

VADA MARIE PALMER,)
)
 Plaintiff/Appellee,)
)
 VS.)
)
 WILLIAM TROUPE, II and LINDA)
 TROUPE,)
 Defendants/Appellants.)

Davidson County Circuit
Case No. 95C-1530

Appeal No.
01A01-9607-CV-00337

FILED

January 17, 1997

Cecil W. Crowson
Appellate Court Clerk

IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE DAVIDSON COUNTY
CIRCUIT COURT OF NASHVILLE, TENNESSEE

HONORABLE WALTER C. KURTZ, JUDGE

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AFFIRMED AND REMANDED

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE
BEN H. CANTRELL, JUDGE

VADA MARIE PALMER,)	
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Plaintiff/Appellee,)	
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Defendants/Appellants.)	

OPINION

The controversy involves title to realty, rights to proceeds of fire insurance and claims and counterclaims between the parties. The Trial Court, sitting without a jury, awarded the realty and \$500.00 judgment to the plaintiff, and defendants have appealed and presented the following issues:

1. The Circuit Court erred by considering facts which occurred after the repeated and numerous breaches and defaults under the contract by the plaintiff.
 - a) Fire totally destroyed mobile home.
 - b) Subsequent acts of parties did not cure the numerous breaches and defaults of contract.
 - c) Testimony of witness, Michael St. Clair, was admitted although he was not listed as a witness prior to trial, in violation of Rule 22 of the Local Rules of Court of Davidson County.
2. Court erred by separating property into real property and personal property. Contract was for sale of ... “the property located at 1015 Alice Street.”
3. The Trial Court did not grasp the fact that the property was sold to another party by the Chancery Court for unpaid taxes and then redeemed by the Troupes.

Plaintiff presents the following issue:

1. Whether the Trial Court's judgment awarding real property at 1015 Alice Street in Nashville, Tennessee to the plaintiff along with money damages in the amount of \$500.00 is supported by the preponderance of the evidence?

At the trial, the parties announced and filed with the Trial Court a "Stipulation of Facts"

which read as follows:

1. On January 23, 1993, title to the property known as 1015 Alice Street was vested in William Troupe, II and wife Linda Troupe by virtue of a Quit Claim Deed of Record in Book 8679, Page 525 at the Register's Office in Davidson County, Tennessee.
2. Vada Marie Palmer paid to William Troupe, II and Linda Troupe the sum of \$14,000 cash on January 23, 1993. William Troupe, II and Linda Troupe transferred to Vada Marie Palmer the mortgage coupon book payable to Vanderbilt Mortgage Company. It was the agreement of the parties that Vada Marie Palmer would make payment to Vanderbilt Mortgage Company in the name of William Troupe, II and Linda Troupe for the remainder of the term of the indebtedness secured by Deed of Trust of Record at Book 8679, Page 527.
3. On August 14, 1992, William Troupe, II paid to the Metropolitan Department of Water and Sewerage Services the sum of \$250 as payment for water tap fee.
4. On December 8, 1992, William Troupe, II paid \$700 to RL Electric Company to establish amp service and to hook up the electrical service to the Mobile home located on a lot at 1015 Alice Street.
5. On November 18, 1992, William Troupe, II and Linda Troupe made an application for sewer tap fee and paid \$10 down on \$500 tap fee agreeing to make monthly installments of \$14 per month with first payment being due November 18, 1992. No additional payments or installments thereafter were made.
6. Real property taxes payable to and accruing on the lot at 1015 Alice Street for the years 1992, 1993, 1994 and 1995 are as follows:

1992	\$125.93
1993	\$ 76.61
1994	\$ 93.38
1995	\$ 93.38
7. On September 1, 1994, the property located on 1015 Alice Street was sold by tax sale to pay delinquent 1992 property taxes in penalty and interest in the amount of \$125.93. Sufficient

proceeds were generated to pay the 1993 taxes of \$76.61 which were by that date due but not delinquent. Court costs and other fees due to the Clerk and Master as a result of the sale necessitated by the delinquent 1992 taxes were \$285.85.

