COURT OF APPEALS
DECISION
DATED AND FILED

May 31, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP1241 **Cir. Ct. Nos. 2013CV3458**
2014CV3009

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

AT&T MOBILITY, LLC,

PLAINTIFF-APPELLANT,

V.

WISCONSIN DEPARTMENT OF REVENUE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: PETER ANDERSON, Judge. *Affirmed*.

Before Lundsten, P.J., Blanchard and Kloppenburg, JJ.

¶1 PER CURIAM. The circuit court, pursuant to WIS. STAT. §§ 76.08(1) and 76.18, "redetermined" the Wisconsin Department of Revenue's 2013 and 2014 assessments of AT&T's tangible personal property.[1] Following the presentation of evidence, the court granted AT&T limited relief, but denied most of the redetermination relief that AT&T sought. AT&T now seeks reversal and remand for a new court trial. AT&T makes several arguments. AT&T's main argument is that the circuit court erred when it rejected the valuation opinions of AT&T's appraiser. AT&T's arguments fail to persuade us that reversal for a new trial is warranted. We affirm.[2]

Background

¶2 AT&T describes the property at issue as equipment used by AT&T to operate its wireless telecommunications network. The relevant dollar amounts are large, so we round to the nearest million. The Department assessed the property at $223 million in 2013 and $299 million in 2014.

¶3 At a trial to the court, AT&T presented the testimony and appraisal reports of an appraiser named Hoemke. Hoemke used a "replacement cost new, less depreciation" approach to valuation. The figures that are most pertinent to our analysis are summarized in a table in the Discussion section below.

[1] All references to the Wisconsin Statutes are to the 2015-16 version. We refer to the most current version for ease of reference. The parties do not suggest that there have been any pertinent changes to the statutes during times that are relevant here.

[2] The circuit court found in AT&T's favor with respect to a relatively small amount of property that the parties agree was misclassified. This part of the circuit court's order and the property that it covers are not at issue.

¶4 The circuit court found that Hoemke's valuation opinions were not credible and, on that basis, concluded that AT&T failed to meet its burden of proof as to most of the redetermination relief that AT&T sought.

Discussion

¶5 As noted, AT&T sought redetermination of the assessments in circuit court. The parties agree that, under the applicable review statute, AT&T had the burden to prove that the assessments should be "substantially less" than the assessments determined by the Department. *See* WIS. STAT. § 76.18. The parties disagree about whether our review of the circuit court's application of that standard is deferential or de novo.

¶6 AT&T argues that, under ***Soo Line Railroad Co. v. DOR***, 97 Wis. 2d 56, 292 N.W.2d 869 (1980), we owe no deference to the circuit court's factual and credibility determinations, including, as most pertinent here, the court's determinations as to Hoemke's opinions. Rather, according to AT&T, we are free to undertake a de novo review of Hoemke's valuation opinions and determine for ourselves whether to accept or reject Hoemke's opinions.

¶7 In ***Soo Line***, our supreme court stated that no deference was due the circuit court where the issue was the propriety of an appraiser's application of an "abstract formula" to underlying "facts or data which are themselves undisputed." *See* ***id.*** at 59-60. So far as we can tell, the application of the formula to the facts in that case did not involve credibility determinations or fact finding. Thus, de novo review was appropriate. What is less clear is whether the supreme court in ***Soo Line*** meant to suggest a broader rule that a de novo standard of review is always applicable in the particular assessment context we address here.

¶8 We need not resolve whether the ***Soo Line*** de novo review standard covers the circumstances here because we conclude that, regardless of the standard of review we apply, AT&T fails to demonstrate that it was error for the circuit court to reject Hoemke's appraisals. Accordingly, we will apply de novo review.

¶9 As to how we go about our de novo review, we understand AT&T to be asserting that we are in just as good a position as the circuit court to assess whether AT&T met its burden of proving that the 2013 and 2014 assessments should be "substantially less" than the assessments determined by the Department. And, in that regard, AT&T focuses on Hoemke's valuation opinions because those opinions were critical to AT&T's case. Thus, applying the de novo standard, and based on our understanding of AT&T's standard of review argument, we will independently assess whether Hoemke's valuation opinions are reliable. As we now explain, AT&T's arguments fail to persuade us that Hoemke's valuation opinions should be accepted.

¶10 The figures that are most pertinent to our analysis are as follows:

	2013	2014
Cumulative cost of equipment as reported by AT&T to the Department	$569 million	$693 million
Department's assessment	$223 million	$299 million
Replacement cost new, less depreciation, according to Hoemke (that is, Hoemke's final valuation figure)	$150 million	$149 million

¶11 The circuit court rejected Hoemke's 2013 $150 million valuation and his 2014 $149 million valuation based on the court's evaluation of Hoemke's

testimony and the fact that AT&T had the burden of proof. The circuit court gave the following reasons.

