

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
On-Briefs March 31, 2003

**SUPRENA BROOKS, ET AL. v. MICHAEL BROOKS**

**A Direct Appeal from the Circuit Court for Madison County  
No. C-01-272 The Honorable Roger A. Page, Judge**

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**No. W2002-02150-COA-R3-CV - Filed April 24, 2003**

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This is a *pro se* proceeding apparently seeking property allegedly due plaintiffs pursuant to a decedent's will which has not been probated and to award plaintiffs a money judgment against the executor named in the will. After a nonjury trial, the trial court granted judgment to defendant. Plaintiffs have appealed. We affirm.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed**

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

Suprena Brooks, *Pro Se*

Michael K. Brooks, *Pro Se*

**MEMORANDUM OPINION<sup>1</sup>**

Suprena Brooks et al.<sup>2</sup> ("Plaintiffs," or "Appellants"), acting *pro se*, filed a Motion Contesting Will and Deeds apparently asserting that Michael Brooks ("Defendant," or "Appellee") improperly depleted the assets of the late John W. Brooks ("Decedent") and later improperly failed to administer the estate of Decedent. At trial, it appears that Appellants further

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<sup>1</sup> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by Memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

<sup>2</sup> The Plaintiffs/Appellants are Suprena Brooks, Nikia Brooks, Antonio Brooks, Kenya Brooks, and Temeka Brooks.

asserted that Michael Brooks exercised undue influence upon the Decedent in procuring the transfer of real property located at 99 Webber Street in Jackson, Tennessee.<sup>3</sup>

A nonjury trial was held on August 14, 2002. The trial court filed its Final Order on August 20, 2002, which stated in relevant part as follows:

The trial court has considered the testimony of Attorney Nathan Pride, Nikia Brooks, Kenya Brooks, Temeka Brooks, Antonio Brooks, Belinda Tomlinson, Jenell Cheairs (Campbell), and Plaintiff Suprena Brooks. The Court has also considered the testimony of Jerry Mercer and Michael Brooks. The Court has further considered the exhibits that were introduced at trial and the applicable law.

Upon consideration of the Petition, the testimony and evidence presented, and the entire record in this cause, the Court is of the opinion that the Petitioner has not carried her burden of proof to show that Defendant Michael Brooks exercised undue influence over John W. Brooks or improperly acted in not probating the will of John W. Brooks.

The Court has concluded upon consideration of all the matters set forth above that John W. Brooks inherited the subject property at 99 Webber Street from his sister in 1991. In 1995, the deceased John W. Brooks was in dire financial circumstances. His telephone and utility services had been terminated for non-payment of the bills. In addition, there was a federal tax lien of \$14,400.00 that had been filed against the property at 99 Webber Street and Mr. Brooks owed property taxes to Madison County and the City of Jackson in an amount of more than \$1,800.00. No one was managing his affairs and it is evident that Mr. Brooks would have lost the property at 99 Webber Street and been evicted for failure to pay federal and local taxes but for the intervention of Michael Brooks.

Michael Brooks agreed to pay all the outstanding liens against the property at 99 Webber Street. He also agreed to pay all of the late John W. Brooks' past due bills. He further agreed to manage the affairs of John W. Brooks for the remainder of Mr. Brooks' life. In consideration for the above agreement, John W. Brooks conveyed the real property at 99 Webber Street to Michael Brooks, reserving a life estate.

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<sup>3</sup> The property at 99 Webber Street was transferred by Quitclaim deed from Decedent to Appellee.

Attorney Nathan Pride and Jerry Mercer each testified that John W. Brooks understood that he was transferring the real property to Michael Brooks and that John W. Brooks appeared capable of making a rational decision at the time the real property was transferred in March of 1995. This Court has concluded that Michael Brooks acted in the best interest of John W. Brooks and did not unduly influence John W. Brooks in any manner whatsoever.

