IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 16, 2023 Session

DARRELL TIPTON ET AL. v. WILLIAM J. WOLFENBARGER ET AL.

Appeal from the Circuit Court for Monroe County
No. V200070S J. Michael Sharp, Judge

No. E2022-01407-COA-R3-CV

This case stems from a dispute over a parcel of real property located in Monroe County, Tennessee. Following a partition action and sale of the property, the trial court entered an order dividing the sale proceeds between several parties that the trial court determined had an interest in the property at the time of the sale. One of those parties appeals, arguing that it is entitled to a bigger portion of the sale proceeds. Discerning no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and JOHN W. MCCLARTY, J., joined.

John P. Konvalinka and C. Michelle Allsup, Chattanooga, Tennessee, for the appellants, Bill Worley Construction Company, Inc., Rebecca A. Worley, and William H. Worley.

W. Tyler Weiss, Madisonville, Tennessee, for the appellee, Darrell L. Tipton.

OPINION

BACKGROUND

This appeal arises from a dispute over a parcel of land located in Monroe County, Tennessee (the "Property"), and the chain of title related to same. In 1988, Charles and Dorothy Sloan executed a warranty deed conveying the Property to Michael Ross, Dale Ross, and Darrell Tipton. The 1988 deed does not provide the type of tenancy created between the three recipients. It is undisputed that the record does not contain any deed or other instrument establishing that Mr. Tipton ever conveyed away his interest in the Property. Michael Ross and Dale Ross, however, each conveyed half of their respective

interests in the Property to William J. Wolfenbarger in 1994 via warranty deed. Michael Ross drafted the 1994 warranty deed, and, like the 1988 warranty deed, it does not provide the type of interest conveyed or tenancy created. Then, in May of 2016, the Estate of Dale Ross quit claimed the Estate's remaining interest in the Property to Robert Stooksbury. Mr. Stooksbury then conveyed his entire interest in the Property to Mr. Wolfenbarger via a quitclaim deed in February of 2019. Accordingly, as of 2019, the individuals holding an interest in the Property were Michael Ross, Mr. Wolfenbarger, and Mr. Tipton.

On March 19, 2020, Mr. Tipton filed an action in the Circuit Court for Monroe County (the "trial court"), naming Mr. Wolfenbarger as the defendant and asking that the Property be partitioned by sale. Mr. Tipton claimed that he held a one-third undivided interest in the Property. On December 10, 2020, HydraSports Custom Boats, LLC ("Hydra") filed a motion to intervene in the litigation, claiming that it "ha[d] agreed to a purchase of the Property with [Mr.] Wolfenbarger for a purchase price of $850,000.00 with the Property titled being able to be conveyed free and clear fee simple marketable title to [Hydra]." After some dispute, the trial court entered an order on May 4, 2021, providing that Hydra had "an interest relating to the property or the transaction which is the subject of the action . . . ." Hydra filed its intervening petition on June 6, 2021, naming, among others, Michael Ross, William Worley, Rebecca Worley, and Bill Worley Construction Co., Inc. as additional defendants. Hydra named William Worley, Rebecca Worley, and Bill Worley Construction Co., Inc. (the "Worley defendants") as defendants because they are judgment creditors of Michael Ross.[1] Several of the additional defendants never responded, and Hydra filed a motion for default judgment on September 2, 2021. Hydra asked the trial court to order the partition by sale, to allow Hydra to pay the purchase price for the Property to the trial court clerk, and to "enter an order or decree confirming the sale, transfer and vesting of fee simple title free and clear to purchaser [Hydra] . . . ." Stated simply, Hydra asked to purchase the Property and then have the trial court disburse the funds to the remaining interest holders.

On November 23, 2021, the trial court entered an order of default against the defendants who failed to participate. The trial court also found:

> [The] sale for partition of the Property pursuant to and in accordance with applicable law and the foregoing findings is appropriate in this action; that this Order be entered to compel such sale under the terms herein; that upon finality of this Order, that thereafter said Petitioner-Purchaser [Hydra] tender and pay into the Clerk of Court the sales or purchase price of $850,000.00; that said funds will be held by the Clerk of Court until further order of the

[1] Michael Ross did not participate in the proceedings in the trial court. For the most part, the other named defendants, primarily other judgment creditors of Michael Ross, also did not participate in this litigation. The only parties participating in the present appeal are the Worley defendants and Mr. Tipton. Hydra filed a brief to this Court, but that brief was later stricken.

