

R E P O R T E R ' S R E C O R D

VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. 94-39TX

UPSHUR COUNTY * IN THE 115TH JUDICIAL
 *
VS. * DISTRICT COURT OF
 *
DOSSIE ROBERTSON, ET AL * UPSHUR COUNTY, TEXAS

TAX SUIT

ORIGINAL

ON THE 6TH DAY OF MARCH, 2000, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the HONORABLE PAUL BANNER,
Judge presiding, held in Gilmer, Upshur, County, Texas:

Proceedings reported by computerized machine
shorthand.

A P P E A R A N C E S

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CHRONOLOGICAL INDEXVOLUME 1

			PAGE
MARCH 6, 2000			
PLAINTIFF'S WITNESS:	DIRECT	CROSS	
BEVERLY MAYHAN	5	7	
Plaintiff Rest and Close			19

PLAINTIFF'S EXHIBIT

NO.	DESCRIPTION	OFFERED	ADMITTED
A	Tax Records	5	5

1 P R O C E E D I N G S

2 (March 6, 2000)

3 MR. BOLSTER: Okay. Your Honor, John
4 Bolster on behalf of Upshur County and the Upshur County
5 taxing authorities. We begin by offering what I have
6 labeled Plaintiff's Exhibit A which is certified
7 copies --

8 THE COURT: Well, have we got any of the
9 defendants here?

10 MR. BOLSTER: There are numerous
11 defendants here. There are numerous defendants period
12 in this case, Your Honor.

13 THE COURT: Okay. Well, whoever is
14 interested, I guess intestate succession, got a bunch of
15 heirs or something?

16 MR. BOLSTER: Yes, Your Honor. There's I
17 think approximately a hundred defendants named in this
18 suit. Some people have been served and haven't appeared
19 or answered, some have been served and answered, and
20 there's numerous defendants that were cited by posting,
21 and Mr. Martin was appointed by the Court as an ad
22 litem. I'm not sure everybody who's here, but I believe
23 most everybody here in the courtroom is probably
24 involved in this case.

25 THE COURT: Okay.

1 MR. BOLSTER: Okay.

2 THE COURT: Go ahead.

3 MR. BOLSTER: Okay. We begin by just
4 offering a certified copy of the tax records which
5 reflects the \$26,787.31 taxes owed on this property
6 which is described as 94.38 acres out of the William
7 Grayton Headright Survey. This is Plaintiff's Exhibit
8 A.

9 MR. MARTIN: No objection.

10 THE COURT: Anybody have any objection to
11 the exhibit? Hearing none, it's received.

12 MR. BOLSTER: And I would call Beverly
13 Mayhan to testify, Your Honor.

14 THE COURT: Okay. Ms. Mayhan.

15 (Witness sworn by the Court)

16 THE WITNESS: Do I need to be seated or?

17 THE COURT: Yeah, since we have other
18 folks here and that may be easier for them to see and
19 hear you.

20 BEVERLY MAYHAN,
21 having being first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BOLSTER:

24 Q. Okay. Ms. Mayan, are you currently employed
25 by the law firm of Linebarger, Heard, Goggan, Blair,

1 Pena, and Sampson?

2 A. Yes, I am.

3 Q. And is part of your job duties to research
4 addresses and attempt to locate anybody who have
5 interest in lawsuits that we file?

6 A. Yes, it is.

7 Q. And did you do that work in this particular
8 case?

9 A. Yes, I did.

10 Q. Okay. I guess the first general question is,
11 so many people involved here, where did you get these
12 names?

13 A. I was provided two different family trees, one
14 from the defendant Dossie Robertson and the other from
15 another side of the family.

16 Q. Of course, numerous people were served with
17 notice of this lawsuit. What did you -- what actions
18 did you take to attempt to locate the people that were
19 cited by posting in this matter?

20 A. I sent several letters to the people that we
21 did have names for but no addresses and the ones that got
22 served I sent questionnaires. I made phone calls. I
23 didn't get much information from that. I have spoken to
24 a lot of the heirs that have an interest in it. I
25 visited with an adjoining property owner also. He had

1 done research also on some of the same people that we
2 were unable to locate.

