

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald L. Bussard, Barbara J.	:	
Bussard, Edward F. Lynch and	:	
Carol L. Lynch,	:	
Petitioners	:	
	:	
v.	:	No. 995 C.D. 2025
	:	Argued: September 14, 2026
Pennsylvania Department of	:	
Conservation and Natural	:	
Resources (State Board of	:	
Property),	:	
Respondent	:	

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE

FILED: October 28, 2026

Petitioners, Donald L. Bussard, Barbara J. Bussard, Edward F. Lynch, and Carol L. Lynch (collectively, Bussards) petition for review of the July 17, 2025 order of the State Board of Property (Board) dismissing the Bussards' petition to quiet title or for declaratory judgment and entering judgment in favor of the Pennsylvania Department of Conservation and Natural Resources (Department or Commonwealth). After review, we affirm.

BACKGROUND

This lawsuit originated in 2018 when the Bussards filed a petition with the Board seeking confirmation of their ownership of real property consisting of 103.04 acres in Southampton Township, Bedford County. Reproduced Record (R.R.) at 1a. Asserting a competing ownership interest, the Department filed preliminary objections, which the Board partially sustained and directed the Bussards to file an amended petition. *Id.* at 52a-53a. The Bussards timely filed an amended petition, and the Department again filed preliminary objections. *Id.* at 54a, 143a. The Board again sustained the preliminary objections, and this time, dismissed the amended petition with prejudice, concluding the Bussards did not recite a complete chain of title. *Id.* at 157a-69a.

The Bussards filed a timely petition for review in this Court, and on June 10, 2022, we vacated the Board’s dismissal of the amended petition and remanded the matter to the Board for further proceedings. *Bussard v. Dep’t of Conservation & Nat. Res.*, 278 A.3d 422 (Pa. Cmwlth. 2022) (“*Bussard I*”). We agreed “the Bussards have not specifically pleaded a chain of individual deeds extending all the way back [to the warrant¹ to land issued by the Commonwealth in 1863].” *Id.* at 427. However, we observed the Bussards “attached to their [a]mended [p]etition two particularly significant documents [relating to a patent for the original warrant].” *Id.*

¹ In *Bussard I*, we explained a “‘warrant’ constituted an original grant of land by the Commonwealth and authorized a survey of the granted land[.]” *Bussard I*, 278 A.3d at 426. “[U]pon payment of the purchase price, it conveyed equitable title constituting ‘a perfect title against all the world but the Commonwealth,’ which retained a lien solely for payment of the separate fee for issuing the patent.” *Id.* (quotation and citation omitted). Additionally, we noted the “patent” issued “upon payment of the patent fee[.]” and “[t]he person entitled to obtain a patent was the person who held ownership under the warrant; therefore, issuance of a patent to the wrong person would not convey any ownership interest, and the patentee would merely hold the legal title in trust for the true owner, the warrantee.” *Id.* (citations omitted).

We explained that while “these two documents do not unequivocally prove title in the Bussards[,]” they “sufficiently set forth a *prima facie* claim of title . . . so as to [defeat a dismissal of their amended petition by preliminary objection and] require a factual response by the Department.” *Id.* at 427-28. Overall, we cautioned, “[w]e recognize that the Bussards have not pleaded the specific deeds in their chain of title prior to 1923 and, as a practical matter, they may ultimately be unable to recreate their purported chain of title with sufficient factual evidence to prevail at a hearing.” *Id.* at 429 n.6. Thus, we concluded, “the parties should complete their pleadings and then, assuming a dispute of fact still remains, the Board should hold a hearing to receive evidence concerning the facts surrounding title” *Id.* at 429.

On remand to the Board, the Department filed, among other things, a motion for partial judgment on the pleadings, which the Board denied. R.R. at 255a, 266a. Subsequently, the Board canceled a scheduled hearing after counsel for both parties agreed for the Board to adjudicate the matter on stipulated facts (Joint Stipulation) and exhibits. *Id.* at 268a.

Based upon the parties’ Joint Stipulation, the Board issued the following findings of fact regarding the **Bussards’ Chain of Title**:

12. [The Bussards’] chain of title begins with the June 18, 2010, general warranty deed (recorded June 18, 2010) from Frances L. Ketterman, widow, to [the Bussards]. . . .

13. The next deed in [the Bussards’] chain of title is a July 7, 1984, deed (recorded July 9, 1984) from Frances L. Ketterman and Earl Ketterman for the property described in the deed. . . .

14. The next deed in [the Bussards’] chain of title is a July 24, 1951, deed (recorded July 25, 1951) from McKinley Morris and Nellie P. Morris, husband and wife, to Earl Ketterman for the property described in the deed. . . .

