

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 1, 2001 Session

STATE OF TENNESSEE, ET AL. v. A. D. WRIGHT, ET UX, ET AL.

**Appeal from the Chancery Court for Davidson County
No. 99-705-II Carol L. McCoy, Chancellor**

No. M2000-03198-COA-R3-CV - Filed September 21, 2001

Edwin Lee Nix and Ira M. Nix (“Purchasers”) bought a parcel of land (“Property”) at a tax sale in September 1999. Other than the tax lien, Purchasers’ title search uncovered no liens on the Property. Unbeknownst to Purchasers, the Property had been devised to a previous owners’ daughter who had given a Deed of Trust for the Property to Associates Financial Services Company, Inc. (“Lienholder”) as security for a loan. In May 2000, pursuant to Tenn. Code Ann. § 67-5-2701(a), the Lienholder filed a Notice of Redemption on the Property to which Purchasers objected. Part of the basis of Purchasers’ objection was that the Lienholder’s security interest in the Property was not within the chain of title and, therefore, the Lienholder had no standing to redeem the Property. The Trial Court referred the question to the Clerk and Master, acting as Master. After a hearing, the Master found that the Lienholder was a “valid redeptonor” under the redemption statute, and the Trial Court subsequently concurred with this finding. Purchasers appeal. We affirm.

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

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and HERSCHEL P. FRANKS, J., joined.

Homer R. Ayers, Goodlettsville, Tennessee, for the Appellants, Edwin Lee Nix, *et ux* Ira M. Nix.

Charles M. Walker, Nashville, Tennessee, for the Appellee, Associates Financial Services Co., Inc.

OPINION

Background

A.D. and Inez Wright purchased the Property located in Davidson County, in 1974. In 1996, the Wrights' daughter, Angelia Wright Morris ("Morris"), inherited the Property from her father, A.D. Wright, through his will ("Will"). The Will was recorded in Davidson County Probate Court. After inheriting the Property, Morris executed a Deed of Trust for the Property in favor of her lender, Associates Financial Services Company, Inc., as security for a loan. The Deed of Trust was recorded with the Davidson County Register of Deeds in November 1996.

The record on appeal contains a notice showing that in 1999, the Metropolitan Government of Nashville attempted to serve A.D. Wright, then deceased, for non-payment of 1997 taxes for the Property. The return mail receipt, which was date-stamped by the Trial Court clerk in May 1999, bears the signature of A.D. Wright's daughter, Morris. In March 1999, Morris and her husband filed a Chapter 13 petition in United States Bankruptcy Court. The technical record on appeal contains a copy of the cover sheet for Morris' bankruptcy petition which was enclosed with correspondence from Morris' bankruptcy attorney to the Clerk and Master of the Trial Court. This correspondence states that Morris is the owner of the Property pursuant to A.D. Wright's Will and bears a date-stamp by the Trial Court clerk of June 3, 1999.

Thereafter, the Trial Court issued a notice of Delinquent Tax Sale scheduled for September 15, 1999. The notice did not state that Morris was the owner of the Property but, instead, was styled "*State of Tennessee, etc., vs. Delinquent Taxpayers for 1997 Taxes, etc. et al, A.D. Wright, ET UX.*" The Property was purchased at the tax sale for \$30,000 by Purchasers. Prior to the tax sale, Purchasers asked a title company to perform a title search. The record on appeal shows that the title opinion was provided to Purchasers nearly two weeks *after* the sale of the Property. With the exception of the tax lien and the Wrights' 1974 deed of trust which had been released, the title search showed no liens or encumbrances, including the Lienholder's mortgage. The record on appeal shows that Purchasers' title searcher performed a search only in the Register of Deeds office using the grantor/grantee index and, consequently, did not locate the Will on file in the Probate Court.

In October 1999, the Trial Court, in its Final Decree Confirming Sale, stated, in pertinent part, as follows:

All rights, title and interest of the Defendant(s) A.D. Wright, Et Ux and any and all unknown heirs-at-law or devisees, and of all other parties to this suit and to said parcel of land be divested out of them and each of them and be vested in the purchaser(s) Edwin Lee & Ira M. Nix *subject to the equity of redemption.*

(emphasis added).