¶12 First, the circuit court focused on the fact that Hoemke's valuation decreased by $1 million from 2013 to 2014 even though AT&T's total reported cumulative cost for its equipment—that is, AT&T's total investment in the equipment—*increased* by $124 million (the 2014 $693 million cost minus the 2013 $569 million cost). The court found that Hoemke was never able to explain why it made sense that AT&T could spend $124 million on equipment with the result being that the total value of the equipment decreased.

¶13 Second, the circuit court appeared to find that Hoemke was not qualified to render the valuation opinions that Hoemke provided. The court criticized Hoemke's responses to mathematical questions posed by the court, and faulted Hoemke for not proceeding as an economist would. The court stated: "I have this prejudice in favor of economists probably [rather] than appraisers."

¶14 Third, the circuit court found that Hoemke was biased because he had received significant payment from AT&T for his services. The court found that Hoemke's "judgment is plainly influenced by the fact that he's being paid a lot of money to testify."

¶15 AT&T expends considerable effort on appeal attempting to explain why the *circuit court's thinking* regarding Hoemke's credibility is wrong. But AT&T had the burden of proof below, and asks us to apply a de novo standard on appeal. Before us, AT&T, at a minimum, has the burden of persuading us, based on uncontested evidence, that *Hoemke's thinking* is correct.

¶16 As to Hoemke's valuation opinions, like the circuit court we question various aspects of Hoemke's approach to fair market value. For example, like the circuit court we question Hoemke's view of the appropriate depreciation amounts for each year. But we conclude that one aspect of Hoemke's analysis is reason, by itself, to conclude that AT&T did not meet its burden—that is, Hoemke's questionable determination that the equipment *decreased* in value from 2013 to 2014 even though AT&T spent $124 million on equipment over this time period. In this regard, the problem for AT&T is that it has focused on the circuit court's reasoning and never affirmatively answers the question of why we should find that Hoemke's opinions are reliable such that they support the conclusion that AT&T has met its burden.

¶17 AT&T's limited discussion of this topic seems to boil down to the assertion that "cost does not equal value." No doubt this assertion is often true. And, there is no dispute that it is true here. For each year, the Department valued the equipment far below its cumulative cost. Perhaps more to the point, although AT&T expended $124 million between 2013 and 2014, the Department increased the assessment in 2014 by substantially less, $76 million.

¶18 But the cost-does-not-equal-value proposition is at best an incomplete explanation. AT&T's limited explanation of the uncontested proposition that cost does not equal value illustrates what is missing from AT&T's arguments. AT&T explains that there is a difference between cumulative cost and the cost to replace as follows:

> Every time AT&T places new equipment at a cell site, or replaces existing equipment, AT&T incurs significant costs for the equipment and the cost of installation, all of which are recorded on its accounting records as new investment. (R. 140, AP. 461-463.) As a result, the total "costs" of each cell site, reflected as capital

> improvements on AT&T's accounting records, reflect substantial duplication of investment. These total "costs"—which are required to be reported to WDOR and which WDOR uses to determine purported true cash value—thus do not bear any relationship to what it would cost to "replace" the functional capacity of AT&T's existing network as of each Valuation Date. (*Id.*) The uncontested evidence showed that the cost to construct and place the required equipment on a new cell site is between $300,000 and $400,000, but the total historical costs reflected on AT&T's accounting records are roughly double that amount.

To the extent this explains why, in part, AT&T's cumulative equipment *costs* are higher than the total *value* in any given year, the explanation does not help us understand why Hoemke's valuations were more reliable than the Department's. The Department's assessments also assume that cumulative costs exceed value. For example, the cumulative cost in 2013 was $569 million and the Department's valuation was $223 million. Thus, the above explanation does not help explain why Hoemke's particular valuations were reliable. More specifically, it does not answer the question of why, under Hoemke's approach, a $124 million increase in AT&T's equipment costs within a one-year period might result in a corresponding decrease in value of $1 million.

¶19 If there is an answer to this reasonable question raised by the circuit court—and we acknowledge there might be—we would have expected it to be front and center in AT&T's briefing. The circuit court referenced this question no fewer than three times in its decision, and the Department references it as many times in its brief on appeal. Plainly, AT&T's limited explanation of why cost does not equal value is not a sufficient explanation of why Hoemke might have reasonably decreased the value by $1 million during the 2013 to 2014 period.

¶20 To sum up so far, we have ignored the circuit court's credibility findings and have reviewed de novo AT&T's argument that it met its burden. We

agree with the Department that "AT&T has given no reason for this Court to accept Hoemke's valuation formula even under a de novo standard of review." We turn to AT&T's remaining arguments.

