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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ROBERT DAHMS, Plaintiff and Appellant, v. DOWNTOWN POMONA PROPERTY AND BUSINESS IMPROVEMENT DISTRICT et al., Defendants and Respondents.	B183545 (Super. Ct. No. BS 092125)

APPEAL from a judgment of the Superior Court of Los Angeles County. David P. Yaffe, Judge. Affirmed.

Martineau & Knudson, Ronald C. Friendt and Gerald R. Knudson, Jr. for Plaintiff and Appellant.

Alvarez-Glasman & Colvin and Scott E. Nichols for Defendants and Respondents Downtown Pomona Property and Business Improvement District and City of Pomona.

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* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts II, III, and IV.

Robert Dahms appeals from the trial court's rejection of his challenge to the creation of a special assessment district in downtown Pomona, California. We affirm.

BACKGROUND

This case concerns the formation of the Downtown Pomona Property and Business Improvement District (PBID), a special assessment district created by the City of Pomona (City) in 2004. The PBID levies assessments on properties within downtown Pomona in order to fund certain services for the properties within the PBID's boundaries. Dahms owns a number of properties within the PBID.

The process of creating the PBID apparently began with a request the City received from four property owners in the spring of 2003. The City subsequently hired a consultant, MuniFinancial, to assist in the creation of the PBID. On June 14, 2004, after receiving a management plan for the PBID and a petition signed by property owners representing over 50 percent of the assessments to be levied, the city council passed and approved a resolution declaring its intention to form the PBID. The resolution set August 2, 2004, as the date for a public hearing on the formation of the PBID.

On June 18, 2004, the City mailed ballots to the affected property owners. On August 2, 2004, the city council held the public hearing, at the conclusion of which the ballots were tabulated. One hundred and twenty-six ballots favored the PBID; 66 opposed it. The ballots were also tabulated after being weighted by the dollar amount assessed for each affected property, as required by California law; the weighted vote was $338,461.29 in favor, and $153,156.86 against.

At the conclusion of the hearing and the tabulation of the ballots, the city council passed and approved three resolutions relating to the PBID. The first resolution declared the results of the balloting. The second approved the formation of the PBID, specified its boundaries and the services to be provided, stated the total amount of the assessments and the maximum annual rate of increase in the assessments, and took various other, related measures. The third resolution approved the engineer's report that MuniFinancial had prepared concerning the PBID, as required by California law.

The engineer's report describes the services that the PBID will provide: (1) security, (2) streetscape maintenance (e.g., street sweeping, gutter cleaning, graffiti removal), and (3) marketing, promotion, and special events. All the services are over and above those the City provides within the boundaries of the PBID and are to be provided only to the properties within the PBID.

As the engineer's report explains, the amount of the assessment for each assessed property within the PBID is based on three factors: street frontage (i.e., the length of street on the street-address side of the property), building size, and lot size. Those factors account for 40 percent, 40 percent, and 20 percent, respectively, of the amount assessed for each property. On the basis of those factors, the amount of the assessment for each assessed property is calculated as a portion of the total cost of the services that the PBID provides. The engineer's report also explains that various nonprofit entities ("religious organizations, clubs, lodges and fraternal organizations") within the boundaries of the PBID are to be assessed for only 5 percent of the amount that they would otherwise have to pay (i.e., the "basic assessment rate"). After discussion of the issue, the City justified the discount on the ground that such entities will "only slightly benefit" from the services provided in the PBID. In addition, properties within the PBID zoned exclusively residential will not be subject to assessment.

On August 25, 2004, Dahms filed this action challenging the City's formation of the PBID. His complaint named the City, the PBID, and "all persons interested in the matter of the [PBID]" as defendants. (Block capitals omitted.) The trial court sustained the City's demurrer to two causes of action, and the case proceeded to a bench trial on Dahms' remaining claims. After the parties filed trial briefs and participated in a hearing, the trial court entered judgment against Dahms. This appeal followed.

STANDARD OF REVIEW

Before California's voters enacted Proposition 218 in 1996, the Supreme Court had repeatedly held that "'[a] special assessment finally confirmed by a local legislative body in accordance with applicable law will not be set aside by the courts unless it clearly appears on the face of the record before that body, or from facts which may be judicially

noticed, that the assessment as finally confirmed is not proportional to the benefits to be bestowed to the properties to be assessed or that no benefits will accrue to such properties.' [Citations.]" (*Knox v. City of Orland* (1992) 4 Cal.4th 132, 146, quoting *Dawson v. Town of Los Altos Hills* (1976) 16 Cal.3d 676, 685.) "[T]he establishment of a special assessment district takes place as a result of a peculiarly legislative process" (*ibid.*), and, because of California's constitutional separation of powers, such legislative determinations are entitled to judicial deference. (*Connecticut Indemnity Co. v. Superior Court* (2000) 23 Cal.4th 807, 814; *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 572; *California Hotel & Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200, 211-212; Cal. Const., art. III, § 3.) Review is limited to the record before the body creating the assessment, plus judicially noticed facts. (*Knox v. City of Orland, supra*, 4 Cal.4th at p. 147.)

