

ANN L. WALKER,

Complainant,

vs

Certain lands, T. H. Walton, J.C. McDearis,
et al,

Respondents.



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Shelby Cnty Judge of Probate, AL
08/24/1973 12:00:00 AM FILED/CERT

IN THE CIRCUIT COURT OF

SHELBY COUNTY, ALABAMA,

IN EQUITY, CASE NO. 4722

This cause coming on to be heard before the Court oral tenus on the 9th day of November, 1972, and continued for further hearing before the Court on Dec. 31, 1973, Jan. 31, 1973, March 9, 1973, and May 3, 1973, and submitted for final decree upon complainant's verified bill of complaint as amended, upon demurrers of Respondents T. H. Walton, J. C. McDearis, Tommy Lynn McDearis and Teresa Ann McDearis, upon answer of T. H. Walton; Answer and Cross Bill of J. C. McDearis, Tommy Lyn McDearis and Teresa Ann McDearis, upon decree pro confessor rendered herein, upon the testimony taken in open court orally and recorded by official court reporters, the same being before the Court by order of the Court, the demurrers, answers and other pleadings of respondents T. H. Walton, J. C. McDearis, Tommy Lyn McDearis and Teresa Ann McDearis and the certificate of the register, as to service, all of which are as noted by the Register, and it appears to the satisfaction of the Court, as follows:

First. That the complainant at the time of the filing of said bill of complaint as amended in this cause, claims in her own right a fee simple title to and was in the actual peaceable possession of the following described lands, lying in the county of Shelby, State of Alabama, and more particularly described as follows:

Beginning at the southeast corner of Section 20, Township 22 South, Range 2 West, Fractional Section and run thence north on and along the section line 985 feet to a point; said point being the P.O.B of the lot herein described; from said point as P.O.B. run thence north 69 deg. 09 min. East 102.88 feet to a point; run thence north and parallel to the west R/O/W of 18th Street a distance of 429 feet to a point; run thence west and at right angles to said 18th Street for 448 feet to a point; run thence north and parallel to said 18th Street for 191 feet to a point; run thence west and at right angles to said 18th Street for 437 feet to a point; run thence south and parallel to said 18th Street for 304 feet to a point; run thence west and at right angles to said 18th Street for 350 feet, more or less, to a point on the east R.O.W of a public road; run thence south 9 deg. east on and along said east R.O.W. of public road for 415 feet to a point; continue to run south 20 deg. 51 min. east for a distance of 300 feet to a point; run thence north 69 deg. 09 min. east 958.02 feet back to the P.O.B.; lying and being in the SE $\frac{1}{4}$ of Section 20, Township 22 South, Range 2 West and the SW $\frac{1}{4}$ of Section 21, Township 22 South, Range 2 West, containing 19.45 acres, more or less.

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Second. That at the time of the filing of said Bill of Complaint, as amended, no suit was pending to test her title to, interest in or the right to the possession of said lands.

Third. That said bill of complaint as amended was and is duly verified and was filed against said lands and against any and all person claiming any title to, interest in, lien or encumbrance on said land or any part thereof, and was to establish the right or title to such lands or interest, and to clear all doubts or disputes concerning the same, and that said bill of complaint as amended, did in all respects comply with the provisions of Code of Alabama of 1940 as Recompiled, Title 7, Section 1117 and other code sections applying thereto.

