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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

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Rhonda Underwood

v.

Planet Home Lending, LLC

Appeal from Jefferson Circuit Court  
(CV-17-904648)

EDWARDS, Judge.

Rhonda Underwood appeals from a summary judgment entered by the Jefferson Circuit Court ("the trial court") against her and in favor of Planet Home Lending, LLC ("PHL"), regarding PHL's claim for ejectment.

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On January 23, 2009, Underwood executed a mortgage in favor of Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Flagstar Bank, FSB ("Flagstar"), as mortgagee, and Flagstar's successors and assigns ("the mortgage"). The mortgage secured a promissory note in the principal amount of \$114,802 ("the note") that Underwood also executed on January 23, 2009, in favor of Flagstar, as lender. The mortgaged property ("the property") is located in Jefferson County.

On January 15, 2015, Flagstar assigned the note and the mortgage to PHL. Thereafter, Underwood defaulted on the note. PHL accelerated the indebtedness due under the note and informed Underwood that it would foreclose on the property. PHL published notice of the scheduled foreclosure sale in the Alabama Messenger, a local newspaper, and an auctioneer for PHL conducted the foreclosure sale on September 14, 2017. PHL was the highest bidder at the foreclosure sale, and the auctioneer executed a foreclosure deed on behalf of PHL to PHL.

On September 15, 2017, an attorney for PHL sent a notice to Underwood demanding possession of the property and that she

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vacate the property. On November 3, 2017, PHL filed a complaint in the trial court, alleging that PHL held title to the property under its foreclosure deed, that Underwood was in physical possession of the property, and that Underwood had refused to surrender possession of the property to PHL. PHL requested that the trial court enter a judgment awarding it "possession of said property, damages ..., interest, and costs." See Ala. Code 1975, § 6-6-280; see also, e.g., Federal Land Bank of New Orleans v. Farris, 226 Ala. 574, 575, 148 So. 123, 124 (1933).

On April 6, 2018, Underwood filed an answer, generally denying PHL's allegations and asserting several affirmative defenses to PHL's ejectment claim, including that the foreclosure was void for various reasons. Underwood also asserted numerous counterclaims against PHL. PHL filed an answer to Underwood's counterclaims, generally denying Underwood's allegations and asserting several affirmative defenses to the counterclaims. Thereafter, Underwood amended

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her answer and her counterclaims, and PHL filed an answer to the amended counterclaims.<sup>1</sup>

On January 8, 2019, PHL filed a motion for a summary judgment regarding its ejectment claim; the motion sought a judgment regarding PHL's right to possession of the property. The motion for a summary judgment did not reference PHL's request for damages or Underwood's counterclaims against PHL, which apparently had been dismissed after Underwood allegedly failed to respond to PHL's discovery requests. Underwood filed a response in opposition to PHL's motion for a summary judgment.

On March 18, 2019, the trial court entered an order granting PHL's motion for a summary judgment regarding its request for possession of the property; the March 2019 order also stated that Underwood's counterclaims against PHL were dismissed. The March 2019 order did not address PHL's request for damages. Underwood appealed to this court. This court transferred the appeal to the supreme court for lack of

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<sup>1</sup>Underwood's amended "counterclaims" also included claims against third-party defendants Flagstar and MERS. The claims against Flagstar and MERS subsequently were dismissed, and Underwood has not appealed regarding the dismissal of those claims.

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jurisdiction. The supreme court transferred the appeal to this Court pursuant to § 12-2-7(6), Ala. Code 1975.

We do not address Underwood's arguments on appeal because we lack jurisdiction to do so.

"It is a settled jurisprudential principle that an appellate court must initially consider whether it has jurisdiction to hear and decide an appeal: "[J]urisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu." Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987)."

"Alabama Dep't of Revenue v. WestPoint Home, LLC, 256 So. 3d 1197, 1199 (Ala. Civ. App. 2018)."

Denault v. Federal Nat'l Mortg. Ass'n, 284 So. 3d 913, 922 (Ala. Civ. App. 2019). "[E]xcept in limited circumstances not applicable here, this court does not have jurisdiction to consider an appeal taken from a nonfinal judgment." Id. at 923. "For a judgment to be final, it must 'put[] an end to the proceedings between the parties to a case and leave[] nothing for further adjudication.'" Ex parte Wharffhouse Rest. & Oyster Bar, Inc., 796 So. 2d 316, 320 (Ala. 2001)." Id.

Based on the record before us, PHL sought both ejectment of Underwood from the property and damages for Underwood's purported wrongful detention of the property. See, e.g.,

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Federal Land Bank of New Orleans v. Farris, 226 Ala. 574, 575, 148 So. 123, 124 (1933). However, PHL's motion for a summary judgment addressed only its request for possession of the property. PHL's request for damages remains pending in the trial court, and no final judgment has been entered in this case. See Denault, supra; Lucky v. Deutsche Bank Nat'l Trust Co., 46 So. 3d 966 (Ala. Civ. App. 2009); see also Vestavia Country Club v. Armstrong, 271 Ala. 294, 296, 123 So. 2d 130, 133 (1960) ("[D]amages for detention is not essential to an ejectment action, but where such are claimed and a default judgment is entered with leave to prove the damages, such judgment is not final until the damages are either proved or waived.").<sup>2</sup> Accordingly, we dismiss Underwood's appeal.

APPEAL DISMISSED.

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

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<sup>2</sup>We also note that, after Underwood failed to respond to PHL's discovery requests, PHL sought an award of attorney's fees in addition to the dismissal of Underwood's counterclaims. At the direction of the trial court, PHL filed an evidentiary submission in support of its attorney-fee request on August 21, 2018. The trial court has not entered an order addressing that request.