IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 28, 2001 Session

ROBERT LEE McNABB, ET AL. v. STEVE HATFIELD, ET AL.

Appeal from the Chancery Court for Hamilton County
No. 00-0185 W. Frank Brown, III, Chancellor

FILED NOVEMBER 9, 2001

No. E2000-02511-COA-R3-CV

Robert Lee McNabb and Roberta McNabb Poteet ("Plaintiffs") brought a partition action against Steve Hatfield and Almeda Hatfield ("Defendants") and Mary R. Edwards, concerning property located in Chattanooga, Tennessee ("Property"). The Property originally was owned by the parties' grandparents. During the pendency of this matter at the trial level, Plaintiffs voluntarily dismissed Mary R. Edwards from this suit. Defendants, who had possessed the Property and paid taxes on it since 1977, filed a counterclaim in which they requested the Trial Court quiet title in their favor. Defendants filed a Motion for Summary Judgment, arguing they were the true owners of the Property under the theories of adverse possession and title by prescription. Defendants also argued in their motion that they were entitled to the statutory presumption under Tenn. Code Ann. § 28-2-109 that they were the *prima facie* owners of the Property because they paid property taxes for more than twenty years, and that Plaintiffs' claim of ownership was barred by Tenn. Code Ann. § 28-2-110 due to Plaintiffs' failure to pay property taxes for more than twenty years. The Trial Court partially granted Defendants' motion, holding that Defendants were entitled to judgment as a matter of law as to Plaintiffs. The Trial Court held that Mary R. Edwards had a claim of ownership to the Property but was no longer a party to the partition action. The Trial Court concluded that the only effect of its judgment was to hold that Plaintiffs have no legal interest in the Property. Plaintiffs appeal. We reverse, in part, and affirm, in part.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed, in part, and Affirmed, in part; Case Remanded.

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, J., and CHARLES D. SUSANO, JR., J., joined.

Barrett T. Painter, Cleveland, Tennessee, for the Appellants, Robert Lee McNabb and Roberta McNabb Poteet.

Hallie H. McFadden, Chattanooga, Tennessee, for the Appellees, Steve Hatfield and Almeda Hatfield.

OPINION

Background

This lawsuit involves a dispute between family members over the Property located in Chattanooga, Tennessee. The Property originally was owned by Jessie and Vina McNabb. Jessie and Vina McNabb had two children, Robert McNabb and Ruth McNabb Tidwell, also known as Mary R. Edwards ("Edwards"). Jessie McNabb died intestate in 1955, and Vina McNabb died intestate in 1977. The defendant, Almeda Hatfield, is Edwards' child, while the other defendant, Steve Hatfield, is Almeda's spouse. Plaintiffs, Robert Lee McNabb ("R. L. McNabb") and Roberta McNabb Poteet, are the children of Robert McNabb and his wife, Thelma McNabb, who were divorced in 1963. Robert McNabb died intestate in 1980, and Thelma McNabb died intestate in 1999.

The record shows that Plaintiffs' father, Robert McNabb, lived on the Property until shortly before the death of his mother, Vina McNabb, in 1977. In its Memorandum Opinion and Order ("Order"), the Trial Court found that after Vina McNabb died in 1977, Defendants moved onto the Property. The Trial Court stated in its Order that "there is some question about whether [Edwards] also lived [on the Property]." The Trial Court specifically found that Defendants had been in physical possession of the Property since 1977. The Trial Court also found that Defendants paid all the real estate taxes on the Property since 1977. After Vina McNabb's death, Edwards placed some personal property on the front porch belonging to Plaintiffs' father who later picked it up. Although the record is somewhat unclear, Plaintiffs contend their father was supposed to receive furniture or proceeds from the sale thereof from Edwards but that their father never received either. The Trial Court found, in its Order, that Plaintiffs' father, Robert McNabb, did not return to live on the Property from 1977 to his death in 1980.

