IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION AT KNOXVILLE

FILED

October 24, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

LEWIS SHELTON, JR., LILLIAN SHELTON WARD, PAULINE SHELTON WADDELL, MARY EDITH SHELTON OTTINGER, JOAN SHELTON, WILMA SHELTON WINTER, SHELBY SHELTON SMITH and TED A. SHELTON,	)	COCKE CHANCERY
Plaintiffs/Appellees	)	No. 03A01-9603-CH-00113
v.	)	
PAUL JENNINGS and wife, ZOLA MAE JENNINGS,	)	
Defendants/Appellants	)	AFFIRMED AND REMANDED

John A. Bell, Newport, For the Appellants

Roy T. Campbell and William H. Leibrock, Newport, For the Appellees

O P I N I O N

INMAN, Senior Judge

This action began as one for a declaratory judgment that the plaintiffs, as the heirs at law of Lewis Shelton, were the owners in fee of a ten-acre tract of land to which the defendants were laying claim.

The defendants replied that Lewis Shelton never owned the ten-acre tract but, to the contrary, that they acquired it on December 16, 1967 by purchase as evidenced by a recorded deed. They, too, sought a declaratory judgment of ownership.

With approval, the plaintiffs amended their complaint to allege that Lewis Shelton acquired title to the ten-acre tract by nature of two deeds, each dated January 10, 1957, of which more will be said hereafter.

With approval, the defendants amended their answer to allege that the complaint is barred by T.C.A. § 28-2-110 because the plaintiffs failed to pay taxes on the ten acres for more than 20 years and, further, that they are the owners thereof by virtue of adverse possession.

The motion of the defendants for summary judgment was denied, and the case was regularly heard, resulting in a judgment that the plaintiffs were the true and lawful owners of the disputed acreage. The defendants appeal and present for appellate review the issue of whether the evidence preponderates against the trial court's findings of fact.

T.C.A. § 28-2-110(a) provides:

> Any person having any claim to real estate or land of any kind, or to any legal or equitable interest therein, the same having been subject to assessment for state and county taxes, who and those through whom he claims have failed to have the same assessed and to pay any state and county taxes thereon for a period of more than twenty (20) years, shall be forever barred from bringing any action in law or in equity to recover the same, or to recover any rents or profits therefrom in any of the courts of this state.

Most of the evidence was directed to the issue of whether the plaintiffs and their predecessors in title failed to pay the assessed taxes on the ten-acre parcel for more than 20 years. The defendants, who rely on the statute as barring the claim of the plaintiffs, have the burden of proof on the issue. *See Winborn v. Alexander*, 279 S.W.2d 718, 729 (Tenn. Ct. App. 1954). The Chancellor held that he was unable to find that the defendants carried their burden of proof on the issue of non-payment of taxes because there was no separate assessment of the tract, and the evidence offered as to who paid the taxes was "confusing, contradictory, convoluted and irreconcilable." He further held that the ten-acre tract was never a part of the defendants' larger tract but, to the contrary, was encompassed within the plaintiffs' title deed and thereupon sustained the complaint for a declaratory judgment.

Various deeds, even deeds of trust, were offered in evidence. Surveyors attempted to identify the ten-acre tract from the deeds, maps and tax records. The testimony of Delmar Williamson is of significance. He is the assessor of property of Cocke County and has worked in that office for 20 years. In 1970, the County employed a Florida company to map and evaluate all real estate in Cocke County. Before 1970, Mr. Williamson testified that "an individual just told the Assessor how much land he owned and he paid taxes on it." He testified that in 1970 the disputed tract was assessed to the defendants, which continued until 1991, when it was also assessed to Shelton. But he examined the title deed offered by the defendants and testified that the Jennings deed will not cover the ten acres. The witness then testified that he had "platted" the disputed tract with respect to the Shelton deed and "it covers it" and fits "like a glove." This testimony bolsters the insistence of the

plaintiff that they, too, paid the taxes on the disputed tract since it was part of their property and was never separately assessed.

Superimposed upon the conflicting testimony is the fact that the claim of the defendants was never asserted until after the death of Lewis Shelton in 1990.

Our standard of review is *de novo* upon the record, accompanied by a presumption that the trial court's findings of fact are correct, unless the evidence otherwise preponderates. TENN. R. APP. P. 13(d).

We cannot find that the evidence preponderates against the judgment, which is affirmed at the costs of the appellants.

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William H. Inman, Senior Judge

Concur:

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Herschel P. Franks, Judge

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Charles D. Susano, Jr., Judge