

NOTICE  
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2016 IL App (5th) 150306-U

NO. 5-15-0306

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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RICHARD HAYS and CONNIE HAYS,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees,	)	Williamson County.
	)	
v.	)	No. 11-CH-86
	)	
LOREN L. COLLINS, SUSAN K. COLLINS,	)	
and LOREN L. COLLINS, d/b/a ZAGWC	)	
WILDLIFE, and UNKNOWN OWNERS and	)	
NONRECORD CLAIMANTS,	)	
	)	
Defendants-Appellants.	)	
	)	
	)	
LOREN L. COLLINS, SUSAN K. COLLINS,	)	
and LOREN L. COLLINS, d/b/a ZAGWC	)	
WILDLIFE,	)	
	)	
Counterplaintiffs-Appellants,	)	
	)	
v.	)	
	)	
RICHARD HAYS and CONNIE HAYS,	)	Honorable
	)	Phillip G. Palmer,
Counterdefendants-Appellees.	)	Judge, presiding.

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PRESIDING JUSTICE SCHWARM delivered the judgment of the court.  
Justices Stewart and Cates concurred in the judgment.

## ORDER

¶ 1 *Held:* The circuit court's ruling denying the appellants' counterclaim is affirmed where the appellants were unable to prove they have acquired title and ownership to railroad right-of-way property.

¶ 2 Appellants Loren and Susan Collins appeal from the judgment of the circuit court holding that they had not established title and ownership, including the right to possess, to railroad right-of-way property. The appellees, Richard and Connie Hays, pled and presented evidence claiming title and ownership to the railroad right-of-way by adverse possession. The appellees do not appeal the circuit court's decision finding that they failed to establish title and ownership to the railroad right-of-way by adverse possession. We affirm.

¶ 3 BACKGROUND

¶ 4 The appellants claim title to and ownership, together with the right of possession, in a railroad right-of-way that is 100 feet wide, 50 feet from either side of the center line, and approximately 1,500 feet long (the Railroad Right-Of-Way). The Railroad Right-Of-Way runs through the appellees' property, which they acquired by a warranty deed dated November 23, 2010, from Delmar Gene Anderson and Elva Anderson. An easement to the Railroad Right-Of-Way had been conveyed by the appellees' predecessors in interest to the Eldorado, Marion, and Southwestern Railroad on July 27, 1906. The appellees' deed thus explicitly excepted the Railroad Right-Of-Way.

¶ 5 On March 18, 2009, appellant Loren Collins fabricated and executed a quitclaim deed purporting to transfer the Railroad Right-Of-Way from JMG Holdings, an Alabama company, to ZAGWC Wildlife. ZAGWC Wildlife is a trade name by which appellants

do business. On December 8, 2009, this deed was recorded in Williamson County. The appellants thereafter posted signs claiming ownership on the Railroad Right-of-Way and, on April 22, 2010, filed notice to the public of "No Trespass" by recording in the Williamson County land records. This notice subsequently ran in the Southern Illinoisian newspaper. The appellees also went into possession of the Railroad Right-Of-Way sometime after acquiring the surrounding property by the November 23, 2010, deed. Appellee Richard Hays cut down trees and planted crops on the Railroad Right-Of-Way. The parties disputed ownership and possession of the Railroad Right-Of-Way, and the sheriff was called on at least one occasion to intervene in this dispute.

¶ 6 On June 6, 2011, the appellees filed a complaint to quiet title, which was amended on August 27, 2012, alleging that they had acquired the Railroad Right-Of-Way by adverse possession or, alternatively, because the Railroad Right-Of-Way had been abandoned and the appellees maintained possession. On July 15, 2011, the appellants filed an answer and counterclaim, which they amended on September 21, 2012. In the counterclaim, the appellants sought a declaratory judgment that the appellees had no interest in the Railroad Right-Of-Way because the deed transferring the Railroad Right-Of-Way from JMG Holdings to ZAGWC Wildlife defeated their claims. The appellants further sought preliminary and permanent injunctive relief enjoining the appellees from trespassing on the Railroad Right-Of-Way. The appellants also sought damages for trespass.