> Court; that thereafter the Clerk of Court shall execute and delivery [*sic*] a Clerk's Deed to the Property to Petitioner-Purchaser [Hydra] that together with this Order, and an Order Confirming Sale, shall vest, transfer and convey free and clear title in fee simple to said Property to Purchaser [Hydra]; and that said Clerk's Deed, this Order and the Order Confirming Sale shall be filed with the Register's Office of Monroe County as evidence of said transfer and conveyance.

The trial court also noted that any other parties with an interest in the Property now instead held an interest in the funds paid into the trial court clerk and that those funds would need to be disbursed according to the fractional ownership. An order confirming the sale and Hydra's tender of $850,000.00 to the trial court clerk was entered January 3, 2022.

On January 27, 2022, the Worley defendants filed a motion for disbursement of the sale proceeds. The Worley defendants argued that they had perfected a first-priority lien against Michael Ross's interest in the Property and thus had an interest in a portion of the sale proceeds. The Worley defendants requested that the trial court "enter an order distributing the proceeds currently held in the Court's registry to the Worley Defendants." Shortly thereafter, Hydra filed a motion asking the trial court to hold an evidentiary hearing regarding how to disburse the sale proceeds. Hydra also filed a motion to take deposition testimony for proof, explaining that it planned to depose Gary Wolff and George McCoin for proof regarding the Property's chain of title. Mr. Wolff is a title examiner, and Mr. McCoin is a licensed Tennessee attorney employed by a title insurance agency.

The trial court entered an order on May 5, 2022, concluding that Hydra could take both depositions for proof "and that the deposition testimony, whether stenographically or audiovisually recorded, shall be admissible into evidence in any later proceedings[.]" Both Mr. Wolff and Mr. McCoin were deposed, and their depositions were filed with the trial court. In his deposition, Mr. Wolff opined that the 1988 warranty deed did not clearly state the type of tenancy created between Michael Ross, Dale Ross, and Mr. Tipton. Thus, according to Mr. Wolff, "as a title examiner, you would surmise or assume that they each have a 1/3 interest or a 4/12, which is the same interest. So, that's all we have to go by when we search and examine property." Mr. Wolff ultimately opined that the remaining interests in the Property at the time of its sale were as follows: Mr. Wolfenbarger with a 6/12 interest; Mr. Tipton with a 4/12 interest; and Michael Ross with a 2/12 interest. Mr. McCoin similarly testified that

> from the plain reading of – the [1988] deed, it's a Warranty Deed. It is from the Sloans and it is to Michael Ross, Dale Ross and Darrell Tipto[n]. It conveys to three parties. It does not indicate anything about their relationship. So, it would be conveying the property to them 1/3 each as tenants in

> common. There would be no rights of survivorship. Each would own it under the rules of tenants in common.

Like Mr. Wolff, Mr. McCoin also testified that he believed Mr. Tipton's ownership interest in the Property at the time of its sale was 4/12. Stated differently, Mr. McCoin opined that Mr. Tipton retained his original one-third interest.

On May 26, 2022, the Worley defendants filed a motion in limine to exclude "legal opinions and conclusions of Gary Wolff and George McCoin[,]" asserting that "Messrs Wolff and McCoin intend to offer legal opinions or conclusions in violation of Tennessee Rules of Evidence 703 and 704." The trial court held its hearing on the disbursement of funds on May 31, 2022. The only parties present were Mr. Wolfenbarger, who appeared *pro se*, the Worley defendants, and Hydra. At the hearing, counsel for Hydra agreed that its only remaining stake in the Property was securing good and insurable title. While the Worley defendants proposed a disbursement under which they would receive twenty-five percent of the proceeds and the other interest holders would divide the remaining balance, an agreement was not ultimately reached. Accordingly, the trial court heard brief testimony from Mr. Wolfenbarger, who was called to testify by the Worley defendants, before taking the case under advisement. Before adjourning the hearing, the trial court stated that it considered both Mr. Wolff and Mr. McCoin to be experts and that it would read through and consider the depositions.

