

REL: June 10, 2022

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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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**Anderson Realty Group, LLC**

v.

**J.C. King III**

**Appeal from Jefferson Circuit Court  
(CV-20-903660)**

PER CURIAM.

Anderson Realty Group, LLC ("ARG"), appeals from a judgment of the Jefferson Circuit Court ("the trial court") permitting J.C. King III to redeem certain real property upon the payment of \$21,302.35 to ARG. For the reasons set forth below, we reverse the judgment.

Background<sup>1</sup>

On August 9, 2005, King purchased a house and lot in Center Point ("the property"), and he subsequently rented it to tenants. In May 2015, a "massive" fire damaged about two-thirds of the house. A company whose name was not identified in the record secured the house, putting a tarp on the roof and boarding the windows to protect it from the elements. Additionally, the water and electricity services to the house were turned off.

Thereafter, King stopped paying the property taxes on the property. On May 24, 2016, the State of Alabama purchased the property at a tax sale and obtained a tax deed to the property. On December 11, 2019, the

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<sup>1</sup>At the outset, we note that ARG included few citations to the record in its combined statement of the case and statement of the facts in its appellate brief, and it is questionable whether the brief complies with Rule 28(a)(5) and (7), Ala. R. App. P. Moreover, both ARG and King provided this court with appendices to their respective briefs and cited to exhibit letters in those appendices rather than to the page numbers in the record. We remind the bar that this court does not consider attachments to briefs and that we rely only on the record compiled by the various clerks' offices and court reporters. The record in this case is slightly more than five volumes, and citations to the actual record would have been helpful.

state sold its interest in the property to Stanley Builders, LLC, which, in turn, sold its interest to ARG.

On October 27, 2020, ARG filed a complaint in the trial court to quiet title to the property. King answered and filed a counterclaim to redeem the property. Thereafter, King filed a motion for a partial summary judgment on his right to redeem the property. The trial court granted that motion on March 17, 2021. It also entered a scheduling order setting an evidentiary hearing on the issue of the amount King would be required to pay ARG to redeem the property.

At the evidentiary hearing, Joshua Anderson, ARG's managing member, testified that, when he first saw the property, the house "was pretty bad." He said that, "in any other part of town, the city would have already demolished it." It is undisputed that the house was uninhabitable after the fire. Anderson said that he would characterize the property as having only land value when he first saw it. He said that, after ARG purchased Stanley Builders' interest in the property, ARG cleaned out the house and the overgrowth around it. It then put in new framing, roofing, wiring, plumbing, air conditioning, windows, doors, siding, and gutters for the house.

Anderson said that, at the time ARG took possession of the property, the property had a value of, at most, \$10,000. After King notified ARG that he was going to redeem the property, Anderson said, ARG stopped working on the house and had an appraisal conducted on the property. As of January 21, 2021, Anderson said, the property was appraised at \$130,000. In its postjudgment motion, ARG asserted that its cost for remodeling the house was \$88,812. In addition, ARG had paid \$6,710.83 for taxes and an attorney fee of \$3,815.63.

Ronald Parker, a commercial and residential appraiser who had served as the chairman of the Alabama Appraisal Board, among other positions, testified on behalf of King. He differentiated between preservation improvements and renovation, explaining that with preservation improvements one is simply trying to maintain the property to ensure that "it exists later on down the line." Preservation improvements are not meant to be permanent, he said. Renovations deal with fair-market value, Parker said, and signifies that one is preparing the property to be introduced into the market. He said that the repairs ARG made on the house were renovations and not preservation improvements. Based on his inspection of the house, Parker said, he

estimated that the preservation improvements, including general clean up, securing the tarps, landscaping, and lawn maintenance, totaled between \$10,000 and \$12,000.

