

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

AILEEN H. CHAR LIFE INTEREST, 629)
INVESTMENTS, A HAWAII PARTNERSHIP,)
REMAINDER INTEREST; AIMCO PROPERTIES)
LP; AIMCO/BLOSSOMTREE APTS LP; AL-SAID)
ANNA F T; ALTA PLACE PROPERTY INC.;)
ARCADIA VILLA APTS, LLC; ARIZONA GRANO-))
PALMS LTD; CAMINO APTS; CINNAMON PROP-))
ERTIES; CON AM REALTY INVESTORS; COOK)
INLET REGION OF ARIZONA INC; DELCAS-))
TELLO IRENE TRUST; EQR VILLA MANANA)
VISTAS INC; EQR-WATSON GP; EQUITY RESI-))
DENTIAL PROPERTIES; ERP OPERATING LP;)
EVANS WITHYCOMBE FINANCE SHP SUITE)
A200; EVANS WITHYCOMBE FINANCE PARTNER-))
SHIP LP; EVANS WITHYCOMBE RESIDENTIAL;)
EVANS WITHYCOMBE RESIDENTIAL LP; FOREST))
PARK LLC; G & E HOLDINGS INC; GREENWAY)
PHOENIX ASSOCIATION LTD PARTNERSHIP;)
HEATHERWOOD INVESTORS LTD PARTNERSHIP;)
LAURELS SADDLE CLUB LP; MAGELLAN NORTH-))
WOOD INC; MARIPOSA JOINT VENTURE;)
MORARU, PETER & ELIZABETH; MOUNTAIN)
VIEW CASISTAS LP; NHP SUMMER LP;)
ORCHARD MESA ASSOCIATES LTD PARTNER-))
SHIP; OTC APARTMENTS LP; PARKSIDE;)
PARKSIDE PARTNERSHIP; PASO ROBLES LLC;)
PHOENIX COURTYARDS LTD PARTNERSHIP; PINE))
SPRINGS LLC; PROFESSIONAL PROPERTY INV)
LTD; SCOTTSDALE PALMS LTD PARTNERSHIP;)
SMITH MELVIN W JR & MARJORIE L TR;)
SUNSET SHADOWS INC; SUNSHINE LAND ASSO-))
CIATES LP; THE PHOENIX APTS LLC; THE S)
DEVELOPMENT COMPANY; THOMSON THOMAS J;)
TPOC LTD LIABILITY CO; VERDE INVESTMENT))
INC; W.L. PROPERTIES LLC; WELLSFORD)
RESIDENTIAL TRUST; YF PARTNERS GREEN)
LP,)

Plaintiffs-Appellees,)

v.)

MARICOPA COUNTY, a political subdivi-))
sion of the State of Arizona,)

Defendant-Appellant.)

1 CA-TX 02-0003

DEPARTMENT T

MEMORANDUM DECISION
(Not for Publication -
Rule 28, Arizona Rules
of Civil Appellate
Procedure)

ANTHEM DUNLAP SQUARE, LLC, a limited liability company,

Plaintiff-Appellee,

v.

MARICOPA COUNTY, a political subdivision of the State of Arizona,

Defendant-Appellant.

CENTURY PROPERTIES FUND XIX; FARNAM COMPANIES INC; FEIGA/CIMMARON LP; PACIFIC CORINTHIAN LIFE INSURANCE; RONALD L. HERRICK TRUSTEE; SANO CORPORATION; WHITE, HOWELL AND HALL, LLC,

Plaintiffs-Appellees,

v.

MARICOPA COUNTY, a political subdivision of the State of Arizona,

Defendant-Appellant.

