IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 10, 2007 Session

MIKE J. URQUHART v. STATE OF TENNESSEE, DEPARTMENT OF SAFETY

Appeal from the Chancery Court for Davidson County
No. 04-2869-I Claudia Bonnyman, Chancellor

No. M2006-02240-COA-R3-CV - Filed May 9, 2008

A man who contracted with a storage facility to clean out abandoned storage units in exchange for permission to keep the contents discovered $40,000 in cash in one of the units. He turned it over to an attorney, who deposited it in an interest-bearing account and reported the find to the police. Shortly thereafter, it was learned that he had cleaned out the wrong unit because of an error by the storage company. The State subsequently seized the money, believing it to be traceable to illegal drug transactions. The finder filed an administrative claim for the money's return, contending that he was a bonafide purchaser for value and that the State had no right to seize property he had legitimately acquired. The administrative law judge ruled that the money was properly seized and forfeited it to the State. The administrative ruling was appealed to the chancery court, which ruled in favor of the State. We affirm.

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

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., J. and TOM E. GRAY, SP. J., joined.

Edward L. Hiland, Nashville, Tennessee, for the appellant, Mike J. Urquhart.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Lizabeth A. Hale and William R. Lundy, Jr., Assistants Attorney General, for the appellee, State of Tennessee, Department of Safety.

OPINION

I. A SURPRISING FIND

This case arose from an oral agreement between Kenneth Woods and the manager of a self-service storage facility in Madison, Tennessee, owned by Public Storage Inc. Mr. Woods agreed to clean out units in the storage facility that were deemed to be abandoned after the lessees failed to make their rental payments. In exchange for his labor, Mr. Woods would then be allowed to keep all the items found in the unit. On January 4, 2003, Public Storage manager Lloyd Harmon

contacted Mr. Woods and told him that one of the units needed to be cleaned out. When Mr. Woods arrived, the manager cut the lock of storage unit A-21, looked over the contents of the unit without entering it, and told Mr. Woods that he could clean it out and keep the contents.

Mr. Woods returned on January 7, 2003 to clean out the unit. He found a big fan, a box of toys, a Christmas tree with jalapeno lights, and bags of men's clothing scattered around. Under the clothing, he found an item he described as "a hard plastic box." Upon opening the box, he discovered $40,000 in cash wrapped in a plastic bag.[1] He moved the clothing and other items to another storage unit, E-54, which Public Storage made available for his use, put the money in his truck and took it home.

As it happened, the rental fees on Unit A-21 were up-to-date and had never been late, so there was no abandonment of that unit, and it was opened by mistake. Mr. Harmon testified that the rental fees on Unit A-20 were over thirty days late, and that this adjoining unit was the one he should have had Mr. Woods clean out. Unit A-21 was leased to a woman named Georgia Minnifield. Her storage agreement granted access to the unit to only one other person - her grandson Timothy Smith. The proof showed that Mr. Smith entered the storage unit on a regular basis.

On January 8, 2003, the day after he found the $40,000, Mr. Woods went to see attorney Mike Urquhart and turned the money over to him. Mr. Urquhart deposited the money in an interest-bearing escrow account and contacted the police to report the find. An investigation began immediately. Detective John Donegan and another detective went to the storage facility, interviewed Mr. Harmon, inspected the lease agreement on Unit A-21, and noticed Timothy Smith's name on the document. Detective Donegan knew Timothy Smith as an associate of a convicted cocaine trafficker from an investigation he had conducted some years earlier.

John Donegan obtained a search warrant for Mr. Smith's house. Although he found no drugs or contraband there, the quantity of luxury items in the home and Mr. Smith's responses to his questions confirmed his suspicion that the money was the fruit of illegal activity. He obtained a seizure notice, which was given to Mike Urquhart on February 5, 2003, and the $40,000 was seized as contraband in accordance with the provisions of Tenn. Code Ann. § 53-11-451(a) of the Tennessee Drug Control Act.

