IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 17, 2023 Session

VFL PROPERTIES, LLC v. JOHN KENNETH GREENE, ET AL.

Appeal from the Chancery Court for Knox County
No. 197789-1 John F. Weaver, Chancellor

No. E2022-00261-COA-R3-CV

This lawsuit arises from a real property/boundary dispute between the plaintiff and the defendants. The trial court found that a prior circuit court condemnation judgment vesting title to the Knoxville Community Development Corporation "bars the claim of [the plaintiff] as an impermissible collateral attack upon the condemnation judgment." Thus, the trial court ruled that the condemnation judgment barred the plaintiff's adverse possession claim against the defendants. The plaintiff appeals. We affirm.

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

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, and KRISTI M. DAVIS, JJ., joined.

Ryan L. Sarr, Knoxville, Tennessee, for the appellant, VFL Properties, LLC.

T. Michael Craig-Grubbs, Knoxville, Tennessee, for the appellees, John Kenneth Greene, and Katherine Greene.

OPINION

I. BACKGROUND

This case involves a dispute over ownership of the land formerly known as Lot 21 of the Lonsdale Land Company Addition in Knoxville (the "Disputed Property"), which, prior to the filing of this adverse possession lawsuit, was combined with former Lot 22 to create Lot 21R, bearing the address 1752 Ohio Avenue. The Disputed Property was previously owned by someone with the last name of Sams and the address was 1754 Ohio

Avenue. Lot 21R shares a common boundary line with Lot 20, which bears the address 1758 Ohio Avenue. The plaintiff, VFL Properties, LLC ("VFL"), purchased Lot 20 from Dan Evans in 2018; Mr. Evans purchased 1758 Ohio Avenue at a tax sale in 2002.

Several years prior to the filing of this lawsuit, on November 1, 2012, the Disputed Property was the subject of a condemnation action brought by Knoxville Community Development Corporation ("KCDC") as part of the Lonsdale Redevelopment and Urban Renewal Plan. KCDC named as defendants at least six interested parties, including "Barbara Jean Grant, Executrix of [sic] Estate of Clifford Roberts." Ms. Grant resided at 1758 Ohio Avenue with Mr. and Mrs. Roberts from the mid-1980s until sometime in 2018, and was the only resident at that property following the death of Mr. Roberts in 1990.

Notices for payment of property taxes for the Disputed Property were sent in the care of Clifford Roberts. Ms. Grant testified that Mr. Roberts began paying property taxes on the Disputed Property, and that she continued to receive the property tax notices after Mr. Roberts' death in 1990, but she only paid those taxes once. Ms. Grant further related that the tax notices were "in the lady's name [Sams]. It wasn't Roberts. They didn't buy it." According to Ms. Grant, Mr. Roberts enclosed the Disputed Property with a fence and used the driveway area to park his car and truck. After Mr. Roberts' death, Ms. Grant continued to attempt to care for the Disputed Property, testifying that "[she] was responsible for it because [she] lived there." She mowed the grass on the Disputed Property and planted flowers and trees on it. She exclusively used the driveway from the time she moved in until she moved out. Her visitors would always use the driveway when arriving and departing.

Dan Evans, who was the owner of Lot 20 in 2012, was not named as a defendant on KCDC's complaint of condemnation of the Disputed Property. Notice of the lawsuit was served by publication and entered by default. Ultimately, an Order of Possession, Vesting Title and Requiring Payment of Taxes was entered on January 11, 2013, finding that "[a]ll defendants [were] served with process either personally or through publication of and granting title and possession of the Disputed Property to KCDC" pursuant to Tennessee Code Annotated section 29-17-501, *et. seq.* That order was recorded in the Knox County Register of Deeds the same day.

Dan Evans testified that he visited 1758 Ohio Avenue "maybe a dozen" times from the point he purchased Lot 20 in 2002 until he sold it to VFL in 2018. According to Ms. Grant, however, he visited the property "about twice" during this time. She further related that Mr. Evans never had anyone mow the Disputed Property. Mr. Evans acknowledged that "it's possible the County may have" mowed the Disputed Property, "like it got high and they cut it." He never paid property taxes on Lot 21, never had a survey conducted of either lot, and never received a deed to Lot 21. He testified that he did not believe there would be any way for the City of Knoxville to connect his name to the Disputed Property.