On June 2, 2022, the trial court sent a letter, which appears in the record, to all parties involved in the litigation. The letter provides, *inter alia*, that

> The court considered Mr. Konvalinka's[2] argument, wherein he argues that Mr. McCoin and Mr. Wolff are in fact offering legal opinions or conclusions of law. The court has considered whether or not Attorney McCoin or Mr. Wolff should be qualified as experts. The court has considered the education, qualifications and experience of both of these men, as well as the facts relied upon by these witnesses to support their opinion, and the reasoning used by these witnesses to arrive at their opinions. Furthermore, the court has considered the credibility of both of these witnesses based upon what the court read in their sworn depositions. The court has given great consideration to what appears to be, at least a part, of Mr. Konvalinka's argument concerning certain answers given by each of these men during their deposition. Mr. Konvalinka argues on behalf of his clients that statements made by Attorney McCoin and Mr. Wolff were in fact legal opinions and/or statements of legal conclusions. The court has thoroughly read the entirety of both depositions, and the court finds that, as a general rule, most of all of

[2] Mr. Konvalinka is counsel for the Worley defendants.

> the answers made by either Mr. McCoin or Mr. Wolff were in direct response to questions from Mr. Konvalinka, calling for their legal conclusion. The court finds that both Attorney McCoin and Mr. Wolff have substantial in depth experience in the area of real estate title examinations, and more specifically, chains of title pertaining to ownership interests in real estate related matters. The court finds that both of these men have been engaged in real estate matters for multiple years, both having done thousands of title examinations, and offering opinions for lending institutions as well as individuals and/or other entities. Both of these men are highly qualified witnesses, and the court finds that both of these witnesses appear to have relied upon the same documentation and information normally expected to be relied upon in real estate title and title examination matters. The court finds that the reasoning used by both of these witnesses to arrive at their respective opinions was sound, based on sound facts and based upon their years of experience. Therefore, the court finds that both of these gentlemen are well qualified to testify as they did in this matter. The court is a bit puzzled by Attorney Konvalinka's argument concerning their rendering of a legal opinion based upon his specific questions that he asked them these men to respond to. Nevertheless, the court will consider the experts' opinions, and therefore the defendant's motion is respectfully denied.

This letter further provides that "it may be necessary to have an additional hearing, or at a minimum, a phone conference concerning Mr. Tipton's ownership interest and the funds he is due in this matter." It is unclear from the record whether any other hearing or phone conference occurred following this letter, as no transcript for either appears in the record.

The trial court entered its final order on September 2, 2022, concluding that the fractional ownership of the sale proceeds was Mr. Tipton 4/12; Michael Ross 2/12; and Mr. Wolfenbarger 6/12. The trial court thus found that Mr. Tipton was entitled to $280,034.23 from the sale proceeds and that the Worley defendants were, as lienholders, entitled to Michael Ross's portion worth $140,017.11. Mr. Wolfenbarger was awarded $420,051.34 for his portion. The trial court ordered the clerk to disburse the funds immediately and that "all related proceedings will and should be dismissed[.]" The trial court designated the order final pursuant to Tennessee Rule of Civil Procedure 54.02.

The Worley defendants timely appealed to this Court.

ISSUES

The Worley defendants (hereinafter, "Appellants") raise two issues on appeal, which are taken verbatim from their appellate brief:

I. Whether the trial court erred in awarding Darrell Tipton a percentage interest in the sales proceeds where Mr. Tipton did not appear at the evidentiary hearing and there was no evidence warranting a distribution of the portion of sale proceeds to Mr. Tipton.

II. Whether the trial court erred in awarding Darrell Tipton a percentage interest in the sales proceeds where the trial court based its holding upon certain erroneous deeds and improper deposition testimony rather than the evidence presented by the Worley Appellants.

