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requirements as well as an opportunity to the parties to be heard and present evidence. So read, the notice requirements of § 44-7532 are constitutionally satisfactory.

Under § 44-7532, it is the responsibility of the Department to provide all interested parties with formal notice of the time, place, and subject matter to be considered at the hearing, as well as a hearing which provides an opportunity to be heard. Contrary to Gridiron's suggestion, it was not incumbent on Travelers to seek out the details of an upcoming appeal which it may have learned about informally. The prehearing conference order setting the hearing date was not served on Travelers. The district court did not err when it determined that "Travelers did not receive notice as required by statute."

CONCLUSION

The Department failed to give Travelers, an interested party, formal notice of Gridiron's appeal as required by § 44-7532. Accordingly, we affirm the district court's order which vacated the decision of the Department and remanded the matter for a new hearing providing Travelers with notice and an opportunity to present evidence and be heard.

AFFIRMED.

IN RE ESTATE OF DARLEEN F. CRAVEN, DECEASED. COUNTY OF LANCASTER, NEBRASKA, APPELLANT, V. UNION BANK & TRUST COMPANY, TRUSTEE AND PERSONAL REPRESENTATIVE OF THE ESTATE OF DARLEEN F. CRAVEN, APPELLEE.

794 N.W.2d 406

Filed February 11, 2011. No. S-10-393.

1. **Decedents' Estates: Taxation: Appeal and Error.** The scope of review in an appeal of an inheritance tax determination is review for error appearing on the record.
2. **Judgments: Appeal and Error.** When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.

3. **Decedents' Estates: Taxation.** Under Neb. Rev. Stat. § 77-2004 (Reissue 2009), clear market value is measured by the fair market value of the property as of the date of the death of the grantor, less the consideration paid for the property.
4. **Real Estate: Taxation: Valuation: Words and Phrases.** For purposes of taxation, the terms "fair market value" and "actual value" mean exactly the same thing.
5. ____: ____: ____: ____. Real property sold in an arm's-length transaction at public auction is sold within the "ordinary course of trade" within the meaning of Neb. Rev. Stat. § 77-112 (Reissue 2009).
6. **Taxation: Valuation: Words and Phrases.** In determining the actual value of property under Neb. Rev. Stat. § 77-112 (Reissue 2009), a county court may consider a professionally accepted mass appraisal method, but is not required to adopt those appraisal values, and is free to weigh other competent evidence.

Appeal from the County Court for Lancaster County: GERALD E. ROUSE, Judge. Affirmed.

Gary E. Lacey, Lancaster County Attorney, and Michael E. Thew for appellant.

Andrew M. Loudon, of Baylor, Evnen, Curtiss, Grimit & Witt, L.L.P., for appellee.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

GERRARD, J.

This appeal involves the valuation of a personal residence for inheritance tax purposes. After Darleen F. Craven's death, her personal representative and trustee sold Craven's residence at auction for $113,000 and listed that amount as the value of the property when it petitioned for a determination of inheritance tax. Lancaster County contested the valuation, and after hearing the matter, the county court found that the actual value of the property for inheritance tax purposes was the auction sale price, $113,000.

The issue on appeal is whether the county court committed reversible error when it determined that the decedent's real property should be valued, for inheritance tax purposes, at the auction sale price. Because the county court's judgment is supported by competent evidence, conforms to law, and is not arbitrary, capricious, or unreasonable, we affirm.

BACKGROUND

Craven died on July 17, 2008, leaving assets which included a single-family residence in Lincoln, Lancaster County, Nebraska. After Craven's death, her trustee and personal representative, Union Bank & Trust Company (Union Bank), sold the residence at auction for $113,000 and listed that amount as the value of the home when it petitioned for a determination of inheritance tax. Lancaster County contested the $113,000 valuation, and a hearing was held.

At the hearing, Union Bank vice president and senior trust officer Alice Skultety testified that after Craven's death, Union Bank sought to sell Craven's residence and began the process of determining how to best market the home. Skultety testified that she visited the residence on several occasions and that there was an overwhelming odor of animal feces present. Skultety said that there were feces on the carpet and that dogs had both defecated and urinated in the house. Skultety also noted a lack of cleanliness and a general state of deferred maintenance. Skultety made the decision to remove the stained carpets from the house, but upon doing so, discovered that the underlying floors had absorbed animal urine and were stained. Skultety found that the bathrooms were in a state of disrepair, that a basement wall displayed efflorescence and was cracked and bowed, and that water poured into the basement during heavy rains, soaking into the wallboards. Skultety opined that the condition of the interior of the home was "poor to fair."