15. On February 17, 1937, the Commonwealth, through the Department of Internal Affairs, issued a Patent to McKinley Morris for property described in the Patent, in accordance with the laws of the Commonwealth authorizing the conveyance of vacant or unappropriated lands. . . .

16. The next deed in [the Bussards'] chain of title is a November 1, 1923, deed (recorded November 9, 1923) from Rhoda May Strut and Robert S. Strut, wife and husband, to McKinley Morris and Nellie P. Morris, husband and wife, for the property described in the deed. . . .

17. Rhoda May Strut, previously Rhoda May O'Neal, received the property by devise from William C. O'Neal. . . .

18. The next deed in [the Bussards'] chain of title is a December 22, 1905, deed (recorded December 23, 1905) from Murray B. Perrin and Camilla Perrin, his wife, and Andrew J. Brotemarkle and Alla Brotemarkle, his wife, to William C. O'Neal for the property described in the deed. . . .

19. The final deed in [the Bussards'] chain of title is a December 26, 1888, deed (recorded December 23, 1905) from William Deremer, Trustee to sell the real estate of Solomon Oster, deceased, to Murray B. Perrin for the property described in the deed. . . .

20. There is no recorded deed in [the Bussards'] chain of title explaining how Solomon Oster acquired the property. . . .

R.R. at 498a-99a.

Based upon the parties' Joint Stipulation, the Board issued the following findings of fact regarding the **Commonwealth's Chain of Title**:

21. [The Department] can trace its title back to the Warrant to Jesse Dicken and the Warrant to Jane L. Ketterman. . . .

22. [The Department] claims ownership of the disputed property by tracing its title to the May 11, 1863, Warrant to Jesse Dicken. . . .

23. By deed dated May 22, 1911 (recorded June 20, 1911) [the Commonwealth] received a deed from Hilary Hartsock and Ida G. Hartsock, husband and wife, for 114 acres and 34 perches, described in

the deed, being all of the Jesse Dicken Warrant excepting a small portion at the southerly corner thereof. . . .

24. Robert Ash and Ann B. Ash, his wife, granted a quitclaim deed to Hilary Hartsock for land surveyed pursuant to the Jesse Dicken Warrant. The quitclaim deed is dated April 22, 1911, and was recorded June 20, 1911. This quitclaim deed [is] for 118 acres and 70 perches[.] . . .

25. The next deed in [the Department's] chain is a February 8, 1896, deed (recorded May 10, 1898) from Abram Ash and Marian V. Ash, his wife, to Hilary H. Hartsock for 118 acres and 70 perches described in the deed. . . .

26. The final deed in [the Department's] chain is a May 4, 1864, deed (recorded June 27, 1864) from Jesse Dicken and Rebecca Dicken, his wife, to Robert Ash for land surveyed on warrant to Jesse Dicken dated May 11, 1863. . . .

27. There is no recorded deed in [the Department's] chain of title explaining how Abram Ash and Marian V. Ash acquired the property from Robert Ash. However, the John E. Potter Abstract: Dicken (Hartsock), Purchased October 1910, included a reference on typed page Number 20 to a letter from Hilary H. Hartsock to John E. Potter, dated March 11, 1911, concerning Robert Ash and land exchange.

Id. at 499a-501a.

Additionally, the Board found, in accordance with the parties' Joint Stipulation, the Department "also claims ownership of the disputed property by tracing its title to the February 4, 1864, Warrant to Jane L. Kettermann." *Id.* at 501a. However, "the part of the property derived from the Jane L. Kettermann Warrant is no longer in dispute," and "[t]he only portion of property that remains in dispute . . . is that portion . . . that derives from the Jesse Dicken Warrant [(Disputed Property).]" *Id.* The Board also found, as set forth in the Joint Stipulation, "[t]he issue to be decided . . . is whether the Disputed Property, acquired by the Commonwealth, through the Forestry Commission for forest reserve in 1911,

transferred to McKinley Morris upon the Department of Internal Affairs['] issuance of its patent dated February 17, 1937.” *Id.*

The Bussards argued to the Board that the patent issued to McKinley Morris (Morris Patent) on February 17, 1937 transferred and/or divested the Commonwealth of any interest in the Disputed Property. *Id.* Otherwise, the Bussards admitted their chain of title ended with a December 28, 1888 deed, with no explanation of how Solomon Oster acquired the Disputed Property prior to 1888. *Id.*, see Bussards’ Br. at 10. The Department refuted the Morris Patent transferred any ownership interest from the Commonwealth. *Id.* at 502a. Rather, the Department argued the Bussards, and their predecessors in title, would have held the Morris Patent in trust for the Commonwealth. *Id.*

On July 17, 2025, the Board dismissed the Bussards’ petition and entered judgment in favor of the Department. *Id.* at 510a. Specifically, the Board concluded:

Because [the Bussards] cannot show a chain of title going back to the Jesse Dicken [W]arrant or to a common grantor with [the Department’s] chain of title, which does go back to the Jesse Dicken [W]arrant, and there has been no showing of the basis for the . . . [Morris Patent], this patent was issued in error and it did not transfer ownership of the Commonwealth’s interest in the Jesse Dicken Warrant which the Forestry Commission previously acquired from the Hartsocks by deed dated April 22, 1911.