DISCUSSION

The essence of Appellants' argument is that the trial court erred in awarding Mr. Tipton any of the proceeds from the Property's sale. The issues raised deal with deed interpretation, which is a question of law and is reviewed de novo with no presumption of correctness. *Griffis v. Davidson Cnty. Metro. Gov't*, 164 S.W.3d 267, 274 (Tenn. 2005) (citing *Rodgers v. Burnett*, 65 S.W. 408, 411 (Tenn. 1901)). Appellants also raise evidentiary issues, which are generally reviewed for an abuse of discretion. *State v. Rimmer*, 250 S.W.3d 12, 23 (Tenn. 2008).

As a threshold matter, Appellants contend that Mr. Tipton relinquished any interest in the Property because he did not appear at the May 31, 2022 hearing on the motion to disburse the sale proceeds. They also argue that there is no evidence speaking to Mr. Tipton's remaining ownership interest. We respectfully disagree.

It is undisputed that Mr. and Mrs. Sloan deeded Mr. Tipton an interest in the Property in 1988. It is also undisputed that since then, Mr. Tipton has not deeded away or encumbered that interest. Appellants concede that there is no deed reflecting that Mr. Tipton relinquished his interest in the Property. Consequently, we disagree that Mr. Tipton's failure to attend the May 31, 2022 hearing is a wholesale waiver of any interest in the Property. While Appellants cite cases generally providing that a lack of proof may result in waiver, they cite no legal authority for the proposition that someone who *undisputedly* has an unencumbered interest in real property relinquishes that interest entirely just by failing to appear at a hearing in a partition action. Additionally, as addressed in more detail *infra*, the record militates against Appellants' claim that there is no evidence speaking to Mr. Tipton's interest in the Property and thus the sale proceeds. The trial court relied on the expert testimony of two witnesses, plus its own review of the relevant deeds, in rendering its decision. We are unpersuaded that Mr. Tipton's interest is waived simply because Mr. Tipton himself did not provide that proof to the trial court on May 31, 2022.

Alternatively, Appellants claim that the trial court improperly relied on the depositions of Messrs. Wolff and McCoin, as well as the deeds in the Property's chain of

title. Turning first to the depositions, Appellants argue that the depositions were not admitted as evidence and that Appellants did not have the opportunity to object to the trial court's use of the depositions. Appellants also claim that both witnesses improperly gave legal conclusions and that the trial court erred in relying on same. We disagree on both counts.

Tennessee Rule of Civil Procedure 32.01 explains use of depositions at trial and provides in part:

> At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Tennessee Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof in accordance with any of the following provisions:
>
> (1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.
>
> (2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30.02(6) or 31.01 to testify on behalf of a public or private corporation, partnership or association, governmental agency or individual proprietorship which is a party may be used by an adverse party for any purpose.
>
> (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds that the witness is "unavailable" as defined by Tennessee Rule of Evidence 804(a). But depositions of experts taken pursuant to the provisions of Rule 26.02(4) may not be used at trial except to impeach in accordance with the provisions of Rule 32.01(1).

Here, Appellants claim that they lacked an opportunity to object to the use of the Wolff and McCoin depositions, but this is unsupported by the record. Hydra filed a motion on March 17, 2022, asking for an order allowing both Mr. Wolff and Mr. McCoin to be deposed for proof. *See Dial v. Harrington*, 138 S.W.3d 895, 898 (Tenn. Ct. App. 2003) (explaining that under Rule 32.01 "[t]he party who hired the expert may [] take a deposition for proof by notice or agreement"). Hydra explained that it "anticipates that both McCoin and Wolff will testify with regard to their examination of the title of the subject real property and their determination or opinions with regard to the percentages of ownership or estimations of percentages of ownership of the three (3) fractional owners to include: Darrell Tipton, William J. Wolfenbarger and Michael L. Ross." Hydra also asserted that

both witnesses would be unavailable for the final hearing, which Appellants did not dispute. *See Spearman v. Shelby Cnty. Bd. of Educ.*, 637 S.W.3d 719, 738–39 (Tenn. Ct. App. 2021) (admitting deposition testimony where witness was unavailable and counsel filed a notice of intent to use the deposition prior to the trial). Appellants did not respond to Hydra's motion. The trial court entered an order on May 5, 2022, granting Hydra's request, and concluding that the testimony "shall be admissible into evidence in any later proceedings." There is no objection in the record by Appellants to that order. Appellants' counsel then participated in the depositions. Hydra filed both depositions with the trial court, and Appellants filed their motion in limine asking that portions of the depositions be excluded.