AILEEN H. CHAR LIFE INTEREST, 629 INVESTMENTS, A HAWAII PARTNERSHIP, REMAINDER INTEREST; AIMCO PROPERTIES LP; AIMCO/BLOSSOMTREE APTS LP; ALSAID ANNA F T; ALTA PLACE PROPERTY INC; ARCADIA VILLA APTS. LLC; ARIZONA GRANOPALMS LTD; CAMINO APTS; CINNAMON PROPERTIES; CON AM REALTY INVESTORS; COOK INLET REGION OF ARIZONA INC; DELCASTELLO IRENE TRUST; EQR-WATSON GP; EQUITY RESIDENTIAL PROPERTIES; ERP OPERATING LP; EVANS WITHYCOMBE FINANCE PSHP SUITE A200; EVANS WITHYCOMBE FINANCE PARTNERSHIP L.P.; EVANS WITHYCOMBE RESIDENTIAL; EVANS WITHYCOMBE RESIDENTIAL LP; FOREST PART LLC; G & E HOLDINGS INC; GLENWAY PHOENIX ASSOC LED PARTNERSHIP; LEATHERWOOD INVESTORS LED PARTNERSHIP; LAURELS SADDLE CLUB LP; MAGELLAN NORTH-

FILED 9-2-03

WOOD, INC; MARIPOSA JOINT VENTURE;)
MORARU, PETER & ELIZABETH; MOUNTAIN)
VIEW CASISTAS LP; NHP SUMMER, L.P.;)
ORCHARD MESA ASSOCIATED LED PARTNER-)
SHIP; OTC APARTMENTS LP; PARKSIDE;)
PARKSIDE PARTNERSHIP; PASO ROBLES LLC;)
PHOENIX COURTYARDS LED PARTNERSHIP;)
PINE SPRINGS, LLC; PROFESSIONAL PROP-)
ERTY INV LED; SCOTTSDALE PALMS LED)
PARTNERSHIP; SMITH MELVIN W JR & MARJO-)
RIE L TR; SUNSET SHADOWS, INC.; SUN-)
SHINE LAND ASSOCIATES LP; THE PHOENIX)
ARTS LLC; THE S DEVELOPMENT COMPANY;)
THOMSON THOMAS J; TPOC LED LIABILITY)
CO; VERDE INVESTMENTS, INC.; W.L. PROP-)
ERTIES, LLC; WELLSFORD RESIDENTIAL)
TRUST; YF PARTNERS GREEN LP,)
))
Plaintiffs-Appellants,)
Cross-Appellees,)
))
v.)
))
MARICOPA COUNTY, a political subdivi-)
sion of the State of Arizona; and the)
DEPARTMENT OF REVENUE OF THE STATE OF)
ARIZONA,)
))
Defendants-Appellees,)
Cross-Appellants.)
))

Appeal from the Arizona Tax Court
Cause Nos. TX 98-00413, TX 98-00419, TX 98-00422

The Honorable Jeffrey S. Cates, Judge

REVERSED; JUDGMENT AND ORDERS VACATED

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E H R L I C H, Judge

¶1 Maricopa County appeals from a judgment holding that it discriminated against certain property holders ("Taxpayers") in valuing their apartment properties and from the denial of its motion for new trial. The Taxpayers have cross-appealed regarding the trial court's award of only a portion of the attorneys' fees requested pursuant to Arizona Revised Statutes section ("A.R.S. §") 12-348(B) (1992). The County and the Arizona Department of Revenue ("ADOR") contest the appeal. In addition, the County cross-appealed regarding the award of expert witness fees. For the reasons discussed, we reverse the judgment on the discrimination claim, and vacate the awards of attorneys' fees and expert witness fees.

FACTS AND PROCEDURAL BACKGROUND

¶2 This action arises out of a property tax appeal for the 1997 tax year. The Taxpayers filed a complaint and notice of property tax appeal against the County and ADOR, contending that the Maricopa County Assessor valued their sixty-two apartment properties in a discriminatory manner in violation of the Arizona Consti-

tution, Article 9, Section 1,¹ and the United States Constitution, Amendment XIV, Section 1.²

¶3 In response to a motion for summary judgment filed by the County, the Taxpayers successfully moved for additional discovery time pursuant to Rule 56(f) of the Arizona Rules of Civil Procedure. After completing discovery, the Taxpayers filed a motion to set and certificate of readiness. The County then renewed its summary-judgment motion based upon the Taxpayers' continuing failure to provide evidence of inequality under the full cash value standard. The Taxpayers then cross-moved for summary judgment. The tax court denied both motions, ruling that the Taxpayers had "offered sufficient evidence to raise a question of fact."

