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Mayfield v. First City Bank of Florida
Florida District Court of Appeals, 1st District
95 So.3d 398 (Decided August 2, 2012)

Synopsis: Mortgage that was recorded, but removed from record after only 73 minutes by clerk and never re-recorded, nevertheless gave constructive notice to later mortgagee.

Facts: In October 2009, Michael and Bonnie Mayfield purchased a parcel of land in Walton County, receiving a warranty deed from Bluewater Real Estate Investments, LLC (Bluewater). At the same time, the Mayfields granted a mortgage on the parcel to Old National Bank (subsequently acquired by Branch Banking & Trust Co. (BB&T). The Mayfields' deed and mortgage were recorded in the Walton County records on November 2, 2009.

Unknowingly, however, the Mayfields were victims of double-dealing by Bluewater. More than three years earlier, Bluewater had conveyed the same parcel to Wright & Associates of Northwest Florida (W&A), which had simultaneously granted a mortgage on the parcel to First City Bank (First City). The W&A deed and First City mortgage were filed with the clerk of Walton County for recording on July 6, 2006. The clerk initially affixed an official register book and page number on the hard copies of the W&A deed and First City mortgage so as to record the documents in the official records. 73 minutes later, however, the clerk realized that she had made an error in the recording process and voided the W&A deed and First City mortgage from the records. The clerk intended to correct the error and re-record the documents; unfortunately, however, the clerk mistakenly recorded similar documents concerning another parcel of land.

Eventually, the W&A deed and First City mortgage (bearing the official register book and page numbers) were returned to the parties. In the official electronic records, however, the corresponding book and page numbers showed that the documents had been voided—and once a document is voided, it no longer appears in the official records or the index, and searchers cannot locate it. Thus, except for a 73-minute period on July 6, 2006, the W&A deed and First City mortgage did not appear in the official records of Walton County.

In 2010, First City sued to foreclose on the parcel due to a loan payment default by W&A. The Mayfields and BB&T were joined as defendants. The Mayfields moved for summary judgment, arguing that they were bona fide purchasers without notice of the W&A deed or the First City mortgage. First City likewise moved for summary judgment, arguing that it fully complied with the recording statute, and thus the Mayfields and BB&T had constructive notice of the First City mortgage. The trial court granted summary judgment for First City.

Analysis/Holding: On appeal, the Mayfields and BB&T argued that under Florida's recording statute, they lacked constructive notice of the W&A deed and First City mortgage. The Florida recording statute provides:

> No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law. . . .

Fla. Rev. Stat. § 695.01(1). The Mayfields and BB&T argued that the statute imposed a requirement that an instrument presently "be" in the public records before it could impart constructive notice. The court of appeals rejected this argument, concluding that existing Florida law established that "when a party complies with the recording statute, constructive notice attaches and will not be destroyed by errors committed by the clerk." The court noted that Fla. Rev. Stat. § 695.11 provides that "[a]ll instruments ... which are filed for recording ... shall be deemed to have been officially accepted by the said officer, and officially recorded, at the time she or he affixed thereon the consecutive official register numbers ... and at such time shall be notice to all persons." Further, the court noted that prior Florida case law established that a prior recorded but improperly indexed mortgage gave constructive notice to subsequent purchasers. The court rejected the Mayfields' argument that the W&A deed and First City mortgage had to remain in the official records to impart constructive notice, concluding that the W&A deed and First City mortgage were "recorded according to law" and thus imparted constructive notice to the Mayfields and BB&T even if a searcher could not have located them. The court recognized the "harshness" of this result to the "innocent" Mayfields and BB&T, but held that their remedy was against the clerk.

Comment: The decision reflects the classic "two innocents" conundrum. On the one hand, why should the filing/recording party bear the consequences of the clerk/recorder's error? On the other hand, as between the filing/recording party (who knows that recording was attempted) and the subsequent searcher (who cannot locate a document that does not actually appear on the record), the filing/recording party is arguably the "cheaper cost avoider." The Pennsylvania Supreme Court acknowledged

this over 100 years ago, in a case holding that an improperly recorded and improperly indexed deed did not provide constructive notice:

> It is an easy matter for a mortgagee, or a grantee in each particular instance, either in person, or by a representative, to look at the record, and see that the instrument has been properly entered.... There is every reason why it should be made the duty of the mortgagee to see that his instrument is properly recorded. This will not in any way interfere with the principle that, when the instrument is certified as recorded, it shall import notice of the contents from the time of filing; but that must be understood as in connection with an instrument properly recorded. As said above, the record is notice of just what it contains, no more and no less. The obligation of seeing that the record of an instrument is correct must properly rest upon its holder. If he fails to protect himself, the consequence cannot justly be shifted upon an innocent purchaser. [Prouty v. Marshall, 225 Pa. 570, 575, 74 A. 550, 552 (1909).]

Consistent with this view, courts in a few states have concluded that a misindexed deed does not provide constructive notice to subsequent purchasers. See, e.g., *Coco v. Ranalletta*, 189 Misc.2d 535, 733 N.Y.S.2d 849 (N.Y.Sup.Ct.2001) (because state law makes indexes part of the official record, proper indexing required to give constructive notice); *Waicker v. Banegura*, 357 Md. 450, 745 A.2d 419 (Ct. Spec. App. 2000) (improperly indexed judgment lien not effective against subsequent purchaser without knowledge of that lien).

Nevertheless, under the weight of authority, a properly recorded but misindexed instrument gives constructive notice to subsequent purchasers. In fact, in 2005, the Pennsylvania Supreme Court also reached this conclusion in *First Citizens Nat'l Bank v. Sherwood*, 879 A.2d 178 (limiting the *Prouty* decision only to cases where an instrument was not properly recorded in the first instance). Likewise, UCC Article 9 takes a comparable approach, concluding that a filed but misindexed financing statement is effective to perfect a security interest notwithstanding that it cannot be discovered by subsequent searchers. See U.C.C. § 9-517 ("The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record."). The result in *Mayfield*, while perhaps harsh, is squarely consistent with this weight of authority.

For prior DDs on the subject, see:

http://dirt.umkc.edu/SEP2005/DD_09-19-05.htm (*First Citizens Nat'l Bank v. Sherwood*)

http://dirt.umkc.edu/April2004/DD_04-23-04.htm (intermediate court of appeals opinion in Sherwood)