IN THE COURT OF APPEALS OF IOWA

No. 9-1018 / 09-0827
Filed January 22, 2010

SWAMI AKSHAR, INC.,
Plaintiff-Appellant,

vs.

BOARD OF REVIEW OF POTTAWATTAMIE COUNTY,
Defendant-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Greg W. Steensland, Judge.

Property owner appeals from summary judgment affirming the board of review's denial of the property owner's tax assessment appeal. **AFFIRMED.**

DeShawne L. Bird-Sell of DeShawne L. Bird-Sell, P.L.C., Glenwood, for appellant.

Matthew Wilber, County Attorney, and Leanne A. Gifford, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

Plaintiff-appellant Swami Akshar, Inc. appeals from summary judgment affirming the denial of plaintiff's tax assessment appeal by the defendant-appellee Board of Review of Pottawattamie County, Iowa (Board). On appeal plaintiff claims the district court erred in concluding that plaintiff's grounds for appeal were limited to a decline in value since the last assessment. Plaintiff further argues that defendant's motion for summary judgment was barred by issue preclusion.

***I. Background Facts and Proceedings*.**

Swami Akshar, Inc. is the owner of a Days Inn motel in Council Bluffs, Iowa. The Pottawattamie County Assessor assessed the property as of January 1, 2007, at $1,522,500. A protest, claiming the property was over-assessed, was filed in 2007 with the Board. The protest was denied, and a petition was filed in the district court appealing the Board's decision. The petition was dismissed on a motion for summary judgment. No further appeal was taken.

The assessed value of the property remained unchanged for 2008. On May 1, 2008, plaintiff filed another protest with the Board. Plaintiff did not allege there had been a change downward in the value of the property since the last assessment. Plaintiff's protest form only alleged the assessment was "not equitable as compared with assessments of other like property" and there was error in the assessment as it was "not comparable to other similar assessments of similar hotels of like size." The Board again denied the protest noting, among other things, the grounds for protest asserted by plaintiff were not applicable in an interim year. Plaintiff appealed to the district court. The district court

overruled the Board's motion to dismiss, but later granted the Board's subsequent motion for summary judgment, finding that Iowa Code section 441.35 (2007) limits protests in even-numbered years to a downward change in value. Specifically, the court stated:

> Plaintiff argues that the incorrect assessment for 2007 results in a downward value for 2008. Plaintiff further argues that comparable values of similar hotels might provide this basis for a downward value. The arguments are merely a rehash of the previous protest made by plaintiff about the 2007 assessment. They are not evidence of downward change required by section 441.35. The arguments were previously presented and lost. When plaintiff did not appeal it, those arguments were lost until the next time the property is assessed.
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> Plaintiff has presented nothing in the form of any affidavits, exhibits, or otherwise to show proof of the downward change required by section 441.35. The court finds that it is undisputed by the record submitted that the 2008 assessment remains the same as the 2007 assessment and nothing in the record shows proof of a downward change.

Plaintiff now appeals.

***II. Scope and Standards of Review*.**

Our review of the district court's summary judgment is for errors at law. *Montgomery Ward Dev. Corp. v. Bd. of Review*, 488 N.W.2d 436, 439 (Iowa 1992).

***III. Discussion*.**

On appeal, plaintiff argues aggrieved taxpayers are only subject to the "downward change in value" limitation on protest grounds where the taxpayer did not protest during the assessment year and where the assessor did not change the assessed value. Plaintiff asserts that since it did file a protest in the assessment year it is not limited to the single ground of protest of "downward change in value" on its interim-year assessment protest. We disagree.

Iowa's real estate tax assessment system is biennial. *See Transform, Ltd. v. Assessor of Polk County*, 543 N.W.2d 614, 615 (Iowa 1996). Real property is independently valued in odd-numbered "assessment" years. *Id*. In assessment years, if the taxpayer disputes the tax valuation placed upon the real property, the taxpayer may file a written protest to the board of review pursuant to Iowa Code section 441.37(1) between April 16 and May 5 of the year of assessment. The aggrieved taxpayer may protest and appeal the assessment on any of the grounds listed in section 441.37.

In even-numbered "interim" years, the assessment value, absent error or change in value, is "locked into" the valuation from the preceding year. *Transform*, 543 N.W.2d at 615 (citing *Vogt v. Bd. of Review*, 519 N.W.2d 395, 396 (Iowa 1994)). If there was a change in value of real estate since the last assessment, the taxpayer may file a written protest in an interim year to the board of review in the same manner and upon the same terms as set forth in section 441.37. *Transform*, 543 N.W.2d at 615, 617. The only statutorily recognized ground applicable to interim year protests is a change in value. *Id.* at 616-17.

Plaintiff argues it is not restricted to a showing of downward change of value because taxpayers are only subject to such limitations "where the taxpayer did not protest during the assessment year and where the assessor did not change the assessed value."[1] Plaintiff reasons that since it did protest the

[1] Plaintiff cites to a document entitled "Assessment Appeal Grounds Explanation" purportedly adopted by the Board on May 1, 2006. The language quoted by plaintiff is attributed to "a Pottawattamie County District Court Dismissal." The complete sentence reads: "However, during an interim year, where the taxpayer did not protest during the

original assessment, it is therefore not limited to the single ground of protest for "downward change of value." Plaintiff's reasoning is flawed. The language it relies on, even if authoritative, is silent as to situations where the taxpayer did indeed protest during the assessment year, and therefore does not limit the "downward change in value" ground to only those situations where the taxpayer did not protest the original assessment. Additionally, plaintiff does not support its position with any statutory or case law. A party's failure in a brief to cite authority in support of an issue may be deemed waiver of that issue. Iowa R. App. P. 6.903(2)(*g*)(3). Lastly, plaintiff's reasoning is contrary to the established statutory and case law cited above, none of which restricts the "downward change in value" ground to situations where a taxpayer has not protested in the assessment year. A taxpayer's action or inaction in the assessment year is not a condition precedent to the applicable interim year grounds of protest. Absent error, the only ground applicable to interim years is a change in value.

Plaintiff is not entitled to a second bite of the apple. Plaintiff presented no evidence that the property declined in value since its 2007 assessment. We therefore conclude the district court correctly granted summary judgment in favor of the Board.

Additionally, plaintiff creatively argues the doctrine of issue preclusion barred the Board's motion for summary judgment. Plaintiff reasons that identical issues were raised and litigated in the motion to dismiss, which was overruled in plaintiff's favor, so the court erred in permitting rehearing of the issues on the

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assessment year and where the assessor did not change the assessed value, the taxpayer is limited to the ground of protest known as 'downward change in value.'"

Board's motion for summary judgment. This court is unaware of any Iowa jurisprudence that adopts such a position. *See City of Ankeny v. Armstrong Co., Inc.*, 353 N.W.2d 864, 868 (Iowa Ct. App. 1984). In any case, since the district court never addressed or decided the issue and plaintiff did not file a rule 1.904(2) motion, we do not address it. *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002).

In view of our decision, we need not address plaintiff's other arguments.

***IV. Conclusion*.**

We conclude the district court correctly granted the summary judgment and accordingly affirm the judgment of the district court.

AFFIRMED.