¶4 Prior to trial, the tax court denied the County's motion in limine requesting exclusion of all evidence irrelevant to the full cash value standard. After trial, the court prepared a minute entry incorporating findings of fact and conclusions of law, and then entered a judgment in favor of Taxpayers, stating that they

¹The Arizona Constitution provides that, with the exception of ad valorem residential taxes, "all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only." ARIZ. CONST. art. 9, § 1.

²The United States Constitution provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

"agreed to voluntarily dismiss" parcel 158-02-005. The County appealed.

¶5 After the County identified additional new evidence, it moved to suspend the appeal and re-vest jurisdiction in the tax court for the purpose of considering a motion for new trial pursuant to Arizona Rule of Civil Procedure 60(c). This court granted the motion to suspend the appeal and re-vest jurisdiction in the tax court, and the tax court considered and rejected the Rule 60(c) motion. Another appeal followed.

¶6 The Taxpayers appealed a separate post-judgment order awarding limited attorneys' fees and rejecting their interpretation of A.R.S. § 12-348(B). The County cross-appealed regarding the Taxpayers' entitlement to expert witness fees.

DISCUSSION

I. *Taxpayers Had Burden to Prove Discrimination in Property Valuation.*

¶7 This court reviews questions of law de novo, *Libra Group, Inc. v. State*, 167 Ariz. 176, 179, 805 P.2d 409, 412 (App. 1991), and subjects factual findings to the clearly erroneous standard. *Schnepp v. State ex rel. Dep't of Econ. Sec.*, 183 Ariz. 24, 27, 899 P.2d 185, 188 (App. 1995). Whereas application of the proper legal standard, the correct burden of proof and the applicable class pose questions of law, whether the legal standard is satisfied is a question of fact under the circumstances. *Baird v. Pace*, 156 Ariz.

418, 420, 752 P.2d 507, 509 (App. 1987). Additionally, questions of statutory interpretation are issues of law. *Walls v. Ariz. Dep't of Pub. Safety*, 170 Ariz. 591, 594, 826 P.2d 1217, 1220 (App. 1991).

¶8 The Uniformity Clause of the Arizona Constitution requires that classifications for tax purposes be based upon a property's nature or on its use, utility or productivity. *Aida Renta Trust v. Dep't of Revenue of State of Ariz.*, 197 Ariz. 222, 237 ¶48, 3 P.3d 1142, 1157 (App. 2000). "[T]he assessment of property within those classifications must not be discriminatory." *Id.* "To violate the Uniformity Clause, unequal assessments must be the result of 'systematic and intentional conduct on the part of the assessing official.'" *Id.* (citations omitted).

¶9 According to A.R.S. § 42-16212(c) (1999) (formerly A.R.S. § 42-178 (1995)), a government's valuation is presumed to be correct and lawful. Therefore, it is the taxpayer who has the burden of proof on a discrimination claim.³

³The County argues that, in a uniformity clause case, the taxpayer must prove "beyond a reasonable doubt" that the valuation is excessive when compared to other properties. *Magellan S. Mountain Ltd. P'ship v. Maricopa County*, 192 Ariz. 499, 504 ¶23, 968 P.2d 103, 108 (App. 1998). The Taxpayers respond that this standard should only apply to cases in which the constitutionality of a statute is at issue and that the burden of proof for a valuation claim is to show by a preponderance of the evidence that the amount is excessive, citing *Inspiration Consolidated Copper Co. v. Arizona Department of Revenue*, 147 Ariz. 216, 709 P.2d 573 (App. 1985). We need not resolve this dispute, however, because, even applying the
(continued...)

¶10 The tax court's minute entry reflects that the court did not properly allocate the burden of proof. For example, the minute entry states that the County "failed to show" how the Taxpayers' lack of evidence and use of an incorrect class has a "significant effect on the necessary discrimination analysis." The burden is not on the County, however. The Taxpayers have the burden to demonstrate discrimination.

