IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 5, 2022 Session

THE WISE GROUP, INC. ET AL v. DWIGHT HOLLAND ET AL.

Appeal from the Chancery Court for Davidson County
No. 19-829-III Ellen Hobbs Lyle, Chancellor

No. M2020-01646-COA-R3-CV

Plaintiffs filed suit against the purchaser of real property, alleging that the purchase was a fraudulent conveyance. On a motion for summary judgment, the trial court determined on the undisputed facts that the purchase was in good faith and without notice of Plaintiffs' claims and for reasonably equivalent value. We conclude that the undisputed facts show that the purchaser was entitled to judgment as a matter of law. We also discern no abuse of discretion in a separate decision by the court to set aside the dismissal of the purchaser's counterclaim against Plaintiffs. So we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

Nicholas D. Bulso and Eugene N. Bulso, Jr., Brentwood, Tennessee, for the appellants, The Wise Group, Inc. and The Lux Development Group, LLC.

James D.R. Roberts, Jr., Nashville Tennessee, for the appellee, Dominion Real Estate, LLC.

OPINION

I.

A.

Understanding the issues raised by this case begins with an earlier case. In 2018, The Wise Group, Inc. and The Lux Development Group, LLC sued Dwight Holland and a

limited liability company that he formed, LD Consulting, LLC, to recover misappropriated funds and past due rent. The suit resulted in a judgment against Mr. Holland and in favor of The Wise Group and The Lux Development Group for $6,133.00 and $28,991.24, respectively. LD Consulting found itself liable only for court costs.[1]

Pertinent to this appeal, while the earlier case was pending, LD Consulting quitclaimed real property in Hermitage, Tennessee, to Americana Birds & Bees, LLC. Two more transfers followed in short succession. Just over two weeks after the judgment in favor of The Wise Group and The Lux Development Group, Americana Birds & Bees quitclaimed the Hermitage property to LAH, LLC, an entity owned and controlled by Mr. Holland. And, in June 2019, LAH sold the Hermitage property to Dominion Real Estate, LLC.

The first two transfers were for little, if any, consideration. In the last, Dominion Real Estate paid $350,000 in cash and debt for the property.

B.

The month following the sale to Dominion Real Estate, The Wise Group and The Lux Development Group (together, "Plaintiffs") sued claiming, among other things, that the transfers of the Hermitage property were fraudulent conveyances. *See* Tenn. Code Ann. § 66-3-305(a)(1) (2022). Plaintiffs asked that they be allowed to levy execution on the Hermitage property or that the transfers be set aside. *See id.* § 66-3-308 (2022).

Plaintiffs described the transfers as having occurred after "an unusual progression of events," focusing on Mr. Holland's role in the transfers. According to Plaintiffs, in January 2019, Mr. Holland broached the idea of a sale of the Hermitage property to William Vaughn, the principal of Dominion Real Estate. They also discussed the possibility of a joint venture to develop the property and to acquire adjoining properties. During the later discussions, Mr. Holland informed Mr. Vaughn that the adjoining properties were owed by Plaintiffs and that Mr. Holland had "conflicts or arguments" with a principal of Plaintiffs.

In April 2019, Mr. Holland and Mr. Vaughn agreed to a purchase price of $350,000 for the Hermitage property. But, by that point, Mr. Holland's limited liability company, LD Consulting, no longer owned the property. Americana Birds & Bees, an entity owned and controlled by Mr. Holland's son, held title. Still, Mr. Holland accepted from Dominion Real Estate a check for $30,000 made payable to LD Consulting as an earnest money deposit.

[1] The court assessed costs against Mr. Holland and LD Consulting, jointly and severally.

In May 2019, Dominion Real Estate and Mr. Holland's limited liability company, LAH, signed a purchase and sale agreement for the Hermitage property. The agreement recited the purchase price as $300,000, rather than $350,000. The day after signing the agreement, Mr. Holland's son had Americana Birds & Bees transfer the Hermitage property to LAH.

In June 2019, Plaintiffs recorded a judgment lien based on their prior judgment. About a week later, the sale of the Hermitage property closed. At closing, Dominion Real Estate signed three deeds of trust encumbering the property. Two of the deeds of trust, in the amounts of $185,000 and $50,000, were in favor of LAH to secure Dominion Real Estate's obligation to pay the balance of the purchase price. A third deed of trust in the amount of $85,000 was in favor of a third-party lender.