In May 2000, the Lienholder filed a Notice of Redemption and tendered \$4,290 to redeem the Property.¹ In response, Purchasers filed an Objection to Redemption in which they contended that the Deed of Trust given to the Lienholder by Morris was not within the chain of title and thus, not properly perfected. Purchasers argued that consequently, the Lienholder had no standing to redeem the Property.² In its response, the Lienholder argued that it was entitled to redeem the Property under Tenn. Code Ann. § 67-5-2701(a) and that its Deed of Trust was properly recorded with the Davidson County Register of Deeds.

Thereafter, a hearing was held before the Clerk and Master, acting as Master, regarding the Purchasers' Objection to Redemption.³ The parties agreed to limit this hearing to the issue of whether the Lienholder was a proper party to redeem the Property. At the hearing, one of the Purchasers, Edwin Lee Nix, testified that he understood at the time of the sale that the people who owned the Property had a year to pay the delinquent taxes and redeem the Property. Purchasers' title searcher testified that the Lienholder's Deed of Trust was outside the chain of title.

After the hearing, the Master filed a report ("Report") in which she made the following findings:

- 1) the mortgage was in the name of the Morrises and not in the name of the taxpayer, A.D. Wright;
- 2) the parties agreed that the Will was recorded with the Probate Court but was not recorded with the Register of Deeds;
- 3) both the Purchasers and the Metropolitan Government of Nashville performed title searches which did not locate A.D. Wright's Will since neither party searched the Probate Court's records;
- 4) the Metropolitan Government of Nashville's title search was performed pursuant to Tenn. Code Ann. § 67-5-2502(c), and therefore, its purpose was to "find all persons who should know about the sale before it takes place";

¹ For simplicity's sake, we use round numbers in this opinion.

² The Purchasers also filed a claim against the Lienholder for charges in the amount of \$39,000, but this issue is not before this Court on appeal.

³ Although the record on appeal does not contain a copy of the Trial Court's Tenn. R. Civ. P. 53 order of reference, the Master Report states "[c]laims in delinquent tax sale redemptions having been referred to the master by the court in its order dated July 14, 1992. . . ."

- 5) Purchasers did not rely upon any other title search besides their own, and the purpose of their title search was to “notify them of all ownership interests”; and
- 6) Purchasers did not provide any authority for their argument that the Lienholder does not have standing to redeem the Property because the mortgage was outside the chain of title at the Register of Deeds office.

The Master concluded in her Report that “[a]s the mortgagee, [the Lienholder] has an interest in the Property and pursuant to T.C.A. § 67-5-2701 is a valid redeempter.”

Thereafter, Purchasers filed an objection to the Report, and the Lienholder filed a response. The Trial Court, in its Order, found that Purchasers’ objection to the Master’s findings were not supported by authority. In concurring with all of the Master’s findings, the Trial Court held that the Lienholder is a “valid party entitled to redeem the [P]roperty . . .” Purchasers appeal. We affirm.

Discussion

_____ Although not exactly stated as such, Purchasers raise the following issues: 1) whether the Lienholder has standing to redeem the Property when Purchasers did not have notice, actual or constructive, of the lien on the Property since the Deed of Trust and the Will are not in the chain of title; and 2) whether the Lienholder is not the owner of the Property but simply a creditor who has no more than a chattel interest in the Property.

The Lienholder generally states the issues on appeal as: 1) whether the Lienholder is a party entitled to redeem the Property pursuant to Tenn. Code Ann. § 67-5-2701(a), and if so, whether Purchasers have any defenses to the Lienholder’s right to redeem the Property; and 2) whether Purchasers are charged with notice of the mortgage lien since it was properly recorded with the Davidson County Register of Deeds.

The Trial Court’s referring this matter to the Master, her Report, and the Trial Court’s Order in which it adopted the factual findings of the Master affect our standard of review on appeal. *Aussenberg v. Kramer*, 944 S.W.2d 367, 370 (Tenn. Ct. App. 1996). A concurrent finding of fact by a master and a trial court “is conclusive on appeal, except where the finding is on an issue not appropriate for referral, where it is based on an error of law[,] or a mixed question of fact and law, or where the factual finding is not based on material evidence.” *Id.*; see also Tenn. Code Ann. §27-1-113 (stating that “the court of appeals shall not have the right to disturb [a concurrent finding of the master and chancellor]”).