II. Taxpayers' Discrimination Claim Fails Because They Failed to Offer Proof of Disproportionate Valuation with Respect to Their Properties' Full Cash Value.

¶11 Not only did the tax court fail to correctly allocate the burden of proof, it also failed to require evidence of disproportionate valuation with respect to the properties' full cash value. According to A.R.S. § 11-542(B) (2001), the Assessor must determine "all the taxable property ... at its full cash value." For property tax purposes, full cash value is "synonymous with market value which means the estimate of value that is derived annually by using standard appraisal methods and techniques" unless otherwise specified by statute. A.R.S. § 42-11001(5) (1999) (formerly A.R.S. § 42-201 (1997)).

¶12 To determine whether the Taxpayers' properties bore an unconstitutional valuation, a court must (1) measure the assessed value of the Taxpayers' properties and the comparison properties

³(...continued)
standard of preponderance of the evidence, the Taxpayers fail to meet their burden of proof.

against the respective full cash values, and (2) determine whether the Taxpayers' properties were assessed at a higher percentage of full cash value than were the comparable properties. *S. Pac. Co. v. Cochise County*, 92 Ariz. 395, 398-401, 377 P.2d 770, 773-75 (1963). The court then may determine whether the disproportionate valuations resulted from systematic and intentional discrimination. *McCluskey v. Sparks*, 80 Ariz. 15, 19, 291 P.2d 791, 793 (1955); *Sec. Props. v. Ariz. Dep't of Prop. Valuation*, 112 Ariz. 54, 57, 537 P.2d 924, 927 (1975).

¶13 Time after time, Arizona courts have required proof of disproportionate valuation in discrimination cases. In *Southern Pacific*, for example, the complaint "encompass[ed] a broader sweep" than does the Taxpayers' dispute as to the amount of their assessments. 92 Ariz. at 399, 377 P.2d at 773. The *Southern Pacific* taxpayer sought to establish

that the full cash value of its property in Arizona was \$73,000,000 and that its property was assessed at not less than 89 per cent of full cash value but that other property subject to assessment by the respective county assessors was assessed at no more than 20 per cent of full cash value on the average.

Id. at 398, 377 P.2d at 772. The Arizona Supreme Court held that "[i]f appellant establishes that its property is being assessed at a higher percentage of full cash value than other properties, then ... discrimination within the 14th Amendment to the United States Constitution will have been shown." *Id.* at 403, 377 P.2d at 776;

see also *Ariz. Copper Co. v. State*, 15 Ariz. 9, 15, 137 P. 417, 420 (1913) (stating a "clear case of discrimination and inequality" was presented and "the fundamental principle of uniformity was violated" when the assessor valued the plaintiff's property at 60 percent of its full cash value while all other properties were valued at not more than 40 percent).

¶14 The Arizona Supreme Court also emphasized this point in *McCluskey*, in which it stated: "Assessing officials cannot systematically and intentionally use different rules for measuring the value of property of the same class *if by the use thereof great inequality results.*" 80 Ariz. at 20, 291 P.2d at 794 (emphasis added). In that case, the plaintiffs based the lawsuit

upon the alleged proposition that plaintiffs have been discriminated against by valuing other properties at below full cash value and, by the use of a method different from that used in valuing other properties, assessing or attempting to assess plaintiffs' properties at a greatly disproportionate valuation.

Id. at 19, 291 P.2d at 793.

¶15 In *Maricopa County v. North Central Development Co.*, we considered North Central Development Company's claim that it was subjected to discriminatory real property assessments in 1971 and 1972. 27 Ariz. App. 561, 556 P.2d 1164 (1976). The record was devoid of evidence of inequality. *Id.* at 563, 556 P.2d at 1166. The taxpayer's evidence consisted of the \$6 per square foot valuation for its property and a different valuation for properties in

a different area of town. *Id.* at 562, 556 P.2d at 1165. The tax court had found discrimination based upon application of the cost model to some properties and not to others. *Id.* We reiterated the full cash value standard and admonished the trial court to apply it. *Id.* at 562-63, 556 P.2d at 1165-66. A contrary approach would have allowed the tax court to "promulgate tax assessment regulations in the form of judicial opinions." *Id.* at 563, 556 P.2d at 1166.