Skultety testified that she discussed the prospect of selling the house with the sole residual beneficiary of the estate. Skultety stated that the beneficiary did not want to make repairs to the property and sought to sell it in "as is" condition. After discussing the various benefits and disadvantages of listing or auctioning the property, the decision was made to auction the house. Skultety explained that this decision was reached for several reasons, including the poor condition of the home, the large inventory of homes for sale in Lincoln, the slow real estate market, the expense to make the home attractive enough to list, the risk of additional home inspections that could potentially uncover expensive necessary repairs, the continuing cost

of paying taxes, and the cost of maintenance over the winter. Skultety testified that Union Bank hired an appraiser, who placed a $135,000 value on the property. Skultety noted that the $135,000 appraisal was lowered to $131,000 to reflect other damage discovered after the appraiser's inspection of the property.

Union Bank hired auctioneer Norman Ford to sell the property. Ford testified that he had auctioned over 750 residences in Lincoln, the majority of which were estate sales. Ford stated that he advertised the auction in the Lincoln Journal Star newspaper every week for 5 consecutive weeks before the auction and advertised the auction on his company Web site. Ford stated that he showed the property eight or nine times to prospective buyers. Ford noted that the smell of urine and feces in the house made it "difficult to stay in the house for five to ten minutes at a time." Ford testified to other various defects of the property, which were all consistent with Skultety's testimony regarding the home's deficiencies.

Ford stated that, in his opinion, the auction was well attended, with several bidders actively bidding on the house. Ford noted that the real estate market in Lincoln at the time of the auction was not strong and that he thought the $113,000 final bid for the property was the highest possible price that could have been obtained at the time of the sale.

The county's witnesses included professional appraisers Mickey Tuttle and Thomas Kubert, who were asked by the county to appraise the residence. Tuttle and Kubert testified that because the property had been substantially improved after the auction but before their appraisal, they were unable to assess the condition of the property at the time of Craven's death, so they relied on the condition information contained in the original $135,000 appraisal used by Union Bank. Tuttle and Kubert stated that their appraisal was partially based on comparable home sales in the area and that in their opinions, the fair market value of the property at the time of Craven's death was $140,000.

Tuttle further testified that auction sales of residential properties in Lincoln were not valid indicators of market value, because sellers are not typically motivated, there is some

degree of urgency associated with auction sales, and auctioned properties are not adequately exposed on the open market. Kubert estimated that less than 5 percent of the residential real property sold in Lincoln is sold at auction. Kubert stated that because of this, it was his opinion that homes sold at auction are not sold in the ordinary course of business.

The county also offered the testimony of appraiser Sally Webster, who stated that she did not consider auction sales to be valid indicators of fair market value, because auctions generally require higher earnest money deposits, lack warranties other than those regarding title, have shorter closing periods, and do not contain provisions for contingencies. Webster stated that these differences effectively eliminate a substantial portion of the pool of potential buyers.

The court made the determination, after weighing all of the evidence, that the actual value of the Craven residence for inheritance tax purposes was $113,000, equivalent to the price for which the property sold at auction. The county appeals.

ASSIGNMENTS OF ERROR

The county assigns, renumbered and restated, that (1) the county court erred in determining that the $113,000 public auction sales price was the property's value for inheritance tax purposes, and (2) the county court erred when it relied on Neb. Rev. Stat. § 77-2018.05 (Reissue 2009) to determine the value of the real property in decedent's estate for inheritance tax purposes.

STANDARD OF REVIEW

[1,2] The scope of review in an appeal of an inheritance tax determination is review for error appearing on the record.[1] When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.[2]

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[1] *In re Estate of Baer*, 273 Neb. 969, 735 N.W.2d 394 (2007).

[2] *Id.*

ANALYSIS

Clear Market Value

[3] The rate of tax assessed on the inheritance of property by an immediate relative (in this case, Craven's brother) is governed by Neb. Rev. Stat. § 77-2004 (Reissue 2009), which states, in relevant part, that "the rate of tax shall be one percent of the *clear market value* of the property in excess of forty thousand dollars received." (Emphasis supplied.) Clear market value is not defined by statute, though our law is established that clear market value is measured by the fair market value of the property as of the date of the death of the grantor, less the consideration paid for the property.[3] There is no evidence in the record that Craven's beneficiary paid consideration for the estate which he inherited. Clear market value is thus equivalent to fair market value in this instance.

[4] Our law is also established that, for purposes of taxation, the terms "fair market value" and "actual value" mean exactly the same thing.[4] Actual value is defined by Neb. Rev. Stat. § 77-112 (Reissue 2009):

> Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used.

[5] The county argues that real property sold at auction is not sold in the "ordinary course of trade" within the meaning

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[3] See *County of Keith v. Triska*, 168 Neb. 1, 95 N.W.2d 350 (1959).

