EVANS *v.* DAVIDSON.

4-7355 180 S. W. 2d 127

Opinion delivered May 8, 1944.

1. APPEAL AND ERROR.—The mere filing with the clerk of an agreed statement of facts does not make it part of the record.
2. APPEAL AND ERROR.—In order that an agreed statement of facts may be considered on appeal, it must either be incorporated in the judgment of the trial court or it must be brought into the record by bill of exceptions.
3. APPEAL AND ERROR.—Since the agreed statement of facts is not incorporated in the judgment and there is no bill of exceptions, the Supreme Court will assume that the judgment is correct.

Appeal from Sebastian Circuit Court, Fort Smith District; *J. Sam Wood,* Judge; affirmed.

Hugh M. Bland and *R. B. Chastain,* for appellant.

Hill, Fitzhugh & Brizzolara, for appellee.

MCHANEY, J. This is a suit in ejectment, brought by appellant against appellees for the possession of lot 6, block 1, Park Place addition to Ft. Smith, Arkansas. He deraigned title from a deed of the Commissioner of State Lands to him, dated September 22, 1942, which was based on a forfeiture and sale to the state in 1938 for the delinquent taxes thereon of 1937, and a decree of confirmation of the state's title on March 14, 1942. The amount of the taxes, penalty and costs for which it was forfeited and sold was $11.70.

The answer denied all material allegations of the complaint and alleged the deed to appellant is void because appellees had paid a part of the 1937 taxes, up to and including March 23, 1937, to the State Treasurer and the Commissioner of State Lands acknowledged such payment as of said date, and the sale to the state was for the full amount of said taxes which was for an amount in excess of the taxes due; also that two items of costs charged were illegal. Other defenses were set up which, it was alleged, avoided the confirmation decree.

The case was tried before the court on an agreed statement of facts and the pleadings, which resulted in judgment for appellees. This appeal followed.

There is no bill of exceptions in the record. The agreed statement of facts is not before us and cannot be considered for any purpose. We have many times held that the mere filing with the clerk of an agreed statement of facts does not make it a part of the record. It must either be brought into the record by a bill of exceptions, or it must be incorporated in the judgment itself, before this court can consider it. The judgment of the court in this case does not incorporate the agreed statement and, there being no bill of exceptions, we must assume that the judgment of the court is correct. *Ashley* v. *Stockard,* 26 Ark. 653; *First Nat. Bank* v. *Thompson,* 124 Ark. 161, 186 S. W. 826; *Satterfield* v. *Loupe,* 160 Ark.

226, 254 S. W. 489; *Great Southern Fraternal Union* v. *Stroud,* 169 Ark. 509, 275 S. W. 753.

Affirmed.