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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2010-2011

1090904

Ex parte Donna McKinney and Marlin McKinney

PETITION FOR WRIT OF MANDAMUS

(In re: Gilberto Sanchez

v.

Donna McKinney and Marlin McKinney)

(Elmore Circuit Court, CV-09-900268)

PER CURIAM.

Marlin McKinney and Donna McKinney, the defendants below, filed this petition for a writ of mandamus seeking an order directing the Elmore Circuit Court to dismiss the ejectment

and unlawful-detainer claims of Gilberto Sanchez, the respondent here and the plaintiff below, and to grant the McKinneys' motion to vacate the trial court's pretrial order on the ground that Sanchez lacked standing. The McKinneys further seek the return of moneys paid by them to Sanchez pursuant to the allegedly void pretrial order. We grant the petition and issue the writ.

Facts and Procedural History

This case arises from a complex factual scenario contrived by the parties in an attempt to circumvent Alabama's homebuilders licensure statute. See § 34-14A-1 et seq., Ala. Code 1975. According to their petition, on January 15, 2005, the McKinneys entered into an oral contract with Sanchez relating to the purchase by Sanchez of a parcel of real property located in Elmore County. Sanchez, an unlicensed contractor, was to construct a residence on the property for the McKinneys. Also according to the petition, on or around April 21, 2005, Sanchez, the McKinneys' former long-term personal physician, purchased property located in Titus on behalf of the McKinneys, who had selected that particular parcel of property as the site for the planned construction of

a primary residence. In October 2005, pending completion of their planned primary residence on the parcel purchased by Sanchez, the McKinneys "took possession" of the property when they moved into a guest house that had been constructed on the property.

On March 1, 2006, the parties entered into a real-estate-sales agreement pursuant to which Sanchez agreed to sell the McKinneys the Titus property for a purchase price of $168,000. The agreement reflected that the McKinneys had previously paid $32,000 of the contract price and that the remaining balance of $136,000 was due at closing, which, the contract specified, was to occur within three weeks of the execution date of the agreement.[1] The transaction was never completed, and the closing never occurred. The McKinneys contend that the planned closing never occurred because, they allege, Sanchez discontinued construction of the residence and has refused to resume construction because he has been unable to obtain a higher purchase price for the property from the McKinneys. They further assert that, as a result of Sanchez's alleged

[1]Another paragraph in the real-estate-sales agreement specified that the transaction was to be closed within 30 days of the execution of the agreement unless extended by separate agreement.

lack of skill and knowledge of homebuilding, "approximately one-half of the main residence had to be demolished and rebuilt by a competent construction company." (Petition, at p. 3.)

Sanchez's brief in response to the McKinneys' petition does indicate that he purchased the property and that he subsequently entered into a real-estate-sales agreement with the McKinneys pursuant to which the McKinneys would purchase the property from him. Sanchez, however, contends that there is nothing to indicate that the McKinneys ever fulfilled the terms of that agreement. In fact, Sanchez identifies in his brief a second real-estate-sales agreement, which he says the parties executed on June 14, 2006, and which was contingent upon, as was the first agreement, the McKinneys' obtaining the necessary financing to cover the purchase price, which had been raised to $220,000, and upon closing "as soon as possible." Sanchez maintains that there is also nothing in the materials before us to indicate that the second scheduled closing ever occurred. In fact, he contends that the McKinneys failed to close on either real-estate-sales agreement.

Both parties acknowledge that, in July 2007, Sanchez executed a $268,000 note secured by a mortgage on the property in favor of Regions Bank d/b/a Regions Mortgage ("Regions"). Thereafter, on September 14, 2007, Sanchez and the McKinneys entered in a bond-for-title[2] agreement whereby Sanchez once again agreed to sell the property to the McKinneys -- this time for a purchase price of $240,000.[3] According to Sanchez, at the time of this third agreement, he disclosed to the McKinneys "that the property was or [might] be subject to a mortgage." (Sanchez's response, at p. 3.) In fact, the bond-

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[2] "'A bond for title is a conditional contract for the sale of land whereby the vendor covenants to make title to the vendee upon payment of the purchase price.' J. Thaddeus Salmon, Comment, Bonds for Title in Alabama, 3 Ala.L.Rev. 327, 327 (1951). A bond for title is an executory contract for the sale of land which creates an equitable mortgage on the land. Id. at 328."

Hicks v. Dunn, 622 So. 2d 914, 915 n.1 (Ala. 1993).

[3]The McKinneys in their petition maintain that the purported signature of Donna McKinney on the bond-for-title agreement is an obvious forgery despite an accompanying notary acknowledgment. The McKinneys also contend that, as a result of his incapacity from grief and medication taken in an attempt to cope with the murder of the McKinneys' daughter in June 2007, Marlin McKinney has no recollection of either seeing or signing the bond-for-title agreement.

for-title agreement specifically provided that the McKinneys, as purchasers, granted Sanchez "the express authority to mortgage, finance, etc. the property subject hereto in any amount not exceeding $300,000.00." The bond-for-title agreement also stated that it was not to be recorded and that, if a mortgage holder were to become aware of Sanchez's agreement with the McKinneys and, as a result, any mortgage balance was accelerated, the McKinneys would be liable for the outstanding mortgage indebtedness.

With regard to the McKinneys' interest in the property, the bond-for-title agreement states, in part, as follows:

> "[The McKinneys] understand[] that in the event that [the McKinneys] do[] not comply with the provisions in this Bond for Title, [Sanchez] has the option to declare [the McKinneys] in violation of this Bond for Title and, in such case, any right [the McKinneys] may have under this Bond for Title will terminate and end.
>
> "The parties hereto agree and understand that the execution of this agreement and the performance of the provisions herein by the respective parties does not create in the [McKinneys] any legal or beneficial interest in the property and [the McKinneys] shall not have any such interest until a deed is executed by [Sanchez] or [Sanchez's] assigns and is delivered to [the McKinneys]."

The bond-for-title agreement also specifically provides that, if the McKinneys fail to timely pay any of the installment

payments due under the bond for title or to comply with any other term of that agreement,

> "[Sanchez] shall have the right to annul [the] agreement, and ... the [McKinneys] shall then become the tenant[s] of [Sanchez], and [Sanchez] shall be entitled to the immediate possession of said property described herein, and may take possession thereof, and may eject the [McKinneys] by an action of unlawful detainer or any other legal proceeding, and shall retain all the monies paid under this agreement by the [McKinneys] as rent of the premises ...."