Darrell Evans — no relation to Dan Evans — purchased Lots 21 and 22 (now owned by the defendants, John Kenneth Greene and Katherine Greene ("the Greenes")) from KCDC in April 2017. He testified as follows:

> A. … I found those lots online. … I bought the first one, and then … they asked me to buy the second one.
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> * * *
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> A. The first one was 1752 [Lot 22] that I made the first offer on.[1]
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> Q. And KCDC requested that you purchase 1754 [Disputed Property] as well?
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> A. They offered it to me. Kathy Ellis [with KCDC] suggested that I buy the other one and she would give me a deal on it for a little bit less than the … asking price. And so we thought it was a good idea to purchase it and combine them, have a bigger lot for a house.
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> * * *
>
> Q. Did KCDC require that you combine those two lots?
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> A. Yes. That was the agreement I had ….

Mr. Evans hired an engineer to conduct a survey and combine the lots into what is now Lot 21R (1752 Ohio Avenue). Mr. Evans took possession upon closing and removed the fence that had been present on the Disputed Property, as required by an agreement with KCDC.[2] He then built a new home on Lot 21R.

VFL purchased Lot 20 at 1758 Ohio Avenue from Dan Evans a year later in April 2018. According to John Kerrigan, the sole member of VFL, at the time of purchase, he believed the driveway and Disputed Lot were part of VFL's property. VFL allowed Ms. Grant to continue living at 1758 Ohio Avenue for $100 a month while VFL worked to find her "adequate housing." Mr. Kerrigan never mowed the Disputed Property himself, nor did he have anyone mow it on VFL's behalf. He never witnessed Ms. Grant coming or going from the house at 1758 Ohio Avenue, did not have a survey conducted on the land he purchased, and did not read the deed by which VFL acquired title to Lot 20.

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[1] KCDC had acquired 1752 Ohio Avenue on May 4, 2011, from its owner. The house previously located at 1752 Ohio Avenue had been demolished and removed at the time Darrell Evans purchased the property from KCDC in 2017.

[2] He was also required to remove the driveway.

In July 2018, Darrell Evans sold the property at 1752 Ohio Avenue to his sister-in-law, Katherine Greene; shortly thereafter, she quitclaimed half of her interest in Lot 21R to her son, John Kenneth Greene. Mr. Greene immediately moved into the home at 1752 Ohio Avenue and still resides there. Mr. Greene testified that Ms. Grant, who still lived at 1758 Ohio Avenue at the time, "wasn't able to mow," and that he helped mow the Disputed Property. After Ms. Grant moved, he recalled a conversation with Mr. Kerrigan in which "he asked me if he could buy a portion of the property … that if he didn't–he wasn't able to sell the property." Mr. Greene claimed that Mr. Kerrigan stated: "[I]f I didn't sell him a piece of it that he would have to rent the property and you don't know what that brings with it[;] … and then he mentioned also that if it wasn't done that way there would be litigation of some sort."

According to Mr. Kerrigan, he claimed to have said to Mr. Greene: "I'd like to work something out" instead of spending a bunch of money on attorneys." When asked if he would characterize his statement to Mr. Greene as an offer to purchase the Disputed Property, Mr. Kerrigan testified as follows: I think I said something to the effect of, "I can give the money to an attorney, or we can—we can give it to you …."

The record reveals that Mr. Kerrigan also contacted Darrell Evans to state that "they could get a better tenant if . . . they could use the driveway and he -- they would be willing to mow and maintain that lot." Mr. Evans related that Mr. Kerrigan called him a second time and "there was some talk of some money, that maybe he'd pay a small fee . . . to get the use of the driveway," but Mr. Evans ultimately told Mr. Kerrigan that they "couldn't let him use it." Mr. Evans recalled a third conversation with Mr. Kerrigan, during which he was told, "I'm gonna spend some money till [sic] somebody, either you or my lawyer, or a lawyer." According to Mr. Evans, Mr. Kerrigan never stated to him that he believed he was the rightful owner of the Disputed Property.