At the May 31, 2022 hearing, the trial court explained that it had not had time to read the depositions or the motion in limine. Nonetheless, the parties argued the motion. While the trial court did not rule on Appellants' motion that day, the trial court later informed the parties in a letter, quoted *supra*, that the motion was denied and that the trial court considered both witnesses experts. Consequently, Appellants had ample opportunity and did object to the use of the depositions at the final hearing. The trial court simply disagreed with Appellants' contentions and determined that it could rely on the depositions in rendering its decision. Consequently, Appellants' argument that they were denied the opportunity to object lacks merit.

Appellants also contend that the depositions should not be considered part of the record on appeal in this Court. Here, Appellants rely on *Staggs v. Violet*, No. 85-61-II, 1985 WL 3643, at *1 (Tenn. Ct. App. Sept. 11, 1985), arguing in their principal brief that "[t]he deposition transcripts cannot be considered evidence by this Court because the depositions were not properly made a part of the record of evidence presented at trial." *Staggs*, however, is distinguishable from the case at bar and deals with Tennessee Rule of Appellate Procedure 24(f), which provides:

> **(f) Approval of the Record by Trial Judge or Chancellor.** The trial judge shall approve the transcript or statement of the evidence and shall authenticate the exhibits as soon as practicable after the filing thereof or after the expiration of the 15-day period for objections by appellee, as the case may be, but in all events within 30 days after the expiration of said period for filing objections. Otherwise the transcript or statement of the evidence and the exhibits shall be deemed to have been approved and shall be so considered by the appellate court, except in cases where such approval did not occur by reason of the death or inability to act of the trial judge. In the event of such death or inability to act, a successor or replacement judge of the court in which the case was tried shall perform the duties of the trial judge, including approval of the record or the granting of any other appropriate relief, or the ordering of a new trial. Authentication of a

> deposition authenticates all exhibits to the deposition. The trial court clerk shall send the trial judge transcripts of evidence and statements of evidence.

In *Staggs*, the deposition at issue "was transmitted to this Court with the record" but was in a separate volume as the technical record and "was not certified by the Trial Clerk." 1985 WL 3643, at *5. While the one-volume technical record contained a certificate of authentication signed by the trial court clerk, we explained that "[t]his certificate authenticates the volume in which it appears, but not a separate volume of a deposition." *Id.* Appellants rely on the following quote from *Staggs*:

> In order for a deposition to be considered as evidence by this Court, it is necessary for the deposition to be made a part of the record of evidence presented at the trial. This may be done in any one of several ways. (1) The deposition may be read in open court and recorded and transcribed as other testimony as part of the transcript. (2) The deposition, having been filed with the Trial Clerk, may be orally read to the jury and/or judge or physically presented to the judge sitting without a jury, and the fact of such reading or presentation may be suitably recorded in the transcript. In this manner the deposition is made a part of the transcript by proper identification and reference, may be certified to this Court as part of the technical record on file with the Clerk. (3) Without such filing and reference in the transcript, if the deposition is in fact read or presented, it may be made a part of the transcript by being filed with the Trial Clerk along with the transcript and authenticated as provided in Rule 24. The better practice is for all exhibits and depositions to be authenticated by the Trial Judge. None of the foregoing methods of authentication of a deposition appear in this record.

Id. *Staggs* is not fatal to the trial court's ruling, however, as the present case comports with the third option explained in the above quote. In *Staggs*, the deposition at issue was not authenticated as part of the record prior to being transmitted to this Court. Here, Hydra filed the depositions at issue with the trial court clerk after the trial court entered an order, to which Appellants did not object, providing that the depositions could be taken for proof and were admissible. Hydra filed the depositions, and the trial court stated at the May 31, 2022 hearing that it would consider the depositions and Appellants' motion in limine in its ruling. Consequently, the depositions were filed with the clerk and presented to the trial court. *See id.* Further, the record contains a signed certificate from the trial court clerk listing the items being transmitted as the record to this Court. The depositions are included in this list. These circumstances are thus distinguishable from *Staggs*, and this Court is not prohibited under Rule 24(f) from reviewing the depositions as evidence.

