

IN THE COURT OF APPEALS  
AT KNOXVILLE

**FILED**

November 29, 1999

Cecil Crowson, Jr.  
Appellate Court Clerk

ESTATE OF GROVER PEMBERTON	)	SCOTT COUNTY
BY EXECUTOR BROMMA PEMBERTON,	)	03A01-9901-CH-00025
and INDUSTRIAL LOGGING, A sole	)	
proprietorship of Sharon Lay	)	
	)	
Plaintiffs-Appellees	)	
	)	
v.	)	HON. BILLY JOE WHITE,
	)	CHANCELLOR
	)	
MABEL PENNINGTON and	)	
GEORGE PENNINGTON	)	
	)	
Defendants-Appellants	)	AFFIRMED AND REMANDED

HAROLD G. JEFFERS OF ONEIDA FOR APPELLANTS

MARK BLAKLEY OF HUNTSVILLE FOR APPELLEES

O P I N I O N

Goddard, P.J.

This is an appeal from the Chancery Court's judgment

finding Bromma Pemberton owned certain disputed property.

Defendants-Appellants raise the following issues:

- I. Did the trial court err in allowing the Appellees to maintain their cause of action in the trial court more than seven (7) years after the right had accrued?
- II. Did the trial court err in allowing the Appellees to maintain their cause of action in the trial court by reason of the fact that they and their predecessors in title had failed to have the disputed 185.45 acre tract of land assessed and to pay state and county property taxes thereon for a period of more than twenty (20) years prior to the filing of their original complaint?
- III. Did the trial court err in holding that the Appellee, Bromma Pemberton, was the owner of the disputed 185.45 acre tract of land as grantee thereof in deed dated October 2, 1997 and filed for public record (recorded) in the office of the Register of Deeds for Scott County, Tennessee at Huntsville in Deed Book No. 217, pages 194 et seq, and was not a champertous conveyance to the extent that the referenced deed purported to convey title to the disputed 185.45 acre tract of land?

The Appellee, Bromma Pemberton, and the Appellants, the Penningtons, own adjacent properties. On September 8, 1995, the Estate of Grover Pemberton entered into a lease with Industrial Logging for Industrial Logging to cut and harvest the timber on the Pemberton property. Pursuant to the lease, Industrial Logging attempted to cut trees on land which the Penningtons claimed as their land. The Penningtons refused to allow Industrial Logging access to the disputed property.

The Pemberton Estate and Industrial Logging filed a complaint requesting a restraining order and boundary line determination. On September 15, 1997, the trial court issued a temporary restraining order to allow Industrial Logging to continue working without interference from the Penningtons. On November 4, 1998, the trial court entered judgment in favor of Bromma Pemberton. The lower court found Bromma Pemberton owned the disputed property and described the boundary between the Pemberton and Pennington properties by metes and bounds.

The Penningtons argue that Bromma Pemberton was barred from filing a claim in the lower court because they have adversely possessed and paid taxes on the disputed property for over 20 years. Bromma Pemberton contends that the Pembertons paid taxes on the disputed property during the 20 year period, also. The parties stipulated that Bromma Pemberton and her predecessors in title paid property taxes on the disputed property for more than 20 years. Additionally, the parties stipulated that the disputed property is part of the Pemberton's warranty deed and not part of the Penningtons' deed.

The first issue raised by the Appellants is whether Bromma Pemberton was barred from filing suit because her predecessors in title failed to file within seven years from the time the action accrued. According to the Appellants, the action accrued in the 1970s because the Appellants stopped

people from cutting timber on the disputed property and they began hacking and painting trees to mark the boundary line. Bromma Pemberton argues that her predecessors in title were unaware of the Appellants' adverse claim to the disputed property.

The statute of limitations relied upon by the Appellants states: "No person or anyone claiming under him shall have any action, either at law or in equity, for the recovery of any lands, tenements or hereditaments, but within seven (7) years after the right of action accrued." Tenn. Code Ann. § 28-2-103(a) (1998). This section is an affirmative defense for adverse possessors against anyone claiming title to property. See Hightower v. Pendergrass, 662 S.W.2d 932, 936-37 (Tenn. 1983). Therefore, the benefit of this statute of limitations only applies to defendants who can prove the elements of adverse possession. The elements of adverse possession are that the possession must be open, notorious, actual, continuous and exclusive. See Catlett v. Whaley, 731 S.W.2d 544, 546 (Tenn. Ct. App. 1987); Tidwell v. VanDeventer, 686 S.W.2d 899, 902 (Tenn. Ct. App. 1984).

Whether the Appellants established the elements of adverse possession is a factual determination. On appeal, the factual findings of the trial court are reviewed *de novo* with a presumption of correctness unless the preponderance of the evidence is otherwise. See Tenn. R. App. P. 13(d). The trial

court concluded that the Appellants did not establish the elements of adverse possession. Most notably, the trial court found that neither Bromma Pemberton nor her predecessors in title had any actual or constructive knowledge of the Appellants' adverse claim. The evidence in this record does not preponderate against the trial court's findings.

Next, the Appellants assert that Bromma Pemberton and her predecessors in title failed to have property taxes assessed and to pay property taxes on the disputed property for over 20 years. The effect of nonpayment of taxes is as follows:

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.

Tenn. Code Ann. § 28-2-110(a) (1998).

Bromma Pemberton points to the parties' stipulation Number 5 which states:

Plaintiff Bromma Pemberton and defendants and their predecessors in title have, for a period exceeding twenty (20) consecutive years, paid real property taxes assessed to them with respect to the above-described parcels of property, said payments being made according to the tax notices received by the parties, the warranty deed references noted on their respective notices, and on the applicable tax maps to the extent that the payors may have relied on such maps.

The trial court found, and we agree, that this stipulation controls the Appellants' second issue. Apparently, both

parties paid property taxes on at least part of the disputed 185.45 acre property.

The Appellants' third issue involves a question of whether a champertous conveyance occurred. The Appellants argue that the conveyance of the property from the Estate of Grover Pemberton to Bromma Pemberton was void because the property was not in the possession of the Estate, but was in the possession of the Appellants. Tennessee Code Annotated section 66-4-202 provides: "Any such agreement, bargain, sale, promise, covenant, or grant shall be utterly void, where the seller has not personally, or by the seller's agent or tenant, or the seller's ancestor, been in actual possession of the lands or tenements, or of the reversion or remainder, or taken the rents or profits for one (1) whole year next before the sale."

The lower court found that the Appellants' actions did not fulfill the requirements of adverse possession. "A conveyance by a person even without title or possession is not champertous unless the land is being adversely held by another." Burnette v. Pickel, 858 S.W.2d 319, 322 (Tenn. Ct. App. 1993).

The Pemberton estate owned the property conveyed to Bromma Pemberton. Therefore, the conveyance was not champertous.

For the foregoing reasons the judgment of the Chancery Court is affirmed and the cause remanded for the

collection of costs below. Costs of this appeal are adjudged against Mabel Pennington and her surety.

---

Houston M. Goddard, P.J.

CONCUR:

---

Herschel P. Franks, J.

---

D. Michael Swiney, J.