II. FORFEITURE PROCEEDINGS

After the State seized the money in Mr. Urquhart's account, he filed a timely claim and a demand for a hearing on behalf of Mr. Woods, claiming that Mr. Woods had an interest in the seized property. Neither Timothy Smith nor Public Storage filed a claim for the funds. Hereinafter, when we refer to "the Claimant" it should be understood that we are referring to Mr. Woods or Mr. Urquhart or both, depending on the context. The hearing was conducted on August 18, 2003 before an Administrative Law Judge (ALJ). Testifying witnesses were Lloyd Harmon, Detective Donegan, Mike Urquhart and Kenneth Woods. Timothy Smith did not testify.

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[1]The police officer called as a witness at the administrative hearing testified that he was told the money was found in a shrink-wrapped condition. But Mr. Woods, who found the money, testified that was not so.

According to the testimony of Lloyd Harmon, Timothy Smith came to Public Storage on January 8, 2003 and discovered that a company lock had been placed on Unit A-21 in place of his own lock. He told Mr. Harmon, who checked his records and discovered that the wrong lock had been cut. Mr. Smith allegedly told Mr. Harmon that there had been a floor safe in A-21 with some important documents in it. Mr. Harmon then called Mr. Woods, who denied that there had been a safe in Unit A-21, but said that Mr. Smith could go to Unit E-54 to retrieve his property. Mr. Harmon and Mr. Smith both went to Unit E-54, but of course there was no safe there. A few days later, Mr. Smith returned and asked about the safe again. Within a few minutes he told Mr. Harmon that there had been over $40,000 in it.

During his testimony, Mr. Harmon was allowed to refresh his memory by referring to pages from a customer transaction journal. The pages, which documented non-payment and delinquency on Unit A-20 and timely and consistent payment on Unit A-21, were entered into the record, as were the lease on the unit, signed by Georgia Minnifield, and occupancy information notes which granted "Timothy Smith - Grandson" access to the unit. There was also a page of ledger notes relating to the same unit, which included Mr. Harmon's account of the events of January 8, 2003. The Claimant cross-examined Mr. Harmon as to why there was no mention in the notes of the visit to Public Storage by the two detectives, and he responded that he didn't know and didn't remember.

Mr. Woods testified that after he turned the money over to Mr. Urquhart, Mr. Harmon called him and said in an urgent tone that the federal government had been there looking for a box with important insurance papers in it, and asked if Mr. Woods had found it. Mr. Woods said that he did not, because "I didn't have no box with insurance papers in it." When Mr. Woods returned home, there were threatening messages on his answering machine from Timothy Smith allegedly saying "I want the stuff back you got out of the storage bin and you know what I'm talking about." Mr. Woods also alleged that Mr. Smith tried to come to his home, but was turned away from the limited access building because he didn't know Mr. Woods' apartment number.

Detective Donegan has served nineteen years in the police department, with twelve of those years in the vice division. He testified that he found quite a bit of electronic equipment in Mr. Smith's residence, as well as a number of expensive cars registered in other people's names, for which Mr. Smith maintained the insurance. He also found receipts and cashiers checks, one of which was for more than $30,000, documenting large expenditures for vehicles, fur coats, electronics and furniture. Mr. Smith claimed that he supported himself with a sunglass business, but his business records showed only $3,000-$4,000 in gross sales per year. Donegan also found a shrink wrap machine and weighing scales in Mr. Smith's kitchen.

Detective Donegan testified that he questioned Mr. Smith about the storage unit and the money and that Mr. Smith denied having access to a storage unit or of having $40,000 in a storage unit. The detective then confronted him with the fact that there was a videotape of him accessing the unit, and "he confessed to the unit. I don't know that he ever confessed to the money." The detective stated that in his experience, drug dealers often use rental storage facilities to hide drugs, money or weapons, that they deny knowledge of ill-gotten gains, that they title the cars they buy in the name of others to protect them from seizure and forfeiture, and that they shrink-wrap money or drugs in an attempt to mask the smell of the narcotic. In light of his experience, and of Mr. Smith's

inability to explain the source of the money that enabled him to buy so many expensive items, Detective Donegan concluded that the money found in the storage locker came from drug dealing.

