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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000401-MR

CITY OF RYLAND HEIGHTS — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA A. SUMME, JUDGE
ACTION NO. 13-CI-01579

CHRIS WILSON;
U.S. BANK, N.A.;
FIRST FINANCIAL BANK, N.A.;
AND JEFF LANE, RECEIVER-
IN-POSSESSION — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: J. LAMBERT, STUMBO, AND TAYLOR, JUDGES.

LAMBERT, J., JUDGE: The City of Ryland Heights has appealed from the February 24, 2016, order of the Kenton Circuit Court entered following a bench

trial ruling that title to contested parcels of real estate was vested in Chris Wilson. We affirm.

The underlying case began with the filing of a complaint (later amended to correct a typographical error) by Wilson on July 26, 2013, to quiet title to property at 4011 Rylandtrace Drive in Ryland Heights, Kentucky, which is also known as Lot 10 of the Valley View Estates Subdivision. In February 2004, Andrew and Andrea Brinthaupt (the Brinthaupts) obtained the title to this property from LaSalle National Bank Association as Trustee for CSPF Series 2002 NP14, and the mortgage was recorded on March 2, 2004, in the Kenton County Clerk's office. On February 23, 2006, the Brinthaupts delivered a mortgage on the property in the amount of $151,200.00 to Countrywide Home Loans, Inc., and the mortgage was recorded the following month. In June 2007, the Brinthaupts executed another mortgage to Countrywide in the amount of $46,000.00, which was recorded the following month. However, in June 2004, the Brinthaupts apparently executed and delivered to the City of Ryland Heights (the City) a deed to a portion of the property, but the deed was not recorded in the Kenton County Clerk's office until July 8, 2008. Therefore, Wilson asserted that the mortgage holder listed in the 2006 and 2007 documents did not have actual notice of the 2004 deed and was the first to file.

In November 2009, US Bank National Association as Trustee for GSAA Home Equity Trust 2006-9 Asset-Backed Certificates Series 2006-9 (US Bank) filed a foreclosure action in Kenton Circuit Court against the Brinthaupts. Wilson alleged that the City had actual notice of the foreclosure proceeding because it filed a motion to intervene in that action, although the City did not properly notice the motion to be heard and was never actually permitted to intervene. In March 2010, the Kenton Circuit Court entered a judgment in favor of US Bank in the foreclosure action. The property was sold at a Master Commissioner's Sale in January 2012 to Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP for the Benefit of GSAA Home Equity Trust 2006-9 (Bank of America). The Master Commissioner's Deed was dated February 6, 2012, and was recorded on May 21, 2012.

On July 20, 2012, Bank of America executed and delivered a special warranty deed to the property to Wilson, in which it conveyed all its rights, title, and interest in the property to him. The deed was recorded in the Kenton County Clerk's office on September 17, 2012. The City then claimed that it had an interest in a portion of the property Wilson owned pursuant to its deed. Wilson asserted that he was entitled to have title to the property quieted in his name pursuant to Kentucky Revised Statute (KRS) 411.120 and requested that the circuit court

declare that the City's interest in the property had been extinguished. The City filed an answer, stating that Wilson did not a have a valid legal claim and that his interest in the disputed property was inferior to that of the City because its deed had been recorded before Wilson purchased the property.

Wilson moved for summary judgment in September 2013, arguing that there were no material issues of fact to be decided and that he was entitled to a judgment as a matter of law pursuant to Kentucky's race-notice statute, KRS 382.270. He asserted that the two mortgages to Countrywide took priority over the City's earlier deed because it was not recorded until 2008, meaning that there was no constructive notice of the deed. In addition to KRS 382.270, Wilson relied upon KRS 426.574 related to court-ordered sales of property. Wilson went on to argue that the City failed to assert its title in the foreclosure action, even though it attempted unsuccessfully to intervene in that action. In an attached affidavit, Wilson stated that he had paid Bank of America $51,000.00 for the property and had no notice of any claim by the City to a portion of that property. The City claimed ownership of a portion of his property after he had taken possession. Wilson stated that as a result of the City's actions, he had incurred extensive damages, including the loss of a potential sale of part of that real estate and a disruption to his business cash flow.

