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the medication errors made by Khan were material in that they introduced medications into Block's body that tend to cause hallucinatory thinking, patient torment, psychiatric and physical symptoms and conditions, and exacerbated illness. Greiner stated that "[t]hese things befell" Block and opined that Block suffered emotionally, mentally, and physically as a direct and proximate result of Khan's negligence. Based on the language of our mandate, we conclude that it was error for the district court to exclude exhibit 25 and that exhibit 25 creates a material issue of fact on the question of whether Khan's negligence was a proximate cause of any conscious pain and suffering on the part of Block. Accordingly, we reverse the grant of summary judgment in Khan's favor.

CONCLUSION

The district court erred in granting summary judgment in Khan's favor, and we reverse the grant of summary judgment.

REVERSED.

ROBERT B. REYNOLDS, APPELLANT, V. KEITH COUNTY BOARD OF EQUALIZATION, APPELLEE.

THERESA SHAW-ROTH AND RICHARD S. ROTH, APPELLANTS, V. KEITH COUNTY BOARD OF EQUALIZATION, APPELLEE.

790 N.W.2d 455

Filed October 26, 2010. Nos. A-09-1019, A-09-1020.

1. **Taxation: Judgments: Appeal and Error.** Appellate courts review decisions rendered by the Tax Equalization and Review Commission for errors appearing on the record.
2. **Judgments: Appeal and Error.** When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.
3. ____: ____. Questions of law arising during appellate review of the Tax Equalization and Review Commission decisions are reviewed de novo on the record.
4. **Governmental Subdivisions: Taxation: Property.** Real and personal property of the state and its governmental subdivisions that is leased to a private party for any purpose other than a public purpose shall be subject to property taxes as if the property were owned by the lessee.

5. **Taxation: Valuation.** Under Neb. Rev. Stat. § 77-1374 (Reissue 2009), improvements on leased public lands shall be assessed, together with the value of the lease, to the owner of the improvements as real property.
6. ____: ____. The purchase price of property, standing alone, is not conclusive of the actual value of the property for assessment purposes; it is only one factor to be considered in determining actual value.
7. **Taxation: Valuation: Words and Phrases.** Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach, (2) income approach, and (3) cost approach.
8. **Taxation: Valuation.** In tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy.

Appeals from the Tax Equalization and Review Commission. Affirmed.

Michael D. Samuelson, of McGinley, O'Donnell, Reynolds & Korth, P.C., L.L.O., for appellants.

J. Blake Edwards, Keith County Attorney, for appellee.

INBODY, Chief Judge, and MOORE and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

At issue in these consolidated appeals are the valuations for property tax purposes of leasehold interests in public land. The taxpayers contend that because their respective leases were determined by protracted negotiations at arm's length, the resulting rentals necessarily meet or exceed market rent and thereby preclude their leaseholds, except for the buildings and improvements located on the leased land, from having taxable value. The Tax Equalization and Review Commission (TERC) correctly rejected this argument, and we affirm its final orders.

BACKGROUND

These appeals address residential lots located near Lake McConaughy in Keith County, Nebraska. Central Nebraska Public Power and Irrigation District (Central), a governmental subdivision of the State of Nebraska which owns the lake and adjoining recreational facilities, leases the lots to a nonprofit

corporation, which in turn subleases the particular lots to the respective taxpayers.

Robert B. Reynolds is the sublessee of "Lot 66 K-1." Theresa Shaw-Roth and Richard S. Roth are the sublessees of "Lot 3 K-3." We refer to these individuals collectively as the taxpayers.

