

GINGLES *v.* STRICKLAND.

5-473

271 S. W. 2d 784

Opinion delivered October 18, 1954.

1. TAXATION—FORFEITURES—VALIDITY OF SALE.—In the absence of confirmation, a tax title may be set aside upon a showing that the clerk's certificate attesting publication of the delinquent list was not spread of record.
2. TRIAL—REOPENING CASE—DISCRETION.—It was within the court's discretion, in the interest of justice, to permit additional testimony to be offered after the reception of evidence had seemingly been completed.

Appeal from Pulaski Chancery Court, First Division;  
*Rodney Parham*, Chancellor; affirmed.

*Ernest Briner*, for appellant.

*House, Moses & Holmes* and *Thomas C. Trimble, Jr.*,  
for appellee.

GRIFFIN SMITH, Chief Justice. The appeal is from a decree divesting H. J. Gingles and his wife of *prima facie* title to lands once owned by D. T. Strickland. The property forfeited in 1948 for 1947 taxes and was purchased from the state in 1951 by Everett Gates. Subsequent conveyances placed the apparent title in Arch Cooper, who conveyed to Gingles.

Various matters relating to overcharges in the amount for which the land forfeited, and defective procedure in certifying the delinquency, are urged. It was shown that the clerk's certificate attesting publication of the delinquent list was not spread of record—not attached to the book or sales list as required by law. We have held that, in the absence of confirmation, this failure may be shown in avoidance of title acquired by reason of the sale. *Browning v. King*, 214 Ark. 480, 216 S. W. 2d 803.

A further contention by the appellant is that the court erred in permitting the trial to be reopened for the admission of additional testimony. The transaction was within term and was discretionary with the Chancellor.

Affirmed.