SUPREME COURT OF NEBRASKA

Cain v. Custer County Board of Equalization

Cain v. Custer Cty. Bd. of Equal., 298 Neb. 834 (2018) · No. No. S-17-370 · Decided February 2, 2018

SUMMARY

The Nebraska Supreme Court reviewed a Tax Equalization and Review Commission decision affirming increased 2012 taxable valuations for Donald V. Cain's agricultural property. The court held that Cain's due process rights were not violated by the lack of additional oral argument, but concluded that the Commission's valuation decision was erroneous on the record. The court reversed and remanded with directions to sustain Cain's property valuation protests for the 2012 tax year.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Funke, J.; Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Kelch, J.
JURISDICTION	Nebraska
DECIDED	February 2, 2018
DOCKET	No. S-17-370
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Cain appealed the Nebraska Tax Equalization and Review Commission's order affirming the Custer County assessor's 2012 valuations of his agricultural property.
STANDARD OF REVIEW	TERC decisions are reviewed for errors appearing on the record; the reviewing court determines whether the decision conforms to law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Questions of law, including due process and statutory or regulatory interpretation, are reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Donald V. Cain, Jr. v. Custer County Board of Equalization

TOPICS

property tax · judicial review of agency action · administrative law · procedural due process · evidence

PRACTICE AREAS

property taxation · administrative law · constitutional due process · appellate procedure · evidence

QUESTIONS PRESENTED

1. Whether TERC violated Cain's procedural due process rights by refusing to permit additional oral argument after remand.
2. Whether Cain waived any due process right to a new evidentiary hearing before a successor TERC commissioner.
3. Whether TERC erred by affirming the assessor's 2012 valuation of Cain's irrigated grassland as irrigated cropland.
4. Whether the assessor's valuation was grossly excessive and the result of arbitrary or unreasonable action under Nebraska property-tax law.
5. Whether the presumption that the assessor acted properly disappeared after Cain presented competent contrary evidence.

HOLDINGS

1. Due process does not establish a freestanding right to oral argument in an administrative valuation proceeding. Cain's asserted right to argue how the preponderance standard applied to the existing record was not a constitutional requirement.
2. Cain waived the due process protection recognized for a successor judge or commissioner who did not hear conflicting live evidence because he did not request a new evidentiary hearing and instead asserted only a right to make legal argument.
3. The presumption that the assessor faithfully performed official duties and relied on sufficient competent evidence disappears when the taxpayer presents competent evidence to the contrary; the presumption is not evidence to be weighed after it disappears.
4. Cain proved by a preponderance of the evidence that the assessor's valuation of his irrigated grassland was grossly excessive and resulted from arbitrary or unreasonable action rather than a mere error in judgment.
5. The regulatory definition of irrigated cropland was a nonbinding guideline rather than a mandatory command because it merely aided the agency's decision and conferred no procedural benefit on Cain.

KEY QUOTATIONS

> *"Due process does not guarantee an individual any particular form of state procedure."* (841)

> *"We have not recognized oral argument as a freestanding procedural due process right."* (842)

> *"A presumption is not evidence and should never be placed in the scale to be weighed as evidence."* (851)

> *"This type of agency rule is merely an aid, and not a command."* (853)

FACTUAL BACKGROUND

Donald Cain owned 1,093.93 acres of agricultural land in Custer County used exclusively for cattle production and grazing, including approximately 756 acres of irrigated native grassland on Valentine sand and rolling, highly erodible terrain. For 2012, the county assessor reclassified Cain's irrigated grassland as irrigated cropland and increased the property's assessed value from $734,968 to $1,834,925, despite no improvements to the property. Cain and a certified appraiser presented evidence that the land was unsuitable for row-crop production and was worth substantially less than comparable irrigated cropland. The assessor acknowledged that the property had previously received adjustments for irrigated grassland and that the valuation could fall between the values assigned to lower-valued market areas.

PROCEDURAL HISTORY

Because Cain was not timely notified of the increased assessments, he did not receive an evidentiary hearing before the Custer County Board of Equalization and petitioned the Nebraska Tax Equalization and Review Commission to determine the actual value of his property under Neb. Rev. Stat. § 77-1507.01. In an earlier appeal, the Nebraska Supreme Court reversed and remanded with directions that TERC reconsider the protests using the preponderance-of-the-evidence standard. On remand, TERC reconsidered the record without an additional hearing, reduced the valuation for three parcels because of clerical errors, and affirmed the valuations for the remaining parcels. The Nebraska Supreme Court reversed and remanded with directions to value the property at $870 per acre, totaling $951,719.10.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

TERC was directed to direct the assessor to set the valuation of Cain's property for the 2012 tax year at $870 per acre, for a total valuation of $951,719.10, and taxes for that year were to be determined and paid on that amount.

