In the
Missouri Court of Appeals
Western District

ALBU FARMS, LLC,	)	
	)	
Respondent,	)	
	)	**WD85494**
v.	)	
	)	**OPINION FILED:**
HILDA M. PRIDE, et al.,	)	**November 28, 2023**
	)	
Appellants.	)	

Appeal from the Circuit Court of Boone County, Missouri
The Honorable Michael Bradley, Judge

Before Division Three: Lisa White Hardwick, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

Dallas Pride ("Dallas"),[1] Sylvia Pride ("Sylvia"), and Valerie Pride ("Valerie") (collectively "Appellants") appeal from the trial court's grant of summary judgment in favor of Albu Farms, LLC ("Albu Farms") on claims to quiet title and for ejectment. Appellants claim the trial court's judgment is void because it was entered without substitution following Hilda Pride's ("Hilda") death; because the trial court did not have personal jurisdiction over Farrel Pride ("Farrel"); because an indispensable party that

[1] Because Hilda Pride, Farrel Pride, Valerie Pride, Dallas Pride, and Sylvia Pride share a surname, we refer to each by their first name for purposes of clarity. No undue familiarity or disrespect is intended.

claims an interest in the real property at issue in this case was not joined; and because a monetary judgment entered in prior litigation, that was executed upon in a manner that led to Albu Farms holding title to the real property at issue in this case, was void. In addition, Sylvia has filed a motion questioning whether this appeal must be dismissed for want of a final judgment. Finding no error and that the judgment appealed from is final, we deny Sylvia's motion to dismiss and affirm the trial court's judgment.

Factual and Procedural History[2]

This case involves a protracted and contentious dispute between family members and closely-held corporate entities over ownership of and the right to possess approximately 200-210 acres of farmland, including a residence and other structures, located in Boone County, Missouri, legally described as:

> Eighty (80) acres, more or less, the East half of the Northwest Quarter; Eighty (80) acres, the West half of the Northeast Quarter, and Forty-Six (46) acres, the West part of the East half of the Northeast Quarter, all in Section Twenty (20) in Township Fifty-One (51) of Range Twelve (12) in Boone County, Missouri.

(the "Farm").[3] The Farm is assigned Boone County Assessor's Parcel No. 03-400-20-00-002.00 01, and has a street address of 20501 N. Route V, Sturgeon, Missouri 65284.

Several persons and entities are connected to the current dispute over ownership and possession of the Farm although only four are parties to this appeal. Albu Farms (the

[2] When reviewing the summary judgment record we "review the record in the light most favorable to the party against whom judgment was entered, and give the non-movant the benefit of all reasonable inferences from the record." *Cox v. Callaway County Sheriff's Department*, 663 S.W.3d 842, 847 (Mo. App. W.D. 2023) (internal brackets and citations omitted).

[3] Judgments affecting real estate "must describe the land with enough certainty to support a later conveyance of the property." *Medical Plaza One, LLC v. Davis*, 552 S.W.3d 143, 165 n. 19 (Mo. App. W.D. 2018) (quotation omitted).

Respondent in this appeal) is a Missouri limited liability company who acquired the Farm from B.G. B.G. and Hilda are brother and sister. Farrel is Hilda's son. Valerie (one of the Appellants) is married to Farrel. Dallas and Sylvia (the remaining Appellants) are the adult children of Valerie and Farrel. Magnum Commercial Properties, Inc. ("Magnum") is a Missouri corporation that was formed in 1994 by F.G.P. (believed to be a relative of the Pride family). Magnum was administratively dissolved in 1995. Midwest Environmental Technologies, Inc. ("Midwest Environmental") is a Missouri corporation that was formed by either Valerie or Farrel. Midwest Environmental is also administratively dissolved.

