COURT OF APPEALS
DECISION
DATED AND RELEASED

NOVEMBER 21, 1995

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1203

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

R. M. IVERSON,

Plaintiff-Appellant,

v.

CITY OF RIVER FALLS,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Pierce County: ROBERT W. WING, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. R. M. Iverson appeals a judgment dismissing his claim of excessive property tax assessment. He argues (1) the trial court erroneously denied him a de novo hearing on his action to recover excessive taxes under § 74.37(3)(d), STATS., and (2) the trial court erroneously ruled that a taxpayer must show a violation of § 70.32, STATS., to prevail on his claim. We reject his contentions and affirm the judgment.

Iverson challenges the 1993 tax assessment of his apartment building complex in the City of River Falls. Iverson first objected to his

assessment before the River Falls Board of Review, which affirmed the assessor's valuation. Pursuant to § 74.37(2), STATS., Iverson next filed with the City of River Falls a claim alleging excessive assessment. After his claim was disallowed, Iverson filed an action in circuit court pursuant to § 74.37(3)(d), STATS., seeking de novo review of the assessment.[1] The trial court dismissed Iverson's claim, and he appeals the judgment of dismissal.

Iverson's complaint alleged that his property was assessed at $1,314,000 for 1993, but that the evidence presented to the board of review supported a determination that its assessed value should be $970,000. Iverson paid 1993 real estate taxes in the sum of $21,797.85. Iverson claimed that "as a result of such illegal and excessive assessment [he] paid more than the fair share of taxes in the amount of $11,200."

At the evidentiary hearing before the circuit court, Iverson's witness, a real estate appraiser, testified that the thirteen-year-old building was of low cost construction, bearing walls had been left out causing sagging floors, its parking lot had poor drainage causing deterioration, and the property had not been adequately maintained. He testified that based upon the cost approach, the income approach and the direct sales comparison approach, the property's 1993 value was $970,000.

On cross-examination, the appraiser testified that his client paid $1,025,000 for the property in a 1988 arm's length transaction. He agreed that the sale price was the best evidence of value in 1988.

River Falls called the city assessor to testify. The assessor testified that in 1993 he used a "gross rent multiplier" to determine the value of all apartment buildings "uniformly right across the board of all similar type complexes."[2] He testified that this method is derived from the Wisconsin Assessor's Manual. The assessor testified that in 1992 Iverson reported gross

[1] River Falls does not dispute that Iverson proceeded under § 74.37, STATS.

[2] The assessor testified that he calculated the multiplier by "dividing the sale price of a property by its actual gross income to arrive at a median, or a multiplier that can then be used against properties that did not sell to derive a uniform and an equitable assessment in comparison to those properties it sold."

rents of $211,928. He testified that by dividing the sale price of seven properties by rents, he obtained the gross rent multiplier of six to be uniformly applied throughout the city to arrive at estimates of fair market value. He added land valuation of $42,600 to arrive at the $1,314,000 assessment.

The assessor further testified that he also considered a comparable sales analysis. He testified that the intent of the 1993 reassessment was to bring the assessed values up to "100% of market value and to create uniformity or equity between similar properties." In rebuttal, Iverson's appraiser testified that he would not rely on the gross rent multiplier as an indication of value.

The trial court found that the city assessor followed the proper procedure under § 70.32, STATS., and that the assessment was reasonable and supported by credible evidence. The court observed that if it finds an excessive valuation, the statutory scheme authorized it to order reassessment or, if it is in the best interests of the parties, immediately make a determination as to value and proceed to judgment without reassessment. *See* § 74.39, STATS. The court concluded that here, however, Iverson was not entitled to relief because he failed to carry his burden of proof. It stated: "I don't believe plaintiff has produced [a] sufficient amount of evidence to grant them relief because they have not shown that there is any violation ... [of] 70.32 subject 1." The court also explained:

> On the law the court is going to rule it is simply not a matter of showing your ... appraiser has a more convincing appraisal than the one done by the assessor, [it] doesn't seem that that is sufficient in my opinion to grant you relief. I think you have to show that what he did was incorrect in some respect, in other words a violation of 70.32. And if there is a violation of that then I am free to set it aside and have a reassessment, or make a judgment on what the value should be pursuant to that.

Iverson contends "that appellant is entitled to a de novo hearing and that this case be remanded to the Circuit Court of Pierce County directing it to make a determination of the market value of the property, which is to be the basis of the assessment, from the evidence already on the record." Because

Iverson was provided a "de novo" hearing and failed to carry his burden of proof, we reject his argument.