The City filed its own cross-motion for summary judgment in October 2013, seeking a judgment in its favor. It stated that the Brinthaupts sold two tracts from the property to it for $2,800.00 on June 19, 2004, and that the deed was recorded on July 8, 2008. The tracts together totaled less than one acre. Subsequent to that sale, the Brinthaupts gave Countrywide first and second mortgages on Lot 10, which were recorded in 2006 and 2007, respectively. The property went into foreclosure in 2009. The foreclosure action did not acknowledge the City's interest, despite US Bank's constructive notice of the 2004 deed. Had Wilson performed a title search, he would have discovered the City's 2004 deed that had been recorded in 2008. Therefore, the City argued that the 2006 and 2007 mortgages to Countrywide did not convey title to it or to Bank of America. Rather those merely established a security interest in the property. The City concluded that Wilson was on constructive notice of its deed to the portions of Lot 10 when he purchased the property from Bank of America. Because the Brinthaupts conveyed the portions to the City prior to mortgaging the property, the Master Commissioner could not convey the City's interest with the Master Commissioner's Deed. Therefore, the title to the disputed property should be quieted in favor of the City.

Wilson objected to the motion, arguing that the City's deed was void and pointing out that the legal descriptions in the City's deed and the calls on the

approved plat did not close, or match. He also provided another affidavit in which he confirmed that he had been paying taxes on the entire property, to both Kenton County and the City, since he had taken possession.

In October 2013, the City filed a motion seeking leave to file an amended answer, a counterclaim against Wilson for negligence in failing to perform a title search, and a third-party complaint against US Bank for negligence in failing to perform a title search and discover its deed. The court granted the motion over Wilson's objection by order entered April 16, 2014. Both Wilson and US Bank filed answers. In April 2015, Wilson moved the court to file a second amended complaint to add claims against the City for trespassing on the disputed property, converting the property for its personal use, committing nuisance on the property, slander of title, tortious interference with business, and negligent or intentional infliction of emotional distress. The circuit court granted Wilson's motion on May 11, 2015. A trial was scheduled for October of that year.

On July 13, 2015, the court entered an order on Wilson's and the City's motions for summary judgment, concluding that there were several issues of material fact to be decided. These issues included constructive notice and what property was conveyed to the City. The court held that, "[s]ince the mortgages were filed prior to the filing of the deed to the City, there is no constructive notice by Countrywide that the mortgagees might not in fact own all of Lot 10 and the

mortgages apparently apply to the whole undivided property." The court went on to recognize problems with the City's deed, including that the legal descriptions did not close and did not match the approved plat. Therefore, the court concluded that a genuine issue of material fact existed with respect to what property was conveyed to the City.

In August 2015, US Bank moved for summary judgment regarding the City's third-party complaint for indemnity against it, arguing that the City had a junior interest in the property, which would have been extinguished by the foreclosure action. US Bank also argued that it owed no duty to the City and that the City was not damaged. The City objected to the motion, noting that this was a claim for common law indemnification and, because the liability of the parties had not yet been decided, the motion was premature.

The same month, the City moved for summary judgment on Wilson's damages and to dismiss certain claims. The City asserted that Wilson's claims for trespass, nuisance, and slander of title, if he won at trial, would be limited to the loss in the property's fair market value. In addition, the City contended that Wilson's claims for slander of title, tortious interference with a business relationship, and the infliction of emotional distress should be dismissed because he could not prove the elements of those claims.

In September 2014, First Financial Bank, N.A. and Jeff Lane, Managing Member of Prodigy Properties, LLC, the court-appointed Receiver-in-Possession (collectively, First Financial), moved to intervene. Wilson had obtained a commercial loan from First Financial in November 2013, which was secured by mortgages and assignment of rent contracts on different parcels of real estate, including the property at issue in the present case. Wilson defaulted on the loan in November 2014, and First Financial filed a foreclosure and recovery action against him. Wilson had been dispossessed of the property since July 2015. Therefore, First Financial had an interest in the disputed property. The court granted the motion to intervene by order entered September 22, 2015.

