Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
02/09/2017 11:34 AM CST

We find the district court correctly determined Rita is not entitled to a recovery for unjust enrichment or under any other theory of recovery.

CONCLUSION

We find the applicable statute of limitations had not run with regard to the foreclosure of Rita's promissory note and deed of trust. However, for the reasons discussed above, we find Rita had no viable security interest in the property or any other equitable claim. We affirm the decision of the trial court finding for Bel Fury on Rita's claims for foreclosure and unjust enrichment.

AFFIRMED.

MARTIN MARIETTA MATERIALS, INC., APPELLEE AND CROSS-APPELLANT, V. CASS COUNTY BOARD OF EQUALIZATION, APPELLANT AND CROSS-APPELLEE.

815 N.W.2d 201

Filed June 12, 2012. Nos. A-11-469 through A-11-479.

1. **Taxation: Judgments: Appeal and Error.** Appellate courts review decisions rendered by the Tax Equalization and Review Commission for errors appearing on the record.
2. **Judgments: Appeal and Error.** When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.
3. **Taxation: Appeal and Error.** Questions of law arising during appellate review of Tax Equalization and Review Commission decisions are reviewed de novo on the record.
4. **Taxation: Valuation: Presumptions: Evidence: Appeal and Error.** There is a presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.

5. **Taxation: Valuation: Constitutional Law.** The object of the uniformity clause is accomplished if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.
6. **Taxation: Valuation: Public Policy.** No difference in the method of determining the valuation or rate of tax to be imposed can be allowed unless separate classifications rest on some reason of public policy or some substantial difference of situation or circumstance that would naturally suggest justice or expediency of diverse legislation with respect to the objects to be classified.
7. **Appeal and Error.** An appellate court is not obligated to engage in an analysis which is not needed to adjudicate the controversy before it.

Appeals from the Tax Equalization and Review Commission. Affirmed.

Nathan B. Cox, Cass County Attorney, for appellant.

Michael L. Schleich and Timothy J. Thalken, of Fraser Stryker, P.C., L.L.O., for appellee.

INBODY, Chief Judge, and MOORE and PIRTLE, Judges.

INBODY, Chief Judge.

I. INTRODUCTION

The Cass County Board of Equalization (Board) appeals from an order of the Tax Equalization and Review Commission (Commission) which reversed the Board's valuation of mineral interests located on real property within Cass County, Nebraska. For the following reasons, we affirm.

II. STATEMENT OF FACTS

1. BACKGROUND

Martin Marietta Materials, Inc. (Martin), owns or leases the mineral interests within several parcels of land located in Cass County. Martin maintains a limestone mining operation with a primary product of concrete stone for use in roads, highways, and base material.

In 2007, Martin received property valuations for those mineral interests and timely filed a protest as to each valuation. The protests were consolidated and came on for hearing before the Board, which adopted the Cass County assessor's valuation. Martin appealed the Board's decision to the Commission, asserting that the taxable value of the property as of January 1,

2007, was not equalized with the taxable value of other real property. Those 14 cases were consolidated for the Commission hearing and orders which followed. With regard to this court, only 11 of those 14 parcels are at issue, and they have also been consolidated in this court for purposes of this appeal. Those specific appeals before the Commission involve Commission cases Nos. 07M-003 through 07M-012 and 07M-014. These properties, together with their parcel identification numbers, valuations, and Commission and appellate case numbers, are summarized as follows:

Parcel Identification Number	Commission Case Number	Appellate Case Number	Cass County Assessor's Underground Mineral Valuation
130391914	07M-003	A-11-469	$1,343,105
130302988	07M-004	A-11-470	$ 455,731
130380865	07M-005	A-11-471	$ 375,238
130302198	07M-006	A-11-472	$ 142,370
130302065	07M-007	A-11-473	$ 450,570
130391197	07M-008	A-11-474	$ 427,111
130303062	07M-009	A-11-479	$ 315,397
130380784	07M-010	A-11-478	$ 866,136
130306529	07M-011	A-11-477	$ 392,386
130302626	07M-012	A-11-476	$ 566,949
130392874	07M-014	A-11-475	$ 372,630