8. William Troupe, II and wife Linda Troupe redeemed the property and paid the sum of \$543.87 as evidence by Deed of Redemption filed November 17, 1994. This sum represents 1992 taxes and penalty of \$125.93, 1993 taxes, \$74.59 and court costs and clerk fees payable to the Clerk and Master totaling \$285.85.

9. Defendant William Troupe, II and wife Linda Troupe had paid the 1994 property taxes in the amount of \$93.38. 1995 property taxes of \$93.38 have not been paid.

10. The parties agree that Vada Marie Palmer has paid all payments to Vanderbilt Mortgage Company since January, 1993, with the exception of eight payments which remain in dispute. Both parties contend that they paid the eight payments set out below. Those disputed payments are as follows:

July 23, 1993	\$266.33
September 17, 1993	\$266.33
November 17, 1993	\$267.36
January 31, 1994	\$267.36
May & June, 1994	\$534.00
June, 1995	\$267.00
July, 1995	\$267.00

11. It is stipulated that the June 27, 1994 Order of Judge Rubin in the General Sessions Court that Vada Marie Palmer pay a total of four payments, totaling \$1,064.00 within ten days, was paid by check of Robert W. Rutherford, Attorney, dated July 1, 1994 within 10 days of the Court Order.

12. It is stipulated that Vada Marie Palmer did not make payment to Vanderbilt Mortgage Company in August, 1995.

13. The trailer sustained substantial fire damage in a fire on August 1, 1995 and Vanderbilt Mortgage Company has been paid insurance proceeds which extinguish the mortgage balance with leaving a remainder of \$38.00 which was paid by William Troupe, II and Linda Troupe.

14. William Troupe, II and Linda Troupe received notice default and right to cure default statements from Vanderbilt Mortgage and Finance Company dated September 20, 1993, and May 2, 1994. The loan has never gone into foreclosure or been called.

The record also contains the original of a handwritten document signed by the parties and reading as follows:

Whom it may concern. I, William Troupe & Linda Troupe agree to sell Marie Palmer the property location at 1015 Alice Street for the sum of \$14,000.00 to be paid in the period of 90 days. I William Troupe & Linda Troupe will only receive \$13,000.00 because we have received \$1,000.00 earnest money. If the money is not received in 90 days, we will consider more time the double-wide home will be assumed by the same party. The payment book will be surrendered to said party. They will make the payment in William Troupe & Linda Troupes name until paid for. When paid for I William Troupe & Linda Troupe will swear to surrender title to mobile home and also deed to property. I give my father Power of Attorney to handle this contract. And any monies you give him will be given to me and my wife Linda Troupe for part of said property & home.

There is insurance already on the mobile home. They are included in the payments. All furniture will go with mobile home except waterbed.

Party who is buying home understand that if agreement can not be made after 90 days and extended time is given to buyer, that said property & mobile home will go back to the original to the original owners. All monies given to my father a receipt will be given to party buying home. I give my father permission to cash any checks or collect any monies for me and my wife Linda Troupe as long as there is a receipt for both parties. We will out of town if a check or any money is paid it is not to be paid to anyone else.

Buyer (Signed) Veda Marie Palmer
Seller (Signed) William & Linda Troupe
By (name provided is not clear)

The oral comments of the Trial Judge at the conclusion of the Trial include the following:

Well, if this transaction is a model for anything, it's a model for chaos and confusion, the way this was drawn up and executed, and then its subsequent history down to the fire and then the allegations regarding the payment of the insurance as well as the taking of property and the exclusion of Ms. Palmer from the property.

Let me turn perhaps to the most important issue in this case, and that is who owns this property. I mean, what happened here? I believe I have to go primarily by the writing as set out here and signed by the parties. William Troupe and Linda Troupe agree to sell Marie Palmer the property located at 1015 Alice Street for the sum of \$14,000 to be paid in the period of 90 days. I mean, that seems fairly clear. That is for the real property. And so all right, title and interest of William Troupe and Linda Troupe in this property is transferred to Marie Palmer. And the order should set out the clear legal description from the deed.

Now, secondly, the contract dealt with the sale of this trailer

that has since burned down. The double wide home will be assumed by the same parties. The payment book will be surrendered to the parties. The payment book will be surrendered to the parties. They will make the payments in William Troupe and Linda Troupe's name until paid for. When paid for, I William Troupe and Linda Troupe will swear to surrender title to the mobile home and also deed to the property. So for whatever it's worth, which doesn't sound to be much anymore, the title of this mobile home is transferred to Marie Palmer.