On June 8, 2021, the trial court entered a judgment determining that the redemption amount for the property was \$21,302.35 plus interest. The judgment provided that King had thirty days to redeem the property by paying that amount to ARG, failing which ARG would be entitled to a judgment quieting title to the property. ARG filed various motions after the judgment was entered, including a motion to alter, amend, or vacate the judgment, which the trial court denied. King paid the redemption amount as ordered, and the trial court directed the circuit clerk to issue a deed to King. The deed was issued on August 2, 2021.

ARG filed a timely notice of appeal to our supreme court, which transferred the appeal to this court pursuant to § 12-2-7(6), Ala. Code 1975.

### Analysis

Before we address ARG's appeal on the merits, we must first consider King's motion to dismiss the appeal. King contends that, because ARG accepted and deposited his redemption payment, the

amount of which could have been questioned on appeal, its acceptance of the money King tendered constitutes a full settlement of the issue and a discharge of the judgment. Additionally, King argues, because he has retained possession of the property and now possesses the clerk's deed transferring the property back to him, the appeal is moot.

The general rule is that when an appellant accepts the benefit of a judgment, that appellant must make restitution of the proceeds received as a condition precedent to the appeal or the appeal will be dismissed. Alco Land & Timber Co. v. Baer, 289 Ala. 567, 570, 269 So. 2d 99, 101 (1972); see also Rice v. State Farm Fire & Cas. Co., 578 So. 2d 1064 (Ala. 1991); Mobile Ins., Inc. v. Smith, 441 So. 2d 894 (Ala. 1983). An exception to this general rule provides that a party can maintain an appeal without refunding judgment proceeds when the opposing party, that is, the appellee, will suffer no injury as a result of allowing the appeal to proceed while the appellant retains the proceeds or when the appellant could not, on retrial, recover less than the amount of the judgment from which he appeals. Alco Land & Timber Co., 289 Ala. at 570, 269 So. 2d at 101-02.

In this case, the redemption amount was based on the amount of taxes ARG had paid, \$6,710.83; an attorney fee of \$3,815.63; \$10,000 for

preservation improvements, which represented the lower end of Parker's estimate of the value of the preservation improvements; and \$775.89 as interest on those preservation improvements, for a total judgment of \$21,302.25. It is apparent that the trial court would not enter a judgment for a lesser amount against King if a new trial were ordered. Moreover, even if this court were to determine that King was not entitled to redeem the property, such a ruling would require restitution of the proceeds he has paid. Thus, we cannot see how that outcome would result in an injury or injustice to King. See Alco Land & Timber Co., 289 Ala. at 571, 269 So. 2d at 102-03. Accordingly, we deny King's motion to dismiss the appeal.

Turning to the merits of ARG's appeal, ARG first contends that the trial court erred in failing to find that King was estopped from claiming his right to redeem the property because, it says, King "tacitly indicated" for five years that he would not redeem the property. ARG claims that it sent tax notices to King before it began making improvements to the property. It then claims that King began filling out the paperwork for the redemption process but then stopped.<sup>2</sup> ARG claims that it perceived

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<sup>2</sup>In support of this assertion, ARG cites a page in the record -- one of the few times it does so (see note 1, supra) -- that is a notice of virtual hearing on the motion for a partial summary judgment. It is well settled

King's "disengagement of the redemption process and [refraining] from redeeming the property while known improvements were being implement[ed] as evidence of consent to move forward with the repairs and [that King] would not redeem." ARG argues that, under the doctrine of promissory estoppel, King could not redeem the property after he knowingly allowed ARG to make improvements to it.

Our review of the record indicates that ARG did not make this argument to the trial court in opposing King's motion for a partial summary judgment, during the hearing to establish the redemption amount, or in its motion to alter, amend, or vacate the judgment. It is well settled that "[t]his court cannot consider arguments raised for the first time on appeal; rather, our review is restricted to the evidence and arguments considered by the trial court." Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992); see also Wiggins v. City of Evergreen, 295 So.

