

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs May 7, 2009

**JOHN S. BRYAN, JR., ET AL. v. WILLIAM R. (BILL)  
MITCHELL, JR., ET AL.**

**Appeal from the Chancery Court for Lincoln County  
No. 00012492 J.B. Cox, Chancellor**

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**No. M2008-01918-COA-R3-CV - Filed May 29, 2009**

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John S. Bryan, Jr. and Debbie W. Bryan (“Plaintiffs”) sued William R. (Bill) Mitchell, Jr. and Sherry L. Mitchell (“Defendants”) in a dispute over real property located in Lincoln County, Tennessee. The case was heard before a Special Master. After a hearing, the Trial Court entered an order, *inter alia*, adopting the Special Master’s findings. Defendants appeal to this Court. No transcript or statement of the evidence is in the record on appeal. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;  
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. McCLARTY, J., joined.

Thomas F. Bloom, Nashville, Tennessee for the Appellants, William R. (Bill) Mitchell, Jr. and Sherry L. Mitchell.

Joe W. Henry, Jr., Pulaski, Tennessee for the Appellees, John S. Bryan, Jr. and Debbie W. Bryan.

## OPINION

### Background

Plaintiffs and Defendants own contiguous tracts of land located in Lincoln County, Tennessee. Disputes arose over the use of the land, and Plaintiffs sued Defendants for breach of contract, violation of statute, nuisance, negligence, and malicious interference with rights, among other things. Plaintiffs sought damages, a declaratory judgment, a permanent injunction, and reformation of a deed, among other things. Defendants answered the complaint and filed a counter-claim for trespass to chattels, and also sought damages and a permanent injunction.

The case was heard before a Special Master who received testimony, reviewed a number of exhibits, and then prepared a detailed written report of his findings for the Trial Court. The Special Master later heard additional proof and issued a supplemental report to the Trial Court. Defendants raised objections to the Special Master's reports. The Trial Court held a hearing on the objections and then entered an order on July 22, 2008 adopting the Special Master's findings and holding, *inter alia*, "that all issues decided by the Special Master are supported by evidence and that the defendants have produced no proof to the contrary." The Trial Court specifically found and held, *inter alia*, that Plaintiffs own Eagin Road, that Defendants do not have standing to claim an ownership interest in Dunnivant Lane, and that Plaintiffs' construction of a new Dunnivant Lane caused no damage to Defendants or to the old Dunnivant Lane.

Defendants appeal to this Court.

### Discussion

Although not stated exactly as such, Defendants raise three issues on appeal: 1) whether the Trial Court erred in holding that Plaintiffs own Eagin Road; 2) whether the Trial Court erred in requiring Defendants to widen the entrance to Eagin Road and in enjoining Defendants from placing head walls or barriers at that entrance; and, 3) whether the Trial Court erred in finding and holding that Plaintiff's actions with regard to Dunnivant Lane did not interfere with Defendants' property rights.

In *Dalton v. Dalton*, we discussed the appropriate standard of review in cases involving matters referred to a Special Master stating:

The trial court's order referring certain matters to the Special Master, the Special Master's report, and the trial court's order on the report affect our standard of review on appeal. *See Manis v. Manis*, 49 S.W.3d 295, 301 (Tenn. Ct. App. 2001); *Archer v. Archer*, 907 S.W.2d 412, 415 (Tenn. Ct. App. 1995). Generally, concurrent findings of fact by a special master and a trial court are conclusive

and cannot be overturned on appeal. *Manis*, 49 S.W.3d at 301. However, a concurrent finding is not conclusive where it is upon an issue not properly referred to a special master, where it is based upon an error of law or a mixed question of fact and law, or where it is not supported by any material evidence. *Id.*

On appeal, we review findings of the trial court which reject or modify a special master's findings under the general standard of Tenn. R. App. P. 13(d). *Parks v. Eslinger*, No. M1999-02027-COA-R3-CV, slip op. at 8 (Tenn. Ct. App. M.S. Feb. 4, 2003). Our review is *de novo* upon the record, with the trial court's findings of fact accompanied by a presumption of correctness unless the evidence preponderates otherwise. *Id.*