3 Q. You have at least driven by this property?

4 A. Yes, I have.

5 Q. Is there anybody presently residing on this
6 property?

7 A. No.

8 Q. How would you describe the property, vacant,
9 woods, pasture?

10 A. Well, mostly woods. The timber has been cut
11 before, but there is still timber on the tract.

12 Q. You feel there is any other source of
13 information that you might have been able to use that
14 would have given you addresses to any of the people that
15 were cited by posting?

16 A. No, I don't. Some of them that were on the
17 family tree I didn't have a last name for so there's
18 nothing more I could do on those.

19 MR. BOLSTER: Pass the witness.

20 THE COURT: Mr. Ad Litem.

21 CROSS-EXAMINATION

22 BY MR. MARTIN:

23 Q. Ms. Mayhan, you feel like that as far as
24 you've been able to you've tracked down all the heirs,
25 is that correct, as many as you could?

1 A. Well, I worked on both family trees for a
2 couple of years and I've got everyone in here involved
3 that I could possibly see might have an interest in it.

4 Q. There's no one that lives on the property at
5 this time; is that correct?

6 A. That's correct.

7 Q. And it looks like no one has lived on the
8 property for quite some time; is that correct also?

9 A. Yes.

10 Q. Now, you and I talked about this case a number
11 of times. I have been visited by Mr. Dossie Robertson
12 even years ago, as much as five years ago.

13 A. Uh-huh.

14 Q. We were talking about the case and I was
15 appointed ad litem in the case. I -- you have not
16 walked the property; is that correct?

17 A. No, I did not walk it. I'm not allowed to
18 walk it.

19 Q. Unless you were with one of the heirs.

20 A. Right.

21 Q. I walked the property with Mr. Dossie
22 Robertson -- Robertson, sorry, and I believe there's
23 enough timber down on the north side property that could
24 be cut and sold to satisfy the taxes that are owed on the
25 property right now. You and I have talked about it and

1 we've talked about it with the attorney. You don't have
2 an objection to me as ad litem joining with some of the
3 heirs to cut the timber to pay the tax, do you?

4 A. No, I don't.

5 Q. And I believe what you had indicated to me and
6 what y'all want today is the judgment and you would
7 schedule a tax sale probably for May.

8 A. That's correct.

9 Q. And of course if we pay the taxes before then,
10 that would satisfy the tax lien and the heirs could
11 squabble about what to do with it after that.

12 A. Right. Then I would release it.

13 Q. Who is the person that lived next door that
14 you talked to, do you remember their name?

15 A. It was Conrad Coppedge.

16 Q. He -- actually a number of the neighbors are
17 perhaps interested in buying this at a tax sale; is that
18 your understanding?

19 A. I know that he's very interested in --

20 Q. He's very interested. So actually if the
21 heirs can't get together and cut the timber or satisfy
22 the taxes, there's a good chance it will be purchased
23 fairly quickly and put back on the tax rolls.

24 A. I believe so.

25 Q. So one way or the other everybody's going to

1 wind up happy.

2 A. I hope so.

3 Q. Or at least the taxes can be paid.

4 A. Uh-huh.

5 MR. MARTIN: Pass the witness.

6 MR. BOLSTER: No further questions.

7 THE COURT: Just a second. Okay.

8 Obviously those of you that are heirs and named parties
9 in this lawsuit, I don't know your name, but starting
10 with on the left side here, the lady in the blue on the
11 front row and I'm going to go down the list, I need to
12 find out what your name is and whether or not you have
13 any -- I know you're here without a lawyer, but if you
14 want to ask the lady, this or any other witness
15 questions, you have the opportunity to do so. What's
16 your name, please, ma'am.

17 MS. BARRETT: My name is Letha Robertson
18 Barrett.

19 THE COURT: Okay. Ms. Barrett, do you
20 have any questions you want to ask this witness?

21 MS. BARRETT: No. I have spoken to
22 Beverly several times on the phone and I think she has
23 been very willing to answer questions and I'm very
24 satisfied with that and my brother here will have some
25 questions that he may want to ask her.

