

# Grand Hotel, LP v. Cardin

Court of Appeals of Tennessee, at Nashville  
July 12, 2005, Session ; August 11, 2005, Filed  
No. M2004-00996-COA-R3-CV

## Reporter

2005 Tenn. App. LEXIS 489; 2005 WL 2012778

GRAND HOTEL, LP v. TERRY W. CARDIN, ET AL.

**Notice:** [\*1] NOT FOR PUBLICATION

**Subsequent History:** Appeal denied by Grand Hotel, L.P. v. Cardin, 2006 Tenn. LEXIS 260 (Tenn., Mar. 27, 2006)

**Prior History:** Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed. A Direct Appeal from the Chancery Court for Marion County. No. 6317. The Honorable Jeffrey F. Stewart, Chancellor.

**Disposition:** Judgment of the Chancery Court Affirmed.

**Counsel:** Paul D. Cross of Monteagle, Tennessee, for Appellants, Terry W. Cardin and Cheryl K. Cardin.

Tracy C. Wooden of Chattanooga, Tennessee for Appellee, Grand Hotel, L.P.

**Judges:** W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which DAVID R. FARMER, J. and HOLLY M. KIRBY, J., joined.

**Opinion by:** W. FRANK CRAWFORD

## Opinion

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This is a quiet title action. Plaintiff sued defendants, purchasers of land at a tax sale, alleging that it was and is the owner of the subject land and did not receive notice of the tax sale. After a nonjury trial, the trial court found that title to the subject property was in plaintiff, and that the tax sale to defendants was void. Defendants appeal. We affirm.

### MEMORANDUM OPINION <sup>1</sup>

[\*2] Plaintiff, Grand Hotel, L.P. ("Plaintiff" or "Grand Hotel"), filed a complaint to quiet title on January 25, 1999, against Defendant, Harry W. Cardin and Cheryl K. Cardin ("Defendants" or "Cardin"). The complaint alleges in pertinent part:

\* \* \*

(hereafter called the "Trusts") by deeds recorded at Book 235, Page 411 and in Book 235, Page 435, in the Register's Office of Marion County.

5. The Trusts acquired the Property as part of a total of 2,896.5 acres by a deed from John C. Miles and wife, recorded at Book 6B, Page 316 in the Marion County Register's Office. The Property is the property described as Tract 2 in said deed recorded in Book 6B, Page 316, said Register's Office.

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<sup>1</sup> Rule 10 (Court of Appeals). Memorandum Opinion. -- (b) The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

6. Prior to 1976, the Trusts paid taxes on the entire 2,896.5 acres under one tax map parcel number.
7. In 1976 or 1977, the Marion County property tax maps were revised and the Trusts' property was split into two tax map parcel numbers.
8. The Property became tax map parcel number 153-5.
9. The balance of the Trusts' property became tax map parcel number 152-4.
10. The acreage for tax map parcel number 152-4 was stated to be 2,96.5 acres, causing the Trusts to [\*3] believe the Trusts were paying taxes on all of the Trusts' property under one tax bill on tax map parcel number 152-4. If a separate tax bill was issued on tax map parcel 153-5, the separate tax bill was not received by the Trusts.
11. Pursuant to a judgment entered in cause # 4460 in the Chancery Court of Marion County, Tennessee, a delinquent tax sale was conducted on November 20, 1981 and the Property was sold to Imperial Properties, Inc., (hereafter called "Imperial"). The Clerk and Master's Tax deed to Imperial is recorded at Book 10C, Page 373 in the Marion County Register's Office and is attached as Exhibit "B."
12. Imperial attempted to convey the Property to Defendants by deed recorded in Book 165, page 203, in the Marion County Register's Office. This deed is attached as Exhibit "C".
13. The Trusts were not given notice of the delinquent tax suit and sale as required by Tennessee Code Annotated 67-5-2502(a)(3).
14. The sale for delinquent taxes violated the provisions of T.C.A. 67-5-2502 in that it inadequately described the property, failed to name Plaintiff as owner of the Property and was not based on a reasonable search of the public records. [\*4]
15. The tax sale and Clerk and Master's Deed of the Property are void due to the lack of notice to the trusts and the violations of T.C.A. 67-5-2502, as evidenced by the Affidavit of Robert W. Henderson attached hereto.
16. Since the deed conveying the Property to Imperial was and is void, Imperial could not convey legal title to the Property to the Defendants.

\* \* \*

The complaint also attaches as Exhibit A a description of the disputed property:

Beginning at an old stone, a corner of the Carter property and being in the west line of Fractional Section 17; running thence S. 25 degs. 8 mins. W. Passing southeast corner of Section 17 at 1320 ft. and continuing with the west boundary of Fractional Section 20, in all 3241.2 ft. to an iron pin in the Tennessee, Georgia State line; thence with the same N. 89 degs. 37 mins. E about 4539 ft. to an old stone, a corner of the Anne Carter property; thence with her painted lines N. 67 degs. W. 1460 ft. to a stone; thence N. 23 E. 1320 ft. to a stone the northeast corner of the southeast quarter of the southwest quarter of Section 17; thence N. 67 degs. W. 2640 ft. to the point of beginning, containing 170 acres, more [\*5] or less.