¶21 AT&T makes two arguments relating to the circuit court's decision to admit or exclude evidence. As we now explain, like the circuit court's credibility findings, the challenged evidentiary rulings do not matter given our de novo review.

¶22 First, AT&T argues that the circuit court erred by refusing to consider Hoemke's appraisal reports or to admit those reports into evidence. These lengthy reports are in the record and we have taken into account the portions that AT&T cites. However, AT&T does not explain what in the reports might answer the $124 million/$1 million question.

¶23 Second, AT&T argues that the circuit court erred by allowing a Department witness to give expert valuation testimony. We have not relied on that testimony. AT&T acknowledges that it had the burden of proof. Without Hoemke's valuations, AT&T cannot meet its burden.

¶24 AT&T makes other assertions relating to the circuit court's evidentiary rulings on two topics: (1) spreadsheets from Hoemke's "work file" and (2) AT&T's presentation of evidence to rebut the Department's evidence. We agree with the Department that these assertions constitute undeveloped arguments. We decline to consider them. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not consider inadequately developed arguments). And, apart from a lack of development by AT&T, our own effort at detecting a reason for why these evidentiary rulings might now matter has yielded no results.

¶25 We turn to AT&T's assertion that the circuit court made a correct "finding" that the Department's assessments did not represent fair market value and AT&T's argument that this correct finding conflicts with the court's decision to uphold the Department's assessments. This argument fails because AT&T misinterprets the pertinent circuit court statements. The circuit court was not indicating its view that the Department's assessments did not reflect a legally proper approach to fair market value. In context, we think it is clear that the circuit court was simply giving its own opinion about the Department's use of "mass appraisals," as authorized by the Wisconsin Property Assessment Manual. The court was not suggesting that the Department's assessments were somehow faulty or out of compliance with the law.

¶26 The circuit court's reference to the Department's use of "mass appraisals" leads to a final AT&T argument that we address and reject. AT&T asserts that the Department employed a "mass appraisal" approach, and seemingly argues that, because a recent supreme court case, ***Metropolitan Associates v. City of Milwaukee***, 2018 WI 4, 379 Wis. 2d 141, 905 N.W.2d 784, held that mass appraisals are no longer sufficient when a taxpayer challenges an assessment, it follows that a taxpayer meets its burden of proof simply by showing that the Department used mass appraisal.[3] Putting aside whether that is a reasonable

[3] The court in ***Metropolitan Associates v. City of Milwaukee***, 2018 WI 4, 379 Wis. 2d 141, 905 N.W.2d 784, explained the term "mass appraisal" as follows:

> "Mass appraisal is the systematic appraisal of groups of properties, as of a given date, using standardized procedures and statistical testing." 1 Wisconsin Property Assessment Manual at 7-32. The Manual provides for assessors utilizing mass appraisal in initial assessments: "Mass appraisal is the underlying principle that Wisconsin assessors should be using to value properties in their respective jurisdictions." *Id.*

(continued)

reading of ***Metropolitan Associates***, we reject AT&T's reliance on ***Metropolitan Associates*** for a different reason that we now explain.

¶27 AT&T directs our attention to the following passage from ***Metropolitan Associates***:

> The [Wisconsin Property Assessment] Manual makes clear that mass appraisal is accepted at the initial assessment stage. It likewise sets forth when a single property appraisal is warranted. A single-property appraisal is necessary (1) after the initial mass appraisal has been challenged by the taxpayer …. *See* 1 Wisconsin Property Assessment Manual at 7-32.

Id., ¶38 (footnote omitted). At first glance, this passage from ***Metropolitan Associates*** might appear to support AT&T's argument. However, ***Metropolitan Associates*** involved the assessment of real property under WIS. STAT. § 70.32(1), and the quoted passage from ***Metropolitan Associates*** is based on a section of the Assessment Manual addressing real property. *See* ***Metropolitan Assocs.***, 379 Wis. 2d 141, ¶¶1-3, 23-31, 35-48. Here, in contrast, AT&T challenges the assessment of "telephone company" *personal property* under WIS. STAT. § 76.81.

¶28 It is not apparent to us that ***Metropolitan Associates*** applies in this personal property context. We do not find in AT&T's arguments any explanation as to why it must or should apply. For this reason, we reject AT&T's reliance on ***Metropolitan Associates***. The Department suggests other reasons to reject

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> Mass appraisal stands in contrast to single property appraisal, which is the valuation of a single particular property as of a given date.

Id., ¶¶29-30.

AT&T's reliance on ***Metropolitan Associates***, but what we have already said is sufficient.

Conclusion

¶29 For the reasons stated, we affirm the circuit court's order redetermining the Department's 2013 and 2014 assessments of AT&T's tangible personal property.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.