With respect to the Master’s and the Trial Court’s concurrent factual findings, we hold that the record on appeal contains material evidence to support these findings. See

Aussenberg v. Kramer, 944 S.W.2d at 370. Moreover, the parties’ arguments on appeal do not appear to dispute these factual findings but, instead, involve the legal conclusion that the Lienholder is a “person entitled to redeem” the Property under Tenn. Code Ann. § 67-5-2701(a), and that Purchasers do not have any valid defenses to the Lienholder’s right of redemption.⁴ Unlike the factual findings, this conclusion of the Master, with which the Trial Court concurred, is not afforded the same presumption of correctness on appeal since it involves a mixed question of law and fact. *Id.*; *Long v. Long*, 957 S.W.2d 825, 829-30 (Tenn. Ct. App. 1997). Accordingly, our review of this issue is *de novo* with no presumption of correctness. *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997).

The statute that the Lienholder relies upon to assert its right of redemption is Tenn. Code Ann. § 67-5-2701(a), which provides as follows:

For purposes of this part, “person entitled to redeem property” includes *any person who owns a legal or equitable interest in the property sold at the tax sale and creditors of the taxpayer having a lien on the property*; provided, that once property has been redeemed by the taxpayer, no further redemptions under this part are permissible. The taxpayer may redeem the property regardless of whether any other person has previously redeemed the property during the one-year redemption period.⁵

(emphasis added).

We agree with the Lienholder’s argument that the plain language of the above-cited statute does not limit the “person entitled to redeem property” to those persons about whom Purchasers had prior notice. Purchasers do not cite any authority that a “person entitled to redeem property” had to be within the chain of title, nor have we been able to locate any authority which supports this argument. Further, whether or not the Will is within the chain of title is immaterial to our decision because, on its face, Tenn. Code Ann. § 67-5-2701(a) allows redemption by “any person who owns a legal or equitable interest . . .” and “creditors of the taxpayer having a lien on the property. . . .” The Lienholder is such a “person” Accordingly, we agree with the Master’s and Trial Court’s concurrent finding that, despite Purchasers’ lack of knowledge of the Lienholder’s claim, the Lienholder was entitled to redeem the Property.

⁴ The parties do argue on appeal about the extent of the Purchaser’s title search and whether the title searcher should have been able to locate the lien on the Property. These matters, however, are, for the most part, not germane to the dispositive issue on appeal.

⁵ Tenn. Code Ann. § 67-5-2702(a) provides that the one-year redemption period referenced in § 67-5-2701(a) is “within one (1) year after entry of an order of confirmation of the tax sale by the court. . . .”

We acknowledge that Purchasers acted cautiously and requested a title search prior to the tax sale and that, unfortunately, their title search did not uncover the Will or the Deed of Trust. Nevertheless, as shown by the testimony at the Master's hearing, Purchasers knew that since they purchased the Property at a tax sale, the Property could be redeemed within one year by the owner of the Property. In addition, the Final Decree Confirming Sale clearly stated that the purchase of the Property was "subject to the equity of redemption." Also, the technical record on appeal contains a copy of correspondence from Morris' bankruptcy counsel which states that Morris owned the Property and shows that this correspondence was filed with the Trial Court well in advance of the tax sale. Moreover, it is undisputed that A.D. Morris' Will, which devised the Property to Morris, was properly filed with the Probate Court. But for Purchasers' title searcher's admitted failure to check with the Probate Court for the existence of a will, Purchasers could have found the lien on the Property. Nevertheless, whether Purchasers had actual notice or should be charged with notice of the lien on the Property is irrelevant under the redemption statute as previously discussed in this Opinion. *See* Tenn. Code Ann. § 67-5-2701(a).

Since the Lienholder is a "person entitled to redeem property" under Tenn. Code Ann. §67-5-2701(a), we find no error in the Trial Court's conclusion that the Lienholder has the right of redemption in this matter. The remaining issues raised on appeal are pretermitted by our holding.

Conclusion

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court for such further proceedings as may be required, if any, consistent with this Opinion, and for collection of the costs below. The costs on appeal are assessed against the Appellants, Edwin Lee Nix and Ira M. Nix, and their surety.

D. MICHAEL SWINEY, JUDGE