

**IN THE COURT OF APPEALS 03/26/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CA-01061 COA**

**B.J. COX AND LOUISE CARTER COX**

**APPELLANTS**

**v.**

**TRUSTMARK NATIONAL BANK, ADMINISTRATOR C.T.A. OF THE ESTATE OF MARJORIE FAIRLEY, SOUTHEASTERN CONCRETE COMPANY, A MISSISSIPPI CORPORATION, HATTIESBURG SAND AND GRAVEL, INC., A MISSISSIPPI CORPORATION, RICHARD O. LOFTON, ROSA E. LOFTON, AND MARIE FAIRCHILD**

**APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. SEBE DALE, JR.

COURT FROM WHICH APPEALED: FORREST COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

S. CHRISTOPHER FARRIS

ATTORNEY FOR APPELLEE:

WALLACE R. GUNN

NATURE OF THE CASE: STATUS OF PROPERTY TAX SALE

TRIAL COURT DISPOSITION: SUMMARY JUDGMENT IN FAVOR OF TRUSTMARK,  
ADMINISTRATOR C.T.A. - TAX SALE VOID

BEFORE FRAISER, P.J., COLEMAN, PAYNE, AND SOUTHWICK, JJ.

PAYNE, J., FOR THE COURT:

This case concerns a situation involving a tax sale of certain Forrest County land. This appeal specifically questions the validity of a summary judgment granted in favor of Trustmark National Bank, Administrator C.T.A. of the estate of Marjorie Fairley. We find that summary judgment was proper in this case and accordingly affirm the chancery court's ruling.

#### FACTS AND ANALYSIS

The facts of this case become convoluted rather quickly if every detail is considered. A majority of the facts are irrelevant for purposes of this appeal, so we will consider only those that are pertinent. Marjorie Fairley died in December 1983, naming by will two individuals as trustees of her estate, which contained the land that is the subject of this suit. Citizens Bank (predecessor to Trustmark National Bank) was appointed administrator in 1984 following the resignation of its two predecessors. In February 1985, Citizens deeded to John and Angelia Carter the subject land as follows:

All property owned in Section 30, Township 4 North, Range 12 West, lying West of Leaf River

#### LESS AND EXCEPT

All that part of the N1/2 of the NW 1/4 of the SW 1/4 lying West of Leaf River, in Section 30, Township 4 North, Range 12 West; and the SW 1/4 of the NW 1/4, lying West of Leaf River; and the NW 1/4 of the NW 1/4 lying West of Leaf River, all in Section 30, Township 4 North, Range 12 West.

The intent of this instrument is to convey all that interest owned by Marjorie Fairley, deceased, in the above described property at the time of her death.

The Forrest County tax assessor subsequently assessed both pieces of property combined (including both the excepted and the granted portions) to the Carters. When the 1986 tax on the jointly-assessed property was not paid by anyone, the land was sold on August 31, 1987, at a tax sale to the Coxes. No notice of delinquent taxes, the tax sale, or the tax sale redemption period was ever sent to Trustmark, which was the administrator for the true owner of the property excepted from the deed to the Carters. On May 3, 1993, Trustmark filed a bill of complaint to set aside the tax sale and, on December 15, 1993, it filed a motion for summary judgment. On September 1994, the Forrest County Chancery Court granted Trustmark's motion.

## ANALYSIS

In determining whether the trial court properly granted a motion for summary judgment, this Court employs a *de novo* review of the record. *Presswood v. Cook*, 658 So. 2d 859, 862 (Miss. 1995) (citing *Owen v. Pringle*, 621 So. 2d 668, 670 (Miss. 1993)); *Daniels v. GNB, Inc.*, 629 So. 2d 595, 599 (Miss. 1993); *Mantachie Natural Gas Dist. v. Mississippi Valley Gas Co.*, 594 So. 2d 1170, 1172 (Miss. 1992). A trial court may grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." M.R.C.P. 56. A fact is material if it "tends to resolve any of the issues, properly raised by the parties." *Webb v. Jackson*, 583 So. 2d 946, 949 (Miss. 1991) (citing *Mink v. Andrew Jackson Casualty Ins. Co.*, 537 So. 2d 431, 433 (Miss. 1988)). The evidence must be viewed in the light most favorable to the non-moving party. *Morgan v. City of Ruleville*, 627 So. 2d 275, 277 (Miss. 1993) (citing *Brown v. Credit Ctr., Inc.*, 444 So. 2d 358, 362 (Miss. 1983)). If, in this view, the moving party is entitled to a judgment as a matter of law, then summary judgment should be granted in that party's favor. *Id.* Otherwise, the motion should be denied. *Id.*