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that "[i]t is not the duty of the appellate court to search the record for evidence to support an appellant's contention of error. Roberts v. NASCO Equip. Co., 986 So. 2d 379 (Ala. 2007).'" Dubose v. Dubose, 172 So. 3d 233, 242 (Ala. Civ. App. 2014) (quoting Certain Underwriters at Lloyd's London v. Southern Natural Gas Co., 142 So. 3d 436, 453 (Ala. 2013)).



3d 43, 49 (Ala. 2019). Therefore, we will not consider this argument on appeal.

ARG next argues that the redemption amount the trial court ordered King to pay to ARG was far too low because it excluded from its calculation certain improvements ARG had made to the property for which, ARG says, it was due to be compensated. Specifically, ARG argues that the trial court erred in ruling that only repairs to stop waste constituted "preservation improvements," while other repairs are considered "permanent improvements" that are not charged to the redemptioner. The determination of what constitutes a preservation improvement versus a permanent improvement is a question of law; thus, the ore tenus rule has no application, Reed v. Board of Trustees for Alabama State Univ., 778 So. 2d 791, 793 n.2 (Ala. 2000), and our review of the trial court's determination as to that issue is de novo, Allstate Ins. Co. v. Skelton, 675 So. 2d 377, 379 (Ala. 1996).

Section 40-10-122(c), Ala. Code 1975, which both parties and the trial court agreed supplied the legal principles applicable to this case, governs the determination of the amount a property owner must pay to redeem residential property that has been the subject of a tax sale. That

provision states that a proposed redemptioner must pay the purchaser "all insurance premiums paid or owed by the purchaser for casualty loss coverage on the residential structure with interest" and "[t]he value of all preservation improvements made on the property determined in accordance with this section with interest ...." § 40-10-122(c)(1) and (2) (emphasis added). Under the statute, "'permanent improvements' shall include, but not be limited to, all repairs, improvements, and equipment attached to the property as fixtures." § 40-10-122(d). The statute defines "preservation improvements" as "improvements made to preserve the property by properly keeping it in repair for its proper and reasonable use, having due regard for the kind and character of the property at the time of sale." *Id.* ARG argues that the improvements it made to the house on the property involved keeping it in repair for its proper and reasonable use, i.e., a structurally sound, habitable, single-family dwelling.

Neither the parties, nor the trial court, nor this court located caselaw elaborating on the meaning of permanent improvements or preservation improvements in the context of the redemption of

residential property after a tax sale.<sup>3</sup> However, our supreme court has considered what constitutes a "permanent improvement" in the context of redemption rights in a foreclosure matter. The redemption of property that has been foreclosed upon is governed by § 6-5-253, Ala. Code 1975, which provides that a proposed redemptioner in that context must pay the purchaser the purchase price paid at the foreclosure sale plus interest, and "all other lawful charges," § 6-5-253(a), including, among other things, the value of "[p]ermanent improvements as prescribed herein," § 6-5-253(a)(1). No mention of preservation improvements is made in the statute governing redemption in foreclosure matters.

In E.B. Investments, L.L.C. v. Pavilion Development, L.L.C., 212 So. 3d 149, 167 (Ala. 2016), our supreme court held that houses that were constructed on certain lots after the foreclosure of those lots, which had been subdivided for the purpose of residential development, were "'valuable and useful additions and improvements to the property suited

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<sup>3</sup>In Surginer v. Roberts, 231 So. 3d 1117, 1128 (Ala. Civ. App. 2017), this court was asked to consider whether preservation improvements to structures on certain property, including plumbing and electrical work, involved poor workmanship that negatively impacted the value of the property. However, the character of the challenged improvements was not at issue.

to its reasonable necessities, character and use.' Thus, the values of those improvements were recoverable as lawful charges under §6-5-253(a)(1)."

