



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

ROSSANA THOMPSON,	§	No. 08-19-00300-CV
Appellant,	§	Appeal from the
v.	§	109th District Court
SIX SHOOTER ENTERPRISES, LLC,	§	of Crane County, Texas
Appellee.	§	(TC# 6727)
	§	

**OPINION**

This is an appeal from a final order granting summary judgment in favor of Six Shooter Enterprises, LLC (Six Shooter) in a quiet title action disputing ownership of forty-two (42) parcels of real property in Crane County, Texas (collectively referred to as the “subject property”). In two issues, Appellant Rossana Thompson<sup>1</sup> asserts the trial court erred in concluding as a matter of law that two separate deeds conveying the subject property to her were void on the basis of her delay in recording the instruments; and further erred in concluding that Six Shooter qualified as a bona

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<sup>1</sup> There are two members of the Thompson family mentioned in this suit, Appellant Rossana Thompson and her son, Jimmy Thompson. Only Rossana Thompson is a party of the suit. To distinguish between the two Thompsons while avoiding repetition of names, we use first names only simply for brevity and clarity.

fide purchaser, as she argues it had constructive notice of her interest in the subject property.

We modify the trial court’s judgment and affirm as modified.

### **BACKGROUND**

The subject property in dispute consists of 42 small parcels of land, each ranging in size from .029 acres to .057 acres. From our record, we note that each of the 42 properties is sometimes referred to by a lot number within its respective block, and sometimes by an individual parcel number. For simplicity, we will refer to the properties by their parcel number only, according to the chart below:

<b>Block</b>	<b>Lot #'s</b>	<b>Parcel #'s</b>
5	15 & 16	763 & 764
	29 through 41	777 through 789
	43 through 45	791 through 793
	57 through 69	805 through 817
	71 through 73	819 through 821
6	9 through 16	7095 through 7102

There are a total of five deeds covering all or part of the subject property that are relevant to this case. Each deed has an execution date and a date that it was recorded in the Crane County public records. We note—importantly—that the deeds were not necessarily recorded in the same order they were executed, nor were they necessarily recorded before subsequent deeds were executed. For the purposes of this opinion, we refer to each deed by a number according to the chronological order in which it was executed, but we also note the date when each deed was recorded. The earliest date relevant to this dispute is March 18, 2013. Prior to that date, Rossana owned eight<sup>2</sup> parcels and Guillermo and Amparo Villa (the Villas) owned the other thirty-four

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<sup>2</sup> Prior to March 18, 2013, Rossana owned Parcels 763-64, 791-93, and 819-21.

(34).<sup>3</sup>

***Jimmy Acquires All 42 Parcels***

On March 18, 2013, Rossana executed a Warranty Deed (Deed 1) conveying her eight parcels to her son, Jimmy. On May 6, 2013, the Villas executed a Warranty Deed (Deed 2) conveying their 34 parcels, also to Jimmy. By May 6, 2013, Jimmy owned all 42 parcels, although he did not immediately record Deeds 1 or 2.

***Jimmy Conveys Eight Parcels to Rossana and Records Deeds 1 & 2***

Three days later, on May 9, 2013, Jimmy executed a Warranty Deed (Deed 3) in favor of Rossana for the same eight parcels she had conveyed to him almost two months earlier. Rossana did not immediately record Deed 3. Jimmy then recorded Deed 2 on May 13, 2013, and Deed 1 on May 23, 2013. As a result, by the end of May 2013, Rossana purportedly owned eight parcels and Jimmy purportedly owned 34. However, because Rossana had not yet recorded Deed 3, it would have appeared from a search of the Crane County public records that, under Deeds 1 and 2, Jimmy still purportedly owned all 42 parcels at that time.