Appellants also challenge the substance of the depositions. They argue that Mr. Wolff offered legal conclusions that he was not entitled to draw because he is not an

attorney. They also urge that Mr. McCoin, despite being an attorney, improperly offered legal conclusions in violation of Tennessee Rule of Evidence 704.

> Generally, questions pertaining to the qualifications, admissibility, relevancy, and competency of expert testimony are matters left to the trial court's discretion. *McDaniel* [*v. CSX Transp., Inc.*, 955 S.W.2d 257, 263 (Tenn. 1997)]. We may not overturn the trial court's ruling admitting or excluding expert testimony unless the trial court abused its discretion. *Id.* at 263–64. A trial court abuses its discretion if it applies an incorrect legal standard or reaches an illogical or unreasonable decision that causes an injustice to the complaining party. *State v. Stevens*, 78 S.W.3d 817, 832 (Tenn. 2002).

Brown v. Crown Equip. Corp., 181 S.W.3d 268, 273 (Tenn. 2005).

The trial court did not abuse its discretion here. As the trial court laid out in its June 2, 2022 letter, Mr. Wolff is a title examiner with many years of experience. The fact that he is not an attorney is not dispositive; indeed, the case cited by Appellants for that notion is distinguishable. Appellants argue that under *Union City & Obion County Bar Ass'n v. Waddell*, 205 S.W.2d 573 (Tenn. Ct. App. 1947), "[a]n opinion of title is a legal opinion of which only an attorney may offer." However, *Waddell* does not deal with title examiners engaged to testify as expert witnesses. Rather, in that case, a local bar association brought suit against a woman, Lorene Waddell, and sought an injunction on the basis that Ms. Waddell was engaging in the unauthorized practice of law. The petitioners alleged that Ms. Waddell had been "drawing deeds of conveyances, deeds of trust, rental contracts, contracts of various characters and kinds, timber sales, timber purchases, wills, chattel mortgages and various other forms of legal documents, preparing and giving legal opinions as to the status of the title of real estate, the existence of liens and giving general legal advice and counsel, all for a valuable consideration." *Id.* at 574. Ms. Waddell also held "herself out as a competitor of the local attorneys in Union City, Tennessee, and [ ] publicly boasted that she is engaged in the illegal practice of law and has more clients than she is able to serve." *Id.* A jury found that Ms. Waddell did not engage in the unauthorized practice of law and, after losing their motion for judgment notwithstanding the verdict, the petitioners appealed. *Id.* at 575. This Court agreed with the petitioners and concluded that the trial court should have granted the motion for judgment notwithstanding the verdict. *Id.* at 580. We explained that

> [t]here is no question but that the defendant has drawn many deeds, trust deeds and other legal instruments for which she has received valuable considerations.

> There is no question but that for a period of years she has done title work for local banks and rendered legal opinions on the titles for which she received valuable considerations.

Id.

Consequently, *Waddell* is a case about the unauthorized practice of law and an individual who improperly held herself out as an attorney for many years. *Id.* That case does not address title examiners in the context of Tennessee Rule of Evidence 704, and it certainly does not stand for the broad principle that title examiners may not be considered expert witnesses regarding chains of title. Appellants have not established through reliance on *Waddell* how the trial court abused its discretion in the case at bar. In the same vein, Appellants have also not established that the trial court abused its discretion by considering Mr. McCoin's testimony. Mr. McCoin is a title attorney with many years of experience. He opined on the state of the Property's title based on the relevant deeds. Appellants cite no case law in which this Court or our Supreme Court has deemed this improper or held that a trial court abused its discretion by relying on the opinion of a title attorney under analogous circumstances.

Finally, Appellants take issue with the trial court's reliance on the deeds themselves, arguing that the deeds "contained certain errors." For example, Appellants point out that the 1988 warranty deed "does not state a specific percentage ownership of each party or that the parties hold the Property as tenants in common." They also note that the 1994 deed from Michael Ross and Dale Ross to Mr. Wolfenbarger was drafted by Michael Ross, who is not an attorney. Appellants assert that this amounts to the unauthorized practice of law and that the 1994 deed is thus a nullity. Rather than looking to the deeds, Appellants posit that the trial court should have followed the percentage split reflected in a receiver's report offered by Appellants at the May 31, 2022 hearing.