In reaching that holding, our supreme court relied on decades of opinions in foreclosure-redemption cases that had used a consistent definition of "permanent improvements," explaining:

"We have indicated that necessary permanent improvements have a well defined meaning in this jurisdiction, which is to preserve the property by properly keeping it in repair for its proper and reasonable use, having due regard for the necessities of each subject as to its kind and character. This includes not only ordinary repairs to restore the property after injury, decay, storm, flood, or fire, etc., but also valuable and useful additions and improvements to the property suited to its reasonable necessities, character and use .... As to this each case is ruled by its facts."

"[Rodgers v. Dixon], 239 Ala. [72,] 74, 193 So. [741,] 743 [(1940)]. In Smith v. Sulzby, 205 Ala. 301, [303,] 87 So. 823[, 824] (1921), this Court stated: "An improvement, generally speaking, is anything that enhances the value of the land."

"Moore v. Horton, 491 So. 2d 921, 923 (Ala. 1986)."

Id. (emphasis added). In Moore v. Horton, 491 So. 2d 921 (Ala. 1986), our supreme court relied on the "well defined meaning" set forth in Rodgers v. Dixon, 239 Ala. 72, 74, 193 So. 741m 743 (1940), to reject Janet Moore's argument that, to redeem certain real estate that had been sold at a foreclosure sale, she was required to pay for such repairs that were necessary only to prevent deterioration of the house, holding that Alabama's caselaw did not support that argument. The Rodgers definition of permanent improvements was used in Pankey v. Dauge, 671 So. 2d 684, 687-88 (Ala. Civ. App. 1995), to affirm a judgment that included in the redemption amount costs for work on the interior and exterior of a house and the surrounding property to restore the house and property. Those costs included removal of trash and "junk," a thorough cleaning and maintenance work inside the house, and replacement of carpet that was in bad condition.

In 2002, the Alabama Legislature established definitions of "permanent improvements" and "preservation improvements" as those terms are applied in the tax-redemption statute, § 40-10-122. In defining "preservation improvements" as "improvements made to preserve the property by properly keeping it in repair for its proper and reasonable

use, having due regard for the kind and character of the property at the time of sale," § 41-10-122(d), our legislature essentially adopted the language used to define "permanent improvements" in Rodgers and its progeny. The definition of "permanent improvements" in § 40-10-122(d), i.e., that that term "shall include, but not be limited to, all repairs, improvements, and equipment attached to the property as fixtures," was a newly crafted definition.

In interpreting a statutory provision, "a court is required to ascertain the intent of the legislature as expressed and to effectuate that intent." Tuscaloosa Cnty. Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa Cnty., 589 So. 2d 687, 689 (Ala. 1991).

"Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."

IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992). "In the absence of a manifested legislative intent to the contrary, or other overriding evidence of a different meaning, legal terms in a statute are presumed to have been used in their legal sense." Crowley v.

Bass, 445 So. 2d 902, 904 (Ala. 1984) (quoting 2A D. Sands, Sutherland Statutory Construction § 47.30 (4th ed. 1973)).

It is also a rule of statutory construction that statutes should be construed in reference to the principles of the common law. Dennis v. State, 40 Ala. App. 182, 185, 111 So. 2d 21, 24 (1959); see also Weaver v. Hollis, 247 Ala. 57, 60, 22 So. 2d 525, 528 (1945) (noting that statutes must be read "in the light of the common law"); Standard Oil Co. v. City of Birmingham, 202 Ala. 97, 98, 79 So. 489, 490 (1918) ("[C]ommon-law words [are to be construed] according to their common-law meaning."); Cook v. Meyer Bros., 73 Ala. 580, 583 (1883) ("[T]he common law prevails, save so far as it is expressly or by necessary implication changed by the statute."); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 320 (2012) ("The age-old principle is that words undefined in a statute are to be interpreted and applied according to their common-law meanings."); cf. Ex parte Christopher, 145 So. 3d 60, 65 (Ala. 2013). In 1838, our supreme court wrote in In re Dorsey, 7 Port. 293, 303-04 (1838):

"If a statute of the legislature adopt phrases of the common law, we must look to the common law to ascertain their true signification. This is a rule of reason. It is the foundation of the principle quoted by Sergeant Pengelly from

Hobart, that when a statute adopts a common law term, you take that common law in its common law meaning."