***Jimmy Conveys His Interest in All 42 Parcels to Rossana by Quitclaim Deed***

Over two years later, on June 22, 2015, Jimmy executed a Quitclaim Deed (Deed 4) in favor of Rossana, conveying to her whatever interest he had in all 42 parcels. Rossana did not immediately record this deed. Therefore, by the end of June of 2015, Rossana purportedly owned all 42 parcels and Jimmy owned nothing. However, because Rossana had not yet recorded Deeds 3 or 4, it would have appeared from a search of the Crane County public records that Jimmy still

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<sup>3</sup> Prior to May 6, 2013 the Villas owned Parcels 777-89, 805-17, and 7095-7102.

owned all 42 parcels due to his recording of Deeds 1 and 2.

***Jimmy Illegally Conveys All 42 Parcels to Six Shooter***

Almost three years later, on May 31, 2018, Jimmy entered into a contract to sell all 42 parcels to Six Shooter in exchange for the sum of \$400 per lot. The sales contract further required Six Shooter to complete title searches for each lot. Upon clear title authenticated, the contract further required Six Shooter to provide a warranty deed to Jimmy, on or before June 21, 2018. Once presented with the warranty deed covering the subject property, and full payment tendered, the contract thereafter required that Jimmy sign the deed and transfer the property. Because Rossana had not yet recorded either of her deeds, Six Shooter's title search revealed that Jimmy appeared to own clean title to all 42 parcels. As a result, Six Shooter provided Jimmy with a Warranty Deed (Deed 5) for the 42 lots, which Jimmy signed on June 18, 2018. Six Shooter then recorded Deed 5 that same day. Here, the parties agree the sale by Jimmy was illegal; they disagree, however, on whether Six Shooter otherwise had notice of Rossana's claim of ownership at the time of Jimmy's conveyance.

***Rossana Records Deeds 3 & 4***

On August 14, 2018, Rossana recorded Deed 4. Six days later, on August 20, 2018, Rossana recorded Deed 3. Of course, by the time Rossana recorded her two deeds, Six Shooter had already completed the sales contract and recorded its deed (Deed 5) as signed by Jimmy.

Summarizing these transactions, the chart below provides relevant details about each of the five deeds involved:

<b>No.</b>	<b>Type</b>	<b># of Parcels</b>	<b>Executed</b>	<b>From</b>	<b>In favor of</b>	<b>Recorded</b>
1	Warranty	8	March 18, 2013	Rossana	Jimmy	May 23, 2013
2	Warranty	34	May 6, 2013	Villas	Jimmy	May 13, 2013
3	Warranty	8	May 9, 2013	Jimmy	Rossana	August 20, 2018
4	Quitclaim	All 42	June 22, 2015	Jimmy	Rossana	August 14, 2018
5	Warranty	All 42	June 18, 2018	Jimmy	Six Shooter	June 18, 2018

### *Procedural History*

On October 17, 2018, Six Shooter filed the underlying action to quiet title in the 42 parcels, claiming that it had superior title to the subject property as a bona fide purchaser for value without notice of competing claims (hereinafter referred to simply as a “bona fide purchaser”) because it purchased the parcels from Jimmy in good faith, for value, and with no actual or constructive knowledge that Jimmy had previously conveyed the parcels to Rossana. Six Shooter later filed a motion for summary judgment and an accompanying brief in support on the issue of whether it was an innocent purchaser of the subject property. As summary judgment evidence, Six Shooter attached each of the five deeds described above, along with the contract for sale between it and Jimmy. Six Shooter’s motion was heard on October 24, 2019. In its brief in support of its motion and during the hearing on the motion, Six Shooter argued that the date and timestamps on the five deeds, along with the language of Six Shooter’s deed, conclusively establish that it took the subject property in good faith, for valuable consideration, without notice of a prior conveyance.

Responding, Rossana argued she was in the possession of the subject property at the time Six Shooter claims it recorded its warranty deed in its favor. As evidence of notice of her interest, Rossana presented a number of undated photographs that purport to show work that she and others performed on the properties including cleaning of the empty lots, working on a sewer line and a water line, and installing PVC for water on the properties. Rossana also presented a series of

receipts, payment confirmations, and other documents that she alleges were related to the subject property.