The above property being described as Tract No. 2 I a conveyance to B. B. Barber, Trustee, from John C. Miles et ux, as recorded in Deed Book 6-B, Page 316, in the Register's Office, Marion County, Tennessee.

Defendants filed separate answers in which they denied the material allegations concerning ownership by Plaintiff. Plaintiff filed a motion for summary judgment, accompanied by Plaintiff's statement of undisputed facts and memorandum of law in support of the motion. Defendant, Terry Cardin, filed a response to Plaintiff's motion for summary judgment but did not dispute the undisputed facts set out. The trial court granted partial summary judgment to Plaintiff on all the issues except the claim of adverse possession on the part of the Defendants. Subsequently, on August 21, 2001, the court entered an order amending the order granting summary judgment, allowing Defendant, Terry Cardin, to amend his answer to assert that he claims under a chain of title distinct from

the Plaintiff and that Plaintiff was barred from relief by Plaintiff's failure to pay taxes pursuant to T.C.A. § 28-2-110. The answer was so amended.

The case was tried by the court without a [\*6] jury, and various exhibits were introduced, either by stipulation or from testimony of witnesses. A review of the record indicates that in December of 1995, Grand Hotel acquired by deed recorded in Book 235, Pages 411, 435, Register's Office of Marion County, Tennessee, 2,896.5 acres of land in two tracts, being the same property that was conveyed by John C. Miles, and wife, in April 1960 to Trustee for Reliance Trust, recorded in Book 6B, Page 316, in the Register's Office of Marion County. The property in dispute in this case is 177 acres of property described in the exhibit to the original complaint being Tract 2 in the above conveyances. Through the testimony of witnesses, proof was presented that from the time that exact acreage was shown by the assessor, Plaintiff, and its predecessor in title, paid taxes on 2,896.5 acres, which included Tract 2, above described. Although the tax record system in the Marion County Tax Assessor changed in 1969, testimony of witnesses established that Plaintiff paid the taxes on the entire two tracts of property above-described.

Some time in 1966, Earl Howard filed an affidavit with the Marion County Tax Assessor claiming ownership, on behalf [\*7] of himself and other heirs of Hope McReynolds, of 175 acres, citing several deeds purporting to vest title to a property in J. W. McReynolds. The property apparently descended by will from J. W. McReynolds to Hope McReynolds and the McReynolds' heirs. The deeds appear to be defective in the description of the property, according to the testimony of some expert witnesses, surveyors and attorneys.

The Plaintiff proved and the trial court found that Grand Hotel's chain of title was traced back to 1949 to a sale under a receivership in chancery court and that since that time, the 2,896 acres were taxed to and paid by the then owners of this property.

The trial court also found, and the proof supports the finding, that the Defendants' chain of title from McReynolds family shows tax assessment to a tract of land which is in the "identical position Grand Hotel and its predecessor, Reliance Trust, say that Tract 2 exists, so therein is the conflict."

The trial court found that there is little testimony about the use of the land or possession by either party, although there was testimony on behalf of Defendants that they had cut some timber off the property to build a fence, but there [\*8] was not any continuous use of it. On the part of the Grand Hotel, there was testimony that they had executed timber deeds and coal rights over a period of years, and that the land had been somewhat extensively mined for coal.

The court finally determined that the question before the court was who had the better title to the property. The court found that Plaintiff proved that they had legal title to the property, stating:

I think under the facts of this case the testimony of the witnesses seems to be abundantly clear that they have established that they do have title to this property. They have established it by their surveys. They have established through a number of witnesses. Mr. Cameron testified as far as his title examination was concerned. We had some diagrams of the property, Exhibit Number 1 and Number 2, so I think that essentially that set forth the description of the disputed area and some other tracts of land. I think that basically from their chain of title, even though it only traces back to the lawsuit in the chancery court of 1949, that they have shown, not by adverse possession, but they have possessed and used the land as well as they have had a described [\*9] piece of property that covers the area in dispute.