¶ 7 On July 7, 2014, the appellees filed a motion to add Union Pacific Railroad as a defendant. According to the motion, Union Pacific "own[s] the property in fee simple"

and thus "[is] a necessary party" to the case. On July 22, 2014, the motion was granted with no response from the appellants. However, the record does not show that Union Pacific Railroad was ever made a party, served with summons, or ever participated in any way in the proceedings.

¶ 8 On November 24, 2014, the court conducted a bench trial on the appellees' amended complaint and the appellants' counterclaim.<sup>1</sup> Prior to the trial, the parties filed a joint stipulation of facts. The parties stipulated that "since December 9, 2009, each [party] has acted in a manner such that they claim to be the true and rightful owners of [the Railroad Right-Of-Way]." The parties also stipulated that the deed purporting to transfer the Railroad Right-Of-Way to the appellants "is outside the chain of title as to [the Railroad Right-Of-Way] and further stipulate[d] that the grantor of said deed, \*\*\* JMG Holdings, \*\*\* never, at any point in time, had any interest, legal, equitable, or otherwise, in [the Railroad Right-Of-Way]."

¶ 9 At the bench trial, appellant Loren Collins testified as to the creation of the deed purporting to transfer the Railroad Right-Of-Way from JMG Holdings to the appellants.

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<sup>1</sup>The bench trial was conducted by the Honorable Judge Randy Moore, who was assigned to the Fifth District Appellate Court before deciding the case. The case was then assigned to the Honorable Judge Phillip G. Palmer. By the agreement of the parties and the court, Judge Palmer reviewed and considered the transcripts of the trial, the exhibits admitted at trial, and the stipulation of facts submitted by the parties to decide the case.

Collins stated that he "instructed [*sic*] this document [himself]." He testified that JMG Holdings was an Alabama company but that it never owned an interest in the Railroad Right-Of-Way. Collins explained that he "did many several hours of research over a two-year period at SIU Law Library" and concluded that, to show adverse possession, "[he] needed to show open hostile possession and control of the property and file a deed with the county courthouse and show notice to the public." He thus created the deed to show "[o]pen and hostile control" as per his understanding of the law.

¶ 10 On January 10, 2015, the appellees filed written closing arguments in which they stated "[a]t no time did either party produce evidence that [the Railroad Right-Of-Way] was abandoned." On January 22, 2015, the appellants filed written closing arguments referring to the Railroad Right-Of-Way as "abandoned railroad property." However, the appellants' closing arguments did not point to any evidence produced at the trial or in documents admitted into evidence to show that the Railroad Right-Of-Way was abandoned.

¶ 11 On June 10, 2015, the circuit court issued a judgment order. The court found that the Railroad Right-Of-Way had been acquired by "the Railroad" by a right-of-way deed filed on July 27, 1906. The court found that "[a]t no time did either party produce evidence that the railroad right-of-way was legally abandoned" and, "[w]ithout such a showing, the Railroad would still be the true owner of the right-of-way." The court further stated that "even if the possibility of a reverter existed in this case, it would not benefit the [appellees], but rather the Andersons or their heirs." The court found that the appellees failed to meet the requirements needed to show adverse possession of the

Railroad Right-Of-Way and therefore denied their complaint. The court found that the appellants "had admitted to drawing the deed up for [themselves]" purporting to make them the true owners of the Railroad Right-Of-Way and that "one cannot create a deed to oneself and then take valid title to the property without a showing that the property is legally abandoned." The court thus found the appellants failed to meet the burden for any part of their counterclaim and, thus, denied the counterclaim.

