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IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

ROSLYN HEWLETT	)	
Petitioner/Counter-Respondent,	)	
	)	
vs.	)	**Docket No. 21-0106-III**
	)	**Notice of Fina**
WALTER WATTS	)	
Respondent/Counter-Petitioner.	)	

Karen Johnson Davidson County
Batch # 1145518 ORDER
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Fees: $42.00 Taxes: $0.00
20240611-0043431

ORDER TO DISMISS

This cause came on to be heard on the 11TH day of January, 2024, before the Honorable I'Ashea Myles, Chancellor for Chancery Court of Davidson County, Tennessee upon the Respondent's Motion to Dismiss and Motion for Declaratory Judgment. Respondent's attorney T.J. Jones was present in court and Petitioner was present in court Pro Se.

Upon argument of counsel for the Respondent, argument of the Petitioner, the entire court file with exhibits and the record taken as a whole, the Court finds as follows:

1. The decedent James Hathaway was married to his wife, Dorothy Hathaway at the time of his death on January 8th, 2009. Petitioner Roslyn Hewlett is one of the children of the decedent. Her Mother was Jeanette Hathaway. Respondent Walter Watts is the son of Dorothy Hathaway from her previous marriage. James and Dorothy Hathaway were married on August 18th, 1989. Mrs. Hathaway owned 2538 Allenwood Drive, Nashville, TN prior to marriage. Mr. James Hathaway owned 2528 Allenwood Drive, Nashville, TN prior to marriage.

2. On June 25th, 1999, there is a Quitlclaim Deed signed by James Hathaway, Grantor that adds his wife, Dorothy Hathaway to the deed and grants her an equal ownership in his house at 2528 Allenwood Drive, Nashville, Tennessee. Also, a Deed of Trust on the property is signed by both James and Dorothy Hathaway on the same June 25th, 1999 date. The Quitclaim Deed and the Deed

of Trust with the signatures of James and Dororthy Hathaway are notarized on June 25th, 1999 and then recorded with the Davidson County Register of Deeds Office on July 7th, 1999.

3. There are several other notarized documents recorded with the Davidson County Register of Deeds Office dating before the Quitclaim Deed of 1999 and after the 1999 date signed by the Hathaways on both pieces of property on Allenwood Drive.

4. The Tax Assesor's Office for Davidson County, Tennessee has Dorothy and James Hathaway as the owners of the real property at 2528 Allenwood Drive and the tax bills were sent to both Hathaways each year from at least July 1999 to 2009. Further, the tax bills were paid by the Hathaways from at least the signing of the Quitclaim Deed in 1999 until Mr. James Hathaway passed away on January 8th, 2009.

5. Dorothy Hathaway stayed in the home after her husband's death until her death on May 18th, 2020. Mrs. Hathaway continued to pay the mortgage attached to the Deeds of Trust and the real property taxes on the property. Mrs. Hathaway also had the real property deeded in her sole name on March 18th, 2009, and she became solely responsible for the remaining mortgage debt and property taxes. At the time of her death, she had owned and paid on the property taxes for over twenty (20) years. The Petitioner was never in possession of the property in dispute nor did she ever pay the property taxes on same.

6. Mrs. Dorothy Hathaway died on May 18th, 2020 and had a valid Last Will and Testament wherein she left her real property at 2528 Allenwood Drive to her son, Walter Watts.

7. The Notary on the Quitclaim Deed of June 25th, 1999 is Tracy Hobby and she has signed an Affidavit that it is in fact her signature on the Quitclaim Deed and she would have requested proper identification of the Grantor, Mr. James Hathaway before notarizing the Quitclaim Deed. She

is also the notary on the Deed of Trust that was filed with the Quitclaim Deed that has not been disputed in the record.

8. Petitioner originally filed a verified Petition to Partition (20-539-I) the real property at 2528 Allenwood Drive on June 10, 2020, wherein in paragraph 2 under the heading "PROPERTY" she states that the property was conveyed to James and Dorothy Hathaway and that her and Mr. Watts are heirs to the property. Respondent filed a Motion to Dismiss on July 27, 2020 disputing Petitioner's interest in the real property and Petitioner then filed a Notice of Voluntary Non-Suit and an Order of Non-Suit was signed on July 31, 2020.