At the conclusion of testimony, the administrative law judge took the case under advisement. On April 12, 2004, the ALJ filed an Initial Order striking Mr. Woods' claim, and ruling that "the subject currency should be forfeited to the seizing agency." In its findings of fact and conclusions of law, the order recited that it had been proven by a preponderance of the evidence that the money was "ill gotten gain from illegal drug transactions," and that Mr. Smith was the true owner of the $40,000.

The claim of Mr. Woods was based upon the theory that in finding the money in Unit A-21, he had obtained an ownership interest in it. The ALJ held, however, that Mr. Woods did not have an ownership interest, reasoning that he could not be considered a bonafide purchaser for value of the currency because neither he nor Public Storage had any right to enter Unit A-21 and remove its contents.

The ALJ's order was then appealed to the Commissioner of the Tennessee Department of Safety. It was affirmed on August 18, 2004, thereby rendering it a final order for purposes of judicial review pursuant to Tenn. Code Ann. § 4-5-322. Such review was sought in the Chancery Court of Davidson County. The trial court reviewed the administrative record and the briefs of the parties and conducted a hearing. Although the court found Mr. Woods to be "a sympathetic claimant," it agreed with the ALJ that he did not have an ownership interest in the money at issue and that, under the forfeiture statutes, no claim could be valid in the absence of such an interest. The court accordingly filed a Memorandum and Order affirming the forfeiture. This appeal followed.

III. Analysis

A. The Standard of Review

Actions for forfeiture of property are derived from English common law, but they are governed by statute in Tennessee, specifically, Tenn. Code Ann. § 40-33-201 *et seq*, which deals with forfeitures in general, and Tenn. Code Ann. § 53-11-201 *et seq*, which deals with penalties for violations of the drug control laws. *See* Lewis L. Laska and Brian K. Holmgren, *Forfeitures under The Tennessee Drug Control Act,* 16 Memphis State Univ. Law Review 431 (1986). Under Tenn. Code Ann. § 53-11-451, law enforcement officers may seize personal property used in the manufacture, transportation or sale of controlled substances, as well as "[e]verything of value furnished or intended to be furnished, in exchange for a controlled substance... all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act..." Tenn. Code Ann. § 53-11-451(a)(6)(A).

Once property is seized, a person claiming an interest in that property may file a claim with the Commissioner of the Tennessee Department of Safety, thereby triggering the claimant's right to

an administrative hearing at which "the state shall have the burden of proving by a preponderance of the evidence that the seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture under the provisions of this chapter, and failure to carry the burden of proof shall operate as a bar to any forfeiture under this chapter." Tenn. Code Ann. § 53-11-201(d)(2). *See also* Tenn. Code Ann. § 40-33-210(a).

Judicial review of forfeiture proceedings is primarily governed by Tenn. Code Ann. § 4-5-322 of the Uniform Administrative Procedures Act. Subsection (h) of that statute provides that

> The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
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> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
> (5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.
>
> (B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

A variation from the above standard applies in forfeiture cases, which is set out in Tenn. Code Ann. § 40-33-213. That statute explicitly refers to Tenn. Code Ann. § 4-5-322(h) but declares that in forfeiture cases "[t]he reviewing court shall use the preponderance of evidence standard in determining whether to sustain or reverse the final order of the applicable agency. The burden of proof on review shall be the same as in the proceedings before the applicable agency." See *Jones v. Greene,* 946 S.W.2d 817, 822 (Tenn. Ct. App. 1996)(stating that "[t]he standard of review tracks Tenn. Code Ann. § 4-5-322(h) except that the reviewing court must weigh the evidence using the preponderance of the evidence standard.").