It is uncontested that record fee simple title to the Farm is held by Albu Farms. It is uncontested that Valerie, Sylvia, and Dallas (Appellants) do not claim to hold title to or an ownership interest in the Farm. It is uncontested that Valerie, Sylvia, and Dallas do not claim to be tenants on the Farm by virtue of a written lease with any person or entity and do not claim to have a tenancy relationship of any kind with Albu Farms or B.G. It is uncontested that Valerie, Sylvia, and Dallas are in possession of the Farm based solely on their familial relationship with Hilda. By warranty deed dated July 1, 1995, Hilda and her husband G.P. conveyed to themselves a life estate in the Farm with the remainder interest granted to Magnum after the death of the survivor of G.P. or Hilda.[4] Appellants claim that Hilda's and Magnum's ownership interests in the Farm have never been lawfully extinguished because a prior lawsuit that resulted in a monetary judgment in favor of B.G. and against Hilda, Valerie, and Farrel is void and that orders and judgments in aid of

[4] After G.P. died on January 1, 2003, and pursuant to the terms of the July 1, 1995 warranty deed, the life estate interest in the Farm was solely held by Hilda.

execution of the prior judgment are void. This includes orders authorizing sheriff's sales of Hilda's and Magnum's interests in the Farm.

The Prior Lawsuit

In 2014, B.G. filed a lawsuit in the Circuit Court of Boone County, Case Number 14BA-CV00675 ("Prior Lawsuit"). B.G. sought to judicially foreclose a deed of trust recorded against land owned by Valerie and Farrel that is not at issue in this case (though the land is believed to be nearby the Farm). The deed of trust secured several personal loans made by B.G. to Valerie, Farrel, and Hilda. B.G. later amended his petition in the Prior Lawsuit to add claims against Valerie, Farrel, and Hilda for the unpaid balances due on the loans as well as for fraudulent misrepresentation, civil conspiracy, and conversion in connection with a specific loan made by B.G.

Hilda, Valerie, and Farrel were served in the Prior Lawsuit by publication. On September 2, 2014, defendants, acting *pro se,* filed an answer which Valerie signed on Farrel's behalf based on a power of attorney. The trial court struck the answer as to Farrel, because Valerie is not a licensed attorney. Despite this, Valerie continued to file and sign pleadings on Farrel's behalf in reliance on the power of attorney.

On March 19, 2015, as a sanction for failing to respond to discovery and for continuing to file pleadings signed by Valerie on Farrel's behalf the trial court struck Valerie, Farrel, and Hilda's pleadings and entered interlocutory default judgments against each of them in favor of B.G. An attorney then entered her appearance on behalf of Hilda and Farrel with a limited appearance on behalf of Valerie. Hilda, Valerie, and Farrel filed a motion to set aside the interlocutory default judgment which was denied by

the trial court following a hearing. During that hearing, evidence was presented including evidence regarding B.G.'s damages.

On April 23, 2015, the trial court entered a final judgment in the Prior Lawsuit which included detailed findings of fact and conclusions of law ("2015 Judgment"). The 2015 Judgment found that the trial court had personal jurisdiction over Hilda, Valerie, and Farrel. The 2015 Judgment found that B.G. held a first and prior lien on Valerie and Farrel's land by virtue of his recorded deed of trust and ordered the deed of trust to be foreclosed by sheriff's sale. The 2015 Judgment also entered sizeable monetary judgments in favor of B.G. and against Hilda, Valerie, and Farrel in the amount each owed on loans extended by B.G. including interest and attorney fees.

Hilda and Valerie appealed the 2015 Judgment to this court (WD78729 and WD78676 respectively)[5] and simultaneously filed for bankruptcy protection to stay the appeals and execution on the 2015 Judgment. Farrel did not appeal the 2015 Judgment.

Hilda and Valerie agreed to bankruptcy payment plans wherein Hilda agreed to pay B.G. the monetary judgment entered against her in the 2015 Judgment, and Valerie agreed to sell the land that was judicially foreclosed by the 2015 Judgment with proceeds paid to B.G. In connection with approval of the plans, Hilda and Valerie were each ordered by the bankruptcy court to dismiss their appeals from the 2015 Judgment.

[5] "It has long been the law that courts may (and should) take judicial notice of their own records in prior proceedings which are (as here) between the same parties on the same basic facts involving the same general claims for relief." *Ruff v. Bequette Construction, Inc.*, 669 S.W.2d 701, 707 (Mo. App. E.D. 2023) (quotation omitted). "Judicial notice of records from other related proceedings involving the same parties can be on the court's own motion or at the request of a party." *Moore v. Mo. Dental Board*, 311 S.W.3d 298, 305 (Mo. App. W.D. 2010) (quotation omitted).

Hilda and Valerie did not perform as they promised they would in their bankruptcy repayment plans. Their bankruptcies were subsequently dismissed without discharge.

On January 30, 2017, this court entered orders dismissing Hilda and Valerie's appeals from the 2015 Judgment for failure to prosecute, and in so doing, noted that Hilda and Valerie had been earlier ordered by the bankruptcy court to dismiss their appeals. Neither Hilda nor Valerie sought further review of, or relief from, our dismissal orders. Our mandate issued in both appeals on February 15, 2017.

After Hilda and Valerie's bankruptcies and appeals were dismissed, B.G. began efforts to execute on the 2015 Judgment. B.G. initiated garnishment proceedings against Magnum believing it owed money to Valerie and Farrel in excess of the amounts each owed on the 2015 Judgment. Although properly served, Magnum never answered the garnishment interrogatories. On May 7, 2018, B.G. secured a judgment against Magnum in the amount of $243,595.53 plus post-judgment interest pursuant to Rule 90.08[6] ("2018 Magnum Garnishment Judgment"). Magnum did not appeal or otherwise seek relief from the 2018 Magnum Garnishment Judgment.

B.G. also initiated garnishment proceedings against Midwest Environmental, believing it owed money to Valerie and Farrel in excess of the amounts each owed on the 2015 Judgment. Although properly served, Midwest Environmental never answered the garnishment interrogatories. On May 7, 2018, B.G. secured a judgment against Midwest

[6] Rule 90.08 requires a garnishee to properly answer garnishment interrogatories, and provides that the failure to do so may "subject the garnishee to a finding that the garnishee is in default, and the garnishor may take judgment by default against the garnishee."

Environmental in the amount of $243,595.53 plus post-judgment interest pursuant to Rule 90.08 ("2018 Midwest Environmental Garnishment Judgment"). Midwest Environmental did not appeal or otherwise seek relief from the 2018 Midwest Environmental Garnishment Judgment.

B.G. then served discovery in aid of execution on Hilda, Valerie, Farrel, Magnum, and Midwest Environmental in an effort to discover assets against which the 2015 Judgment and the two garnishment judgments could be collected. After receiving no or inadequate responses B.G. filed motions for sanctions.

In the motion for sanctions filed against Hilda, Valerie, Farrel, and Magnum, B.G. noted that on July 1, 1995, Magnum executed a corporation deed of trust in favor of Hilda and her husband G.P. in the amount of $110,000 plus interest. Additionally, B.G. noted that on December 4, 1995, Magnum executed a corporation deed of trust in favor of Valerie and Farrel in the amount of $20,000 plus interest. Both of the corporation deeds of trust purported to create liens on the Farm. B.G. argued that the two deeds of trust executed by Magnum were a hindrance to his ability to collect the 2015 Judgment and the 2018 Magnum Garnishment Judgment because it was unclear whether payments were owed on the obligations secured by the deeds of trust, or whether the obligations secured by the deeds of trust had been fully payed requiring their release. On May 29, 2018, the trial court entered an order directing that the interests in the Farm held by Hilda, Valerie, and Farrel by virtue of Magnum's deeds of trust were deemed to be released, remised, and quit-claimed to Magnum, and that the two corporation deeds of trust were released and were null and void and of no legal effect whatsoever. The order

directed the Boone County, Missouri Recorder of Deeds to show that Corporation Deed of Trust recorded in Book 1177, Page 290 was released. The order also directed the Boone County, Missouri Recorder of Deeds to show that Corporation Deed of Trust recorded in Book 1195, Page 547 was released. This sanctions order was never appealed.[7]

In the motion for sanctions filed against Midwest Environmental, B.G. noted that on December 8, 1995, Magnum executed a corporation deed of trust in favor of Midwest Environmental in the amount of $180,000 plus interest. The corporation deed of trust purported to create a lien on the Farm. B.G. argued that the corporation deed of trust executed by Magnum created a hindrance to his ability to collect the 2018 Magnum Garnishment Judgment because it was unclear whether payments were owed on the obligation secured by the deed of trust or whether the obligation secured by the deed of trust had been fully payed requiring its release. On July 23, 2018, the trial court entered an order directing that the interest in the Farm held by Midwest Environmental by virtue

[7] Pursuant to section 512.020, "[a]ny party to a suit aggrieved by any judgment of any trial court in any civil cause from which an appeal is not prohibited by the constitution, nor clearly limited in special statutory proceedings, may take his or her appeal to a court having appellate jurisdiction from any . . . (5) Final judgment in the case or from any special order after final judgment in the cause . . . .

"A special order after final judgment includes 'orders in special proceedings attacking or aiding the enforcement of [a] judgment after it has become final in the action in which it was rendered.'" *McGathey v. Matthew K. Davis Tr.*, 457 S.W.3d 867, 873 (Mo. App. W.D. 2015) (quoting *State ex rel. Koster v. Cain*, 383 S.W.3d 105, 111 (Mo. App. W.D. 2012)). *Wilson v. Wilson*, 640 S.W.3d 136, 140 (Mo. App. W.D. 2022).

All statutory references are to RSMo 2000 as supplemented through May 27, 2022, unless otherwise indicated.

of the Magnum deed of trust was deemed to be released, remised, and quit-claimed to Magnum, and that the corporation deed of trust in favor of Midwest Environmental was released and was null and void and of no legal effect whatsoever. The order directed the Boone County, Missouri Recorder of Deeds to show that Corporation Deed of Trust recorded in Book 1195, Page 550 was released. The sanctions order was never appealed.

B.G. then sought and secured trial court orders authorizing sheriff's sales of Hilda's life estate interest and Magnum's remainder interest in the Farm in aid of execution on the 2015 Judgment and the 2018 Magnum Garnishment Judgment.[8]

B.G. purchased Magnum's remainder interest in the Farm at a sheriff's sale held on January 16, 2020, and received a sheriff's deed that was duly recorded on May 26, 2020. Pursuant to the terms of the sheriff's deed, the sheriff's sale was conducted pursuant to judgment execution issued by the court on September 9, 2019, in favor of B.G. and against Farrel, Valerie, Hilda, Magnum, and Midwest Environmental. Based on said judgment execution the sheriff levied and seized all of the rights, title, interests, and estates of Farrel, Valerie, Hilda, Magnum, and Midwest Environmental in and to the Farm and caused same to be sold at the sheriff's sale. On July 6, 2020, B.G. recorded a quit-claim deed conveying the remainder interest in the Farm acquired at the sheriff's sale to himself and his wife, P.G.

B.G. and P.G. purchased Hilda's life estate in the Farm at a sheriff's sale held on June 18, 2020, and received a sheriff's deed that was duly recorded on July 27, 2020.

[8] *See* footnote 7, *supra*.

Pursuant to the terms of the sheriff's deed, the sheriff's sale was conducted pursuant to judgment execution issued by the court on February 27, 2020, in favor of B.G. and against Farrel, Valerie, Hilda, Magnum, and Midwest Environmental. Based on said judgment execution the sheriff levied and seized all of the rights, title, interests, and estates of Farrel, Valerie, and Hilda in and to the Farm and caused same to be sold at the sheriff's sale.

Neither Hilda, Magnum, Midwest Environmental, Valerie, nor Farrel filed any legal challenge to the sheriff's sales in the Prior Lawsuit.

Based on the foregoing efforts to execute on the 2015 Judgment and on the 2018 Magnum Garnishment Judgment, B.G. and his wife P.G. became the fee simple absolute title holders of the Farm by no later than July 27, 2020. Despite that fact, Hilda, Valerie, Farrel, Sylvia, and Dallas continued to live at, and/or to have personal belongings at, the residence or in other buildings on the Farm.

The Current Lawsuit Giving Rise to this Appeal

On September 8, 2020, B.G. and P.G. filed a lawsuit in the Circuit Court of Boone County, Missouri asserting claims for unlawful detainer (Count I) and property damages (Count II) against Hilda, Valerie, Farrel, Sylvia, and Dallas. The petition also asserted a claim of quiet title against Hilda, Valerie, Farrel, Sylvia, Dallas, and Magnum. Because Magnum is not in good standing and its statutory registered agent is the Missouri Secretary of State, service of process was secured on Magnum by service on the secretary of state. After service on the individual defendants via special process server was unsuccessful, B.G. served all of the individual defendants by placing summons on the

front door of the Farm, in a public place in Boone County, and via direct mail to each defendant's last known address. Additionally, B.G. posted a notice of termination of any tenancy on the front door of the residence on the Farm on November 27, 2020, requiring all occupants to vacate the property by December 31, 2020.

On December 16, 2020, P.G. died leaving B.G. as the sole fee simple title owner of the Farm. Suggestions of P.G.'s death were filed on January 8, 2021, and B.G. filed his first amended petition removing P.G. as a plaintiff and including the notice of termination posted at the Farm. B.G. filed a second amended petition in August of 2021 which added a claim of ejectment (Count IV) against Hilda, Valerie, Farrel, Sylvia, and Dallas.

According to the trial court's docket sheet included in the legal file, Hilda, Valerie, Sylvia, and Dallas filed answers in response to B.G.'s various petitions including the second amended petition. However, those answers are not included in the extensive legal file submitted by the Appellants in this case. The record is therefore silent as to whether Hilda, Valerie, Sylvia, or Dallas asserted any affirmative defenses to the claims asserted by B.G. in the second amended petition. Farrel and Magnum never filed answers in response to any of B.G.'s petitions or otherwise took any action to join issue in the case.

B.G. filed a motion for summary judgment on the claim of quiet title (Count III) and a separate motion for partial summary judgment on his claims of unlawful detainer (Count I) and ejectment (Count IV). The motion did not address B.G.'s request in the second amended petition for an award of damages for ejectment. Valerie, Hilda, Sylvia, and Dallas filed responses to both summary judgment motions. Farrel did not respond to

either summary judgment motion. Magnum did not respond to the summary judgment motion involving the claim of quiet title (the only claim asserted against Magnum).

In their responses to the summary judgment motions, Hilda, Valerie, Sylvia, and Dallas argued that as a matter of law unlawful detainer is not permitted as a remedy to secure possession of property after a sheriff's sale. In their responses to the summary judgment motions, Hilda, Valerie, Sylvia, and Dallas did not contest the material uncontroverted facts set forth in B.G.'s summary judgment motions that would support the entry of summary judgment as a matter of law on B.G.'s claims of quiet title[9] and ejectment.[10] However, in their responses to the motions for summary judgment, Hilda, Valerie, Sylvia, and Dallas argued that despite uncontroverted material facts that would support the entry of judgment in favor of B.G. judgment cannot be entered in favor of B.G. on the claims of quiet title and ejectment because B.G. only holds title to the Farm

---

[9] Section 527.150 governs suit to quiet title, and provides in subsection 1:

> Any person claiming any title, estate or interest in real property, whether the same be legal or equitable, certain or contingent, present or in reversion, or remainder, whether in possession or not, may institute an action against any person or persons having or claiming to have any title, estate or interest in such property, whether in possession or not, to ascertain and determine the estate, title and interest of said parties, respectively, in such real estate, and to define and adjudge by its judgment or decree the title, estate and interest of the parties severally in and to such real property.

Section 527.150.1. "[T]he core remedy in a quiet title action is a decree quieting title in favor of one of the litigants." 18A Mo. Prac., Real Estate Law -- Transact. & Disputes section 71:5 (3d ed. 2023).

[10] Chapter 524 is dedicated to the action for ejectment. "An action for [ejectment] may be maintained in all cases where the plaintiff is legally entitled to the possession thereof." Section 524.010. "[T]he core remedy in a successful claim for ejectment" is "an order turning over possession." 18A Mo. Prac., Real Estate Law -- Transact. & Disputes section 71:5 (3d ed. 2023).

by virtue of the 2015 Judgment and judgments and orders in aid of execution on the 2015 Judgment, all of which are void. Specifically, Hilda, Valerie, Sylvia, and Dallas claimed that Valerie, Farrel, and Hilda were denied their due process rights in the Prior Lawsuit. Hilda, Valerie, Sylvia, and Dallas asserted additional uncontroverted facts in their responses to B.G.'s summary judgment motions to support their defense. B.G. replied to the responses, including to the additional uncontroverted facts asserted by Hilda, Valerie, Sylvia, and Dallas.