1 THE COURT: Okay. The gentleman in the
2 maroon sweater, what is your name, please, sir.

3 MR. MELVIN ROBERTSON, JR.: My name is
4 Melvin Robertson, Jr.

5 THE COURT: Okay. Mr. Robertson, do you
6 have some questions you want to ask the lady?

7 MR. MELVIN ROBERTSON, JR.: I have
8 basically one question and basically it's really
9 directed toward the Court and maybe can -- and if
10 Beverly can -- I hope you don't mind me calling you
11 Beverly.

12 THE WITNESS: That's fine.

13 MR. MELVIN ROBERTSON, JR.: But if the
14 Court and Beverly or whoever can help us identify from a
15 legal and court standpoint pertaining to this matter who
16 are the heirs, are we talking about how far down in
17 descendants or if this is relevant, you know, to this
18 issue, you know what I'm saying, because there's so many
19 folks, you know, involved, okay. I hear different
20 things about heirs being the bloodline, this and that,
21 you know, so I would like the Court to help us with the
22 definition of heirs pertaining to this matter. Is that
23 too broad of a question?

24 THE COURT: Well --

25 THE WITNESS: I can only go by what --

1 THE COURT: Whoever had the -- whoever
2 had the deed, the last time there was a recorded deed,
3 that person, if they died without a will that was
4 probated, then whatever children she or he had if alive,
5 those get a share. If some of them are dead, then
6 they're replaced by their children and on down the line.
7 Now it gets more complicated if somebody had a will and
8 it was probated because the will overrides the way to
9 figure who the heirs are. But if there were three
10 children, then presumptively it would be a third to each
11 of those children. If one child's dead then had two
12 children, well then that would be a -- each one would
13 have a half of the third which would be a sixth and it
14 can get pretty complicated as you go down the line. And
15 if a line completely runs out and there's nobody, then
16 it goes back up the hill and increases the percentages
17 everybody would have. Usually what happens after a few
18 generations, I don't have any idea how many is going on
19 here, but after a number of generations, it almost gets
20 to the point some folks have such a small share in terms
21 of either land or in money if the land is sold, that it
22 costs more almost to try to work it out than it is
23 what's at stake. I don't know if I answered your
24 question, but that's...

25 MR. BOLSTER: If it please the Court,

1 Beverly, who is the last record owner, the name of the
2 person who last got this property?

3 THE WITNESS: I have a deed here to
4 Dossie Robertson dated 1975.

5 MR. BOLSTER: But is it our title
6 research, is it reflected that's not a complete deed?
7 In other words, the person that conveyed that to Dossie
8 did not own the entire interest to the property?

9 THE WITNESS: That's right.

10 MR. BOLSTER: Okay. Who's the last
11 person that owned the entire interest in the property?

12 THE WITNESS: Jessie Robertson back in
13 1904.

14 MR. BOLSTER: 1904.

15 MR. MELVIN ROBERTSON, JR.: On the heirs,
16 would in-laws be considered? No. Very good.

17 THE COURT: The only way an in-law
18 participates is if the -- gets kind of complicated --
19 I've been a lawyer long enough to know there's no such
20 way a lawyer can answer any question yes or no because
21 we'd always think of the reasons why either answer
22 wouldn't always be correct. But under some
23 circumstances as to such as by will, an in-law could
24 take over the prior person's share. An in-law may or
25 may not have something called a life estate, but

1 ordinarily it is children, children's children, and
2 children of those children, and down the line.
3 Generally speaking, in the absence of a community
4 property interest, the most that an in-law would have
5 would be some sort of thing called a life estate.

6 MR. MELVIN ROBERTSON, JR.: Okay. I have
7 one final question. I believe it'll be final. If I pay
8 the taxes, okay, hypothetical.

9 THE COURT: If you pay the taxes without
10 there being a sheriff's sale, then you haven't changed
11 your position much one way or the other.