In granting a summary judgment in favor of Six Shooter, the trial court found that no question of material fact existed in the case even in the light most favorable to Rossana, the nonmovant. The trial court found the Warranty Deed (Deed 5) in favor of Six Shooter was recorded in the Crane County property records on June 18, 2018, without notice of any prior conveyances. Specifically, the trial court found that Six Shooter lacked notice of the following conveyances from Jimmy to Rossana: (1) the Warranty Deed (Deed 3) executed on May 9, 2013, recorded August 20, 2018, and (2) the Quitclaim Deed (Deed 4) executed June 22, 2015, recorded August 14, 2018. The trial court ordered, adjudged, and decreed the Warranty Deed (Deed 5) in favor of Six Shooter was valid and enforceable; and that Six Shooter was a bona fide purchaser. Lastly, the trial court ordered, adjudged, and decreed that both of Rossana's deeds (Deeds 3 and 4) were void as instruments of conveyance.

This appeal followed.

## **ISSUES PRESENTED**

Rossana raises two issues on appeal: first, whether the trial court erred in finding that Deeds 3 and 4 were void as conveyance instruments; and second, whether the trial court erred in finding that Six Shooter conclusively established its status as a bona fide purchaser.

We address both issues in turn while recognizing that a part of the first issue overlaps with the second issue in its entirety.

## **DISCUSSION**

### **A. Standard of Review**

This Court reviews de novo a trial court's order granting summary judgment. *Hillis v. McCall*, 602 S.W.3d 436, 439 (Tex. 2020). Under the traditional standard for summary judgment, the movant has the initial burden of showing that no genuine issue of material fact exists and that the trial court should grant a judgment as a matter of law. TEX. R. CIV. P. 166a(c); *see Hillis*, 602 S.W.3d at 439-40 (citing *ConocoPhillips Co. v. Koopmann*, 547 S.W.3d 858, 865 (Tex. 2018)). Importantly, it is not part of the movant's initial burden to negate all possible issues of fact or law that could be raised by the nonmovant. *See City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678-79 (Tex. 1979). Instead, when the movant presents summary judgment proof of each element of the claim or defense upon which it seeks summary judgment, the burden then shifts to the nonmovant to disprove or raise an issue of fact as to at least one element of the movant's claim or defense. *See id.*

In deciding a motion for summary judgment, trial courts should indulge every reasonable inference and resolve all doubts in the nonmovant's favor. *Park Place Hosp. v. Estate of Milo*, 909 S.W.2d 508, 510 (Tex. 1995). Similarly, in reviewing a trial court's summary judgment, appellate courts should "examine the entire record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion." *Sudan v. Sudan*, 199 S.W.3d 291, 292 (Tex. 2006) (quoting *City of Keller v. Wilson*, 168 S.W.3d 802, 823 (Tex. 2005)).

## **B. Applicable Law**

A conveyance of an interest in real property must: (1) be in writing, (2) be signed by the grantor, and (3) be delivered to the grantee. *See* TEX. PROP. CODE ANN. § 5.021. In Texas, it is settled that title to real property will vest upon execution and delivery of the deed. *Stephens County Museum, Inc. v. Swenson*, 517 S.W.2d 257, 261 (Tex. 1974); *McGehee v. Endeavor Acquisitions*,

*LLC*, 603 S.W.3d 515, 526 (Tex. App.—El Paso 2020, no pet.). The recording of the deed is not necessary to pass title. *Noell v. Crow-Billingsley Air Park Ltd. P’ship*, 233 S.W.3d 408, 416 (Tex. App.—Dallas 2007, pet. denied). The recording, however, establishes a prima facie case of delivery and the accompanying presumption that the grantor intended to convey the land according to the terms of the deed. *Swenson*, 517 S.W.2d at 261-62 (citing *Thornton v. Rains*, 157 Tex. 65, 299 S.W.2d 287 (1957)).