Fourth. That respondents Clay L. Lanningham, Hattie Lanningham, Cledy Rodgers, Flora Northcutt, Amy S. Blewster, Veryl O. Samons, ~~James Woods~~, ~~Lucille Woods~~, Elizabeth W. Holmes, Charlotte W. Jones, ~~William Woods~~, Andrew Woods, ~~Erma Mae Woods Baker~~, Mary W. Dooley, Eugene Woods, Norman Woods, Bobbie Lee Woods Arthur Lee Woods, Sylvia Woods and Reva Woods, ~~Nina Aldridge~~, ~~Crockett Joseph Woods~~, Kate Davis, Joyce Seale, Fannie Ballard whose addresses were known were served according to law, but said respondents filed to answer, plead to or demur as required by law and decree pro confessoros were taken against them; that Linda Samons and Barbara Samons, minors were served, along with their custodian, being their mother Icie Mae Samons, as required by law and a guardian ad litem appeared in open court to represent them in this proceedings. It further appears to the court that complainant exercised due diligence in trying to locate the other respondents named in the Bill of Complaint, being W. F. Pilgreen, Mattie Pilgreen, C. A. Crowson, Fannie Seale Ballard, Tinie Comer, W. A. Crim, Mamie Crim, Mary Jordan, William A. Crowson, Flora M. Askins Crowson, George H. Seale, William Brasher, Lula James Woods, Lucille Woods, William Woods, Susie Gene Woods and Crockett Joseph Woods May Brasher, Betty Nabors, Adaline Alexander, Faye Eason, Mae McKibbon, heirs or devisees of Mrs. D. W. Boyd, deceased; heirs or devisees of Robert McKibbon, deceased; and all parties, who, unknown to complainant claimed an interest in or to the above described property, and notice to said parties was given as provided by law and decree pro confessoros were taken against them and a guardian ad litem appeared in open court to represent them in this proceedings. That respondent T. H. Walton contested the suit, and J. C. McDearis, Tommy Lyn McDearis and Teresa Ann McDearis contested said suit, all of whom appeared either in his own defense or by an through their attorney of record in open court in defense of this cause of action.



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Fifth. That notice of the pendency of the said bill of complaint as amended was drawn and signed by the Register of this Court and said Register did have said notice published once a week for four consecutive weeks in the Shelby County Reporter, a newspaper having general circulation and published in the County of Shelby, and State of Alabama, and is authorized by law to receive and publish legal advertisements, where the land described in the Bill of Complaint as amended lies, as prescribed by law and the rules of this Court or by an order made in this cause.

Sixth. That a copy of said notice certified by the Register of this court as being correct was recorded as a lis pendens in the office of the Judge of Probate of said County, said notice being in strict accord and compliance with the 1940 Code of Alabama as Recompiled, Title 7, Section 11 21 and recorded in compliance with the 1940 Code of Alabama as Recompiled, Title 7, Section 1120.

Seventh. That it has been more than sixty days since the first publication of said notice and filing of a certified copy of said notice in the office of the Judge of Probate of said county where said lands lie.

Eighth. That no person intervened in this cause, except for J. C. McDearis, Tommy Lynn McDearis and Teresa Ann McDearis and T. H. Walton, who were respondents named in said cause and who defended said cause.

Ninth. It appears to the court that the Tax Deed into T. H. Walton dated August 3, 1955, recorded in Deed Book 181 page 312 in the Probate Office of Shelby County, Alabama, was void^{able} due to the fact that for the year 1950 said land was assessed and taxes paid by the owner of record of said land; that the said Tax Sale in the name Russell R. Hetz was void, as Russell R. Hetz had theretofore sold said property and the present owners were assessing and did assess and pay taxes for said year 1950. That the said T. H. Walton introduced no legal deed from J. O. and Mary E. Anderson, since the parties who had conveyed the land to J. O. Anderson had prior thereto conveyed a bona fide interest in and to said land to other parties.

Tenth: The Court observed the demeanor and manner in which the Notary Public or witness Nelva C. Jones appeared and as she testified from the witness stand in open court and the Court finds this witness' testimony denying her signature on that certain deed from Louise McDearis and husband, J.C. McDearis to Celeste B. Timothy dated March, 1961, recorded August 13, 1961, in Deed Book 263 page 456 in the Probate Office of Shelby County, Alabama, simply not true in as much as the deed did appear to bear the official Notary Public Seal with the name of Nelva C. Jones inscribed thereon and the Court submitted

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blank pieces of paper to this witness and requested her to sign her name thereto in the same manner as it appeared on the said deed "Nelva C. Jones" and the Court after folding up the signature underneath the deed in order that the witness not be allowed to see her former signature and in the Court's judgment, there is a remarkable similarity between the specimen signature of the witness Nelva C. Jones and the signature affixed on the deed with the signed name of Nelva C. Jones. In addition thereto Mr. Karl C. Harrison, attorney at the Columbiana Bar and C. P. Walker, Sheriff of Shelby County, both being reputable and honorable gentlemen sworn as witnesses testified that they questioned Mrs. Nelva C. Jones in Chattanooga, Tennessee prior to the trial of the case and when shown the above mentioned deed which is recorded in Deed Book 263 page 456 in the Probate Office of Shelby County, Alabama, she stated: "That is my signature and it is the signatures of Mr. & Mrs. McDearis. They both signed before me." It further appearing to the Court that after the execution of said deed by Mr. & Mrs. McDearis, Louise McDearis discontinued to assess said land and the same was not again assessed by her until her husband assessed the same for her estate for the year 1969 and escaped it for the years 1964, 1965, 1966, 1967 and 1968, which time was subsequent to the date this suit was filed.

