STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1110

Juris Curiskis,
Appellant,

vs.

City of Minneapolis,
Respondent.

Filed May 26, 2009
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CV-05-008914

Juris Curiskis, 1199 Edlin Place, Minneapolis, MN 55416 (pro se appellant)

Susan L. Segal, Minneapolis City Attorney, Robin H. Hennessy, Tracey L. Fussy, Assistant City Attorneys, 333 South Seventh Street, Suite 300, Minneapolis, MN 55402 (for respondent)

Considered and decided by Schellhas, Presiding Judge; Lansing, Judge; and Halbrooks, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant asserts that the district court erred in upholding a special assessment on his property, arguing that (1) the special assessment was not uniform, (2) he did not

receive a benefit equal to or greater than the assessment, (3) the city charter authorizing the assessment was invalid, and (4) trial errors prejudiced his case. We affirm.

FACTS

Appellant Juris Curiskis owns property in the Bryn Mawr neighborhood of Minneapolis. In 2005, the city assessed Curiskis's property and other properties in that neighborhood to finance street improvements. Special assessments to property owners were to finance 25% of the cost of the improvements, with the remaining 75% to be financed by public funding. Curiskis appealed the special assessment in Hennepin County District Court, and his appeal was denied. This appeal follows.

D E C I S I O N

"A special assessment is a tax, intended to offset the cost of local improvements such as sewer, water and streets, which is selectively imposed on the beneficiaries of such products." *Buettner v. City of St. Cloud*, 277 N.W.2d 199, 201 (Minn. 1979). The limitations on a city's power of special assessment are that (1) "the land must receive a special benefit from the improvement being constructed," (2) "the assessment must be uniform upon the same class of property," and (3) "the assessment may not exceed the special benefit." *David E. McNally Dev. Corp. v. City of Winona,* 686 N.W.2d 553, 558 (Minn. App. 2004) (citing *Carlson-Lang Realty Co. v. City of Windom*, 307 Minn. 368, 369, 240 N.W.2d 517, 519 (1976)). "Although the law does not define how property is classified for assessment purposes, the municipality has an obligation to evaluate and determine the reach of the benefit from the improvement. In doing so, the municipality has substantial discretion as long as its decision is fair." *Id.* at 560 (citation omitted). So

long as a special assessment does not exceed the benefit to the properties assessed, the apportionment of a special assessment is a legislative function on the part of a city council and will not be overturned absent clear error. *Anderson v. City of Bemidji*, 295 N.W.2d 555, 560-61 (Minn. 1980).

On appeal from a special assessment, relief is limited to setting the assessment aside and ordering a new assessment. *See* Minn. Stat. § 429.081 (2008) (providing that on appeal, "[t]he court shall either affirm the assessment or set it aside and order a reassessment. . . . This section provides the exclusive method of appeal from a special assessment levied pursuant to this chapter."). Appeals from special assessments are "wholly statutory, there being no common-law right to such appeal, and . . . the conditions imposed by the statute must be strictly complied with. The conditions will not be extended by construction." *Wessen v. Village of Deephaven*, 284 Minn. 296, 298, 170 N.W.2d 126, 128 (1969) (citation omitted). Therefore, although in this appeal Curiskis seeks numerous remedies, including that this court inform the city that its charter is ambiguous, we will consider only whether the assessment should be affirmed or set aside.

Curiskis argues that the subject special assessment was not uniform on the same class of property, citing a portion of the trial transcript that reflects an agreement by the city and the district court that the amount of the per-lot assessment was not uniform. Curiskis further argues the special assessment resulted in undue disparity because the highest amount assessed, $7,956, was more than 16 times the lowest amount assessed, $484. But the properties that were assessed $484 were individual units of an 11-unit condominium; as a whole, the condominium was assessed $5,330.