Plaintiffs also sought to cast doubt on whether Dominion Real Estate paid fair consideration for the Hermitage property. That fall, Dominion Real Estate listed the property for sale with an asking price of $1.25 million. It later increased the asking price to $1.5 million.

Although it received two offers for the property, one approaching and another just above $1 million, Dominion Real Estate rejected both due to contingencies placed on the offers. Dominion Real Estate did use the offers to attract a development partner. Using funds supplied by the development partner, Dominion Real Estate paid off the debt associated with its acquisition of the Hermitage property, including the amounts due to LAH.

C.

Dominion Real Estate answered the complaint and asserted counterclaims against Plaintiffs. Plaintiffs moved to dismiss the counterclaims for failure to state a claim upon which relief can be granted. *See* TENN. R. CIV. P. 12.02(6). Dominion Real Estate did not respond to Plaintiffs' motion, so Plaintiffs filed a proposed order of dismissal, which the trial court entered on April 13, 2020. *See* 20TH JUD. DIST. LOCAL RULE § 26.04 (providing that, if no response to a motion is timely filed and personally served, the motion will be granted).

Seemingly unperturbed by the dismissal of its counterclaims, Dominion Real Estate moved for summary judgment on Plaintiffs' claims. It argued that its purchase of the Hermitage property was not voidable because the purchase was in good faith and for reasonably equivalent value. *See* Tenn. Code Ann. § 66-3-309(a) (2022).

Plaintiffs moved for an award of costs and reasonable and necessary attorney's fees associated with the motion to dismiss the counterclaims. *See id.* § 20-12-119(c) (2021). At that point, Dominion Real Estate moved to set aside the dismissal. As grounds, counsel

claimed that he had no record of the e-mail transmitting the motion to dismiss and that he may have "inadvertently deleted" the e-mail.

The trial court eventually granted the motion to set aside the dismissal and denied Plaintiffs' application for attorney's fees as moot. Once the court granted its requested relief, Dominion Real Estate voluntarily dismissed its counterclaims. In light of the voluntary dismissal, Plaintiffs asked the court to revise its order setting aside the dismissal of the counterclaim. But the court declined to do so.

The trial court also granted Dominion Real Estate's motion for summary judgment. The court concluded that the undisputed facts established that Dominion Real Estate purchased the Hermitage property in good faith and without "any actual, inquiry or constructive notice of the Plaintiffs' claims" and that $350,000 was reasonably equivalent value. Although Plaintiffs asserted some additional facts in opposition to summary judgment, the court concluded that the additional facts would not lead a rational trier of fact to find in Plaintiffs' favor. The court then certified its order granting summary judgment and its orders related to setting aside the dismissal of the counterclaims as final judgments. *See* TENN. R. CIV. P. 54.02.

II.

On appeal, Plaintiffs raise two issues for our review. They contend the trial court erred by setting aside the dismissal of the counterclaims because Dominion Real Estate's willful conduct precipitated the dismissal. And they contend that the court erred in granting summary judgment. For its part, Dominion Real Estate submits this appeal is frivolous and requests damages.

A.

The order dismissing Dominion Real Estate's counterclaims did not resolve all claims in the litigation. Under Tennessee Rule of Civil Procedure 54.02, "any order . . . , however designated, that adjudicates fewer than all the claims[,] rights[,] and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of [a final judgment]." TENN. R. CIV. P. 54.02(1); *see also* TENN. R. APP. P. 3(a) (describing an order "that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties" as "subject to revision at any time before entry of a final judgment"). For that reason, "relief from a partial default judgment may be granted more liberally under Rule 54.02 than relief from final default judgments under Rule 59.04 or Rule 60.02." *Discover Bank v. Morgan*¸ 363 S.W.3d 479, 494 (Tenn. 2012).

In general, we review a trial court's ruling on a Rule 54.02 motion applying an abuse of discretion standard. *Id.* at 487; *Harris v. Chern*, 33 S.W.3d 741, 746 (Tenn. 2000). Under that standard, we consider whether "the trial court applied incorrect legal standards,

reached an illogical conclusion, based its decision on a clearly erroneous assessment of the evidence, or employed reasoning that causes an injustice to the complaining party." *Discover Bank*, 363 S.W.3d at 487 (quoting *State v. Jordan*, 325 S.W.3d 1, 39 (Tenn. 2010)). We will uphold the trial court's ruling as "long as reasonable minds can disagree as to [the] propriety of the decision made." *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (quoting *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000)).