The proof in the record shows that Plaintiffs' mother, Thelma McNabb, died intestate in 1999. After her death, Plaintiffs discovered a letter ("Strickland Letter"), dated November 1981, addressed to their mother from her attorney, Donald W. Strickland. Enclosed with the letter was an Affidavit of Heirship regarding the heirs of Jessie and Vina McNabb and a quitclaim deed ("Plaintiffs' Deed") which transferred the Property from plaintiff R.L. McNabb and his wife, who is not a party to this matter, to his sister, plaintiff Roberta McNabb Poteet. According to his affidavit, Attorney Strickland prepared both the Affidavit of Heirship and Plaintiffs' Deed. Neither the Affidavit of Heirship nor Plaintiffs' Deed was executed or recorded. Plaintiffs contend they did not realize they had an ownership interest in the Property until they discovered these documents. Plaintiffs, thereafter, unsuccessfully sought to negotiate with Defendants their ownership interest in the Property.

In February 2000, Plaintiffs filed a Complaint for partition against Defendants and Edwards in which they alleged they own a one-half interest in the Property, as tenants in common with Defendants and Edwards. Plaintiffs alleged in their Complaint that they were unlawfully ousted

from the Property in 1977, upon the death of Vina McNabb, and requested that the Trial Court hold a partition sale of the Property. Plaintiffs also alleged in their Complaint that Defendants and Edwards had been in continuous, sole possession of the Property since 1977, and had paid property taxes and made improvements to the Property. Plaintiffs also asked the Trial Court to award Plaintiffs the rents and profits from the Property beginning from the date that Plaintiffs were ousted in 1977.

Defendants filed an Answer and Counter-Claim in which they requested the Trial Court to quiet title. Defendants alleged that in 1999, Edwards, by quitclaim deed, transferred her one-half interest in the Property to Defendants.[1] This deed ("Defendants' Deed") was recorded in the Register of Deeds office. The Trial Court found, in its Order, that Defendants' Deed conveyed only "Edward's [sic] one-half (½) interest in a part of the subject property to [Defendants]" instead of the entire parcel of Property. Defendants alleged in their Counter-Claim that, since taking possession of the Property in 1977, they paid all property taxes, the total sum of which was $3,620, and made improvements to the Property at a cost of $45, 675. Defendants requested the Trial Court quiet title to the Property in favor of Defendants, or alternatively, if the Trial Court granted Plaintiffs' request for partition, that Plaintiffs' recovery be offset by the amount Defendants paid for property taxes and improvements.

Thereafter, upon Plaintiffs' motion, the Trial Court entered an Order of Dismissal allowing Plaintiffs' to voluntarily dismiss Edwards as a defendant. By Agreed Order, Plaintiffs filed an Amended Complaint which did not name Edwards as a defendant.

Defendants filed a Motion for Summary Judgment in which they argued they were entitled to judgment as a matter of law because the undisputed material facts showed they were owners of the Property under three theories: (1) adverse possession; (2) title by prescription; and (3) Tenn. Code Ann. § 28-2-109, which Defendants argued established that they were the *prima facie* owners of the Property due to their payment of property taxes for more than twenty years. In addition, Defendants argued that Plaintiffs' claim to the Property was barred by Tenn. Code Ann. § 28-2-110 by Plaintiffs' failure to pay property taxes for a twenty-plus-year period. In their Tenn. R. Civ. P. 56.03 statement, Defendants cited Plaintiffs' Response to Defendants' Request for Admissions in which Plaintiffs admitted the following: (1) Defendants took possession of the Property in 1977 and have continuously resided at the Property ever since; (2) Defendants have paid

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[1] Edwards' Quitclaim deed ("Defendants' Deed") stated, in pertinent part, the following:

> I, MARY R. EDWARDS, Grantor, declaring that this property was formerly owned by my mother, Vina McNabb, who died intestate in or about 1977, and that at the time of her death, she was survived by her two children, myself and my brother, and as a result of the intestate passage, own an undivided one-half interest in the below-described property, do hereby sell, transfer and convey unto STEVEN R. HATFIELD AND ALMEDA HATFIELD, Grantees, all of my right, title and interest in and to the following described real estate to-wit:
>
> AN UNDIVIDED ONE-HALF (½) INTEREST IN THE FOLLOWING PROPERTY, TO WIT:
>
> . . . .

the property taxes since 1977 for the Property and have made improvements to the Property; (3) Plaintiffs paid no property taxes nor made any improvements to the Property since Defendants' took possession in 1977; (4) Defendants have withheld possession of the Property from Plaintiffs; and (5) after the death of Vina McNabb, "due to the nature of the 'cleaning out' of all the belongings of [Plaintiffs' father] Robert McNabb, Plaintiffs feel that they were ousted . . . ."