Thus, the trial court must examine the evidence under the preponderance of the evidence standard rather than the more deferential "substantial and material evidence" standard. The appellate court must in turn follow the same standard as the trial court when reviewing administrative proceedings under Tenn. Code Ann. § 4-5-322. *Robertson v. Tennessee Board of Social Worker Certification and Licensure*, 227 S.W.3d 7, 13 (Tenn. 2007); *CF Industries v. Tennessee Pub. Serv. Comm'n*, 599 S.W.2d 536, 540 (Tenn. 1980). The preponderance of the evidence standard is satisfied if the proof shows that the truth of the matter asserted is more probable than not. *Lettner v. Plummer*, 559 S.W.2d 785,787 (Tenn. 1985); *In re C.W.W.,* 37 S.W.3d 467, 474 (Tenn. Ct. App. 2000).

B. THE QUESTION OF STANDING

In order to contest a forfeiture proceeding, a party must demonstrate some sort of ownership interest in the property which is subject to forfeiture. Without such an ownership interest, a party lacks standing to challenge the forfeiture. *See Jones v. Greene, supra; U.S. v. $515,060.42 in U.S. Currency*, 152 F.3d 491, 497 (6th Circuit 1998). The standing requirement in the statutory proceeding in this case is included in the following:

> Whenever, in any proceeding under this section, a claim is filed for any property seized, as provided in this section, by an owner or other person asserting the interest of the owner, the commissioner shall not allow the claim unless and until the claimant proves that the claimant:
>
> (A) Has in interest in such property which the claimant acquired in good faith; and
>
> (B) Had at no time any knowledge or reason to believe it was being or would be used in violation of the laws of the United States or of the State of Tennessee relating to narcotic drugs or marijuana.

Tenn. Code Ann. § 53-11-201(f)(1).

The claimant is required to carry the burden of proof as to his ownership interest under Tenn. Code Ann. § 53-11-201(f)(A). Rules of Procedure for Asset Forfeiture Hearings, 1340-2-2-.15(3).[2] The mere physical possession of property is not sufficient in and of itself to confer standing to contest a forfeiture. *U.S. v. $515,060.42 in U.S. Currency*, 152 F.3d at 497; *see also* Am. Jur. 2d *Forfeitures and Penalties*, § 38.

The State does not dispute that Mr. Woods acted in good faith, nor does it claim that there was any connection between him and any illegal activity which may have generated the disputed currency. It argues, rather, that he could not demonstrate an interest in the property which would entitle him to recover the seized funds.

Mr. Woods argues that because he fulfilled the terms of his agreement with Public Storage by exchanging his labor cleaning out Unit A-21 for the goods found in that unit, he thereby became a bonafide purchaser for value. *See Henderson v. Lawrence*, 369 S.W.2d 553, 556 (Tenn. 1963) (stating "A bonafide purchaser is one who buys for a valuable consideration without knowledge or notice of facts material to the title."). A bonafide purchaser, sometimes called an "innocent purchaser," or a "purchaser in good faith," generally takes the property he has purchased free of any defects of title of which he has received neither actual or constructive notice.[3]

However, a purchaser can only acquire title to goods where the seller has the power to transfer such title. *Alsafi Oriental Rugs v. American Loan Co.*, 864 S.W.2d 41, 43 (Tenn. Ct. App.

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[2]The department has the burden of proof as to the illegal use of the seized property. Rules of Procedure for Asset Forfeiture Hearings, 1340-2-2-.15(4).

[3]We are not convinced that Mr. Woods qualifies as a bonafide purchaser for value. When he agreed to provide his labor, he had no expectation of receiving $40,000 or any items close to that value.

1993). Thus, the protection normally afforded to a bonafide purchaser does not extend to situations where the seller has only a "bare possessory interest" in the property and lacks any ownership interest. *See Butler v. Buick Motor Co.*, 813 S.W.2d 454, 458 (Tenn. Ct. App. 1991). In the present case, the actual owner of the disputed property prior to the forfeiture proceeding was the lessor of the storage facility or her grandson, Timothy Smith. The seller was Public Storage, Inc. acting through its agent, Lloyd Harmon. The limitations on Public Storage's authority over Timothy Smith's property are set out in the lease agreement and in Tenn. Code Ann. § 66-31-101 et seq, the "Tennessee Self-Service Storage Facility Act."

