

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-1090

CAL MOORE, RAYBURN MOORE,
AND ESTATE OF FEDDIE MOORE
APPELLANTS

V.

KAREN DUNSWORTH AND KERRY
MCCLENDON

APPELLEES

Opinion Delivered May 26, 2010

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[NO. CV-2006-434-6]

HONORABLE DAVID F. GUTHRIE,
JUDGE

REVERSED AND REMANDED

JOHN MAUZY PITTMAN, Judge

Jim Moore was the last record owner of a five-acre tract of land. He died with many heirs, and there was no administration of his estate. Appellants, three heirs of Jim Moore, redeemed the five acres by paying taxes for the years 1994–2000 and have paid all property taxes thereon since 2001. Appellants were granted a decree quieting title in them against all other heirs of Jim Moore in 2006. In October 2006, appellants filed a complaint for ejectment against appellees, who ostensibly purchased the property in 1999 from Jose Fremonde, another heir of Jim Moore. Appellees counterclaimed, seeking to quiet title in themselves on the grounds of adverse possession. The trial judge found that appellees established their claim to title by adverse possession, quieted title in them, and dismissed appellants’ complaint. On appeal, appellants assert that the trial court erred in finding that

appellees established adverse possession without ever paying property taxes on the land in question. We agree, and we reverse.

The facts are undisputed. The question is purely one of law, and our review is thus de novo. *Pulaski County v. Arkansas Democrat-Gazette, Inc.*, 371 Ark. 217, 220, 264 S.W.3d 465, 467 (2007). The statute governing establishment of title by adverse possession was amended in 1995 to include, as pertinent here, the requirement that the person claiming by adverse possession must have paid ad valorem taxes on the property for the seven-year statutory period. Ark. Code Ann. § 18-11-106(a)(1) (Supp. 2009). The requirement of paying ad valorem taxes for the statutory period does not apply to persons or entities exempt from the payment of ad valorem taxes by law. Ark. Code Ann. § 18-11-106(b)(1) (Supp. 2009). Exemptions to the payment of ad valorem taxes are found in Article 16, section 9 of the Arkansas Constitution. These exemptions are limited to lands actually employed for public, charitable, or religious purposes, such as public buildings, schools, libraries, churches, and cemeteries. Amendment 22 to the Arkansas Constitution exempts homesteads from Article 16 taxes to a certain extent and under certain circumstances, depending upon the assessed valuation of the homestead. Section 2 of Amendment 22 authorizes the legislature to modify the amount of the tax exemption within certain limits.

Here, the trial court found that appellees met the statutory requirement of paying the ad valorem tax by attempting, without success, to list the tax assessment in their names, and by qualifying for a \$350 homestead tax credit. This was error. Tax exemptions are acts of

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grace and must be strictly construed. *Hilger v. Harding College*, 231 Ark. 686, 331 S.W.2d 851 (1960). Here, it is undisputed that appellees neither paid nor tendered ad valorem taxes on the property. Furthermore, although appellees may at some time have qualified for a \$350 tax credit on the property, a credit does not equate to payment of taxes—particularly here, where it is undisputed that taxes were in fact owing and were paid by appellants. We reverse and remand for further consistent proceedings.

Reversed and remanded.

HART and BAKER, JJ., agree.