In response, Plaintiffs argued that summary judgment was not appropriate in this matter because there were factual disputes regarding Defendants' adverse possession and title by prescription claims. In support of their position, Plaintiffs filed the affidavit of plaintiff R.L. McNabb, the Strickland Letter, an affidavit executed by Attorney Strickland, and the unexecuted Affidavit of Heirship and Plaintiffs' Deed. Plaintiffs did not, however, file a Tenn. R. Civ. P. 56.03 statement of facts in response to Defendants' statement of facts.

In turn, Defendants filed a Reply to Plaintiffs' Response brief. Defendants argued that the documents Plaintiffs filed in support of their response brief were inadmissible. Defendants also filed a Motion to Strike regarding these documents.

The Trial Court, in its Order entered August 2000, partially granted Defendants' Motion to Strike. The Trial Court held that paragraphs 6, 7, 8 and 9 of plaintiff R.L. McNabb's affidavit did not comply with Tenn. R. Civ. P. 56.02 because they contained hearsay and may "violate the Dead Man's Rule." The Trial Court, however, denied Defendants' Motion to Strike regarding the remaining documents relied on by Plaintiffs.

In addition, the Trial Court held in its Order that when Plaintiffs' father died in 1980, Plaintiffs jointly owned a one-half interest in the Property, or each Plaintiff owned 25% of the Property, through intestacy. The Trial Court also found that Plaintiffs did not learn of their ownership interest in the Property until they found the Strickland Letter and its enclosures after their mother's death in 1999. Nevertheless, the Trial Court held that Plaintiffs' "claims are filed too late" and that "[t]he knowledge of their parents are [sic] imputed to the Plaintiffs."

Also, the Trial Court, in its Order, partially granted Defendants' Motion for Summary Judgment. The Trial Court granted Defendants' motion insofar as the undisputed material facts established that Plaintiffs have no ownership interest in the property under the three theories proffered by Defendants: (1) adverse possession; (2) title by prescription; and (3) Defendants' payment of taxes for more than twenty years under Tenn. Code Ann. § 28-2-109. The Trial Court held that Defendants met the elements of these three theories as to Plaintiffs. The Trial Court also held that Plaintiffs were prohibited from making any claim to the Property by Tenn. Code Ann. § 28-2-110. The Trial Court, however, stated in its Order that it could not hold that Defendants were the exclusive owners of the Property since Edwards, who was no longer a party to the proceedings, still had a claim to the Property. The Trial Court stated, in its Order, "[t]herefore, the only effect of this Order is to declare that the Plaintiffs have no legal interest in the subject real estate."

With respect to Defendants' adverse possession claim, the Trial Court held that the undisputed facts established Defendants were entitled to judgment as a matter of law under this theory as to Plaintiffs. The Trial Court recognized that, if the parties were co-tenants, Defendants would have to show ouster of Plaintiffs to establish title by adverse possession. The Trial Court, however, held that Defendants were not co-tenants with Plaintiffs because Defendants had no legal claim to the Property at the time they obtained possession of the Property in 1977, and because Plaintiffs' ownership interest was based upon their inheritance of their father's one-half interest in the Property upon their father's death which was not until 1980.

The Trial Court, nevertheless, found that if the parties were co-tenants, the undisputed facts showed that Defendants had ousted Robert McNabb, Plaintiffs' father. The Trial Court found significant Plaintiffs' Response to Defendants' Request for Admissions in which Plaintiffs admitted they were ousted when their father's personal belongings were cleaned out of the Property in 1977. In addition, the Trial Court held that Plaintiffs' non-payment of property taxes and Plaintiffs' failure to pay for any improvements made to the Property established ouster.

With respect to Defendants' second claim to the Property under the theory of title by prescription, the Trial Court held that Defendants were entitled to judgment as a matter of law as to the Plaintiffs under this theory for the "same facts and legal principles" as adverse possession.