Here, Dominion Real Estate requested relief from the order dismissing its counterclaims on the basis of "excusable neglect." When excusable neglect is claimed, a three-part test is used. *See Discover Bank*, 363 S.W.3d at 493; *Byrnes v. Byrnes*, 390 S.W.3d 269, 278 (Tenn. Ct. App. 2012). As a threshold inquiry, the court must "determine whether the conduct precipitating the default was willful." *Discover Bank*, 363 S.W.3d at 494. If the conduct was willful, the order may not be set aside on "excusable neglect" grounds. *Id.* But if the conduct was not willful, the court considers whether the defaulting party has a meritorious claim and whether the non-defaulting party would be prejudiced by granting the relief sought. *Id.*

Missed deadlines or court dates attributable to an attorney's carelessness or inattention are not ordinarily considered willful. *See id.* at 493. And the failure to contest a motion is not willful when an attorney did not receive notice of the motion. *Tenn. Dep't of Human Servs. v. Barbee*, 689 S.W.2d, 863, 867 (Tenn. 1985). Counsel for Dominion Real Estate claimed that, after conducting a search of his e-mails, he could not locate the e-mail serving him with a copy of the motion to dismiss the counterclaims and that he would have responded had he seen the e-mail. Counsel surmised that the e-mail might have been inadvertently deleted.

On appeal, Plaintiffs argue that Dominion Real Estate could not overcome the threshold inquiry because its conduct was willful. They assert that Dominion Real Estate's failure to respond to the motion to dismiss was part of a strategy to simplify the litigation. This strategy was revealed by its dismissal of the counterclaims as soon as the court had reinstated them. And Dominion Real Estate's motion to set aside the dismissal was only prompted by its potential liability for costs and attorney's fees associated with the involuntary dismissal. *See* Tenn. Code Ann. § 20-12-119(c).

The trial court found that Dominion Real Estate's failure to respond was not willful. It credited the representation of counsel "that due to disruption and furloughing of office staff during the pandemic, if he received [Plaintiffs'] motion to dismiss, he did not realize that." And the court did not depart from that finding after Dominion Real Estate voluntarily dismissed its counterclaims. Upon Plaintiffs' motion to revise the order granting Dominion Real Estate relief from the dismissal, the court reiterated that it credited the representation of counsel "that he failed to file opposition to the Plaintiffs' motion to dismiss . . . due to inadvertence and oversight related to COVID-19 issues at this law office." As for the voluntary dismissal of the counterclaims, the court again credited the representation of

counsel, finding that Dominion Real Estate instructed counsel "to abandon and withdraw the counterclaim and to proceed with the summary judgment [motion]" so that it could "[potentially] be free and clear of th[e] litigation."

We cannot say that the court's assessment of the evidence was clearly erroneous. Although Dominion Real Estate's voluntary dismissal of its counterclaims after receiving relief from the involuntary dismissal could suggest that the failure to reply was not inadvertent, the court properly focused on the conduct before entry of the order of dismissal. *Cf. Henry v. Goins*, 104 S.W.3d 475, 480 (Tenn. 2003) (recognizing that, "generally speaking, the grounds for relief asserted under Rule 60.02(1) must have occurred at or before the entry of the final judgment and must have resulted in the judgment's entry"). And, in any event, Dominion Real Estate offered a plausible explanation for why it decided to voluntarily dismiss its counterclaims after they were reinstated, which the court accepted.

Considering the other two factors applicable to relief from an order based on excusable neglect, the trial court did not abuse its discretion in granting relief. Dominion Real Estate asserted three counterclaims against Plaintiffs: tortious interference with a contract, malicious prosecution, and civil conspiracy. Each was a potentially meritorious claim depending on the proven facts. And the court found there was no prejudice to reinstating the counterclaims because Plaintiffs could refile their motion to dismiss. Ultimately there was some prejudice in that the voluntary dismissal of the counterclaims precluded Plaintiffs from seeking recovery of their costs and attorney's fees associated with their motion to dismiss. But that prejudice does not convince us that the court abused its discretion. Under the statute permitting recovery of costs and attorney's fees for the dismissal of a claim for failure to state a claim upon which relief can be granted, voluntary withdrawal of the claim can potentially defeat the recovery of costs and fees. *See* Tenn. Code Ann. § 20-12-119(c)(5)(C).

B.

