

IN THE COURT OF APPEALS OF IOWA

No. 8-074 / 07-0813
Filed February 27, 2008

JAMES A. TOOL and M. CYNTHIA TOOL,
Plaintiffs-Appellees/Cross-Appellants,

vs.

ROBERT GENE NOLIN and MARJORIE M. NOLIN,
Defendants-Appellants/Cross-Appellees.

Appeal from the Iowa District Court for Jasper County, Dale B. Hagen,
Judge.

The defendants appeal from the summary judgment ruling on the plaintiff's
quiet title action. **REVERSED AND REMANDED.**

Jane Odland of Walker & Billingsley, Newton, for appellant.

Bruce Nuzum of Matthias, Campbell, Tyler, Nuzum & Rickers, Newton, for
appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

This appeal, which involves plaintiffs James and Cynthia Tool and defendants Robert and Marjorie Nolin, revolves around a small piece of land amounting to approximately .3 acres that previously was part of a railroad line. The present dispute over the land between the parties arose after the Tools closed access to the property, which included a lane that the Nolins had previously used to access their farm.

Background Facts and Proceedings.

Nolins' Claim. The Nolins trace their right to the land as follows. In 1877, a deed transferring the land to Iowa, Minnesota and N.P. R.R. Co. was recorded in the office of the Jasper County Recorder. That deed recited, in pertinent part,

that in case the said Railway Company does not construct a Railway through said tract of land or shall after construction permanently abandon the route through said lands the same shall revert to and become the property of the grantees herein, their heirs and assigns

In approximately 1927, the rails and ties remaining from the railroad were removed from this particular piece of land. Later, a decision by the Interstate Commerce Commission found that the entire portion of the railroad line running from Reasnor to Monroe had been formally abandoned.

In 1956, a tax sale regarding this property was held, and Jasper County bid on it, as was then required. On December 21, 1967, a tax deed was issued to Jasper County. The tax sales deed recites that that abandoned railroad property was acquired for taxes owed by the Chicago, Rock Island & Pacific Railroad Company for the years 1953, 1954, and 1955. In 1972, Jasper County held an auction and sold its interest in the property to Steve and Linda Hewitt by

way of quitclaim deed. In 2006, Robert Nolin approached Steve Hewitt to purchase the land. Hewitt agreed to sell it for \$1000 and he provided Nolin with a quitclaim deed.

Tools' Claim. As noted above, the 1877 deed transferring the land to the railroad provided for the possibility of title reverting to the grantees or their assigns should the railroad company abandon it. The Tools assert they are the assigns of those grantees. In 1978, the Tools purchased a portion of the disputed land from the Van Wyngarden family. In 2002, they purchased a second plot of land from a cousin, Arthur Q. Tool, and his wife. Later that year, the Tools filed an affidavit of possession concerning the land.

The Lawsuit. On August 28, 2006, the Tools filed a petition in equity against the Nolins, asking that title to the disputed property be quieted in their names. Competing motions for summary judgment were filed by the parties. Following a hearing on the motions, the district court ruled in favor of the Tools and quieted title to the land in their name. It first noted that section 7862 of the 1927 Iowa Code provided that if a railway is left unused for a period of eight years, it shall revert to the owners from whom it was originally taken. The court found that because the Tools were the assignees of the original grantors of that property, "they were the proper owners of the land in question." It further ruled that "any alleged tax sale was ineffective and a nullity, as was any attempted conveyance from the Hewitts to the Nolins." No authority was cited for this conclusion. The Nolins appeal from this ruling.

Standard of Review.

Even though quiet title actions are tried in equity, *Fencl v. City of Harpers Ferry*, 620 N.W.2d 808, 811 (Iowa 2000), when the appeal stems from a summary judgment ruling our review is for the correction of errors at law. Iowa R. App. P. 6.4; *Keokuk Junction Ry. Co. v. IES Indus., Inc.*, 618 N.W.2d 352, 355 (Iowa 2000). In assessing the cross-motions for summary judgment, we view the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any, in the light most favorable to the nonmoving party. *Bearshield v. John Morrell & Co.*, 570 N.W.2d 915, 917 (Iowa 1997); *City of West Branch v. Miller*, 546 N.W.2d 598, 600 (Iowa 1996). Summary judgment was appropriately entered if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *City of West Branch*, 546 N.W.2d at 600.

Tax Deed.

First, there are no disputes as to material facts on the issue of the validity of the tax deed. Thus, summary judgment is appropriate.

We first note that the Tools, who prevailed below, now concede that the legal ground upon which the district court ruled in their favor does not actually support its position. Iowa Code section 7862 (1927), as noted, provided that upon eight years of disuse railway property shall revert to the former owners from whom the tract was originally taken. However, as was made clear in *Jacobs v. Miller*, 253 Iowa 213, 218, 111 N.W.2d 673, 676 (Iowa 1961), this statute only operates prospectively from the enactment of its predecessor in 1880. As the deed to the railroad in this case is dated 1877, it predates this act. Thus, the

Tools concede the district court ruling erred in relying on this ground and, as they must, have abandoned the position that this section is dispositive in their favor.

On appeal, the Nolins claim the Tools' action to quiet title was untimely under Iowa Code sections 448.12 and 614.24 (1954). The tax sale from which Jasper County purchased the property occurred in 1956 and a tax deed was subsequently issued to Jasper County in 1967. At that time, section 448.5(3) (1966) provided that the deed shall be considered "*conclusive* evidence . . . that all things whatsoever required by law to make a good and valid sale and to vest the title in the purchaser were done" (Emphasis added).

Iowa Code section 448.12 (1966) provided that "[n]o action for the recovery of real estate sold for the nonpayment of taxes shall be brought after five years from the execution and recording of the treasurer's deed" Under section 448.6, a challenger was required to prove one of four elements to defeat a tax deed. No challenge to the tax deed was made within five years of its execution and no argument was made as to any of the four elements that may have defeated the title conferred by such a deed. As a result, the Tools' rights to the property allegedly conferred as assigns of Van Wyngarden and/or Arthur Q. Tool were cut off. See *Witmer v. Peebles*, 294 N.W. 563, 564, 229 Iowa 404, 407 (1940). We therefore reverse the decision of the district court quieting title in the plaintiffs, James and Cynthia Tool.

The Tools also claimed a right to the land under alternative grounds. However, the district court did not address the issue of whether the Nolins' interest in the land was forfeited either under a theory of adverse possession of boundary by acquiescence. It appears factual issues may remain as to these

claims, and a trial may be necessary on them. We therefore remand for further consideration of these theories.

REVERSED AND REMANDED.