On September 1, 2009, Sanchez commenced the underlying action in the Elmore Circuit Court alleging a claim of unlawful detainer and seeking ejectment. In his complaint, Sanchez contended that the McKinneys had defaulted under the payment terms of the bond-for-title agreement; that they were in arrears in the amount of $42,264.72; and that Sanchez had terminated the McKinneys' right to possession by written notice. The McKinneys answered, asserting numerous affirmative defenses and also asserting that Sanchez lacked standing. Additionally, the McKinneys asserted counterclaims alleging breach of contract, unjust enrichment, fraud, negligence or wantonness, breach of fiduciary duty, and abuse

of a confidential relationship and seeking specific performance.[4]

On November 18, 2009, following a hearing regarding Sanchez's emergency motion to determine the McKinneys' right to continued possession of the property, the trial court entered an order allowing the McKinneys to remain in possession of the property but ordering that they make the monthly mortgage payments on Sanchez's mortgage in the amount of $2,616.45. Specifically, the trial court ordered that the McKinneys were to make mortgage payments for the following months: November 2009, December 2009, January 2010, and February 2010. The trial court's order scheduled trial for February 18, 2010.

On January 7, 2010, Sanchez's counsel moved that the trial setting be continued, alleging scheduling conflicts and the need for additional discovery/preparation. The trial court rescheduled the trial for April 2010. On March 1, 2010, Sanchez filed a motion seeking to extend the trial court's

[4]The McKinneys' counterclaim also includes a claim of respondeat superior related to the notarization of the alleged forged signature of Donna McKinney on the bond-for-title agreement by Farley Pugh, allegedly an employee of Sanchez's. See supra note 3.

November 2009 order, in which he asserted that the McKinneys remained in possession of the property and requested that the trial court order the McKinneys to continue making the monthly mortgage payments on the property until the rescheduled trial date in April 2010. In their response, the McKinneys argued, among other things, that "principles of equity" required that Sanchez's request be denied because the trial date was continued at his sole request and because Sanchez was not using the remitted moneys to satisfy the monthly mortgage payments. The McKinneys further argued that the original pretrial order in which they were first ordered to make the mortgage payments was void for want of subject-matter jurisdiction and thus could not be extended.

On March 2, 2010, the trial court entered an order requiring the McKinneys "to continue satisfying the $2,616.45 monthly mortgage payment on the subject property pending further Order of [the] Court." On that same date, the McKinneys filed their first motion seeking to dismiss Sanchez's action based on a lack of subject-matter jurisdiction. Thereafter, the McKinneys filed both an emergency motion to stay and a separate motion requesting that

the trial court vacate its March 2, 2010, order. Specifically, in their motion to vacate, the McKinneys noted that, in his motion seeking a continuance, Sanchez failed to request that the trial court extend its previous pretrial order requiring that the McKinneys make the mortgage payments. The trial court denied the motion to vacate; however, nothing in the materials before us suggests that the trial court ever ruled on the McKinneys' dismissal motion.

On March 30, 2010, the McKinneys filed a second motion requesting that the trial court dismiss Sanchez's ejectment and unlawful-detainer claims. In their renewed motion and accompanying brief, the McKinneys again argued that, because Sanchez purportedly lacked standing, the trial court lacked subject-matter jurisdiction over those claims. The McKinneys' assertions regarding Sanchez's alleged lack of standing were based on the McKinneys' contentions that Sanchez did not hold either legal or equitable title to the subject property, which, under Alabama law, is required to pursue an ejectment action, or have the necessary possessory interest in the property to maintain an action for unlawful detainer. As a final matter, the McKinneys argued that the district court,

not the circuit court, was vested with original jurisdiction of all actions asserting an unlawful-detainer claim. According to the case-action summary, the trial court has taken "no action" on the McKinneys' renewed motion to dismiss.

The McKinneys subsequently filed this petition for a writ of mandamus,[5] and this Court entered an order staying all proceedings in the Elmore Circuit Court pending our disposition of the petition.

Standard of Review

> "A writ of mandamus is an extraordinary remedy, and is appropriate when the petitioner can show (1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court."

Ex parte BOC Group, Inc., 823 So. 2d 1270, 1272 (Ala. 2001).

Discussion

I.

The substantive question presented by the McKinneys' petition is whether the trial court lacks subject-matter

[5]See Ex parte Flint Constr. Co., 775 So. 2d 805, 808 (Ala. 2000) ("[A] lack of subject-matter jurisdiction may be raised at any time, and ... the question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus.").

jurisdiction over Sanchez's complaint seeking ejectment and asserting an unlawful-detainer claim. Specifically, the McKinneys contend that Sanchez lacked the necessary standing to commence the action seeking ejectment, thereby depriving the trial court of subject-matter jurisdiction. They further argue that original jurisdiction of an action claiming unlawful detainer lies in district court and not in the circuit court.

Initially, we note that Sanchez's abbreviated complaint does not set out individual counts asserting separate ejectment and unlawful-detainer claims,[6] and, because of our resolution of this matter, we do not pass on the potential merits of either purported claim. Instead, we conclude, for the reasons discussed below, that the trial court erred in refusing to dismiss the action.

A. Ejectment Action

The McKinneys initially argue that Sanchez does not own legal title to the subject property and is not in possession

[6]"Ejectment may be maintained on proof of title carrying, as an element of ownership, a right to possession and enjoyment. Unlawful detainer is a penal action, summary in character, specifically designed to oust a hold-over tenant." Lane v. Henderson, 232 Ala. 122, 124, 167 So. 270, 271 (1936).

of the property. Either title or possession, they contend, is essential to possess the requisite standing to maintain an ejectment action. They further argue that, as a result of Sanchez's mortgage of the property to Regions, Sanchez is the holder of equitable title to the property while Regions holds legal title and that Regions is, thus, the sole party capable of pursuing a claim for ejectment. In support of this claim, the McKinneys cite Shannon v. Long, 180 Ala. 128, 60 So. 273 (1912), in which this Court stated: "When the holder of an equitable title, only, to land, is out of possession, he cannot maintain an action of ejectment to oust the actual possessor of the land ...." 180 Ala. at 135, 60 So. at 276.

In his answer in opposition to the McKinneys' petition, and as evidence that he possesses the requisite standing to pursue the underlying civil action, Sanchez relies on the April 21, 2005, deed transferring title of the subject property to him and on the real-estate mortgage, which he executed on the subject property in favor of Regions. Sanchez also responds by citing the circuit court's jurisdictional requirements pertaining to the amount in controversy in civil actions. See § 12-11-30(1). Sanchez further cites the two

real-estate-sales agreements mentioned above and contends that, as a result of the subsequent bond-for-title agreement, his complaint is governed by the Alabama Uniform Residential Landlord and Tenant Act. See § 35-9A-101 et seq., Ala. Code 1975.

It is well established that,

> "[i]n order to maintain an action for ejectment, a plaintiff must allege either possession or legal title, and the 'action must be commenced in the name of the real owner of the land or in the name of the person entitled to possession thereof....' § 6-6-280, Ala. Code 1975; see Morris v. Yancey, 267 Ala. 657, 659, 104 So. 2d 553, 555 (1958)('to authorize the recovery by the plaintiff, it must be made to appear by the evidence that plaintiff, at the commencement of the suit, had the legal title to the land sued for'); Douglass v. Jones, 628 So. 2d 940, 941 (Ala. Civ. App. 1993)(beneficiary of will lacked standing to maintain ejectment because title of property remained with estate)."

Cadle Co. v. Shabani, 950 So. 2d 277, 279 (Ala. 2006) (emphasis added). See also McCary v. Crumpton, 267 Ala. 484, 487, 103 So. 2d 714, 716 (1958) ("[T]he plaintiff, to recover in ejectment, must have title when he files his suit, and also at the time of trial ....").

Sanchez does not allege in his ejectment complaint that he holds title to the subject property or that he is in actual possession of the property. See § 6-6-280, Ala. Code 1975

("[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 defendant entered thereupon and unlawfully withholds and detains the same."); Atlas Subsidiaries of Fla., Inc. v. Kornegay, 288 Ala. 599, 601, 264 So. 2d 158, 161 (1972) (noting that a statutory action in the nature of ejectment exists under two alternatives: "The first such alternative is where the complaint alleges that the plaintiff was possessed of the premises and the defendant entered thereupon and unlawfully withholds and detains the same. The other alternative is where the complaint alleges that the plaintiff has the legal title to the lands and the defendant entered thereupon and unlawfully withholds and detains the same."). Instead, in that pleading, Sanchez merely "demands the right to possession from the [McKinneys]." Although the deed attached to Sanchez's brief does, in fact, indicate that Sanchez holds record title to the property, the property is indisputably subject to a mortgage in favor of Regions. Such mortgage deprives Sanchez of legal title to the property.

> "This Court generally defined the property interests created by a mortgage in Trauner v.

> Lowrey, 369 So. 2d 531, 534 (Ala. 1979), stating: 'Alabama classifies itself as a "title" state with regard to mortgages. Execution of a mortgage passes legal title to the mortgagee.' See Foster v. Hudson, 437 So. 2d 528 (Ala. 1983); First Nat'l Bank of Mobile v. Gilbert Imported Hardwoods, Inc., 398 So. 2d 258 (Ala. 1981); Jones v. Butler, 286 Ala. 69, 237 So. 2d 460 (1970); McCary v. Crumpton, 267 Ala. 484, 103 So. 2d 714 (1958); Garst v. Johnson, 251 Ala. 291, 37 So. 2d 183 (1948); and Mallory v. Agee, 226 Ala. 596, 147 So. 881 (1932). See also § 35-10-26, Ala. Code 1975."

Bolte v. Robertson, 941 So. 2d 920, 925 (Ala. 2006). See also Jones v. Butler, 286 Ala. 69, 71, 237 So. 2d 460, 462 (1970) ("The execution and delivery by appellee of her note and mortgage to Burchwell & Company conveyed to said mortgagee appellee's legal title to the property subject to the conditions of said mortgage."); McCary, 267 Ala. at 487, 103 So. 2d at 716 ("A mortgage on real estate passes to the mortgagee a fee-simple title, unless otherwise expressly limited.").

By executing a mortgage on the subject property, Sanchez, the mortgagor, conveyed legal title to Regions, the mortgagee. Because the loan had not been repaid in full at the time this petition was filed, Regions retained the right, title, and interest to the property. See § 35-10-26, Ala. Code 1975 (stating both that "[t]he payment or satisfaction of the real

property mortgage debt divests the title passing by the mortgage" and that "'[p]ayment or satisfaction of the real property mortgage debt' shall not occur until there is no outstanding indebtedness"). We further note that it is undisputed that, following their move onto the subject property in October 2005, the McKinneys have remained in possession of the property. In fact, as the McKinneys note in their petition, there is nothing to suggest that Sanchez has ever actually physically possessed the property in any respect. Because Sanchez is unable to demonstrate that, at the time he filed the underlying ejectment action, he had either legal title to or actual possession of the subject property, under the authority of Cadle he lacks the standing necessary to prosecute his ejectment claim.[7]

[7]Sanchez does not argue that Cadle was wrongly decided or that it is due to be overruled. We have previously recognized that our appellate courts were occasionally guilty of "'blurr[ing]'" the lines between the distinct concepts of standing and real party in interest. Ex parte Sterilite Corp. of Alabama, 837 So. 2d 815, 819 (Ala. 2002) (quoting Battle v. Alpha Chem. & Paper Co., 770 So. 2d 626, 634 (Ala. Civ. App. 2000), citing in turn Cooks v. Jim Walter Homes, Inc., 695 So. 2d 19 (Ala. Civ. App. 1996), overruled by Ex parte Moore, 793 So. 2d 762 (Ala. 2000)). See also Hamm v. Norfolk Southern Ry., 52 So. 3d 484, 499 (Ala. 2010) (Lyons, J., concurring specially) ("condemn[ing] loose usage of the term 'standing'" where the issue should be whether the action is being prosecuted by the real party in interest). However, this

B. Unlawful-Detainer Claim

With regard to the unlawful-detainer claim asserted by Sanchez, as set out above, the McKinneys argue in their petition that original jurisdiction over an unlawful-detainer action lies exclusively in the district court of the county in which the property lies.

> "By statute, original jurisdiction over unlawful-detainer actions lies in the district courts. § 6-6-330, Ala. Code 1975 ('The forcible entry upon and detainer, or the unlawful detainer, of lands, tenements and hereditaments is cognizable before the district court of the county in which the offense is committed.'). A circuit court may not exercise jurisdiction over an unlawful-detainer action until the district court has adjudicated the

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Court has long recognized a disinclination to overrule existing caselaw in the absence of either a specific request to do so or an adequate argument asking that we do so. Clay Kilgore Constr., Inc. v. Buchalter/Grant, L.L.C., 949 So. 2d 893, 898 (Ala. 2006) (noting the absence of a specific request by the appellant to overrule existing authority and stating that, "[e]ven if we would be amenable to such a request, we are not inclined to abandon precedent without a specific invitation to do so"). Although our cases indicate that we may, ex mero motu, address "jurisdictional issues," see, e.g., Crutcher v. Williams, 12 So. 3d 631, 635 (Ala. 2008), we generally do so in cases involving the lack of subject-matter jurisdiction. Id. See also Blevins v. Hillwood Office Ctr. Owners' Ass'n, 51 So. 3d 317, 322 (Ala. 2010) (holding that "just because the Court is duty bound to notice the absence of subject-matter jurisdiction, it does not follow that it is so bound to construct theories and search the record for facts to support the existence of jurisdiction for plaintiffs who choose to stand mute in the face of a serious jurisdictional challenge").

> unlawful-detainer action and one of the parties has appealed to the circuit court. See § 6-6-350, Ala. Code 1975 ('Any party may appeal from a judgment entered against him or her [in an unlawful-detainer action] by a district court to the circuit court at any time within seven days after the entry thereof, and [the] appeal and the proceedings thereon shall in all respects, except as provided in this article, be governed by this code relating to appeal from district courts.')."

Darby v. Schley, 8 So. 3d 1011, 1013 (Ala. Civ. App. 2008).

The limited materials before us indicate that Sanchez initiated the underlying civil action in the Elmore Circuit Court. There is nothing in the case-action summary indicating that the Elmore District Court had previously adjudicated Sanchez's unlawful-detainer claim or that Sanchez's filing in the circuit court represented the permitted appeal from such an adjudication. Further, there is no challenge to the correctness of Darby, and the trial court had no discretion in the instant case not to comply with its dictates. Therefore, because the Elmore District Court had not adjudicated Sanchez's unlawful-detainer claim, the Elmore Circuit Court lacked jurisdiction over that claim, and any purported order it entered in the underlying unlawful-detainer action is void. Id.

II.

The McKinneys further assert in their petition that, because the trial court lacked subject-matter jurisdiction, it is incapable of enforcing its pretrial order requiring the McKinneys to continue making Sanchez's mortgage payments and that the payments they have made pursuant to that order must be returned.

> "Standing is '"'[t]he requisite personal interest that must exist at the commencement of the litigation.'"' Pharmacia Corp. v. Suggs, 932 So. 2d 95, 98 (Ala. 2005)(quoting In re Allison G., 276 Conn. 146, 156, 883 A.2d 1226, 1231 (2005), quoting in turn H. Monaghan, Constitutional Adjudication: The Who and When, 82 Yale L.J. 1363, 1384 (1973)). 'When a party without standing purports to commence an action, the trial court acquires no subject-matter jurisdiction.' State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1028 (Ala. 1999). ...
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> > "When the absence of subject-matter jurisdiction is noticed by, or pointed out to, the trial court, that court has no jurisdiction to entertain further motions or pleadings in the case. It can do nothing but dismiss the action forthwith. '"Any other action taken by a court lacking subject matter jurisdiction is null and void."' Rainbow Drive, 740 So. 2d at 1029 (quoting Beach v. Director of Revenue, 934 S.W.2d 315, 318 (Mo. Ct. App. 1996))."

Cadle Co., 4 So. 3d at 462-63. See also Crutcher v. Williams, 12 So. 3d 631, 635 (Ala. 2008) ("A court is obligated to vigilantly protect against deciding cases over which it has no jurisdiction ...."). According to the precedents cited by the

McKinneys, Sanchez lacked possession of, or legal title to, the subject property; he had no standing to pursue the ejectment action; and the trial court had no subject-matter jurisdiction. See State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1029 (Ala. 1999) ("Because the City had no standing, the trial court had no subject-matter jurisdiction, and, consequently, no alternative but to dismiss the action. See Beach v. Director of Revenue, 934 S.W.2d 315, 318 (Mo. Ct. App. 1996) ('Lacking subject matter jurisdiction [a court] may take no action other than to exercise its power to dismiss the action.... Any other action taken by a court lacking subject matter jurisdiction is null and void.')."). Thus, all actions taken and every order entered in this matter are void, and the trial court must dismiss Sanchez's action and the McKinney's counterclaims. 2018 Rainbow Drive, supra.

Finally, the McKinneys cite no authority showing that the trial court--which lacks subject-matter jurisdiction--has the power to order the return of the payments; therefore, the McKinneys have not met their burden of establishing a clear legal right to that particular relief, and we deny their petition in that respect.

Conclusion

We grant the McKinneys' petition in part and direct the trial court to dismiss the action.

PETITION GRANTED IN PART AND DENIED IN PART; WRIT ISSUED.

Woodall, Stuart, Parker, Main, and Wise, JJ., concur.

Shaw and Bolin, JJ., concur specially.

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

Murdock, J., dissents.

SHAW, Justice (concurring specially).

Donna McKinney and Marlin McKinney argued to the trial court that under Cadle Co. v. Shabani, 950 So. 2d 277, 279 (Ala. 2006), the trial court had no jurisdiction to entertain Gilberto Sanchez's ejectment action and that, under Darby v. Schley, 8 So. 3d 1011, 1013 (Ala. Civ. App. 2008), it had no jurisdiction to entertain the unlawful-detainer action. These two cases stand for those two propositions. The trial court had no discretion to deviate from those precedents.

In their petition for a writ of mandamus, the McKinneys again argue that these precedents deny the trial court jurisdiction. Sanchez does not argue that Cadle or Darby were wrongly decided, and he does not argue that they should be overruled. As the main opinion notes, in Blevins v. Hillwood Office Center Owners' Ass'n, 51 So. 3d 317, 323 (Ala. 2010), this Court held that when a party "'choose[]s to stand mute in the face of a serious jurisdictional challenge'" we will not "'construct theories and search the record for facts to support the existence of jurisdiction.'" ___ So. 3d at ___ n. 7. This maxim of judicial restraint is well founded:

> "'[W]hen the parties have not provided sufficient legal or factual justification for this Court's

> jurisdiction, this Court is not obligated to embark on its own expedition beyond the parties' arguments in pursuit of a reason to exercise jurisdiction. The burden of establishing the existence of subject-matter jurisdiction falls on the party invoking that jurisdiction. See, e.g., Ex parte HealthSouth Corp., 974 So. 2d 288 (Ala. 2007) (setting forth the plaintiff's burden of demonstrating standing to bring an action, an issue of subject-matter jurisdiction); ... Ex parte Ray-El, 911 So. 2d 1100, 1104 (Ala. Crim. App. 2004) (placing the burden to "'justify the jurisdiction of this court'" on the person bringing a habeas petition as a "next friend" (quoting Whitmore v. Arkansas, 495 U.S. 149, 164, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990))); cf. Bush v. Laggo Props., L.L.C., 784 So. 2d 1063, 1065 (Ala. Civ. App. 2000) ("Once a party challenges the trial court's jurisdiction, pursuant to Rule 12(b)(1), [Ala. R. Civ. P.,] the burden of establishing jurisdiction is on the plaintiff." (citing Menchaca v. Chrysler Credit Corp., 613 F.2d 507 (5th Cir. 1980))).'"

Blevins, 51 So. 3d at 322 (quoting Crutcher v. Williams, 12 So. 3d 631, 635-36 (Ala. 2008)).

The McKinneys cite caselaw that clearly holds that the trial court had no jurisdiction. Sanchez's response does not refute the applicability of those decisions and certainly does not argue that those decisions should be overruled. We need not cast aside the doctrine of stare decisis, the rule stated in Blevins and Crutcher, or the countless other decisions that hold that this Court will not overrule precedents unless asked to do so, especially when there has been no argument for such

a result. The philosophy of judicial restraint and the doctrine of stare decisis strongly counsel against this Court's overruling those precedents in the absence of a proper challenge and thorough briefing of the issues presented.

Bolin, J., concurs.

COBB, Chief Justice (concurring in part and dissenting in part).

When this Court decided Cadle Co. v. Shabani, 4 So. 3d 460 (Ala. 2008), Justice Murdock wrote a powerful dissent. See Cadle, 4 So. 3d at 463 (Murdock, J., dissenting). I concurred in the result in Cadle, with the following special writing:

> "Under other circumstances, I would find Justice Murdock's dissent persuasive, particularly with respect to the savings in judicial resources that would be effected if the filing and prosecution of an entirely new legal action could be avoided. However, under the circumstances of this case, it does not appear to me that the jurisdictional impediment first noted in Cadle Co. v. Shabani, 950 So. 2d 277 (Ala. 2006), was ever removed. Accordingly, I concur in the result."

4 So. 3d at 463 (Cobb, C.J., concurring in the result).

I cannot concur with the Court's decision to continue to unnecessarily curtail the jurisdiction of the courts of this State by continuing to rely on Cadle, which was wrongly decided, merely because we did not receive an invitation to overrule the case. Why should this Court perpetuate the confusion that it caused? We should remedy the "blurring" noted in note 7 of the main opinion and overrule Cadle ex meru motu.

Accordingly, I respectfully dissent from the Court's holding that Gilberto Sanchez lacks standing to prosecute his claim for ejectment. In all other respects, I concur.

MURDOCK, Justice (dissenting).

I.

Our courts too often have treated as a matter of subject-matter jurisdiction that which does not go to the fundamental authority of the courts to decide a case. I believe this Court should, today, "clear up" the "'"blur[ring]"' [of] the lines" between such "distinct concepts" as "standing and real party in interest" of which the main opinion acknowledges our appellate courts have been "occasionally guilty." ___ So. 3d at ____ n.7. We should not perpetuate in yet another case the confusion as to the issue of standing and, in turn, subject-matter jurisdiction that this Court has created in recent years in cases such as Cadle Co. v. Shabani, 950 So. 2d 277, 279 (Ala. 2006) ("Cadle I"), upon which the main opinion relies, and Cadle Co. v. Shabani, 4 So. 3d 460, 463 (Ala. 2008) ("Cadle II"). See generally Hamm v. Norfolk Southern Ry., 52 So. 3d 484, 499 (Ala. 2010) (Lyons, J., concurring specially "to condemn loose usage of the term 'standing'" in our cases and observing that because "[s]tanding implicates subject-matter jurisdiction," "[i]mprecision in labeling a party's

inability to proceed as a standing problem unnecessarily expands the universe of cases lacking in subject-matter jurisdiction"); Ex parte Green, [Ms. 1071195, April 9, 2010] ___ So. 3d ___, ___ (Ala. 2010) (Murdock, J., writing specially) ("[O]ur 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." (citing 13A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure: Jurisdiction § 3531 (3d ed. 2008)).

There are actually three distinct categories of issues that can arise in a case such as this and that our appellate courts too often have confused:

(1) Standing;

(2) Real party in interest;

(3) An alleged cause of action not recognized in our law or a failure of the plaintiff to satisfy one of the elements of a cognizable cause of action.

The first issue, standing, goes to whether a party has a sufficient "personal stake" in the outcome and whether there is sufficient "adverseness" that we can say there is a "case or controversy."

> "Standing goes to the existence of sufficient adversariness to satisfy both Article III case-or-controversy requirements and prudential concerns. In determining standing, the nature of the injury asserted is relevant to determine the existence of the required personal stake and concrete adverseness."

13A Federal Practice & Procedure § 3531.6.

Although the Alabama Constitution does not have the same Article III language as is found in the Federal Constitution, this Court has held that Section 139(a) of the Alabama Constitution limits the judicial power of our courts to "cases and controversies" and to "concrete controversies between adverse parties." As Justice Lyons has stated:

> "Standing is properly limited to circumstances stemming from lack of justiciability. A plaintiff must be so situated that he or she will bring the requisite adverseness to the proceeding. A plaintiff must also have a direct stake in the outcome so as to prevent litigation, initiated by an interested bystander with an agenda, having an adverse impact on those whose rights are directly implicated. See Diamond v. Charles, 476 U.S. 54, 61-62, 106 S.Ct. 1697, 90 L.Ed.2d 48 (1986).
>
> "Much of the precedent in the area of standing comes from federal courts subject to the case-or-controversy requirement of Article III of the United States Constitution. Of course, we do not have a case-or-controversy requirement in the Alabama Constitution of 1901, but our concepts of justiciability are not substantially dissimilar. See Pharmacia Corp. v. Suggs, 932 So. 2d 95 (Ala. 2005), where this Court, after noting the absence

of a case-or-controversy requirement in our Constitution, observed:

> "'We have construed Art. VI, § 139, Ala. Const. of 1901 (as amended by amend. no. 328, § 6.01, vesting the judicial power in the Unified Judicial System), to vest this Court "with a limited judicial power that entails the special competence to decide discrete cases and controversies involving particular parties and specific facts." Alabama Power Co. v. Citizens of Alabama, 740 So. 2d 371, 381 (Ala. 1999). See also Copeland v. Jefferson County, 284 Ala. 558, 226 So. 2d 385 (1969) (courts decide only concrete controversies between adverse parties).'"

Hamm, 52 So. 3d at 500 (Lyons, J., concurring specially). Clearly, even under the majority's view of the elements of an ejectment action, see discussion, infra, Gilbert Sanchez has a personal stake in the outcome of this case and the requisite adverseness to make this a "case or controversy."

A second issue that can arise is whether the plaintiff is the "real party in interest." See Rule 17(a), Ala. R. Civ. P. A party may be sufficiently adverse and in a position to be affected by the outcome of the litigation, and thus have standing, but not be the real party in interest. See, e.g., Hamm, supra. See also Ex parte Regions Fin. Corp., [Ms. 1090425, Sept. 30, 2010] ___ So. 3d

___, ___, (Ala. 2010) (Murdock, J., dissenting and juxtaposing a real-party-in-interest issue with a standing issue).

> "The confusion of standing with real-party-in-interest concepts may have unfortunate consequences. A focus on standing may lead a court to refuse application of the ameliorating rules that enable substitution of the real party in interest when the wrong plaintiff filed the action."

13A Federal Practice & Procedure § 3531.

The author of this Court's opinion in Cadle I was Justice Lyons. As already noted, Justice Lyons more recently concluded that there has been, and recently wrote specially in a case "to condemn[,] loose usage of the term 'standing' in our cases." Hamm, 52 So. 3d at 499 (Lyons, J., concurring specially). Justice Lyons aptly observed in Hamm:

> "Rule 17(a) allows an action to proceed after an objection is made based on the absence of the real party in interest if curative steps are taken. Obviously, an absence of a real party in interest does not implicate subject-matter jurisdiction or the sole remedy would be dismissal, as opposed to countenancing curative measures. If we allow instances of the want of a real party in interest to be swallowed up by an erroneously expansive definition of standing, we will effectively eliminate any field of operation for the

> aforementioned feature of Rule 17(a) allowing the defect to be cured.
>
> "....
>
> "If we limit standing to issues of justiciability as defined above, thereby significantly reducing the occasion for concerns over subject-matter jurisdiction, the problem in this case is properly viewed as an issue of real party in interest for which Rule 17(a), Ala. R. Civ. P., offers a remedy. In this proceeding we have no concerns over adverseness nor do we have a meddlesome bystander at the helm as of the commencement of the action. Viewed from this perspective, no problem of absence of subject-matter jurisdiction is presented."

52 So. 3d at 500 (Lyons, J., concurring specially).

The third category of potential issues includes situations in which the plaintiff has attempted to allege a cause of action that the law of Alabama does not recognize or has failed to satisfy one of the elements of a cause of action that is cognizable under our law. As this Court recently observed: "[O]ur courts too often have fallen into the trap of treating as an issue of 'standing' 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, 42 So.3d 1216, 1219 (Ala. 2010). Compare Steele

v. Federal Nat'l Mortg. Ass'n, [Ms. 1091441, Dec. 3, 2010] ___ So. 3d ___, ___ n.2 (Ala. 2010) (citing Wyeth as authority for rejecting the appellant's suggestion that a plaintiff's failure to have made a demand for possession before bringing an ejectment action presented an issue of standing).

> "The question whether the law recognizes the cause of action stated by a plaintiff is frequently transformed into inappropriate standing terms. The [United States] Supreme Court has stated succinctly that the cause-of-action question is not a question of standing."

13A Federal Practice & Procedure § 3531 (noting, however, that the United States Supreme Court, itself, has on occasion "succumbed to the temptation to mingle these questions").

In an analysis that appears to me to govern the present case, this Court observed in Wyeth:

> "In the present case, Wyeth appears to argue that the plaintiff, BCBSAL, lacks standing because, Wyeth says, BCBSAL's allegations, even if true, would not entitle it to a recovery. In responding to a similar argument, the court in Angleton v. Pierce, 574 F. Supp. 719, 726 (D.N.J. 1983), articulated a correct understanding of the aforestated difference between the issue of a plaintiff's standing and the issue of the viability of a plaintiff's cause of action:

> "'Associates appears to argue that plaintiffs lack standing because they have no legal right to the relief they seek. Associates has confused standing with failure to state a claim. The two are conceptually distinct: when standing is at issue, the court asks whether the plaintiffs are the proper parties to bring the action, whereas failure to state a claim focuses not on the parties but on the existence of a cause of action (i.e., on the merits). Kirby v. Department of HUD, 675 F.2d 60, 63-64 (3d Cir. 1982); Bowman v. Wilson, 672 F.2d 1145, 1151 n. 10 (3d Cir. 1982).'
>
> "Thus, the focus of an inquiry into standing is not on the viability of the legal theory asserted; rather, the focus is on whether the plaintiff is the 'proper part[y] to bring the action.' If the legal theory itself is not a viable one under applicable law, that is a different question. The question whether the right asserted by BCBSAL is an enforceable one in the first place, i.e., whether BCBSAL has seized upon a legal theory our law accepts, is a cause-of-action issue, not a standing issue."

42 So. 3d at 1220 (emphasis omitted).

By the same token, the question whether the action in the nature of an action of ejectment[8] asserted by Sanchez is

[8]Although referred to in the statute as "an action in the nature of an action of ejectment," see § 6-6-280(a), Ala. Code 1975, "[t]he alternate form of action prescribed in subsection (b) [of § 6-6-280] is, in effect, an action of ejectment as at common law, only stripped of the cumbersome forms and fictions which are characteristic of that form of action." MacMillan Bloedell, Inc. v. Ezell, 475 So. 2d 493, 496 (Ala. 1985).

a viable one under our law if it is based merely on a claim to the right to possession (rather than current physical possession), i.e., whether the legal theory upon which the trial court based its judgment in favor of Sanchez is a legal theory our law accepts, is "a cause-of-action issue, not a standing issue." Id. Regardless of the resolution of this cause-of-action issue, Sanchez has the necessary "personal stake and concrete adverseness" to bring this action. In other words, the issue before us is one that falls in the third of the three aforesaid categories; it is not a standing issue.

Sanchez purchased and received fee-simple title to the property at issue. He thereby acquired legal and equitable title to the property. He mortgaged the property, transferring legal title to Regions Bank. He alleges, however, that he retained an equitable interest in the property. In this context, Sanchez clearly is sufficiently adverse to the parties in actual physical possession of the property to give him standing to assert a right to receive rents and/or possession of the property. It seems equally clear that he is the real party in interest to assert the

rights he asserts. Under the view of the elements of ejectment embraced in the main opinion, however, because Sanchez is not in current actual possession of the property, his claim for ejectment would fail for lack of one of the elements of an ejectment action. Compare Ex parte Green, ___ So. 3d at ___ (Murdock, J., writing specially and expressing disagreement with the conclusion in the main opinion that a failure to prove the peaceable possession required under § 6-6-560, Ala. Code 1975, deprives the circuit court of subject-matter jurisdiction, suggesting instead that "such a failure simply means that a plaintiff has failed to prove a necessary element for recovery under that statute").[9]

This Court has the authority to address ex mero motu, and routinely has addressed ex mero motu, the issue of subject-matter jurisdiction. The main opinion declines to address the question whether this case truly falls in the category of cases in which the plaintiff lacks standing and in which, therefore, the court has no subject-matter

[9]As I explain later, see discussion, infra, I disagree that the elements of an ejectment claim are as stated in the main opinion; therefore, I would disagree with a holding that Sanchez's claim should fail on this basis.

jurisdiction. It does so on the ground that Sanchez has not asked this Court to overrule this Court's holding in Cadle I, see ___ So. 3d at ___ n.7, in which this Court held (wrongly in my view) that the plaintiff lacked standing. As I indicated at the outset, however, I believe there are compelling reasons for this Court to alleviate in this case the confusion over standing and subject-matter jurisdiction, on the one hand, and real-party-in-interest issues and failure to satisfy cause-of-action elements, on the other hand. As Chief Justice Cobb notes in her special writing, this Court created the confusion that exists as to this issue. This Court should clear it up at its earliest opportunity.

Also, although Sanchez has not specifically requested that this Court overrule Cadle I, Sanchez does take the position in his brief to this Court that he has standing, a position that would necessarily require an overruling of Cadle I in the view of the main opinion. It is difficult for me to fault Sanchez, who, after all, was the prevailing party in the trial court, for not making a more specific argument in this regard in light of this Court's own

erroneous and indiscriminate references to standing over the years.[10]

Moreover, it is important to observe that it is the McKinneys, not this Court, who have raised the issue of subject-matter jurisdiction for our consideration. The McKinneys, as petitioners, specifically invoke this Court's decision in Cadle II as their first stated ground for relief from the trial court's judgment. By refusing to grant the petitioners the relief they request in this regard, we would merely be refusing to apply our own wrongly decided precedent concerning an issue of subject-matter jurisdiction. Recognizing that precedent as having been wrongly decided would be consistent not only with the fact that we deal here with an issue of subject-matter jurisdiction, but also with the principle that we generally uphold the decision of a trial court if we may do so on any valid legal ground, even one not presented to us by an

[10]To the extent that the impediment to this Court's correctly addressing the issue of its own jurisdiction in the present case might be viewed as a lack of adequate briefing, I believe it would be preferable to ask for supplemental briefs on this issue rather than to perpetuate what I believe to be an error of our own making concerning an issue of subject-matter jurisdiction.

appellee or, in this case, a "respondent." Although, as a general rule, there may be some degree of difference in the compulsion we feel to address an issue of subject-matter jurisdiction when the result is a finding of the presence of jurisdiction rather than the absence of jurisdiction, see Blevins v. Hillwood Office Center Owners' Ass'n, 51 So. 3d 317 (Ala. 2010), relied upon in note 7 of the main opinion, ___ So. 3d at ___, the main opinion does not dispute that we have the "inherent power" and discretion to address the issue of subject-matter jurisdiction in either situation. In light of the confusion this Court has generated as to the issue of standing and subject-matter jurisdiction in cases such as the one the petitioner requests that we apply today in order to overturn a trial court's judgment, and in light of the fact that the doctrine of stare decisis is a principle of policy designed to ensure stability in the law and not an inexorable command, I believe we have an added measure of responsibility to reject that request.

The confusion caused by this Court on the issues of standing and subject-matter jurisdiction has in large measure been caused in cases where this Court raised these

issues on its own motion. Accordingly, I think it entirely fitting for this Court to act on its own motion to alleviate this confusion at its earliest opportunity, which is now this case. I would reject the invitation of the petitioners to overturn a trial court's judgment based upon a subject-matter-jurisdiction precedent that I believe would not hold up under further scrutiny by this Court.[11]

II.

Even if the view of standing embraced in the main opinion was correct, the application of that view in the main opinion is dependent upon an expression of the elements of an action for ejectment that I believe is incorrect. I

[11]I further question whether the Court today acts consistently with its own approach to the issue of the trial court's jurisdiction. Specifically, I refer to the holding in the penultimate paragraph of the main opinion that the trial court lacks the power to order the return of certain payments made by the McKinneys to Sanchez. The payments in question were made only because they were ordered by the trial court in the first place, the same trial court that is today held not to have had jurisdiction of this case. I question the suggestion in the main opinion that the trial court (and this Court) would not have the authority to remedy the effects of a void order and require the return of payments the trial court is today held not to have had authority to order in the first place. There may be other considerations that would make such an order impractical or contrary to equitable considerations, but those are not the basis upon which the main opinion decides this issue.

therefore conclude that the holding of the main opinion today is based upon an error within an error.

Although some cases speak of an action for ejectment requiring a showing that the plaintiff has legal title or "possession," the reference to possession can only be understood as either loose language or language that is convenient in a given case because the plaintiff happens to have actual possession. In Cadle I itself, although this Court stated that, "[i]n order to maintain an action for ejectment, a plaintiff must allege either possession or legal title," the Court correctly quoted § 6-6-280 as providing that an action must be commenced "'in the name of the real owner of the land or in the name of the person entitled to possession thereof.'" 950 So. 2d at 279 (emphasis added). As this Court explained in MacMillan Bloedell, Inc. v. Ezell, 475 So. 2d 493, 496-97 (Ala. 1985): "[I]t remains incumbent upon the plaintiff to prove a right to possession at the time of the commencement of the action." (Emphasis added.) See also Gholson v. Watson, 495 So. 2d 593, 597 (Ala. 1986) (noting "that plaintiffs did not

have the right of immediate possession, which is the gravamen of an ejectment action" (emphasis added)).

The main opinion itself quotes Lane v. Henderson, 232 Ala. 122, 124, 167 So. 270, 271 (1936), for the principle that "'[e]jectment may be maintained on proof of title carrying, as an element of ownership, a right to possession and enjoyment. Unlawful detainer is a penal action, summary in character, specifically designed to oust a hold-over tenant.'" ___ So. 3d at ___ n.6 (emphasis added). Under the expression of the elements of an action in the nature of ejectment embraced by the main opinion, however, the thousands of landowners in this State who have purchased property, transferred by way of a mortgage deed the legal title to the property to a bank or other lender, given current, physical possession of the property to a tenant, and retained for themselves only a nonpossessory, equitable interest in the property would have no right to bring an action for ejectment against the tenant if the tenant refuses to surrender actual possession of the property following the expiration or termination of a lease.[12]

[12]Indeed, is it not oxymoronic to posit that a claimant seeking to recover possession of land from another must allege

Sanchez purchased the property and acquired legal and equitable title to it before mortgaging the property and transferring legal title to Regions Bank. He still claims an equitable interest in the property and, accordingly, claims a right to immediate possession of the land as against someone who, as he alleges here, "unlawfully withholds and detains the same." Accordingly, even if one were to treat the issue presented as one of standing, a proper recognition of the elements of the cause of action asserted by Sanchez would lead to the conclusion that he did have standing to assert that cause.

III.

I also am compelled to dissent from the holding of the Court today -- the first ever holding by this Court to this effect -- that a circuit court does not have original jurisdiction over an unlawful-detainer action. The only authority relied upon by the main opinion for the aforesaid

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and prove that he or she already has possession of the land? Consistent with an affirmative answer to this rhetorical question, in MacMillan Bloedell, Inc., supra, this Court further noted that "[t]he plaintiff may allege and prove that he either has the legal title to, or was possessed of, the land and that the defendant entered thereupon and unlawfully withholds and detains it." 475 So. 2d at 497 (emphasis added).

conclusion is Darby v. Schley, 8 So. 3d 1011, 1013 (Ala. Civ. App. 2008). As a decision of the Court of Civil Appeals, the decision in Darby does not constitute a precedent that binds this Court for purposes of the doctrine of stare decisis.

Moreover, the question presented in Darby was different than the question presented here. In Darby, the question presented was whether the district court in that case had erred in transferring an unlawful-detainer action to the circuit court "'under the mandate of Alabama Code [1975], § 12-11-9.'" 8 So. 3d at 1013 (quoting the district court's order). Section 12-11-9, Ala. Code 1975, provides that a judge of the district court where a case is filed must transfer that case to the circuit court if that case is "within the exclusive jurisdiction of the circuit court." (Emphasis added.)