Although equitable title to real property passes at the time a deed is delivered, a delay in recording of the deed leaves open the possibility that the prior owner could illegally purport to convey the same property to a different purchaser. *See Madison v. Gordon*, 39 S.W.3d 604, 605 (Tex. 2001) (per curiam). This possibility arises because the prior owner still appears to be the current, legal owner when the subsequent purchaser searches the public record. *See id.* In such a case, of course, both purchasers would claim title to the property. *See id.* Texas law settles such a dispute over competing deeds in favor of the first to record, even where the first to record is a subsequent purchaser, as long as such deed holder qualifies as a subsequent purchaser for value pursuant to Section 13.001(a) of the Property Code. *See TEX. PROP. CODE ANN.* § 13.001(a) (stating that an unrecorded conveyance in real property is “void as to a creditor or to a subsequent purchaser for a valuable consideration without notice”). Even so, with regard to the prior unrecorded deed, section 13.001(b) further provides that the unrecorded instrument remains binding on a party to that instrument, on the party’s heirs, and “on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.” *See id.* § 13.001(b); *Hue Nguyen v. Chapa*, 305 S.W.3d 316, 323 (Tex. App.—Houston [14th Dist.] 2009, pet. denied).

Section 13.001 codified the long-held position of the Supreme Court of Texas that in cases



where there exist competing deeds on real property, the first deed to have been properly recorded is valid and enforceable against the other. *See Smith v. Crosby*, 23 S.W. 10, 22 (1893); *Jackson v. Wildflower Prod. Co.*, 505 S.W.3d 80, 90 (Tex. App.—Amarillo 2016, pet. denied) (recognizing that under the notice system—“which has been in place in Texas in one form or another since 1830”—the grantee under a later deed will prevail over the grantee in a prior unrecorded deed of the same property, unless the subsequent purchaser had notice of the prior unrecorded conveyance). This legislative prerogative was intended to protect an innocent, subsequent purchaser of land from a prior purchaser who failed to exercise diligence in recording his or her deed. *Smith*, 23 S.W. at 22 (holding that “[t]he law contemplates that the owners of land will place evidence of right on record, so that all persons dealing with it may know how the title stands; and a failure to record may result in loss to the owner, if the land passes into the hands of an innocent purchaser.”).

Under Section 13.001 of the Property Code, an innocent—or bona fide—purchaser is one who acquires property “in good faith, for value, and without notice, actual or constructive, of any third-party claim or interest.” *Madison*, 39 S.W.3d at 606; *see also* TEX. PROP. CODE ANN. § 13.001(a). To receive protection as a bona fide purchaser, the buyer cannot have actual or constructive knowledge of the prior conveyance at the time of the purchase. *Id.* Actual notice rests on personal information or knowledge. *Flack v. First Nat’l Bank*, 226 S.W.2d 628, 631 (Tex. 1950). And, in a more comprehensive sense, the term “notice” also embraces knowledge of all those facts which reasonable inquiry would have disclosed. *Id.* In such case, the duty of inquiry extends only to matters that are fairly suggested by the facts really known. *Id.* Constructive notice, then, is notice the law imputes to a person who does not have actual notice. *Id.* at 632. A recorded

deed is one instance where notice of a conveyance is imputed to a subsequent purchaser. *See Smith*, 23 S.W. at 22-23.