US Bank and Wilson both moved the court to bifurcate the proceedings in order to separate the proceedings between US Bank and the City, and between the quiet title action and Wilson's damages claims. Wilson requested a bench trial to decide the property ownership issue.

Wilson testified by deposition prior to the bench trial. He had been in the real estate business for about twenty years, buying and selling (flipping) property. His wife worked as a realtor. Wilson explained how he found out about the property at issue being for sale. He saw a sign in the yard that it was in foreclosure. The property consisted of a 4000 square-foot house and just under five acres of land. The house was missing its cabinets and was in disrepair. It had

been vacant for some time. The land went around the City building, and it had frontage on both Decoursey Pike and Rylandtrace Drive. His plan was to divide off and sell three parcels as well as rehab the house and sell it. He purchased the property for approximately $51,000.00 from the bank in a cash transaction. He obtained a title search from Nielson & Sherry, who reported the title was clean. He also obtained title insurance. Wilson described the extensive work he put into the house, including new wiring, new plumbing, a new HVAC, a new roof, new windows, new walls, and painting the outside. He spent approximately $250,000.00 on repairing and rehabbing the house. Once the renovations on the house were completed, Wilson began publicizing that he potentially had some land for a building site.

In furtherance of his plan to subdivide the property, Wilson contacted a surveyor to survey the property and separate it. He and the surveyor scheduled a meeting, and while Wilson waited for him on the property, the City's Mayor, Bob Miller, approached him to ask what he was doing. He told the Mayor that he had pending sales on two of the lots and decided to retain one lot to build on for himself. He went on to say that he was waiting to meet with the surveyor. He told the Mayor that he had two driveways on the other side of the City building and would be able to keep the driveway that wrapped around the house. The Mayor informed Wilson that the City owned some of the property. Wilson called Jeff

Sherry, whose firm had run the title search, regarding what the Mayor told him. Mr. Sherry told him that he (Wilson) owned the whole lot. Mr. Sherry offered to call the City Attorney and the Mayor to discuss the matter, but they refused his calls.

A few days later, Wilson received a telephone call from the Mayor telling him the City was getting ready to erect a monument. When Wilson returned from a trip, he discovered the monument was being erected on his portion of the property, in the center of where he planned to include a driveway. Wilson called Mr. Sherry, who called the City Attorney and the Mayor and sent a cease and desist letter. The City kept digging on the property. Wilson then decided to file a title insurance claim. Mr. Sherry filed his claim, and another attorney got back to him to say that the City did not have a legal right to the property and they were going to fight the claim rather than pay it. Wilson stated that the property was currently in foreclosure through his commercial line of credit. He said he was unable to sell the property because of the cloud on his deed due to the City's actions.

John Cole also testified by deposition. He was the current Mayor of Ryland Heights. Prior to that, he served as a City Commissioner. Several documents were introduced during his testimony, including an unsigned version of the purchase contract between the City and Brinthaupts for the two tracts. He did

not have a copy of the signed version or know where one was. Mayor Cole was involved with the negotiations for the purchase of the property. The City needed an additional twenty feet of property if it ever decided to put in a driveway on both sides. They discussed the matter with Mr. Brinthaupt, came up with a price, and the City Attorney had the transaction completed after Mayor Miller contacted a surveyor. The final deal included an additional fifty feet on the other side at Mr. Brinthaupt's request.

Mayor Cole recalled that there was a problem with the plot numbers on the deed not matching the PVA's computer system. He explained that the property was resurveyed, but it took a long time to locate the Brinthaupts, who needed to sign the corrected version. A revised plat was signed by Mr. Brinthaupt in June 2005, but nothing else was signed by either of the Brinthaupts after that. The Mayor was not aware that the Brinthaupts had taken out two mortgages on their property between 2004 and 2008 until the lawsuit started. He stated that the City had moved to intervene in the Brinthaupts' foreclosure action to protect its interest in property taxes. The City's intervention had nothing to do with a property dispute. Mayor Cole believed someone dropped the ball on the title search because the City's deed was recorded in 2008 and Wilson did not purchase the property until 2012.