12 MR. MELVIN ROBERTSON, JR.: Okay. I
13 thank you very much.

14 THE COURT: So other than having a bunch
15 of folks that run the price up in a sheriff's sale,
16 often that's about the only way to ever get the title
17 cleaned up.

18 MR. MELVIN ROBERTSON, JR.: All right.
19 Thank you very much.

20 THE COURT: Yes, sir. And the lady in
21 the brown, what -- I guess that's brown, sort of a gold
22 color. Yes, ma'am, what's your name?

23 MS. BETTY ROBERTSON: My name is Betty
24 Robertson.

25 THE COURT: Okay. Ms. Robertson.

1 MS. BETTY ROBERTSON: Do you want to go
2 into --

3 THE COURT: Do you have any questions you
4 want to ask this lady?

5 MS. BETTY ROBERTSON: No, sir.

6 THE COURT: Okay. Fine. And the next
7 lady in the beige or white as it might be.

8 MS. ALMA BRYANT: If I don't have a
9 question, do I need to --

10 THE COURT: I just need to know who you
11 are.

12 MS. ALMA BRYANT: Oh, okay, I am Alma
13 Bryant.

14 THE COURT: Hi, Ms. Bryant.

15 MS. ALMA BRYANT: Robertson. I'm Mel and
16 Letha Barrett's sister.

17 THE COURT: Right. Thank you. Now I
18 understand those back on the right-hand side by the
19 center aisle, somebody else in this lawsuit. Your name,
20 please.

21 MR. CHARLES ROBERTSON: My name is
22 Charles Robertson.

23 THE COURT: Mr. Robertosn.

24 MR. CHARLES ROBERTSON: Okay. The
25 question I got is, see, Manuel Robertson was our, you

1 know, great-grandfather, then you had Jessie Robertson
2 and John Robertson, they all were brothers. John
3 Robertson was the oldest so he was my father so on the
4 little tree here we got Dossie, Oliver Robertson was
5 Dossie's father and John Robertson.

6 MS. BARRETT: No, Ollie Robertson was
7 Dossie's father.

8 MR. CHARLES ROBERTSON: That's right.
9 Well, yeah, I had Dossie -- well, we called her name
10 Dossie Doe, that right. Yeah. But anyway, the question
11 I want to ask is: I talked to Dossie about a year ago
12 and he told me that they had been selling, you know,
13 pulpwood off of the deal, off the property. So if me
14 and Dossie is about the same power, we got the same --
15 his daddy and my daddy was brothers and on the family
16 tree, I got a tree from Brother Martin there, he showed
17 me a tree and the tree left us off. See, John Robertson
18 got married -- got married Ms. Corina so they had two
19 sons. One was named Fred Robertson, the other one was
20 Hugh Robertson. So Fred is dead and on the tree Hugh
21 got Ruby rights -- his wife is on the family tree, but
22 he left us off. And like I was laughing and talking to
23 Macko, said Mac, where did y'all come from, you know, we
24 all come in because he only had to get what he -- you
25 know, what Dossie told --

1 THE COURT: Well, Mr. Robertson, this
2 lawsuit doesn't have much to do with who owns it. What
3 this lawsuit is about is that the local taxing
4 jurisdictions said nobody is paying the taxes and
5 therefore they have done what the law requires them to
6 do and they brought a lawsuit seeking to foreclose on
7 the property if the taxes are not paid. All that can
8 happen today is that I can either grant or deny the
9 taxing authorities judgment and then they have to go
10 through a process and ultimately if it's not paid there
11 would be what's called a sheriff's sale with a judgment
12 being executed upon. Okay?

13 MR. CHARLES ROBERTSON: Well, thank you
14 very much.

15 THE COURT: Let me explain to all of you,
16 kind of keep in mind you might well be advised to talk
17 to somebody that's conversant with Texas real estate law
18 to find out what your interest is so you can take some
19 action to protect it, but it would be a different kind
20 of lawsuit if -- the only way ultimately to establish
21 who owns the land is going to be what's called a
22 trespass to try title lawsuit. That's a different
23 animal and that's really where it's just the family,
24 whoever that family is, okay?