Under certain circumstances, constructive notice can be established by the true owner's occupation or possession of the land even in the absence of a recorded deed. *See Madison*, 39 S.W.3d at 606. A purchaser of land may be charged with constructive notice of an occupant or possessor's claim of title if a court determines that the purchaser had a duty to ascertain the rights of a third-party possessor. *Id.* (citing *Collum v. Sanger Bros.*, 82 S.W. 459, 460 (1904)). When such a duty arises, the purchaser is imputed with notice of all the possessor's claims the purchaser might have reasonably discovered on proper inquiry. *Id.* (citing *Flack*, 226 S.W.2d at 632). However, such a duty only arises where the possession is visible, open, exclusive, and unequivocal. *See Strong v. Strong*, 98 S.W.2d 346, 350 (Tex. 1936).

**C. Whether the trial court erred in finding that Rossana's deeds were void.**

In Rossana's first issue, she argues the trial court erred in finding her two deeds, the Warranty Deed recorded on August 20, 2018 (Deed 3), and the Quitclaim Deed recorded on August 14, 2018 (Deed 4), were *generally* void on the basis she delayed in recording those deeds.

As stated above, to be valid, a deed must be in writing, signed by the grantor, and delivered to the grantee. TEX. PROP. CODE ANN. § 5.021. Here, Rossana's deeds each adequately describe the property to be conveyed, they are both in writing, they are both signed by Jimmy, and they were both delivered to Rossana. Additionally, each was signed by a notary on the same date. On May 9, 2013, Rossana acquired title over eight parcels of the subject property based on Deed 3; and, as of June 22, 2015, she further acquired titled over all 42 parcels based on Deed 4. Although neither deed was recorded until August 2018, each deed is valid on its face and presumptively

conveyed ownership of the subject property to Rossana as grantee. *See Thornton v. Rains*, 299 S.W.2d 287, 288 (Tex. 1957); TEX. PROP. CODE ANN. § 5.021; *see also Adams v. First Nat. Bank of Bells/Savoy*, 154 S.W.3d 859, 869 (Tex. App.—Dallas 2005, no pet.) (“A deed does not have to be recorded to convey title.”). To the extent the trial court *generally* found Rossana’s deeds were void as to all parties, we agree the trial court erred as a matter of law.

Six Shooter, however, does not contest the validity of those deeds *in general*, but argues, instead, that, in the absence of recording, the instruments are void only as to bona fide purchasers for value. Said differently, Six Shooter concedes that Rossana’s deeds were valid and enforceable as to everyone except parties who qualify for protected status. *See* TEX. PROP. CODE ANN. § 13.001(a). In May 2013 and June 2015, respectively, there is no dispute that Rossana became the equitable and true owner of the subject property by virtue of Deeds 3 and 4. But as of June 18, 2018, Six Shooter argues it qualified for protective status given that, on that date, Jimmy still appeared to be the record holder of the subject property when he signed a Warranty Deed (Deed 5) conveying record title to Six Shooter. On that basis, Six Shooter narrowly argues it maintains superior title over Rossana over all parcels of the subject property. Whether her deeds are void specifically as to Six Shooter hinges on whether Six Shooter qualified as a bona fide purchaser of the subject property. *See Madison*, 39 S.W.3d at 606; *see also* TEX. PROP. CODE ANN. § 13.001(a).

We sustain in part Rossana’s first issue to the extent the trial court declared Rossana’s deeds void *in general* as to all parties without yet deciding the remaining part of whether Rossana’s deeds were void as to Six Shooter. Because a part of the first issue overlaps with her second issue, we address the remaining part of Issue One in our discussion of Issue Two.

**D. Whether the trial court erred in finding that Six Shooter conclusively proved its status as a bona fide purchaser.**

In her second issue, Rossana argues that Six Shooter did not conclusively prove its status as a bona fide purchaser. Responding, Six Shooter contends that even though Rossana provided photographs of the property reflecting minor improvements were initiated on the lots, along with receipts for certain purchases, her evidence failed to raise a genuine issue of material fact that Six Shooter had any knowledge of an adverse claim over the property.

In reviewing the trial court’s grant of summary judgment in favor of Six Shooter, we must determine (1) whether Six Shooter met its initial burden of establishing the elements of its claimed status as a bona fide purchaser; and, if so, (2) whether Rossana met her burden of raising a fact issue as to any of the elements of Six Shooter’s status as a bona fide purchaser. As to both questions, we must view the evidence in the light most favorable to Rossana, indulging all reasonable inferences in her favor. *See Park Place Hosp.*, 909 S.W.2d at 510.

**1. Whether Six Shooter’s summary judgment evidence established the elements of its status as a bona fide purchaser of the subject property.**

A bona fide purchaser is one who acquires property “in good faith, for value, and without notice, actual or constructive, of any third-party claim or interest.” *Madison*, 39 S.W.3d at 606; *see also Realty Trust Co. v. Craddock*, 112 S.W.2d 440, 442 (Tex. 1938) (“It is the settled law of this state that the purchaser of the apparent legal title to a tract of land takes a good title thereto as against an equitable owner, if such purchaser takes in good faith, for a valuable consideration, and without notice of such outstanding equitable title.”). Although the parties’ dispute over Six Shooter’s status as a bona fide purchaser is centered around the notice element, we briefly address each of the elements required to attain such status.

As evidence that it acquired the subject property in good faith, for value, and without notice, Six Shooter presented each of the five deeds relevant to this case, as well as its sales contract with Jimmy for the subject property. Even in the light most favorable to Rossana, the evidence establishes that the deed from Jimmy in favor of Six Shooter was in consideration of “[c]ash of ten dollars or more and other good and valuable consideration.” It further establishes that Jimmy executed a warranty deed in favor of Six Shooter, and that neither Six Shooter’s deed nor the sales contract mentions any prior conveyances of the subject property from Jimmy to Rossana. Finally, it establishes that, at the time of the sales contract and the warranty deed between Jimmy and Six Shooter, neither of Rossana’s deeds had been recorded. Thus, the

We determine that, even when viewing the evidence in the light most favorable to Rossana and indulging every reasonable inference in her favor, Six Shooter met its initial burden of presenting sufficient summary judgment proof on each element of its claimed status as a bona fide purchaser. *See Clear Creek Basin Auth.*, 589 S.W.2d at 678-79. Accordingly, the burden shifted to Rossana to raise a fact issue on any element of Six Shooter’s status as a bona fide purchaser.

**2. Whether Rossana’s summary judgment evidence raised a fact issue on any element of Six Shooter’s claimed status as a bona fide purchaser of the subject property.**

In addition to the five deeds relevant to this case and the sales agreement for the subject property between Jimmy and Six Shooter, Rossana’s response to Six Shooter’s motion included several photographs and a number of payment receipts and other documents. Noticeably absent from Rossana’s response was an affidavit that would explain the relevance of the photographs and documents. However, from Rossana’s response and her brief on appeal, we will endeavor to make the strongest possible inferences from the evidence in her favor. Some of the photographs purport to show Rossana present at the subject property, others show plumbing and electrical work on the

property, and still others show trash and debris from the work that had been or was currently being performed on the subject property.

One of the payment receipts is from the City of Crane, dated March 8, 2013, for \$700, apparently for the installation of sewer taps. Because that date was from Rossana's first period of ownership prior to her execution of Deed 1, it is not relevant to this dispute over whether Six Shooter had notice of Rossana's subsequent period of ownership, which, at the earliest, began on May 9, 2013. Otherwise, as best as can be determined due to the poor quality of the copies found in the record, the receipts range in dates from March 6, 2018, to June 18, 2018.

One receipt is from Lowe's Home Centers, LLC and four are from Home Depot. The specific items listed on the Lowe's receipt are impossible to decipher; however, the items on the Home Depot receipts generally appear to be related to a plumbing project. Two receipts are from contractors: a \$300 receipt dated March 28, 2018, from Armando Ramirez for "Ditch-Connection PVC/R-V Park," and a \$720 receipt dated June 11, 2018, from a master electrician for "Electric-Connections R-V's." Two receipts are from the City of Crane regarding utility deposits on two<sup>4</sup> separate street addresses, each for \$300, dated March 13, May 7. Rossana also attached a receipt from the City of Crane Water Department for \$80.94. The \$80.94 receipt does not indicate a clear date and also appears to be related to an 800 Adams address.