2. May 15, 2007, Appraisal Report

In 2006, the Cass County assessor retained the services of Michael Cartwright, a certified geologist and appraiser, in order to review certain property in Cass County to determine the value of mineral interests therein. Cartwright's assignment was to identify parcels of land in Cass County which were actively mined, may be mined within a certain timeframe in the future, or have been mined out and are now unsuitable for mineral extraction purposes. On May 15, 2007, Cartwright submitted a report to the Cass County assessor's office with a current actual value appraisal of 184 parcels in Cass County. The report indicated that out of those 184 parcels, 31 were owned

by individuals or companies, 36 involved severed mineral interests by deed and/or lease, 43 involved mineral leases, and 122 were owned by closely related business entities.

Out of two types of property parcels, minerals nonproducing and minerals producing, the appraisal established seven classes of mineral interests: mineral future, mineral exhausted, mineral active, mineral obsolescence, mineral processing, mineral unknown, and nonmineral in character. The report indicated that the only mineral interest parcels subject to an increase in the mineral interest property tax in the appraisal were those which have been designated as "[m]ineral [a]ctive," defined as those parcels currently being mined and those which may be mined in the next 5 years. Cartwright directed that a "five-year forward looking time frame" had been used to define the "several year time frame" noted in the property tax regulations. See 350 Neb. Admin. Code, ch. 13, § 002.07 (2009). The report further indicates that there were no comparable sales of mineral interest properties in the area.

Throughout the report, there are several instances where Cartwright notes that various "mineral interest operators" refused to cooperate with requests for documents and information and that he had not contacted individual lessors of mineral interests for that information when it was not provided by the operator. The report indicated that only one mineral operator cooperated fully, while yet another mineral operator refused access to the property entirely. The report concluded by recommending the assessed value and estimated property tax for 20 parcels.

3. Commission Hearing Testimony and Evidence

Numerous exhibits were received and testimony was given at the Commission's hearing on the valuation of Martin's mineral interests. Martin's manager of land and zoning testified that his job included Martin's mines in Cass County and that he was very familiar with those mines. He testified that if the company is observing or discussing a possible property to mine, Martin routinely looks at properties for as far as 30 years out for purposes of obtaining leases or ownership in the mineral interests. Martin's manager also explained that there was no

timeframe on when a conditional use permit would actually be used, although those issues may have been discussed during the hearing to obtain the permits. He further gave testimony that Martin had, on at least four separate occasions, made offers in excess of $1 million to the owner of the parcel identified as "A" on the map which was admitted as an exhibit and used by the parties throughout the proceedings. Parcel A did not have a conditional use permit filed or issued and was given a mineral interest valuation of $0.

Cartwright, a mineral property appraiser and geologist who submitted the assessment report, also testified at a deposition received into evidence and in person at the hearing regarding the valuation of the parcels in Cass County. Cartwright testified that in 2006, he made his first visit to Nebraska to retrieve and review documents. Cartwright testified that the Cass County assessor at the time instructed him to stay off the properties and that therefore, he only drove by or around the land during the first visit. Cartwright testified he understood that his assignment was to look at mineral interests and then value the parcels that were actually producing and generating income. Cartwright testified that in order to differentiate properties, the Cass County assessor's office operated under the assumption that those properties which did not have a conditional use permit could not be mining material and could not be generating any income, because a permit was required for any mining activity. Cartwright testified that the parcels with nonproducing mineral interests, those without conditional use permits, were valued by default at $0 because they were not adding any value to those properties:

> [Counsel for appellant]. Well, if one of those landowners that had non-producing mineral interests came to you and said I want to sell my land, can you appraise my land for me, would you attribute any value to the underlying mineral?
>
> [Cartwright]. If he had a conditional use permit?
>
> Q. If he didn't have a conditional use permit.
>
> A. If he didn't have a conditional use permit, he can't really do anything with those minerals until such time as he does have one.