Applying these principles, we conclude that, because the definition of "preservation improvements" as codified in § 40-10-122(d) is the same definition of "permanent improvements" set forth in Rodgers and applied for more than eighty years, the legislature must have intended that "preservation improvements" have the same meaning as ascribed by the Rodgers Court to the term "permanent improvements" under the foreclosure-redemption statute, § 6-5-253.

Here, the tax-sale purchaser obtained its interest in the house after a "massive" fire. ARG, the tax-sale purchaser's successor in interest, then spent a considerable amount of money toward restoring the house and surrounding property to its previous condition for its "proper and reasonable use," i.e., a, sound, habitable, single-family dwelling. § 40-10-122(d). Alabama courts have consistently required one seeking to redeem property that has been foreclosed upon to pay not only the costs for ordinary repairs to restore the property after, among other things, a fire "but also [to pay for] valuable and useful additions and improvements to the property suited to its reasonable necessities, character and use." Rodgers, 239 Ala. at 74, 193 So. at 743. Therefore, we conclude that the



trial court erred in limiting ARG to the recovery of the cost of repairs undertaken to keep the property in the same condition it was in at the time of the tax sale.

ARG contends that the amount King must pay to redeem the property is the value of the improvements it made to the property. It cites Anderson's testimony that, when ARG obtained its interest in the property, it had an appraised value of \$10,000. After ARG made improvements to the property, it had an appraised value of \$130,000 -- a difference of \$120,000. King counters with the contention that, because, at trial, ARG did not present evidence such as receipts, invoices, or proposals for the costs of improvements, it is not entitled to reimbursement of those costs.

The applicable provision in the tax-redemption statute, § 40-10-122(c), provides that, with respect to property that contains a residence at the time of the sale, the proposed redemptioner must pay all insurance premiums paid or owed by the purchaser for casualty-loss coverage on the house and the "value of all preservation improvements made on the property" plus interest. § 40-10-122(c)(2)(emphasis added). Cf. Surginer v. Roberts, 231 So. 3d 1117, 1128 (Ala. Civ. App. 2017) (refusing to

include in redemption amount cost of improvements to property sold at tax sale because poor workmanship used to make those improvements "negatively impacted" property's value).

Looking again at caselaw in the context of redemptions of property foreclosed upon for guidance, we find that our supreme court has held that redemptioners must pay the value of improvements. In reversing a judgment in a foreclosure-redemption case in which the trial court had included the costs of improvements rather than the value of improvements as part of the redemption amount, our supreme court said that Alabama law "provides that it is the reasonable value of the permanent improvements to the land, not their cost, that must be paid by the redeeming party." Southeast Enters., Inc. v. Byrd, 720 So. 2d 873, 877 (Ala. 1998). See also E.B. Invs., 212 So. 3d at 167. Thus, we agree with ARG that it is entitled to recover the value of the preservation improvements it made to the property and not merely the expenses it incurred in making those improvements.

### Conclusion

For the reasons discussed, the trial court erred in determining that King must pay \$21,302.25 to ARG to redeem the property. Therefore, the

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judgment is reversed, and the cause is remanded to the trial court for it to enter a judgment consistent with this opinion.

**REVERSED AND REMANDED.**

Moore, Hanson, and Fridy, JJ., concur.

Thompson, P.J., and Edwards, J., dissent, with opinions.

THOMPSON, Presiding Judge, dissenting.

