

IN THE CIRCUIT COURT OF MONROE COUNTY, TENNESSEE

SONDRA K. HUGHES, GEORGE B. CLARK,
and DONALD A. CLARK,

Plaintiffs,

vs.

Docket No. V-20-0231S

JOHNNY W. ALLMAN, NANI YU, and A, B,
and C, fictitious parties, whose names and
identities are unknown but will be provided
when ascertained,

Defendants.

**ORDER REGARDING DEFENDANTS MOTION TO QUASH,
AND MOTION TO ALTER OR AMEND OR REVISE**

This matter came on to be heard in the Circuit Court of Monroe County, Tennessee, on the 4th day of April, 2025. This matter is before the Court based upon the Defendants' Motion to Quash Writ of Possession, as well as their Motion to Alter or Amend or to Revise. The defendants are represented by Attorney Clifford E. Wilson. The Court has considered the motion to quash, motion to alter or amend or revise, as well as the opposition to motion to quash filed by the plaintiffs. The plaintiffs are represented by attorneys Tracy C. Wooden and Warren J. Yemm. The Court has also considered the applicable statutes and case law, as well as all of the other pleadings previously filed in this matter. The Court was also provided with Affidavits, the Monroe County Tax notices, as well as pictures accompanying the motion and the response in opposition to the defendants' motion to alter or amend or revise.

This Court granted the plaintiff's renewed motion for summary judgment, dismissed

the respondent's counterclaims, and awarded the plaintiffs possession of the property by order entered August 30, 2024. The defendants filed their motion to amend the Court's judgment on September 24, 2024. Under T.R.C.P. 59.04, a party may file a motion to alter or amend a judgment, asking the court to correct errors before the judgment becomes final. Motions to alter or amend are appropriate "when the controlling law changes before the judgment becomes final; when previously unavailable evidence becomes available; or to correct a clear error of law or to prevent injustice". *In Re M.L.D.*, 182 S.W.3d 890 (Tenn. Ct. App. 2005). A Rule 59.04 motion should not, however, be granted if they are simply seeking to relitigate matters that have already been adjudicated". *Abraham v. Abraham*, 2020 WL 2745433, 2020 Tenn. App. LEXIS 239, at *19-20 (Tenn. Ct. App. 2020)(citing *Bradley v. McLeod*, 984 S.W.2d 929, 933 (Tenn. Ct. App. 1998)).

The Court finds that the defendants' motion to amend the judgment introduces no previously unavailable evidence, asserts no change in applicable law, nor does it point to any clear error in the courts application of the law. In this Court's order, the Court acknowledged that the defendants claimed ownership through adverse possession of his mother and father, but that "Mr. Allman and his family have always recognized the plaintiff's ownership of the property", and that Mr. Allman admitted "that neither he nor his parents ever claimed to be the owner of the property". (see court order, page 4).

The Court, in considering the defendants' motion, finds that none of the facts asserted by the defendants would negate the Court's ruling that the defendants' possession was permissive prior to the August 2020 Notice to Quit, and furthermore would not negate the Court's ruling that the defendants and their predecessors never claimed adverse ownership of the property until this lawsuit was filed. The Court noted in its order (see court order, pages 4 and 7), and reiterates now that Mr. Allman's testimony was that "neither he nor his parents

ever claimed to be the owners of the property”.

With regard to the defendants’ claims based upon T.C.A. §28-2-103, the Court finds no errors of law in its order. The Court finds that the defendants failed to raise T.C.A. §28-2-103 seven year statute of limitations as an affirmative defense in their answer and counterclaim, nor did they ever argue that it applied to this motion. “The failure to raise an affirmative defense in an answer or motion generally results in a finding of waiver”. Tindell v. West, 2012 WL 1525035, 2012 Tenn. App. LEXIS 280, at *10 (Tenn. Ct. App. 2012)(citing Tenn. R. Civ. P. 8.03 and 12.08, Sands v. State, 903 S.W.2d 297, 299 (Tenn. 1995) (affirming the trial court’s refusal to consider Tenn. Code Ann. §28-2-103 as an un-plead affirmative defense)”. In addition to the above, “the Court finds that the seven year statute of limitation would not apply, given the Court’s finding that the defendants’ possession was permissive prior to the August 2020 notice to quit”. (see court order, page 7).

Furthermore, with regard to the defendants’ claim that the Court failed to apply T.C.A. §24-1-203 (the “Dead Man’s Statute”), the Court finds that motion to alter or amend, because of the dead man’s statute, would not bar the introduction of Imogene Allman’s bankruptcy court filing. The Court finds that this statutory bar applies only to a transaction with or statement by the decedent. The Court finds that the plaintiffs were not involved in Ms. Allman’s bankruptcy, and that the plaintiffs obtained these filings and the information pertaining to the filings on their own. Based upon the applicable case law, the Court finds that the plaintiffs discovered this information on their own, and therefore they are not precluded under the dead man’s statute. Furthermore, the Court finds that the defendants never raised this objection to the introduction of the documents prior to this motion. Thus, the Court finds this objection is waived pursuant to applicable case law. Memphis v. Pritchard, 2020 WL 4354911, 2020 Tenn. App. LEXIS 337, at *7 (Tenn. Ct. App. 2020)(“Typically,

when a party raises an argument for the first time in a motion to alter or amend, we will deem the argument waived[.]”0; *In re M.L.D.*, 182 S.W.3d 890, 895 (Tenn. Ct. App. 2005) (“A Rule 59 motion should not be used to raise or present new, previously untried or unasserted theories or legal arguments.”).

