

SUPREME COURT OF TENNESSEE

Cumulus Broadcasting, Inc. v. Shim

226 S.W.3d 366 (Tenn. 2007) · Decided April 27, 2007

SUMMARY

The Supreme Court of Tennessee reviewed a dispute over a service road that crossed the boundary between adjoining properties. The court held that the trial court erred by failing to rule on a pending motion to amend before granting summary judgment, but that the error was harmless because Tennessee's statutory tax-payment bar for adverse possession did not apply to the small disputed portions of contiguous tracts where each owner paid taxes on the respective property. The court addressed common-law adverse possession, prescriptive easements, and the effect of boundary mistakes and tax assessments.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Gary R. Wade, J.; William M. Barker, C.J.; Janice M. Holder, J.; Cornelia A. Clark, J.
JURISDICTION	Tennessee
DECIDED	April 27, 2007
DISPOSITION	reversed
PROCEDURAL POSTURE	Cumulus and Phoenix appealed from the Court of Appeals' reversal of a chancery-court summary judgment recognizing Cumulus's common-law adverse possession of a disputed service-road area. The Tennessee Supreme Court granted Rule 11 review.
STANDARD OF REVIEW	Summary judgment is reviewed de novo without a presumption of correctness. The evidence must be viewed in the strongest legitimate manner in favor of the nonmoving party, with all reasonable inferences in that party's favor. A trial court's ruling on a motion to amend is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion; precedential.
PARTIES	Cumulus Broadcasting, Inc., Phoenix of Hendersonville, Inc. v. Jay W. Shim

TOPICS

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QUESTIONS PRESENTED

1. Whether the chancery court erred by granting summary judgment before ruling on the plaintiff's motion to amend its pleading to assert a prescriptive-easement theory.
2. Whether Tennessee Code Annotated section 28-2-110(a), which bars claims by persons who fail to pay taxes on claimed real property for more than twenty years, barred a common-law adverse-possession claim involving a relatively small disputed area along the boundary of contiguous tracts.
3. Whether the undisputed evidence established the elements of common-law adverse possession for the disputed service-road area.

HOLDINGS

1. The chancery court erred by failing to rule on the plaintiff's motion to amend before entering summary judgment, because Rule 15.01 requires that leave to amend ordinarily be freely given and the motion must be considered. The error was harmless under Tennessee Rule of Appellate Procedure 36(b) because the statutory tax-payment bar did not apply and the plaintiff's substantive rights were not prejudiced.
2. Tennessee Code Annotated section 28-2-110(a) does not bar a common-law adverse-possession claim when the disputed area lies between contiguous tracts, is relatively small, and the adjoining owners claiming ownership have paid taxes on their respective properties.
3. The undisputed evidence established common-law adverse possession because Cumulus and its predecessors possessed the actual service-road area exclusively, actually, adversely, continuously, openly, and notoriously for more than twenty years.

KEY QUOTATIONS

“Tennessee Code Annotated section 28-2-110 should not serve as a bar to a claim of adverse possession when the tracts are contiguous, a relatively small area is at issue, and the adjacent owners making claims of ownership have paid their respective real estate taxes.” (381)

“To hold otherwise would effectively eliminate the adverse possession of any part of an adjoining tract.” (381)

“That the Plaintiff and the Defendant, and their predecessors in title, were mistaken as to the true boundary is of no consequence.” (382)

FACTUAL BACKGROUND

The disputed property consisted of portions of a twenty-foot service road built in 1974 to provide access from Campbell Road to a commercial radio tower on the Cumulus tract. Because of discrepancies between deed descriptions and the actual fence line, a 2000 survey showed that portions of the road overlapped the boundary

of Shim's adjoining tract. After acquiring his property, Shim removed the livestock fence, bulldozed part of the road, and erected a new fence that blocked access to the tower. Cumulus and its predecessors had used the road exclusively, openly, continuously, and adversely for more than twenty years, while both sides and their predecessors paid taxes on their respective tax parcels.

PROCEDURAL HISTORY

Dickey Brothers filed suit in the Davidson County Chancery Court after Shim removed a fence and bulldozed part of a service road accessing a radio tower. Phoenix was added as a plaintiff, and Cumulus later replaced Dickey Brothers as lead plaintiff. The chancery court granted summary judgment to Cumulus on common-law adverse possession, rejected the asserted statutory tax-payment bar, and did not rule on the alternative prescriptive-easement amendment. The Court of Appeals reversed and ordered dismissal based on Tennessee Code Annotated section 28-2-110(a). The Supreme Court reversed the Court of Appeals and reinstated the chancery court judgment.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The judgment of the Tennessee Court of Appeals was reversed, and the judgment of the Davidson County Chancery Court was reinstated. No further remand instructions were stated.

CASES CITED

- Blair v. W. Town Mall, 130 S.W.3d 761, 763-64 (Tenn. 2004)
- Hembree v. State, 925 S.W.2d 513, 515 (Tenn. 1996)
- Byrd v. Hall, 847 S.W.2d 208, 210-15 (Tenn. 1993)
- Harris v. St. Mary's Med. Ctr., Inc., 726 S.W.2d 902, 904 (Tenn. 1987)
- Henderson v. Bush Bros. & Co., 868 S.W.2d 236, 238 (Tenn. Workers' Comp. Panel 1993)
- Branch v. Warren, 527 S.W.2d 89, 91-92 (Tenn. 1975)
- Gardiner v. Word, 731 S.W.2d 889, 891 (Tenn. 1987)
- Thompson v. Superior Fireplace Co., 931 F.2d 372, 374 (6th Cir. 1991)
- Ellison v. Ford Motor Co., 847 F.2d 297, 300 (6th Cir. 1988)
- Merriman v. Smith, 599 S.W.2d 548, 559 (Tenn. Ct. App. 1979)
- Winborn v. Alexander, 39 Tenn. App. 1, 279 S.W.2d 718, 729 (1954)
- Burress v. Woodward, 665 S.W.2d 707, 708-09 (Tenn. 1984)
- Alexander v. Patrick, 656 S.W.2d 376, 377 (Tenn. Ct. App. 1983)
- Jack v. Dillehay, 194 S.W.3d 441, 450-54 (Tenn. Ct. App. 2005)
- Ferguson v. Prince, 136 Tenn. 543, 190 S.W. 548, 552 (Tenn. 1916)
- Keel v. Sutton, 142 Tenn. 341, 219 S.W. 351, 352-53 (1920)

- Hallmark v. Tidwell, 849 S.W.2d 787, 792-93 (Tenn. Ct. App. 1992)
- Liberto v. Steele, 188 Tenn. 529, 221 S.W.2d 701, 703-04 (1949)
- Lemm v. Adams, 955 S.W.2d 70, 72 (Tenn. Ct. App. 1997)
- Bradley v. McLeod, 984 S.W.2d 929, 934-35 (Tenn. Ct. App. 1998)
- Pevear v. Hunt, 924 S.W.2d 114, 116 (Tenn. Ct. App. 1996)
- House v. Close, 48 Tenn. App. 341, 346 S.W.2d 445, 447 (1961)

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