Two of the attached documents are payment confirmations from Tara Energy dated June 10, 2018, and June 18, 2018, respectively. Although neither confirmation identifies what address they are related to, Rossana did attach an enrollment form from Tara Energy, dated April 23, 2018,

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<sup>4</sup> The three addresses from the City of Crane receipts are 801 McElroy and 805 S. Adams.

regarding the 801 S. McElroy address. Rossana attached three copies of a check for \$300 issued to her from the City of Crane, dated August 10, 2018. Finally, Rossana attached a \$3,000 deposit slip from First National Bank dated August 31, 2018.

Rossana argued in her response to Six Shooter's motion for summary judgment that the photos and receipts tend to show that Six Shooter had notice of her claim of interest because she was using and occupying the subject property by working to establish recreational vehicle pads, and by installing sewer and water lines on the subject property. However, whether the photographs and documents tend to show that Rossana was in possession and ownership of the property and whether they tend to show that Six Shooter could have had notice of Rossana's ownership are two different questions.

At the outset, we note that none of the pictures are stamped with a date. Nor has Rossana included an affidavit in her response attesting to the dates or subject matter depicted by the photographs. She also does not argue in her response to Six Shooter's motion or on appeal when those photographs were taken or how they tend to prove anything regarding Six Shooter's notice of her ownership. Additionally, none of the photographs show any buildings, trailers, or even a recreational vehicle where a person could reside. And we also note that Rossana stated in her response that—without giving specific dates—she was out of the country around the time when Jimmy executed the warranty deed in favor of Six Shooter. Rossana's attorney repeated this assertion twice during the hearing on Six Shooter's motion for summary judgment.

Viewing the evidence in the light most favorable to Rossana, we can make the following reasonable inferences. We infer the photos Rossana provided are of the subject property and they were taken some time after May 9, 2013, which is after she regained ownership of part of the

subject property, but before June 18, 2018, or the date Six Shooter recorded Deed 5. Similarly, in March and early April 2018, someone purchased plumbing supplies at Lowe's and Home Depot and used those supplies to install sewer and water lines on the subject property on behalf of Rossana. On March 28, 2018, Rossana paid Armando Ramirez \$300 for work performed on an unknown date and related to the subject property. The plumbing lines may have been left exposed, as some of Rossana's pictures show, during the contract period between Six Shooter and Jimmy, which was from May 31, 2018, through June 18, 2018. By the time Jimmy contracted to sell the subject property to Six Shooter on May 31, 2018, Rossana had placed two \$300 utility deposits with the City of Crane for two specific street addresses that correspond to the parcels that make up the subject property. Rossana paid a master electrician \$720 on June 11, 2018, for work that was completed on an unknown date and related to the subject property. Rossana made at least two electronic payments to Tara Energy, both for \$28.22, in June of 2018 related to the subject property. Finally, the City of Crane returned at least one of Rossana's utility deposits on August 10, 2018. Rossana does not explain, nor can we determine, the significance of the \$3,000 bank deposit on August 31, 2018, or how Six Shooter could have been aware of it; but at any rate, the deposit was made well after Six Shooter recorded Deed 5.