Plaintiffs' second issue is addressed to the grant of summary judgment. Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." TENN. R. CIV. P. 56.04. The party moving for summary judgment has "the burden of persuading the court that no genuine and material factual issues exist and that it is, therefore, entitled to judgment as a matter of law." *Byrd v. Hall*, 847 S.W.2d 208, 211 (Tenn. 1993).

A trial court's decision on a motion for summary judgment enjoys no presumption of correctness on appeal. *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008); *Blair v. W. Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004). It presents a question of law.

Martin, 271 S.W.3d at 84; *Blair*, 130 S.W.3d at 763. So we review the record de novo and make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been met. *Eadie v. Complete Co*., 142 S.W.3d 288, 291 (Tenn. 2004); *Blair*, 130 S.W.3d at 763.

Here, Plaintiffs alleged that Dominion Real Estate was a transferee of a fraudulent transfer. Under the Tennessee Uniform Fraudulent Transfer Act (the "Act"), a transfer is fraudulent as to a creditor if the debtor made the transfer with the actual intent to hinder, delay, or defraud any creditor of the debtor. Tenn. Code Ann. § 66-3-305(a)(1). But a transfer is not voidable if the transferee took the property (1) in good faith and (2) for a reasonably equivalent value. *Id.* § 66-3-309(a). Dominion Real Estate moved for summary judgment on the basis that it took the Hermitage property in good faith and for a reasonably equivalent value. When a party moves for summary judgment based on an affirmative defense, it has the burden of establishing all of its elements. *Carr v. Borchers*, 815 S.W.2d 528, 532 (Tenn. Ct. App. 1991). It "must produce at the summary judgment stage evidence that, if uncontroverted at trial, would entitle it to a directed verdict." *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 888 (Tenn. 2019) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986) (Brennan, J., dissenting)).

1. Good Faith

The Act does not define "good faith." It is a term that "resists an exact definition." *SecurAmerica Bus. Credit v. Schledwitz*, No. W2012-02605-COA-R3-CV, 2014 WL 1266121, at *26 (Tenn. Ct. App. Mar. 28, 2014) (citation omitted). But if anything, "it represents the absence of bad faith." *Id.* (citation omitted). This is a question of fact. *Dick Broad. Co. of Tenn. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 671 (Tenn. 2013); *Lamar Advert. Co., v. By-Pass Partners*, 313 S.W.3d 779, 791 (Tenn. Ct. App. 2009).

A buyer acts in good faith when it takes actions that are reasonable in relation to the transaction at issue. *See Jernigan v. Ham*, 691 S.W.2d 553, 557 (Tenn. Ct. App. 1984). This usually does not require a buyer to perform an exhaustive investigation of the other party to the exchange, but only one that is reasonable under the circumstances. *Cf. id.* A buyer does not act in good faith "if he had 'notice of facts that would put a reasonably prudent man on inquiry,'" yet failed to investigate further. *Liles Bros. & Son v. Wright*, 638 S.W.2d 383, 386 (Tenn. 1982) (citation omitted).

In determining that Dominion Real Estate established that it acted in good faith when it purchased the Hermitage property from LAH, the trial court relied on several facts. At the time of the purchase, "Plaintiff had not recorded a judgment lien from [the earlier case] with the Register of Deeds on the property." And in an affidavit filed in support of the motion for summary judgment, Dominion Real Estate's principal, Mr. Vaughn, denied having any knowledge of the dispute between Mr. Holland and Plaintiffs. Instead, he knew only of a personal conflict between Mr. Holland and Alan Wise, who was a principal of

both Plaintiffs. Dominion Real Estate also paid significantly more for the Hermitage property than the judgment amount awarded Plaintiffs in the earlier case.

The court examined each of the additional facts that Plaintiffs asserted in opposition to the motion for summary judgment. And it determined that, even when taken as true, the facts did not create a genuine issue for trial.

Plaintiffs argue the court's determination regarding the judgment lien was "clearly erroneous." Plaintiffs recorded their judgment before Dominion Real Estate closed on the Hermitage property. So, according to Plaintiffs, Dominion Real Estate had constructive notice of their claims and a duty to investigate further.

