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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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Lewis Archer

v.

America's First Federal Credit Union

Appeal from Mobile Circuit Court
(CV-16-900716)

EDWARDS, Judge.

America's First Federal Credit Union ("AFFCU") filed in the Mobile Circuit Court ("the trial court") a complaint seeking to eject Lewis Archer and Shearie Archer from real property AFFCU had purchased at a January 29, 2016,

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foreclosure sale; AFFCU's complaint also sought damages for the Archers' unlawful detention of the property. The Archers answered the complaint and filed a counterclaim, in which they sought damages for breach of their mortgage contract with AFFCU and a judgment declaring that the foreclosure was void. AFFCU amended its complaint twice; in its second amended complaint, AFFCU requested the alternative relief of a judicial foreclosure if the trial court determined that the original foreclosure sale was due to be set aside, attorney fees for the efforts undertaken to collect on the Archers' mortgage, and a judgment awarding AFFCU the balance due on the Archers' home-equity loan. AFFCU moved for a summary judgment in December 2016; in its motion, AFFCU sought a summary judgment on its complaint, but it presented evidence and argument relating solely to its ejectment claim. The trial court initially denied AFFCU's motion. However, AFFCU filed a renewed motion for a summary judgment in December 2017, in which it stated that it was seeking a summary judgment on all claims and counterclaims; however, AFFCU again appeared to argue solely about its ejectment claim and presented no evidence relating to damages, the home-equity

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loan, or attorney fees. The trial court entered a judgment on June 25, 2018, in favor of AFFCU, awarding it possession of the real property and, thus, rejecting the Archers' counterclaims alleging breach of the mortgage contract and challenging the validity of the foreclosure. The judgment, which was drafted by AFFCU, is labeled "Final Order" and contains the following concluding sentence: "This order concludes this litigation, with costs taxed as paid."¹ Lewis

¹In light of AFFCU's claims seeking damages for unlawful detainer, attorney fees, and the balance due on the Archers' home-equity loan, the trial court's judgment does not clearly appear to conclude the litigation. Because we questioned whether AFFCU's motion sought a summary judgment in its favor on only the ejection claim contained in its complaint and amended complaints or on all claims it had asserted, see We Got Games, LLC v. E & D Ventures, LLC, 261 So. 3d 1224, 1228 (Ala. Civ. App. 2018) (dismissing an appeal from a judgment entered on a motion for a summary judgment that had sought relief on only one of various claims); see also Denault v. Federal Nat'l Mortg. Ass'n, [Ms. 2170591, April 5, 2019] ___ So. 3d ___ (Ala. Civ. App. 2019), we requested letter briefs from the parties regarding the finality of the judgment. AFFCU and Lewis Archer filed a joint letter brief in response, in which they both agreed that the judgment is final because AFFCU had sought a summary judgment on all claims set out in its complaint. AFFCU specifically states in that letter brief that,

"[w]hile the [summary-judgment] order does not expressly address the claims for damages ..., attorney's fees ..., or the claim based on the home equity [loan] ..., the order, at least implicitly, resolved those claims as well. The order states that

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Archer filed a postjudgment motion, which the trial court denied, and he then appealed to our supreme court, which transferred the appeal to this court, pursuant to Ala. Code 1975, § 12-2-7(6).²

Archer presents two issues in his initial brief on appeal. He first contends that AFFCU's motion for a summary judgment was not adequately supported by admissible evidence because, he says, certain documents and exhibits are not contained in the record. Secondly, Archer argues that there

'[t]his order concludes this litigation, with costs taxed as paid.' ... Thus, the Order can be fairly read as having disposed of those claims without granting [AFFCU] specific relief. Significantly, [AFFCU] did not cross-appeal the denial of relief on those bases, and [it] does not intend to seek further relief."

Because the parties agree that the trial court has resolved all their claims and because AFFCU has indicated that it does not intend to seek further relief regarding its requests for damages for unlawful detainer, attorney fees, or the balance due on the home-equity loan, we conclude that the judgment is final and appealable and have considered the arguments asserted by Lewis Archer on appeal.