CASES CITED

- Cain v. Custer Cty. Bd. of Equal., 291 Neb. 730, 868 N.W.2d 334 (2015)
- Burdess v. Washington Cty. Bd. of Equal., 297 Neb. 166, 903 N.W.2d 35 (2017)
- County of Douglas v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 501, 894 N.W.2d 308 (2017)
- Brenner v. Banner Cty. Bd. of Equal., 276 Neb. 275, 753 N.W.2d 802 (2008)
- Blakely v. Lancaster County, 284 Neb. 659, 825 N.W.2d 149 (2012)
- In re Interest of Carmelo G., 296 Neb. 805, 896 N.W.2d 902 (2017)
- State v. McCurry, 296 Neb. 40, 891 N.W.2d 663 (2017)
- State v. Jasa, 297 Neb. 822, 901 N.W.2d 315 (2017)
- Bryan M. v. Anne B., 292 Neb. 725, 874 N.W.2d 824 (2016)
- Crown Products Co. v. City of Ralston, 253 Neb. 1, 567 N.W.2d 294 (1997)
- Geringer v. City of Omaha, 237 Neb. 928, 468 N.W.2d 372 (1991)
- Krusemark v. Thurston County Bd. of Equal., 10 Neb. Ct. App. 35, 624 N.W.2d 328 (2001)

- In re Interest of S.J., 283 Neb. 507, 810 N.W.2d 720 (2012)
- Slansky v. Nebraska State Patrol, 268 Neb. 360, 685 N.W.2d 335 (2004)
- Farmers Co-op Assn. v. Boone County, 213 Neb. 763, 332 N.W.2d 32 (1983)
- Liljestrand v. Dell Enters., 287 Neb. 242, 842 N.W.2d 575 (2014)
- Ready Mix, Inc. v. Nebraska Railroads, 181 Neb. 697, 150 N.W.2d 275 (1967)
- State v. Smith, 199 Neb. 368, 259 N.W.2d 16 (1977)
- State ex rel. Bonner v. McSwine, 14 Neb. Ct. App. 486, 709 N.W.2d 691 (2006)
- Newman v. Rehr, 10 Neb. Ct. App. 356, 630 N.W.2d 19 (2001), affirmed on other grounds, 263 Neb. 111, 638 N.W.2d 863 (2002)
- In re Marriage of Seyler, 559 N.W.2d 7 (Iowa 1997)
- Louis v. Nebraska Dept. of Corr. Servs., 12 Neb. Ct. App. 944, 687 N.W.2d 438 (2004)
- Bartlett v. Dawes Cty. Bd. of Equal., 259 Neb. 954, 613 N.W.2d 810 (2000)
- Vanderheiden v. Cedar Cty. Bd. of Equal., 16 Neb. Ct. App. 578, 746 N.W.2d 717 (2008)
- US Ecology v. Boyd Cty. Bd. of Equal., 256 Neb. 7, 588 N.W.2d 575 (1999)
- JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal., 285 Neb. 120, 825 N.W.2d 447 (2013)
- Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal., 231 Neb. 653, 437 N.W.2d 501 (1989)
- Bumgarner v. County of Valley, 208 Neb. 361, 303 N.W.2d 307 (1981)
- TJ 2010 Corp. v. Dawson Cty. Bd. of Equal., 22 Neb. Ct. App. 989, 866 N.W.2d 93 (2015)
- Darnall Ranch v. Banner Cty. Bd. of Equal., 276 Neb. 296, 753 N.W.2d 819 (2008)
- First Nat. Bank in Kearney v. Bunn, 195 Neb. 829, 241 N.W.2d 127 (1976)
- In re Estate of Drake, 150 Neb. 568, 35 N.W.2d 417 (1948)
- Bohmont v. Moore, 138 Neb. 784, 295 N.W. 419 (1940)
- Beynon Farm Products v. Bd. of Equalization, 213 Neb. 815, 331 N.W.2d 531 (1983)
- Estermann v. Bose, 296 Neb. 228, 892 N.W.2d 857 (2017)