SUPREME COURT OF APPEALS OF WEST VIRGINIA

# Harper v. Smith

232 W. Va. 655 (2012) · Decided March 26, 2012

## SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment declaring Gavin Smith the owner of disputed real property. The court held that the Harpers lost title through a 2001 foreclosure sale and therefore lacked standing to challenge the validity of a later tax deed or Smith's bona fide purchaser status. Although the court noted a potential defect in notice to the Bank of New York, it affirmed on the independent ground that the Harpers had no legally protected interest in the property.

## CASE DETAILS

| | |
|---|---|
| COURT | Supreme Court of Appeals of West Virginia |
| JURISDICTION | West Virginia |
| DECIDED | March 26, 2012 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Appeal from a final order granting defendants' motions for summary judgment in a declaratory judgment action concerning ownership of real property. |
| STANDARD OF REVIEW | Summary judgment is reviewed de novo. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. |
| PRECEDENTIAL VALUE | Published opinion; precedential decision of the Supreme Court of Appeals of West Virginia. |
| PARTIES | Mike Harper, Estate of Lois Harper v. Gavin Smith, Marquis Development, LLC |

## TOPICS

title disputes · summary judgment · standing · foreclosure · appellate procedure

## PRACTICE AREAS

real estate · civil procedure · appellate procedure · foreclosure · tax sales

## QUESTIONS PRESENTED

1. Whether summary judgment was proper when the Harpers failed to produce evidence creating a genuine issue of material fact concerning the Bank of New York's title obtained through foreclosure.
2. Whether Mike Harper had standing to challenge the validity of Marquis Development's tax deed based on allegedly defective notice of the right to redeem.
3. Whether Gavin Smith qualified as a bona fide purchaser despite having notice of a potential defect in the tax deed.
4. Whether summary judgment could be affirmed on a ground different from the ground relied upon by the circuit court.

## HOLDINGS

1. The Harpers failed to produce evidence showing a genuine issue for trial concerning the validity of the Bank of New York's foreclosure title; summary judgment was therefore proper on that issue.
2. Mike Harper lacked standing to challenge the validity of Marquis Development's tax deed because he and his mother no longer owned the property and neither was entitled to pay the taxes or redeem the property when the tax lien was sold.
3. The evidence did not support treating Gavin Smith as a bona fide purchaser because his title search placed him on notice of a potential defect in the tax deed; however, that issue did not affect the judgment because the Harpers lacked standing to challenge Smith's status.

## KEY QUOTATIONS

> *"A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law."* (658)

> *"The persons entitled to notice to redeem in conjunction with a purchaser's application for a tax deed, pursuant to W. Va.Code § llA-3-19(a)(l) (1994) (Repl.Vol. 1995), are those persons who are permitted to redeem the real property subject to a tax lien or liens"* (659)

> *"Standing is comprised of three elements: First, the party attempting to establish standing must have suffered an "injury-in-fact" — an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct forming the basis of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court."* (659)

> *"Nonetheless, we affirm the circuit court order granting summary judgment in favor of Mi*. Smith because the Harpers lost title to the property as a result of the foreclosure sale in 2001 and, therefore, have no standing to challenge Mr. Smith's status as a bona fide purchaser."* (660)

## FACTUAL BACKGROUND

The Harpers mortgaged Lot 9 of the Ellis Heights Subdivision, defaulted on the loan, and lost the property at a foreclosure sale to the Bank of New York on July 10, 2001. After delinquent property taxes, Marquis Development purchased the tax lien, obtained a tax deed, and sold the property to Gavin Smith. Smith later attempted to evict Mike Harper, who claimed that his mother, Lois Harper, still owned the property. The Harpers challenged the foreclosure title, the tax deed, and Smith's status as a bona fide purchaser, but the court determined that they had lost title before the tax sale and therefore lacked standing to challenge the later conveyances.

## PROCEDURAL HISTORY

The Harpers filed a declaratory judgment action in the Circuit Court of Mingo County asserting ownership of property that had been sold at foreclosure and later conveyed through a tax deed to Gavin Smith. The circuit court granted summary judgment for Marquis Development, LLC and Smith, concluding that Smith was a bona fide purchaser and owner of the property. The Supreme Court of Appeals affirmed, although it relied on the Harpers' lack of standing rather than solely on Smith's bona fide-purchaser status.

## DISPOSITION

affirmed

## CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Aetna Cas. & Sur. Co. v. Federal Ins. Co. of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963)
- Williams v. Precision Coil, Inc., 194 W. Va. 52, 459 S.E.2d 329 (1995)
- Rollyson v. Jordan, 205 W. Va. 368, 518 S.E.2d 372 (1999)
- Findley v. State Farm Mut. Auto. Ins. Co., 213 W. Va. 80, 576 S.E.2d 807 (2002)
- Belcher v. Greer, 181 W. Va. 196, 382 S.E.2d 33 (1989)
- Stickley v. Thorn, 87 W. Va. 673, 106 S.E. 240 (1921)
- Carpenter Paper Co. v. Wilcox, 50 Neb. 659, 70 N.W. 228 (1897)
- Simpson v. Edmiston, 23 W. Va. 675 (1884)
- Subcarrier Communications, Inc. v. Nield, 218 W. Va. 292, 624 S.E.2d 729 (2005)
- Gentry v. Mangum, 195 W. Va. 512, 466 S.E.2d 171 (1995)