Proposition 218 altered the standard for judicial review of assessments by amending the California Constitution to provide that "[i]n any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question." (Cal. Const., art. XIII D, § 4, subd. (f).) We must consequently determine the effect of this provision on the standard of review articulated in *Knox v. City of Orland, supra*, 4 Cal.4th at page 146.

Not About Water Com. v. Board of Supervisors (2002) 95 Cal.App.4th 982, addresses this issue, but we believe that opinion's analysis is not sufficiently clear to provide concrete guidance. The opinion states that the creation of a special assessment district is reviewed "under the substantial evidence rule" (*id.* at p. 986), but at another point the opinion appears to apply an "abuse of discretion standard" (*id.* at p. 994). In addition, although the standard of review articulated in the opinion provides, pursuant to Proposition 218, that the agency bears the burden of proving the existence of special benefits to the assessed properties, it does not acknowledge that, also pursuant to

Proposition 218, the agency bears the burden of proving that the assessment is proportional to the benefits. (*Ibid.*) There is no other published California decision on point.[1]

We conclude that the City's determinations that the affected properties will receive special benefits and that the assessment is proportional to the benefits conferred on those properties must be affirmed if they are supported by substantial evidence. The substantial evidence standard is highly deferential and thus comports with the constitutional separation of powers and the legislative character of the determinations at issue. But the substantial evidence standard also conforms to Proposition 218's placement of the burden of proof on the City, because (1) the determinations at issue are factual, and (2) factual determinations are ordinarily reviewed under the substantial evidence standard on appeal regardless of which party bore the burden of proof in the trial court. (See, e.g., *SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 461.)

We review pure questions of law de novo. (*Topanga and Victory Partners v. Toghia* (2002) 103 Cal.App.4th 775, 779-780.)

DISCUSSION

I. The Hearing on the Assessment Was Not Premature

Dahms argues that the city council held the hearing on the proposed assessment too early, in violation of the California Constitution, because the hearing took place on the forty-fifth day after the City mailed notices of the proposed assessment to the affected property owners. We disagree.

The City was required to "conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel." (Cal. Const., art. XIII D, § 4, subd. (e).) By its terms,

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1 A case presenting the issue is currently pending before the Supreme Court. (*Silicon Valley Taxpayers' Association, Inc. v. Santa Clara County Open Space Authority* (2005) 130 Cal.App.4th 1295, review granted Oct. 12, 2005, S136468.)

that constitutional provision permits the City to hold the hearing 45 days after mailing the notices. The only remaining question is how the 45-day period is to be computed.

The Code of Civil Procedure provides that "[t]he time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded." (Code Civ. Proc., § 12.) By this method of computation, the City held the hearing 45 days after mailing the notices—the first day (i.e., the day of the mailing) is excluded from computation of the 45-day period, but the last day (i.e., the day of the hearing) is included.[2] Accordingly, the notice did not violate the constitutional notice provision.

Dahms' arguments to the contrary are not persuasive. He cites a section of the Government Code for the proposition that "'[a] day is the period of time between any midnight and the midnight following[,]'" but that section tells us nothing about whether the first day, the last day, neither, or both are to be included in computing the 45-day period. Dahms also relies upon two cases, *Burke v. Turney* (1880) 54 Cal. 486, and *City of Pleasanton v. Bryant* (1965) 63 Cal.2d 643, but neither of those cases involved a provision, like the one at issue here, calling for notice of "not less than" a specified number of days. Consequently, neither case casts any doubt upon our analysis.

For all of these reasons, we reject Dahms' argument that the hearing on the assessment was unconstitutionally premature.

II. The Amounts Assessed Were Proportional to the Special Benefits Conferred

The California Constitution provides that "[n]o assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel." (Cal. Const., art. XIII D, § 4, subd. (a).) "'Special benefit' means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value

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[2] Similarly, a noticed motion in the superior court must be served "at least 16 court days before the hearing." (Code Civ. Proc., § 1005, subd. (b).) That is, if the motion is served on the 16th court day counting back from the hearing date, and excluding the first day (i.e., the day of the hearing itself), then the statutory notice requirement is satisfied.

does not constitute 'special benefit.'" (Cal. Const., art. XIII D, § 2, subd. (i).) Dahms presents three separate arguments for the conclusion that there is insufficient evidence to support the City's determination that the assessments are proportional to the special benefits conferred on the affected properties. We conclude that none of Dahms' arguments has merit.