Finally, the Trial Court held that Defendants were entitled to judgment as a matter of law based upon Defendants' payment of property taxes for over twenty years under Tenn. Code Ann. § 28-2-109. Moreover, the Trial Court held that according to Tenn. Code Ann. § 28-2-110, Plaintiffs were barred from asserting their ownership claim because they failed to pay property taxes for more than twenty years.[2] Plaintiffs appeal. We reverse, in part, and affirm, in part.

Discussion

On appeal and although not stated exactly as such, Plaintiffs raise the following issues for our review: (1) whether the Trial Court erred in holding that Defendants were entitled to judgment as a matter of law due to Defendants' payment of taxes for more than twenty years under Tenn. Code Ann. § 28-2-109, when Defendants did not have recorded color of title for this time period; (2) whether the Trial Court erred in granting partial summary judgment to Defendants on the basis of adverse possession and title by prescription; (3) whether the Trial Court erred in dismissing Plaintiffs' claim for partition due to the doctrine of laches; and (4) whether the Trial Court erred in

[2] The Trial Court, in its Order, addressed a portion of plaintiff R.L. McNabb's affidavit in which he stated that Plaintiff Roberta McNabb Poteet had been diagnosed with paranoid schizophrenia and characterized her condition as a disability. The Trial Court held that, although Tenn. Code Ann. § 28-2-110(b) provides an exception for those "of unsound mind . . .," Plaintiffs did not allege Roberta's disability in any of their pleadings and in fact, submitted Roberta's executed General Power of Attorney to the Trial Court. In addition, the Trial Court, citing *Hallmark v. Tidwell*, 849 S.W.2d 787, 792 (Tenn. Ct. App. 1992), held that it was not Defendants' burden to prove that Roberta did not have a disability.

striking portions of the affidavit of plaintiff R.L. McNabb, which Plaintiffs filed in opposition to Defendants' Motion for Summary Judgment.[3]

Defendants argue on appeal that, due to Plaintiffs' admissions in their Response to Defendants' Request for Admissions, there is no genuine issue of material fact which would preclude a grant of summary judgment.[4] Defendants also contend that the Trial Court correctly held that Plaintiffs were barred from pursing this action by Tenn. Code Ann. § 28-2-110, due to Plaintiffs' non-payment of taxes on the Property for more than twenty years.

Our Supreme Court outlined the standard of review of a motion for summary judgment in *Staples v. CBL & Assoc.*, 15 S.W.3d 83 (Tenn. 2000):

> The standards governing an appellate court's review of a motion for summary judgment are well settled. Since our inquiry involves purely a question of law, no presumption of correctness attaches to the lower court's judgment, and our task is confined to reviewing the record to determine whether the requirements of Tenn. R. Civ. P. 56 have been met. *See Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn.1997); *Cowden v. Sovran Bank/Central South*, 816 S.W.2d 741, 744 (Tenn.1991). Tennessee Rule of Civil Procedure 56.04 provides that summary judgment is appropriate where: (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, *see Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn.1993); and (2) the moving party is entitled to a judgment as a matter of law on the undisputed facts. *See Anderson v. Standard Register Co.*, 857 S.W.2d 555, 559 (Tenn.1993). The moving party has the burden of proving that its motion satisfies these requirements. *See Downen v. Allstate Ins. Co.*, 811 S.W.2d 523, 524 (Tenn.1991). When the party seeking summary judgment makes a properly supported motion, the burden shifts to the nonmoving party to set forth specific facts establishing the existence of disputed, material facts which must be resolved by the trier of fact. *See Byrd v. Hall*, 847 S.W.2d at 215.

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[3] It should be noted that Defendants did not raise laches as a defense, nor did the Trial Court specifically state in its Order that it was relying upon the doctrine of laches. The Trial Court, however, did find in its Order that Plaintiffs were not aware of their claims to the Property until after their mother died in 1999 and as discussed, stated that "[Plaintiffs'] claims are filed too late . . . [,][and] knowledge of their parents are [sic] imputed to the Plaintiffs."

[4] In their brief, Defendants argue that the Trial Court "correctly decided that [Defendants] have gained title to the Property by virtue of adverse possession . . . ." This is an incorrect statement of the Trial Court's holding since it specifically held that the only effect of its Order was to declare that "Plaintiffs have no legal interest in the subject real estate . . . " and granted Defendants judgment as a matter of law only as to Plaintiffs. Due to the absence of Edwards as a party, who the Trial Court held has a claim to the Property, the Trial Court did not hold that Defendants were the sole and exclusive owners of the Property.