The court held a bench trial on the quiet title action on November 13, 2015. Wilson testified first regarding his purchase of the property, explaining that he took title via a special warranty deed from Bank of America. There were some tax liens on the property that had to be cleared prior to closing, but there were no other title issues with it. The title he received and his inspection of the property did not indicate that the City owned any portion of the property. The house on the property was in bad shape; Wilson had to gut it and rebuild it. The house was right next door to the city building, and Wilson knew the Mayor. He found out about a year later that the City claimed an interest in the property. For that year, Wilson maintained the property and paid taxes on the entire lot. Wilson went on to describe the onset of the dispute with the City as he did during his deposition.

Ted Knoebber testified next. He is the City Attorney for the City, and he has served in this position since 1974. He handles suits against the City and some real estate transactions. He handled the 2004 real estate transaction with the Brinthaupts for the City. He stated that he had problems getting the deed recorded because the PVA rejected it. The description did not match the PVA's plat, so the PVA was going to recommend that the clerk's office not record it. The deed was not recorded until 2008 due to the difficulties getting the PVA and the clerk's office to record it. The City had to have the property resurveyed and re-platted before it could be recorded. Mr. Knoebber lost track of the Brinthaupts, but he

tried to locate them to get their approval of the re-platted property and perhaps sign a corrected deed. He did not have any personal contact with the Brinthaupts after 2004. Mr. Knoebber said that the descriptions for the 2004 deed were obtained from using the plats available at the time. The file containing the referenced plat was not available. Mr. Knoebber also testified about the foreclosure action, and he said he filed a motion to intervene on behalf of the City. The motion was never heard. He wanted to protect the City's interest in collecting taxes in the event of a judicial sale.

Tom Yeager was the next witness to testify. He is a mapping technician for the Kenton County PVA's office. He maps properties for location and ownership to send out tax bills, processes new deeds to update owners, and processes property splits (partial sales of property) or combines properties. Mr. Yeager was familiar with the City's attempt to split the lot in question. He discussed the issues with the 2004 deed so far as the descriptions for the pieces of the lot to be split off. The descriptions did not match the picture on the plat. Mr. Yeager discussed the PVA's file regarding the property, which included computer generated drawings of the portions split from the lot made from the calls showing that the descriptions did not close. He was unable to determine what property was being transferred in the deed based on the legal description, and he later retired the

parcel numbers for the small tracts. The PVA never added the parcels to the City building and never removed them from Lot 10.

Mayor Cole testified next for the City. He testified about the purchase agreement between the City and the Brinthaupts dated June 19, 2004. He said Mayor Miller signed the agreement for the City after the commission approved it. The agreement included a description of the parcels to be purchased in the amount of $2,800.00. As part of the agreement, the City would have a driveway put in from Decoursey Pike. He said the City wanted to acquire the slivers of the property because one of the sections was very close to the City building. The City had been maintaining the 20-foot section since before the Brinthaupts owned it, believing the City owned it. The City entered into negotiations to purchase the tracts once it determined it did not. The survey mentioned in the purchase agreement was not attached to the exhibit, and Mayor Cole did not know where the survey was. He assumed that the Brinthaupts knew what property they were selling to the City.

Following the bench trial, the parties filed memoranda setting forth their respective positions. The City argued that it had a valid deed to the property, stating that the plat and the purchase agreement provided extrinsic evidence to establish the portion of the property the City owned and that its deed took priority over Wilson's deed. First Financial argued that Wilson sustained his burden of

proof to establish that title to the disputed property should be quieted in his favor based upon the City's abandonment of its rights and remedies to protect its interest. Wilson, similarly, argued that the City did not possess legal title to the disputed tracts of property and failed to assert its claim to the property in the Brinthaupts' foreclosure action.

