

4038
198 Va. 379

Record No. 4554

In the
Supreme Court of Appeals of Virginia
at Richmond

C. L. CHAVIS

v.

LOUIS C. GIBBS

FROM THE CIRCUIT COURT OF CHESTERFIELD COUNTY.

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

198VA 379

NOTICE TO COUNSEL

This case probably will be called at the session of court to
be held. **JUN - 1956**

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

H. G. Turner, Clerk.

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has put the other has not filed such a brief, the party in default will not be heard orally.

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4554

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 25th day of November, 1955.

C. L. CHAVIS,

Plaintiff in Error,

against

LOUIS C. GIBBS,

Defendant in Error.

From the Circuit Court of Chesterfield County

Upon the petition of C. L. Chavis a writ of error is awarded him to a judgment rendered by the Circuit Court of Chesterfield County on the 3rd day of June, 1955, in a certain proceeding then therein depending wherein Louis C. Gibbs was plaintiff and the petitioner was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Circuit Court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *
NOTICE OF MOTION.

You are hereby notified that on the 9th day of October, 1950, at 10:00 A. M. of that day, or as soon thereafter as Counsel in my behalf may be heard, I will move the Circuit Court of Chesterfield County at the Court House thereof, to adjudge that I hold the complete fee-simple title to the below described tracts of land and that writ of entry be awarded to me, all by virtue of the following facts:

1. That by deed dated May 7th, 1928, duly recorded on September 8th, 1928, in the Clerk's Office of the Circuit Court of Chesterfield County, in Deed Book 193, at page 420, the Hopewell Westover Corporation conveyed to Joe Mitchell the following tracts of land:

Tracts 56 and 59 "Westover Farms," Chesterfield County, Virginia; a plat of which is to be found in Plat Book 4, at Page 118-119 in the aforesaid Clerk's Office.

2. That the said Joe Mitchell, by deed of trust dated May 7th, 1928, and duly recorded on September 8th, 1928, in the said Clerk's Office in Deed Book 193, at page 421, conveyed the above described tracts to James O. Heflin, Trustee. Said conveyance was made to secure the payment of two notes, "each for the sum of \$200.00, payable in nine (9) and eighteen (18) months after date * * *"

3. That the said Joe Mitchell and Mary Mitchell, his wife, then conveyed the above described tracts to Charles T. Morris, Jr. by deed dated October 29, 1929, and recorded on November 1, 1929, in the aforesaid Clerk's Office in Deed Book 201, at page 192. This deed made no mention of the outstanding Deed of Trust.

page 2 } 4. That default having occurred in the payment of the aforesaid notes given by Joe Mitchell, the Trustee, James O. Heflin, pursuant to the terms of the aforesaid Deed of Trust, conveyed the said tracts of land to Archer L. Jones and T. J. Blankenship, Receivers of the Hopewell Bank and Trust Company, by deed dated July 2, 1936, of record in said Clerk's Office in Deed Book 340 at page 185; this deed was not recorded until August 11th, 1948.

5. That Archer L. Jones and Thomas J. Blankenship, Receivers, by two deeds, both dated October 20, 1948, and both recorded in the said Clerk's Office on November 20, 1948, conveyed the above described property to the Plaintiff, Louis C. Gibbs. The deed conveying Tract No. 59 is recorded in Deed Book 345, at page 138, and the deed conveying Tract Number 56 is recorded in Deed Book 345, at page 140, all in the aforesaid Clerk's Office.

6. That Charles T. Morris, Jr. and Louise Meyers Morris, his wife, by deed dated January 14, 1948, and recorded on January 19, 1948, in the said Clerk's Office in Deed Book 326, at page 44, purported to convey the above described tracts of land to the defendant, C. L. Chavis; this deed contained the following language: "It is understood and agreed that this conveyance is made subject to the lien of a certain Deed of Trust from Joe Mitchell to James O. Heflin, Trustee, dated May 7th, 1928, and recorded in Deed Book 193, at page 42, to secure the principal sum of \$400.00 evidenced by two notes of \$200.00 each * * *"

7. That the Defendant, the said C. L. Chavis, has taken possession of the above described tracts of land, has fenced in the same, and has declared himself to be the fee-simple owner of the same, denying that the Plaintiff has any rights to or in the said property.

8. Wherefore, by reason of the above, the Plaintiff, Louis C. Gibbs, will ask that the Court enter judgment declaring that he, the Plaintiff, is the fee-simple owner of the above-described tracts, and that other relief, hereinabove stated, shall be granted to him.

LOUIS C. GIBBS.
By Counsel.

SNEAD & SNEAD,
Attorneys at Law,
303 Union Trust Building,
Petersburg, Virginia.
By HARRY L. SNEAD, p. q.

* * * * *

* * * * *

MOTIVE TO STRIKE.

The defendant, by counsel, moves the Court to strike the notice of motion in this matter and to dismiss these proceedings, and the defendant hereby assigns the following grounds for the said motion.

1. The proceeding by notice of motion is fatally defective, in that the plaintiff seeks to invoke the equitable jurisdiction of the Court.

