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IN THE SEVENTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
PROBATE DIVISION

2012 NOV 14 PM 3:09

RICHARD R. ROOKER, CLERK

D.C.

IN RE:

ESTATE OF WILLIAM HENRY BOMER
Deceased,

NO.: 12P-536

CALVIN BOMER,

Petitioner,

vs.

EXIE DAVIS,

Respondent

EXIE DAVIS,

Third-Party Petitioner,

vs.

CALVIN BOMER, CATHERINE BOMER, MICHAEL BOMER, DAVID BOMER, KIM BOMER, THE ESTATE OF ANNIE ASKINS, AND THE ANNIE ASKINS TESTAMENTARY TRUST,

Third-Party Respondents.

BILL GARRETT, Davidson County
Trans:T20130061243 ORDER
Recvd: 07/18/13 11:09 9 pgs
Fees:47.00 Taxes:0.00
20130718-0074311

ORDER ON COMPLAINT TO QUIET TITLE

This matter came on to be heard in the Seventh Circuit Court for Davidson County, Tennessee, Probate Division, before the Honorable Randy Kennedy, Circuit Judge, on October 23, 2012 for a hearing on the third-party complaint to quiet title to real property located at 722 Rowan Drive, Nashville, Tennessee that was filed by the third-party plaintiff, Exie Davis. The parties agreed to bifurcate the hearing on the complaint to quiet title from the claim of Exie Davis for quantum meruit relief for repairs and renovation of the premises.

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The parties stipulated to the admissibility of the following documents without stipulating to the legal validity or effect of the documents:

1. Deed from William Head to Annie M. Askins recorded February 8, 1977 at Book 5113, Page 343 by the Register of Deeds for Davidson County, Tennessee.
2. Last Will and Testament of Annie M. Askins dated April 4, 1989.
3. Order Admitting Last Will and Testament of Annie M. Askins dated April 4, 1989 for Probate in the Davidson County Probate Court - docket number 95049.
4. Affidavit of Heirship by Joel Mckissack recorded November 26, 2003 as document number 20031126-0171946 in the Register of Deeds for Davidson County, Tennessee.
5. Affidavit of Heirship by William H. Bomer recorded February 26, 2010 as document number 20100226-0014894 by the Register of Deeds for Davidson County, Tennessee.
6. Quitclaim deed from William H. Bomer to Exie H. Davis recorded March 7, 2012 as document number 20120307-0020001 by the Register of Deeds for Davidson County, Tennessee.

The parties and the Court agreed that the question before the Court did not require the Court to consider any oral testimony. After considering the stipulated exhibits, statements of counsel, the pleadings, the briefs submitted by counsel, the Court file for the Estate of Annie M. Askins, Case No. 95049 and the entire file in this matter, the Court finds as follows:

The real property that is the subject of this lawsuit is located at 722 Rowan Drive in Nashville, Tennessee and was purchased by Annie M. Askins, an unmarried person, on February 8, 1977. Title was transferred to Ms. Askins by a Warranty Deed recorded at Book 5113, page

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343 by the Register of Deeds for Davidson County, Tennessee. Annie M. Askins was the legal owner of this property at the time of her death on October 13, 1989.

The Last Will and Testament of Annie M. Askins, dated April 4, 1989, was admitted for probate in the Probate Court for Davidson County, Tennessee on March 12, 1990 in Case Number 95049. Robbie L. Malone and Robert Bomer were appointed to serve as Co-Executors of the Annie M. Askins estate.

Item 3 of the Last Will and Testament of Annie M. Askins dealt specifically with the disposition of the property at 722 Rowan Drive, Nashville, Tennessee. The Will created the Annie M. Askins Testamentary Trust and named Robbie L. Malone and Robert Bomer to serve as trustees. The Rowan Drive property was conveyed to the trust "to provide a home for my nephew, William Henry Bomer, during his lifetime or for so long as he occupies the premises forming the corpus of the trust as his personal residence and in conformity with the requirements hereof...." William Henry Bomer was required to maintain the property, pay the real estate taxes and pay premiums for maintaining insurance coverage on the property. The trust states that upon the death of William Henry Bomer, or upon the termination of his right of occupancy, the trustees may either (a) sell the assets comprising the trust corpus or (b) distribute the trust corpus in kind and, in either event, to divide the trust corpus between William Henry Bomer, Robert Bomer, and Calvin T. Bomer, if living, or to their issue, if deceased.