¶ 12 On June 26, 2015, the appellants filed a motion for reconsideration. The appellants argued that Anderson could not exercise the possibility of reverter if the railroad abandoned the Railroad Right-Of-Way and that the court should therefore revise that section of its order. The appellants further argued that the court could "issu[e] a narrow ruling to the effect that [the appellants'] claim is superior to [the appellees' claim]." On July 14, 2015, the circuit court denied the motion for reconsideration. In its denial, the court noted that "[t]he [c]ourt's *dicta* in [discussing the possibility of reverter] is not the controlling basis of said ruling. Further, as explained in the Order, neither party has shown ownership in said right-of-way" (*italics added*). On July 27, 2015, the appellants filed notice of appeal.

¶ 13

#### ANALYSIS

¶ 14 The appellants argue that Illinois law permits them to take title to the Railroad Right-Of-Way because they have acquired a deed to the property and went into possession of the property. The circuit court found in a bench trial that the appellants produced insufficient evidence to show that the Railroad Right-Of-Way was abandoned and that further, a party cannot fabricate a deed granting property to themselves and then

take valid title to the property without a showing that the land is abandoned. "A reviewing court will not substitute its judgment for that of the trial court in a bench trial unless the judgment is against the manifest weight of the evidence." *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008).

¶ 15 Before considering the merits of this appeal, we first consider whether we must remand for failure to join a necessary party. As noted above, the circuit court found that the parties did not show that "the Railroad" had ever abandoned the Railroad Right-Of-Way and that, without such a showing, "the Railroad" would still be the deeded owner of the land. However, neither the appellants nor the appellees have presented sufficient evidence to determine what railroad currently has title to the Railroad Right-Of-Way. The Eldorado, Marion, and Southwestern Railroad acquired the Railroad Right-Of-Way by the July 27, 1906, deed, which was admitted into evidence at the trial. The appellees prior to trial in the proceeding sought to join Union Pacific Railroad as a necessary party because "they own the property in fee simple." There was no evidence presented at trial as to what railroad company is the successor in interest to the Eldorado, Marion, and Southwestern Railroad. Regardless of what railroad may now hold title to the Railroad Right-Of-Way, it is clear that no railroad has participated in this case. Because we cannot be sure what railroad, if any, may need to be joined, we will refer to the potential necessary party as "the railroad."

¶ 16 The appellants are appealing the denial of their counterclaim seeking a declaratory judgment regarding ownership of the Railroad Right-Of-Way. In a declaratory judgment action, "[f]ailure to join necessary parties is not fatal in all instances," and "[t]he issue of

non-joinder of necessary parties may be raised for the first time on appeal or by the court on its own motion." *Davidson v. Comet Casualty Co.*, 89 Ill. App. 3d 720, 724-25 (1980). "But '[w]here an objection of nonjoinder of a necessary party is first raised after judgment, it will be denied unless such denial will have the effect of depriving the party omitted of material rights without a hearing \*\*\* or unless the interest of the omitted party in the subject matter of the suit is so interconnected with the interests of the other parties that his presence is an absolute necessity.'" *Id.* at 725 (quoting *Hall v. Humphrey-Lake Corp.*, 29 Ill. App. 3d 956, 964 (1975)).

¶ 17 Here, the railroad's rights were unaffected by the circuit court's ruling. The circuit court found the evidence did not show that the railroad had ever abandoned the Railroad Right-Of-Way, and without such showing, the railroad would still be the owner of the land. Therefore, the circuit court denied both the appellants' and the appellees' claims of ownership to the Railroad Right-Of-Way. Given that neither party produced evidence showing that the railroad had abandoned the Railroad Right-Of-Way, the circuit court's ruling on this issue was not against the manifest weight of the evidence. Further, the circuit court was able to reach its conclusion without input from the railroad, thus showing that the railroad's presence was not an absolute necessity. Thus, because we are affirming the circuit court's ruling, the railroad's rights remain unaffected, and we do not need to remand for the addition of the railroad as a necessary party.