> To properly support its motion, the moving party must either affirmatively negate an essential element of the non-moving party's claim or conclusively establish an affirmative defense. *See McCarley v. West Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn.1998); *Robinson v. Omer*, 952 S.W.2d 423, 426 (Tenn.1997). If the moving party fails to negate a claimed basis for the suit, the non-moving party's burden to produce evidence establishing the existence of a genuine issue for trial is not triggered and the motion for summary judgment must fail. *See McCarley v. West Quality Food Serv.*, 960 S.W.2d at 588; *Robinson v. Omer*, 952 S.W.2d at 426. If the moving party successfully negates a claimed basis for the action, the non-moving party may not simply rest upon the pleadings, but must offer proof to establish the existence of the essential elements of the claim.
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> The standards governing the assessment of evidence in the summary judgment context are also well established. Courts must view the evidence in the light most favorable to the nonmoving party and must also draw all reasonable inferences in the nonmoving party's favor. *See Robinson v. Omer*, 952 S.W.2d at 426; *Byrd v. Hall*, 847 S.W.2d at 210-11. Courts should grant a summary judgment only when both the facts and the inferences to be drawn from the facts permit a reasonable person to reach only one conclusion. *See McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn.1995); *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn.1995).

Staples, 15 S.W.3d at 88-89; *see also Madison v. Love*, No. E2000-01692-COA-RM-CV, 2000 WL 1036362, at * 2 (Tenn. Ct. App. July 28, 2000), *no appl. perm. app. filed*, (holding that "[m]aterial supporting a motion for summary judgment must do more than 'nip at the heels' of an essential element of a cause of action; it must negate that element"). A fact is "material" for summary judgment purposes, if it must be decided in order "to resolve the substantive claim or defense at which the motion is directed." *Luther v. Compton*, 5 S.W.3d 635, 639 (Tenn. 1999) (citing *Byrd v. Hall*, 847 S.W.2d at 211).

Although Plaintiffs do not raise any issues on appeal regarding their responses to Defendants' Request for Admissions, Defendants' Motion for Summary Judgment was based, in large part, upon these responses. Accordingly, we first address the significance of these responses.

As discussed, Plaintiffs admitted in their responses to Defendants' Request for Admssions that Defendants had continuous possession of the Property since 1977. Plaintiffs also admitted Defendants had paid the property taxes since 1977 and made improvements to the Property, and that Plaintiffs had paid for neither property taxes or improvements. Plaintiffs also admitted they believed they were ousted from the Property in 1977 when their father's belongings were cleaned out of the Property. Neither at the trial level nor on appeal do Plaintiffs contend that their responses to Defendants' Tenn. R. Civ. P. 36 Request for Admissions are incorrect or should be amended or set aside. Moreover, we note that Plaintiffs' Complaint alleged the same matters.

Our Supreme Court held that "[u]nlike other forms of discovery, requests to admit under Rule 36 primarily involve the elimination of undisputed matters. . . ." *State Dept. of Human Serv. v. Barbee*, 714 S.W.2d 263, 266 (Tenn. 1986). Tenn. R. Civ. P. 36 provides for this discovery mechanism, and Tenn. R. Civ. P. 36.02 states, in pertinent part, "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." A party who has obtained admissions through Rule 36 may bring these admissions to the trial judge's attention through a motion for summary judgment. *Neely v. Velsicol Chem. Corp.*, 906 S.W.2d 915, 917 (Tenn. Ct. App. 1995). Accordingly, Tenn. R. Civ. P. 56.04 provides, in pertinent part, as follows:

> Subject to the moving party's compliance with Rule 56.03, judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and *admissions on file*, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.

(emphasis added). Accordingly, we hold that Plaintiffs' Response to Defendants' Request for Admissions conclusively established that since 1977, Defendants had continuous possession of the Property to the exclusion of Plaintiffs; Defendants paid the property taxes and made improvements to the Property since 1977; Plaintiffs never paid the property taxes or made improvements to the Property; and Plaintiffs were ousted in 1977. *See* Tenn. R. Civ. P. 36.02.