The personal representatives of the Annie M. Askins estate, Davidson County Probate Court number 95049, failed to complete the administration of the estate which resulted in the Court file for the estate of Annie M. Askins being "retired" on June 22, 2000. The estate of Annie M. Askins was reopened by an Order of this Court entered September 11, 2012, in response to a motion of Exie M. Davis to reopen the estate and to appoint a Successor Trustee for the Annie M. Askins Testamentary Trust.

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Title to the property at 722 Rowan Drive became complicated on November 26, 2003 when an affidavit of heirship executed by Joel McKissack was recorded in the office of the Register of Deeds for Davidson County, Tennessee. This affidavit of heirship stated, incorrectly, that Annie M. Askins died *intestate* and that she was survived by two nephews, William Bomer and Robert Bomer, who each received a one-half interest in the real property at 722 Rowan Drive. Ms. Askins did not die intestate. Her Will had previously been admitted for probate. In addition, the evidence shows that had Ms. Askins died intestate, Robert Bomer and William Bomer would not have been her only two heirs-at-law. Her Will made reference to three nephews, Robert Bomer, William Bomer and Calvin Bomer, and to a niece, Robbie Malone. There was no evidence as to whether Calvin Bomer died prior to the recording of this affidavit of heirship but it is clear that he left two children who would have taken his share had he died before the affidavit.

On February 26, 2010 William H. Bomer recorded a second affidavit of heirship regarding the property at 722 Rowan Drive. William Bomer's affidavit stated Robert Bomer had died and that at the time of Robert Bomer's death, he and Robert Bomer were the joint owners of a fee simple interest in the property at 722 Rowan Drive. This affidavit was incorrect in ignoring the interest of Calvin Bomer or his children and in assuming that Robert and William Bomer were the owners of the property at 722 Rowan Drive pursuant to the prior affidavit of heirship which incorrectly stated that Annie M. Askins died intestate.

On March 7, 2012, William H. Bomer executed a quitclaim deed to convey his interest in the 722 Rowan Drive property to Exie H. Davis. Ms. Davis claims that she is the legal owner of the contested property based on the quitclaim deed from William Bomer, the affidavit of heirship of William Bomer, and the affidavit of heirship of Joel McKissack.

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Ms. Davis argues that the McKissack affidavit of heirship recorded on November 26, 2003 cannot be contested because it has been more than six years since the recording of the affidavit and that contesting the affidavit is now barred by *T.C.A.* § 30-2-712(e)(1). Ms. Davis further argues that since William Bomer resided in the property for more than seven years following the recording of the McKissack affidavit, William Bomer obtained title to the property through adverse possession and was able to convey good title to her by quitclaim deed.

Ms. Davis' position was contested by the Trustee of the Annie M. Askins Testamentary Trust and by counsel for the children of Calvin Bomer and William Bomer. The trust and the children of Calvin Bomer and William Bomer contend that even after the passing of six years from recording affidavits of heirship, those affidavits only provide prima facie evidence of the facts stated therein and that the affidavits may be contested. They contend that William Bomer did not obtain title by adverse possession because he did not hold the property "adversely." The Trustee and the children of William Bomer and Calvin Bomer contend that title vested in the Annie M. Askins Testamentary Trust under *T.C.A.* § 31-2-103 when the Will of Annie M. Askins was admitted for probate.