"The law requires only that assessments be roughly proportionate to the benefits accruing." *Buzick v. City of Blaine*, 491 N.W.2d 923, 926 (Minn. App. 1992) (quotation omitted), *aff'd*, 505 N.W.2d 51 (Minn. Aug. 27, 1993). "Furthermore, the mere fact that an assessment on one lot is higher than another does not result in a lack of uniformity." *Id.* In *Buzick*, we held that the district court did not err in finding that an assessment based on a per-frontage-foot rate for street and storm improvements and a per-acre rate for sanitary and water improvements was uniform. Similarly, here, we conclude that the per-square-foot assessment rate applied to all properties of the same class was uniform, regardless of the fact that the amount of the assessment was higher on some properties than on others.

Curiskis also argues that he did not receive a benefit equal to or greater than the amount of the assessment. An assessment that exceeds the benefit conferred constitutes a taking. *Carlson-Lang*, 307 Minn. at 370, 240 N.W.2d at 519. But an assessment is presumed to be legally valid and prima facie proof that the assessment does not exceed the benefit to the property is established when the assessment roll is introduced into evidence, as was done here. *Id.* Curiskis asserts that street maintenance does not increase the market value of property, but merely extends the life and conserves the original value of that which is maintained. We reject this assertion and note that "improvement" is defined under Minn. Stat. § 429.011 (2008), as "any type of improvement made under authority granted by section 429.021," which authorizes a municipality to improve any street by reconstructing and maintaining pavement, gutters, curbs, and the like. Minn. Stat. § 429.021, subd. 1 (2008); *see also State ex rel. Wheeler*

v. Ramsey County Dist. Court, 80 Minn. 293, 310-11, 83 N.W. 183, 188 (1900) (rejecting the argument that repaving a street is not an improvement for which a municipality may assess properties). Curiskis claims that the special assessment is a liability and has a negative impact on property values. But he ignores that the positive effect of street improvements on land values could offset the burden of the assessment. As City Assessor Patrick Todd testified, the street improvements in this case "would be reflected in the overall land value" of a property, in that a buyer might be willing to pay more for a benefited property. Curiskis has not presented convincing evidence that the special assessment exceeded the value of the benefit conferred.

Curiskis also challenges the city charter on the basis that it authorizes assessments to be charged in proportion to the benefits conferred onto properties without defining "benefit." A home-rule charter city may proceed in making an improvement under either its own charter or Minnesota Statutes, Chapter 429, section 429.111 (2008). In this case, the district court found that the city proceeded with the project under its own charter. That the charter fails to define the term "benefit" does not render it invalid per se. *See State by Alexander v. Block*, 660 F.2d 1240, 1253 n.35 (8th Cir. 1981) (stating that the fact that a statute requires administrative or judicial construction to clarify specific language does not render it unconstitutionally vague). Moreover, case law establishes that "benefit," as it pertains to a special assessment, refers to increased market value. *See, e.g., City of St. Paul v. Sanborn*, 176 Minn. 62, 66, 222 N.W. 522, 523 (1928) (stating that "benefits [from special assessments] are to be measured by increased market value"). We therefore reject Curiskis's challenge to the city charter.

Curiskis argues that he was prejudiced by trial errors. "In addition to their burden to show error, appellants have the burden on appeal to demonstrate that the [district] court error caused them prejudice." *Bloom v. Hydrotherm, Inc.*, 499 N.W.2d 842, 845 (Minn. App. 1993), *review denied* (Minn. June 28, 1993). Curiskis complains that when he asked to play a video of a public hearing at trial, the district court refused. But the district court explained that if the video were played, the city would be "at a severe disadvantage" because it would not be able to cross-examine any of the people who spoke at the meeting who were not in attendance at the trial and that playing the tape at trial would be "classic hearsay." *See* Minn. R. Evid. 801(c) (defining hearsay as an out-of-court statement offered to prove the truth of the matter asserted). Curiskis fails to show that an exception to the hearsay rule applied to the video, and we conclude that the district court did not err in its assessment of the video as inadmissible hearsay. We also note that, notwithstanding its evidentiary ruling, the district court expressed its willingness to view the video in chambers after the trial and allowed appellant to refer to the video during his closing argument as though it were part of the record.