¶16 In a later decision, the plaintiffs disputed the fact that their properties were taxed at all. *Maricopa County v. N. Central Dev. Co.*, 115 Ariz. 540, 542-43, 566 P.2d 688, 690-91 (App. 1977). There accordingly was no need to compare the assessments under the full cash value standard.⁴

⁴In their motion for reconsideration, the Taxpayers seize on the *McCluskey* proposition that taxpayers are entitled to receive relief for unconstitutional assessments "even though the statute requiring assessment of property at full cash value is violated." 80 Ariz. at 19, 291 P.2d at 793. Their reliance on this case is misplaced. The *McCluskey* language derives from *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923). There, a taxpayer's property was assessed at full value while other properties in the same class received assessments at less than full value. *Id.* at 443-46. Due to the impracticalities entailed in reassessing all the improperly valued properties, the Court allowed the taxpayer's property to be assessed at the undervalued rate received by the other properties. *Id.* The need to remedy the unconstitutional assessment thus trumped the consequent violation of the statute. In this appeal, however, the Taxpayers never dealt with full cash value evidence because they believed it irrelevant. Moreover, they never argued that relief was impracticable.

¶17 Likewise, *State v. Rella Verde Apartments, Inc.* requires application of the full cash value standard. 25 Ariz. App. 458, 544 P.2d 675 (1976). That case concerned a challenge to the State Board of Property Tax Appeals' implementation of an equalization order affecting multi-residential properties. *Id.* at 460-61, 544 P.2d at 677-78. The order stemmed from a finding that certain properties "were substantially undervalued as compared with the general level of assessment throughout the counties as well as the state." *Id.* at 460, 544 P.2d at 677. Like the Taxpayers, the *Rella Verde* taxpayers were claiming that implementation of the order caused their properties to be treated in an unequal manner because they received an increase in value while others received a smaller increase or no increase at all. *Id.* at 463, 544 P.2d at 680.

¶18 This court denied relief because "there was no proof that, on the whole, [the manner of calculation] did not bring properties within the county nearer to full market value." *Id.* at 465, 544 P.2d at 682. Again, the parties failed to prove discrimination because they had no evidence that their properties were valued in excess of full cash value or that other properties were valued at a disproportionately lower percentage of full cash value.⁵

⁵Other courts agree that a uniformity clause violation requires proof of excessive value with regard to the full cash value standard and not simply proof of an increase in value or use of a different method of assessment. See *Yusem v. Town of Raymond*, 769 A.2d 865, 871-72 (Me. 2001) (holding that evidence attacking the assessors' methodology was insufficient to establish a consti-
(continued...)

¶19 Notwithstanding this authority, the tax court refused to require the threshold showing of inequality with regard to the full cash value standard. As a result, the Taxpayers submitted evidence that (1) the valuation of their properties increased overall, while other properties' valuations did not and (2) the Assessor valued their properties according to the cost model but did not use this method with other properties. However, without tying these numbers to the full cash value standard, there is no way to tell whether the properties whose values remained constant were over-valued in prior years and whether stabilizing the values brought them closer to full cash value. It is also impossible to discern whether the properties with increased values had been undervalued in previous years and the increase brought them closer to full cash value.