I respectfully dissent from the main opinion's judgment reversing the trial court's judgment. I agree that if a tax-sale purchaser makes "preservation improvements" to a property during the statutory period of redemption, the proposed tax-sale redemptioner must pay to the tax-sale purchaser the value of the "preservation improvements." The term "preservation improvements" is defined in § 40-10-122(d), Ala. Code 1975, as "improvements made to preserve the property by properly keeping it in repair for its proper and reasonable use, having due regard for the kind and character of the property at the time of sale." Literally, "preservation improvements" consist of acts of repair that prevent further deterioration of the property and acts of maintenance that keep the property in the condition it was in at the time of the tax sale. After reviewing the caselaw discussed in the main opinion, I acknowledge that the definition of "preservation improvements" adopted by the legislature in § 40-10-122(d) is substantially similar to the definition of "permanent improvements" used in foreclosure-redemption cases. In Rodgers v. Dixon, 239 Ala. 72, 193 So. 741 (1940), our supreme court, when addressing what costs a proposed foreclosure redemptioner was required

to reimburse the foreclosure purchaser for in order to redeem the property, stated:

"We have indicated that necessary permanent improvements have a well defined meaning in this jurisdiction, which is to preserve the property by properly keeping it in repair for its proper and reasonable use, having due regard for the necessities of each subject as to its kind and character. This includes not only ordinary repairs to restore the property after injury, decay, storm, flood, or fire, etc., but also valuable and useful additions and improvements to the property suited to its reasonable necessities, character and use."

239 Ala. at 74, 193 So. at 743. However, had the legislature intended for the terms "preservation improvements" and "permanent improvements" to have the same import, the legislature could have used the term "permanent improvements" in § 40-10-122(c). Because the legislature chose to use the term "preservation improvements," as opposed to "permanent improvements," in § 40-10-122(c), the legislature must have perceived a distinction between the two terms. See Surtees v. VFJ Ventures, Inc., 8 So. 3d 950, 975 (Ala. Civ. App. 2008) ("The courts must presume that ... the legislature intended that each word of [a] statute have effect.").

Foreclosure-redemption statutes and tax-redemption statutes are similar in that both involve the redemption of property by a former owner

who lost the property due to an inability or a refusal to pay a debt (i.e., a loan secured by a mortgage or taxes) thereon. Generally, however, the condition of a property sold at a foreclosure sale is different from the condition of a property sold at a tax sale. A foreclosure-sale property is usually in moderate condition at the time of foreclosure, and any "permanent improvements" made to "keep [ ] [the property] in repair for its proper and reasonable use" are usually minimal in scope and cost, and the increase in the value of the property as a consequence of those "permanent improvements" is not likely to be substantial. In contrast, a tax-sale property is typically one, as in this case, that is untended, in poor condition, and likely in need of substantial repair at the time of the sale to return the property to its original proper and reasonable use. Thus, although the nature of repairs and maintenance on foreclosure-sale and tax-sale properties may be the same, the value of those improvements may be significantly different. Consequently, the propriety of the application of our supreme court's reasoning and decisions in foreclosure-redemption cases to tax-redemption cases is tenuous at best. I encourage the legislature to revisit its definition of "preservation improvements" in § 40-10-122(d) in light of the judiciary's application of that definition as

being synonymous with the definition of "permanent improvements" in foreclosure-redemption cases.

"Preservation improvements" made in tax-redemption cases are distinguishable from "permanent improvements" made in foreclosure-redemption cases. Our supreme court's conclusion that "permanent improvements" in foreclosure-redemption cases include useful additions and improvements to the property does not require that "preservation improvements" must include the same in a tax-redemption case. "Preservation improvements" must be scrutinized to ensure that the maintenance and repairs are reasonable, necessary, and made in keeping with "the kind and character of the property at the time of sale." § 40-10-122(d)(emphasis added). Although a tax-sale purchaser is entitled to the value of the "preservation improvements" made to maintain and to protect the property, a tax-sale purchaser is not necessarily entitled to the value of all improvements, regardless of the nature of the improvements. Otherwise, the tax-sale purchaser would be encouraged to make improvements to the property that go beyond "preservation improvements" simply to increase the cost of redemption and to make redemption unattainable for the proposed tax-sale redemptioner. A

proposed tax-sale redemptioner should provide compensation to the tax-sale purchaser for reasonable and necessary improvements designed to keep the property "in repair for its proper and reasonable use, having due regard for the kind and character of the property at the time of the sale."

