaccuracies in individual appraisals throughout the township. As noted above, plaintiff's neighborhood was one of the worst in terms of inaccurate assessments.

¶16 To begin, we first emphasize that plaintiff's claim is that there is a lack of uniformity in the manner in which his property is assessed. Thus, he has to prove a lack of uniformity with respect to *this* assessment by clear and convincing evidence (*Cook County Board of Review*, 403 Ill. App. 3d at 145. We also note that plaintiff's attempt to assert an equal protection claim necessarily fails. As plaintiff notes, "The threshold inquiry in equal protection analysis is whether similarly situated

persons are treated dissimilarly." *Du Page Bank & Trust Co. v. Property Tax Appeal Board*, 151 Ill. App. 3d 624, 628 (1986). Here, there is evidence that plaintiff's neighborhood was reappraised first because it was the worst in the township in terms of inaccurate assessments. It was not, therefore, similarly situated to other neighborhoods.

¶17 We further note that the evidence plaintiff relies on does not establish a lack of uniformity. The mere fact that his taxes were increased more than other property owners does not establish, in and of itself, that the increases were not appropriate. Quite simply, if plaintiff's property was undervalued prior to the reassessment, the new valuation may have resulted in uniformity. Though we can infer that there were inaccuracies due to the length of time a mass-appraisal system was used, it is equally likely that plaintiff's property was under appraised as over appraised. While these are only possibilities, it was plaintiff's burden to prove his case by clear and convincing evidence. As he has not addressed such possibilities, we cannot find error in the Board's decision.

¶18 Plaintiff's most substantial argument is that certain properties in the township were assessed using the ProVal system while others continued to be assessed using the mass-appraisal system, which relied on an equalization factor. Indeed, there is language in *Walsh v. Property Tax Appeal Board*, 181 Ill. 2d 228 (1998), upon which plaintiff extensively relies, to suggest that a uniform method of assessment must be used throughout a taxing jurisdiction. For example, the *Walsh* court stated, "The Illinois Constitution's uniformity clause requires not only uniformity in the level of taxation, but also in the basis for achieving the levels." *Walsh*, 181 Ill. 2d at 235. Further, it held that "until such time as Tazewell County systematically ascribes true fair cash value to all like properties, plaintiffs are entitled to the benefits they have accrued under a uniform, though flawed, basis of valuation." *Walsh*, 181 Ill. 2d at 237. However, the court went on to explain that the property owners "contend that the Tazewell County board of review has arrived at an assessed

valuation of their property on a different basis than that employed for the vast majority of other Pekin Township properties, *thus resulting in plaintiffs arbitrarily paying property taxes on a greater percentage of their property's fair cash value than do other property owners*." (Emphasis added.) *Walsh*, 181 Ill. 2d at 236. The emphasized material provides a hurdle that plaintiff does not surmount. In this case, plaintiff provides evidence that his property was subject to a larger increase in his property taxes. It does not necessarily follow that plaintiff is now "paying property taxes on a greater percentage of [his] property's fair cash value than do other property owners." *Walsh*, 181 Ill. 2d at 236. In *Walsh*, 181 Ill. 2d at 234, the record indicated that "sales-assessment ratios for other Pekin Township properties ranged from 7% to 68%." Plaintiff calls our attention to no similar evidence in this case. Accordingly, *Walsh* is distinguishable.

¶19 In sum, plaintiff has not established any error of law in the method used to assess his property. In the course of making this argument, plaintiff briefly raises a number of other points, which we do not find persuasive.

¶20 III. DUE PROCESS AND THE PUBLIC INTEREST

¶21 In the final section of his brief, plaintiff first questions the impartiality of the Lake County Board of Review. As evidence of this purported animus, plaintiff first points to the error in the size of his house (the first argument addressed in this order), claiming it has not been corrected. However, that issue was properly addressed by the trial court and the Board. He next complains generally of the Board's refusal to consider certain evidence. It is well established that a litigant must point to more than an adverse ruling to establish that a decision-maker was biased. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Moreover, plaintiff complains of rulings without arguing that they were incorrect. For example, the Board had rejected some evidence proffered by plaintiff because it was untimely, and plaintiff makes no attempt to show that this ruling was erroneous.

Clearly, if the ruling was proper, it could not be evidence of animus in any event.

¶22 Plaintiff asserts that the Board "failed to preserve the issues raised." However, it is the burden of the appellant to preserve any issues of which he desires to seek review. *People v. Sanders*, 34 Ill. App. 3d 253, 257 (1975). We further note that most of the assertions made by plaintiff in the course of this argument are unsupported by pertinent authority or citation to the record, which renders them forfeited. *People v. Acevedo*, 191 Ill. App. 3d 364, 366 (1989). In short, we do not find this argument well founded.

¶23 III. CONCLUSION

¶24 In light of the foregoing, the decision of the circuit court of Lake County affirming the decision of the Board is affirmed.

¶25 Affirmed.