Curiskis claims that he was prejudiced when the district court granted the city's motion in limine that the court not consider evidence referred to by Curiskis in his motion for judicial notice. After considering the city's motion in limine on the record, before testimony was offered at trial, the district court excluded: evidence of facts to which the parties had already stipulated; summaries of or general commentary on evidence rather than the evidence itself; hearsay evidence; and unreliable evidence. Curiskis did not object at that time of the district court's ruling, and does not argue now, that the court

erred in rejecting this evidence on the grounds stated. Although the district court did not address Curiskis's motion for judicial notice, it did take judicial notice of sections of the city's charter. Curiskis's motion for judicial notice stated only that the city had "in [its] possession material that is public information as Adjudicative Facts." Rule 201 of the Minnesota Rules of Evidence requires a court to take judicial notice of adjudicative facts "if requested by a party and supplied with the necessary information" and provides that judicial notice is otherwise permissive. Aside from stating that information was in the city's possession, Curiskis did not identify to the district court, and has not identified to this court, the information that was the subject of his motion for judicial notice. We therefore conclude that the district court did not err by excluding evidence pursuant to the city's motion in limine or by not specifically addressing Curiskis's motion for judicial notice.

Curiskis complains that at the conclusion of the evidence, he argued first and was not granted the opportunity to make an oral rebuttal after the city argued. Although the district court subsequently granted Curiskis's request to submit a written rebuttal, the city concedes that Curiskis is correct that at trial he should have been allowed to present his closing argument after the city's closing argument. *See* Minn. Stat. § 546.11(4) (2008) (providing that "the defendant shall open and the plaintiff close the argument to the jury"). But Curiskis has not shown that he was prejudiced by this procedural error. *See* Minn. R. Civ. P. 61 (requiring that harmless error be ignored); *Givans v. Chicago, St. P., M. & O. Ry. Co.* 238 Minn. 161, 163, 56 N.W.2d 306, 307 (1952) (stating that when section 546.11 is violated, the question is whether the error was prejudicial).

Curiskis complains that City Assessor Patrick Todd was allowed to testify even though neither he nor anyone from the city assessor's office was listed on the city's witness list. Curiskis claims that he was prejudiced because he was not prepared to cross-examine Todd. But the city's witness lists included "any rebuttal witnesses as necessary," and Todd was called only on surrebuttal after Curiskis submitted documents with which he intended to prove that the city assessor showed that a certain property had not increased in value as a result of the improvement. Curiskis did not object to Todd being called as a witness. We conclude that the district court properly allowed the city to call Todd as a surrebuttal witness. *See Schiro v. Raymond*, 237 Minn. 271, 276, 54 N.W.2d 329, 333 (1952) ("Plaintiff may not remain silent throughout the trial, in anticipation of a favorable verdict, and raise the issue of surprise for the first time in the motion for a new trial.").

Curiskis also challenges the credibility of Todd's testimony. In particular, Curiskis argues that Todd's testimony that he would rely on sales data to determine whether a property increased in value to an exact dollar figure, conflicts with his testimony that he used a model as the basis for his analysis for the assessment. But evidentiary weight and witness credibility are within the province of the fact-finder. *Nelson v. Nelson*, 291 Minn. 496, 497, 189 N.W.2d 413, 415 (1971). Based on our exhaustive review of the record, we conclude that the district court did not abuse its discretion in finding Todd's testimony to be credible and persuasive.

Finally, Curiskis argues that the district court was incorrect in its order when it stated that "the main thrust of [Curiskis's] argument has been that his property did not

receive a special benefit. Or if it did, the assessment exceeds the special benefit." Curiskis claims that in district court he challenged the city's procedures in determining the special assessments. But the implication of Curiskis's argument to the district court is that he was improperly assessed as a result of the city's alleged irregularities in determining the special assessments. Because the scope of an appeal from a special assessment is limited by statute, *see* Minn. Stat. § 429.081 (stating that the exclusive remedy for a special assessment is an order setting it aside and ordering reassessment), the district court was correct in limiting the extent to which it would consider Curiskis's arguments.

Affirmed.