Id.

When determining the value of alleged "preservation improvements," a trial court is not required to conclude that all the alleged "preservation improvements" made by a tax-sale purchaser were reasonable and necessary to maintain the property for its use and condition at the time of the sale. For example, if the evidence indicates that the roof on the house was replaced to protect the interior of the structure, then that improvement may be of the type for which reimbursement is contemplated. However, if the evidence indicates that an alleged improvement was made with the sole purpose of enhancing the value of the property or making it more difficult for a proposed tax-sale redemptioner to redeem the property, the improvement should be nonreimbursable and treated as one made at a tax-sale purchaser's risk.

Additionally, the value of the "preservation improvements" cannot be determined solely by evidence of the difference between the appraisal



price of the property at the time of the tax sale and the appraisal price at the time of redemption. Many factors other than the value of "preservation improvements" may contribute to the increase in the value of the property reflected by an appraisal. For example, an increase in the appraisal amount between the tax sale and the redemption may be a consequence of a trend in the real-estate market. Therefore, although consideration of an increase in the appraisal amount may be a factor for the trial court to consider when determining the value of the alleged "preservation improvements," it should not be the only factor considered.

I have reviewed the record in this case, and in my opinion the evidence supports the trial court's judgment regarding the value of the "preservation improvements" made by Anderson Realty Group, LLC ("ARG").

"Our ore tenus standard of review is well settled. "When a judge in a nonjury case hears oral testimony, a judgment based on findings of fact based on that testimony will be presumed correct and will not be disturbed on appeal except for a plain and palpable error.'" Smith v. Muchia, 854 So. 2d 85, 92 (Ala. 2003) (quoting Allstate Ins. Co. v. Skelton, 675 So. 2d 377, 379 (Ala. 1996)).'

"Kennedy v. Boles Invs., Inc., 53 So.3d 60, 67-68 (Ala. 2010)."

Surginer v. Roberts, 231 So. 3d 1117, 1127-28 (Ala. Civ. App. 2017).

In this case the alleged preservation improvements were made on a property and the residence located thereon. Approximately a year before the tax sale, the residence had been damaged by a fire. The record indicates that at the time of the sale the roof was secured by a tarp, the windows were boarded, and the utilities were disconnected. Undisputed evidence indicates that the residence was uninhabitable and that the property had only land value. Therefore, the evidence establishes that the "kind and character" of the property at the time of the sale was comparable to a vacant lot and not a residence needing repairs to make it habitable. The trial court, when it made its determination of the value of ARG's alleged preservation improvements, considered whether the alleged preservation improvements were necessary to prevent damage to the property and to preserve the property "for its proper and reasonable use, having due regard for the kind and character of the property at the time of the sale." § 40-10-122(d)(emphasis added). Competent evidence in the record supports the trial court's determination of the value of ARG's preservation improvements, and, consequently, the trial court's judgment is not palpably wrong or manifestly unjust. Because this court cannot reweigh the evidence or substitute its opinion for that of the trial

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court, see Lacks v. Stribling, 406 So. 2d 926, 929 (Ala. Civ. App. 1981), I believe that the trial court's judgment is due to be affirmed. Therefore, I respectfully dissent from the main opinion's decision to reverse the trial court's judgment.

EDWARDS, Judge, dissenting.

Based on the requirement that the trial court give "due regard for the kind and character of the property at the time of sale," Ala. Code 1975, § 40-10-122(d), when considering whether improvements are "preservation improvements" recoverable under § 40-10-122(c)(2), and based on the distinction between such improvements and "permanent improvements" recoverable under § 40-10-122(b)(2), I do not agree with the main opinion that the trial court was required to conclude that the improvements at issue were preservation improvements. Accordingly, I respectfully dissent.