Q. So you would put no value on that?

A. I would put no value on that.

Cartwright testified that an offer on a parcel of land would also have an impact on his opinion of the value of the land and that he would always consider such offer.

Cartwright testified that as to the nonproducing mineral interests, he looked at the possibility of production as criteria and if that possibility was too remote, then the mineral interest value would be $0. Cartwright explained that the criteria in that determination included whether there had been testing of the minerals and whether any mining permits had been applied for. Cartwright testified that he was again instructed by the county assessor to not speak with any of the individual landowners of the parcels without going through the assessor first. Cartwright testified that the landowner's intent with regard to the nonproducing parcels would be important information to know, such as permit status and any negotiations for sale of nonproducing land, but again, Cartwright testified he was not authorized, per the assessor, to retrieve any of that information. Cartwright testified that he was allowed to speak only with mineral producers in Cass County.

On another visit, Cartwright observed live operations of some of the mining companies and was told to leave the property of another, although Cartwright testified that Martin was cooperative with his inquiries. Cartwright began to investigate all of the properties to ascertain whether or not there was a conditional use permit for each parcel. Cartwright made several additional trips to Nebraska through March 2007. Cartwright testified that "[a]ll properties were reviewed. The only ones that could have an increase in value due to the extraction of mineral are those that possess conditional use permits or [those] actively being mined at the time of the examination." Cartwright agreed that his position was that unless a property had a conditional use permit, the mineral interest added no value to the property. Cartwright explained that "[d]ifferent uses are allowed with these things, and it cannot be mined, at least legally mined, without a conditional use permit."

Cartwright testified that parcel A, as discussed earlier by Martin employees as a tract of land for which Martin had

made several offers, had been reviewed and valued at $209,246 as a surface appraisal only for the 155.41 acres on the tract. Cartwright testified that parcel A contained limestone content but was not currently leased. Cartwright concluded that the mineral interest on parcel A did not add any value to the parcel, because the parcel lacked a conditional use permit, indications on how many reserves might be on the property, and indications of whether or not the minerals could be mined at a profit. Cartwright also testified that several parcels akin to parcel A were not included in the 184 parcels Cartwright appraised.

With regard to the 5-year time period adopted to define the timeframe at when production might occur within a reasonable time as set forth in Nebraska's regulations, Cartwright testified that he met with the county assessor, the Cass County Attorney, and a deputy county assessor and determined that "several years" could reasonably be defined as 5 years.

4. Commission's Findings and Order

On May 11, 2011, the Commission entered a decision and order reversing and affirming decisions of the Board. The portion of the order affirming the Board's decision deals with three property valuations which are not at issue in this court. The Commission found that the appraiser was retained to develop an actual value appraisal for all real property in Cass County operating under conditional use permits for mining in order to determine the valuation of mineral interests, mineral leases, and mineral reserves. The Commission found that the appraiser had investigated equalization for similar properties in Cass County in order to ensure that all of the identified mineral interests were valued uniformly and proportionately.

The Commission explained that the appraiser had testified that the Cass County assessor had prohibited contact with property owners who were not conducting mining operations, which, in turn, prohibited the appraiser from contacting owners of parcel A and another parcel. The Commission determined that the county assessor's constraint, coupled with a lack of cooperation from the mining companies, forced the appraiser to focus solely on properties with conditional use

permits, which focus was prohibited because it created a de facto ownership classification which violated the uniformity clause. The Commission determined that there were parcels for which the minerals contributed to the actual value of the fee simple, parcels which contained minerals that contributed to the actual value and had been assessed by a separate assessment of mineral interests, and parcels which contained minerals that would contribute to the actual value of the fee simple that were assessed at a value of $0. The Commission found that the difference in assessed values, due to the actions of the Cass County assessor and the lack of information received from certain mining operations, created de facto classifications favoring one group of taxpayers over another.