On April 1, 2019, VFL filed this action seeking to establish ownership of the Disputed Property by adverse possession. After hearing testimony on January 10 and 11, 2022, the trial court concluded that Mr. Roberts' and then Ms. Grant's continued use and occupation of the Disputed Property satisfied the necessary elements of VFL's adverse possession claim.[3] However, the trial court ruled that the circuit court's condemnation judgment of the Disputed Property barred VFL's adverse possession claim as an impermissible collateral attack upon the condemnation judgment and dismissed the action. The trial court held that VFL's only possible remedy was to file to reopen the circuit court action or to file an independent inverse condemnation action against KCDC for the taking

[3] The trial court observed that VFL and Mr. Evans and his predecessors did not pay taxes on the Disputed Property for twenty years and that the claim and title by adverse possession would be barred by Tennessee Code Annotated section 28-2-110. However, the defense was not pled affirmatively, and the plaintiff objected to its consideration.

of the Disputed Property. The trial court likewise dismissed the Greenes' counterclaims. VFL filed a timely notice of appeal.

II. ISSUE

The issue presented for review by VFL is as follows:

> Whether VFL's title to real property acquired via adverse possession survives a government agency's condemnation judgment when the government agency never provided notice to the adverse possessor, never took physical possession of the property, and subsequently sold the property to a private citizen.

III. STANDARD OF REVIEW

The appeal of this bench trial is governed by Rule 13(d) of the Tennessee Rules of Appellate Procedure. The appellate court reviews the trial court's factual findings de novo, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. R. App. 13(d); *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000). "In order for the evidence to preponderate against the trial court's findings of fact, the evidence must support another finding of fact with greater convincing effect." *Wood v. Starks*, 194 S.W.3d 255, 257 (Tenn. Ct. App. 2006). We review questions of law de novo with no presumption of correctness. *Bowden*, 27 S.W.3d at 916.

IV. DISCUSSION

VFL claims that Dan Evans, as its predecessor in ownership, did not have an opportunity to defend his interest in the Disputed Property. VFL argues that its remedy is not limited to inverse condemnation and/or reopening the circuit court action because KCDC never took possession of the disputed property and did not own the property when VFL filed the lawsuit. According to VFL, it can still be vested with title to the disputed property via adverse possession because the disputed property is now record-owned by private citizens and not a governmental agency.

In the context of eminent domain judgments, 29A C.J.S. *Eminent Domain* section 517 states that "[a] judgment or award in condemnation proceedings, if rendered by a competent court, generally is not open to collateral attack, except where the judgment is void." As noted in *MacCaughelty v. Sherrod*, No. M2020-00403-COA-R3-CV, 2023 WL 2924595 (Tenn. Ct. App. Apr. 13, 2023):

> Our Supreme Court has set forth the legal principles applicable to determine

> whether a judgment is void. "'[A] void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final.'" *Turner v. Turner*, 473 S.W.3d 257, 270 (Tenn. 2015). Specifically, "[a] judgment rendered by a court lacking either personal or subject matter jurisdiction is void." *Id.* (citing *Ins. Corp. of Ireland*, 456 U.S. 694, 694 (1982); *Hood v. Jenkins*, 432 S.W.3d 814, 825 (Tenn. 2013); *Gentry v. Gentry*, 924 S.W.2d 678, 680 (Tenn. 1996)).
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> Nonetheless, a judgment "will be held void only when 'its invalidity is disclosed by the face of that judgment, or in the record of the case in which that judgment was rendered.'" *Id.* (quoting *Giles v. State ex rel. Giles*, 235 S.W.2d 24, 28 (1950); *Hood*, 432 S.W.3d at 825). Consequently, "[a]ll decrees not thus appearing on their face to be void are absolutely proof against collateral attack, and no parol proof is admissible on such an attack to show any defect in the proceedings, or in the decree." *Gentry*, 924 S.W.2d at 680 (quoting William H. Inman, Gibson's Suits in Chancery § 228 at 219-20 (7th ed. 1988)). Stated differently, "[i]f the defect allegedly rendering the challenged judgment emanated and must be established by additional proof, the judgment is merely voidable, not void." *Turner*, 473 S.W.3d at 271 (citing *Hood*, 432 S.W.3d at 825). As a result, in determining whether a judgment is void, we "must confine [our] review to the record of the proceeding from which the judgment emanated." *Id.* at 275 (citing *Hood*, 432 S.W.3d at 825).

MacCaughelty, 2023 WL 2924595, at *4.