2. The plaintiff claims title through a certain deed from James O. Heflin, Trustee, to Archer H. Jones and S. J. Blankenship; Receivers of the Hopewell Bank and Trust Company, dated July 2, 1936, and recorded in the Clerk's Office of said Court on August 11, 1948, in Deed Book 340 page 185, which said deed is void as to the defendant by reason of a certain deed from Charles I. Morris, Jr., and Louise Myers Morris, his wife, to the defendant C. L. Chavis, dated January 14, 1948, and recorded in said Clerk's Office on January 19, 1948, in Deed Book 326 Page 44.

3. As is shown by the said Notice of Motion, the defendant is seised and possessed of title in fee simple to said property.

C. L. CHAVIS
By Counsel.

WILLIAM OLD, p. d.

I hereby certify that a copy of the above motion to strike has been mailed to Harry L. Snead, Esquire, Attorney for the plaintiff.

WILLIAM OLD.

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* * * * *

AMELIA, VA.

August 19, 1954.

Mr. Harry L. Snead
Union Trust Building
Petersburg, Virginia

Mr. William Olds
Chesterfield, Virginia

Gibbs v. Chavis (Chesterfield)

Gentlemen:

The facts in this case show that Joe Mitchell received the land which is the subject of this suit by deed dated May 7, 1928 and recorded on September 8, 1928, and that Joe Mitchell conveyed said land to James O. Heflin, Trustee, by deed dated May 7, 1928 and recorded September 8, 1928 to secure payment of two notes each for the sum of two hundred dollars (\$200.00) payable in nine and eighteen months after date; that this land was sold by the trustees under the above mentioned deed of trust and was conveyed to Archer L. Jones and J. T. Blankenship, receivers of the Hopewell Bank and Trust Company by deed dated July 2, 1936 and recorded August 11, 1948; that Charles T. Morris who had received this land from Joe Mitchell conveyed the same to C. L. Chavis by deed dated January 14, 1948 and recorded on January 19, 1948, which deed sets out that it was made subject to the deed of trust mentioned above.

It will be noted above that the deed from the Trustee under the deed of trust was recorded August 11, 1948 and that the deed from Morris to Chavis was recorded January 19, 1948.

The question here presented is whether the deed from the Trustee which was recorded after the deed from the then owner is valid and whether the deed from Morris to Chavis which was recorded before the deed from the Trustee takes priority under the recording act.

I am of the opinion that where a person purchases land upon which there is a deed of trust he is required to take notice of the deed of trust and to determine what has happened under the deed of trust. In this case such an inquiry would have disclosed that the property had been sold under the deed of trust although the deed had not been recorded.

page 5 } I am therefore of the opinion that the deed from the Trustee takes priority over the deed from Morris to Chavis.

You may draw an order carrying into effect the above views.

Yours very truly,

J. G. JEFFERSON, JR.

JGJ,Jr:LB

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* * * * *

JUDGMENT.

This day came again the parties by their attorneys and waived a jury and submitted all questions of law and fact to the Court.

THEREFORE, it is considered by the Court that the Defendant's Motion to strike should be and the same is hereby overruled and it is further considered by the Court that the Plaintiff, Louis C. Gibbs, recover against the Defendant, C. L. Chavis, the possession of the premises which are the subject of this suit; to-wit: Tract Nos. 56 and 59 "Westover Farm," Chesterfield County, Virginia, as shown in Plat Book 4, at pages 118 and 119 in the Clerk's Office of said County, and that the Plaintiff, shall recover his costs by him in this behalf expended.

It being suggested that defendant desires to apply to Supreme Court of Appeals for writ of error or appeal, this judgment is suspended for a period of 60 days upon the execution by the defendant or some one for him of a bond for the sum of \$500.00, with security satisfactory to the Clerk of this Court, within 15 days.

Enter this June 3, 1955.

J. G. JEFFERSON, JR.
Judge.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The defendant, C. L. Chavis, hereby *appeal* from a final judgment entered herein on the 3rd day of June, 1955, and the said defendant hereby files this as his notice of appeal.

The said defendant hereby makes the following assignments of error:

1. The Court erred in overruling the defendant's motion to strike the plaintiff's notice of motion.

2. The Court erred in making any adjudication of the title to the real estate described in the notice of motion and in determining that the plaintiff may recover possession of said real estate under the proceedings in this matter.

3. The Court erred in holding that the plaintiff's *title the* land is valid and that the deed from James O. Heflin, Trustee, to Archer L. Jones and T. J. Blankership, Receivers, dated July 2, 1936, and recorded August 11, 1948, had priority over the deed to the defendant, dated January 14, 1948, and recorded January 19, 1948.

4. The Court erred in holding that it was incumbent upon the defendant to make inquiry to determine whether an unrecorded deed from said trustee was outstanding at the time he accepted and recorded deed from Charles T. Morris and wife, there being no evidence of any actual notice of said unrecorded deed.

5. The Court erred in entering the final judgment of June 3, 1955.

C. L. CHAVIS
By WILLIAM OLD
His attorney-at-law.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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