¶ 18 On appeal, the appellants argue that the circuit court's "finding" that the possibility of reverter would benefit the Andersons and not the appellees is erroneous because the possibility of reverter may benefit a different person or persons who are not a party to this



case. We agree with the circuit court that any statements it made regarding the Andersons and the possibility of reverter were *dicta*. We further note, as did the circuit court, that this section of its opinion was not necessary for its findings of fact and conclusions of law. Because this argument has no bearing on the case, we do not address it further.

¶ 19 Generally, a wild deed, or a deed outside of the record chain of title, is unmarketable. See *Exchange National Bank of Chicago v. Lawndale National Bank of Chicago*, 41 Ill. 2d 316 (1968). The appellants argue that they can take title through the JMD deed, a wild deed outside the chain of title. In support of their theory that courts in the past have allowed parties to claim abandoned real estate by taking a deed from a party lacking title and going into possession, they cite *Copple v. Scott*, 372 Ill. 307 (1939). In *Copple v. Scott*, the appellees sought to eject a claimant from land. *Id.* at 307-08. The appellees' predecessor in interest had conveyed a right-of-way over the property to a railroad. *Id.* at 308-09. Within four years after the appellees acquired the land via deed, the railroad abandoned this right-of-way. *Id.* at 309. After this abandonment, the appellees took possession of the right-of-way and began farming it. *Id.* at 310. The court held that the appellees were entitled to enter into possession of the land once it was abandoned. *Id.* Further, the court held that "[t]he deed of conveyance [to the right-of-way] coupled with possession thereof \*\*\* constitutes a prima facie title sufficient to support ejectment." *Id.* Thus, the appellants argue, to show ownership of the Railroad Right-Of-Way, they must prove (1) the railroad has abandoned the Railroad Right-Of-

Way; (2) the appellants have a deed to the Railroad Right-Of-Way; and (3) the appellants have taken possession of the Railroad Right-Of-Way.

¶ 20 However, as noted above, the circuit court found that neither party has proven that the Railroad Right-Of-Way was abandoned by the railroad. This finding was not against the manifest weight of the evidence. Further, even if the appellants had shown the Railroad Right-Of-Way was abandoned, the appellants have fabricated both their deed to the Railroad Right-Of-Way and the transaction purporting to give them their deed to the Railroad Right-Of-Way. Even though the appellants insist that the fabrication was due to their understanding of the law, we hold it would be inequitable to enforce this deed. Similarly, neither *Jobst v. Mayer*, 327 Ill. 423 (1927) (holding that a party with a chain of title running back 60 years are presumed owners over a party with no title at all) nor *Burns v. Curran*, 275 Ill. 448 (1916) (holding that a party with a deed to a parcel of land does not have to trace the deed back to issuance by the government when the party also possesses the land) offers a legal basis to support using the fabricated deed as a basis for ownership. Therefore, because the appellants failed to show the Railroad Right-Of-Way was abandoned and because it would be inequitable to enforce their deed, the appellants cannot show that they can take title to the Railroad Right-Of-Way as against the railroad.

¶ 21 Nonetheless, the appellants argue that the circuit court could "issu[e] a narrow ruling to the effect that [the appellants'] claim is superior to [the appellees'] claim." The appellants have cited no authority that the circuit court must, or even can, issue such a ruling. The circuit court properly ruled that the Railroad Right-Of-Way had not been abandoned and denied the appellants' claim of ownership. Likewise, the circuit court

properly denied the appellees' claim of ownership by adverse possession. "The plaintiff must recover on the strength of his own title rather than on defects in the defendant's title." *Hoch v. Boehme*, 2013 IL App (2d) 120664, ¶ 41. Because the appellants cannot show that they established title and ownership of the Railroad Right-Of-Way, they cannot recover anything from the appellees, who also failed to establish title and ownership of the Railroad Right-Of-Way. The circuit court properly refused to issue a ruling of a superior claim to ownership and possession after properly refusing each claim. Therefore, because the circuit court's ruling was not against the manifest weight of the evidence, we affirm.

¶ 22

#### CONCLUSION

¶ 23 For the reasons stated, we affirm the judgment of the circuit court of Williamson County.

¶ 24 Affirmed.