The leases each state a term of 31 years with an additional year added at the end of any year if the leases have not been terminated. The term of each sublease is 30 years, with automatic renewals at the end of each year. Under the leases from Central to the nonprofit corporation, the taxpayers are classified as "Lake Front Sublessees," and the rent payable by such sublessees is 5 percent of the fair market value of the average lakefront lot as determined by an appraisal or appraisals, unless otherwise agreed. By written agreement with Central, the per annum rents payable by each of the lakefront sublessees from April 1, 2007, to March 31, 2008—which encompassed the January 1, 2008, valuation date at issue in these appeals—were $450. Increased rents were payable thereafter: $1,000 for 2008-09, $1,500 for 2009-10, and $2,000 for 2010-11 and annually thereafter until April 1, 2018.

The taxpayers did not take issue with the respective valuations of improvements on their properties, but contested the county's valuation of the land, i.e., the leasehold interests. For 2008, the chief appraiser for Keith County valued the Reynolds property at $389,245 (land value of $50,000 and improvement value of $339,245) and the Roth property at $167,680 (land value of $70,000 and improvement value of $97,680). After receipt of these proposed property valuations, the taxpayers filed property valuation protests with the Keith County Board of Equalization (Board) in which they requested that their land values be set at $20,000. The Board affirmed the assessment values used by the appraiser.

The taxpayers timely appealed the decisions to TERC. They alleged that the valuations affirmed by the Board did not determine the value of the lease as defined by Neb. Rev. Stat. § 77-1374 (Reissue 2009) or chapter 10 of the Nebraska Administrative Code and that the assessor did not follow

professionally accepted mass appraisal methodology. They agreed to a consolidated hearing on their respective appeals.

At the hearing, Reynolds and Roth each testified that they were only disputing the taxable values placed upon their leasehold interests. Reynolds testified that he was the president of the nonprofit corporation leasing the real estate from Central and testified at some length regarding the negotiations lasting 9 to 10 months with Central over the rentals to be paid by sublessees. In describing the negotiations, he testified that "[t]here was the threat of litigation constantly being held over our head and finally we agreed to the terms that appear in the addend[um] that is dated in 2007. That was as — it just fit so squarely into the definition of an arm's-length transaction . . . ." He testified that "we negotiated and agreed that this was the full value." Reynolds testified that the value of the lease was $0 because it was an arm's-length transaction. Roth testified that "at the time that this was done, we were in negotiation with Central . . . , and at the time that we were in that process, we had a lease fee that was below market, so I felt that there was value to the lease at that time, in all honesty." However, Roth testified that on January 1, 2008, the value of the lease was $0 "because we were paying market value."

The appraiser testified that the leasehold values of the "K properties" were established at $30,000, $50,000, or $70,000, based on criteria such as size, view, access, and "elbow room." He testified that the values "were driven off of the sold properties and we compared what sold and tried to make those properties — the leasehold values similar to the sold properties and determined that." The appraiser testified that in the K-1 area, a property with improvements valued at $24,260 sold for $52,000, so the amount attributed to the leasehold value was $30,000—the approximate difference between the improvement value and the sale price. He testified that another property sold for $110,000 and had an improvement value of $57,510, so he attributed to it a leasehold value of $50,000. The appraiser testified that he attributed a $70,000 leasehold value to all of the properties in the K-3 area and that he had used the cost approach to arrive at that amount: "[W]e took the

sale price minus the value of the improvements, which gave us an indication of value for the leasehold value."

Following a hearing, TERC affirmed the decisions of the Board. TERC found that the taxpayers had not produced competent evidence that the Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions and had not adduced sufficient clear and convincing evidence that the Board's decisions were unreasonable or arbitrary. TERC affirmed the Board's decisions determining the actual values of the subject properties as of the January 1, 2008, assessment date.

The taxpayers timely appeal.

ASSIGNMENTS OF ERROR

The taxpayers allege that TERC erred in (1) finding that the Board's assessments were supported by competent evidence and were not unreasonable or arbitrary and that the taxpayers did not meet their burdens of proof; (2) affirming the Board's conclusions concerning the actual values of the subject properties on January 1, 2008, instead of determining the correct actual values of the properties for the tax year 2008; and (3) accepting the Board's methodology employed and values reached for the taxpayers' leasehold interests in the subject properties.

