

HUNTER OF ALABAMA ASSOCIATES,
an Iowa LIMITED PARTNERSHIP,
PLAINTIFF

VS

SHERMAN HOLLAND,
DEFENDANT

IN THE CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA

CIVIL ACTION NUMBER

CV-88-376

4

1990

RECEIVED & FILED
Dan Reeves
Circuit Clerk &
Recorder

JUDGMENT

THIS CAUSE coming on before the Court on the 7th day of August, 1990 was submitted on the pleadings of record. Upon consideration thereof, together with ore tenus testimony and argument of counsel, the Court makes the following findings of fact, enters the following conclusions of law, and makes the following order.

FINDINGS OF FACT

1. That the fifty (50) foot tract of land in controversy in this cause is located in Shelby County, Alabama and is more particularly described as follows:

A 50 foot wide parcel of land located in the NW 1/4 of the NW 1/4 of Section 6, Township 20 South, Range 2 West, more particularly described as follows: Commence at the SW corner of the NW 1/4 of the NW 1/4 of Section 6, Township 20 South, Range 2 West, thence in a Northerly direction along the westerly line of said 1/4 - 1/4 section a distance of 25 feet to the point of beginning, said point being in the center line of herein described fifty foot wide parcel of land, said parcel being 25 feet each side of herein described center line; thence 89 deg. 10 min. right, in an Easterly direction, a distance of 56.05 feet to the beginning of a curve to the left, having a central angle of 73 deg. 32 min., and a radius of 119.93 feet; thence Northeasterly along said curve, a distance of 153.92 feet to end of said curve and the beginning of a curve to the right, having a central angle of 23 deg. 18 min. and a radius of 242.51 feet; thence Northeasterly along said curve, a distance of 98.62 feet to end of said curve; thence Northeasterly a distance of 715.64 feet to the beginning of a curve to the right having a central angle of 16 deg. 02 min. 30 sec., and a radius of 354.83 feet; thence Northeasterly along said curve, a distance of 99.34 feet to end of said curve; thence Northeasterly a distance of 27.50 feet to the beginning of a curve to the left, having a central angle

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of 35 deg. 26 min. 30 seconds, and a radius of 313.17 feet; thence Northeasterly along said curve a distance of 193.72 feet to end of said curve and the beginning of a curve to the right, having a central angle of 78 deg. 41 min. and a radius of 135.26 feet; thence Northeasterly along said curve a distance of 185.75 feet to its intersection with the Westerly right of way line of U.S. Highway 31 and end of herein described 50 foot wide parcel. Situated in Shelby County, Alabama.

2. That there was a deed from a Mr. and Mrs. Rodens to W. M. Humphries Development Co., Inc. dated August 24, 1971, which was recorded in the Shelby County Probate Court on August 26, 1971 conveying in fee simple the said 50 foot tract reserving in the grantors a right of way over said tract.

3. That in 1975, W. M. Humphries Development Company, Inc. changed it's name to W. M. Humphries Enterprises, Inc.

4. That W. M. Humphries Enterprises, Inc. conveyed a right of way to the subject property to the Birmingham Trust National Bank on August 14, 1979.

5. That on February 1, 1980, the Plaintiff received a deed from Birmingham Trust National Bank conveying to Plaintiff the right of way Birmingham Trust National Bank had on the subject 50 foot strip and recorded said conveyance in the Shelby County, Alabama Probate Court on February 11, 1980.

6. That the said 50 foot tract was sold for unpaid 1980 taxes to the State of Alabama on May 20, 1981.

7. That the State Land Commissioner sold the subject 50 foot tract to the Defendant on December 3, 1986 for \$147.51.

8. That the Plaintiff received a quit claim deed from W. M. Humphries, Inc. on the subject 50 foot strip on June 1, 1988 and recorded in the Shelby County Probate Court on June 3, 1988.

9. That the lawsuit in this cause was filed on July 13, 1988.

10. That the Defendant has never been in possession of the property since the tax sale of 1981.

11. That the Plaintiff has owned and still owns a tract of land contiguous to the subject 50 foot tract in which mobile homes are located thereon, said 50 foot strip serving as an ingress and

egress to the contiguous from Highway 31, a heavily traveled thoroughfare.