So I think the question then becomes whether or not this is a case where the defendants have a better title or a superior title and in looking at the facts in this case, their chain of title comes through the Webb Heirs and the Webb Heirs call for their property to be -- or excuse me, the McReynolds deeds call for the Webb property to be on its east side, and if you take the property in dispute and place it on the lands that were defined as the Webb lands on Exhibit Number 1 and 2, the land in dispute would be west of the Webb properties. And so further, in looking at the testimony given by Mr. Cameron in this case, he pointed out that on Exhibit Number 1 and 2, that the McReynolds Cemetery is actually located to the west of the Webb properties and Webb is

shown as TVA and Morrison, I believe, on Exhibits Number 1 and 2, and so if you looked at the property there then Webbs' properties would have been to the east. In examining their deeds, their deeds descriptions are very difficult to understand and some of them call for only two sides. So I think then based upon the facts and circumstances and the law in this case, that the Plaintiffs [\*10] have prevailed in proving that they have title to the property, and I would remove this claim against their property as a cloud on their title.

On April 8, 2004, the court entered its final judgment incorporating its facts and conclusions by reference. The order states in pertinent part: (p. 173, 174)

*ORDERED* that any claim of Defendants, or of their predecessors or successors in interest, to the property made the subject of this litigation is hereby removed as a cloud upon the Plaintiff's title, it is further

*ORDERED* that any and all claims to or interest in the subject property is hereby and finally divested out of Defendants, as well as their predecessors or successors in interest; it is further

*ORDERED* that full and sole title to the property made the subject of this litigation is hereby and finally vested in the Plaintiff; and it is further

*ORDERED* that the court costs relative to this case be hereby taxed against the Defendants and their surety, for which execution may issue.

Defendants have appealed and present two issues for review which, as stated in their brief, are:

1. Whether the trial court erred in failing [\*11] to dismiss this suit based on plaintiff failing to carry its burden of proof for its cloud-removal-from-title action?
2. Whether the trial court erred in failing to dismiss this suit based on Plaintiff's non-payment of taxes on the disputed property pursuant to TCA 28-2-110.

Because this case was tried by the court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. T.R.A.P. 13(d).

When the resolution of the issues in a case depends upon the truthfulness of witnesses, the trial judge who has the opportunity to observe the witnesses in their manner and demeanor while testifying is in a far better position than this Court to decide those issues. *McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn. 1995); *Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn. App. 1997). The weight, faith, and credit to be given to any witness's testimony lies in the first instance with the trier of fact, and the credibility accorded will be given great weight by the appellate [\*12] court. *Id.*; *In re Estate of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997).

In this very complicated title disputed, the court relied upon the testimony of expert witnesses. The trial court is afforded discretion to determine the "admissibility, qualifications, relevancy, and competency of expert testimony." *McDaniel v. CSX Transp., Inc.*, 955 S.W.2d 257, 263 (Tenn. 1997). The trial court's ruling in this regard will be upheld except upon a showing of abuse of discretion. See *McDaniel* at 263-64.

To remove a cloud from the title, a complainant must aver and prove title in themselves. *Cox v. Blackwell*, 99 Tenn. 352, 41 S.W. 1061 (1897); see *Estill v. Deckerd*, 63 Tenn. 497 (1874); *Hoyal v. Bryson*, 53 Tenn. 139 (Tenn. 1871).

In the present case, Grand Hotel's predecessor in title obtained title through a sale in a receivership. In order to quiet title, a plaintiff must have legal title or actual possession of the property on which it is alleged there is cloud. Generally, the complainant must show he holds legal title to the disputed property. It has been held, however, that when neither [\*13] the plaintiff nor the defendant has possession of the property and both are claiming the property under a color of title, the party with the better paper title will prevail. See *State v. Cooper*, 53 S.W. 391, 393 (Tenn. Ch. App. 1899).

Grand Hotel traces its deed to a judicial sale in 1949, and has a consistent description of the land. The Cardins, however, have inconsistent descriptions of the land, and according to a number of the deeds, Tract 2 may not even be the tract described in each of the deeds. In fact, the only clear description of the land in question in the Cardins chain of title comes from language taken out of a deed in Grand Hotel's chain. Therefore, based on the proof presented at trial, and after affording the trial court's decision the proper weight, we conclude Grand Hotel met its burden of proof, and the trial court did not err in quieting title in Grand Hotel.

Although the trial judge did not make a specific finding on the non-payment of taxes issue, inherent in his decision for Grand Hotel is his determination that they were paying taxes on the property. In Grand Hotel's deed, the property is described with the total number of acres consistent [\*14] with both Tract 1 and Tract 2, and the tracts were assessed under the same parcel number until the Marion County tax maps were changed. Although Tract 2 was under a different parcel number, Grand Hotel and its predecessors in interest were paying taxes on the full acreage as before the tax map split. Therefore, by quieting title in Grand hotel and not dismissing the suit for failure to pay taxes on the property, the trial judge apparently determined that Grand Hotel and its predecessors had been paying taxes on the tract, and the evidence supports that determination.

Accordingly, the final judgment of the trial court is affirmed. The case is remanded to the trial court for such further proceedings as may be necessary. Costs of the appeal are assessed to the Appellants, Harry W. Cardin and Cheryl K. Cardin.

W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.