The Appellants' arguments can be summarized as follows: (1) did the administrator's deed properly convey both pieces of property to the Carters; (2) was Trustmark ready, willing, and able to pay the outstanding 1986 tax assessment on the estate property; and (3) did Trustmark receive notice of the tax sale and of the redemption period expiration date? We will discuss each briefly.

In the present case the lower court ruled, as its finding of fact, that the land description within the deed was not confusing or ambiguous, but rather was "absolutely clear, concise, complete and totally absent of any ambiguity whatsoever -- it permits of only one understanding." This understanding was that the land within the deed to the Carters was LESS AND EXCEPT the portion involved here now on appeal. We agree, after reviewing the record, that the administrator's deed was not ambiguous. The transfer of the first portion to the Carters, prior to the LESS AND EXCEPT language, was valid. No ambiguity in the description existed in the transfer of that portion of the property. The LESS AND EXCEPT portion of the property was not transferred and was still subject to separate taxation to and payment by the proper payor(s)--here, Trustmark as the administrator C.T.A. of the estate of Marjorie Fairley. The Coxes contend that the deed language conveying all interest owned by Fairley in the property at her death is ambiguous. They argue that Fairley owned both the granted and the excepted property and that the deed language conveying all interest should be interpreted to mean both portions. However, the qualifying language does nothing to enlarge the property actually conveyed in the deed. The deed itself clearly limits the conveyance to that portion remaining after carving out that which was excepted. As the chancellor so ably articulated, no genuine issue of material fact exists regarding the description in the deed to the Carters. The court properly granted summary judgment in favor of the Appellees on this issue.

The question of Trustmark's willingness and ability to pay the outstanding 1986 taxes on the estate property is irrelevant. The tax assessor erroneously assessed 1986 taxes on both parcels in the name of Carter, so that the actual assessment was invalid. Moreover, the county failed to give the proper payor, Trustmark, sufficient notice of the 1986 tax debt for the LESS AND EXCEPT parcel. We find that Trustmark's ability to pay those taxes is immaterial to resolving this appeal.

Finally, the lower court found that the tax collector's notice of pending tax sale on August 31, 1987, for 1986 taxes failed to notify Trustmark and failed to comply with Mississippi statutory guidelines for notice of sale and records procedure under sections 27-41-55 and 27-41-31, respectively, of the Mississippi Code. Moreover, the court found that the statutory guidelines for notice of the period of tax sale redemption and its expiration under sections 27-43-1 and 27-43-3 were not met and, if they were at all, were directed to the Carters and not to Trustmark. Therefore the court determined that the deficiencies failed to meet statutory and constitutional minimums so that the tax sale and the tax deed to the Coxes, regarding the property excepted from the description, were both void. We find that no notice was provided to Trustmark for either the delinquent 1986 taxes, the tax sale, the redemption period, or the redemption period expiration date. As a result, the tax sale is void. No genuine issue of material fact exists concerning this issue because statutory minimums regarding notice of the tax sale and post-sale procedures were not met. The Appellees are therefore entitled to a judgment as a matter of law.

We hold that summary judgment was proper. We believe the chancery court ruling was a well-reasoned opinion and therefore affirm.

**THE JUDGMENT OF THE CHANCERY COURT OF FORREST COUNTY IS AFFIRMED.  
ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANTS.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING,  
McMILLIN, AND SOUTHWICK, JJ., CONCUR.**