The Court of Civil Appeals in Darby correctly cited § 6-6-330, Ala. Code 1975, for the proposition that an unlawful-detainer action "'is cognizable before the district court,'"[13] and § 6-6-350, Ala. Code 1975, for the

[13]Section 6-6-330 states in its entirety:

proposition that a party may appeal to the appropriate circuit court from a judgment entered against him or her in an unlawful-detainer action by a district court.[14] 8 So. 3d at 1013. From these two statutes, the Court of Civil Appeals reached the conclusion that the transfer was

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> "The forcible entry upon and detainer, or the unlawful detainer, of lands, tenements and hereditaments is cognizable before the district court of the county in which the offense is committed."

[14]Section 6-6-350 merely authorizes appeals from the district court to the circuit court. In pertinent part, § 6-6-350 states:

> "Any party may appeal from a judgment entered against him or her by a district court to the circuit court at any time within seven days after the entry thereof, and appeal and the proceedings thereon shall in all respects, except as provided in this article, be governed by this code relating to appeal from district courts."

This provision is, of course, a reiteration of the general rule, see § 12-11-30(3), Ala. Code 1975 ("The circuit court shall have appellate jurisdiction of civil, criminal, and juvenile cases in district court and prosecutions for ordinance violations in municipal courts, except in cases in which direct appeal to the Courts of Civil or Criminal Appeals is provided by law or rule."), and § 12-12-71, Ala. Code 1975 ("Except as provided in Section 12-12-72 and in subsection (e) of Section 12-15-120, all appeals from final judgments of the district court shall be to the circuit court for trial de novo."), except with respect to the seven-day time limit for appeals, compare § 12-12-70 (providing for a general 14-day period to appeal to a circuit court from the judgment of a district court).

improper. In so doing, however, that court did not limit its reasoning to the fact that an unlawful-detainer action is not exclusively within the original jurisdiction of the circuit court (as is obvious from § 6-6-330). The court went further and asserted that an unlawful-detainer action is not within the original jurisdiction of a circuit court at all. Without citing any authority, the court asserted that "a circuit court may not exercise jurisdiction over an unlawful-detainer action until the district court has adjudicated the unlawful-detainer action and one of the parties has appealed to the circuit court." 8 So. 3d at 1013. I question this conclusion in two respects.

First, the conclusion of the Court of Civil Appeals in Darby does not follow from the two statutory provisions cited by that court as its only authority for that conclusion. It is true that § 6-6-330 does give the district court original jurisdiction over unlawful-detainer actions. Nothing in the language of that statute, however, gives the district court exclusive original jurisdiction over unlawful-detainer actions. The district courts and the circuit courts generally have concurrent jurisdiction

(subject to restrictions relating to the amount in controversy) as to many forms of civil actions, with there being a right of appeal to the circuit court from a judgment of a district court in such actions.[15]

By constitutional provision, the circuit courts are the courts of general jurisdiction in this State with original jurisdiction over all cases (even if in some instances that jurisdiction is concurrent with some other court) except as otherwise specifically provided by law. The district

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[15]Section 12-11-30(1), Ala. Code 1975, provides that "[t]he circuit court shall have exclusive original jurisdiction of all civil actions in which the matter in controversy exceeds ten thousand dollars ($10,000), exclusive of interest and costs, and shall exercise original jurisdiction concurrent with the district court in all civil actions in which the matter in controversy exceeds three thousand dollars ($3,000), exclusive of interest and costs." (Emphasis added.) Section 12-11-30(3) provides as a general rule that "[t]he circuit court shall have appellate jurisdiction of civil, criminal, and juvenile cases in district court ...."

The Alabama Uniform Residential Landlord and Tenant Act, Ala. Code 1975, § 35-9A-101 et seq., confirms the concurrent jurisdiction of the district and circuit courts as to eviction actions brought under its provisions: "District courts and circuit courts, according to their respective established jurisdictions, shall have jurisdiction over eviction actions, and venue shall lie in the county in which the leased property is located." Ala. Code 1975, § 35-9A-461(b).

courts, on the other hand, are courts of "limited jurisdiction," meaning that a specific constitutional or statutory grant is necessary to give such courts jurisdiction over a particular type of case. Section 139 of the Alabama Constitution of 1901 ("Judicial Power") states, in pertinent part:

> "(a) Except as otherwise provided by this Constitution, the judicial power of the state shall be vested exclusively in a unified judicial system which shall consist of a supreme court, a court of criminal appeals, a court of civil appeals, a trial court of general jurisdiction known as the circuit court, a trial court of limited jurisdiction known as the district court, a probate court and such municipal courts as may be provided by law."

(Emphasis added.) Moreover, § 142(b) of the Alabama Constitution of 1901 provides, in pertinent part, that "[t]he circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law." (Emphasis added.) See also § 12-11-30(a), Ala. Code 1975 (providing that the circuit courts of this State are the courts of general jurisdiction). In the absence of a statutory provision that relegates an unlawful-detainer action exclusively to the jurisdiction of a district court, I see no basis for the Court of Civil Appeals to have

concluded in Darby, or for this Court to conclude today, that the legislature has removed such actions from the general, original jurisdiction of the circuit courts. See Brown v. Arnold, 125 W. Va. 824, 835, 26 S.E.2d 238, 243 (1943) ("Jurisdiction in the lower court to entertain the eviction proceeding in its inception is not questioned, and rightfully so. General jurisdiction of all matters at law where the controversy, exclusive of interest, exceeds $50, accorded circuit courts in this jurisdiction by Constitution of West Virginia, Article VIII, Section 12, and Code, 51-2-2, includes the right to hear and determine actions of unlawful entry and detainer.").

Furthermore, the conclusion by the Court of Civil Appeals in Darby that a circuit court does not have concurrent, original jurisdiction over an unlawful-detainer action was not a question squarely presented to that court and was not even necessary to the result reached by that court. Specifically, the district court in Darby had transferred the case to the circuit court under the authority of § 12-11-9, which mandated such a transfer only when the case was "within the exclusive jurisdiction of the

circuit court." Thus, in order to decide the validity of the district court's transfer of the unlawful-detainer action in Darby, all that was necessary for the Court of Civil Appeals to decide was whether the district court had been given original jurisdiction over unlawful-detainer actions under § 6-6-330, which it obviously had been, thus meaning that the circuit court did not have exclusive, original jurisdiction. It was not necessary for the Court of Civil Appeals to go further and address whether the original jurisdiction of the district court was exclusive. As a consequence, the Court of Civil Appeals' holding in this respect can only be considered dictum.

IV.

On the basis of foregoing, I respectfully dissent.