On January 13, 2022, a hearing was held on B.G.'s summary judgment motions. On February 21, 2022, the trial court entered its order denying B.G.'s request for summary judgment on the unlawful detainer claim (Count I) agreeing with the defendants that unlawful detainer was not an available remedy as a matter of law despite uncontroverted material facts. However, based on the uncontroverted material facts established by the summary judgment record the trial court granted partial summary judgment in favor of B.G. and against Hilda, Valerie, Farrel, Sylvia, Dallas, and Magnum on B.G.'s claim for quiet title (Count III) and against Hilda, Valerie, Farrel, Sylvia, and Dallas on B.G.'s claim for ejectment (Count IV). Left unresolved were B.G.'s request for an award of damages in connection with the ejectment claim and his claim for property damages (Count II) as to which no motion for summary judgment was filed. The trial court's partial summary judgment order expressly rejected the defense asserted by Hilda, Valerie, Sylvia, and Dallas that the 2015 Judgment and all subsequent execution orders and judgments were void.

Hilda died on March 16, 2022, and suggestions of death were presented by her attorney on April 14, 2022. The trial court's April 14, 2022 docket entry notes that Hilda appeared by next friend Sylvia. On that same day, B.G. dismissed his claims for unlawful detainer (Count I) and ejectment (Count IV) against Hilda only and dismissed his claim for property damages (Count II) against all defendants against whom the claim was asserted. The trial court set the remaining unresolved issue of damages to be awarded against Valerie, Sylvia, and Dallas on the ejectment claim (Count IV) for trial in late May 2022.

B.G. conveyed fee simple title in the Farm to Albu Farms and filed pleadings to substitute Albu Farms as the plaintiff in lieu of himself on May 13, 2022. B.G. also sought a continuance from the late May 2022 trial date. Following a hearing, the motion to substitute was granted on May 24, 2022, and trial was rescheduled on the remaining damages issue for June 28, 2022.

On May 25, 2022, Albu Farms waived the unresolved claim for damages on the ejectment claim (Count IV). On May 27, 2022, the trial court cancelled the scheduled trial and entered a final judgment ("Judgment") as all issues as to all parties had been resolved. The Judgment noted and effectively incorporated the February 21, 2022 interlocutory partial summary judgment order; noted the subsequent conveyance of the Farm to Albu Farms and the substitution of Albu Farms as plaintiff in lieu of B.G.; noted Albu Farms' dismissal of the unresolved claim for damages in connection with the ejectment claim (Count IV) and Albu Farms' acceptance of the trial court's February 21, 2022, partial summary judgment order including that no recovery could be had in

unlawful detainer (Count I). The Judgment then entered judgment in favor of "defendants" and against Albu Farms on the claim for unlawful detainer (Count I); in favor of Albu Farms and against "defendants" on the claim for quiet title (Count III); and in favor of Albu Farms and against "defendants" on the claim for ejectment (Count IV). The Judgment further stated that "[a]s to Count IV, the Court, per its interlocutory order dated February 21, 2022, grants possession to [Albu Farms] pursuant to RSMo 524.010 and recovery of the premises," and directed that "[p]ursuant to Section 524.280, the Sheriff of Boone County, Missouri may enforce this judgment by executions and writs for delivery of the possession of real property."

Sylvia, Dallas, and Valerie filed this timely appeal. No appeal has been filed by Farrel or Magnum.

Sylvia's Motion Questioning Finality of the Judgment

Although Sylvia is an Appellant, she has filed a motion asking this court to consider the finality of the Judgment. "A prerequisite to appellate review is that there be a final judgment." *Maly Commercial Realty, Inc. v. Maher*, 582 S.W.3d 905, 910 (Mo. App. W.D. 2019) (quoting *Gibson v. Brewer*, 952 S.W.2d 239, 244 (Mo. banc 1997)). "If the trial court's judgment is not final, the reviewing court lacks jurisdiction and the appeal must be dismissed." *Id.* (quoting *Glasgow Sch. Dist.*, 572 S.W.3d 543, 547 (Mo. App. W.D. 2019)). "A final, appealable judgment resolves all issues in a case, leaving nothing for future determination." *Id.* (quoting *Archdekin v. Archdekin*, 562 S.W.3d 298, 304 (Mo. banc 2018)).

Sylvia's motion raises three concerns. First, Sylvia argues that the Judgment was entered after Hilda's death and is void as to Hilda and, thus, fails to dispose of all issues as to all parties. Second, Sylvia argues that the trial court did not have personal jurisdiction over Farrel so that the Judgment entered against him is void and, thus, fails to dispose of all issues as to all parties. Third, Sylvia argues that the Judgment is void because it was rendered in the absence of Midwest Environmental an indispensable party who holds a deed of trust on the Farm. We address the concerns separately.