"Constructive notice is notice implied or imputed by operation of law and arises as a result of the legal act of recording an instrument under a statute by which recordation has the effect of constructive notice." *Blevins v. Johnson Cnty.*, 746 S.W.2d 678, 682-83 (Tenn. 1988). The record does show that a judgment lien was recorded before the closing for the Hermitage property. But, by operation of law, a judgment lien would only extend to property of the judgment debtor, in this case Mr. Holland and LD Consulting.[2] *See* Tenn. Code Ann. § 25-5-101(b)(1) (2017). The undisputed facts establish that LD Consulting no longer owned the Hermitage property when Plaintiffs obtained their judgment against Mr. Holland and LD Consulting. So the judgment lien, even if discovered, would not be constructive notice of a claim against the Hermitage property.

Plaintiffs also argue that the court improperly waived away "red flags" they identified between Dominion Real Estate and the "Holland entities." According to Plaintiffs, the concession in Mr. Vaughn's affidavit that he knew of a personal conflict between Mr. Holland and the principal of Plaintiffs as well as the other circumstances surrounding the transfer of the Hermitage property should have "triggered inquiry notice." The other circumstances included the fact that Mr. Holland "would continue participating in the development of [the Hermitage property], but with the understanding that [Mr.] Holland needed to move ownership . . . out of his entity's name." And the fact that Dominion Real Estate "agreed to purchase from LAH, LLC–an entity Dominion [Real Estate] knew Dwight Holland did not own or control–while paying an 'earnest money deposit' to LD Consulting, LLC."

In Tennessee, inquiry notice is considered "a variant of actual notice." *Blevins*, 746 S.W.2d at 683. It refers to "knowledge of facts and circumstances sufficiently pertinent in character to enable reasonably cautious and prudent persons to investigate and ascertain as

[2] A judgment lien can be effective against a person later acquiring an interest in the judgment debtor's property "only after an appropriate copy or abstract, or a notice of lis pendens, is recorded in the register's office of the county wherein the property is situated." Tenn. Code Ann. § 25-5-101(c). In response to Dominion Real Estate's statement of undisputed material facts, Plaintiffs admitted that, on the date LAH transferred title to the Hermitage property, "they had not filed their lien *lis pendens*."

to the ultimate facts." *Texas Co. v. Aycock*, 227 S.W.2d 41, 46 (Tenn. 1950) (citation omitted). As noted above, inquiry notice can defeat a claim of good faith because "whatever is sufficient to put a person upon inquiry . . . is equivalent to notice." *Ryland v. Brown*, 39 Tenn. (2 Head) 270, 273 (1858). So if a party "has sufficient information to lead him to the knowledge of a fact, he . . . [is] presumed to be cognizant of that fact." *Id.*

Here, Plaintiffs contend that, had Dominion Real Estate or "[Mr.] Vaughn inquired or conducted any due diligence concerning Holland, [t]he[y] would have discovered . . . the dispute between Holland and Alan Wise and his companies that encompassed the very property Dominion [Real Estate] was buying." But Plaintiffs fail to explain how discovery of a dispute between Mr. Holland and Plaintiffs impacts real property that was never owned by Mr. Holland. To be sure, Mr. Holland owned or controlled entities in the chain of title to the Hermitage property. Yet, Mr. Holland is not those entities. A limited liability company is a distinct legal entity, possessing a separate existence from its members and managers. *Collier v. Greenbrier Devs., LLC*, 358 S.W.3d 195, 200 (Tenn. Ct. App. 2009). And while the Hermitage property might have been involved in Plaintiffs' earlier case against Mr. Holland and LD Consulting, the record does not reflect that the earlier case concerned title to the property. The judgment in the earlier case makes no mention of the Hermitage property.[3] So, even had it looked beyond a title search, Dominion Real Estate would not have been aware that the earlier case, as Plaintiffs' claim, "encompassed the very property Dominion [Real Estate] was buying." *See Washington Mut. Bank v. N.K.T. Land Acquisitions Inc.*, No. M2007-02040-COA-R3-CV, 2008 WL 2925299, at *10 (Tenn. Ct. App. July 23, 2008) (recognizing that a reasonable inquiry is "not necessarily . . . limited to what would have been discovered by examining the records of the county's register of deeds").

The undisputed facts established that Dominion Real Estate acted in good faith in purchasing the Hermitage property from LAH. Plaintiffs put forward no facts that would put a reasonably prudent purchaser on notice of a competing claim to the property.

