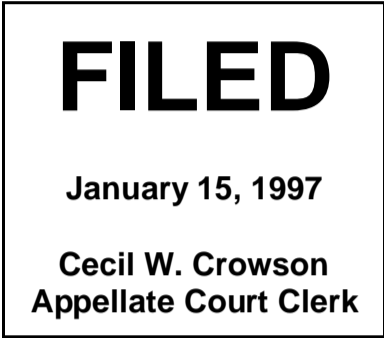


S. THOMAS BURNETT, )  
 )  
 Petitioner/Appellee, )  
 v. )  
 )  
 SAMMY (sic) WILLIAMS, )  
 )  
 Respondent/Appellant, )  
 v. )  
 )  
 FRANK SMITH, both individually and )  
 as Circuit Court Clerk, )  
 )  
 Respondent. )

APPEAL NO.  
01A01-9605-CH-00222

FENTRESS CHANCERY  
No. 94-24



COURT OF APPEALS

MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT FOR FENTRESS COUNTY

AT JAMESTOWN, TENNESSEE

THE HONORABLE BILLY JOE WHITE, CHANCELLOR

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REVERSED AND REMANDED

SAMUEL L. LEWIS, JUDGE

## OPINION<sup>1</sup>

This is an appeal by respondent/appellant, Sammy Williams, from a decision of the chancery court that found that petitioner/appellee, S. Thomas Burnett, had properly redeemed his property which Williams purchased at a delinquent tax sale. The facts out of which this matter arose are as follows.

On 25 October 1990, Williams purchased a parcel of land located in Fentress County, Tennessee and shown on tax map 96 parcel 28.05 at a delinquent tax sale. The Circuit Court for Fentress County confirmed the sale in *State of Tennessee and Fentress County v. Delinquent Taxpayers* (“action #6287”). Williams caused a tax sale deed covering the property to be recorded on 26 October 1992.

At some point, Burnett, one of the delinquent taxpayers, made a deal with a Mr. Patterson. Mr. Patterson agreed to provide Burnett the money needed to redeem the property, and, in exchange, Burnett agreed to convey his interest in the land to Mr. Patterson. Burnett attempted to redeem the land on 18 September 1992 by delivering a check for \$665.50 to the Circuit Court Clerk's office. The clerk gave Burnett a receipt. In the “to be applied” portion of the receipt, the clerk wrote “Redemption Map #096 Parcel #02805.” Burnett claimed that the clerk refused to calculate the redemption amount and that Burnett had Mr. Coleman, Mr. Patterson's agent and the County Back Tax Attorney, calculate the \$665.50 redemption amount. This amount equaled the sum of the \$550.00 paid by Williams for the property and the accrued interest of \$115.50 on the purchase price from 25 October 1990.

Burnett filed a petition in the chancery court seeking an order of redemption on 13 April 1994 (“action #94-24”).<sup>2</sup> The petition did not name any respondents, and Burnett never caused a

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<sup>1</sup> The caption of the case has been changed to properly reflect the true parties as required by Rule 10.01 of the Tennessee Rules of Civil Procedure. In addition, the record is unclear as to the proper spelling of appellant's first name. Both “Sammy” and “Sammie” appear on the various documents.

<sup>2</sup> On 25 September 1992, Burnett filed a petition in action #6287 requesting the circuit court to enter an order of redemption. On 26 October 1992, Williams filed a motion to dismiss claiming that the chancery court, not the circuit court, was the proper court to determine Burnett's right to redeem the property. Thereafter, Burnett moved to transfer the case to the chancery court on 8 September 1993. Williams then filed a motion in action #6287 requesting, inter alia, that the court determine whether Williams was a party in action #6287. On 8 April 1994, Williams filed a motion for summary judgment in action #6287. Williams claimed that Burnett failed to tender the

summons to issue against Williams. On 2 June 1994, Frank Smith, the Circuit Court Clerk, filed an answer to the petition as an unnamed respondent and a motion for a judgment on the pleadings or for summary judgment. Thereafter, Burnett filed a motion to amend his petition to include Williams and Frank Smith as respondents. On 10 February 1995, Williams filed a motion to dismiss. He claimed that Burnett had not redeemed the property in time and that the statute of repose had run. The court issued an order of nonsuit as to Frank Smith on 23 May 1995. On this same date, the court orally ruled that Williams was a party. Thereafter, Williams filed an answer.