The Commission concluded by finding that the taxable value of the mineral interests in the parcels in cases 07M-003 through 07M-012 and 07M-014 were not determined by the Board uniformly and proportionately with other parcels in Cass County, that Martin produced competent evidence that the Board failed to faithfully perform its official duties and to act on sufficient competent evidence, that the determinations of the Board were unreasonable or arbitrary, and that the assessments of the parcels were void for the taxation of the producing mineral interests. The Commission vacated and reversed the Board's determination of mineral interest valuations as of January 1, 2007. The Commission found the assessments void and assigned each a value of $0. The Board has timely appealed the Commission's determination to this court.

III. ASSIGNMENTS OF ERROR

The Board assigns that the Commission erred in the following determinations: (1) that the taxable value of Martin's mineral interests had not been determined uniformly and proportionately with other parcels in Cass County, (2) that the system of valuing mineral interests for parcels with a conditional use permit created a de facto classification arbitrarily favoring one group of taxpayers, and (3) that the value of Martin's mineral interests was $0. However, upon a careful review of the Board's brief, we find that the Board has failed

to set forth any argument regarding its third assignment of error, and, as such, we will not address the Commission's determination of the value of Martin's mineral interests at $0. See *Walsh v. State*, 276 Neb. 1034, 759 N.W.2d 100 (2009) (to be considered by appellate court, alleged error must be both specifically assigned and specifically argued in brief of party asserting error).

On cross-appeal, Martin assigns that the Commission erred by finding that Cass County could classify minerals for differential tax valuation based on whether the minerals would be extracted within 5 years.

IV. STANDARD OF REVIEW

[1-3] Appellate courts review decisions rendered by the Commission for errors appearing on the record. *Vandenberg v. Butler County Bd. of Equal.*, 281 Neb. 437, 796 N.W.2d 580 (2011). When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Id.* Questions of law arising during appellate review of Commission decisions are reviewed de novo on the record. *Id.*

V. ANALYSIS

1. Cass County's Appeal

(a) Taxable Value of Mineral Reserves

The Board argues that the Commission erred by reversing its determination of the taxable value of Martin's mineral reserves.

[4] There is a presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the

taxpayer on appeal from the action of the board. *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 606 N.W.2d 786 (2000); *US Ecology v. Boyd Cty. Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

In this case, the Commission found that the taxable mineral interests were not determined by the Board uniformly and proportionately with other parcels in Cass County and that Martin had produced competent evidence that the Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.

The Board contends that the Cass County assessor's system for appraisal and valuation of mineral interests is a reasonable method for determining mineral interests. We disagree. The record contains evidence which called into question the reasonableness of the actions taken by the Board. Cartwright, the appraiser hired by the Cass County assessor's office, gave testimony which quite candidly revealed that he had been specifically instructed by the assessor to speak only with mine operators and to not speak with individual landowners. Cartwright testified that he requested the assessor set up several meetings with individual landowners and that no meetings were ever arranged. Testimony was adduced which indicated that there are properties nearby, in some cases directly adjacent to, which contained limestone with commercial value that were owned by individual landowners or did not have a conditional use permit that the appraiser was unable to obtain information about and, as such, were assessed a mineral interest value of $0. Cartwright testified that his appraisal was affected by the restriction of not speaking with individual landowners and that the lack of information had an impact on the ultimate valuations. Cartwright also indicated that his work was affected by the refusal of a mining operator to discuss operations or to allow Cartwright on the property.

Therefore, the presumption that the Board has faithfully performed its official duties in making the assessment of the value of mineral interests and has acted upon sufficient competent evidence has disappeared. The Commission's determination regarding the presumption of the Board's actions is supported

by competent evidence and is neither arbitrary, capricious, nor unreasonable.

(b) Classification

The Board contends that the Commission erred in its determination that the county assessor's system of valuing mineral reserves arbitrarily favored one group of taxpayers over another. The Commission found that as a result of the assessor's constraint coupled with the lack of information from the mining companies, Cartwright was forced to focus on those properties with conditional use permits controlled by the mining companies. The Commission determined that the valuation on this basis created a de facto ownership classification, which violated the Nebraska Constitution's uniformity clause, article VIII, § 1.