2. Reasonably equivalent value

Unlike "good faith," the Act does define the word "value." Tenn. Code Ann. § 66-3-304(a) (2022) (defining value as being given if "property is transferred or an antecedent debt is secured or satisfied"). It also defines "reasonably equivalent value," but in the context of a constructively fraudulent transfer. *See id.* § 66-3-304(b) (defining "reasonably equivalent value" as "acquir[ing] an interest of the debtor in an asset pursuant to a regularly

[3] The judgment incorporated by reference "[a] transcript of the court's findings of fact and conclusion of law announced from the bench." But the transcript of the findings and conclusions is not included in the record on appeal.

conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor").

Plaintiffs claimed that the transfer of the Hermitage property was made "[w]ith actual intent to hinder, delay, or defraud." *See id.* § 66-3-305(a)(1). In that context, courts have provided the meaning of "reasonably equivalent value." *See Corzin v. Fordu* (*In re Fordu*), 201 F.3d 693, 707 (6th Cir. 1999) (interpreting OHIO REV. CODE ANN. § 1136.04(A)(2)); *Janvey v. Golf Channel, Inc.*, 487 S.W.3d 560, 569 (Tex. 2016) (interpreting TEX. BUS. & COM. CODE ANN. § 24.004(a), (d)). To determine reasonably equivalent value, "courts generally compare the value of the property transferred with the value of that received in exchange for the transfer." *Corzin*, 201 F.3d at 707. A transferor has received "reasonably equivalent value" if it "received a fair exchange in the market place for the [asset] transferred." *Janvey*, 487 S.W.3d at 569-70 (quoting *In re Ozark Rest. Equip. Co.*, 850 F.2d 342, 344-45 (8th Cir. 1988)).

In determining that Dominion Real Estate established that it paid reasonably equivalent value for the Hermitage property, the trial court relied on the opinion testimony of Mr. Vaughn. On behalf of Dominion Real Estate, he opined that the fair market value at the time it was acquired was $350,000. He based his opinion on comparable properties in the area as well as the current zoning for the property.

Plaintiffs contend that the court made two errors in determining the reasonably equivalent value of the Hermitage property. First, the court measured reasonably equivalent value relative to Plaintiffs' judgment from the earlier case. Second, the court disregarded evidence from which a rational trier of fact could have found that the reasonably equivalent value exceeded $350,000. Specially, the court ignored the property's listing price and the offers for the property after it was acquired by Dominion Real Estate.

As for the first assignment of error, we do not read the court's order as referencing the amount of Plaintiffs' judgment in the earlier case for purposes of determining reasonably equivalent value. Instead, the court appears to consider the amount of the prior judgment in the context of its good faith analysis.

As for the second, the trial court did not ignore Plaintiffs' evidence. Instead, it focused on the only valuation evidence for the Hermitage property as of the date Dominion Real Estate acquired title. The only competent evidence of value as of that date was Mr. Vaughn's opinion testimony. *See Haynes v. Cumberland Builders*, *Inc.*, 546 S.W.2d 228, 234 (Tenn. Ct. App. 1976) (recognizing an "owner of real property is competent to . . . give his opinion as to that property's value"); *see also Stinson v. Stinson*, 161 S.W.3d 438, 446 (Tenn. Ct. App. 2004). Plaintiffs relied on a later listing price for the property that Mr. Vaughn explained was based on rezoning the property and on later purchase offers

containing "many one-sided contingencies." So we agree with the trial court that Plaintiffs' evidence did not create a factual issue for trial.

C.

Dominion Real Estate also seeks an award of attorney's fees as damages for a frivolous appeal. *See* Tenn. Code Ann. § 27-1-122 (2017). The statute authorizing an award of damages for a frivolous appeal "must be interpreted and applied strictly so as not to discourage legitimate appeals." *Davis v. Gulf Ins. Grp.*, 546 S.W.2d 583, 586 (Tenn. 1977). A frivolous appeal is one "utterly devoid of merit." *Combustion Eng'g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978).

This appeal was not devoid of merit. Plaintiffs "made legitimate arguments and cited to relevant law and facts." *See Coolidge v. Keene*, 614 S.W.3d 106, 120 (Tenn. Ct. App. 2020). Their appeal was unsuccessful, not frivolous. *See id*. So we deny Dominion Real Estate's request for an award of attorney's fees.

III.

The trial court did not abuse its discretion in setting aside the dismissal of Dominion Real Estate's counterclaims. And Dominion Real Estate was entitled to judgment as a matter of law on its defense to the avoidance action. So we affirm.

s/ W. Neal McBrayer
W. NEAL MCBRAYER, JUDGE