On 28 July 1995, the court entered an interlocutory order denying Williams' motion for dismissal, his motion for sanctions, and his motion for summary judgment. The court entered its final order on 19 February 1996. The court made the following orders and findings: 1) Burnett redeemed the property; 2) the tax deed recorded by Williams is a cloud on Burnett's title; 3) the tax deed is null and void; 4) Fentress County shall reimburse Williams the amount of his bid and the interest from the date of initial payment; and 5) Burnett shall pay the clerk the taxes paid by Williams from the initial payment of the bid price. Thereafter, Williams filed his notice of appeal and presented the following issues.

1. Did S. Thomas Burnett pay enough money to redeem the one acre of raw land shown as Tax Map 96, parcel 28.05 in the Tax Assessor's Office of Fentress County, Tennessee?
2. If the \$665.50 paid to redeem is insufficient, do incorrect calculations by the back tax attorney excuse the failure to pay enough money to redeem?
3. Even if the \$665.50 paid to redeem was sufficient, except that no accrued taxes after October 25, 1990 were paid by Mr. Burnett, does T.C.A. Section 67-5-2504(c) prevent the filing of a bill of redemption by Mr. Burnett until Mr. Burnett has paid to the clerk, or tendered to the clerk, all the taxes that accrued on Tax Map 96, parcel 28.05 after the tax sale on October 25, 1990?
4. Even if the \$665.50 paid to redeem was sufficient, did Mr. Burnett file a bill of redemption before T.C.A. Section 67-5-2504(d) barred Mr. Burnett on October 25, 1993 from filing a bill of redemption on Tax Map 96, parcel 28.05?
5. Is Sammie J. Williams entitled to a dismissal with prejudice of Mr.

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redemption money to the purchaser and that the time for redemption had expired. In December, Burnett filed a motion to amend and attached an amended complaint in action #6287. The amendment incorporated the earlier petition and named Williams and Frank Smith, the Circuit Court Clerk, as defendants. On 13 December 1994, the circuit court transferred action #6287 to the chancery court.

Some of the documents in the record list both docket numbers; however, neither party filed a motion to consolidate nor did the court enter an order consolidating the cases. During oral argument, Williams' attorney made a point to mention that the cases had not been consolidated. Moreover, the notice of appeal refers to the final judgment entered on 19 February 1996. This order lists only docket number 94-24. Given these facts, it is the opinion of this court that the only judgment on appeal before this court is the judgment in civil action #94-24.

- Burnett's \$18,000.00 property damage claim against Mr. Williams filed on 1 August 1994?
6. Is the failure of S. Thomas Burnett to have a summons filed or issued against Sammie J. Williams fatal to his bill of redemption?

We address the first, third, and fourth issues together.

The right of redemption conferred upon debtors by Tennessee Code Annotated chapter 8, title 66 has a long history in this state. Under the statutes, a debtor may redeem real estate sold for debt at any time within two years after such sale when the land is sold under any decree, judgment, or order of a court of chancery . Tenn. Code Ann. § 66-8-101(2) (1993). In order to redeem property, a debtor must pay "the amount bid or paid by the purchaser, with interest thereon . . . together with all other lawful charges." *Id.* § 66-8-106. Once a debtor tenders the appropriate amount, the purchaser has a duty to convey the property to the debtor. *See Paris v. Burger*, 23 Tenn. 325, 326 (1843). If the purchaser refuses to convey the property to the debtor, the debtor may bring an action in the chancery court to force the conveyance. Tenn. Code Ann. § 66-8-114 (1993).