12. That the Plaintiff has maintained signs adjoining the paved road on the said 50 foot strip and has done landscaping next to the said road and has picked up trash on the said 50 foot strip.

13. That the tax sale conveying the land to the Defendant was deficient, in that the name of the owner in which statutory notice was required to be given was insufficiently described and further, proper notice was not given.

CONCLUSIONS OF LAW

In a sale of real property for taxes, great strictness is required and the statutory provisions must be rigorously pursued. Reuter v. Mobile Bldg. and Constr. Trades Counsel, 274 Ala. 614, 150 So.2d 699 (1963). A tax sale is void in the absence of evidence that the requirements of the statutes have been complied with. State ex rel. Gallion v. Graham, 273 Ala. 634, 143 So.2d 810 (1962). A tax deed is void and conveys no interest where underlying sale was invalid. Almon v. Champion International Corporation, 349 So.2d 15. A tax deed by the auditor of the State of Alabama is not prima facie evidence of the proceedings therein recited. Moorer v. Macon, 273 Ala. 66 (1961). Payment of taxes will not by itself establish title by adverse possession. Moorer v. Macon, 273 Ala. 66; Brannon v. Henry, 175 Ala. 454, 57 So. 967. Bill to quiet title is proper method to cancel tax deed and effect redemption. Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (1962).

JUDGMENT

Accordingly, it is ORDERED, ADJUDGED and DECREED by the Court as follows:

A. That the Plaintiff, Hunter of Alabama Associates, an Iowa Limited Partnership, is, as a matter of law, the owner in fee simple of the following described property:

A 50 foot wide parcel of land located in the NW 1/4 of the NW 1/4 of Section 6, Township 20 South, Range 2 West, more particularly described as follows: Commence at the SW corner of the NW 1/4 of the NW 1/4 of Section 6 Township 20 South, Range 2 West, thence in a Northerly


direction along the Westerly line of said 1/4 - 1/4 section a distance of 25 feet to the point of beginning, said point being in the center line of herein described fifty foot wide parcel of land, said parcel being 25 feet each side of herein described center line; thence 89 deg. 10 min. right, in an Easterly direction, a distance of 56.05 feet to the beginning of a curve to the left, having a central angle of 73 deg. 32 min., and a radius of 119.93 feet; thence Northeasterly along said curve, a distance of 153.92 feet to end of said curve and the beginning of a curve to the right, having a central angle of 23 deg. 18 min. and a radius of 242.51 feet; thence Northeasterly along said curve, a distance of 98.62 feet to end of said curve; thence Northeasterly a distance of 715.64 feet to the beginning of a curve to the right having a central angle of 16 deg. 02 min. 30 sec., and a radius of 354.83 feet; thence Northeasterly along said curve, a distance of 99.34 feet to end of said curve; thence Northeasterly a distance of 27.50 feet to the beginning of a curve to the left, having a central angle of 35 deg. 26 min. 30 seconds, and a radius of 313.17 feet; thence Northeasterly along said curve a distance of 193.72 feet to end of said curve and the beginning of a curve to the right, having a central angle of 78 deg. 41 min. and a radius of 135.26 feet; thence Northeasterly along said curve a distance of 185.75 feet to its intersection with the Westerly right of way line of U.S. Highway 31 and end of herein described 50 foot wide parcel. Situated in Shelby County, Alabama.

B. That Defendant has no right, title or interest in the above described real estate and the tax deed issued by and from the State Land Commissioner to the Defendant dated December 3, 1986 recorded in Book 106 Page 85 in the Probate Court of Shelby County, Alabama is hereby cancelled and voided and held of no force and effect.

C. That having found in favor of Plaintiff, the Defendant's counterclaim is hereby denied.

D. That the costs of this action are hereby taxed to the Defendant.

DONE and ORDERED this 22nd day of October, 1990.


D. Al Crowson
Circuit Judge

Certified a true and correct copy

Date: 9/24/99


Mary H. Harris, Circuit Clerk
Shelby County, Alabama

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