Now, there are these collateral issues. I call them collateral issues, because they have to do with the claim of the Troupes that they're entitled to reimbursement for unpaid water bills, unpaid taxes, unpaid tap fees and the like.

And then there is the claim of Ms. Palmer that she's entitled to a judgment against the Troupes for conversion of property after the fire, for denying her access to the property and for punitive damages.

Now, the assessment of damages do not have to be exact. They have to be reasonable.

I also ought to mention the allegation that Mr. Troupe retained money from the insurance company that should have gone to Ms. Palmer, which he pretty much admitted from the witness stand, said he thought he was entitled to it because of these other issues. But it was kind of a self-help insurance claim, if there is such a thing.

Well, I think taking all the matters that the Troupes contend, I think they're entitled to a judgment of \$2,000 against Ms. Palmer.

However, I believe that Ms. Palmer, for conversion and for the denial of access to her property at the time of this fire, is entitled to a judgment of \$2,500. And, therefore, using that as a set off, using the 2,000 as a set off, she's entitled to a judgment of \$500 against the Troupes.

MR. GRISSIM: The insurance proceeds that he received on the contents policy?

THE COURT: Well, I'm taking that into consideration in giving her the \$2,500 judgment. There was some testimony that there was property belonging to the Troupes in the home, and I'm trying to balance out all these conflicting claims, the upshot of which is your client gets a \$500 judgment when you take the \$2,500 and set off the 2,000 against that.

Defendants' statement of the issues, quoted above, does not question the evidentiary basis of the amounts found by the Trial Judge to be due from the plaintiffs to the defendants and from the defendants to the plaintiff. Neither brief denies or cites the location of such evidence in the record. Any complaint as to said amounts is waived by failure to raise the issue in briefs.

Defendants insist that plaintiff forfeited all of her rights under the January 23, 1993, handwritten agreement quoted above by becoming delinquent in paying the installments of the consideration on time. The agreement appears to be a contract of sale on credit with some right of recapture to enforce payment of the purchase price. There is some evidence of efforts to regain possession by writ of unlawful detainer, but no evidence is found that defendants ever regained actual possession. There is no evidence of any other proceeding in equity to enforce the collection of the purchase price or extinguish the equitable rights of plaintiff..

Equity abhors penalties and forfeitures and will not permit a creditor to assume a title to property for non-payment of debt and keep the entire proceeds of sales of the property in disregard of the rights of the debtor. *Harmon v. Faucette*, 8 Tenn. App. 137, (1928).

In the present case, the defendants took no appropriate action to enforce what was, in effect, an equitable lien to secure the purchase price of the property they sold to plaintiff. The mere occurrence of a default does not ipso facto effect a foreclosure and loss of rights.

Finally, defendants complain that no consideration was given to the fact that they redeemed the property from tax sale and obtained a new evidence of title. Under the terms of the informal sales agreement, defendants retained record title until payment of the purchase price. The mortgage and tax records remained in their name. They held title as trustees for plaintiff, and their actions to protect their record title were not only for their own benefit, but for the benefit of their cestui que trust, the plaintiff.

Although not made an issue on appeal, defendants conclude their two page written argument with a complaint that a witness was allowed to testify in violation of a local rule requiring advance notice of witnesses and that said witness later signed a statement recanting his testimony. There is no support of this argument by citation to the record. For lack of such citation, such argument is not considered as provided by Rule 6 of the Rules of this Court.

No merit is found in the complaints of the appealing defendants.

The plaintiff-appellee presents the issue of preponderance of the evidence, which is not argued by defendants, and, in addition, proposes the award of damages for frivolous appeal.

Plaintiff's one-page argument does not adequately support either of these issues.

The evidence does not preponderate against the factual findings of the Trial Court, and no error of law is found therein.

The judgment of the Trial Court is affirmed. Costs of this appeal are assessed against the defendants-appellants. The cause is remanded to the Trial Court for any necessary proceedings.

AFFIRMED AND REMANDED

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE

