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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2009-2010

1071195

Ex parte Johnnie Mae Alexander Green et al.

**PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS**

(In re: Frank Stokes, Jr.

v.

E'Stella Alexander Webb Cottrell et al.)

1071204

Ex parte E'Stella Alexander Webb Cottrell

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS

(In re: Frank Stokes, Jr.

v.

E'Stella Alexander Webb Cottrell et al.)

(Elmore Circuit Court, CV-03-321;
Court of Civil Appeals, 2060887)

PER CURIAM.

This case is before this Court on petitions for the writ of certiorari. Johnnie Mae Alexander Green, Lillie Robinson, Oscar C. Alexander, Bertha Mae Humphrey, Shirley Alexander, Cathy Alexander, Johnny Alexander, Jr., and Althea Alexander (hereinafter referred to collectively as "the Greens") (case no. 1071195) and E'Stella Alexander Webb Cottrell (case no. 1071204) petitioned this Court for review of that portion of the opinion of the Court of Civil Appeals reversing the judgment of the trial court insofar as it quieted title to certain real estate in the Greens and Cottrell (hereinafter referred to collectively as "the plaintiffs") and remanding the case to the trial court to enter a judgment quieting title in that real estate in the heirs of Larenda Jenkins. <u>Stokes</u>

v. Cottrell, [Ms. 2060887, March 14, 2008] __ So. 3d __ (Ala. Civ. App. 2008). In addition, Cottrell seeks reversal of the opinion of the Court of Civil Appeals insofar as it affirms the trial court's judgment awarding certain other real estate to Jenkins's heirs.

In cases no. 1071195 and 1071204, we vacate the portion of the opinion of the Court of Civil Appeals reversing the trial court's judgment. We quash the petition in case no. 1071204 insofar as it asks us to decide whether the Court of Civil Appeals erred in affirming the trial court's judgment quieting title to a portion of the disputed property in "the heirs of Larenda Jenkins." We remand the case to the Court of Civil Appeals for further proceedings consistent with this opinion.

Facts and Procedural History

This case concerns a dispute over the rightful ownership of approximately 270 acres of real property formerly owned by Estelle Haggerty Alexander ("Estelle"), who died in 1962

without a spouse or children. The Court of Civil Appeals summarizes the facts of this case as follows:[1]

> "During her lifetime, Estelle owned six parcels of land located in Elmore County in the vicinity of Rifle Range Road and Dozier Road. In the complaint to quiet title, the parcels were identified as 'parcel 1,' consisting of approximately 100 acres for which Estelle had a deed of record in her name; 'parcel 2,' consisting of approximately 11 acres; 'parcel 3,' consisting of approximately 4.3 acres; 'parcel 4,' consisting of approximately 24 acres; 'parcel 5,' consisting of approximately 52 acres; and 'parcel 6,' consisting of approximately 79 acres. No deed of record was produced for parcels 2 through 6. The parties stipulated that Estelle owned all six parcels at the time of her death.
>
> "During her lifetime, Estelle lived on a portion of parcel 1, the 100-acre tract of land. Also during her lifetime, Estelle took in two infants--Cottrell and Johnny [Alexander] Sr.--whom she raised to adulthood. Cottrell and Johnny Sr. were not related by blood to Estelle or to each other, and Estelle did not legally adopt them. However, at some point before her death, Estelle had a house built for Johnny Sr. and his wife on parcel 1. Cottrell lived in Estelle's house.
>
> "Estelle died in 1962; she left no will. She was buried on parcel 1 alongside her husband. Following Estelle's death, both Cottrell and Johnny Sr. continued living on the property. Cottrell continued living in Estelle's house, while Johnny Sr., his

[1]The plaintiffs dispute some of the facts as set forth in the opinion of the Court of Civil Appeals. The existence of those factual disputes is not material to this opinion; therefore, the Court will not address those disputes further in this opinion.

wife, Johnnie Mae [Alexander] Green, and their children continued living in the house that Estelle had had built for them on parcel 1.

"After Estelle's death in 1962, the Elmore Probate Court appointed Larenda Jenkins, Estelle's cousin and only living relative by blood, as the administrator of Estelle's estate.[2] Johnny Sr. and Cottrell each filed claims against Estelle's estate in amounts of $7,500 and $5,000, respectively, for personal services rendered to Estelle during her lifetime. Johnny Sr. also challenged Jenkins's appointment as administrator; he filed an action seeking to have himself named as the administrator as the estate's largest creditor.

"A third party also challenged Jenkins's appointment as administrator, and the matter was removed to the circuit court. After a hearing in 1963, the challenges to Jenkins's appointment as administrator were dismissed. Although Johnny Sr. voluntarily dismissed his petition, the order resulting from the circuit court's 1963 hearing also recognized that the challenges filed to Jenkins's appointment as administrator were 'not well taken' and were 'denied.' That order also declared that Jenkins was the administrator of Estelle's estate. No appeal was taken from that order.

"Cottrell moved away from the property in approximately 1964 or 1965 and never reestablished a residence thereon. In 1965, Cottrell and Johnny Sr. filed a complaint, alleging that, during her lifetime, Estelle had purchased the six parcels[[2]] of land for their benefit and that, at the time of Estelle's death, the property was being held in a

[2]The reference to "six parcels" in the Court of Civil Appeals' opinion appears to be an error. The alleged constructive trust pertained only to 100 acres of the property at issue in this case.

constructive trust for them.[3] In that complaint, Johnny Sr. and Cottrell acknowledged that they were not Estelle's biological or adoptive children.

"During the pendency of that 1965 action, Jenkins died intestate; at the time of her death, Jenkins had not closed Estelle's estate. Johnnie Mae Stokes, Jenkins's granddaughter, was then named as the administrator of Estelle's estate. Cottrell and Johnny Sr.'s 'constructive trust' action was subsequently dismissed for lack of prosecution.

"Johnny Sr. died in 1988; he was buried alongside Estelle. At the time of his death, Johnny Sr.'s wife and several of his children were still living on the property.

"Johnnie Mae Stokes, as the administrator of Estelle's estate, paid the property taxes due on the six parcels; the taxes were assessed in the name of the 'estate of Estelle Haggerty Alexander.' Also during Johnnie Mae Stokes's administration of Estelle's estate, she leased to third parties the property held in Estelle's estate. The record contains a copy of a 1991 lease entered into by Johnnie Mae Stokes with E.B. Calloway. That lease provided:

> "'For the sum of $700.00 for 1991 rent, I, Johnnie Mae Stokes, agree to lease E.B. Calloway all the farming and cotton acreage land of Larenda Jenkins and Estelle Alexander, south of the Rifle Range Road and north of the Rifle Range [Road] joining the Griffin land for the sum of $700.00. We reserve the rights to fish and hunt on said property, my family and the family of Johnny Alexander with hunting and fishing rights going to E.B. Calloway south and north of the Rifle Range [Road]. If this land is sold before the year is out, E.B.

> Calloway will be given the needed time to gather his crop.'

"Another such lease for the year 1993, this one between Johnnie Mae Stokes and Colvin Davis, was introduced into evidence; the 1993 lease differed from the 1991 lease only in the names of the parties involved and the amount of rent charged for the lease.

"Frank Stokes, Jr., Johnnie Mae Stokes's son, testified that, although other leases could not be located, Johnnie Mae Stokes had leased the property to Calloway and then to Davis repeatedly and continuously during her administration of the estate. Also, according to Oscar Alexander, Johnny Sr. was aware that, during Johnny Sr.'s lifetime, a third party was leasing the property. Oscar believed that the administrator of Estelle's estate, Johnnie Mae Stokes, was responsible for the leases of the property. Because Johnny Sr. died in 1988, it appears that Johnnie Mae Stokes leased the property even before 1991.

"Johnnie Mae Stokes died intestate in 1996 without having formally closed Estelle's estate. Although Frank Stokes, Jr., was never appointed administrator of Estelle's estate, he took over the handling of Estelle's estate. He paid the taxes due on the property and he continued to enter into farming, hunting, and fishing leases pertaining to the property with Colvin Davis until Davis's death. At that point, Stokes began entering into leases for the use of the property with Colvin's son, Reese Davis.

"In 2002, Cottrell and Oscar Alexander filed a petition, asking the probate court to appoint them as coadministrators of Estelle's estate. In that petition, Cottrell and Oscar Alexander, one of Johnny Sr.'s sons, claimed that they were the daughter and grandson of Estelle, that the estate

was open, and that no administrator existed. Cottrell and Oscar also claimed that, other than the ... plaintiffs, they knew of no other heirs to Estelle's estate. Cottrell and Oscar did not identify the heirs of Larenda Jenkins as Estelle's kin and heirs at law. Cottrell and Oscar were appointed coadministrators on May 22, 2002.

"At some point in 2003, Frank Stokes, Jr., entered into another lease with Reese Davis, granting Davis the right to farm, hunt, and fish on the property in Estelle's estate. However, because a lawyer representing the ... plaintiffs contacted Davis and instructed him not to plant his crop that year, no crops were planted in 2003. Stokes did not enter into any subsequent leases because of this litigation.

"In April 2003, the ... plaintiffs entered into an agreement to sell the property in Estelle's estate to a third party. A judgment was entered by the probate court on August 7, 2003, identifying the ... plaintiffs as Estelle's heirs at law and approving the final settlement of Estelle's estate proposed by the ... plaintiffs. There is no indication in the record that any of the pleadings filed in this 2002 probate action were ever served on the heirs of Larenda Jenkins.

"On July 24, 2003, the ... plaintiffs filed this action in the Elmore Circuit Court ('the trial court') to quiet title to the land owned by Estelle's estate. The ... plaintiffs alleged that they held color of title to the property because Johnny Sr. and Cottrell were Estelle's children and that, therefore, they were Estelle's next of kin; the ... plaintiffs also alleged that they had been determined to be Estelle's heirs at law in conjunction with the 2002 administration of Estelle's estate. That complaint was subsequently amended to assert title to the property by adverse

possession and to acknowledge that none of the ... plaintiffs were Estelle's blood relatives.[4]

"Subsequent to the filing of the quiet-title action, Oscar Alexander sold the rights to cut timber on some unspecified portion of the property to a third party. In June 2005, Lillie Robinson entered into a hunting lease with a third party, granting this third party the right to hunt on '150 acres' of the property. All of these possessory acts occurred after the filing of their quiet-title action.

"In April 2006, Frank Stokes, Jr., petitioned the probate court to vacate its orders appointing Cottrell and Oscar Alexander as coadministrators of Estelle's estate and declaring the ... plaintiffs to be Estelle's heirs at law. Stokes also sought a restraining order to prevent the ... plaintiffs from selling, transferring, conveying, wasting, or consuming the lands and assets on the lands. On April 26, 2006, the probate court vacated all orders and findings from the 2002 probate proceeding.[5] Shortly before the trial in the quiet-title action, Stokes sought to amend his answer and to assert a counterclaim, asking the court to quiet title to the property in the heirs of Larenda Jenkins; the trial court, however, denied Stokes's motion to amend.

____

"[2]Under the probate law in effect at the time of Estelle's death, Title 61, § 81, Ala. Code 1940 (Recomp. 1958), the next of kin entitled to share in the decedent's estate was given priority for the position of administrator if no spouse survived the decedent. If no next of kin entitled to share in the estate could be identified, the largest creditor was to be named as administrator of the decedent's estate.

"[3]Cottrell was a minor at the time this complaint was filed, and, thus, it was filed by and through her father, as her best friend.

"[4]After a family dispute arose between Cottrell and the remaining ... plaintiffs, Cottrell retained separate counsel.

"[5]At this point in the litigation, Cottrell obtained separate counsel to represent her in the action to quiet title."

Stokes, __ So. 3d at __.

On November 1, 2006, the trial court entered a pretrial order bifurcating the trial of the quiet-title action as follows:

"[T]he Court determines that judicial economy will best be served by bifurcating the trial of this case so as to postpone, for the time being, the trial of those issues in which the interests of Plaintiff Cottrell would be adverse and in conflict with the interests of the heirs of Johnnie Alexander. Accordingly, the Court will proceed, on November 1, 2006, as follows:

"1. The Court will try the issue of whether the plaintiffs can establish that they are in peaceable possession of the property sufficient to allow them to maintain an action to quiet title.

"2. Assuming plaintiffs can establish peaceable possession of the property in question, the burden will then shift to the Defendant, Frank Stokes, Jr., to show legal title to the property. The issue of Defendant's legal title to the property will be tried on November 1, 2006.

"3. Assuming that the Defendant is able to show legal title to the property, the burden will then shift back to plaintiffs to show superior legal title by adverse possession. If the Court reaches the question of whether plaintiffs can show superior title by adverse possession, the Court will receive evidence on the issue of adverse possession and make a determination as to what portion of the property, if any, is under the adverse possession of the plaintiffs. If the Court finds that some or all of the plaintiffs have established title to some or all of the subject property by adverse possession, the Court will make that finding. The Court will not, however, at the November 1, 2006, hearing, attempt to make any allocation of the property among the various plaintiffs. The resolution of those legal and factual issues that will ultimately determine how any portion of the property being adversely possessed will ultimately be divided among the plaintiffs will be reserved for a later hearing.... For now, however, the Court will not attempt to make any allocation among the plaintiffs of any property found to be under adverse possession. Any decision as to how property under adverse possession (if any is found to be) shall be divided among the plaintiffs will be reserved until a later time."

The case then proceeded as follows:

"The ... plaintiffs' quiet-title action was heard at a bench trial conducted in December 2006 and January 2007. The parties stipulated to the specific property at issue and stipulated that the property at issue belonged to Estelle in fee simple at the time of her death. Testifying at the hearing were Oscar Alexander; Fred Gray, the attorney who [had] represented Jenkins in connection with the administration of Estelle's estate; Johnny Jr.;

Cottrell; Clifford Thomas, who knew Estelle; Christopher Cairns, an independent property appraiser who had examined the property at issue; Frank Stokes, Jr.; and Reese Davis, Jr., who had leased the land from Stokes.

"It was undisputed that Cottrell and Johnny Sr. had lived on the property beginning before Estelle's death in 1962. No one disputed that Cottrell and Johnny Sr. lived on the property with the permission of Estelle during her lifetime. Testimony was also presented tending to indicate that, after Estelle's death, Cottrell and Johnny Sr. remained on the property with the permission of the administrator of Estelle's estate. However, the ... plaintiffs disputed that testimony.

"Finally, the trial court received copies of the 1991 and 1993 lease agreements executed by the administrator of Estelle's estate, in which the administrator leased the entire property to third parties for farming, hunting, and fishing. However, in those leases, the administrator specifically reserved the right of the ... plaintiffs to hunt and fish on the land.

"Testimony from the ... plaintiffs established that they were aware that Jenkins and the Stokeses had repeatedly leased the property to third parties. The ... plaintiffs admitted that the crops planted by the lessees were readily visible on the three farmed parcels; one of the ... plaintiffs also acknowledged that the leases granted the lessees the right to use all the property. Additionally, one of the lessees, Reese Davis, testified that, while on the property, he had run into Johnny Jr. Davis testified that Johnny Jr. had never questioned Davis's right to be on the property and had never asked him to leave the property.

"Cottrell admitted that she knew Jenkins had been Estelle's only living relative; she

acknowledged that Jenkins and the Stokeses were Estelle's heirs. The ... plaintiffs were also aware that Jenkins and the Stokeses had paid the property taxes since Estelle's death in 1962 until at least 1997.[6]

"[6]An exhibit presented to the trial court indicated that, in 1997, Cottrell made a partial payment toward the taxes; in 1998 and 1999, Frank Stokes, Jr., and Cottrell each paid an amount toward the taxes; in 2000 and 2001, Stokes paid the taxes; and, from 2002 until 2005, Oscar Alexander and Lillie Robinson paid the taxes. However, the testimony regarding the payment of taxes from 1997 through 2005 was disputed and did not entirely support this exhibit."

Stokes, __ So. 3d at __.

On April 25, 2007, the trial court entered the following order:

"JUDGMENT QUIETING TITLE

"This matter was heard before the Court on a non-jury trial on December 1, 2006 and January 24, 2007, and was submitted for judgment on the pleadings, parties' exhibits, and ore tenus testimony of the parties and their witnesses. Present in Court were plaintiffs [the Greens] ...; Plaintiff [Cottrell] ...; Defendant FRANK STOKES, JR., ... and, Roderick Perdue, Esq., Guardian ad Litem representing Willie C. Alexander, thought to be deceased, and any and all unknown heirs of Estelle Haggerty Alexander.

"The court finds that the complaint, as amended, complies in all respects with the requirements of Ala. Code [1975,] § 6-6-561, in order for the court to quiet title in and to the real property described

within Plaintiffs' Complaint, and the amendments thereto, being approximately 279[3] acres of real property located in Elmore County, Alabama, (which is and has been assessed to the 'Heirs of Estelle Alexander' by the Elmore County Revenue Commissioner)....

"The Court finds that some or all of the plaintiffs have proven that they have, since the death of Estelle Haggerty Alexander in 1962, been in actual, exclusive, open, notorious, uninterrupted, and hostile possession of the lands described in the Complaint, as amended, with the exception of those subparcels of land specifically identified hereinbelow. Such possession has been proven by evidence that, since 1962, some or all of the plaintiffs occupied the land, lived on it, maintained the improvements on it, cultivated portions of it, kept domestic livestock on it, cut timber on it, cut firewood on it, hunted on it, fished on it, operated a business on it, and buried their dead on it. The Court finds from all the evidence that the plaintiffs' possession was sufficient for some or all of them to acquire title to the property by adverse possession. Accordingly, it is the judgment of this Court that title to the lands identified in the Complaint, as amended, less and except those sub-parcels specifically identified below, is hereby quieted in the plaintiffs. The respective interests, if any, of each of the named plaintiffs shall be determined at a subsequent hearing, pursuant to this Court's earlier Order bifurcating the trial of this case.

"It is the opinion of the court that the heirs of Larenda Jenkins are entitled to a judgment quieting title to certain subparcels of the real property

[3]We note that this figure differs from the total acreage the Court of Civil Appeals said was in dispute. It is unclear from the record precisely how many acres are involved.

prayed for in the Defendant's counter-complaint, as described hereinafter within Parcel A, Parcel B, and Parcel C. As to those sub-parcels, the Court finds that the Defendant, Frank Stokes, Jr., showed record title sufficient to defeat plaintiffs' presentation of prima facie case to quiet title thereto. The Court further finds that record title to the subject property was vested in the name of Estelle Haggerty Alexander at the time of her death and that title passed to Larenda Jenkins at the death of Estelle Haggerty Alexander. Accordingly, the Court quiets title to those sub-parcels identified below in the heirs of Larenda Jenkins.

"The Court finds there to be no just reason to delay the final entry of this order and directs the entry of final order on the determinations made herein regarding the Defendants, and against any and all other persons and entities who may claim any interest in or to the lands described herein who have not filed an answer or intervened in this action. Accordingly, it is ORDERED, ADJUDGED, and DECREED:

"1. The right, title, interest and ownership of the Heirs of Larenda Jenkins in and to a portion of the subject property is hereby established in fee simple and forever quieted in rem and against all parties to this action, both named and unknown, all other persons and entities, and against the real property which is more particularly described as

"Parcel A: Beginning at the NW corner of Section 23, T17, R19, Elmore County, Alabama, thence South along westerly Section line approximately 1897 feet to the south right-of-way of County Road #4 (Rifle Range Road); thence leaving said Section line and proceeding Easterly along said south right-of-way of County Road #4 (Rifle Range Road) approximately 1080 feet to the Point of

Beginning (that point being the northeast corner of property deeded to B. Gene Williams and Neva Albritton Williams by Warranty Deed dated May 15, 1981 and recorded at Card 21513); Thence South 382 feet; Thence East 430 feet; Thence Northeasterly to the south right-of-way of County Road #4 (Rifle Range Road) a distance of approximately 385 feet; Thence Westerly along said south right-of-way of said public road 500 feet to the P.O.B. All lying in S23, T17, R19, Elmore County, Alabama.

"Parcel B: Beginning at the NE corner of Section 22, T17, R19, being the Point of Beginning for the parcel herein described; Thence South approximately 1820 feet to the North right-of-way of County Road #4 (Rifle Range Road); Thence West along said right-of-way approximately 270 feet; Thence North approximately 1825 feet; Thence East approximately 260 feet to the Point of Beginning. All lying in the E 1/2 of the E 1/2 of the Northeast Quarter of Section 22, Township 17, Range 19, Elmore County, Alabama.

"Parcel C: Beginning at the NW corner of Section 27, T17, R19; thence East approximately 209 feet to the east bank of the Tallapoosa River; thence South approximately 116 feet along the river bank to the Point of Beginning of the parcel herein described; Thence southwesterly along said river bank approximately 984 feet; thence East approximately 2508 feet; thence North approximately 952 feet; thence West approximately 2237 feet to the bank of the Tallapoosa River and the P.O.B. All lying in the N 1/2 of the NE 1 /4 of S27, T17, R19, Elmore County, Alabama, and containing 52 acres, more or less.

"....

> "3. The plaintiffs are entitled to a judgment quieting title to the remainder of the subject real property, with each named Plaintiff's interest therein, if any, to be determined after further proceedings and order of this Court."

On June 6, 2007, Frank Stokes, Jr. ("Stokes"), filed a notice of appeal to this Court from the April 25, 2007, order of the trial court. On June 20, 2007, the Greens and Cottrell filed separate notices of appeal to this Court from the order quieting title to three parcels of the property in the heirs of Larenda Jenkins. On June 29, 2007, this Court transferred all three appeals to the Court of Civil Appeals pursuant to Ala. Code 1975, § 12-2-7(6).

On March 14, 2008, the Court of Civil Appeals issued an opinion in which that court (1) affirmed the trial court's judgment quieting title to a portion of the real property in the heirs of Larenda Jenkins and (2) reversed the portion of the trial court's order that quieted title to the remainder of the property in the plaintiffs and remanded the case with instructions to the trial court to enter a judgment quieting title to those parcels in the heirs of Larenda Jenkins. Stokes, __ So. 3d at __.

On May 29, 2008, Cottrell filed a petition for a writ of certiorari seeking review and reversal of the judgment of the Court of Civil Appeals in its entirety (case no. 1071204). On May 30, 2008, the Greens filed a petition for a writ of certiorari seeking review of the decision of the Court of Civil Appeals insofar as that court reversed the portion of the trial court's order quieting title to some of the property in the plaintiffs (case no. 1071195).

Analysis

I. The Plaintiffs' Contention that the Court of Civil Appeals Erred in Reversing the Portion of the Trial Court's Order Quieting Title to Some of the Property in the Plaintiffs

The plaintiffs argue that the Court of Civil Appeals erred in reversing the portion of the trial court's order awarding them all but three parcels of the property. Before considering the merits of this argument, we must first consider whether that portion of the trial court's order is subject to appellate review at this stage of the litigation.

With some exceptions not applicable here,[4] "this Court is without jurisdiction to hear an appeal in the absence of a

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[4]See Rules 4(a) and 5, Ala. R. App. P.

final judgment." Championcomm.net of Tuscaloosa, Inc. v. Morton, 12 So. 3d 1197, 1199 (Ala. 2009) (citing Hamilton ex rel. Slate-Hamilton v. Connally, 959 So. 2d 640, 642 (Ala. 2006), quoting Cates v. Bush, 293 Ala. 535, 537, 307 So. 2d 6, 8 (1975)); see also Ex parte Wharfhouse Rest. & Oyster Bar, Inc., 796 So. 2d 316, 320 (Ala. 2001) ("Without a final judgment, this Court is without jurisdiction to hear an appeal. Cates v. Bush, 293 Ala. 535, 307 So. 2d 6 (1975)."). This Court will take notice of the question of subject-matter jurisdiction "'at any time or even ex mero motu.'" Alabama State Docks Terminal Ry. v. Lyles, 797 So. 2d 432, 435 (Ala. 2001) (quoting Aland v. Graham, 287 Ala. 226, 229, 250 So. 2d 677, 678 (1971)). "'"When it is determined that an order appealed from is not a final judgment, it is the duty of the [appellate court] to dismiss the appeal ex mero motu."'" Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 362 (Ala. 2004) (quoting Tatum v. Freeman, 858 So. 2d 979, 980 (Ala. Civ. App. 2003), quoting in turn Powell v. Republic Nat'l Life Ins. Co., 293 Ala. 101, 102, 300 So. 2d 359, 360 (1974)).

> "A final judgment that will support an appeal is one that puts an end to the proceedings between the

> parties to a case and leaves nothing for further adjudication. See City of Birmingham v. City of Fairfield, 396 So. 2d 692 (Ala. 1981). 'A judgment need no longer be phrased in formal language nor bear particular words of adjudication. It is sufficient if it is signed or initialed by the trial court and, in considering the entire record, it evidences an intention to adjudicate and the substance of adjudication.' Dudley v. State Dep't of Human Res., 555 So. 2d 1121, 1121 (Ala. Civ. App. 1989) (citing Rule 58(c), Ala. R. Civ. P., and Purnell v. Covington County Bd. of Educ., 519 So. 2d 560 (Ala. Civ. App. 1987))."

Wharfhouse Rest., 796 So. 2d at 320.

The trial court's order quieting title does not "evidence[] an intention" to finally adjudicate the plaintiffs' claims with respect to the land awarded to the plaintiffs. See Wharfhouse Rest., 796 So. 2d at 320. The trial court, finding "no just reason to delay," availed itself of the provisions of Rule 54(b), Ala. R. Civ. P., to "direct[] the entry of [a] final order on [its] determinations ... regarding the Defendants, and against any and all other persons and entities who may claim any interest in or to the lands described herein who have not filed an answer or intervened in this action." (Emphasis added.) See Rule 54(b), Ala. R. Civ. P. (permitting the trial court under certain circumstances to "direct the entry of final judgment

as to one or more but fewer than all the claims or parties" in an action). The trial court did not purport to enter a final judgment as to any other issue.

As to the plaintiffs' interest in all but the three parcels awarded to the heirs of Larenda Jenkins, the trial court's order in this case does not put an end to the proceedings among the parties. Rather, in concluding that the "[p]laintiffs are entitled to a judgment quieting title to the remainder of the subject real property," the trial court reserved ruling on "each named [p]laintiff's interest therein, if any." The trial court expressly left that issue to be adjudicated "after further proceedings and order of [the trial] [c]ourt" in accordance with the trial court's "earlier order bifurcating this case."

Therefore, the trial court's judgment is not a final judgment with respect to the real property awarded to the plaintiffs by that judgment. Miller Props., LLC v. Green, 958 So. 2d 850, 851 (Ala. 2006) ("'A final judgment that will support an appeal is one that puts an end to the proceedings between the parties to a case and leaves nothing for further adjudication.'" (quoting Wharfhouse Rest., 796 So. 2d at 320,

citing in turn City of Birmingham v. City of Fairfield, 396 So. 2d 692 (Ala. 1981))); City of Birmingham, 396 So. 2d at 694 ("We have previously defined 'final judgment' as a decree which 'ascertains and declares such rights embracing the substantial merits of the controversy and the material issues litigated or necessarily involved in the litigation.'" (quoting Morton v. Chrysler Motors Corp., 353 So. 2d 505 (Ala. 1977))).

Because the trial court's finding that the "[t]he [p]laintiffs are entitled to a judgment quieting title to the remainder of the subject real property" was not a final adjudication of the plaintiffs' claims regarding that property, it was the duty of the Court of Civil Appeals to dismiss the appeal ex mero motu with regard those claims. Cf. Dzwonkowski, 892 So. 2d at 362. Therefore, insofar as it purported to reverse the trial court's ruling that the plaintiffs were entitled to a judgment quieting title to a portion of the property, the judgment of the Court of Civil Appeals is due to be vacated.

II. Cottrell's Contention that the Court of Civil Appeals Erred in Affirming that Portion of the Trial Court's Order Quieting Title to Three Parcels of the Property in the "The Heirs of Larenda Jenkins"

In case no. 1071204, Cottrell seeks reversal of the judgment of the Court of Civil Appeals insofar as that court affirmed the trial court's judgment awarding certain real estate to "the heirs of Larenda Jenkins."[5] We note that Cottrell seeks to quiet title to the parcels awarded to the Jenkins heirs pursuant to § 6-6-560 et seq., Ala. Code 1975.[6] Section 6-6-560 authorizes "any person" who "claims ... to own any lands or any interest therein, and is in the actual, peaceable possession of the land" to commence an in rem action "to establish the right or title to such lands or interest and to clear up all doubts or disputes concerning the same." Ala. Code 1975, § 6-6-560.[7] Jurisdiction exists over Cottrell's

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[5]The Greens did not petition for review of this issue.

[6]The plaintiffs asserted in their complaint that they brought their claims pursuant to § 6-6-540, Ala. Code 1975, which governs in personam actions to quiet title. However, the trial court correctly indicated in its order quieting title that this action is governed by § 6-6-560 et seq. Additionally, in her briefs before this Court, Cottrell states that her claims were brought pursuant to § 6-6-560 et seq.

[7]Alabama Code 1975, § 6-6-560, also authorizes the commencement of an in rem action to quiet title

> "'(2) When neither the complainant nor any other person is in the actual possession of the lands and complainant has held color of title to the lands, or interest so claimed, for a period of ten or more consecutive years next preceding the filing of the

claims only if Cottrell can demonstrate that, at the time the

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bill, and has paid taxes on the lands or interest during the whole of such period[;]

"'(3) When neither the complainant nor any other person is in the actual possession of the lands and complainant, together with those through whom he claims, have held color of title and paid taxes on the lands or interest so claimed for a period of ten or more consecutive years next preceding the filing of the bill[; or]

"'(4) When neither the complainant nor any other person is in the actual possession of the lands and complainant and those through whom he claims have paid taxes during the whole of such period of ten years on the lands or interest claimed, and no other person has paid taxes thereon during any part of said period.'"

Shelton v. Wright, 439 So. 2d 55, 57 (Ala. 1983) (quoting Fitts v. Alexander, 277 Ala. 372, 375, 170 So. 2d 808, 810 (1965)). However, these three sets of circumstances can exist only when neither the complainant nor any other person is in actual possession of the land. In light of the undisputed facts reflected in the record regarding actual possession of the property in dispute here, and because Cottrell bases her quiet-title claim solely on rights allegedly acquired by adverse possession, these three sets of circumstances are inapplicable in this case. Cf. Cobb v. Brown, 361 So. 2d 1069, 1070 (Ala. 1978) ("Title may be quieted in a party under Tit. 7, § 1116 [§ 6-6-560, Ala. Code 1975] only when that party is in actual, peaceable possession or when no one is in actual possession. Dennison v. Claiborne, 289 Ala. 69, 265 So. 2d 853 (1972); Fitts v. Alexander, 277 Ala. 372, 170 So. 2d 808 (1965).").

complaint was filed, she was "in the actual, peaceable possession of the land." Ala. Code 1975, § 6-6-560.[8]

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[8]Woodland Grove Baptist Church v. Woodland Grove Cmty. Cemetery Ass'n, Inc., 947 So. 2d 1031, 1038 (Ala. 2006) ("The trial court has jurisdiction over quiet-title actions in which the plaintiff shows that he or she is in peaceable, rather than scrambling, possession of the property."); State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1028 (Ala. 1999) ("'Standing is a necessary component of subject matter jurisdiction.'" (quoting Barshop v. Medina County Underground Water Conservation Dist., 925 S.W.2d 618, 626 (Tex. 1996))); Cullman Wholesale Co. v. Simmons, 530 So. 2d 727, 729 (Ala. 1988) (plurality opinion) ("[T]he trial court, in the absence of a showing by the complainant that he meets one of the four situations set forth in [Ala. Code 1975, § 6-6-560], is without power to assume jurisdiction over the subject res."); Denson v. Gibson, 392 So. 2d 523, 524 (Ala. 1980) ("Complainant [in a quiet-title action] must prove, inter alia, that he was in the actual or constructive possession of the property, and that his possession was peaceable as distinguished from scrambling or disputed. Hinds v. Slack, 293 Ala. 5, 299 So. 2d 717 (1974). It is the character of the possession at the time the suit commenced which is decisive. Davidson v. Blackwood, 250 Ala. 263, 34 So. 2d 205 (1948)."); cf. Merchants Nat'l Bank of Mobile v. Morris, 252 Ala. 566, 569, 42 So. 2d 240, 242 (1949) (noting that an in rem proceeding to quiet title "is purely statutory and the [Grove] Act [which includes the statute now codified at § 6-6-560] confers upon the circuit court in equity a limited jurisdiction in which the statutory requirements must be made to appear on the record and be introduced in evidence as a support to the decree"); Buchmann Abstract & Inv. Co. v. Roberts, 213 Ala. 520, 521, 105 So. 675, 676 (1925) ("[W]e are constrained to hold that the possessory acts herein indicated on the part of respondent were sufficient as a contest of complainant's possession so as to destroy the peaceable character thereof and constitute it a disputed, contested or scrambling one. ... This conclusion destroys the jurisdiction of the court over the cause at its very threshold, and renders

"A court is obligated to vigilantly protect against deciding cases over which it has no [subject-matter] jurisdiction ...." Crutcher v. Williams, 12 So. 3d 631, 635 (Ala. 2008) (citing Wilkinson v. Henry, 221 Ala. 254, 256, 128 So. 362, 364 (1930)). Therefore, in reviewing Cottrell's petition, we must consider at the outset whether, at the time the complaint was filed, Cottrell was in the actual, peaceable possession of the land that is the subject of these appellate proceedings. In considering that issue, we note that, "[o]n questions of subject-matter jurisdiction, this Court is not limited by the parties' arguments or by the legal conclusions of the trial and intermediate appellate courts regarding the existence of jurisdiction." Ex parte Alabama Dep't of Human Res., 999 So. 2d 891, 894-95 (Ala. 2008) (citing Ex parte Smith, 438 So. 2d 766, 768 (Ala. 1983)).

"'[O]ne is in peaceable possession as opposed to scrambling possession when at the time of the suit no other party is denying the fact of complainant's possession.'" Woodland Grove Baptist Church v. Woodland Grove Cmty. Cemetary

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unnecessary a consideration of the questions which constitute any of the issues as to the contest of title.").

Ass'n, Inc., 947 So. 2d 1031, 1039 (Ala. 2006) (quoting Denson v. Gibson, 392 So. 2d 523, 524-25 (Ala. 1980)). "When one party does something (other than mere isolated acts not amounting to an interference with [the complainant's] peaceable possession) which indicates that he himself claims to be in possession, the complainant's possession ceases to be peaceable and becomes 'disputed' or 'scrambling.'" Cobb v. Brown, 361 So. 2d 1069, 1070 (Ala. 1978) (citing Ford v. Washington, 288 Ala. 194, 259 So. 2d 226 (1972)); see also George E. Wood Lumber Co. v. Williams, 157 Ala. 73, 77, 47 So. 202, 203 (1908) ("It is difficult to lay down any definite rule as to what is a peaceable possession. ... [I]t would not do to state that the mere fact that another denied the right of possession would render the possession not peaceable. The party denying the right of possession in the complainant must do something indicating that he claims to be in possession himself ...."). "'If both parties claim actual possession[9] or are scrambling for it, then the possession is not

[9]"Actual possession generally refers to the physical occupation of the land." Woodland Grove, 947 So. 2d at 1037 n.7 (citing Hinds v. Slack, 293 Ala. 25, 28, 299 So. 2d 717, 719 (1974)).

peaceable.'" Woodland Grove, 947 So. 2d at 1039 (quoting Denson, 392 So. 2d at 525).

In 1965, Johnnie Mae Stokes was named the administrator of Estelle's estate. After being named administrator, Johnnie Mae Stokes leased portions of the property that could readily be cultivated ("the leased property"). The lessees planted and harvested crops on the leased property; in addition, they hunted and fished on the leased property.[10] Frank Stokes, Jr., Johnnie Mae Stokes's son, testified that, although written copies of many of those leases could not be located, Johnnie Mae Stokes had leased the leased property repeatedly and continuously during her administration of the estate. After Johnnie Mae Stokes died, Frank Stokes, Jr., leased the cultivatable land for farming and hunting.

Reese Davis, Jr., testified at trial that his father had rented the leased property from Johnnie Mae Stokes and Frank Stokes, Jr., for 10 consecutive years, until 2002. During that time, Davis and his father, or their sublessees, would

[10] A dispute exists as to whether Reese Davis, Jr., his father, and other lessees also hunted in other areas of the property. Our analysis does not require the resolution of that issue.

cultivate the leased property, and Davis and his father would hunt and fish on the leased property. After Davis's father passed away in 2002, Davis rented the leased property from Frank Stokes, Jr. However, in 2003, after the underlying action was filed, the Greens instructed Davis not to farm the leased property. Therefore, Davis did not farm the property in 2003. He did not rent the leased property thereafter.

According to the parties, the leased property was the property that the trial court awarded to "the heirs of Larenda Jenkins." In renting the leased property to others, Johnnie Mae Stokes and Frank Stokes, Jr., engaged in possessory acts that interfered with the plaintiffs' possession of that property. See Ford v. Washington, 288 Ala. 194, 200, 259 So. 2d 226, 231 (1972) (holding that a complainant's possession is not peaceable when another party has "done something to indicate that she herself claims to be in possession of the property"). Further, it is undisputed that the Stokeses' tenants regularly farmed and hunted on that land until some time after the plaintiffs filed the complaint in this action. Thus, at the time of the filing of this action, Frank Stokes, Jr., claimed to be, and in fact was, in actual possession of

the leased property. Shannon v. Long, 180 Ala. 128, 137, 60 So. 273, 276 (1912) (quoting Southern Ry. v. Hall, 145 Ala. 224, 226, 41 So. 135, 136 (1906)) ("'Actual possession, or possession in fact, exists when the thing is in the immediate occupancy of the party, or his agent or tenant ....'"); Orso v. Cater, 272 Ala. 657, 660, 133 So. 2d 864, 867 (1961) (citing Stephens v. Stark, 232 Ala. 485, 485, 168 So. 873, 874 (1936)) ("It is elementary that, as between landlord and tenant, possession of the tenant is possession of the landlord.").

Accordingly, even if Cottrell was also in actual possession[11] of the leased property at the time the complaint was filed in this action, her possession of the leased property was not "peaceable." See Denson, 392 So. 2d at 525 ("[I]f both parties claim actual possession, or are scrambling for it, then the possession is not peaceable."); see, e.g., Cobb, 361 So. 2d at 1070 ("The stipulation that appellees

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[11]It is undisputed that, since the 1960s, Cottrell has not resided on any of the property at issue in this case, including the leased property. Cottrell contends that the Greens acted as her agents in possessing both the leased property and the unleased property, but the Greens dispute that contention. We find it unnecessary to resolve that particular issue at this time.

walked over the property, posted signs, and halted the cutting of timber by others establishes acts of possession sufficient to cause appellant's possession to be 'scrambling' rather than 'peaceable.' Likewise, appellant's walking over the land and having timber cut constituted acts of possession, making appellees' possession also 'scrambling.' While the appellant does not have actual, peaceable possession, both she and the appellees have some possession. There is enough evidence of possession by both parties to prevent either party's bringing suit under [§ 6-6-560]."); Smith v. Gaston, 1 So. 3d 1043, 1046 (Ala. Civ. App. 2008) (citing Denson, 392 So. 2d at 524-25) ("Gaston's fence indicates a claim of possession over the disputed land. Because both Smith and Gaston claimed to be in possession of the disputed land, Smith's alleged possession was not peaceable.").

Therefore, Cottrell is unable to meet the requirements of Ala. Code 1975, § 6-6-560, with regard to the leased property, which the trial court awarded to "the heirs of Larenda Jenkins." See Ala. Code 1975, § 6-6-560 (authorizing in rem actions to quiet title by "any person" who "claims ... to own any lands or any interest therein, and is in the actual, peaceable possession of the land" (emphasis added)). Thus,

Cottrell's petition for a writ of certiorari is due to be quashed as to all issues contesting the affirmance by the Court of Civil Appeals of that part of the trial court's order awarding the leased property to "the heirs of Larenda Jenkins."

Conclusion

For the reasons stated above, we quash Cottrell's petition for the writ of certiorari in part. We vacate the judgment of the Court of Civil Appeals insofar as, in reliance on the trial court's Rule 54(b) certification, it reversed that portion of the trial court's order quieting title to certain of the property in the plaintiffs and instructed the trial court to enter a judgment quieting title to that property in the heirs of Larenda Jenkins, and we remand the cause to the Court of Civil Appeals for that court to enter a judgment dismissing the appeal in part and instructing the trial court to vacate its Rule 54(b) certification as to the property it awarded to the plaintiffs and to then address the remaining issues.

1071195--JUDGMENT VACATED IN PART AND CAUSE REMANDED WITH INSTRUCTIONS.

Woodall, Smith, and Shaw, JJ., concur.

Lyons, Parker, and Murdock, JJ., concur specially.

Stuart and Bolin, JJ., concur in the result.

Cobb, C.J., dissents.

1071204--WRIT QUASHED IN PART; JUDGMENT VACATED IN PART; AND CAUSE REMANDED WITH INSTRUCTIONS.

Woodall, J., concurs.

Smith, J., concurs in part and concurs in the result.

Lyons, Stuart, Bolin, Parker, and Shaw, JJ., concur in the result.

Murdock, J., concurs specially in part and dissents in part.

Cobb, C.J., concurs in part and dissents in part.

SMITH, Justice (concurring specially in case no. 1071195 and concurring in part and concurring in the result in case no. 1071204).

I concur with Part I of the main opinion. As to Part II of the main opinion, I agree that the writ should be quashed.

Justice Murdock's special writing demonstrates that if a plaintiff's complaint alleges actual, peaceable possession under § 6-6-560, Ala. Code 1975, a subsequent failure by the plaintiff to prove actual, peaceable possession does not mean that the circuit court never had jurisdiction over the subject matter or the res. Rather, a failure to prove actual, peaceable possession means that the plaintiff has not demonstrated that she is entitled to relief under § 6-6-560.

The question whether a plaintiff has actual, peaceable possession likely will be contested and often will be intertwined with issues that will need to be resolved by a trial on the merits. However, in such a circumstance, as Justice Murdock notes in his special writing, "[t]he circuit court does not make the decision whether the element of peaceable possession exists in order to determine whether it has subject-matter jurisdiction over this type of case, but

does so <u>because</u> it has subject-matter jurisdiction over this type of case." ___ So. 3d at ___.

LYONS, Justice (concurring specially in case no. 1071195 and concurring in the result in case no. 1071204).

As to Part I of the main opinion, I concur fully. I write specially as to the unavailability of certification pursuant to Rule 54(b), Ala. R. Civ. P., with respect to the defendants' attempt to appeal the trial court's order quieting title to some of the property in the plaintiffs. I agree that the failure of the trial court to allocate between the multiple plaintiffs defeats finality of the judgment and that, therefore, a certification pursuant to Rule 54(b) as to the unleased property is inappropriate.

> "If there are multiple parties, there need only be one claim in the action. Of course, <u>all of the</u> rights or <u>liabilities of one or more of the parties</u> regarding that claim must have been fully adjudicated."

10 Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, <u>Federal Practice and Procedure</u> § 2656 (3d ed. 1998).

> "The second prerequisite for invoking Rule 54(b) is that at least one claim or the rights and liabilities of at least one party must be finally decided....
>
> "....
>
> "... According to the Supreme Court [<u>Catlin v. United States</u>, 324 U.S. 229, 233 (1945)] '<u>A "final decision" generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment</u>.'"

Id. (emphasis added). "A determination of damages that does not allocate an aggregate sum among claimants similarly is not final." 15B Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, Federal Practice and Procedure § 3915.2 (2d ed. 1992), citing Strey v. Hunt Int'l Res. Corp., 696 F.2d 87, 88 (10th Cir. 1982).

In Strey, the United States Court of Appeals for the Tenth Circuit stated:

> "Rule 54(b) permits an entry of judgment for fewer than all claims presented in a civil action. Fed.R.Civ.P. 54(b). However, it permits an entry of judgment only for claims that are in fact finally decided. See Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 7, 100 S.Ct. 1460, 1464, 64 L.Ed.2d 1 (1980); Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 435, 76 S.Ct. 895, 899, 100 L.Ed. 1297 (1956). We conclude that the claims certified in the Rule 54(b) entry of judgment have not finally been decided. Notwithstanding the Rule 54(b) certification, the liability claims of the class will not be the subject of a final decision, and therefore will not be appealable, until the district court establishes both the formula that will determine the division of damages among class members and the principles that will guide the disposition of any unclaimed funds. See Boeing Co. v. Van Gemert, 444 U.S. 472, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980)."

696 F.2d at 88 (emphasis added).

Although the judgment in favor of the plaintiffs as to the unleased property is adverse to the defendants on the

issue of title, "all of the liabilities" of the defendants have not been determined where the respective shares of each plaintiff have not been ascertained. This is so because, without a determination as to the allocation among the plaintiffs, the property formerly collectively claimed by the defendants remains undivided, and the judgment in favor of the multiple plaintiffs is not susceptible to the characterization that the litigation has ended and that there is nothing for the court to do but execute the judgment. See Catlin v. United States, 324 U.S. 229 (1945). The Chief Justice's special writing dissenting in part states: "The defendants' rights and liabilities will be wholly unaffected by the resolution of any remaining claim or issue, and no further proceeding in this action will require their participation as litigants." __ So. 3d at __. The foregoing statement overlooks the necessity for an order requiring a conveyance from the defendants to those plaintiffs ultimately deemed to be entitled to an interest in the lands held by the defendants. Hence, the order appealed from is not a final judgment as to the defendants.

I therefore concur fully in the main opinion's conclusion that the Rule 54(b) certification of the judgment involving the unleased portion of the property is ineffective and that the judgment of the Court of Civil Appeals is to be vacated to the extent it pertains to the unleased property and the case ultimately remanded to the trial court to consider issues concerning the unleased property.

As to Part II of the main opinion, I concur in the result and join Justice Shaw's writing.

Parker, J., concurs.

SHAW, Justice (concurring in case no. 1071195 and concurring in the result in case no. 1071204).

I concur in the analysis of Part I of the main opinion addressing the finality of the trial court's ruling on the plaintiffs' claims. As to the remaining issues raised in both cases, I would quash the writs; therefore, as to Part II, I concur in the result. I write only to address the question of jurisdiction raised in the main opinion and in some of the special writings.

In Cullman Wholesale Co. v. Simmons, 530 So. 2d 727 (Ala. 1988) (plurality opinion) (hereinafter "Cullman I"), the plaintiffs sought to quiet title under Ala. Code 1975, § 6-6-560, to a piece of property in which they alleged they had peaceable possession. Because the trial court determined that there was peaceable possession from the pleadings alone, a finding prior caselaw held was "'adducible only in a full trial on the merits,'" the judgment was reversed and the cause remanded. 530 So. 2d at 729 (quoting Almon v. Champion Int'l Corp., 293 Ala. 727, 730, 310 So. 2d 207, 209 (1975) (emphasis omitted)). Specifically, a plurality of the Court, noting that peaceable possession was one of four situations in which a party could seek to quiet title under § 6-6-560, stated:

"[T]he trial court, in the absence of a showing by the complainant that he meets one of the four situations set forth in the statute, is without power to assume jurisdiction over the subject res." 530 So. 2d at 729. In a subsequent appeal in the same action, Cullman Wholesale, Inc. v. Simmons, 592 So. 2d 1031, 1035 (Ala. 1992) (hereinafter "Cullman II"), this Court noted that on remand of Cullman I the plaintiffs had "presented sufficient evidence to enable the trial court to determine that they were in peaceable possession of the property"; thus, the Court held that "the trial court's determination that it had jurisdiction under Ala. Code 1975, §§ 6-6-560 and 6-6-561, was correct." The language regarding jurisdiction in Cullman I was restated in Thrift v. McConnell, 564 So. 2d 431 (Ala. 1990). In that case, this Court held that a party seeking to quiet title under § 6-6-560 failed to show peaceable possession of the subject property. We reversed the trial court's judgment, holding that the trial court was "without authority" to quiet title and instructing the trial court to "dismiss the complaint." 564 So. 2d at 433. See also Oehmig v. Johnson, 638 So. 2d 846, 848 (Ala. 1994) (referring to the four situations set forth in § 6-6-560

et seq., Ala. Code 1975, in which one may commence an in rem action to quiet title, as "jurisdiction requirements"), overruled on other grounds, Ex parte Liberty Nat'l Life Ins. Co., 825 So. 2d 758 (Ala. 2002). More recently, this Court stated in Woodland Grove Baptist Church v. Woodland Grove Community Cemetery Ass'n, 947 So. 2d 1031, 1038 (Ala. 2006), that "[t]he trial court has jurisdiction over quiet-title actions in which the plaintiff shows that he or she is in peaceable, rather than scrambling, possession of the property."

Although I do not disagree with the conclusion that in light of Chestang v. Tensaw Land & Timber Co., 273 Ala. 8, 134 So. 2d 159 (1961), these more recent decisions are questionable, we are not asked in this case to revisit and overrule Cullman I, Cullman II, Thrift, Oehmig, or Woodland Grove. In fact, the parties make no argument with respect to this particular issue at all. With the case in this posture, I am hesitant to depart from the more recent decisions of this Court until they are properly challenged on appeal. Ex parte Carlisle, 26 So. 3d 1202, 1207 n.2 (Ala. 2009) ("'Stare decisis commands, at a minimum, a degree of respect from this

Court that makes it disinclined to overrule controlling precedent when it is not invited to do so.'" (quoting Moore v. Prudential Residential Servs. Ltd. P'ship, 849 So. 2d 914, 926 (Ala. 2002))). Cf. Morrison v. State, 258 Ala. 410, 63 So. 2d 346 (1953) (noting that a decision approved in later cases should be regarded as "settled law").

The holding in the main opinion that the trial court lacked jurisdiction to hear the plaintiffs' quiet-title action does not call into question the Court of Civil Appeals' affirmance of the trial court's judgment quieting title in the defendant. However, if the trial court retained jurisdiction over the plaintiffs' action despite the lack of peaceable possession, as other Justices suggest, then the plaintiffs nevertheless failed to establish merit in their quiet-title action. I would thus quash the writ as to that issue, as well as quash the writ as to any remaining issues.

Lyons and Parker, JJ., concur.

MURDOCK, Justice (concurring specially in case no. 1071195 and concurring specially in part and dissenting in part in case no. 1071204).

As to Part I of the main opinion, concerning the nonleased property, I fully concur. I agree with the main opinion that the trial court's "'entry of [a] final order on [its] determinations ... regarding the Defendants,'" ___ So. 3d at ___ (emphasis in main opinion), does not adjudicate the plaintiffs' interest in the land at issue and, for this reason, cannot be certified as a final judgment. As stated in the main opinion, the trial court's judgment, based on its finding that one or more of the plaintiffs was entitled to a judgment against the defendants, but not deciding which of the plaintiffs was so entitled, could not be certified as a "final judgment" because it "was not a final adjudication of the plaintiffs' claims regarding that property." ___ So. 3d at ___ (emphasis added).

It is axiomatic that a "final judgment" requires a final decision as to the entirety of at least one claim as between at least one plaintiff and one defendant. Put plainly, an order cannot be considered a final judgment as to a given claim unless there is at least one "winner" and one "loser" as

to that claim and all aspects of that claim as between those two parties have been decided. Here, although we know who the "loser" is in the litigation over the nonleased property, no determination has been made as to who the "winner" is.

The purpose of the finality-certification process allowed by Rule 54(b), Ala. R. Civ. P., is not to change the intrinsic nature of a final judgment. Instead, the certification mechanism is made available as a response to the rule reflected in the last sentence of Rule 54(b), i.e., that an order that would otherwise be a "final judgment" may not be appealed or executed upon because it is "subject to revision at any time before entry of a judgment adjudicating all the claims and the rights and liabilities of all the parties." The fact remains that Rule 54(b) does not contemplate a finality certification as to a judgment that would not otherwise be a "final judgment," i.e., a judgment that adjudicates the entirety of at least one claim between at least one plaintiff and at least one defendant.

As to Part II of the main opinion, I respectfully must dissent. I disagree that a failure to prove the peaceable possession required under § 6-6-560, Ala. Code 1975, deprives

the circuit court of "subject-matter jurisdiction" over the cause of action created by that statute. Rather, such a failure simply means that a plaintiff has failed to prove a necessary element for recovery under that statute.

Any analysis of the issue of the subject-matter jurisdiction of a circuit court over claims of the nature presented by this case must begin by recognizing that our courts have on occasion referred in jurisdictional terms to that which does not in fact go to the fundamental authority of the court to decide a case. As we recently observed, for example, "our courts too often have fallen into the trap of treating as an issue of 'standing'" -- and therefore as an issue of subject-matter jurisdiction -- "that which is merely a failure to state a cognizable cause of action or legal theory, or a failure to satisfy the injury element of a cause of action." Wyeth, Inc. v. Blue Cross & Blue Shield of Alabama, [Ms. 1050926, Jan. 15, 2010] ___ So. 3d ___, ___ (Ala. 2010).[12] Cf. 13A Charles Alan Wright, Arthur K. Miller,

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[12]

"Nor do we see that the consideration of the legal theory asserted by BCBSAL is outside the subject-matter jurisdiction of either the trial court or this Court. The courts of this State exist for the very purpose of performing such tasks as

& Edward H. Cooper, Federal Practice & Procedure Jurisdiction § 3531 (3d ed. 2008) ("The question whether the law recognizes the cause of action stated by a plaintiff is frequently transformed into inappropriate standing terms.").[13]

As I understand our jurisprudence on the matter, subject-matter jurisdiction concerns a court's power to decide certain "types" of cases:

> sorting out what constitutes a cognizable cause of action, what are the elements of a cause of action, and whether the allegations of a given complaint meet those elements. Such tasks lie at the core of the judicial function. See generally, e.g., Art. VI, § 139(a), Ala. Const. 1901 (vesting 'the judicial power of the state' in this Court and lower courts of the State); Art. VI, § 142, Ala. Const. 1901 (providing that the circuit courts of this State 'shall exercise general jurisdiction in all cases except as may otherwise be provided by law')."

Wyeth, Inc. v. Blue Cross & Blue Shield of Alabama, ___ So. 3d at ___.

[13]Also, cf. Gene R. Nichol, Jr., Ripeness and the Constitution, 54 U. Chi. L. Rev. 153, 162 (1987) (observing that the ripeness doctrine has been used by federal courts in recent years "to measure the demands of substantive statutory or constitutional causes of action," but noting that "[t]his application of the doctrine does not relate to jurisdictional power at all. Instead, it is an aspect of actionability analysis -- that is, the determination of whether the litigant has stated a claim on which relief can be granted. ... See Fed. Rule Civil Proc. 12(b)(6).").

> "Subject-matter jurisdiction concerns a court's power to decide certain types of cases. Woolf v. McGaugh, 175 Ala. 299, 303, 57 So. 754, 755 (1911) ('"By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought."' (quoting Cooper v. Reynolds, 77 U.S. (10 Wall.) 308, 316, 19 L.Ed. 931 (1870))). That power is derived from the Alabama Constitution and the Alabama Code. See United States v. Cotton, 535 U.S. 625, 630-31, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002) (subject-matter jurisdiction refers to a court's 'statutory or constitutional power' to adjudicate a case). In deciding whether Seymour's claim properly challenges the trial court's subject-matter jurisdiction, we ask only whether the trial court had the constitutional and statutory authority to try the offense with which Seymour was charged and as to which he has filed his petition for certiorari."

Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006) (first emphasis original; second emphasis added). Applying this standard, I do not see how it can be said that circuit court in this case did not have jurisdiction over the "subject matter," or "type of case," described in § 6-6-560.

Admittedly, discerning whether an issue implicates a court's "jurisdiction" can become more complicated in equity cases such as this. This is so because so many reported cases actually speak to three separate and distinct concepts: jurisdiction in the strictest sense, or "subject-matter jurisdiction"; so-called "equity jurisdiction"; and, finally,

"equity jurisprudence." A well respected treatise written before the merger of law and equity in most states begins its explanation of the three above-stated concepts by first explaining the difference between subject-matter jurisdiction and "equity jurisdiction":

> "§ 129. It is important to obtain at the outset a clear and accurate notion of what is meant by the term 'Equity Jurisdiction.' It is used in contradistinction to 'jurisdiction' in general, and to 'common-law jurisdiction' in particular. In its most general sense the term 'jurisdiction,' when applied to a court, is the power residing in such court to determine judicially a given action, controversy, or question presented to it for decision. If this power does not exist with reference to any particular case, its determination by the court is an absolute nullity .... On the other hand, it is equally plain that this strict meaning is not always given to the term 'equity jurisdiction,' as it is ordinarily used. ... [W]hen ordinarily speaking of the 'equity jurisdiction' we do not thereby refer to the general power inherent in a court to decide a controversy at all, -- a power so essential that its absence renders the decision a mere nullity, but <u>we intend by the phrase to describe some more special and limited judicial authority</u>.
>
> "§ 130. 'Equity jurisdiction,' therefore, in its ordinary acceptation, as distinguished on the one side from the general power to decide matters at all, and on the other from the jurisdiction 'at law' or 'common-law jurisdiction,' is the power to hear certain kinds and classes of civil causes according to the principles of the method and procedure adopted by the court of chancery, and to decide them in accordance with the doctrines and rules of equity

jurisprudence .... In order that a cause may come within the scope of the equity jurisdiction, one of two alternatives is essential; either the primary right, estate, or interest to be maintained, or the violation of which furnishes the cause of action, must be equitable rather than legal; [or] the remedy granted must be in its nature purely equitable, or if it be a remedy which may also be given by a court of law, it must be one which, under the facts and circumstances of the case, can only be made complete and adequate through the equitable modes of procedure....

"§ 131. It is plain, from the foregoing definitions, that the question whether a given case falls within the equity jurisdiction is entirely different and should be most carefully distinguished from the question whether such case is one in which the relief peculiar to that jurisdiction should be granted, or in which the equity powers of the court should be exercised in maintaining the primary right, estate, or interest of the plaintiff. The constant tendency to confound these two subjects, so essentially different, has been productive of much confusion in the discussion of equitable doctrines. Equity jurisdiction is distinct from equity jurisprudence. One example will suffice to illustrate this important proposition. A suit to enforce the specific performance of a contract, or to reform a written instrument on the ground of mistake, must always belong to the equity jurisdiction, and to it alone, since these remedies are wholly beyond the scope of common-law methods and courts; but whether the relief of a specific performance, or of a reformation, shall be granted in any given case, must be determined by an application of the doctrines of equity jurisprudence to the special facts and circumstances of that case. ... In other words, the equity jurisdiction may exist over a case, although it is one which the doctrines of equity jurisprudence forbid any relief to be given, or any right to be maintained. This

> conclusion is very plain, and even commonplace; and yet the '<u>equity jurisdiction' is constantly confounded with the right of the plaintiff to maintain his suit, and to obtain the equitable relief.</u> This is, in fact, making the power to decide whether equitable relief should be granted to depend upon, and even to be identical with, the actual granting of such relief."

J. Pomeroy, <u>Pomeroy's Equity Jurisprudence</u> §§ 129-131 (3d ed. 1905) (footnotes omitted; second emphasis in original; other emphasis added).

Reflective of the law as explained above, the court in <u>Yuba Consolidated Gold Fields v. Kilkeary</u>, 206 F.2d 884, 887 (9th Cir. 1953), held as follows:

> "This case is permeated with serious questions relating to jurisdiction which requires, at the threshold of our discussion, that we point out the distinction between the term 'jurisdiction' in its strict sense, and as commonly used in equity jurisprudence. 'Jurisdiction,' in the strict meaning of the term, is the power to hear and determine the subject matter of the class of actions to which the particular case belongs. <u>Reference to 'equity jurisdiction' does not relate to the power of the court to hear and determine a controversy but relates to whether it ought to assume the jurisdiction and decide the cause.</u> The distinction is of the utmost importance here, as this case involves problems of both 'equity jurisdiction' and 'jurisdiction' in its strict sense."

(Emphasis added.) Having explained the difference between "jurisdiction" in its "strict sense" and "equity

jurisdiction," the court then noted the difference between "equity jurisdiction" and equity jurisprudence: "Equity jurisdiction being recognized, the question whether it will be exercised rests in the sound discretion of the chancellor." 206 F.2d at 889.

In a 1958 decision, the Supreme Court of Maryland offered this observation:

> "Originally the term 'equity jurisdiction' referred to the category of controversies that a court of equity was authorized to decide. So long as the principles of equity were administered by separate courts, questions of equity jurisdiction were often considered to be jurisdictional in the strict sense, i.e., if the cause of action was not of a kind that fell within the province of the chancellor, a court of equity had no power to decide the case. However, in those states where law and equity have been merged, equity jurisdiction is something entirely different from jurisdiction over the subject matter. See Chafee, Some Problems of Equity (1950) 305-6. Thus, in those states which have a single system of courts administering principles of both law and equity, the lack of equity jurisdiction does not necessarily mean that the court lacks power to adjudicate the controversy, but only means that under the historic principles of equity the party seeking relief is not entitled to it. There the concept of equity jurisdiction is one that relates to the question of the merits of a controversy rather than to the basic power of the court to decide the case."

Moore v. McAllister, 216 Md. 497, 507-08, 141 A.2d 176, 181-82 (1958) (emphasis, other than on "power," added).

It may be true that "[t]itle may be quieted in a party under [§ 6-6-560] only when that party is in actual, peaceable possession or when no one is in actual possession," see Cobb v. Brown, 361 So. 2d 1069, 1070 (Ala. 1978), but this requirement goes neither to the subject-matter jurisdiction of the circuit court to decide a quiet-title action nor to so-called "equity jurisdiction"; it instead goes to the jurisprudential merits of the quiet-title claim. The requirement that a plaintiff be in peaceable possession is a statutorily imposed prerequisite to recovery by the plaintiff. In this respect it is no different than, for example, a showing of actual possession for an adverse-possession claim or of a valid contract for a breach-of-contract claim. Similarly, it is no different than the showing of possession necessary for the maintenance of an ejectment action in our courts.[14] The circuit court does not make the decision whether

[14] Compare, e.g., Penick v. Most Worshipful Prince Hall Grand Lodge F & AM of Alabama, Inc., [Ms. 1071530, March 19, 2010] ___ So. 3d ___, ___ (Ala. 2010) (reversing a judgment of ejectment on its merits because the plaintiff did not have legal title to or possession of the property at the time it filed its complaint, applying and quoting Ala. Code 1975, § 6-6-280)("'[T]he complaint [in an ejectment action] is sufficient if it alleges that the plaintiff was possessed of the premises or has the legal title thereto ... and that the

the element of peaceable possession exists in order to determine whether it has subject-matter jurisdiction over this type of case, but does so because it has subject-matter jurisdiction over this type of case.[15]

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defendant entered thereupon and unlawfully withholds and detains the same.'").

[15]Indeed proof of peaceable possession is not even necessary for a circuit court to grant relief under § 6-6-560; it is only a prerequisite for relief under one of four different, alternative showings prescribed by the statute:

> "When any person, natural or artificial, claims, either in his own right or in any representative capacity whatsoever, to own any lands or any interest therein, and is in the actual, peaceable possession of the land, or if neither he nor any other person is in the actual possession of the lands and he holds, and has held, color of title to the lands, or interest so claimed, for a period of 10 or more consecutive years next preceding and has paid taxes on the lands or interest during the whole of such period, or if he, together with those through whom he claims, has held color of title and paid taxes on the land or interest so claimed during the whole of such period of time, or if he and those through whom he claims have paid taxes during the whole of such period of 10 years on the lands or interest claimed and no other person has paid taxes thereon during any part of said period, he may, if no action is pending to test his title to, interest in or his right to the possession of such lands, file a verified complaint in the circuit court of the county in which such lands lie against said lands and any and all persons claiming, or reputed to claim, any title to, interest in, lien, or encumbrance on said lands, or any part thereof, to establish the right or title to such lands or

The main opinion, in note 8, ___ So. 3d at ___, cites a number of cases purportedly supporting the notion that a failure to prove peaceable possession prevents a court from acquiring subject-matter jurisdiction over a claim in equity to quiet title under § 6-6-560. The above-explained difference between subject-matter jurisdiction and "equity jurisdiction" may explain in part why, in just a few of these cases, we see the court using the term "jurisdiction" to describe the ability of the court to grant equitable relief, but in none of these cases do we find the term "subject-matter jurisdiction." Indeed, references in such cases to the "jurisdiction" of equity would appear traceable to cases decided in Alabama and other states before the merger of law and equity. See, e.g., Merchants Nat'l Bank of Mobile v. Morris, 252 Ala. 566, 569, 42 So. 2d 240, 242 (1949) (stating that "the [Grove] Act [including the statute now codified at

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> interest and to clear up all doubts or disputes concerning the same."

I do not see that the element of peaceable possession under the first alternative presented by the statute any more implicates the subject-matter jurisdiction of the circuit court than the other showings necessary to prevail under that alternative or any of the other three alternatives presented by the statute.

§ 6-6-560, Ala. Code 1975] confers upon the circuit court in equity a limited jurisdiction in which the statutory requirements must be made to appear on the record and be introduced in evidence as a support to the decree"), and Buchmann Abstract & Inv. Co. v. Roberts, 213 Ala. 520, 521, 105 So. 675, 676 (1925).

In any event, a compelling line of Alabama cases confirms that a failure to prove peaceable possession is a failure that goes to the jurisprudential merits of a claim in equity to quiet title, not to the circuit court's fundamental power to hear and decide that claim. The case of Chestang v. Tensaw Land & Timber Co., 273 Ala. 8, 134 So. 2d 159 (1960), is particularly worth closer examination in light of the main opinion's quotation of Buchmann.[16]

In Chestang, the plaintiff alleged in his complaint that he held "peaceable possession" of the property in question. The trial court determined, upon examining the facts, that the

[16]It also should be noted that the Court of Civil Appeals discusses the issue of jurisdiction. In note 7 of its opinion, that court relies upon Myers v. Moorer, 273 Ala. 18, 134 So. 2d 168 (1961), and Chestang to conclude, as do I, that the trial court's jurisdiction is not in issue. Stokes v. Cottrell, [Ms. 2060887, March 14, 2008] ___ So. 3d ___, ___ (Ala. Civ. App. 2008).

plaintiff did not have peaceable possession of the property and that, in fact, title should be quieted in the defendant. This Court stated that the core issue before it was as follows: "Did the trial court, after finding that complainant was not in peaceable possession of the lands, have authority, under the pleadings, to go further and render the decree establishing ownership of the lands in respondent?" 273 Ala. at 12, 134 So. at 162. On rehearing, the Court addressed Buchmann and gave a thorough and persuasive affirmative answer to the question posed:

> "There is a long line of cases holding that complainant must have actual or constructive possession, peaceable and undisputed, as distinguished from a disputed or scrambling possession, to be entitled to recover. 16 Ala. Dig., Quieting Title, 12 (9). There was no conflict, addition or subtraction to this rule until the case of Buchmann Abstract & Investment Co. v. Roberts, 213 Ala. 520, 105 So. 675, 676 [(1925)]. In that case, this court held that the evidence showed a scrambling possession and dismissed the bill. This action was proper; but the following paragraph was added to the opinion:
>
> > "'This conclusion destroys the jurisdiction of the court over the cause at its very threshold, and renders unnecessary a consideration of the questions which constitute any of the issues as to the contest of title. These matters are properly here pretermitted. Ladd v.

> Powell, supra [144 Ala. 408, 39 So. 46 [(1905)]'
>
> "Ladd v. Powell supports the result but not the proposition that the jurisdiction of the court is destroyed at its very threshold."

273 Ala. at 13-14, 134 So. 2d at 163. After noting three other cases in which the "jurisdiction destroyed" statement had been repeated, the Court observed:

> "In the case of Crump v. Knight, 250 Ala. 393, 34 So. 2d 593, 596 [(1948)], this court followed the Buchmann case, and even though the trial court had held that complainant had neither possession nor title, but found for respondent under his cross-bill, we said:
>
> > "'When the court determined that the complainant had failed to establish such possession as warranted the maintenance of his bill, this ended any litigable controversy between the parties....'
>
> "This statement and its application conflicts with the holding of this court in cases decided prior to the introduction of the 'jurisdiction destroyed' statement in the Buchmann case. See Collier v. Alexander, 138 Ala. 245, 36 So. 367 [(1903)]; O'Neal v. Prestwood, 153 Ala. 443, 45 So. 251 [(1907)]; Vandegrift v. Southern Mineral Land Co., 166 Ala. 312, 51 So. 983 [(1909)[17]];

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[17]In Myers v. Moorer, 273 Ala. 18, 30, 134 So. 2d 168, 180 (1961) (opinion on rehearing), this Court observed:

> "It is difficult, if not impossible, to reconcile the Vandegrift decision with the proposition that lack of peaceable possession in complainant deprives the court of jurisdiction to declare that a

Sloss-Sheffield Steel & Iron Co. v. Lollar, 170 Ala. 239, 54 So. 272 [(1910)]; Rucker v. Jackson, 180 Ala. 109, 60 So. 139 [(1912)]. In the opinion in each of the last four cited cases, this court made the categorical statement that the proof showed the complainant was not in possession, yet title was quieted in respondent. It is obvious that this court did consider that it had jurisdiction to decide the cases even when the complainant did not prove his allegation that he was in possession.