A. Nonprofit Entities

Dahms argues that the assessments for properties owned by nonprofit entities, such as fraternal organizations and churches, were discounted by 95 percent without any evidence to support such a discount. The record contains evidence that nonprofit entities are not profit-making enterprises, which in any event is a definitional truth and hence a judicially noticeable fact. (Evid. Code, § 451, subd. (e).) It follows that nonprofits, unlike commercial enterprises, will not generate increased profits as a result of the services funded by the assessments. The record reflects the City's reasoning that the nonprofits will derive no benefit from most of those services (such as marketing, promotion, and special events), though they might receive "some type of benefit" from the enhanced security. The substantial evidence rule requires us to draw all reasonable inferences in favor of the decision under review. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632-1633.) The evidence and the reasonable inferences from it consequently support the City's conclusion that, in the words of the management plan, the nonprofits will "only slightly benefit" from the services funded by the assessments. A 95 percent reduction is proportional to a slight benefit, so Dahms' first argument fails.

B. Commercial Properties

Dahms argues that certain parcels with commercial uses were not assessed at all and that the assessments for certain other parcels with commercial uses were discounted. Our evaluation of Dahms' argument is hampered by his failure to identify the parcels at issue and to support his claims of commercial use and discounted or nonexistent assessments by reference to the record. For example, Dahms asserts, without further elaboration, that "[t]here are between 6 and 10 commercial properties that are not

included in the PBID." The only support he cites is a map of the entire PBID, leaving us to guess which properties he is talking about, why he thinks they are commercial, and why he thinks they "are not included in the PBID." This we will not do. Although Proposition 218 placed the burden of proof on the City with respect to certain issues, it did not relieve Dahms of his burden, as appellant, to articulate and support his own arguments in a manner that will render them capable of rational evaluation by this court. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1245-1246 & fn. 14; see also Cal. Rules of Court, rules 14(a)(1)(B), 14(a)(1)(C).) Similarly, Dahms asserts that parcels 8341-007-900 and 8341-007-030 "are both commercial parking lots," but he cites no evidence to support his assertion. His argument based on that assertion is therefore waived. (*Nwosu v. Uba*, *supra*, 122 Cal.App.4th at p. 1246.)

Dahms also refers to a "substantial commercial development" which, he says, is owned by the City of Pomona Redevelopment Agency but "was not included" in the PBID. As support, Dahms cites a portion of the record that does not refer to the City of Pomona Redevelopment Agency but which does refer to a property "at the corner of Mission and Garey." The record reflects that the two parcels within the PBID at the corner of Mission and Garey, numbers 8335-012-017 and 8341-008-027, were assessed in the amounts of $7,954 and $6,793, respectively. We consequently find no support for Dahms' claim that the property in question "was not included."

Some of Dahms' arguments in this vein also fail as a matter of law for an independent reason. Respondents argue that some of the properties in question (i.e., the ones that, according to Dahms, are being commercially used but were not assessed) are zoned for exclusively residential use and that such properties cannot be assessed because, by statute, they are "conclusively presumed not to benefit from the improvements and service" provided in the PBID. (Sts. & Hy. Code, § 36632, subd. (c).) In his reply brief, Dahms does not deny that the properties are zoned for exclusively residential use, so we will assume that they are.[3] Instead, Dahms claims the parcels do receive a benefit from

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[3] We cannot confirm it ourselves, because we do not know which parcels the parties are talking about, and no party cites to any zoning evidence in the record.

the services of the PBID, so the fact that they are not assessed shows that the assessments are not proportional to the benefits, regardless of whether there is a statute prohibiting such properties from being assessed. Dahms' argument fails because its initial premise—that the parcels that are zoned for exclusively residential use still benefit from the services of the PBID—is false as a matter of law. The statute that respondents cite does not merely prohibit any assessment on such parcels. Rather, it establishes a conclusive presumption that such parcels *do not benefit*. Because we, like the City, must abide by that presumption, we must conclude that the assessments on those parcels (i.e., $0) are proportional to the benefits received by those parcels (i.e., none).

For all of these reasons, Dahms' second argument that the assessments are not proportional to the benefits fails.

C. Street Frontage

Dahms argues that the assessments are not proportional to the benefits because the assessments are based on only 37 percent, rather than 100 percent, of the street frontage in the PBID. Dahms apparently generates the 37 percent figure by dividing the total amount of street frontage used in calculating the assessments (18,504 feet) by the total amount of street frontage for all of the properties in the PBID (49,960 feet). The record contains evidence (namely, Dahms' own statements) to support those numbers, but the argument still lacks merit.