R.R. at 503a. The Bussards timely filed a petition for review with this Court.

On appeal, the Bussards raise two issues for this Court’s review. First, they question whether “the issuance of [the Morris Patent] transfer[red] and/or divest[ed] the Commonwealth of any interest it may have had in the [D]isputed [P]roperty?” Bussards’ Br. at 4. Second, the Bussards inquire “[e]ven if the . . . [Morris Patent]

was issued . . . in error, should the Commonwealth bear the consequences of that error and not . . . [the Bussards]?” *Id.*

In response, the Department contends the Bussards can show only a chain of title going back to 1888, and unlike the Department, cannot prove a valid claim of title back to the Jesse Dicken Warrant of May 11, 1863. Dep’t Br. at 18. Additionally, the Department asserts the Board correctly determined the Morris Patent was erroneously issued, which neither divested the Commonwealth of its title, nor improved the Bussards’ title. *Id.*

DISCUSSION

We must affirm the Board’s decision unless it violates constitutional rights, is not in accordance with law, or lacks substantial evidence to support any finding of fact made by the Board and necessary to support the decision. 2 Pa.C.S. § 704. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *William Penn Sch. Dist. v. Dep’t of Educ.*, 902 A.2d 583, 586 n.3 (Pa. Cmwlth. 2006) (citation omitted). For questions of law, our standard of review is *de novo* and our scope of review is plenary. *EQT Prod. Co. v. Dep’t of Env’t Prot.*, 193 A.3d 1137, 1148 (Pa. Cmwlth. 2018). “In other words, we do not defer to the [Board’s] conclusions of law, and we reassess the record with a fresh pair of eyes.” *Allegheny Cnty. Dep’t of Health v. Wilkerson*, 329 A.3d 111, 117 (Pa. Cmwlth. 2024).

First, we address the Bussards’ contention that the Board erred by determining the issuance of the Morris Patent did not transfer and/or divest the Commonwealth of any interest in the Disputed Property. In support of their argument, the Bussards rely upon the plain language of the Morris Patent, which recites land subject to the Jesse Dicken Warrant. Bussards’ Br. at 18. Additionally, the Bussards assert the

issuance of the Morris Patent to McKinley Morris in 1937 passed and vested the entire Commonwealth estate to him, “free and clear of all liens, [e]ncumbrances and claims of the Commonwealth whatsoever,” pursuant to 64 P.S. § 419.² *Id.* at 18-19.

Under the law of this Commonwealth, the moving party in a quiet title action bears the burden of proof to establish title by a preponderance of the evidence. *Long Run Timber Co. v. Dep’t of Conservation & Nat. Res.*, 145 A.3d 1217, 1228 (Pa. Cmwlth. 2016). “Moreover, whether the matter sounds in ejectment or quiet title, the moving party must recover on the strength of its own title and not upon the weakness of the Commonwealth’s.” *Id.* (quotation omitted).

In *Bussard I*, we remanded for the Bussards to prove at hearing before the Board that McKinley Morris acquired clear title to the Disputed Property from the issuance of the Morris Patent. As we indicated, at that time, the Bussards had only pleaded deeds in their chain back to 1923. *See Bussard I*, 278 A.3d at 429 n.6; R.R. at 56a.

However, on remand, the Board determined, that unlike the Commonwealth, the Bussards still could not trace their title back to the 1863 Jesse Dicken Warrant. R.R. at 506a-07a. The Board also found “[n]or is there any showing that otherwise connects [the Bussards’] chain of title to the Jesse Dicken warrant.” R.R. at 507a. On appeal, the Bussards do not refute their inability to trace their chain beyond 1888, candidly acknowledging, “[t]he problem [the Bussards] have is there exists no recorded deed that explains how Solomon Oster received the property.” Bussards’ Br. at 10.

² Act of March 11, 1843, P.L. 79, § 4 (providing, pertinently, “that all patents granted by the Commonwealth, do pass and vest the entire estate of the Commonwealth to and in the patentees, free and clear of all liens, [e]ncumbrances and claims of the Commonwealth whatsoever, prior to the date of the respective patents, except for the arrears of purchase money”).

