**IN THE COURT OF APPEALS OF TENNESSEE**

**EASTERN SECTION T KNOXVILLE**

FILED

**May 30, 1996**

**Cecil Crowson, Jr.**
**Appellate Court Clerk**

| | | |
|---|---|---|
| LESTER L. KRAMER, | ) | KNOX CHANCERY |
| | ) | |
| Plaintiff/Appellee | ) | |
| | ) | NO. 03A01-9601-CH-00033 |
| v. | ) | |
| | ) | |
| MYRON C. COLEMAN, | ) | |
| | ) | |
| Defendant/Appellant | ) | AFFIRMED |

Wanda G. Sobieski, Knoxville, for Appellant.

Jerrold L. Becker and Samuel W. Brown, Knoxville, for Appellee.

**O P I N I O N**

_____INMAN, Senior Judge

This action was commenced January 3, 1990 by the plaintiff-appellee who sought reformation of a deed.

In 1959 Robert Kirby conveyed 67 acres to Curtis and Hazel Hansard by a general warranty deed which inaccurately described the boundaries. Discovery of this fact resulted in a corrected deed delivered May 11, 1960 to the Hansards. The description of the land intended to be conveyed revealed that 1.75 acres were situated north of Woody Road, with 65 acres being south of this road.

In 1974 Hansards conveyed 65 acres to their nephews, John and Myron Coleman. Their attorney used the erroneous description in the 1959 deed and described the property as the “farm between Woody Road and Lake Ridge Road.” Had the description in the corrected deed been used, it would have revealed that the entire 65 acres lay south of Woody Road, i.e., that a small tract north of Woody Road was not conveyed.

In March1982, Hansard, apparently believing that he still owned the 1.75 acres, conveyed it to the plaintiff, who began construction of a residence and expended $45,000.00. After the plaintiff made application for a mortgage loan to

complete the construction, his title problems surfaced, i.e., examiners looked at the 1959 deed and raised questions about the quantum of land conveyed. He sought to obtain a quit-claim deed from the defendant, who acknowledged the mistake but declined to execute the requisite instrument because of domestic relations problems. As a matter of fact, the defendant alleged in his divorce proceeding that he owned no property north of Woody Road. This fact, standing alone, should settle the issue of ownership.

In February 1984, John Coleman quit-claimed his interest in the 1.75 acres north of Woody Road to Myron Coleman.

As the Chancellor succinctly observed, the question is, who owns the 1.75 acres?

The plaintiff filed a prior action in 1985 against Curtis Hansard seeking damages for breach of covenant of title warranty, later amended to join the defendant and to seek reformation. Curtis Hansard died, and the action was voluntarily dismissed. The present action was filed January 3, 1990 seeking reformation of the 1974 deed, naming Myron Coleman and Curtis Hansard as defendants. The appellee thereafter moved to substitute Mr. Hansard's estate as a defendant, but the Motion was denied for the reason the plaintiff knew that Mr. Hansard was deceased before this action was filed.

The defendant says that the equitable remedy of reformation is unavailable to the plaintiff because he was a stranger to the deed he seeks to reform. He further argues that reformation is barred by the ten-year statute of limitations, TENN. CODE ANN. § 28-3-110.

The findings of the Chancellor that the defendant knew, even acknowledged, that he did not own the 1.75 acres is supported by an abundance of proof. The defendant was fully aware that an erroneous description had been used initially, and it now clearly appears that he is attempting to take advantage of circumstances made fortuitous by the passage of time.

The issue of whether reformation is available to the plaintiff is a phantom one. We think the Chancellor focused the real issue: who owns the 1.75 acres? And

there is no doubt whatsoever under this record that the plaintiff is the owner. When the various conveyances are considered, it is clear beyond peradventure that the parties intended that the plaintiff was the fee owner of the 1.75 acres. The Chancellor fashioned an equitable remedy (1) by declaring the 1959 deed void insofar as it purports to convey the 1.75 acres to the defendant, and (2) by declaring that the plaintiff owned the 1.75 acres by virtue of the 1960 deed of correction and the 1982 deed from Hansard. We think the Chancellor arrived at the justice of the case.

Contrary to the insistence of the appellant, the plaintiff is not a stranger to the deed he seeks to reform because he acquired the disputed tract from Hansard. Thus, the plaintiff was in privity with Mr. Hansard and thereby was entitled to bring this action.

In *Jackson v. Thompson*, 61 S.W.2d 470 (1933), a deed was executed by Rachel and A.W. Thompsan to a daughter, *Margaret E. Eatherly*, for life, "with remainder to her children, or their descendants living at her death, and in default of children or their descendants living at her death, said lands shall revert to and belong to the brothers and sister of said *Sarah E. Jackson* . . . ." *Jackson v. Thompson*, 61 S.W.2d at 470. Reformation of the deed was sought by substituting "Margaret E. Eatherly" for "Sarah E. Jackson," thereby effectuating the intent of the grantors, which appeared from the face of the instrument. Relief was denied by the Court of Appeals, relying on a line of cases holding that courts will not reform an instrument on behalf of one who is not a party to the instrument. The Supreme Court reversed, holding that while neither the plaintiffs nor their ancestor were original parties to the deed sought to be reformed, they were claiming in privity with their mother, if reformation were allowed. The Supreme Court further observed that the object of reformation is to make the instrument speak the truth. We think the judgment speaks the truth of this case.

The issue of the statute of limitations was not raised until *two years after the trial* of the case, and was disallowed by the Chancellor, who held that the Motion came too late. We agree. See *Steed Realty v. Oveisi,* 823 S.W.2d 195 (Tenn. App.

1991).

Our review is *de novo* upon the record accompanied by the presumption that the findings of the trial judge are correct unless the preponderance of the evidence is otherwise. TENN. R. APP. P., RULE 13(d). We find that the preponderance of the evidence in this case supports the findings of the trial judge.

The judgment is affirmed with costs assessed to appellant and the case is remanded for all purposes.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Houston M. Goddard, Presiding Judge

_____
Don T. McMurray, Judge

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**J U D G M E N T**

_____This appeal came on to be heard upon the record from the Chancery Court of Knox County and briefs filed on behalf of the respective parties. Upon consideration thereof, this court is of the opinion that there is no reversible error in the trial court's judgment.

It is therefore, ORDERED and ADJUDGED by this Court that the judgment of the trial court is affirmed. Costs are assessed to the appellant and its surety. The case is remanded to the Chancery Court of Knox County for collection of costs pursuant to applicable law.

PER CURIAM