*Dalton*, No. W2006-00118-COA-R3-CV, 2006 WL 3804415, at \*3-4 (Tenn. Ct. App. Dec. 28, 2006), *no appl. perm. appeal filed*. With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

Our review of this case has been hampered by the fact that we have been provided neither a transcript of the hearings nor a statement of the evidence. As we have stated many times, "[t]his court cannot review the facts *de novo* without an appellate record containing the facts, and therefore, we must assume that the record, had it been preserved, would have contained sufficient evidence to support the trial court's factual findings." *Sherrod v. Wix*, 849 S.W.2d 780, 783 (Tenn. Ct. App. 1992). In summary, we have concurrent findings of fact by the Special Master and the Trial Court. Added to that is the absence of a transcript or a statement of the evidence.

With regard to the first issue raised on appeal, Defendants contend that "the trial court's ruling suffers from several legal and factual errors," which Defendants contend require reversal. Defendants argue, in part:

First, despite the special master's statement that the "roadway existed and was clearly identifiable at the time the deed containing that reservation was executed," ..., there is no evidence whatsoever in the record that Eagin Road, as presently located, existed in 1911. In fact, William Mitchell Jr. [sic] and John Bryan testified that they remembered the road in its present location from 1958 ... and the early 1960s ..., respectively. There is no evidence with respect to any previous time period.

This Court, however, has no way of knowing whether there is evidence in the record that Eagin Road existed in 1911, nor are we able to determine what the testimony of William Mitchell, Jr. and John

Bryan showed, as we have not been provided with an appellate record containing the evidence to allow us to conduct a proper review.

In their reply brief on appeal, Defendants argue:

The issues raised in this appeal, particularly the issue with regard to the ownership of Eagin Road, involve the construction of certain deeds - a question of law. The deeds themselves are part of the technical record. Furthermore, any additional evidence needed to flesh out these issues was supplied by the depositions of Plaintiff John Bryan and Defendant William Mitchell, which are also in the record. Although Plaintiffs state that the special master took sworn testimony regarding these issues at the hearing, they do not specify how that testimony differs from the deposition testimony already included in the record.

Defendants miss a crucial point. They themselves admit that “additional evidence” was needed to “flesh out these issues” and that this evidence was provided, in part, by testimony taken before the Special Master. Although we have the deeds in the record on appeal, this Court was not provided with a transcript or statement of the evidence detailing the evidence given by sworn testimony at the hearings. Defendants also allege that Plaintiffs in their brief on appeal failed to specify how the sworn testimony at the hearings differs from deposition testimony in the record. However, this Court has no way of knowing whether this assertion that the testimony given before the Special Master was identical to the deposition testimony is true as we were not provided with a transcript or statement of the evidence pursuant to Tenn. R. App. P. 24.

Defendants, as the appellants, had the duty "to prepare a record which conveys a fair, accurate and complete account of what transpired in the trial court with respect to the issues which form the basis of the appeal." *Nickas v. Capadalis*, 954 S.W.2d 735, 742 (Tenn. Ct. App. 1997) (quoting *State v. Boling*, 840 S.W.2d 944, 951 (Tenn. Crim. App. 1992)). Defendants raise issues on appeal alleging that the Trial Court made factual errors, but failed to prepare a record that would allow this Court to conduct a full review of the facts.

No issue was raised on appeal that the issues were not properly referred to the Special Master. We find no error of law and, due to Defendants’ failure to provide an appropriate record on appeal, we cannot review the evidence to determine whether the findings are, or are not, supported by material evidence. Taking the findings of fact as conclusive, as we must in this case, we find no error in the Trial Court’s holding that Plaintiffs own Eagin Road.

As for the second and third issues raised on appeal, Defendants argue that the Trial Court’s ruling “is contrary to a preponderance of the evidence.” As we have already discussed, we are unable to determine whether the evidence preponderates for or against the Trial Court’s findings and resulting ruling because of Defendants’ failure to provide an appropriate record on appeal. These issues are without merit.

We affirm the Trial Court's July 22, 2008 order.

**Conclusion**

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellants, William R. (Bill) Mitchell, Jr. and Sherry L. Mitchell, and their surety.

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D. MICHAEL SWINEY, JUDGE