With regard to the defendants’ claim that they are entitled to reimbursement for improvements made to the property, the Court finds that this claim must fail under the color of title requirement because this Court has already found that “the defendants’ possession was permissive prior to the August 2020 notice to quit”. (See court order, page 7). The Court notes that by Mr. Allman’s own admission, most of the alleged improvements were done by his father during his parents lifetime. This Court has already found, based upon Mr. Allman’s candid admissions, that any interest he claims in the subject property “derived from his mother”. “Mr. Allman claims no interest in the property prior to his mother’s passing in December of 2018”. (See order, page 9). The Court finds that the undisputed evidence establishes that Johnny Allman was not in possession at the time of the alleged improvements, and therefore he is not entitled to compensation for them.

Based upon all of the above, the Court finds that the defendants have not identified any previously unidentified evidence, there has been no change in controlling law, nor any clear error of law or injustice to justify amending the Court’s grant of summary judgment. Therefore, the Court respectfully finds that the defendants’ motion to amend the judgment is respectfully denied.

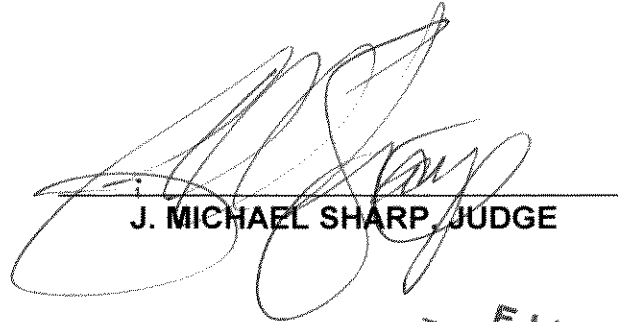
With regard to the motion to quash the writ of possession, the Court finds that this Court’s granting of the motion for summary judgment specifically held that “Mr. Allman’s own candid testimony that neither he nor his predecessors ever claimed ownership of the property adverse and hostile to the plaintiffs’ ownership, and that “there is no dispute that the

defendants and their predecessors have never paid taxes upon the property that is the subject of this litigation”, or “have ever had the property assessed to them during the last 20 years, or any other time”. (see order, page 10). Furthermore, this Court previously ordered that the “plaintiffs shall obtain and are granted possession of the property 30 days from the date of the entry of the order”. The Court finds that this finding is dispositive of defendants’ adverse possession claims, and the T.C.A. §28-2-103 defense raised for the first time in the defendants’ motions. Furthermore, the Court finds that the defendants’ motion does not challenge the undisputed fact that neither Mr. Allman nor his predecessors ever had the property taxes assessed to them or paid by them, which the Court also finds to be dispositive of any counterclaim for ownership of any part of the property. The Court finds that there is no colorable challenge to the plaintiffs entitlement to possession of the property. The Tennessee Court of Appeals has previously held that a writ is a court order commanding the addressee to do or to refrain from doing some specified act. “As such, a writ is injunctive in nature”. Gallatin Hous. Auth. V. Pelt, 532 S.W.3d 760, 769 (Tenn. Ct. App. 2017). The Court finds that the writ of possession is in fact valid and applies to the approximately 370 acres of land that is the subject of this Court’s order and was executed upon that land. Finally, the Court finds that the defendants have provided no basis for the Court to return possession to the defendants. The Court respectfully finds, based upon its findings in the aforementioned order, that there is no reasonable chance that the defendants will prevail on the merits, given that the defendants’ own admissions on the record. Therefore, the defendants motion to quash provides no reasonable legal basis for putting the defendants back in possession. The Court finds the plaintiffs are the record owners of the property, and are therefore entitled to possession. The Court finds the defendants have not raised any recognizable challenge to the material undisputed facts supporting the Courts previous award of possession. The Court

finds that the defendants and their predecessors have not adversely possessed the property, and have never paid property taxes on the property. Therefore, the Court respectfully denies the defendant' motion to quash the writ of possession. This is a final order.

IT IS SO ORDERED.

THIS 10th day of April, 2025.



J. MICHAEL SHARP JUDGE

FILED
TIME _____ AM/PM
APR 15 2025
DEWAYNA MARTIN
CIRCUIT COURT CLERK

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been served upon the following by delivering the same via U. S. Mail and/or via facsimile to the parties listed below:

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This 15 day of April, 2025.


P. CLERK