On February 24, 2016, the circuit court entered an order deciding the quiet title action. The court found that "[s]ince the [2006 and 2007] mortgages were filed prior to the filing of the deed to the City, there was no constructive notice to Countrywide that the mortgagees might not in fact own all of Lot 10, and the mortgages apparently apply to the whole undivided property." The court went on to state:

> As noted above, it appears that the whole of the property was in fact mortgaged to the bank and therefore the whole of the property could be conveyed by the Master Commissioner's sale. However, prior to the sale the City did record its [deed] and the burden of due diligence is on the purchaser to ascertain the condition of the property, both physical and legal. The City argues that as its deed to the two surveyed and divisible tracts out of Lot Ten pre-dates both of the mortgages to Countrywide, the Master Commissioner's Deed to Bank of America, and Bank of America's deed to Wilson, and as it was recorded prior to the other deeds, its interest is superior. The court notes that the property of Plaintiff is on the corner of Decoursey Pike and Ryland Trace [sic] Drive and is indexed in the county records by its address on Ryland Trace [sic] Drive. The deed to the City is indexed in the county records as the property being on Decoursey Pike, which is correct as to the two disputed

> tracts but further adds to the confusion and fails to provide clear notice in the abstract of title to the original Lot 10. Considering the equities of the situation, it was the City's action, or inaction, in not recording their deed prior to the grant of the mortgages, and then their failure to assert their interest in the foreclosure action, which put the bank and the subsequent purchaser into an untenable position. "It has often been held that the owner of property who stands by and sees a third person selling it under claim of title, without asserting his own title or giving the purchaser any notice of it, is estopped as against the purchaser from afterwards asserting his title. *Brothers v. Porter*, 6 B. Mon. 106; *Davis v. Tingle*, 8 B. Mon. 539; *Sale v. Crutchfield*, 8 Bush, 636, *Morris v. Shannon*, 12 Bush, 89; *Amyx v. Hurt*, 69 S.W. 420." *Mize v. Day*, 153 Ky. 739, 156 S.W. 415, 416 (1913). All of these circumstances and the equitable positions of the parties support a judgment in favor of Plaintiff. The entirety of Lot 10 was conveyed by the Master Commissioner's sale, and later by the deed to Plaintiff, free and clear of any interest of the City in the two tracts.

Regarding the problems with the City's deed, the court stated:

> The discrepancies in the metes and bounds description in the deed as to the exact boundaries of the tracts attempted to have been conveyed by the Brinthaupts to the City make it impossible to determine from the face of the document exactly what land was meant to be conveyed. The deed refers to an attached plat which either never existed or has been lost, and there is sufficient evidence in the record to support a finding that the Brinthaupts never saw such a plat, which makes it impossible to ascertain exactly what property they intended to convey. There was testimony that the City attempted to contact the Brinthaupts at some point after the signing of the deed because the PVA had rejected it and it could not be recorded: the City had to have the property re-surveyed and re-platted and the new plat was prepared in 2008, but the Brinthaupts could not be located for them to sign off

> on corrections of the defects and the deed was finally filed. There is insufficient evidence that there was a meeting of the minds between the Brinthaupts and the City as to what property was being conveyed and their contract, the deed, must therefore fail. The preponderance of the evidence before the court is that the deed to the City from the Brinthaupts did not actually pass title to the two tracts of land.

Accordingly, the court determined that title to the entirety of Lot 10 was vested in Wilson. The court made the order final and appealable, and this appeal by the City now follows.

The City asserts that the circuit court should have granted summary judgment in its favor, while Wilson asserts that the circuit court did not commit any error in quieting title to the disputed property in his favor.

While the City states in its brief that our review should be under the summary judgment standard, we note that the circuit court did not grant summary judgment in this case, but rather it held a bench trial after which the judgment on appeal was entered. Therefore, we agree with Wilson that a different standard of review applies. In *Baze v. Rees*, 217 S.W.3d 207, 210 (Ky. 2006), the Supreme Court of Kentucky instructed that

> CR 52.01 has long held that matters of fact tried before a judge without a jury are to be reviewed under the clearly erroneous standard. The rule provides in pertinent part that findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge the credibility of

> the witnesses. *See Largent v. Largent*, 643 S.W.2d 261 (Ky. 1982).