The record before the trial court clearly demonstrated that neither Dan Evans nor VFL were record land owners of the Disputed Property, as neither held any deed or muniment of title for the Disputed Property. As observed by the trial court, "when the record shows that the court had jurisdiction over the res, being the property, and had before it the record land owners, complaints regarding a judgment of condemnation are not cognizable upon collateral objection." VFL, however, does not assert that the circuit court condemnation order is void. It relies upon the statutory language found in Tennessee Code Annotated sections 29-17-503(a) and -704(a) to support its contention that because Dan Evans was not made a party to the condemnation proceeding, the 2013 condemnation order of the circuit court has no effect on VFL's ability to assert ownership over the Disputed Property.

> Tennessee Code Annotated section 29-17-701(a) provides that
>
> [w]henever the state of Tennessee or any county therein . . . shall desire to take or damage private property in pursuance of any law so authorizing, and shall find or believe that the title of the apparent or presumptive owner of

> such property is defective, doubtful, incomplete or in controversy; or that there may be persons unknown or nonresidents who have or may have some claim or demand thereon, or some actual or contingent interest or estate therein; . . . or that there are taxes due or that should be paid thereon; or shall, for any reason, conclude that it is desirable to have a judicial ascertainment of any question connected with the matter; the state, county or the United States as the condemner, through any authorized representative, ... may petition the circuit court of the county having jurisdiction, for a judgment in rem against such property, condemning the same to the use of the petitioner upon payment of just and adequate compensation therefor to the person or persons entitled to such payment.

Tenn. Code Ann. § 29-17-701(a). When condemning the Disputed Property, KCDC properly recognized, as can be seen in its petition to the circuit court, that the status of the title to the Disputed Property was "defective, doubtful, incomplete or in controversy" and named every potential title owner to the Disputed Property, which included Ms. Grant in her capacity as executrix of Clifford Roberts' estate. Construction of the statutes under which KCDC obtained title to the Disputed Property reveals that the Disputed Property was "condemned and taken for legitimate public use as defined in § 29-17-102." *See* Tenn. Code Ann. § 29-17-103. Accordingly, KCDC lawfully obtained title to the Disputed Property for a specific and statutorily authorized public use: the Lonsdale Redevelopment and Urban Renewal Plan. The relevant subsection of Tennessee Code Annotated section 29-17-102(2) defines what constitutes a "public use" for purposes of condemnation proceedings by housing authorities:

> (2) "Public use' shall not include either private use or benefit, or the indirect public benefits resulting from private economic development and private commercial enterprise, including increased tax revenue and increased employment opportunity, *except as follows*:
> . . .
> (C) *The acquisition of property by a housing authority or community development agency to implement an urban renewal or redevelopment plan in a blighted area*, as authorized by title 13, chapter 20, part 2 or title 13, chapter 21, part 2.

Tenn. Code Ann. § 29-17-102(2)(C) (emphasis added). KCDC properly exercised its statutorily-granted powers to lawfully condemn the Disputed Property for a statutorily-defined public use. That KCDC ultimately sold the Disputed Property to Darrell Evans, together with Lot 22, subject to several restrictions, covenants and conditions imposed by KCDC, does not defeat the existence of the Lonsdale Redevelopment and Urban Renewal Plan.

The Tennessee State Constitution provides that "no man's particular services shall

be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor." Tenn. Const. Art. 1, § 21. This provision clearly recognizes the power 'of the government to exercise eminent domain to take private property without the owner's consent, "but it limits that right by entirely prohibiting the taking of private property for private purposes, and by requiring just compensation when private property is taken for public use.'" *Jackson v. Metro. Knoxville Airport Auth.*, 922 S.W.2d 860, 861 (Tenn. 1996) (citations omitted). The procedure for the exercise of the governmental right of eminent domain and the rights of private citizens to challenge such governmental action are codified. *See* Tenn. Code Ann. §§ 29-16-101 to 29-16-127; 29-17-101 to 29-17-1004. As already noted above, the General Assembly has defined condemnation proceedings by housing authorities for the purposes of redeveloping blighted areas as a specific public use.

When a governmental entity lawfully condemns real property for a legitimate public purpose, those with an interest in the taking are not entitled to an undoing of that taking. As observed by the Indiana Supreme Court in *Dible v. City of Lafayette*, 712 N.E.2d 269 (Ind. 1999), "[e]quitable relief is not available to enjoin an alleged taking of private property for a public use, duly authorized by law, when a suit for compensation can be brought against the government entity subsequent to the taking." *Id.* at 273. We conclude the trial court properly determined that inverse condemnation is the only remedy for VFL after KCDC exercised complete dominance and ownership of the Disputed Property.