[4] See *Xerox Corp. v. Karnes*, 217 Neb. 728, 350 N.W.2d 566 (1984).

of § 77-112, so the county court erred when it determined that the auction sale price was the property's value for inheritance tax purposes. We disagree. Real property, particularly in estate proceedings, is routinely sold at auction. Though real estate appraisers may choose to disregard auction sales for valuation purposes, we have long recognized that the price for which real estate sells at public auction is admissible as evidence of the value of that property.[5] And though sale price is not necessarily synonymous with market value, the purchase price of real property may be taken into consideration in determining the actual value of the property for taxation purposes.[6]

Therefore, the auction sale price was competent evidence of the actual value of the property. Though the county presented expert opinion testimony that the value of the property was higher than the auction sale price, the county court weighed the evidence and found the auction sale price evidence more compelling as an indicator of this particular property's actual value. We addressed a similar issue in *Lincoln Joint Stock Land Bank v. Fuller*, noting:

> While opinion evidence is almost always necessary in fixing the market value of land, it is not always controlling. The trial court apparently gave it little weight in the case at bar when the results of three public auctions of the land were presented to it. In this we believe the trial court was justified. Opinion evidence must give way to facts, and, after three sales, none of which brought over $12,000, it would seem that the trial court was amply justified in finding that the market value did not exceed that amount.[7]

[6] Here, too, the court found that the auction sale price was the better measure of the actual value of the property than was the appraisal evidence. The county argues that the appraisals

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[5] See *Travelers Indemnity Co. v. Heim*, 218 Neb. 326, 352 N.W.2d 921 (1984), citing *Lincoln Joint Stock Land Bank v. Fuller*, 132 Neb. 677, 273 N.W. 14 (1937).

[6] See *Collier v. County of Logan*, 169 Neb. 1, 97 N.W.2d 879 (1959).

[7] *Fuller, supra* note 5, 132 Neb. at 682, 273 N.W. at 17.

were better indicators of the actual value of the property and notes that those appraisals utilized the methods expressly approved by § 77-112. However, though the county court *may* consider a professionally accepted mass appraisal method in determining the actual value of property under § 77-112, it is not required to adopt those values.[8] The court is free to weigh other competent evidence, such as the auction sale price, and determine the actual value of the property.

The appraisals cited by the county as evidence of actual value were estimates of the fair market value of the property, based upon sales of comparable properties and other factors. However, evidence in the record reflects that there were no truly comparable properties in the area because of the unique deficiencies of the home. Testimony indicated that those deficiencies made the property difficult to market and reduced its value. Testimony also indicated that auctioning the property was a reasonable alternative to listing with a real estate agent and that estate auctions were common practice in the industry. The record further reveals that the auction was conducted at arm's length, was well advertised, and was open to the public, and there was testimony that the auction sale price was the highest possible price that could have been obtained for the property.

There are no yardsticks by which actual value can be determined with complete accuracy.[9] Here, there is ample evidence in the record to support the county court's determination that the actual value of the property was equivalent to the auction sale price in this instance. That will not always be the case; these determinations are necessarily fact specific. But because competent evidence supports the county court's determination that the actual value of the property was $113,000, and because no error appears in the record, we will not disturb the court's factual determination on appeal.

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[8] See *JCB Enters. v. Nebraska Liq. Cont. Comm.*, 275 Neb. 797, 749 N.W.2d 873 (2008) (when "may" is used in statute, permissive or discretionary action is presumed).

[9] *S.S. Kresge Co. v. Jensen*, 164 Neb. 833, 83 N.W.2d 569 (1957).

County Court's Reliance on "Neb. Rev. Stat. § 77-2018.5"

The county court cited a statute which does not exist, "Neb. Rev. Stat. § 77-2018.5," in support of its factual determination that the value of Craven's residence for inheritance taxation purposes was the auction sale price of the home. The county interprets the court's reference to "§ 77-2018.5" as one to § 77-2018.05 and argues that such reliance was misplaced. However, the record does not establish which statute the court meant when it cited § 77-2018.5, so we do not speculate as to whether the court intended to cite § 77-2018.05. Regardless, the county court's erroneous citation to a nonexistent statute was harmless error. The county court has jurisdiction, pursuant to chapter 77, article 20, to make estate valuation determinations for purposes of inheritance taxation. And as previously discussed, the court did not err when it determined that the value of this particular property, for inheritance taxation purposes, was $113,000.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the county court.

Affirmed.

Wright, J., not participating.

State of Nebraska, appellee, v. Rocky J. Sharp, appellant.

795 N.W.2d 638

Filed February 11, 2011. No. S-10-622.

1. **Motions to Suppress: Investigative Stops: Warrantless Searches: Probable Cause: Appeal and Error.** In reviewing a trial court's ruling on a motion to suppress based on the Fourth Amendment, an appellate court will uphold its findings of fact unless they are clearly erroneous. But an appellate court reviews de novo the trial court's ultimate determinations of reasonable suspicion to conduct an investigatory stop and probable cause to perform a warrantless search.

Appeal from the District Court for Douglas County: Patricia A. Lamberty, Judge. Affirmed.