The assessment for each assessed property was based on three factors: street frontage, building size, and lot size. Those factors accounted for 40 percent, 40 percent, and 20 percent, respectively, of the assessment for each property. As used in the assessment formula, however, "street frontage" does not mean just any length of street bordering any side of an assessed property. Rather, it means the length of street *where the street address for the property is* (or, if there is no street address, an approximation of where the street address would be if the property were developed). To avoid ambiguity, we will refer to this as "front footage," and we will use "total street length" to refer to the total length of street on which a property borders. Dahms' argument, then, is that the

assessments are disproportional to the benefits because each assessment is based, in part, on front footage rather than on total street length.

The argument fails because there is nothing unreasonable about the City's inference that front footage rather than total street length is a better gauge of the amount of benefit a property will derive from the services of the PBID. To put it another way, Dahms has not shown that the *only* reasonable inference is that the benefits received by a property must be directly proportional to the property's total street length. It is reasonable to infer, for example, that front footage is a better gauge because a clean and safe front entrance to a business is more likely to attract additional customers than a clean and safe side or rear, where there may or may not be any entrance at all. The trial judge expressly recognized the reasonableness of this inference, and on appeal Dahms has not shown any way in which it is unreasonable. Because the substantial evidence rule requires us to draw all reasonable inferences in favor of the decision under review (*Kuhn v. Department of General Services, supra*, 22 Cal.App.4th at pp. 1632-1633), Dahms' attack on the use of front footage as a factor in calculating the assessments fails.[4]

III. The City Adequately Distinguished Between Special and General Benefits

Dahms quotes the California Constitution to the effect that "[o]nly special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel." (Cal. Const., art. XIII D, § 4, subd. (a).) On that basis, he argues that the City's creation of the PBID is not supported by substantial evidence because the City failed to "separate general benefits from special benefits." The argument fails because it is based on a misunderstanding of the relevant constitutional requirements.

The California Constitution provides that "[a]n agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon

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4 Dahms also appears to argue that in certain cases the City incorrectly applied the methodology of using front footage. He asserts, for example, that a particular parcel was assessed on the basis of front footage on only one side although "[b]usinesses on the parcel face . . . three streets." Once again, however, Dahms fails to cite any evidence to support his assertion that "businesses on the parcel face . . . three streets[,]" so this argument is deemed waived, as are similar arguments with respect to other parcels. (*Nwosu v. Uba, supra*, 122 Cal.App.4th at p. 1246.)

them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel." (Cal. Const., art. XIII D, § 4, subd. (a).) As previously noted, "'[s]pecial benefit' means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute 'special benefit.'" (Cal. Const., art. XIII D, § 2, subd. (i).)

The requirement imposed by these provisions is that assessments must be limited to special benefits; general benefits cannot be included in the amounts assessed. The record amply demonstrates that the City complied with that requirement. The engineer's report describes the services to be provided by the PBID: (1) security, (2) streetscape maintenance (e.g., street sweeping, gutter cleaning, graffiti removal), and (3) marketing, promotion, and special events. They are all services over and above those provided by the City within the boundaries of the PBID. And they are to be provided only to the properties within the PBID, not to the public at large. The services provided by the PBID are therefore special benefits, and the engineer's report separates them from general benefits (i.e., it separates them from services already provided by the City within the PBID, or provided to the public at large).

The engineer's report presents a budget for the total cost of the services provided by the PBID. It then calculates the assessment for each assessed property within the PBID as a portion of that total cost, on the basis of the three factors already described. The record thus demonstrates that only special benefits (i.e., the costs of the services provided by the PBID) were assessed. The City therefore met the constitutional

requirement that general benefits not be included in the amounts assessed, so Dahms' argument fails.

IV. Dahms' Challenge to the City's Findings Lacks Merit

Dahms claims that certain findings by the City are not supported by substantial evidence. As support for his claim, Dahms simply reiterates, in extremely abbreviated fashion, some of his previous arguments concerning the sufficiency of the evidence—not all benefited properties are assessed, the assessments are disproportionate to the benefits, and so forth. In response, respondents argue that the findings are supported by evidence in the record and that the City was not required to make the findings that Dahms has identified, so any alleged lack of evidentiary support for the findings could not serve as a basis for reversal. In his reply brief, Dahms concedes that the findings in question were not legally required, and he does not explain how he was prejudiced by the City's making legally superfluous but putatively unsupported findings. We see no prejudice either and, in any event, we agree with respondents that the findings are supported by the evidence, for the reasons we have explained in the preceding parts of this opinion. Dahms' argument therefore fails.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

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ROTHSCHILD, J.

We concur:

SPENCER, P. J.

VOGEL, J.