

**REAL PROPERTY****Title**

## Parties fought over who owned the legal title to property

<b>VERDICT</b>	<b>Plaintiff</b>
<b>CASE</b>	Mercy Nims Thomas v. Eldred I. Nims and Gene DeForest, Constable Precinct 2, Montgomery County, Texas v. Intervenor Daphne Nims, No. 07-08-07916
<b>COURT</b>	Montgomery County District Court, 221st, TX
<b>JUDGE</b>	Fred Edwards
<b>DATE</b>	8/1/2008
<b>PLAINTIFF ATTORNEY(S)</b>	Scott J. Davenport, Lewis, Davenport & Hildebrand, Houston, TX
<b>DEFENSE ATTORNEY(S)</b>	Racy Haddad Gordon, Spain, Hastings, Ward, Carey & Chambers, Austin, TX (Daphne Nims (Intervenor)) None reported (Eldred I Nims, Gene DeForest)

**FACTS & ALLEGATIONS** In 2003, plaintiff Mercy Nims Thomas negotiated the purchase of two undeveloped lots located in Montgomery County. She gave the seller a down payment of \$9,300 for the transaction. Thomas planned to complete the purchase in her own name with a mortgage; however, her financing fell through. The closing was cancelled, and she spent much of the rest of 2004 trying to secure alternate financing for the property.

At the end of 2004, Thomas gave the third-party seller an additional down payment, but was still unable to secure alternate financing for the purchase. Thomas and her brother, Eldred I. Nims, then entered into a written agreement in December 2004 by which Nims would permit his credit to be used for Thomas to purchase the property. Neither the seller nor the lending institution offered an objection to this arrangement. Nims' credit was used for the purchase and a loan was extended in his name.

Thomas sued Nims and Gene DeForest, Constable Precinct 2, Montgomery County (DeForest was included in the suit only by his official role; he was eventually nonsuited). She filed the suit to obtain legal/equitable title to the property.

Thomas maintained she provided all funds and made all payments toward the mortgage loan and Nims did not make any payments or contribute any funds toward the purchase or the mortgage.

Nims hired no legal counsel and did not offer any defense.

Intervenor Daphne Nims, the former wife of Eldred Nims, obtained a judgment against him in excess of \$400,000 in May 2003. Daphne Nims joined the lawsuit to foreclose on the property because the deed was in the name of Eldred Nims.

Thomas claimed the intervenor had no legal interest or right, and no claim to the property or the suit.

Daphne Nims argued because the property was in the name of Eldred Nims and she since had a valid judgement against him, she could execute on the property.

**INJURIES/DAMAGES** Thomas sought to obtain the legal title to the property.

**RESULT** The intervenor filed a motion for summary judgment. Thomas filed a response and also a motion to dismiss for lack of subject matter jurisdiction (no standing). The court concluded Daphne Nims had no standing in the case and dismissed all of her claims. The court then entered a declaratory judgment in favor of the plaintiff, finding Thomas had legal title to the property.

<b>DEMAND</b>	\$90,000 (from Daphne Nims)
<b>OFFER</b>	\$5,000