The lease between Public Storage Inc. (designated as "Owner") and Georgia Minnifield ("Occupant") does not allow Public Storage to enter the storage unit except upon three days written notice to the occupant, in the event of an emergency, or on default of the occupant's obligations under the lease. The lease also creates "a lien on all personal property located on or in the premises, pursuant to Tenn. Code Ann. § 66-31-101 et seq. to secure the payment of rent, labor, or other charges. . . ." Both the lease and the statute declare that the facility may not enforce its lien until the occupant has been in default continuously for a period of thirty days. Tenn. Code Ann. § 66-31-105(1).

The facility is further prohibited from selling or otherwise disposing of the occupant's personal property without complying with specific and detailed statutory requirements as to notice and without giving the occupant the opportunity to redeem his property by paying the amount necessary to satisfy the lien. Tenn. Code Ann. § 66-31-105(2). In this case, none of the conditions allowing the owner to enter the storage unit existed, and Public Storage's unlawful trespass did not confer upon it any ownership interest in the property contained in the unit, and, in fact, it claims none. It thus had no authority to sell or otherwise dispose of that property.

Under Tenn. Code Ann. § 66-31-105(2)(J), "A purchaser in good faith of the personal property sold to satisfy the owner's lien takes the property free of any rights of persons against whom the lien was valid, despite noncompliance by the owner with the requirements of this section."[4] Thus, if the occupant of Unit A-21 had in fact been in default on her obligations for thirty days, then Public Storage would have been entitled to satisfy the debt by selling or otherwise conveying the stored property to Mr. Woods. Such a conveyance would have endowed him with title to the property as a purchaser in good faith, despite any failure by Public Storage to comply with the procedures set out in Tenn. Code Ann. § 66-31-105(2), such as notice. As we noted above, however, there was no default, and therefore Public Storage did not have any right to dispose of the property in Unit A-21.

The Claimant argues that we should deem Public Storage to have at least obtained voidable title to the property, and he cites Tenn. Code Ann. § 47-2-403 of the Uniform Commercial Code which states that ". . . a person with voidable title has power to transfer a good title to a good faith purchaser for value." We disagree. Public Storage could only have acquired voidable title by validly exercising its lien - that is, by entering the unit and taking possession of the property therein after

[4]The Claimant does not cite this or any other section of the Tennessee Self-Storage Facilities Act in this appeal.

a thirty-day default on the lease payments. Such title would have been voidable because the occupant would have been able to recover his property by making his lease payments.

If we turn to the cases construing Tenn. Code Ann. § 47-2-403, we find that they draw a distinction between voidable title and what they characterize as a bare possessory interest. In *Butler v. Buick Motor Co., supra,* for example, the plaintiffs purchased a Buick automobile from a used car and auto salvage dealer. The car was a "prototype test vehicle" or a "pre-production model." An employee of General Motors Corporation had the authority to dispose of such vehicles by making sure they were turned into scrap after they had outlived their usefulness to the corporation. Instead of doing so, he sold the car to the used car dealer who in turn used falsified title to sell it to the plaintiffs. The Tennessee Department of Safety impounded the car as the result of an ongoing investigation into improper vehicle sales.

The plaintiffs filed suit, asking the trial court to determine the proper ownership of the vehicle. They cited Tenn. Code Ann. § 47-2-403 and argued that they should be allowed to claim title as good faith purchasers from a person with voidable title. The trial court agreed, and ruled that the plaintiffs had acquired good title to the automobile and were entitled to its possession. This court reversed, holding that the seller's title was void rather than voidable, because the General Motors employee did not have the authority to dispose of the vehicles in the way that he did. We reasoned that he only had a bare possessory interest in the car, and thus could not pass any kind of good title to the innocent purchasers. Public Storage similarly had the power to dispose of the contents of Unit A-21, but that power did not endow it with even voidable title under the circumstances presented. Therefore, Public Storage could not have transferred any kind of ownership interest to the Claimant.