In response to Defendants' Motion for Summary Judgment, Plaintiffs filed a brief and supporting documents, including the affidavit of plaintiff R.L. McNabb. Plaintiffs raise as an issue on appeal the Trial Court's exclusion of parts of the affidavit of plaintiff R.L. McNabb. Although Plaintiffs raise this matter as an issue on appeal, Plaintiffs fail to provide any argument in support of their position that the Trial Court erred in striking portions of this affidavit. In fact, the only reference to this issue found in Plaintiffs' brief is in the "Issues Presented for Review" section which states: "[s]hould the Trial Court have allowed the portion of Mr. R.L. McNabb's Affidavit which contained material facts based upon his own personal knowledge?" We hold that Plaintiffs' brief does not comply with Tenn. Ct. App. R. 6, and, therefore, this issue will not be considered by the Court. *See Forde v. Fisk Univ.*, 661 S.W.2d 883, 886 (Tenn. Ct. App. 1983); *Thomas v. Thomas*, E1999-00563-COA-R3-CV, 2000 WL 276886, at * 1 (Tenn. Ct. App. Mar. 15, 2000), *no appl. perm. app. filed.*

We now turn our attention to the issues raised by the parties on appeal regarding Defendants' payment of property taxes and Plaintiffs' failure to do so for a period of more than twenty years. Plaintiffs contend on appeal that the Trial Court erred in determining that Defendants were entitled to judgment as a matter of law as to Plaintiffs under Tenn. Code Ann. § 28-2-109 which provides as follows:

> Any person holding any real estate or land of any kind, or any legal or equitable interest therein, who has paid, or who and those through

> whom such person claims have paid, the state and county taxes on the same for more then [sic] twenty (20) years continuously prior to the date when any question arises in any of the courts of this state concerning the same, *and who has had or who and those through whom such person claims have had, such person's deed, conveyance, grant or other assurance of title recorded in the register's office of the county in which the land lies, for such period of more than twenty (20) years*, shall be presumed prima facie to be the legal owner of such land.

(emphasis added).

Plaintiffs contend on appeal that the undisputed material facts do not establish that Defendants had a "deed, conveyance, grant or other assurance of title . . ." recorded in the Register of Deeds office for the twenty-plus-year period as required by Tenn. Code Ann. § 28-2-109. We agree, and we hold that the proof in the record on appeal does not show that Defendants or their predecessor, Edwards, met this requirement. Although Defendants have possessed this Property and paid taxes on it since 1977, the proof in the record shows that Defendants did not obtain and record any deed, conveyance, grant or other assurance of title until June 1999. Defendants' Deed states that Edwards received her share of the Property by "intestate passage." Nothing in the record before us shows that Edwards had recorded any ownership interest in the Property before she gave this deed to Defendants in 1999. We hold that the undisputed material facts do not support the Trial Court's determination that Defendants were entitled to the presumption of ownership provided by Tenn. Code Ann. § 28-2-109 for their payment of property taxes for more than twenty years, and, therefore, we reverse the portion of the Trial Court's Order which grants Defendants judgment as a matter of law on this basis. *See Meals v. Lucas*, No.02A01-9404-CH-00085, 1995 WL 318467, at * 3 (Tenn. Ct. App. May 26, 1995), *appl. perm. app. denied*; *Welch v. A.B.C. Coal Co., Inc.*, 293 S.W.2d 44, 50 (Tenn. Ct. App. 1956).

We next review Defendants' issue on appeal regarding Plaintiffs' non-payment of property taxes for a twenty-plus-year period. Defendants contend that the Trial Court correctly held that Plaintiffs' lawsuit was barred by Tenn. Code Ann. § 28-2-110, due to Plaintiffs' failure to pay property taxes for a twenty-plus-year period. Applying the *Staples* standards to this grant of summary judgment, we agree with Defendants on this issue. Tenn. Code Ann. § 28-2-110 provides, in pertinent part, as follows:

> (a) Any person having any claim to real estate or land of any kind, or to any legal or equitable interest therein, the same having been subject to assessment for state and county taxes, who and those through whom such person claims have failed to have the same assessed and to pay any state and county taxes thereon for a period of more than twenty (20) years, shall be forever barred from bringing any action in

> law or in equity to recover the same, or to recover any rents or profits therefrom in any of the courts of this state.
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> (b) This section does not apply to persons under eighteen (18) years of age or to persons of unsound mind if suit shall be brought by them, or any one claiming through them, within three (3) years after the removal of such disability. . . .

