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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200492

Jeremy Smith

v.

Velma Smith and Larry Kent Smith

**Appeal from Talladega Circuit Court
(CV-19-900612)**

MOORE, Judge.

Jeremy Smith ("the tax-sale purchaser"), who purchased certain property in Talladega County ("the property") at a tax sale, appeals from

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a judgment entered by the Talladega Circuit Court ("the trial court") determining that Velma Smith and Larry Kent Smith ("the proposed redemptioners") can redeem the property by paying \$173.27 to the Talladega County Revenue Commissioner. We affirm the trial court's judgment.

Procedural History

On December 5, 2019, the tax-sale purchaser filed a complaint against the proposed redemptioners ("the ejectment complaint"), requesting a judgment granting him possession of the property, removal of the proposed redemptioners from the property, and "recovery of mesne profits and damages for waste or other injury to the home and lands." On December 31, 2019, the proposed redemptioners filed an answer. Subsequently, on April 28, 2020, the proposed redemptioners filed a motion asserting that the tax-sale purchaser had failed to submit a price for redemption of the property and requesting that the trial court "enter an Order compelling the [tax-sale purchaser] to submit ... an itemized sum necessary to accomplish the redemption within 20 days." On May 5, 2020, the trial court granted the proposed redemptioners' motion. On

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September 10, 2020, the proposed redemptioners filed an amended answer asserting their right to redeem the property that the parties had been unable to negotiate a redemption price and requesting, pursuant to Ala. Code 1975, § 40-10-83, that the trial court set the redemption price.

On October 8, 2020, the trial court held a hearing. At the conclusion of that hearing, the trial court stated that it would allow the proposed redemptioners to redeem the property and that it, therefore, would not hold a trial on the ejectment complaint. On November 20, 2020, the trial court entered a judgment concluding that the proposed redemptioners were "entitled to redeem the ... property according to [§] 40-10-83" and that "[t]he redemption price to be paid ... is \$173.27." The trial court stated that the proposed redemptioners should pay the amount to redeem the property within 30 days of the entry of the judgment or their right of redemption would be forfeited. The trial court further stated: "The Complaint for Ejectment and damages will be dismissed with prejudice upon notification that the [proposed redemptioners] have paid the full redemption price to the Talladega County Revenue Commissioner."¹

¹We conclude that the judgment is sufficiently final to support an appeal pursuant to this court's decision in Prescott v. Milne, 308 So. 3d

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On December 2, 2020, the tax-sale purchaser filed a postjudgment motion arguing that the trial court lacked jurisdiction over the redemption of the property. That motion was denied by operation of law on March 2, 2021. The tax-sale purchaser filed his notice of appeal to the Alabama Supreme Court on April 12, 2021; that court subsequently transferred the appeal to this court, pursuant to Ala. Code 1975, § 12-2-7(6).

Discussion

On appeal, the tax-sale purchaser first argues that the trial court lacked jurisdiction over the redemption of the property. We note, however, that, in Mitchell v. Curry, 70 So. 3d 353 (Ala. Civ. App. 2010), this court explained:

"Under Alabama law, after a parcel of property has been sold because of its owner's failure to pay ad valorem taxes assessed against that property (see § 40-10-1 et seq., Ala. Code 1975), the owner has two methods of redeeming the property from that sale: "statutory redemption"

906, 910 (Ala. Civ. App. 2019) (determining that a "judgment [in an ejectment action, which] conditioned the entry of a judgment awarding Milne title to the house on the occurrence of a future event, i.e., Milne's payment into court of the total redemption amount within 45 days," was sufficiently final to support an appeal).

(also known as "administrative redemption"), which requires the payment of specified sums of money to the probate judge of the county in which the parcel is located (see § 40-10-120 et seq., Ala. Code 1975), and "judicial redemption" under §§ 40-10-82 and 40-10-83, Ala. Code 1975, which involves the filing of an original civil action against a tax-sale purchaser (or the filing of a counterclaim in an ejectment action brought by that purchaser) and the payment of specified sums into the court in which that action or counterclaim is pending.'

"First Props., L.L.C. v. Bennett, 959 So. 2d 653, 654 (Ala. Civ. App. 2006). A circuit court has jurisdiction over a 'judicial redemption' action. See, generally, First Props., L.L.C., 959 So. 2d at 654."

70 So. 3d at 354 n.2. In the present case, it is undisputed that the proposed redemptioners had maintained possession of the property, and they relied on their right to a judicial redemption of the property, over which the trial court had jurisdiction. See, e.g., Espinoza v. Rudolph, 46 So. 3d 403, 412 n.9 (Ala. 2010) (construing allegations in answer as a counterclaim). Therefore, we conclude that the tax-sale purchaser's jurisdictional argument is without merit.

The tax-sale purchaser next argues that, even though the redemption was approved, he was entitled to mesne profits. We note,

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however, that, at the conclusion of the hearing on the issue of the redemption of the property, the trial court indicated that it would allow the redemption and that it therefore would not hold a trial on the ejectment complaint. The tax-sale purchaser did not object or seek to put on evidence regarding the claimed mesne profits. Moreover, the tax-sale purchaser did not raise any error related to the trial court's failure to award mesne profits in his postjudgment motion. Therefore, we conclude that the tax-sale purchaser has waived any argument relating to the trial court's failure to award mesne profits. See, e.g., Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992) ("[An appellate court] cannot consider arguments raised for the first time on appeal; rather, [the appellate court's] review is restricted to the evidence and arguments considered by the trial court.").

Based on the foregoing, we affirm the trial court's judgment.

AFFIRMED.

Thompson, P.J., and Edwards, Hanson, and Fridy, JJ., concur.