"There would also be a conflict with those cases wherein this court has held that when it appears that the title to part of the land is in the complainant, and part in the respondent, the court should ascertain and declare these facts, and decree accordingly. Motley v. Crumpton, 265 Ala. 565, 93 So. 2d 413 [(1957)]; Hinds v. Federal Land Bank of New Orleans, 235 Ala. 360, 179 So. 194 [(1938)]; Friedman v. Shamblin, 117 Ala. 454, 23 So. 821 [(1898)].

"....

"It is the law both generally and specifically in statutory actions to quiet title, that allegations in pleadings go to the question of jurisdiction, and proof to the right of plaintiff to recover. ...

"'The right of a plaintiff to maintain a suit, while frequently treated as going to the question of jurisdiction, has been said to go in reality to the right of plaintiff to relief rather than to the jurisdiction of the court to afford it.' 21 C.J.S. Courts § 35, p. 44.

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respondent in peaceable possession has a title superior to that of a complainant who had no possession."

> "In Adler v. Sullivan, 115 Ala. 582, 22 So. 87 [(1897)], decided just four years after the adoption of the statute, the court said:
>
> > "'The mere reading of the bill in connection with the statute, under which it is filed, -- (Acts, 1892-93, p. 42), -- suffices to show that it contains the necessary averments under the act, to give the court jurisdiction and to authorize relief. ...'
> >
> > "....
>
> "In Stewart v. Childress, 269 Ala. 87, 111 So. 2d 8, 12 [(1959)], we said:
>
> > "'... Furthermore, it is well settled that in a proceeding under the statute, "if the averments of the bill and answer conform to the requirements of the statute, the issues involve everything necessary to a determination by the court as to whether the complainant or the defendant has the superior title to the property, and it is proper for the court under the issues thus found to determine in which of the parties the title resides."'"

273 Ala. at 14-15, 134 So. 2d at 164-65 (emphasis added).

The Chestang Court then proceeded to review holdings from other jurisdictions that comported with the conclusion it reached, including that of Young v. Hamilton, 135 Ga. 339, 348, 69 S.E. 593, 597 (1910) ("The jurisdiction of a court to entertain a cause, and the right of the plaintiff in such cause to finally prevail, present essentially different

questions."), and Atwood v. Cox, 88 Utah 437, 446, 55 P.2d 377, 381 (1936) ("Jurisdiction can never depend upon the merits of the case brought before the court, but only upon its right to hear and decide at all."). 273 Ala. at 16, 134 So. 2d at 165-66.

As the Chestang Court also explained:

> "At trial, the burden is on complainant to prove his allegations. If he cannot, he fails to recover and his suit cannot be maintained. But that does not mean that the equity court suddenly lost jurisdiction to proceed any further. ...
>
> "....
>
> "We think we have explained most of the differences appearing in the cases under the quieting title statute. It follows that the 'jurisdiction destroyed' statements in the cases of Buchmann Abstract & Investment Co. v. Roberts, 213 Ala. 520, 105 So. 675 [(1925)]; Grayson v. Muckleroy, 220 Ala. 182, 124 So. 217 [(1929)]; McCaleb v. Worcester, 224 Ala. 360, 140 So. 595 [(1932)]; Price v. Robinson, 242 Ala. 626, 7 So. 2d 568 [(1942)]; McGowin v. Felts, 263 Ala. 504, 83 So. 2d 228 [(1955)]; Mettee v. Bolling, 266 Ala. 50, 94 So. 2d 191 [(1957)]; Hart v. Allgood, 260 Ala. 560, 72 So. 2d 91 [(1954)]; Wilson v. Dorman, 271 Ala. 280, 123 So. 2d 112 [(1960)], should be disregarded....
>
> "....
>
> "For sixty-nine years, the bench and bar of this state have used Tit. 7, § 1109 et seq., to quiet title. In the great majority of cases, the complainant has had peaceable possession. But we are

> sure that title has been quieted many times in the respondent when possession was in him. Most of those cases probably were not appealed, but that was the holding of this court in 1907 in O'Neal v. Prestwood, 153 Ala. 443, 45 So. 251 [(1907)], and later in subsequent cases already cited. To begin enforcing a rule that the court has no jurisdiction of a suit to quiet title when the complainant failed to prove his allegation of peaceable possession might put many titles in jeopardy."

273 Ala. at 16-17, 134 So. 2d at 166 (emphasis added).

The Chestang Court made these observations in 1960. It has now been another 50 years that "the Bench and Bar of this state have used Tit. 7, § 1109 et seq. [or their successors, including § 6-6-560], to quiet title." Thus, it may be said today with even more apprehension that to now allow collateral attacks upon titles quieted in actions where the proper findings regarding peaceable possession were not made would indeed put many titles in jeopardy.

In Myers, 273 Ala. at 29, 134 So. 2d at 178-79, the Court reaffirmed that the statement in Buchmann concerning the jurisdiction of the court was no longer good law.

> "While it is established that a complainant in a statutory bill to quiet title, who fails to prove his peaceable possession, thereby fails to sustain the equity of his bill and is not entitled to relief, the cases cited in support of the assertion in the Buchmann case do not hold that where complainant fails to prove his peaceable possession

> the court is without jurisdiction to quiet the title of the respondent. ...
>
> "....
>
> "The cases cited in the Buchmann case do support the proposition that a complainant who fails to prove his peaceable possession is not entitled to have his title declared superior to that of respondent, but the cited cases do not hold that the title of a respondent shown to be in peaceable possession cannot be quieted in him, or that the court lacks jurisdiction to render a decree declaring that respondent has superior title."

(Emphasis added.)

This understanding of the jurisdiction of the circuit court in a quiet-title action also was upheld in Woolf v. Oswell, 285 Ala. 648, 650, 235 So. 2d 794, 795 (1970), Lott v. Keith, 286 Ala. 431, 433, 241 So. 2d 104, 105 (1970), Bukacek v. Pell City Farms, Inc., 286 Ala. 141, 145-46, 237 So. 2d 851, 854 (1970), Ford v. Washington, 288 Ala. 194, 198, 259 So. 2d 226, 228-29 (1972), Hinds v. Slack, 293 Ala. 25, 29, 299 So. 2d 717, 720 (1974), and Cooper v. Adams, 295 Ala. 58, 60, 322 So. 2d 706, 707 (1975).

It is true that some of our cases after Cooper appear to have overlooked the holding in Chestang and thus in some form have repeated the jurisdiction language first mentioned in Buchmann. The most notable of these cases are Historic

Blakeley Foundation, Inc. v. Williams, [Ms. 1080550, Dec. 18, 2009] __ So. 3d __, __ (Ala. 2009); Woodland Grove Baptist Church v. Woodland Grove Community Cemetery Ass'n, Inc., 947 So. 2d 1031 (Ala. 2006); Thrift v. McConnell, 564 So. 2d 431, 433 (Ala. 1990); and Cullman Wholesale Co. v. Simmons, 530 So. 2d 727, 729 (Ala. 1988) (plurality opinion). Woodland Grove quotes directly from Buchmann for support of its statement that "[t]he trial court has jurisdiction over quiet-title actions in which the plaintiff shows that he or she is in peaceable, rather than scrambling, possession of the property." 947 So. 2d at 1038. Williams and Thrift quote from Cullman on this issue. The pertinent portion of Cullman simply quotes the statute at length, including the four alternative ways to prove entitlement to relief (see note 15, supra), and states that "'[t]he trial court must deny relief unless one of the above situations is proven.'" Cullman, 530 So. 2d at 729 (quoting Gulf Land Co. v. Buzzelli, 501 So. 2d 1211, 1212 (Ala. 1987)) (emphasis omitted). Without further analysis, the Cullman Court then described what it said was the "obvious import" of the foregoing statement, an import that I submit is not at all "obvious":

> "The obvious import of the above emphasized language is that the trial court, in the absence of a showing by the complainant that he meets one of the four situations set forth in the statute, is without power to assume jurisdiction over the subject res."

Cullman, 530 So. 2d at 729 (emphasis added).

Cullman relies upon Buzzelli, supra, which in turn relies upon Fitts v. Alexander, 277 Ala. 372, 170 So. 2d 808 (1965). In doing so, however, the Cullman Court misreads both Fitts and Buzzelli. Fitts states that

> "one who claims to own lands or any interest therein ... may file a verified bill of complaint in the circuit court, in equity, of the county in which such lands lie, against the lands and any and all persons claiming or reputed to claim any title to ... said lands ... when either of the following situations is shown to exist:
>
> "1. When the complainant is in the actual, peaceable possession of the lands. ..."

Fitts, 277 Ala. at 375, 170 So. 2d at 810. Thus, Fitts does not explicitly state that a circuit court lacks subject-matter jurisdiction unless the complainant has actual, peaceable possession of the subject property; the Fitts Court states that the plaintiff "may file a verified bill of complaint" if the plaintiff avers that he or she holds peaceable possession of the property in question.

Buzzelli actually articulated the issue in a fashion that comports with Chestang by stating that "[t]he trial court must deny relief unless one of the above situations is proven." Buzzelli, 501 So. 2d at 1212 (emphasis added). A denial of relief does not depend upon a lack of subject-matter jurisdiction.

In short, the cases relied upon in Cullman provide no support for the statement in Cullman concerning the jurisdiction of the circuit court. Chestang accurately and thoroughly explains the law on this issue, and it should be followed by the Court in this case.[18] In an action brought under § 6-6-560, title may be quieted in the defendant, or no one at all, but the circuit court possesses jurisdiction to make such a determination.[19]

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[18]In Chestang, this Court engaged in a very explicit and thorough analysis of whether the requirement of peaceable possession went to the subject-matter jurisdiction of the court. This issue has not been expressly analyzed in subsequent cases that used the term "jurisdiction," and those cases do not command precedential respect in the manner that does Chestang. Furthermore, because the issue is indeed one pertaining to the jurisdiction of the trial court and this Court, I do not share the hesitation of some other Justices to base this Court's decision in the present case on a proper understanding of it.

[19]The discussion of the import of peaceable possession is, in some cases, provided in the context of an in rem action

Thus, the requirement of proof of peaceable possession in equitable actions to quiet title is one that goes to the merits of the controversy, rather than to the subject-matter jurisdiction of the circuit court to decide this "type of case" or a "cause of action" in the first place. The inability of the plaintiffs, as stated in the main opinion, "to meet the requirements of Ala. Code, § 6-6-560," ___ So. 3d at ___, does not mean that the trial court lacked subject-matter jurisdiction over their claims. It means only that the plaintiffs failed to prove an essential prerequisite to their recovery under those claims.

The competing claims of both sets of parties to the leased land were within the subject-matter jurisdiction of the

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under § 6-6-560, Ala. Code 1975, or its predecessor, and in other cases in the context of in personam actions under § 6-6-540, Ala. Code 1975, or its predecessor. There is no material difference between the two statutes, however, as to their language requiring a showing of peaceable possession. Compare § 6-6-560 ("[W]hen any person ... is in the actual, peaceable possession of the land ... he may ... file a verified bill of complaint ....") with § 6-6-540 ("[W]hen any person is in peaceable possession of lands ... such person ... may bring and or maintain a suit ...."). The fact that the two statutes contemplate the naming of different types of defendants, (i.e., both the land and interested persons in an in rem action) does not alter the similarity for our purposes of the required showing of peaceable possession contained in each statute.

trial court. Because of this, I must dissent from the majority's action today in case no. 1071204 quashing the writ in part in that case.

