

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JOE M. AGAPAY, JR., TRUSTEE,	:	APPEAL NOS. C-080491
		C-080514
Plaintiff-Appellee/ Cross-Appellant,	:	TRIAL NO. A-0701777
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
	:	
DUSTY RHODES, HAMILTON COUNTY AUDITOR,	:	
	:	
Defendant-Appellant/ Cross-Appellee,	:	
	:	
and	:	
	:	
BOARD OF REVISION OF HAMILTON COUNTY, OHIO,	:	
	:	
Defendant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant, Hamilton County Auditor Dusty Rhodes, appeals the judgment of the court of common pleas establishing the value of real property owned by plaintiff-appellee, Joe M. Agapay, Jr., Trustee. Agapay cross-appeals.

For tax year 2005, the auditor valued Agapay's property, which consisted of nearly 62 acres of undeveloped land, at \$13,255,100. The county board of revision reduced the assessed value to \$12,050,000. Agapay appealed the board's decision to the common pleas court.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

After an evidentiary hearing, a magistrate of the common pleas court valued the property at \$11,550,000. Following Agapay's objections to the magistrate's decision, the trial court lowered the value to \$9,500,000.

In his first assignment of error, the auditor argues that the trial court erred in imposing a value on the property that was not supported in the record.

In conducting its independent review of the board's decision, the trial court heard arguments and considered the evidence presented before the magistrate, as well as the administrative record. The court noted the widely divergent opinions by the parties' expert witnesses concerning the property's value, which had ranged from \$6.5 million to \$15.1 million, before concluding that the property's value was \$9.5 million.

The court considered appraisals done by Lance Brown, for Agapay, and by Susan Spoon, for the auditor. Brown valued the property at \$7.9 million, using an "economic units" methodology that accounted for legal restrictions and physical constraints on the property. Spoon and the board of revision had both adopted Brown's methodology, but each had arrived at a different valuation.

The court noted that two other defense witnesses, who had estimated the lowest values for the property, were potentially biased due to their interests in the outcome. And the court considered Brown's lack of experience in appraising residential property.

Upon review, the trial court concluded that Spoon's valuation was "abnormally high" for a property that was unimproved. The court found that Spoon had unduly relied upon improved land sales in the area and had ignored the costs associated with developing the land.

The trial court had broad discretion to determine the weight given to the evidence and the credibility of witnesses. Because it does not affirmatively appear from the record that the court's decision was unreasonable or unlawful, we hold that

the trial court did not abuse its discretion in its determination of the property's value.² We overrule the first assignment of error.

In his second assignment of error, the auditor argues that the trial court erred by failing to adopt the factual findings of the magistrate and that the court abused its discretion by failing to affirm the magistrate's decision. We disagree.

Contrary to the auditor's assertion, the trial court was not "acting in an appellate capacity" in reviewing the decision of its magistrate. The magistrate's function was to aid the trial court, not to become a substitute for the court's judicial function.³ The court was entitled to adopt or reject the magistrate's decision in part or in its entirety.⁴ We overrule the auditor's second assignment of error.

In his brief, Agapay informs us that "he accepts the decision of the trial court." His sole assignment of error concerns the methodology used in the auditor's valuation. This assignment of error is rendered moot by our resolution of the auditor's first assignment of error.

Therefore, we affirm the judgment of the trial court.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., HILDEBRANDT and PAINTER, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 25, 2009

per order of the Court _____.

Presiding Judge

² *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11, 475 N.E.2d 1264; see, also, *Natl. Church Residence v. Licking Cty. Bd. of Revision*, 73 Ohio St.3d 397, 1995-Ohio-327, 653 N.E.2d 240.

³ See *Hartt v. Munobe*, 67 Ohio St.3d 3, 1993-Ohio-177, 615 N.E.2d 617.

⁴ Civ.R. 53(D)(4)(b).