OLA OWENS,	)	
	)	
Petitioner/Appellant,	)	Appeal No.
	)	01-A-01-9609-CH-00433
v.	)	
	)	Fentress Chancery
CHARLES R. GERNT and	)	No. 96-34
THE ESTATE OF	)	
BRUNO GERNT, INC. and	)	
HOOD COAL COMPANY,	)	
	)	
Respondents/Appellees.	)	

COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT FOR FENTRESS COUNTY

AT JAMESTOWN, TENNESSEE

THE HONORABLE BILLY JOE WHITE, CHANCELLOR

OLA OWENS, Pro Se
Rt. Box 88
Jamestown, Tennessee 38556

JAMES P. ROMER
Neal, Craven, Romer & Rains
P. O. Box 797
Jamestown, Tennessee 38556
ATTORNEY FOR RESPONDENTS/APPELLEES

AFFIRMED AND REMANDED

SAMUEL L. LEWIS, JUDGE

MEMORANDUM OPINION[1]

This is an appeal by petitioner/appellant, Ola Owens, from the chancellor's dismissal of her petition pursuant to Tennessee Rule of Civil Procedure 12.02(6).

Petitioner filed a "Petition to Establish Title to Real Property" in May 1996. She claimed rights in a 5,000 acre tract of land which the state granted to Isham Railey in 1836.[2] Respondents filed a motion to dismiss pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. The chancellor heard arguments on the motion and filed an opinion. He found that Petitioner was the owner of the surface rights to a two acre tract of land which was part of the Bruno Gernt estate. The court also found that Petitioner did not have a viable claim to the entire Bruno Gernt estate and dismissed her suit.

Petitioner appealed and presented the following two issues: 1) "Whether the [Petitioner] has valid claim to file for title, being the oldest possession holder on the Isham Railey grant tacking on making 94 years of occupancy" and 2) "Whether the [Petitioner] has the right to the grant based on a quit claim deed from person or persons who had no interest in the said grant." We address these issues together.

In her petition, Petitioner stated:

> Plaintiff was willed this two acre deed and is tacking on the oldest possession holders rights. This plaintiff is living on this deed, and having the rights of the oldest possession holder, plaintiff is applying to the state for title for said real property being the Isham Railey Grant.

Nevertheless, Petitioner admitted the following:

> 8. Plaintiff allege [sic] on information and belief that defendants, the Estate of Bruno Gernt, Inc. claim said Isham Railey Grant by adverse possession, held by other people for them.

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[1] Court 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.

[2] By deed dated 1913, Hortson Barnum conveyed the Isham Railey grant to Bruno Gernt. Hereinafter the 5,000 acre tract shall be referred to as the Bruno Gernt estate.

. . . .

> Defendants, the estate of Bruno Gernt, Inc., also claim, or it appears from the public record, the Isham Railey Grant. This claim is based on a quit claim deed from D. Bethume Duffield of Detroit, Michigan which carried no chain of title to Henry Duffield in 1889. Henry Duffiel's (sic) heirs to Hortson Barnum in 1905 and made a deed of correction in 1913 to Hortson Barnum.
> Then Hortson Barnum deeds it to Bruno Gernt in 1913. Harrison Owens signed a lease with Bruno Gernt in order to keep his home in 1928.

Petitioner further pleads on page five of her complaint: "That said defendant and the people working for them have taken enough resources off said Grant in the way of wood, timber, paper wood, coal by strip mining, etc. far outweigh what tax was paid by the estate of Bruno Gernt, Inc." Petitioner further admits that the Estate of Bruno Gernt, Inc. "may claim a lien on said property for taxes paid by the corporate defendants herein."

The deed to Petitioner's two acre tract was filed as an exhibit to the petition. It is a deed from Harrison Owens to Webster Owens, Petitioner's deceased husband. The deed does not recite the source of title for the two acres; however, it does state "no mineral rights is [sic] conveyed." The source of the two acre title is, in fact, one of two deeds conveying land from the Estate of Bruno Gernt to Harrison Owens.

The chancellor held and we agree that the Petitioner failed to state a claim. Petitioner stated that she "is applying to the state for title for said real property being the Isham Railey Grant." Petitioner is attempting to grow her two acre tract into a 5,000 acre grant. Petitioner's claim to the land previously granted to Isham Railey almost 200 years ago by the State of Tennessee cannot succeed. "It has become elementary that superiority of title is to be found with the holder of the title prior in date." ***Southern Coal & Iron Co. v. Schwoon***, 145 Tenn. 191, 235, 239 S.W. 398, 412 (1921). Respondents' title is earlier in time and is superior to that Petitioner attempts to set up. Petitioner's claim is dependent upon a scheme that does not have a basis.

Moreover, Petitioner's suit must fail because it is barred under Tennessee Code Annotated section 66-4-203. This section provides:

> Any suit at law or equity brought for the recovery of lands or tenements bargained or contracted for, whether the agreement, sale, bargain, covenant, grant, or promise be executed or executory, shall be forthwith dismissed, with costs, by the court in which such suit may be pending, upon the facts being disclosed.

Tenn. Code Ann. § 66-4-204 (1993). This is obviously a suit for the recovery of lands already bargained for by the admissions found in the petition, i.e., that Respondents' predecessors acquired title.

Finally, the petition contradicts itself. Petitioner relied on and disputed her own title to the two acres which she does own in an attempt to form a basis for this suit. She cannot be permitted to do this.

> If he is to succeed, the complainant in an ejectment action must show that he has both legal title and a right to immediate possession. The burden of proof is upon complainant in an action for ejectment to establish his title and his right of possession. The complainant must prove that he has a perfect title to recover even against the defendant who has no title or who is a trespasser. The complainant in an ejectment suit must establish title by deraigning title to a common source under which both parties claim or by seven years adverse possession under a registered color of title or by 20 years actual adverse possession. The reason underlying the rule forbidding either party to deny the common source of title is that one cannot dispute the title under which he claims. In ejectment the complainant must recover on the strength of his own title and cannot rely on the weakness of his adversary's title.

Johnson v. City of Mt. Pleasant, 713 S.W.2d 659, 661 (Tenn. App. 1985) (citations omitted).

Petitioner has failed to cite any law in support of her position, and we are unable to find any law that would support her claim. Therefore, it results that the judgment of the chancellor is affirmed, and the cause is remanded to the trial court for any further necessary proceedings. Costs on appeal are assessed to the petitioner/appellant, Ola Owens.

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SAMUEL L. LEWIS, JUDGE

CONCUR:

_____

HENRY F. TODD, PRESIDING JUDGE, M.S.

_____

BEN H. CANTRELL, JUDGE