I agree with the main opinion, however, to the extent it concludes that the record is insufficient to support a claim of peaceable possession by E'Stella Alexander Webb Cottrell as to the leased land. I further note that the appeal before us and the arguments presented also call on us to decide the correctness of the decision of the Court of Civil Appeals to affirm the trial court's judgment quieting title to the leased land in the heirs of Larenda Jenkins. Because I believe the Court of Civil Appeals reached the correct result in this regard,[20] I believe this Court should affirm this portion of its judgment.

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[20]I do not intend by this statement to imply that I do not agree with the result reached by the Court of Civil Appeals as to the remainder of the property; as discussed above, that issue simply is not before us at this time.

COBB, Chief Justice (dissenting as to case no. 1071195 and concurring in part and dissenting in part as to case no. 1071204).

I dissent as to Part I of the Court's opinion holding that the trial court's certification of finality under Rule 54(b), Ala. R. Civ. P., was invalid as to the land that that court did not award to the heirs of Larenda Jenkins. Further, I would affirm the trial court's order awarding that portion of the property to the plaintiffs.

I. Applicability of Rule 54(b)

Rule 54(b), Ala. R. Civ. P., states:

> "When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. Except where judgment is entered as to defendants who have been served pursuant to Rule 4(f), in the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all

the claims and the rights and liabilities of all the parties."[21]

[21] "Despite its apparently broad scope, Rule 54(b)[, Fed. R. Civ. P.,] may be invoked only in a relatively select group of cases and applied to an even more limited category of decisions. The rule itself sets forth three basic conditions on its applicability. The first requirement is that either multiple claims for relief or multiple parties be involved. If there are multiple parties, there need only be one claim in the action. Of course, all of the rights or liabilities of one or more of the parties regarding that claim must have been fully adjudicated. A decision that leaves a portion of the claim pending as to all defendants does not fall within the ambit of Rule 54(b). ...

"....

"The second prerequisite for invoking Rule 54(b) is that at least one claim or the rights and liabilities of at least one party must be finally decided. ...

"The third prerequisite to the issuance of a Rule 54(b) certificate is that the court must find that there is no just reason for delaying an appeal. ..."

10 Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, Federal Practice & Procedure Jurisdiction § 2656 (3d ed. 1998) (footnotes omitted; emphasis added). Each of these requirements is met in this case.

"A final judgment that will support an appeal is one that puts an end to the proceedings between the parties to a case and leaves nothing for further adjudication." Ex parte Wharfhouse Rest. & Oyster Bar, Inc., 796 So. 2d 316, 320 (Ala. 2001) (citing City of Birmingham v. City of Fairfield, 396 So. 2d 692 (Ala. 1981)). "[T]he test of finality should look for effective conclusion of a discrete and important part of the overall litigation. No more exact test should be asked." 15B Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, Federal Practice & Procedure Jurisdiction § 3915.2 (2d ed. 1992) (footnote omitted). That test is met in this case.

The trial court's order completely disposed of all the rights and liabilities of the defendants as to the portions of the property that were not leased to third parties by the heirs of Estelle Haggarty Alexander and Larenda Jenkins. Although additional proceedings will continue in the trial court to resolve the plaintiffs' competing claims against each other with regard to that land, the trial court's order clearly and unambiguously found that the defendants have no valid claim to that property.

Before trial, the Greens filed an amended complaint that excluded Cottrell and contained a claim that they alone had adversely possessed the property. Cottrell does not dispute the trial court's finding that the Greens adversely possessed the property, nor does she make any assertion that, if proven, could defeat the plaintiffs' quiet-title claims by rendering the plaintiffs' possession "scrambling." Cottrell's only remaining contention, reflected in her own amended pleading as well as in her arguments to this Court, is that the Greens adversely possessed the property as her agents. This dispute between Cottrell and the Greens is the sole remaining issue. If Cottrell prevails, she will presumably be entitled to some portion of the property to which the Greens now claim exclusive ownership; if not, the Greens will presumably own the property as against all others, including Cottrell. Under the circumstances, the remaining proceedings pose no risk of results inconsistent with the disposition of this appeal. Cf. Palmer v. Resolution Trust Corp., 613 So. 2d 373, 376 (Ala. 1993) (quoting Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373 (Ala. 1987)) (holding that Rule 54(b) was not intended to cover a situation where "'the issues in the two

claims in [the] case are so closely intertwined that separate adjudication would pose an unreasonable risk of inconsistent results'").

My conclusion that Rule 54(b) certification was appropriate does not violate our well established principles that "[a] claim is not eligible for Rule 54(b) certification unless it has been completely resolved by the judgment" and that "a claim for which damages are sought is insufficiently adjudicated for Rule 54(b) purposes until the element of damages is resolved; a judgment resolving only liability in an action seeking damages cannot be certified as final pursuant to Rule 54(b). Tanner v. Alabama Power Co., 617 So. 2d 656 (Ala. 1993)." Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 361-62 (Ala. 2004).

These principles are consistently triggered when an appeal is taken from a certified order that finds one or more parties liable, but reserves the determination of damages for later proceedings. See, e.g., Dzwonkowski, 892 So. 2d 354; Tanner v. Alabama Power Co., 617 So. 2d 656 (Ala. 1993); and McGowin Inv. Co. v. Johnstone, 291 Ala. 714, 715-16, 287 So. 2d 835, 835-36 (1973); see also Strey v. Hunt Int'l Res.

Corp., 696 F.2d 87 (10th Cir. 1982); and Wright, Miller & Cooper, supra, § 3915.2. Such an order completely disposes of neither a claim (because damages remain to be determined) nor a party (because the party or parties found "liable" must later return to the trial court for a determination the extent of that liability). Although our cases have generally focused on the fact that such orders leave claims partially adjudicated, we have consistently recognized that, to be eligible for certification as a final judgment pursuant to Rule 54(b), an order must dispose of "one or more ... of the claims or parties." Rule 54(b), Ala. R. Civ. P. (emphasis added); see, e.g., Tanner, 617 So. 2d at 656-57.

Here, however, although the plaintiffs' competing claims to some of the property have yet to be determined, the rights and liabilities of one or more parties -- the defendants -- have been completely resolved by the trial court's order. See Tanner, 617 So. 2d at 656 ("The sine qua non of the rule's applicability is the existence of multiple parties or claims. The rule confers appellate jurisdiction over an order of judgment only where the trial court 'has completely disposed

of one of a number of claims, or one of multiple parties.' Rule 54(b), committee comments (emphasis [in Tanner])."). The defendants' rights and liabilities will be wholly unaffected by the resolution of any remaining claim or issue, and no further proceeding in this action will require their participation as litigants. Therefore, the trial court's order qualifies for Rule 54(b) certification. Rule 54(b), Ala. R. Civ. P. ("[T]he [trial] court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties." (emphasis added)).

This conclusion is consistent not only with the express wording of Rule 54(b), but also with the spirit of the Alabama Rules of Civil Procedure: "These rules shall be construed and administered to secure the just, speedy and inexpensive determination of every action." Rule 1(c), Ala. R. Civ. P. The facts of this case are unusually complex, requiring proof as to a series of events that stretch back more than 40 years. No doubt the trial court's certification of its order as final "as to the Defendants" simplifies the action and increases the efficiency with which justice may be dispensed in this case.

II. The Merits

It is undisputed that the plaintiffs initially occupied the property that was the subject of the complaint with the permission of Estelle Haggerty Alexander, who owned the property before her death. Therefore, to prevail on their theory that they acquired the property by adverse possession, the plaintiffs were required to show that, after their initial permissive occupation of the property, they made a "clear and positive disclaimer or repudiation" of the record owner's title. Moss v. Woodrow Reynolds & Son Timber Co., 592 So. 2d 1029, 1031 (Ala. 1992) ("In order to change possession from permissive to adverse, the possessor must make a clear and positive disclaimer or repudiation of the true owner's title. The possessor must give the true owner actual notice of such disavowal, or he must manifest acts or make a declaration of adverseness so notorious that actual notice will be presumed.").

The trial court, after hearing ore tenus evidence, held that the plaintiffs had adversely possessed all but those portions of the property that had been leased by the

administrators of the estates of Estelle Haggarty Alexander and Larenda Jenkins. In so holding, the trial court did not make an express finding on the record that the plaintiffs had clearly and positively repudiated the record owner's title. When evidence is taken ore tenus and the trial judge makes no express findings of fact, this Court will assume that the trial judge made those findings necessary to support the judgment. Transamerica Commercial Fin. Corp. v. AmSouth Bank, N.A., 608 So. 2d 375, 378 (Ala. 1992). Therefore, we must assume the trial court found that the plaintiffs made a timely "clear and positive disclaimer or repudiation" of the record owner's title. Further, under the ore tenus standard of review, we must affirm the trial court's judgment if, under any reasonable aspect of the testimony, there is credible evidence to support such a finding. See id.

Viewed in the light most favorable to the trial court's judgment, the evidence, in its totality, supports the finding that the plaintiffs "manifest[ed] acts [and] ma[d]e a declaration of adverseness so notorious" that actual notice of a disavowal of the record owner's title will be presumed.

Moss, 592 So. 2d at 1031. In 1965, Cottrell and Johnny Alexander, Sr., filed a complaint, alleging that, during her lifetime, Estelle had purchased 100 acres of the land for their benefit and that, at the time of Estelle's death, the property was being held in a constructive trust for them. Competing inferences may be drawn from the existence of the action and the fact that the 1965 action was dismissed for lack of prosecution. However, a finder of fact could reasonably conclude that the action manifested a disavowal of the record owner's title sufficient to notify the record owner that Cottrell and Johnny Sr. did not recognize the validity of the record owner's title to at least 100 acres of the property.

In addition, the plaintiffs used the property in whatever manner they pleased without accounting to anyone for their use of it and without paying rent. They lived on the property for several generations, maintained improvements on it, cultivated portions of it, drew water from it, kept domestic livestock on it, cut timber on it, cut firewood on it, hunted on it, fished on it, operated a business on it, and buried their dead on it.

Until shortly before the trial of this case, a number of the plaintiffs believed themselves to be, and openly held themselves out to be, the grandchildren and heirs of Estelle Haggerty Alexander.

One could reasonably conclude from the evidence that the plaintiffs clearly and openly held themselves out to be the rightful owners of the property, not merely permissive users. Further, one could reasonably conclude that the record owners had actual notice of the plaintiffs' claim of ownership, or that the plaintiffs' claim of ownership was so open and notorious that actual notice of the plaintiffs' claim could reasonably be imputed to the record owners. See Moss, supra.

Accordingly, the Court of Civil Appeals erred in reversing the trial court's judgment after reweighing the evidence and concluding that the plaintiffs had not made a "clear and positive disclaimer or repudiation" of the record owner's title. Transamerica, 608 So. 2d at 378 (quoting Clark v. Albertville Nursing Home, Inc., 545 So. 2d 9, 13 (Ala. 1989), and citing Norman v. Schwartz, 594 So. 2d 45 (Ala. 1991)) (stating that, in cases where evidence is presented ore

tenus, the trial court's judgment must be affirmed "'if, under any reasonable aspect of the testimony, there is credible evidence to support the judgment'").

III. Conclusion

For these reasons, I respectfully dissent from that portion of the Court's opinion holding that Rule 54(b) is inapplicable to that portion of the trial court's order holding that the defendants were not entitled to the land that had not been leased. I would affirm that portion of the trial court's order. In all other respects, I concur.