¶20 In response to the County's arguments, the Taxpayers "do not argue that their properties were assessed at a higher percentage of full cash value than other properties." All they proved was that the Assessor used a different method for valuing their proper-

⁵(...continued)
tutional violation); *Sirrell v. State*, 780 A.2d 494, 499-501 (N.H. 2001) (applying the full cash value standard and denying relief because the taxpayers failed to provide any evidence that any properties were valued in a disproportionate manner in relation to full cash value); *Univ. Village Ltd. Partners v. King County*, 23 P.3d 1090, 1093 (Wash. Ct. App. 2001) (recognizing that the assessor has the discretion to value properties through different methods and that "a challenge to the assigned land value ... appraised by the income method, without more, is insufficient to sustain a constitutional claim of non-uniform taxation, because a difference in land value does not necessarily mean a difference in total assessment ratio in that context").

ties and the comparison properties. The tax court accepted this as proof, ruling that, "[t]o determine whether there has been unlawful discrimination under the Uniformity Clause, courts examine whether the subject property was assessed differently" than other similar properties. This is not the standard for discrimination and does not show a constitutional violation. See *Recreation Ctrs. of Sun City, Inc. v. Maricopa County*, 162 Ariz. 281, 285, 782 P.2d 1174, 1178 (1989) (recognizing that statutes impose a tax on full cash value but providing that any of the standard appraisal methods may be used in the determination of this value). Moreover, it is not enough to show intentional action in the absence of proof of disproportionate values.

¶21 Compounding the error, the Taxpayers claim that they had no burden to establish anything with regard to full cash value because this is not a valuation case. They fail to recognize that, in a discrimination case, the taxpayer must supply proof of unequal assessment, i.e., disproportionate valuation. See *McCluskey*, 80 Ariz. at 19, 291 P.2d at 793; *S. Pac.*, 92 Ariz. at 398-400, 377 P.2d at 772-74; *Rella Verde*, 25 Ariz. App. at 465, 544 P.2d at 682. If the Taxpayers' properties had received increases in value but were still valued at the same or a lower percentage of full cash value than those properties whose values remained the same, then Taxpayers were not harmed and they did not receive disproportionate values.

¶22 The Taxpayers also make an unpersuasive effort to distinguish the four key valuation discrimination cases. For example, they contend that *Southern Pacific* is distinguishable based on the evidence submitted and that the full cash value standard is not the exclusive method to prove discrimination. They fail, however, to describe an alternative appropriate standard or how their proof conforms to it. At bottom, the Taxpayers confuse unequal assessments with proof of intentional and systematic behavior, and claim that discrimination is established because the County froze certain values while increasing others. This evidence does not prove inequality; it only shows intentional acts without proof that those acts caused unconstitutional discrimination.

¶23 The Taxpayers' attempt to distinguish *North Central Development* is equally unavailing. Without citing any legal authority, they contend that it was a "valuation case," not a "valuation discrimination case." To the contrary, the court in *North Central Development* stated: "taxpayer contends that the intentional, systematic over-valuation of its property when compared to the lower assessments placed on similar property in the same class amounts to discrimination." 27 Ariz. App. at 562, 556 P.2d at 1165.

¶24 We also reject the Taxpayers' puzzling assertion that the court in *McCluskey* disregarded the full cash value standard. The Arizona Supreme Court found that, although the taxpayer's proper-

ties were not valued in excess of their full cash value, they received values "greatly in excess of undervaluation" of other like properties, which were valued at "five to forty percent of full cash value." 80 Ariz. at 18, 19, 291 P.2d at 792, 793. The evidence presented was predicated on full cash value, and the court later found that inequality existed on that basis. See *McCluskey v. Sparks*, 84 Ariz. 283, 327 P.2d 295 (1958).

¶25 Moreover, the Taxpayers seek to distinguish *Rella Verde* by focusing upon the absence of intentional and systematic behavior by the taxing authority. This factor does not change the holding with regard to unequal assessments. The court in *Rella Verde* recognizes that inequality of assessments can only be determined by relating the values of the subject properties and the comparison properties to the full cash value standard. 25 Ariz. App. at 465, 544 P.2d at 682. Like the taxpayers in *Rella Verde*, the Taxpayers provided the tax court with evidence of only an increase in the amount of assessed values.⁶

⁶In their motion for reconsideration, the Taxpayers make an eleventh-hour request for a remand to present evidence under the full cash value standard. In their briefs, however, they never argued that their evidence established discrimination under the full cash value standard or that they should be allowed to meet that standard on remand. Having failed to preserve these arguments and seek remand relief during the briefing stage, the Taxpayers cannot receive it now. See *Boy v. Fremont Indem. Co.*, 154 Ariz. 334, 337, 742 P.2d 835, 838 (App. 1987) (refusing to consider an argument raised for the first time in a motion for reconsideration).