Eleventh. It further appears to the Court that the deed from Louise McDearis and husband, J. C. McDearis to Celeste B. Timothy, being the predecessor in title to Thomas E. Thurman who conveyed said land to the complainant, Ann L. Walker, as shown by deed recorded in Deed Book 263 page 240 in the Probate Office of Shelby County, Alabama, was a good and sufficient deed; that the same was legally executed by J. C. McDearis and Louise McDearis, all as shown by said deed recorded in Deed Book 263 page 456 in the Probate Office of Shelby County, Alabama, and which has been introduced in evidenced in this cause of action. It further appears to the court that Ann L. Walker became the owner of said property in fee simple under said deed recorded in Deed Book 263 page 240 in the Probate Office of Shelby County, Alabama.

Twelfth. After hearing oral testimony in open court recorded by court reporters, and upon reviewing the bill of complaint as amended, the answers and cross-bill and all other pleadings filed in this cause, it has been determined by the court that all the allegations of fact contained in complainant's bill of complaint as amended, are true. It is, therefore,



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ORDERED, ADJUDGED AND DECREED BY THE COURT,

(1) that complainant is entitled to the relief prayed for in the bill of complaint as amended, and that the fee simple title claimed by complainant Ann L. Walker in the above described lands has been duly proven.

(2) That the complainant Ann L. Walker is the owner of said lands, and has a fee simple title thereto, free of all liens and encumbrances, and that her said title thereto be and is hereby established, and that all doubts and disputes concerning the same be and are hereby cleared up.

(3) That J. C. McDearis, Tommy Lynn McDearis, Teresa Ann McDearis and T. H. Walton have no right, title or interest in and to said land and it is further ordered adjudged and decreed by the Court that the said J. C. McDearis, Tommy Lynn McDearis, Teresa Ann McDearis and T. H. Walton be and they are hereby ordered to delete from their assessment the real estate hereinabove described in this decree. Should the said J. C. McDearis, Tommy Lynn McDearis, Teresa Ann McDearis and T. H. Walton fail to delete the same from their assessments within ten days after October 1, 1973, I hereby order and direct the Tax Assessor of Shelby County, Alabama, to delete the same from the assessments of the said J. C. McDearis, Tommy Lynn McDearis, Teresa Ann McDearis and T. H. Walton. A copy of this decree is ordered to be sent to said Tax Assessor authorizing him to make said correction on the books of the Tax Assessments in Shelby County, Alabama.

(4) A copy of this decree is ordered to be recorded in the Probate Office of Shelby County, Alabama, and indexed Ann L. Walker vs T. H. Walton, J. C. McDearis, et al, in both the direct index and indirect index of the records thereof.

It is further ordered, adjudged and decreed by the Court that Hewitt L. Conwill be and he is hereby awarded a fee of \$350.00

Dollars for his services as guardian ad litem in this proceeding, to be taxed as a part of the costs herein, to be paid by the Register of this Court to him on payment of such costs;

And it is further ordered, adjudged and decreed by the Court that the complainant pay 1/2 the court cost; and the following respondents pay one-half, namely T. H. Walton, J. C. McDearis, Tommy Lynn McDearis, Teresa Ann McDearis, being a one-eighth each herein pay the costs of this proceeding, for which execution may issue.

Done this 23rd day of August, 1973.

FILED IN OFFICE, This the 23rd day

of August 1973

James H. Sharbutt
Judge

Kyle Lanford

STATE OF ALA. SHELBY CO.
CLERK OF COURT
I HEREBY CERTIFY THIS
INSTRUMENT WAS FILED

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J.C. FILE NUMBER OR
REC. NO. & PAGE NO. SHOWN ABOVE
JUDGE OF PROBATE
Conrad H. Jones

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