The court did not simply review the proceedings before the board as it would have done on certiorari. *See* § 70.47, STATS.[3] The court heard Iverson's witness and ruled that absent a showing the assessor erred in making the assessment or a violation of § 70.32, STATS., the court was not persuaded that Iverson was entitled to relief. It would not accept a mere showing that Iverson's appraiser had a different opinion of the property or the fair market value. In the trial court's opinion, more must be shown than just a battle of appraisers who had differing opinions of the property's value in order to succeed in an action under § 74.37(3)(d), STATS.

Iverson concedes that the assessor's violation is prima facie correct and will not be set aside in absence of evidence showing it to be incorrect. *See* ***State ex rel. Collins v. Brown,*** 225 Wis. 593, 594, 275 N.W. 455, 456 (1937). He also agrees that the burden of producing evidence is upon the person seeking to attack the assessment, and the presumption survives until it is met by credible evidence. *See* ***Rosen v. Milwaukee,*** 72 Wis.2d 653, 662, 242 N.W.2d 681, 684 (1976).

Iverson argues that his appraisal evidence rebutted the presumption of correctness and that the trial court erred by not considering his appraiser's opinion as to the property's value. Iverson is only half right. We recognize that a presumption is not entitled to standing as actual evidence. The presumption only exists in the absence of actual evidence establishing the contrary fact. ***Smith v. Green Bay,*** 223 Wis. 427, 430, 271 N.W. 28, 30 (1937).

Here, however, the record discloses that the trial court did not rely on the presumption of correctness, but considered evidence on the record before it. It heard the testimony of the River Falls' assessor and Iverson's appraiser. It weighed the evidence and concluded that because the assessment was

[3] A § 70.47, STATS., certiorari review is strictly limited to the record, no matter how incomplete or inadequate the record may be. ***State ex rel. Hemker v. Huggett,*** 114 Wis.2d 320, 323, 338 N.W.2d 335, 336 (Ct. App. 1983). The reviewing court on certiorari is not authorized to conduct its own factual inquiry. *See* ***State ex rel. Kesselman v. Board of Review,*** 133 Wis.2d 122, 127, 394 N.W.2d 745, 747 (Ct. App. 1986).

reasonable and complied with § 70.32, STATS., Iverson had not carried his burden of showing an excessive assessment.

Iverson argues that he is not required to show the assessor erred in making the assessment or violated § 70.32, STATS., but is only required to produce an appraisal that conflicts with the assessment. We disagree. The method of real estate assessment is governed by statute, § 70.32.[4] Statutory interpretation is a question of law we review independently of the trial court's determination. ***IBM Credit Corp. v. Allouez,*** 188 Wis.2d 143, 149, 524 N.W.2d 132, 134 (1994).

"Section 70.32(1), STATS., seeks to ensure a uniform method of taxation by requiring assessors to assess real estate at its fair market value, using the 'best information' that the assessor can practicably obtain." ***State ex rel. Levine v. Fox Point Review Bd.***, 191 Wis.2d 363, 372, 528 N.W.2d 424, 427 (1995) (footnote omitted).[5] We agree with the trial court that merely presenting a conflicting appraisal is insufficient to show an excessive assessment, absent some showing of error or failure to comply with § 70.32, on the part of the assessor. To demonstrate an excessive assessment, the taxpayer must establish that the property was valued at more than its fair market value, ***State ex rel. Wisconsin Edison Corp. v. Robertson,*** 99 Wis.2d 561, 568-69, 299 N.W.2d 626,

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[4] This method has been described in numerous cases. ***Rosen v. Milwaukee,*** 72 Wis.2d 653, 663-64, 242 N.W.2d 681, 685 (1976); ***Eagle v. Christensen,*** 191 Wis.2d 301, 313-15, 529 N.W.2d 245, 250 (Ct. App. 1995); ***State ex rel. N/S Assocs. v. Board of Review,*** 164 Wis.2d 31, 53-54, 473 N.W.2d 554, 562 (Ct. App. 1991).

[5] Section 70.32, STATS., states:

> Real estate, how valued. (1) Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03(2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In determining the value, the assessor shall consider recent arm's-length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm's-length sales of reasonably comparable property; recent arm's-length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.

629-30 (Ct. App. 1980), or that other properties were undervalued, thus violating § 70.32 and uniformity. *Cf.* ***Levine,*** 191 Wis.2d at 374, 528 N.W.2d at 428 (taxpayer demonstrated excessive tax on his new construction, because, by using arbitrary and improper considerations in undervaluing older properties, "the assessor violated sec. 70.32(1)."). Here, Iverson presented expert opinion that merely varied with the assessor's opinion as to the fair market value. We agree with the trial court that the evidence was insufficient to show an excessive assessment.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.