III. The Tax Court Misconstrued the Roll-Over Valuations.

¶26 The tax court apparently misunderstood the effect of roll-over valuations; it stated that the improper roll-over resulted in disproportionate valuation. Even if the roll-over were erroneous, there is still no basis for finding discrimination absent evidence of full cash value ratios.

¶27 Additionally, there seemingly was confusion about the justification for the roll-overs. The tax court stated that there was no authority to roll over 7560 multi-family residential properties on the 1997 tax roll because they were not subject to a valuation appeal in 1996. This finding is erroneous because the 1995 and 1996 tax years were treated as one pursuant to legislative mandate.

¶28 The tax court also erroneously concluded that roll-overs were inappropriate because the Taxpayers' properties had never been subject to a valuation appeal, but the evidence established that most parcels had been through appeals of their values. The Taxpayers' properties received the same benefit in prior years as a result of a system they now challenge.

¶29 Our holding obviates the need to consider whether the County's actions were discriminatory and systematic and whether a new trial was necessary on the issue of alleged evidence of new mistakes. We also need not consider the alternative arguments that the tax court (1) did not properly define the class of property

holders, (2) abused its discretion in finding discrimination absent sufficient facts and holding certain facts established absent supporting or contrary evidence, and (3) ordered an inappropriate remedy.

¶30 Our holding is likewise dispositive of the attorneys' fees and expert witness fee arguments. Because the Taxpayers are no longer the prevailing parties in an adjudication on the merits, we vacate the award of fees for their attorneys and expert witness pursuant to A.R.S. § 12-348(B) and (D) (1992).

IV. The Tax Court Violated the Rules of Civil Procedure in Permitting a Parcel to be Dismissed.

¶31 The only remaining issue is whether the tax court impermissibly allowed the Taxpayers to dismiss a parcel unilaterally. At trial, the County established that the reduction in value of Parcel 158-02-005 more than compensated for the increase in value of Parcel 158-02-004 in the same economic unit. The relief requested would actually increase the value of the economic unit.

¶32 After trial, the Taxpayers submitted a form of judgment stating that the plaintiff had voluntarily agreed to dismiss parcel 158-02-005. Despite the County's objection, the tax court entered a judgment dismissing the parcel.

¶33 As the County pointed out, Arizona Rule of Civil Procedure 41(a)(1) permits a plaintiff to dismiss a claim "at any time before service by the adverse party of an answer or of a motion for summary judgment ... or ... by order of the court pursuant to a

stipulation of dismissal signed by all parties." The tax court's ruling was based upon the Taxpayers' agreement to dismiss the parcel, but the dismissal was entered in the absence of a stipulation signed by the County and the ADOR, and occurred after the court had issued findings of fact and conclusions of law. The dismissal accordingly violated Rule 41(a)(1) and was erroneous.⁷

CONCLUSION

¶34 We reverse the tax court's holding and vacate its judgment and orders, including the award of attorneys' fees and expert witness fees. In addition, we deny Taxpayers' request for attorneys' fees on appeal. We also deny the motion for publication of this decision as an opinion.

SUSAN A. EHRLICH, Judge

CONCURRING:

SHELDON H. WEISBERG, Judge

JONATHAN SCHWARTZ, Judge Pro Tempore

⁷The Taxpayers, however, contend in their motion for reconsideration that they were entitled to a dismissal pursuant to Rule 41(a)(2). That provision permits a dismissal by order of the court upon terms it deems just. The problem is that Taxpayers did not raise this argument in the briefs, choosing instead to argue that Rule 41 did not apply. We do not consider arguments raised for the first time in a motion for reconsideration. See *Boy*, 154 Ariz. at 337, 742 P.2d at 838.