There is no dispute in this case as to whether Burnett paid the purchase price and interest within the two years. Instead, the dispute concerns whether he failed to pay all of the "other lawful charges" within the two years. Williams claimed that Burnett should have paid, in addition to the \$665.50, court costs, clerk's commissions, and real estate taxes paid by Williams since the tax sale. It is the opinion of this court that the \$665.50 was insufficient because Burnett should have, at the very least, paid any court costs and clerk's commission's arising from the tender. Burnett chose to use the services of the clerk instead of paying the monies directly to the purchaser. *See Hitt v. Caney Fork Gulf Coal Co.*, 124 Tenn. 334, 340-41, 139 S.W. 693, 694 (1910) (holding that a debtor may pay the redemption money to the clerk or to the purchaser). He was aware of the existence of other charges arising from the transaction and should have included those charges in his tender. His statutory right to redeem the property expired on 25 October 1992 because he failed to pay the proper amount to redeem the property.<sup>3</sup>

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<sup>3</sup> A debtor may redeem property by making partial payments. The partial payments, however, must equal the total redemption amount at the expiration of the two year period. If there remains only a partial payment of the redemption amount at the end of the two years, the debtor's right to redeem the property is lost. *Rambo v. Donnelly*, 68 Tenn. 418, 419 (1877); 21 Tenn. Jur. *Redemption of Real Estate Sold for Debt* §21 (1985).

Even if the \$665.50 was sufficient, there is a second reason why Burnett's claim must fail. To explain, although a debtor has only two years in which to pay the entire redemption amount, there are no other time limitations imposed by Tennessee Code Annotated chapter 8, title 66. There are, however, additional time restraints imposed by the statutes which deal specifically with property taxes. These statutes prohibit the commencement of a suit to invalidate a tax title more than three years after the date of the tax sale. Tenn. Code Ann. § 67-5-2504(d) (1994). In this case, the clerk prepared a tax title pursuant to the court's order confirming the sale. The deed conveyed the property to Williams, and Williams recorded the deed on 26 October 1992. Burnett commenced this action, an action to invalidate Williams' tax title, more than three years after the date of the tax sale.

The statutes also provide that "[n]o suit shall be commenced in any court of this state to invalidate any tax title to land until the party suing shall have paid or tendered to the clerk of the court where the suit is brought the amount of the bid and all taxes subsequently accrued, with interest and charges as herein provided." *Id.* § 67-5-2504(c). Assuming the \$665.50 was sufficient, Burnett would have had to tender the accrued taxes before filing his suit to invalidate Williams' tax deed. Burnett failed to do so and could not properly commence the action.<sup>4</sup>

It is the opinion of this court that we may not or need not discuss the remaining issues. This court is without jurisdiction to determine the second issue raised by Williams. There is nothing in the record indicating that the trial court made any decision with respect to the role of the back tax attorney. "This Court can only consider such matters as were brought to the attention of the trial court and acted upon or permitted by the trial court." *Irvin v. Binkley*, 577 S.W.2d 677, 679 (Tenn 1978). As to the fifth issue, Burnett raised the \$18,000.00 claim in action #6287. Thus, the issue is not properly before this court. Finally, our above decision pretermits Williams' sixth issues.

It is the opinion of this court that the trial court erred in finding that Burnett properly

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<sup>4</sup> In his brief, Burnett argued that the issue of whether he paid the accrued taxes is irrelevant because the court ordered Burnett to pay the taxes. The problem with this argument is that the court ordered Burnett to pay the amount of the taxes to the clerk, not Williams, and failed to order the clerk to pay the taxes to Williams.

redeemed the property and that William's tax title was a cloud on Burnett's title. Thus, the decision of the trial court in action #94-24 is reversed, and the case remanded to the trial court for any further necessary proceedings. Costs are taxed against petitioner/appellee, S. Thomas Burnett.

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SAMUEL L. LEWIS, JUDGE

CONCUR:

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BEN H. CANTRELL, J.

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WILLIAM C. KOCH, JR., J.