And in *Patmon v. Hobbs*, 280 S.W.3d 589, 593 (Ky. App. 2009), this Court, in accordance with *Baze*, described the standard of review following a bench trial as two-fold:

> At a bench trial, the factual findings of the trial court shall not be set aside unless they are clearly erroneous; that is, not supported by substantial evidence. *Cole v. Gilvin*, 59 S.W.3d 468, 472 (Ky. App. 2001). If not clearly erroneous, the findings shall not be set aside. Kentucky Rules of Civil Procedure (CR) 52.01. Additionally, any questions of law that are resolved at trial are reviewed *de novo*. *Gosney v. Glenn*, 163 S.W.3d 894 (Ky. App. 2005).

With this standard in mind, we shall review the circuit court's order on appeal.[1]

For its first argument, the City asserts that the mortgages from the Brinthaupts to Countrywide did not convey title to the property. It argues that the 2006 and 2007 mortgages merely documented a security interest in the property and that its deed conveyed an ownership interest. While the security interest extended over the entire lot, that interest was extinguished by the Master Commissioner's Deed. We disagree.

[1] We note that, with the exception of a few citations in the argument section to Mayor Cole's deposition and items in the appendix to its brief, the City has failed to include "ample references to the specific pages of the record, or tape and digital counter number in the case of untranscribed videotape or audiotape recordings" in its Statement of the Case pursuant to CR 76.12(4)(c)(iv), and it did not include "ample supportive references to the record" or, at the beginning of each argument, "a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner" pursuant to CR 76.12(4)(c)(v). We shall nevertheless consider the City's arguments.

As Wilson argues, the City's argument must fail because the source of the City's title was the Master Commissioner's Deed, which conveyed all of Lot 10 to Countrywide's successor, Bank of America, pursuant to a valid court order. KRS 426.570 provides that "the master commissioner of a Circuit Court shall make all conveyances of real property that are authorized by law to be made by a commissioner of the Circuit Court." KRS 426.574 provides, in turn, that "[a] conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding." The former Court of Appeals held in *Smith v. Holowell*, 201 Ky. 271, 256 S.W. 408, 409 (1923), as follows:

> To warrant the setting aside of a sale there must be either fraud or misconduct in some one connected with the sale, unfairness of the officer who conducts the sale, some surprise or misapprehension on the part of those interested, or some irregularity in the proceedings, or other circumstances attending, conducing to show unfairness.

The City never objected to the Master Commissioner's sale, never alleged that any fraud had taken place with respect to that sale, and failed to properly intervene in the Brinthaupts' foreclosure action to protect its interest. Therefore, we find no merit in the City's argument that the Brinthaupts' mortgages to Countrywide did not convey title.

Next, the City argues that Bank of America and Wilson had notice of the City's title to the disputed tracts before receiving deeds to the property. The City posits that because its deed was recorded in 2008 and the foreclosure action was not filed until 2009, Bank of America had constructive notice of the City's ownership in the disputed tracts prior to obtaining the Master Commissioner's Deed. The 2008 recording also put Wilson on notice of the City's title to the tracts, as he did not obtain his title to the property until 2012 after the Master Commissioner's Deed had been transferred to Bank of America following the foreclosure proceedings. Again, we disagree.

There is no dispute that Kentucky is a race-notice state regarding the priority of interests in real estate. KRS 382.270 provides:

> No deed or deed of trust or mortgage conveying a legal or equitable title to real property shall be lodged for record and, thus, valid against a purchaser for a valuable consideration, without notice thereof, or against creditors, until such deed or mortgage is acknowledged or proved according to law. However, if a deed or deed of trust or mortgage conveying a legal or equitable title to real property is not so acknowledged or proved according to law, but is or has been otherwise lodged for record, such deed or deed of trust or mortgage conveying a legal or equitable title to real property or creating a mortgage lien on real property shall be deemed to be validly lodged for record for purposes of KRS Chapter 382, and all interested parties shall be on constructive notice of the contents thereof. As used in this section "creditors" includes all creditors irrespective of whether or not they have acquired a lien by legal or equitable proceedings or by voluntary conveyance.

