

Cite as 2009 Ark. App. 747

**ARKANSAS COURT OF APPEALS**

DIVISION I  
No. CA09-362

ARLANDS, LLC

APPELLANT

V.

FARMERS BANK & TRUST COMPANY  
APPELLEE

Opinion Delivered November 11, 2009

APPEAL FROM THE MISSISSIPPI  
COUNTY CIRCUIT COURT  
[NO. CV-2006-30 (JF)]

HONORABLE JOHN N. FOGLEMAN,  
JUDGE

AFFIRMED

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**JOHN MAUZY PITTMAN, Judge**

This is an appeal from summary judgment in favor of the appellee in an action to set aside a tax deed conveying property on which appellee held a mortgage. Appellee was not notified of the sale and discovered that it had taken place only after it attempted to foreclose the lien on the property for nonpayment. Appellant argues that no notice to appellee of the tax sale was required because the description in most of the deeds of trust filed by appellee in connection with the mortgage were void for uncertainty, and that appellee's action to set aside the deed is barred by the statute of limitations. We find no error, and we affirm.

The land at issue was conveyed by Michael M. Connealy and Shirley M. Connealy to NEARK Construction Company on December 11, 1997. The deed from the Connealys to NEARK described the land as "Lot Eight (8), and the West one-half (½) of Lot Nine (9),

Marsh Addition to the City of Blytheville, Arkansas.” The actual legal description of the property was “Lot Eight (8), and the West one-half (½) of Lot Nine (9), *Block three (3) of the Marsh Addition to the City of Blytheville, Arkansas.*” (Emphasis added.) The deed from the Connealys to NEARK, therefore, identified the property as particular lots in the Marsh Addition but failed to specify that the lots conveyed were located in “Block three.”

Simultaneously with its purchase of the property from the Connealys, NEARK executed a promissory note in favor of appellee and a deed of trust giving appellee a mortgage interest in the property. The promissory note was subsequently renewed several times, and additional deeds of trust were executed. Most of these deeds of trust likewise failed to specify the block number in which the lots were located, but one contained the full and correct legal description.

NEARK failed to pay the property taxes for the mortgaged property, and it was certified by the State for nonpayment of taxes. The Commissioner of State Lands issued a Limited Warranty Deed for Forfeited Property Sold on May 19, 2005, conveying all rights, title, and interest held by the State of Arkansas in the property to appellant in exchange for a payment of \$5,819.98. Although appellant did not conduct any title search before contracting to buy the property from the State, it did order a title search before the deed was issued. That title search resulted in a report informing appellant of the 1997 deed from the Connealys to NEARK and of the deeds of trust and mortgage granted by NEARK to

appellee. Appellant, then, had actual knowledge of the specific defect in the title description arising out of the Connealys' deed to NEARK and of appellee's interest in the property.

A deed will not be voided for uncertainty if the description, aided by extrinsic evidence, makes it possible to determine what property is intended to be conveyed. *American Investment Co. v. Gleason*, 181 Ark. 739, 28 S.W.2d 70 (1930). That the description in question in the present case did so is irrefutable; appellant's own title search actually discovered the deeds of trust granted to appellee. Under these circumstances, we hold that the trial court correctly refused to declare that the deeds omitting "Block three" from the legal description were void for uncertainty.

The Commissioner of State Lands was required to notify the owner of the land and all interested parties, by certified mail at their last known address, of their right to redeem the land by paying delinquent taxes, penalties, interests, and costs. Ark. Code Ann. § 26-37-301(a)(1) and (2) (Repl. 1997). Any person or business entity holding title or interest in the property by virtue of an instrument recorded before certification of the property as delinquent is an owner or interested party entitled to such notification. Ark. Code Ann. § 26-37-301(c) (Repl. 1997). Because the recorded deeds of trust securing appellee's mortgage interest were not void for vagueness, it follows that appellee was entitled to notice of its right to redemption under section 26-37-301. Because it is undisputed that the Commissioner of State Lands took no action whatsoever to notify appellee of its right to redemption, appellee's

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action to set aside the tax deed was not barred by the statute of limitations,<sup>1</sup> and the trial court correctly set aside the Commissioner's limited warranty deed to appellant. *RWR Properties, Inc. v. Mid-State Trust VIII*, 102 Ark. App. 115, 282 S.W.3d 297 (2008); see *Jones v. Flowers*, 547 U.S. 220 (2006); *McKinney v. Ivey*, 287 Ark. 300, 698 S.W.2d 506 (1985).

Affirmed.

HART and GLOVER, JJ., agree.

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<sup>1</sup>The statute of limitations set out in Ark. Code Ann. § 26-37-203 begins to run only after the Commissioner of State Lands gives the statutory notice to owners and interested parties.