STANDARD OF REVIEW

[1-3] Appellate courts review decisions rendered by TERC for errors appearing on the record. *Vitalix, Inc. v. Box Butte Cty. Bd. of Equal.*, 280 Neb. 186, 786 N.W.2d 326 (2010). When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Id.* Questions of law arising during appellate review of TERC decisions are reviewed de novo on the record. *Id.*

ANALYSIS

The taxpayers correctly observe that leasehold interests are a taxable interest in real property and thus, we begin by recalling basic principles of law pertaining to real property taxation. In

Omaha Country Club v. Douglas Cty. Bd. of Equal., 11 Neb. App. 171, 179-80, 645 N.W.2d 821, 829 (2002), this court summarized as follows:

> Under Nebraska law, real property "shall mean all land, . . . improvements, . . . and all privileges pertaining to real property." 350 Neb. Admin. Code, ch. 10, § 001.01 (2000). Privileges related to real property [are] defined as "the right to sell, lease, use, give away, or enter and the right to refuse to do any of these. All rights may or may not be vested in one owner or interest holder." 350 Neb. Admin. Code, ch. 10, § 001.01F (2000).
>
> Nebraska law also provides that all real property not exempt from taxation is to be valued at its actual value. Neb. Rev. Stat. § 77-201(1) (Cum. Supp. 2000). Further, 350 Neb. Admin[.] Code, ch. 10, § 002.01A (2000), requires real property, except agricultural or horticultural land, to be valued at 100 percent of its actual value. For the purpose of taxing real property, actual value means the real property's market value in the ordinary course of business.

[4,5] As the taxpayers also observe, Nebraska statutes and regulations impose property taxation upon the lessee's interests in real estate owned by a governmental subdivision. "Property of public power districts and irrigation districts that is leased to a private party for purposes other than a public purpose . . . shall be subject to taxation as if the property was owned by the lessee." 350 Neb. Admin. Code, ch. 41, § 004.06 (2009). See, also, Neb. Admin. Code, ch. 15, § 003.05 (2009) ("[r]eal and personal property of the state and its governmental subdivisions that is leased to a private party for any purpose other than a public purpose shall be subject to property taxes as if the property was owned by the lessee"). Under § 77-1374, "Improvements on leased public lands shall be assessed, together with the value of the lease, to the owner of the improvements as real property." As we related above, the taxpayers do not contest the assessment of the value of improvements on their leased public land. Thus, they contest only the "value of the lease," to which the county refers as the "land." At issue in this appeal is the value of the

taxpayers' leasehold interests. They contended at the hearing that the appraiser and, consequently, the Board attributed to the taxpayers the value of the *land*, as if it were owned by the taxpayers, rather than the value of the *lease*. We reject the taxpayers' position for a number of reasons.

[6] First, an amount arrived at through an arm's-length transaction does not necessarily equate to market value. The taxpayers argued before TERC that their leasehold interests had no value because the rent negotiated was the result of an arm's-length transaction. "The market value of a leasehold interest depends on how contract rent compares to market rent . . . ." *The Appraisal of Real Estate*, Appraisal Inst. 634 (13th ed. 2008). "A leasehold interest may have value if contract rent is less than market rent, creating a rental advantage for the tenant." *Id.* at 114-15. "It should be noted that the terms and the market reaction to those terms could cause the sum of the values of the leased fee and leasehold interests to be different than the value of a fee simple interest as if no lease existed." *Id.* at 112. TERC stated, "The argument of the [t]axpayer[s] is essentially the same argument that a purchaser might make that his or her purchase price is the market value of the property. Purchase price does not, however, equal market value, although it may be considered when a determination of market value is made." We agree. The purchase price of property, standing alone, is not conclusive of the actual value of the property for assessment purposes; it is only one factor to be considered in determining actual value. *US Ecology v. Boyd Cty. Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999). Similarly, we conclude that negotiated rent, while a factor to be evaluated, is not determinative of the market value of the leasehold.