Despite such reasonable inferences, Six Shooter can only be charged with constructive notice of Rossana's claim of ownership if it had a duty to ascertain Rossana's rights as a third-party possessor. *See Madison*, 39 S.W.3d at 606. And such a duty only arises where the possession is visible, open, exclusive, and unequivocal. *See Strong*, 98 S.W.2d at 350. "[A]mbiguous or equivocal possession which may appear subservient or attributable to the possession of the holder of the legal title is not sufficiently indicative of ownership to impute notice" of the rights of a



possessor. *Id*; see also *Shaver v. National Title & Abstract Co.*, 361 S.W.2d 867, 869 (Tex. 1962) (holding buried pipeline not “visible”); *Boyd v. Orr*, 170 S.W.2d 829, 834 (Tex. App.—Texarkana 1943, writ ref’d) (holding minor children’s occupancy in mother’s homestead was “not the character of possession as would constitute constructive notice”); *DeGuerin v. Jackson*, 50 S.W.2d 443, 448 (Tex. App.—Texarkana 1932) (holding there was no “visible” circumstance pointing to claimant as possessor of field and noting that “[a]ll the authorities agree” that the possession must be “open, visible, and unequivocal” to impute notice to a potential purchaser), *aff’d*, 124 Tex. 424, 77 S.W.2d 1041 (1935).

Even when viewing all evidence in the light most favorable to Rossana, including all reasonable inferences in her favor, the evidence provided does not raise a fact issue on Six Shooter having actual or constructive notice of her claim of ownership of the property, or that Six Shooter had a duty of inquiry to ascertain her rights. Not only are the receipts from home improvement stores from March and April dated well before Six Shooter contracted to buy the subject property, but Rossana has not explained how the purchases shown would themselves have been visible or open to Six Shooter during the relevant period of time. Similarly, Rossana has not explained how the utility deposits to the City of Crane, payments to Tara Energy, and payments to contractors would have been visible or open to Six Shooter. To the extent the plumbing project or any electrical improvements were left exposed to view during Six Shooter’s contract period, they would not unequivocally indicate that someone other than Jimmy—as the record owner of title—owned the property. Even assuming the photographs of Rossana at the subject property were taken at some point during Six Shooter’s contract period, or that any contractor performed work on such property on Rossana’s behalf during that time, she has not pointed to any authority, nor are we aware of

any, that would require Six Shooter to monitor the property at all times while it remained under contract. Further, as Six Shooter points out, Rossana's presence on the subject property, even if it had been discovered by Six Shooter to the extent depicted by the photographs, would not necessarily be inconsistent with Jimmy's ownership given their family relationship. *See Madison*, 39 S.W.3d at 607 (ambiguous or equivocal possession did not put purchaser on notice of a possessor's claim given such possession may have appeared subservient or attributable to another party); *Strong*, 98 S.W.2d at 350.

We conclude that Six Shooter met its burden of presenting evidence that established each element of its claimed status as a bona fide purchaser of the subject property. Rossana's evidence in response, even making every inference in her favor, as we must, did not raise a fact issue that her possession of the subject property was visible, open, exclusive, and unequivocal, so as to invoke a duty of inquiry requiring Six Shooter to ascertain her rights. *See Strong*, 98 S.W.2d at 350. Accordingly, we hold that Six Shooter established, as a matter of law, its status as a bona fide purchaser for value of the subject property pursuant to Section 13.001(a) of the Property Code. *See TEX. PROP. CODE ANN. § 13.001(a)*; *see also Madison*, 39 S.W.3d at 606. Because Six Shooter qualified as a bona fide purchaser for value, without notice, and recorded its deed before Rossana recorded her two, Rossana's deeds—while not void generally—are void as to Six Shooter. Accordingly, Six Shooter's deed is valid and enforceable against Rossana.

We overrule the remaining part of Rossana's first issue; and overrule her second issue in its entirety.

## **CONCLUSION**

We modify the trial court's judgment to reflect Rossana's deeds executed on May 9, 2013

(Deed 3), and June 22, 2015 (Deed 4), respectively, are void as to Six Shooter but remain valid as to all other parties. As modified, we otherwise affirm the trial court's judgment.

GINA M. PALAFOX, Justice

August 19, 2021

Before Rodriguez, C.J., Palafox, and Alley, JJ.