An action for inverse condemnation requires: "(1) a taking or damaging; (2) of private property; (3) for public use; (4) without just compensation being paid; and (5) by a governmental entity that has not instituted formal proceedings." 29A C.J.S. *Eminent Domain* § 566. Inverse condemnation was explained by the Tennessee Supreme Court in *Edwards v. Hallsdale-Powell Utility District Knox County, Tennessee*, 115 S.W.3d 461 (Tenn. 2003), as follows:

> "Inverse condemnation" is the popular description for a cause of action brought by a property owner to recover the value of real property that has been taken for public use by a governmental defendant even though no formal condemnation proceedings have been instituted. *See Johnson v. City of Greeneville*, 435 S.W.2d 476, 478 (Tenn. 1968). A "taking" of real property occurs when a governmental defendant with the power of eminent domain performs an authorized action that "destroys, interrupts, or interferes with the common and necessary use of real property of another." *Pleasant View Util. Dist. v. Vradenburg*, 545 S.W.2d 733, 735 (Tenn. 1977).

Edwards, 115 S.W.3d at 464.

Ownership of an interest in the property is an element of a claim for inverse condemnation. In any inverse condemnation action, it is "incumbent upon the plaintiff to

show that he is the owner of the land which has been taken for the purposes of internal improvement if the ownership is denied by the defendant." *Cox v. State*, 399 S.W.2d 776 (Tenn. 1965). As VFL has established an interest in the Disputed Property, the remedy is inverse condemnation.

In codifying the government's eminent domain power, the General Assembly enacted Tennessee Code Annotated section 29-17-503(a):

> (a) From the filing of the declaration of taking and the deposit in court to the use of the *persons* entitled thereto of the amount of the estimated compensation stated in the declaration, title to the property described as being taken by the declaration shall vest in the housing authority, free from the right, title, interest or lien of all *parties* to the cause, and such property shall be deemed to be condemned and taken for the use of the housing authority, and the right to just compensation for the same shall vest in the *persons* entitled thereto.

Tenn. Code Ann. § 29-17-503(a) (emphasis added). The Greenes argue that the statutory language reveals the General Assembly purposefully used two different words when describing the effect of a taking by a housing authority—one for the effect on those made parties to the proceeding and another for those entitled to just compensation after such taking (i.e., "persons"). According to the Greenes, the statute contemplates that the "persons" who have a vested right to just compensation for a taking by a housing authority do not have to be "parties" to the condemnation proceeding, but they nevertheless maintain a vested right to just compensation for any property taken through eminent domain. We find this argument persuasive.

As the trial court in this case found, KCDC indisputably obtained title to the Disputed Property through a statutorily sanctioned condemnation proceeding for an authorized public use, and through that condemnation proceeding the circuit court obtained jurisdiction of the res, leaving only the matter of the vested right to just compensation for "the persons entitled thereto." Tenn. Code Ann. § 29-17-503(b). VFL may not simply choose to reclaim ownership of the Disputed Property rather than seek just compensation for its taking. VFL's legal remedy for the condemnation of land it claims to own by adverse possession is just compensation, whether obtained by reopening the condemnation case or through a separate action against KCDC.

Interestingly, VFL admits that it failed to make any investigation of the status of the title to the Disputed Property when it purchased Lot 20. KCDC's condemnation order was recorded in the Knox County Register of Deeds the same day the order was entered, and it is well established that "[t]he purpose of recording and registering deeds is to give the world constructive notice of transfers." *Cheatham v. Carter County*, 363 F.2d 582, 585 (6th Cir. 1966). Yet VFL now seeks to bypass the eminent domain powers of the

government by accusing KCDC of the very negligence of which VFL itself is guilty by failing to engage in due diligence prior to purchasing Lot 20. We must agree with the Greenes that VFL's position would create confusion in the law by allowing private citizens to completely nullify the ability of the government to exercise its inherent power of eminent domain, despite those private citizens already having a vested constitutional and statutory right to just compensation.

V. CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court. The matter is remanded for such further proceedings as may be necessary. The cost of the appeal is assessed to the appellant, VFL Properties, LLC.

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JOHN W. MCCLARTY, JUDGE