On February 4th, 2021, Petitioner filed a verified Petition for Quiet Title of the real property stating that she solely owned the property. Respondent Answered said Petition and filed a Counter-Petition for Quiet Title. In the 2021 Petition, Petitioner makes a claim that the Quitclaim Deed has a forged signature.

9. Based on the dates in question, specifically the dates of the notarized and recorded Quitclaim Deed of 1999 and several following notarized and recorded Deeds of Trust and other recorded documents, the Court finds that Petitioner's claims are barred by several Statute of Limitations.

A. Mr. Hathaway's signature and transfer of ownership on the Quitclaim Deed of June 25th, 1999, was never disputed by himself, the actual Grantor during his lifetime as a forged document or fraudulent conveyance. Several of the documents signed by Mr. Hathaway, notarized and filed with the Davidson County Register of Deed's Office after 1999 reference in the document the Quitclaim Deed signed by Mr. Hathaway. The Court finds that Mr. Hathaway never challenged the authenticity or validity of the Quitclaim Deed during his lifetime.

B. All of the property documents were notarized and recorded for public notice to all that Mrs. Dorothy Hathaway was purportedly a joint owner in the real property since July 7th, 1999. No person disputed the validity of the Quitclaim Deed or her ownership of the real property until Petitioner filed her first Petition to Partition on June 10th, 2020. The Respondent argues that Pursuant to Tennessee Code Annotated Section § 24-5-101, "there is a presumption that all instruments of conveyance executed by a public officer of this state", in this case the Notarized signature and document recorded with the Register of Deed's Office, "is prima facie evidence of the facts in such instrument recited and all such instruments now of record shall be admitted, held and construed in accordance with this section."

As it relates to this case, notice was given to the public that Dorothy Hathaway owned the real property by the power in the notarized and recorded Quitclaim Deed and subsequent notarized and recorded documents by her husband James Hathaway. If the signature of James Hathaway was forged, the Court is of the opinion that notice was given to the public that Mrs. Hathaway was holding herself out to be the owner of the property. Also, the record reflects that she paid on the taxes from at least July 7th, 1999 until her death in May 2020. Pursuant to T.C.A. § 28-2-109, it is presumed:

> 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 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.

There is no dispute that the documents were recorded and there is no claim by the Petitioner that Mrs. Hathaway's signature is a forgery.

C. Based on T.C.A § 28-2-102 and 103, actions that are barred after seven years, it is clear that after Mr. Hathaway died in 2009 and Petitioner never filed any action within the seven (7) years after his death to proclaim that she was the rightful owner of the property or have Dorothy Hathaway defend any claim that she was not the rightful owner. The record does have ample information that Petitioner has not been in possession of the real property since her father died or even since the Quitclaim Deed was filed in 1999, there is no dispute in the record to those facts. As an heir, Petitioner's potential interest in her father's assets would vest at his death date and there was not a Petition filed within seven years of this date. Therefore, Petitioner's claims are barred by the seven (7) year statute of limitations.

D. Also, pursuant to T.C.A. § 28-3-105, actions for injuries to personal or real property shall be commenced within three (3) years. As stated above no such action was filed within three (3) years of Mr. Hathaway's death.

E. Also, pursuant to T.C.A. § 28-3-109, actions for breach of contract or contract disputes not otherwise expressly provided for, must be commenced within six (6) years. Neither Mr. Hathaway nor Petitioner filed any action for breach of contract within the time prescribed.

F. As to any Adverse Possession claim with a seven (7) year statute of limitations, Petitioner did not file within seven (7) years of her Father's death. The Court notes that Dorothy Hathaway was alive during that time and could have defended any claim filed against her personally. Based on the facts of this claim, the Respondent is correct in that he could defend this action with a seven (7) years adverse possession claim and/or a twenty (20) years adverse possession defense based on possession and property tax payments. The Court finds that if Petitioner made an Adverse Possession claim that claim would be time barred by the statute limitations as well.

G. Further, pursuant to T.C.A. § 28-3-110(3) , there is a catch all statute of ten (10) years when you cannot find an exact category for cases. However, the Court does find that this case more appropriately is governed by the seven (7) year statute. For argument sake and taking all facts in a light most favorable to the Petitioner, her Petition was not filed within ten (10) years of her father's death and therefore, would be forever barred by this statute as well.