Appellants appeal from this Final Order and raise five issues for our review as stated in their brief:

1. Whether the trial court err[ed] by fail[ing] to rule on the motions file[d] prior to the hearing?
2. Whether the trial court err[ed] when [it] accepted exhibits from the Defendant wh[ich] the Defendant fail[ed] to give Plaintiffs prior to the trial by way of interrogatory?
3. Whether the trial court err[ed] by accepting testimony from parties that Plaintiffs [had] no knowledge [of] and or question them [concerning] the intent of their testimony?
4. Whether the trial court err[ed] [by giving consideration to] the testimony of the [Decedent's] grandchildren?
5. Whether the trial court err[ed] [by giving consideration to] the last will [and] testament and deeds of [the] decease[d] Mr. John Wesley Brooks?

**Whether the trial court err[ed] by fail[ing] to rule  
on the motions file[d] prior to the hearing?**

On February 22, 2002, Plaintiffs filed a Motion entitled “Motion to Compel Answer to Interrogatories and/or Impose Sanction Upon Defendant and Place in Default.” On May 1, 2002, Plaintiffs filed a Motion entitled “Motion Request for Interrogatories as Guided under Rule 33 of Tennessee Rules of Civil Procedure.” We note that the Defendant, Michael Brooks, did file an Answer to Interrogatories on May 15, 2002. The motions filed by the Plaintiffs do not indicate what portion of the interrogatories the Defendant allegedly failed to answer. The record reflects no order ruling on the motions, but there is nothing in the record to indicate that Plaintiffs sought a hearing on the motions. It is abundantly clear that the Plaintiffs chose to go to trial in this case without pursuing an order compelling discovery. If, in fact, the Defendant’s answers to the interrogatories were evasive or nonresponsive, and if, in fact, he failed to produce documents in response to Plaintiffs’ motions, these matters should have been properly brought before the court

on Plaintiffs' motion pursuant to Tenn.R.Civ .P. 37. *Pro se* litigants are entitled to fair and equal treatment, but they are not excused from complying with the applicable substantive and procedural law. *Paehler v. Union Planters Nat. Bank*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997). This issue is, therefore, without merit.

**Whether the trial court err[ed] when [it] accepted exhibits from the Defendant wh[ich] the Defendant fail[ed] to give Plaintiffs prior to the trial by way of interrogatory?**

The interrogatories propounded to Defendant ask for “any legal documents, bill of sell [sic], or any statements with signature of (respectfully late) Mr. John Wesley Brooks,” indicating that the property at 99 Webber was to transfer to Defendant. Mr. Michael Brooks’ answer states that “the only legal document is the quitclaim deed signed by John Wesley Brooks on March 3, 1995 and made a part of my answer.” In terms of any documents that were alleged to exist but which were not turned over to Plaintiffs through the course of discovery, Plaintiffs should have filed a Motion to Compel Discovery pursuant to Tenn. R. Civ. P. 37, see discussion *supra* under Issue 1.

**Issues 3, 4, and 5 will be considered together.**

Since this case was tried by the court sitting without a jury, we review the case *de novo* upon the record with a presumption fo correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. T.R.A.P. 13(d).

The trial court is afforded wide discretion in the admission or rejection of evidence, and the trial court’s action will be reversed on appeal only when there is a showing of an abuse of discretion. *See Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439 (Tenn. 1992); *Davis v. Hall*, 920 S.W.2d 213, 217 (Tenn. Ct. App. 1995).

The record before us consists of the pleadings, motions and orders, commonly referred to as the technical record, but includes no transcript or statement of the evidence of the August 14, 2002 trial. Where the issues raised go to the evidence, there must be a transcript or statement of the evidence. In the absence of a transcript or statement of the evidence, we must conclusively presume that every fact admissible under the pleadings was found or should have been found in favor of the appellee. *Leek v. Powell*, 884 S.W.2d 119 (Tenn. Ct. App. 1996); *Lyon v. Lyon*, 765 S.W.2d 755 (Tenn. Ct. App. 1988).

For the foregoing reason, we affirm the Order of the trial court. Costs of this appeal are assessed to the Appellants, Suprena Brooks, Nikia Brooks, Antonio Brooks, Kenya Brooks, and Temeka Brooks, and their sureties.

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— W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.