

LARRY VAUGHAN and wife,)
LINDA L. VAUGHAN,)
)
Plaintiffs/Appellees,)
v.)
)
SUSAN RAE MORRIS, CLORINDA)
REESE PYEATT, JOHN K. WILSON,)
and ERNEST EDGAR WILSON, JR.,)
)
Defendants/Appellants.)

Appeal No.
01-A-01-9603-CH-00105
Maury Chancery
No. 93-285

FILED
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Appellate Court Clerk

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT FOR MAURY COUNTY
AT COLUMBIA, TENNESSEE

THE HONORABLE JOE C. LOSER, JR., CHANCELLOR

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AFFIRMED AND REMANDED

MEMORANDUM OPINION¹

Defendants/appellants, John K. Wilson and Earnest Edgar Wilson, Jr., appealed from the judgment of the chancery court which found that plaintiffs/appellees, Larry and Linda Vaughan, held title to a contested tract of land.

The facts out of which this case arose are convoluted by the various conveyances of a single piece of land to and from the members of the Watkins family. Fortunately, the facts necessary to an understanding of the issues before this court are few. The land at issue consists of two parts; the northern portion including 35 acres and the southern portion encompassing 118.96 acres. On 19 May 1993, appellees filed a complaint seeking to quiet title to the land. Appellees alleged that they had purchased the land at a tax sale and, as a result, held exclusive title to the lot. As defendants, appellees named two couples both of which claimed an interest in the land. Sisters, Susan Rae Morris and Clorinda Reese Pyeatt, claimed that they obtained an interest in the land pursuant to a conveyance from their father. The sisters' cousins, Ernest Edgar Wilson, Jr. and John K. Wilson, claimed that they owned the remainder interest in the property subject to the life estates of the sisters. Moreover, Ernest Edgar Wilson, Jr. and John K. Wilson filed a cross-complaint against the sisters. The cousins alleged that they did not have notice of the tax delinquency or of the tax sale. Further, they alleged that the sisters had "committed waste to the detriment of the remainder-men."

¹Court of Appeals Rule 10(b):

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

The facts leading up to the tax sale were as follows. On 29 March 1991, the State filed a complaint for the collection of delinquent property taxes owed from 1989. The complaint named Susan Rae Morris as a defendant, but did not list Clorinda Reese Pyeatt, John K. Wilson, or Ernest Edgar Wilson, Jr. as defendants. The names of both Susan Rae Morris and Clorinda Reese Pyeatt were listed in the delinquent tax notice published in the *Daily Herald* on 9, 16, and 23 January 1992.

The court entered a default judgment on 2 March 1992 against Clorinda Reese Pyeatt, but not against Susan Rae Morris. The court also entered an order of reference which listed Clorinda Reese Pyeatt as the owner of a 144.02 acre farm on Watkins Road. The tax sale was held on 25 March 1992. Appellees purchased the land for the sum of \$10,000.00. The record is clear that neither appellant tendered into the court a tax sale bid or the accrued taxes with interest. The trial court, sitting without a jury, found that "judgment should be entered in favor of Plaintiffs Larry Vaughan, and wife, Linda Vaughan" and granted relief as follows:

1. The title and right of possession of the subject property . . . is hereby decreed to the Plaintiffs along with exclusive possession thereof.
2. The Defendants and all persons claiming under any of them, or any combination of them, are forever barred from all claim to an estate or an interest in the subject property.
3. The Plaintiffs have the absolute and unencumbered title in fee simple to the property subject only to valid easements, if any, of record in the Maury County, Tennessee Register of Deeds Office.

Appellants presented the following two issues on appeal:

- 1) "did the tax sale conducted on March 25, 1992 effect the ownership of appellants in the subject property" and 2) "were the appellants required to tender funds pursuant to T.C.A. section 67-5-2504." Our conclusion as to the first issue pretermits any need

to discuss the second issue.

Appellants insist that "the tax sale conducted on March 25, 1992, was void and had no effect on appellants' rights in the subject property." Tennessee Code Annotated section 67-5-2502(b) provides: "It is the responsibility of the property owner to register the property owner's name and address with the assessor of property of the county in which the land lies." Tenn. Code Ann. § 67-5-2502(b)(1994). Plaintiffs contend and we agree that the intent of the statute is to give those persons who are not record owners such as appellants the responsibility of registration. Failure to meet this responsibility, results in the loss of some of the property owners' rights. In *Marlowe v. Kingdom Hall of Jehovah's Witnesses*, 541 S.W.2d 121 (Tenn. 1976), the supreme court stated:

Every landowner knows that his property is subject to taxes and that they are paid to the county trustee on an annual basis. He is charged with the knowledge that taxes become a first lien upon his property from the first day of January of the year for which they are assessed and that they are due and payable on the first Monday in October in each year

Id. at 124 (citation omitted). In a later case, this court held that a property owner is not entitled to any more notice than that given by publication in the newspaper when the property owner's interest is not on record in the tax assessor's office as required by the statute. *Cook v. McCullough*, 735 S.W.2d 464, 466 (Tenn. App. 1987) *cert. denied*, 498 U.S. 855, 111 S. Ct. 151, 112 L. Ed. 2d 117 (1990); *see Johnson v. Anderson County*, No. 03-A-01-9201-CH-00011, 1992 WL 91513, at *2-*3 (Tenn. App. 1992).

Because appellants failed to comply with section 67-5-2502(b), they waived any right to be named in a delinquent proceeding and were not entitled to receive actual notice of the suit or the sale. Appellants were entitled to notice of the tax

delinquency and of the tax sale by publication only. Here, appellants received the only notice they were entitled to receive, publication in the local newspaper. This notice consisted of a delinquent tax notice and the names of the record owners, Susan Rae Morris and Clorinda Reese Pyeatt. It was published on 9, 16, and 23 January 1992. The delinquent tax sale notice was also published on 3 and 15 March 1992 in the *Daily Herald*. This notice listed one of the record owners, Clorinda Reese Pyeatt.

Appellants have also attempted to attack the validity of the tax sale by attempting to show that the notice to Susan Rae Morris and Clorinda Reese Pyeatt was defective. Morris and Pyeatt were record owners and also party defendants below. In the past, this court has allowed non-record owners to attack the sufficiency of notice to a record property owner in a case where the record owner had died several years earlier and the claimants were beneficiaries under the will. *Cook v. McCullough*, 735 S.W.2d 464, 469 (Tenn. App. 1987). Unlike *Cook*, the record owners in this case were party defendants below. Upon hearing the proof, the trial court found that the notice to them of the tax delinquency and the subsequent sale was sufficient. Neither Susan Rae Morris nor Clorinda Reese Pyeatt appealed from the judgment of the trial court. Thus, the adequacy of notice to them and the resulting validity of the sale as to their interest was determined below and is not before this court.

It results that the judgment of the trial court is affirmed. Costs on appeal assessed to defendants/appellants, John K. Wilson and Ernest Edgar Wilson, Jr. The cause is remanded to the trial court for any further necessary proceedings.

SAMUEL L. LEWIS, JUDGE

CONCUR :

BEN H. CANTRELL, JUDGE

WILLIAM C. KOCH, JR., JUDGE