Second, the taxpayers did not provide sufficient evidence to support use of the discounted cashflow method to estimate the value of their leasehold interests. The discounted cashflow analysis is an accepted method of valuation within the income capitalization approach to value. Uniform Standards of Professional Appraisal Practice, Statement on Appraisal Standards No. 2 (Appraisal Standards Bd. of Appraisal Found. 2010), available at http://www.uspap.org/2010USPAP/USPAP/stmnts/smt_02.htm. The method is an additional tool available

to an appraiser, but it is best applied in developing value opinions in the context of one or more other approaches. See *id.* The record contains evidence of the base rent and a yield rate applied to the agreed-upon fair market value of an average lakefront property. However, as TERC stated:

> Whether that rate is a market rate and whether it would be an appropriate rate for use in a discounted cash flow analysis is unknown. There is no evidence of the amount or frequency of assessments by the [nonprofit c]orporation or the repayment of taxes or in lieu of tax payments made by [Central]. In this appeal, there is no evidence of an appropriate discount rate. Without a determination of gross rents and a discount rate, an estimate of market value is not possible using the discounted cash flow method.

We agree with TERC that there is simply insufficient evidence in the record to support use of the discounted cash-flow method.

[7,8] Third, the Board's estimate of value has support in generally accepted methodology. "Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach . . . , (2) income approach, and (3) cost approach." Neb. Rev. Stat. § 77-112 (Reissue 2009). The appraiser used a cost approach to value the properties, and the Board adopted these valuations. The record cards that were developed from the government appraisal show that a computer program was used to determine property valuations. These state that data for cost calculations was supplied by "Marshall & Swift." The appraiser testified that he determined the "replacement cost new" of the improvements, deducted depreciation, and then added the leasehold value to arrive at a total value. An analysis by the appraiser of the K-1 subdivision and of the K-3 subdivision examined all of the sold properties within these areas for assessment year 2007. The reports stated that the sales comparison approach "was not developed because there was an insufficient amount of sales in the area that were similar in age, size, location, and style. It is not typical to use this approach in mass appraisal unless there are an abundant

amount of sales and interior information is known." However, "[t]he Sales Comparison Approach and the Abstraction Method w[ere] used to determine the land value in all of the subdivisions around the lake." With regard to the income approach, the reports stated, "The unknown lease agreements make it difficult to determine a capitalization rate. In addition, if the total accurate income was well known and was market driven on a year to year basis, the value would be similar to the cost approach to value or the sales comparison approach." In tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy. *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 753 N.W.2d 802 (2008). The taxpayers had the burden of persuading TERC that the Board's valuations were arbitrary or unreasonable. See *id.* We conclude that the record does not show that the Board acted arbitrarily or unreasonably in determining its valuations of the subject properties.

CONCLUSION

Because we conclude that TERC's decisions conform to the law, are supported by competent evidence, and are not arbitrary, capricious, or unreasonable, we affirm its orders.

AFFIRMED.

VALLEY COUNTY SCHOOL DISTRICT 88-0005, ALSO KNOWN AS ORD PUBLIC SCHOOLS, APPELLEE, V. ERICSON STATE BANK, A NEBRASKA CORPORATION, APPELLANT.

790 N.W.2d 462

Filed October 26, 2010. No. A-09-1206.

1. **Statutes: Appeal and Error.** The determination of the applicability of a statute is a question of law, and when considering a question of law, the appellate court makes a determination independent of the trial court.
2. **Prejudgment Interest.** Generally, prejudgment interest accrues on the unpaid balance of liquidated claims arising from an instrument in writing from the date the cause of action arose until the entry of judgment, pursuant to Neb. Rev. Stat. §§ 45-103.02(2) and 45-104 (Reissue 2004).
3. **Appeal and Error.** Under the law-of-the-case doctrine, an appellate court's holdings on questions presented to it in reviewing the trial court's proceedings