25 MR. CHARLES ROBERTSON: Okay. Thank you.

1 THE COURT: Did the lady to your right,
2 do you have a question?

3 LADY IN AUDIENCE: No.

4 THE COURT: Thanks. Okay. Next witness.

5 MR. BOLSTER: I just -- if it please the
6 Court --

7 THE COURT: Yes, ma'am, Ms. Barrett, you
8 have something you want to say?

9 MS. BARRETT: Yes. I have a question.
10 When Beverly said that she had tried to contact all of
11 the people on the family trees that she had, what does
12 that mean?

13 THE COURT: Well, the law requires that
14 if the lawsuit -- if something a person has an interest
15 in is going to be affected by a lawsuit, there must be
16 an effort made to notify that person to identify who's
17 got an interest in it and notify them. In these kind of
18 situations, you find as many as you can and you don't
19 know if you're leaving somebody out, the law requires
20 that an ad litem be appointed and that's what Mr.
21 Martin's doing here in case there are other children,
22 grandchildren, great-grandchildren and they didn't
23 somehow or another get notice, that's what he's there
24 for to make sure that they don't inadvertently get left
25 out of the loop.

1 MS. BARRETT: Thank you.

2 THE COURT: Thank you, ma'am. Yes, sir.

3 MR. BOLSTER: I was just going to mention
4 for the benefit of the defendants that are present here
5 we don't, in this lawsuit we're not assigning a
6 percentage interest in the property. All we're saying
7 -- we're not even guaranteeing everybody we've named in
8 here necessarily has an interest. We just think you
9 might, so give the benefit of the doubt if we think
10 these people have an interest, we brought them in this
11 lawsuit so we could proceed. That's all I have, Your
12 Honor. Plaintiffs would rest and close.

13 THE COURT: Mr. Martin. You may step
14 down.

15 MR. MARTIN: Your Honor, I don't have
16 anything.

17 THE COURT: Okay. Now in the same order
18 I asked you to identify yourself you have a right to
19 testify, you have a right to call witnesses. Ma'am, do
20 you have anybody you want to call?

21 MS. BARRETT: No.

22 THE COURT: Mr. Robertson?

23 MR. MELVIN ROBERTSON, JR.: No.

24 THE COURT: The next lady.

25 MS. ROBERTSON: No.

1 THE COURT: Mr. Robertson back here.

2 Okay. Then I'll close the evidence.

3 I'm going to grant judgment to taxing
4 authorities. Do you have a judgment?

5 MR. BOLSTER: Your Honor, I've prepared a
6 judgment foreclose, tax liens, also includes cost of
7 court. I've also had an order approving ad litem fee in
8 the amount of \$750. Generally we do 250, but Mr. Martin
9 has done quite a bit of work on this case.

10 THE COURT: Well, for those that want
11 them, will you have copies so that the folks, the
12 defendants that are here, can have a copy of the
13 judgment?

14 MR. BOLSTER: The copies --

15 THE COURT: Okay. The lawyer will meet
16 you out in the hall if you want to have a copy of the
17 orders that I've signed, he'll get a copy for you.
18 Thank you very much.

19 (End of hearing)

20

21

22

23

24

25

1 THE STATE OF TEXAS *

2 COUNTY OF UPSHUR *

3 I, DEANNA DRENNAN, CSR, Official Court
4 Reporter in and for the 115th Judicial District Court
5 of Upshur County, State of Texas, do hereby certify
6 that the above and foregoing contains a true and correct
7 transcription of all portions of evidence and other
8 proceedings requested in writing by Counsel for the
9 parties to be included in this volume of the Reporter's
10 Record, in the above-styled and numbered cause, all of
11 which occurred in open court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's Record
14 of the proceedings truly and correctly reflects the
15 exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$90⁰⁰
18 and was paid/~~will be paid~~ by Defendants.

19 WITNESS MY OFFICIAL HAND this the 2nd day
20 of April, 2000.

21
22
23
24
25

Deanna Drennan
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