The weakness of the Claimant's argument is underscored by an alternate theory set out in his appellate brief. He cites the inability of Lloyd Harmon to explain why he didn't record the visit from the police detectives on January 8, 2003, and suggests that the trial court erred in its finding that Mr. Woods cleaned out a unit that had not been abandoned. He argues, "There is a definite question as to whether Public Storage actually removed the lock from and cleaned out the correct storage unit. In fact, just as plausible as the State's contention is that the storage unit was in arrears and Harmon was threatened and caused to edit the records of two units, mistakenly leaving out any allusion to the contacts with police."

However, Mr. Harmon testified that the ledger notes and account statements he prepared used a proprietary program linked to a central mainframe computer in Glendale, California, that the computer stamps the dates on the entries, and that the local manager cannot make any changes after the fact. There was no evidence to controvert this testimony, nor was there any testimony that Mr. Harmon had been threatened. Thus, the Claimant's argument amounts to mere innuendo, unsupported by any evidence. The trial court's finding that Unit A-21 was not delinquent on its rent was supported by more than the preponderance of the evidence.

Finally, the Claimant urges us to find that he acquired an ownership interest in the $40,000 he discovered by comparing it to buried treasure. He cites the theory of "treasure trove," which refers to valuables buried in the lands of another, where the treasure was hidden or concealed so long as to indicate that the owner is probably dead or unknown. *See Morgan v. Wiser*, 711 S.W.2d 220,

222 (Tenn. Ct. App. 1985).

The Claimant cites the case of *Martin v. Moore*, 109 S.W.3d 305 (Tenn. Ct. App. 2003), as authority for his argument. In that case, this court declined to follow the common law rule giving the finder of treasure trove priority over the owner of the land upon which it was buried. We ruled, rather, that the landowner should have such priority, because giving priority to the finder would create an incentive for trespassers to dig for buried treasure upon the land of others, and thus to breach the peace. *Martin v. Moore*, 109 S.W.3d at 313 (citing *Morgan v. Wiser*, 711 S.W.2d at 222).

Claimant is therefore suggesting that Public Storage Inc. is a landowner entitled to assert an interest in any money found on its property, which it could then legitimately transfer to Mr. Woods. However, Public Storage is subject to the limitations set out in its lease and in the Tennessee Self-Service Storage Facility Act. It may not seize or otherwise exercise dominion over property stored in units whose rental payments are current . Further, although Timothy Smith may have chosen not to file a claim to the money left in the storage unit, there is no mystery as to his identity, nor any suggestion that he is no longer among the living, so the money does not fit the definition of treasure trove. Finally, since the entry of Public Storage and Mr. Woods into the leased unit amounts in itself to a trespass, the rationale of *Martin v. Moore* does not apply.

C. THE QUESTION OF CONTRABAND

The Claimant also argues that the trial court erred by concluding that the $40,000 found in the storage unit was the proceeds of illegal drug activity or was traceable to illicit drug activity. Of course, there is quite a bit of evidence in the record to support the trial court's conclusion. Such evidence includes Mr. Smith's evasion of questions involving the storage unit; his inability to credibly explain the source of funds for the cars, fur coats, electronics and furniture found in his possession; his shrink wrap machine and weighing scales; and his previous association with a convicted drug trafficker. However, the Claimant lacks standing to contest the forfeiture, so we need not decide whether the evidence was sufficient to sustain the trial court's conclusion as to the origin of the disputed money. Since no other valid claim of ownership was presented, the State is entitled to forfeiture of the money. *See Jones v. Green*, 946 S.W.2d at 829.

IV.

The judgment of the trial court is affirmed. We remand this case to the Chancery Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellant.

PATRICIA J. COTTRELL, JUDGE