"All bona fide deeds of trust or mortgages shall take effect in the order that they are legally acknowledged or proved and lodged for record." KRS 382.280. As the Supreme Court of Kentucky explained in *Wells Fargo Bank, Minnesota, N.A. v. Commonwealth, Finance and Admin., Dept. of Revenue*, 345 S.W.3d 800, 804 (Ky. 2011),

> The combined effect of these statutes is known as the "race-notice" rule. In other words, one must not only be the first to file the mortgage, deed or deed of trust, but the filer must also lack actual or constructive knowledge of any other mortgages, deeds or deeds of trust related to the property.

"It is familiar law that constructive notice is charged against a party in two ways. One is the conclusive notice of instruments properly recorded in the office of a county court clerk, and the other is the implication of the law arising from negligent failure to ascertain any given situation." *Wides v. Wides' Ex'r*, 299 Ky. 103, 113, 184 S.W.2d 579, 584 (1944).

The City argues that because its deed predated the mortgages to Countrywide, the Master Commissioner's Deed, and Bank of America's deed to Wilson, it had established constructive notice and its interest in the property was superior. But as the circuit court noted, Wilson's property

> is on the corner of Decoursey Pike and Ryland Trace [sic] Drive and is indexed in the county records by its address on Ryland Trace [sic] Drive. The deed to the City is indexed in the county records as the property

> being on Decoursey Pike, which is correct as to the two disputed tracts but further adds to the confusion and fails to provide clear notice in the abstract of title to the original Lot 10.

The City's inaction in failing to file its deed prior to the filing of the two Countrywide mortgages coupled with its failure to assert its interest in the foreclosure action leads this Court to find no merit in this argument. The circuit court's finding that there was no constructive notice is supported by substantial evidence and is not clearly erroneous.

Next, the City contends that Wilson's title to Lot 10 is inferior to the conveyances of the two tracts to it. The City relies upon KRS 426.574 ("A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding.") in support of its argument that its interest was superior because both the Master Commissioner's Deed to Bank of America and Bank of America's deed to Wilson were later in time and with notice of the City's interest. For the reasons set forth regarding the previous argument, this argument must also fail. Countrywide did not have actual or constructive notice of the City's interest when the mortgages were recorded in 2006 and 2007, and it therefore follows that because its interest covered all of Lot 10, the Master Commissioner's Deed and thereafter Wilson's deed encompassed the entire property, including the disputed tracts. We find no merit in the City's argument on this issue.

Finally, the City argues that the Brinthaupts intended to transfer the property to the City as evidenced in the 2008 deed and the real estate purchase contract. The City asserts that the deficiency in the deed's legal description constituted an ambiguity or mistake, meaning that the court could consider the parties' intentions. We find no merit in this argument, but rather agree with Wilson that there is no evidence the Brinthaupts intended to convey to the City the tracts identified in the 2008 survey because they never saw that survey. Furthermore, the City failed to produce a signed version of the purchase contract and the attachments mentioned in it, including the survey of the property. Accordingly, the circuit court's finding that there was "insufficient evidence that there was a meeting of the minds between the Brinthaupts and the City as to what property was being conveyed" is supported by substantial evidence. Therefore, the circuit court did not commit any error in concluding that the deed from the Brinthaupts to the City did not pass title to the two disputed tracts.

Therefore, we hold as a matter of law that the circuit court did not commit any error in quieting title to the disputed tracts in Wilson's favor, and the order on appeal is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Jack S. Gatlin
Fort Mitchell, Kentucky

BRIEF FOR APPELLEE CHRIS WILSON:

Glenn E. Algie
Covington, Kentucky