This Court has interpreted Tenn. Code Ann. § 28-2-110 as completely barring a claim to property where the claimant failed to pay property taxes for more than twenty years. *Tidwell v. Van Deventer*, 686 S.W.2d 899, 903 (Tenn. Ct. App. 1984).

As discussed, it is undisputed that Defendants paid the property taxes since 1977 and that Plaintiffs have made no such payments. Since Plaintiffs admitted that Defendants paid the property taxes since 1977, it follows that Plaintiffs' predecessor-in-interest, their father, did not pay any property taxes from the time he moved out of the Property in 1977 until his death in 1980.

Moreover, the Trial Court correctly held that Defendants "did not have a legal claim to the property in 1977 and therefore were not co-tenants with the Plaintiffs or their father [,]" and neither party disputes this finding. The earliest Plaintiffs and Defendants could arguably be co-tenants is 1999 when Defendants received their deed from Edwards. Since the parties were not co-tenants from at least 1977 until 1999, Defendants' payment of property taxes could not have been for the benefit of Plaintiffs as co-tenants. Additionally, Plaintiffs admitted, and in fact contended, that Defendants ousted them in 1977.

In their response brief to Defendants' Motion for Summary Judgment, Plaintiffs, apparently relying upon the exception provided by Tenn. Code Ann. § 28-2-110(b), raised the issue of the disability of plaintiff Roberta McNabb Poteet. In paragraph six of his affidavit filed in support of Plaintiffs' response brief, plaintiff R.L. McNabb states "My sister, Roberta McNabb Poteet, has been disabled for a number of years and is diagnosed as paranoid schizophrenic." As discussed, paragraph six, along with paragraphs seven through nine, were stricken as inadmissible by the Trial Court. Since Plaintiffs failed to comply with Tenn. Ct. App. R. 6, we will not address this determination by the Trial Court, and the issue of whether there is proof contained in the record on appeal to support Plaintiffs' contention that the exception provided by Tenn. Code Ann. § 28-2-110(b) applies to this matter is not properly before this Court. *See Forde v. Fisk University*, 661 S.W.2d at 886; *Thomas v. Thomas*, 2000 WL 276886, at * 1.

Accordingly, the undisputed material facts in the record before us show that the Trial Court correctly held that Plaintiffs' Complaint is barred by Tenn. Code Ann. § 28-2-110 because Plaintiffs did not pay property taxes for more than twenty years. We, therefore, affirm the Trial Court's determination that Plaintiffs' Complaint should be dismissed and that "Plaintiffs are prohibited from making any claim to the [Property]. . . " due to Plaintiffs' failure to pay taxes on the Property for more than twenty years.

Two of the remaining issues on appeal concern Plaintiffs' argument that the Trial Court erred in determining that Defendants were entitled to judgment as a matter of law as to Plaintiffs under the theories of adverse possession and title by prescription. In light of the Trial Court's holding that the only effect of its Order "is to declare that the Plaintiffs have no legal interest in the [Property]" and our determination that the Trial Court properly held that Plaintiffs' claim to the Property was barred by Tenn. Code Ann. § 28-2-110, these two issues are pretermitted. Plaintiffs' remaining issue on appeal, albeit unclear, concerns the claimed Trial Court's determination that Plaintiffs' claim of ownership was barred by the doctrine of laches. This matter is likewise pretermitted in light of our holding concerning Tenn. Code Ann. § 28-2-110.

Conclusion

The summary judgment of the Trial Court regarding Defendants' claim to the Property under Tenn. Code Ann. § 28-2-109 is reversed. The Trial Court's summary judgment that Plaintiffs' claim to the Property is barred by Tenn. Code Ann. § 28-2-110 is affirmed. The remaining issues addressed by the Trial Court's summary judgment are pretermitted in light of our Opinion. This cause is remanded to the Trial Court for such further proceedings as may be required, if any, consistent with this Opinion, and for collection of the costs below. The costs on appeal are assessed against the Appellants, Robert Lee McNabb and Roberta McNabb Poteet, and their surety.

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D. MICHAEL SWINEY, JUDGE