[5,6] The Nebraska Constitution's uniformity clause provides that "[t]axes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution . . . ." Neb. Const. art. VIII, § 1. While absolute uniformity of approach for taxation may not be possible, there must be a reasonable attempt at uniformity. *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 606 N.W.2d 786 (2000). The object of the uniformity clause is accomplished if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value. *Id*. No difference in the method of determining the valuation or rate of tax to be imposed can be allowed unless "separate classifications rest on some reason of public policy or some substantial difference of situation or circumstance that would naturally suggest justice or expediency of diverse legislation with respect to the objects to be classified." *Id*. at 874, 606 N.W.2d at 793.

This case is not the first time that Cass County mineral interests have been before the courts. In a trilogy of cases released in February and March 2000, the Nebraska Supreme Court determined that the valuation plan first utilized by Cass County to value mineral interests was unconstitutional. See *Constructors, Inc. v. Cass Cty. Bd. of Equal., supra*; *Ash Grove*

Cement Co. v. Cass Cty. Bd. of Equal., 258 Neb. 990, 607 N.W.2d 810 (2000); and *Lyman-Richey Corp. v. Cass Cty. Bd. of Equal.*, 258 Neb. 1003, 607 N.W.2d 806 (2000).

In those three cases, mining companies whose Cass County properties were assessed at a higher value for tax purposes due to mineral interests lying beneath the land sought review of the Board's valuations. The scheme under which the property was valued at was one in which the mineral interests were assessed only on the properties owned or under lease to mining companies. In *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, the court held that "the classification scheme created in which only those minerals contained in lands owned by the [mining companies] were given value for tax purposes, whereas other mineral interests were ignored, violates the uniformity provisions of article VIII, § 1, of the Nebraska Constitution." 258 Neb. at 875, 606 N.W.2d at 793.

The Board argues that the classification in this case rests upon real differences of situations, because the classification was made based upon use and not ownership and because the classification rests on sound public policy reasons.

We do not doubt that the review of whether or not a property has a conditional use permit is an important tool for the assessor's office in making assessments for the purpose of mineral interest valuations. However, the problem in this case is that the conditional use permit was the only tool utilized, which singled out mining operations in the eventual valuations issued by the assessor's office and approved by the Board.

Again, as we have previously discussed, Cartwright testified that in his investigation for the compilation of his report, he was instructed by the assessor to speak only with mining operators and to stay away from individual landowners. Cartwright testified that the parcels of land which held conditional use permits or those on which mining would occur within the next 5 years were given a mineral interest value. Cartwright testified that those parcels without permits were given a default value of $0. The record indicates that parcel A, a parcel located near many of the parcels at issue in this case, was owned by an individual landowner. That landowner was never interviewed,

and no information was attained about the parcel. Cartwright testified that parcel A had minerals below the surface, which was substantiated by Martin employees, who also testified that over the past several years, Martin had made substantial offers, in excess of $1 million for parcel A. The record also indicates that parcel A is surrounded by two active mines, consists of approximately 155 acres, and was attributed a value of $0 for mineral interests.

Therefore, upon our de novo review of the record, we find that there is no substantial difference or public policy reason that justifies differential tax treatment between those parcels of land with conditional use permits and those without. Thus, the classification utilized by Cass County was not based upon use, but instead ownership, and this violates the uniformity provisions of article VIII, § 1, of the Nebraska Constitution. The Commission did not commit error by reversing the Board's determinations, and this assignment of error is without merit.

2. Martin's Cross-Appeal

[7] On cross-appeal, Martin argues that the Commission erred by holding that Cass County could classify minerals for differential tax valuation based on whether the minerals would be extracted within 5 years. However, having determined that the Commission did not err by reversing the Board's determinations which resulted in a finding that Martin's properties had a value of $0, we need not address Martin's cross-appeal. An appellate court is not obligated to engage in an analysis which is not needed to adjudicate the controversy before it. *Castillo v. Young*, 272 Neb. 240, 720 N.W.2d 40 (2006).

VI. CONCLUSION

In sum, we find that the Commission's decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. As such, we affirm the Commission's decision in its entirety.

Affirmed.