Respectfully, these arguments do not support Appellants' ultimate request for relief in this case, which is that Mr. Tipton should be awarded no interest in the Property sale proceeds. Indeed, Appellants cite no legal authority for the proposition that Mr. Tipton's interest in the Property does not exist because the 1988 warranty deed does not specify the type of tenancy created.[3] The arguments regarding the post-1988 deeds are particularly

[3] Moreover, "Tennessee recognizes three basic forms of concurrent ownership in real property: joint tenancy, tenancy in common, and tenancy by the entirety." *Bryant v. Bryant*, 522 S.W.3d 392, 399 (Tenn. 2017) (citing *Griffin v. Prince*, 632 S.W.2d 532, 535 (Tenn. 1982)). Tenancy by the entirety does not apply here because "[a] tenancy by the entirety is held exclusively by persons who are legally married." *Id.* at 400. And "[b]ecause joint tenancies no longer include a survivorship interest by operation of law, both joint tenants and tenants in common have essentially the same rights, which are the 'right to use, to exclude, and to enjoy a share of the property's income.'" *Id.* at 404 (citing *United States v. Craft*, 535 U.S.

unavailing, as those deeds have nothing to do with Mr. Tipton, who undisputedly never deeded away any portion of his interest in the Property. Although the chain of title regarding Michael Ross and Dale Ross became murky following the 1988 conveyance, the same cannot be said for Mr. Tipton. Nor can we agree that the receiver's report is more probative than the deeds themselves. The 2015 report arises from litigation between Mr. Stooksbury and Michael Ross, among others, that occurred in the United States District Court for the Eastern District of Tennessee in a wholly unrelated matter. The only mention of Mr. Tipton in the report is as follows:

> **F. Unresolved Issues**
>
> The unresolved issues presented within the receivership involve the claim asserted by Darrell Tipton against Michael L. Ross and the Estate of Dale M. Ross seeking to offset rental proceeds collected for jointly-held property as referenced in the Memorandum of Understanding dated December 1, 2013 [Doc. 1088], transfers among Judgment Debtors and Evelyn W. Ross relating to sale proceeds generated by the assignment of Michael L. Ross' life insurance policy and divestment of stock of Rarity Bay Realty, Inc., and the property located in Monroe County, Tennessee jointly-owned in part by the Judgment Debtors.
>
> The Receiver and William Wolfenbarger agreed to list for private sale the property located at 260 Industrial Park Road in Monroe County, Tennessee [Doc. 1423]. Unfortunately, the listing through the mutually agreed-upon broker did not yield an acceptable offer; therefore, the subject property owned jointly by Mr. Wolfenbarger (50%), the Estate of Dale M. Ross (25%) and Michael L. Ross (25%) has not been sold. The interest of the Judgment Debtors should be subject to execution by the Plaintiff in partial satisfaction of the Judgment entered in this action.

Based on the foregoing, Appellants assert that the trial court should divide the proceeds in accordance with the percentages listed by the receiver. Respectfully, we disagree. By its own terms, the report provides that the Property is an "unresolved issue." The report does not reflect how or why the receiver reasoned that the ownership split is as listed above. The trial court clearly found the deeds and the Wolff and McCoin depositions more probative than the report, a decision with which we take no issue.

274, 280 (2002)). As such, we do not think it dispositive under the circumstances that the 1988 warranty deed does not provide more information.

Contrary to Appellants' claims on appeal, the trial court did not err in its consideration of either the deeds or the depositions. The record preponderates in favor of the trial court's holding that Mr. Tipton is entitled to $280,034.23 from the Property's sale proceeds. Thus, we affirm the trial court's ruling.

CONCLUSION

The ruling of the Circuit Court for Monroe County is affirmed. This case is remanded for proceedings consistent with this opinion. Costs on appeal are assessed to William Worley, Rebecca Worley, and Bill Worley Construction Co., Inc., for which execution may issue if necessary.

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KRISTI M. DAVIS, JUDGE