²In the trial court, Shearie Archer is consistently listed as a defendant, and the record indicates that she signed the note and mortgage pertaining to the real property. However, the postjudgment motion in the record indicates that the sole movant is Lewis Archer, and he is the only appellant named in the notice of appeal.

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were numerous genuine issues of material fact precluding a conclusion that AFFCU was entitled to a judgment as a matter of law.

The argument section of Archer's brief is meager. In the argument related to his first issue, he complains that a particular document relied on by AFFCU is not contained in the record on appeal; however, AFFCU had the record supplemented with that document. Archer did not seek to amend his brief after the supplementation. Instead, he submitted a reply brief containing completely new arguments. It is well settled that an appellate court will not consider arguments raised for the first time in a reply brief. Steele v. Rosenfeld, LLC, 936 So. 2d 488, 493 (Ala. 2005) (quoting Improved Benevolent & Protective Order of Elks of World v. Moss, 855 So. 2d 1107, 1111 (Ala. Civ. App. 2003), abrogated on other grounds, Ex parte Full Circle Distrib., L.L.C., 883 So. 2d 638 (Ala. 2003)) ("[A]n argument may not be raised, nor may an argument be supported by citations to authority, for the first time in an appellant's reply brief."). AFFCU has filed a motion to strike the newly raised arguments asserted in Archer's reply brief; that motion also requests that this court strike

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exhibits to the reply brief, all but one document of which are not in the record on appeal. See Papaspiros v. Southeast Gen. Contractors, Inc., 982 So. 2d 1099, 1102 (Ala. Civ. App. 2007) ("We cannot consider matter in a brief that is outside the record."). We hereby grant AFFCU's motion.

Furthermore, although Archer cites authority in his first argument in his initial brief, that authority contains merely general statements of law applicable to summary judgments. Archer develops no adequate legal arguments in support of his bid for reversal. As our supreme court explained in White Sands Group, L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008), "Rule 28(a)(10) [, Ala. R. App. P.,] requires that arguments in briefs contain discussions of facts and relevant legal authorities that support the party's position. If they do not, the arguments are waived." We have no duty to develop Archer's legal argument for him. See Spradlin v. Spradlin, 601 So. 2d 76, 79 (Ala. 1992) (explaining that an appellate court is not required to do a party's legal research or to develop an argument on behalf of a party); and Bishop v. Robinson, 516 So. 2d 723, 724 (Ala. Civ. App. 1987) (quoting Thoman Eng'g, Inc. v. McDonald, 57 Ala. App. 287, 290, 328 So.

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2d 293, 294 (Civ. App. 1976)) (noting that an appellant should "present his issues 'with clarity and without ambiguity'" and "fully express his position on the enumerated issues" in the argument section of his brief); accord United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) ("It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones.").

Archer's second argument fares no better. Archer cites no applicable authority and does not explain why the "disputes of material fact" he specifies are, in fact, material. To the extent that Archer might be attempting to incorporate any arguments that he may have made in a submission to the trial court, Archer may not do so. Perry v. State Pers. Bd., 881 So. 2d 1037, 1039 (Ala. Civ. App. 2003) (explaining that Rule 28, Ala. R. App. P., does not provide for the incorporation into an appellate brief of arguments made in trial briefs or other submissions in the trial court); accord DeSilva v. DiLeonardi, 181 F.3d 865, 867 (7th Cir. 1999) ("A brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record."). Archer's

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second argument, like his first, is neither properly developed nor properly supported.

Archer's initial brief on appeal fails to comply with Rule 28(a)(10), Ala. R. App. P. He makes no proper legal argument for this court to consider. We are precluded from considering the arguments asserted for the first time in his reply brief, which we have stricken at the request of AFFCU. Accordingly, we affirm the judgment of the trial court.

AFFIRMED.

Thompson, P.J., and Moore, Donaldson, and Hanson, JJ., concur.