H. Also, Petitioner never filed a Probate action within two (2) years of her Father's death or upon filing this Petition, claiming that she was the true owner of her father's real property.

10. Therefore, the Court finds that Petitioner's Petition for Quiet Title shall be dismissed due to the statute of limitations having run on all claims prior to the filing.

11. The Court finds that the real property was owned by Dorothy Hathaway solely after the death of her husband Mr. Hathaway and that the real property would pass to Mrs. Hathaway's heirs as a matter of law. There being no dispute of Mrs. Dorothy Hathaway's Last Will and Testament and her bequest to Walter Watts, the Court finds that Mr. Walter Watts is the lawful owner of 2528 Allenwood Drive, Nashville, Tennessee 37207.

12. The Court orders that the parties shall bear their own reasonable and necessary attorney's fees in this matter.

13. Any unpaid court costs shall be taxed to the Petitioner/Counter-Respondent for which execution may issue if necessary.

14. There being no other disputed matters for the Court, this Order shall be deemed a Final Order for appeal purposes.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

15. The Statute of Limitations for any and all of Petitioner's claims ran prior to the date of Petitioner filing her 2020 Petition and her 2021 Petition in this Court. Therefore, the Motion to Dismiss and Declaratory Judgment filed by the Respondent is granted;

16. Further, the Court finds that Respondent's Counter-Petition shall be granted based on the facts that the real property was owned by Dorothy Hathaway solely after the death of her husband Mr. Hathaway and that the real property would pass to Mrs. Hathaway's heirs as a matter of law. There being no dispute of Mrs. Dorothy Hathaway's Last Will and Testament, the Court finds that Mr. Walter Watts is the lawful owner of 2528 Allenwood Drive, Nashville, Tennessee 37207. The real property being more particularly described as follows:

> Being Lot No. 61 on the Plan of Sheparwood Subdivision, Section 1 of Record in Book 4175, Pages 82 and 83, Register's Office for Davidson County, Tennessee. Reference to which plan is hereby made for a more complete description.
>
> Being all the same property conveyed to James Hathaway and Wife, Jeanett Hathaway by Deed from C.H. Briley, Jr. Trustee of Record in Book 4466, Page 102, Register's Office for Davidson County, Tennessee.
>
> Being the same property after Jeanett Hathaway passed away, conveyed to James Hathaway and wife, Dorothy J. Hathaway by Quitclaim Deed in June 25th, 1999, from James Hathaway, of Record in Book 11561, Page 518-519, Register's Office for Davidson County, Tennessee.
>
> Being the same property after James Hathaway died solely owned by Dorothy J. Hathaway as the remaining tenant by the entirety and a Deed of Trust recorded March 18th, 2009, Instrument Number 20090318-0024295, Register's Office for Davidson County, Tennessee.

17. The Court finds that the parties shall bear their own attorney's fees in this matter;

18. Any unpaid court costs shall be taxed to the Petitioner/Counter-Respondent for which execution may issue if necessary; and,

19. There being no other disputed matters for the Court, this Order shall be deemed a Final Order for appeal purposes.

ENTERED this _____ day of _____, 2024.

s/I'Ashea L. Myles
HON. I'ASHEA L. MYLES
Chancellor, Chancery Court Part III

APPROVED FOR ENTRY:

/s/T.J. JONES
T.J. JONES (#19071)
Attorney for Walter Watts
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Old Hickory, Tennessee 37138
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CERTIFICATE OF SERVICE

This is to certify that the foregoing Order to Dismiss has been delivered by mail and email to the following:

Roslyn Hewlett
5168 Ryan Allen Circle
Whites Creek, Tennessee 37189
Roslynhewlett@gmail.com

EMAILED AND MAILED ON JANUARY 25, 2024 TO THE ABOVE ADDRESS AND EMAIL ADDRESS.

/s/T.J. JONES
T.J. JONES, #19071
Certifying Attorney

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF ORIGINAL INSTRUMENT FILED IN MY OFFICE THIS 29 DAY OF May 2024
MARIA M. SALAS, CLERK & MASTER
BY Gretchen Allen DEPUTY