Thus, the Board found the Bussards “presented nothing to show the justification for issuance of the [Morris Patent] and remain unable to prove their ownership through a valid chain of title.” R.R. at 507a (citing *Bussard I*, 278 A.3d at 427) (issuance of the Morris Patent does not unequivocally prove title in the Bussards). Consequently, the Board determined the Morris Patent was issued in error, and as such, unable to divest the Commonwealth of its ownership interest. *Id.* at 507a. *See Bussard I*, 278 A.3d at 426 (issuance of a patent to the wrong person would not convey any ownership interest). Because the Bussards could not prove any deed conveyances from Jesse Dicken or his successors in interest for the Jesse Dicken Warrant to any of the Bussards’ predecessors in title, the Board did not err in its determination.

Additionally, because the Morris Patent was erroneously issued, the Bussards cannot prevail under 64 P.S. § 419. As the Board correctly noted, only a validly issued patent can sufficiently pass and vest the Commonwealth’s title. R.R. at 506a (citing, among other things, *Delaware & Hudson Canal Co. v. Dimock*, 47 Pa. 393, 397 (1864)). Accordingly, the Board did not err in finding the issuance of the Morris Patent insufficient to divest the Commonwealth of its title to the Disputed Property.

Second, the Bussards alternatively assert, the Commonwealth, rather than the Bussards, should bear the consequences of any error resulting from the improper issuance of the Morris Patent. Bussards’ Br. at 23-24. In support of their claim, while admitting inability to prove it as such, the Bussards characterize the Commonwealth’s 1911 Ash to Hartsock quitclaim deed, which preceded the Morris Patent, as “very suspicious,” based upon the timeframe for requested execution. *Id.* at 22 n.1. Specifically, the Bussards question the achievement of the following, in the year 1911, in a mere eight days:

On April 21, 1911, Mr. Hartsock who lives in Maryland, writes to Mr. Potter (who is in Pittsburgh, PA) requesting that Mr. Potter prepare a quitclaim deed. After preparation, the deed was sent to the Hartsocks in Maryland then sent to Nebraska to be signed by Robert Ash and his wife where it was allegedly executed on April 29, 1911.

Id.

Here, even if the Bussards' suspicions are warranted, they are of no legal significance in this quiet title matter. We have previously observed "the moving party must recover on the strength of its own title and not upon the weakness of the Commonwealth's." *Long Run Timber Co.*, 145 A.3d at 1228 (quotation omitted). Thus, an alleged deficiency regarding the Commonwealth's title will not strengthen the Bussards' title.

Finally, the Bussards admit that the issuance of a patent to the wrong person usually results in the patentee holding the property in trust for the true owner; however, they contend this is not true where the Commonwealth owns the property and issued the patent. Bussards' Br. at 23. The Bussards assert no legal authority to support this position. In contrast, the Department emphasizes, among other things,³ its superior chain of title, originating back to the 1863 Jesse Dicken Warrant. Dep't Br. at 23.

Again, in *Bussard I*, we remanded this matter to the Board to allow the Bussards to plead "specific deeds in their chain of title prior to 1923[.]" *Bussard I*,

³ As in *Bussard I*, 278 A.3d at 428, the Department again relies upon its 1911 acquisition of the Disputed Property as forest reserve, which the Department argues is not "subject to warrant, survey or patent." Dep't Br. at 23-24 (quoting section 8 of the Act of February 25, 1901, P.L. 11, 32 P.S. § [169]). However, on remand, the Board found this statutory provision inapplicable because the Commonwealth "did not acquire the [Disputed Property] following nonpayment of taxes, and it is not clear that the land was unseated." R.R. at 508a n.3. Because the Board deemed either requirement a necessary prerequisite to the applicability of the statute, the Board concluded it did not apply. *Id.* On appeal, we need not reach this issue because the Bussards have not met their burden of asserting title superior to the Commonwealth's.

278 A.3d at 429 n.6. In doing so, we acknowledged while “[t]he Bussards have pleaded facts in support of their claim” sufficient to overcome preliminary objections; “they **may ultimately be unable to recreate their purported chain of title with sufficient factual evidence to [later] prevail.**” *Id.* (emphasis added). As set forth in the Joint Stipulation, while the Bussards could trace their chain back to 1888, they still could not, like the Commonwealth, connect their chain to the 1863 Jesse Dicken Warrant. This is precisely what the Board found, and this finding was supported by substantial evidence.

CONCLUSION

For the reasons set forth above, we affirm the Board’s July 17, 2025 order.

STACY WALLACE, Judge

Judge McCullough dissents and wishes to be so noted.

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ORDER

AND NOW, this 28th day of October 2026, the July 17, 2025 order of the State Board of Property is hereby **AFFIRMED**.

STACY WALLACE, Judge