Based upon all of the foregoing, the Court finds that the affidavits of heirship of Joel McKissack and William Bomer fail to establish ownership of the property by William Bomer or Exie Davis. All parties agree that the affidavits of heirship are incorrect, that Annie M. Askins died testate and that her Last Will and Testament was admitted for probate on March 3, 1990. Title to the property at 722 Rowan Drive vested in the Annie M. Askins Testamentary Trust when the Askins Will was admitted for probate. William Bomer could only convey the interest that he had in the property through the quitclaim deed he executed transferring his interest to Exie Davis. The Court finds that William Bomer had no ownership interest in the property, his only interest was as a beneficiary of the Annie M. Askins Testamentary Trust. The Annie M.

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Askins Testamentary Trust was a spendthrift trust. No interest in the trust property could be conveyed by William H. Bomer.

The Court finds that title in the property at 722 Rowan Drive, Nashville, Tennessee is vested in the Annie M. Askins Testamentary Trust. This property is more particularly described in the deed recorded at Book 5113, page 343, Register of Deeds' Office for Davidson County, Tennessee as follows:

> Land in Davidson County, Tennessee, being Lot No. 310 on the Plan of Haynes Manor Section II, as of record in Book 3700, page 88, Register's Office for Davidson County, Tennessee.
>
> Said Lot No. 310 fronts 75 feet on the northerly margin or Rowan Drive and extends back between lines 136.9 feet on the westerly line, passing a witness line at 107.2 feet and 130 feet on the easterly line passing a witness line at 100 feet to a rear line on which it measures 65.25 feet.
>
> Being the same property conveyed to Annie M. Askins by deed from William E. Head and Tonya V. Head, of Record in Book 5113 page 343 in the Register's Office for Davidson County, Tennessee.

The Court finds that *T.C.A.* § 30-2-712(c)(1) sets a six year period following the recording of an affidavit of heirship for an aggrieved party to ask that the affidavit be expunged from the records of the county in which it is recorded but that this subsection does not change the effect of an affidavit of heirship, which is to provide "prima facie evidence of the facts stated in the affidavit." Prima facie evidence may be rebutted and, in this case, the prima facie evidence stated in the affidavit was rebutted by clear and convincing evidence to show that Annie M. Askins did not die intestate.

The Court finds that the claim for adverse possession cannot be sustained because William H. Bomer had the right to reside in the property for his lifetime pursuant to the Annie M. Askins Testamentary Trust and that the time for the running of the seven year period for adverse possession did not begin until the death of William H. Bomer on March 5, 2012.

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IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Court finds that the legal owner of the property at 722 Rowan Drive, Nashville, Tennessee is the Annie M. Askins Testamentary Trust, through Michael M. Castellarin, Successor Trustee, and that the Annie M. Askins Testamentary Trust is entitled to possession of this property.

A ruling on the claim of Exie Davis for quantum meruit relief for repairs and renovation of the subject property is reserved pending a final hearing on that claim.

Court costs will be taxed upon the conclusion of the hearing on the claim for quantum meruit relief.

Entered this 14 day of NOV., 2012.

Randy Kennedy, Circuit Judge

APPROVED FOR ENTRY:

Michael M. Castellarin, No. 12015
Substitute Trustee for the
Annie M. Askins Testamentary Trust
Moody, Whitfield & Castellarin
Suite 509, Cavalier Building
95 White Bridge Road
Nashville, TN 37205
(615) 356-8130

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been mailed on the 25th day of October, 2012 to:

Jon S. Jablonski, Esq.
2400 Crestmoor Road
Suite 315
Nashville, TN 37215-2048

Karl D. Warden, Esq.
214 Second Avenue North
Suite 103
Nashville, TN 37201-1637

Peggy Mathes, Esq.
20 Academy Place
Nashville, TN 37210-2026

Michael M. Castellarin

STATE OF TENNESSEE

I, **RICHARD R. ROOKER,** Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the ORDER heretofore entered in the SEVENTH Circuit Court for Davidson County, Tennessee, on the 14 day of NOVEMBER , 2012 , in Case Number 12P536 between BOMER, CALVIN T. ET.AL Petitioner, and BOMER, WILLIAM HENRY ET.AL Respondent, as same remains in the records of said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 13 day of JUNE 2013

RICHARD R. ROOKER, Clerk,

By _____
Deputy Clerk

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