Following Hilda's death, B.G. dismissed his claims for unlawful detainer (Count I) and ejectment (Count IV) against Hilda only and dismissed his freestanding claim for property damages (Count II) against all defendants against whom the claim was asserted (which included Hilda). The Judgment entered judgment in favor of Albu Farms (B.G.'s successor) and against "defendants" for ejectment (Count II), but Hilda was no longer a named defendant as to that count so no judgment was entered against her for ejectment. The Judgment also entered judgment in favor of Albu Farms and against "defendants" for quiet title (Count III) a claim as to which Hilda technically remained a named defendant.

Rule 52.13(a)(1) provides in pertinent part as follows: "If a party dies ***and the claim is not thereby extinguished***, the court may, upon motion, order substitution of the proper parties. . . ." (emphasis added). Here, the quiet title action sought to extinguish Hilda's claimed interest in the Farm which was alleged in the second amended petition to be her continued possession of the Farm despite the fact that B.G. (and later Albu Farms) was the fee simple absolute owner. Plainly, Hilda's possession of the Farm ceased at the time of her death necessarily extinguishing the quiet title claim asserted against her.

Consistent with this fact, the trial court's docket entry, made contemporaneously with its entry of the written Judgment, expressly notes that judgment was entered in favor of Albu Farms and against Valerie, Farrel, Sylvia, Dallas, and Magnum with no mention of Hilda.

Sylvia argues that beyond Hilda's possessory interest raised in B.G.'s quiet title claim, Hilda had an additional interest in the Farm by virtue of her life estate and by virtue of the deed of trust extended to her by Magnum. But, the uncontroverted summary judgment record establishes that these claimed interests had been extinguished well before Hilda's death by one of the sheriff's sales conducted in aid of execution on the 2015 Judgment and by the sanctions order in aid of execution on the 2018 Magnum Garnishment Judgment which declared the deed of trust extended by Magnum to Hilda released, null and void, and of no legal effect whatsoever.

Although prior to her death Hilda sought in this case to reestablish these claims by arguing in response to B.G.'s summary judgment motions that the 2015 Judgment and all orders or judgments entered in aid of execution on that judgment were void, the trial court expressly rejected this defense *before* Hilda died when it entered its February 21, 2022 partial summary judgment order. That interlocutory ruling became final for purposes of appeal upon entry of the Judgment. By then, Hilda's death had forever foreclosed the ability to reestablish her life estate in the Farm even assuming the defense of a void judgment was later determined to have merit.[11] And Hilda's death forever

[11]Hilda's life estate automatically extinguished upon her death. *Reed v. Little River Draining Dist.*, 584 S.W.2d 426, 429 (Mo. App. E.D. 1979) ("A life estate held by more than one tenant is terminated [] at the death of the survivor."); *see, e.g.*, *Wilson v. Garaghty*, 70 Mo. 517 (Mo. 1879) (holding where defendant husband died, and husband's right to possession of property was a function of marital interest acquired through wife, suit for ejectment against husband abated on his death).

foreclosed her ability to recover the debt, if any, secured by the deed of trust on the Farm extended by Magnum as that claim, if it exists at all, belongs to Hilda's estate. Hilda's presence in this case is not necessary for effective appellate review of Appellants' claims that the trial court erred in rejecting the defense that the 2015 Judgment and all judgments and orders in aid of execution on the 2015 Judgment are void. The practical effect of those claims, if successful, will inure to the benefit of every party named in the 2015 Judgment and in judgments or orders in aid of execution of the 2015 Judgment, including Hilda.

Pursuant to the plain language of Rule 52.13(a)(1), substitution for Hilda following her death was not required. Sylvia's challenge to finality of the Judgment based on the lack of substitution following Hilda's death is without merit.

Sylvia next argues that the trial court did not have personal jurisdiction over Farrel so that the Judgment entered against him is void, and as a result, fails to dispose of all issues as to all parties. This contention is without merit for two reasons. First, Sylvia concedes that the Judgment on its face disposed of the quiet title and ejectment claims asserted against Farrel. The Judgment thus disposed of all issues as to all parties, rendering it final for purposes of appeal. *Maly Commercial Realty, Inc.*, 582 S.W.3d 905, 910. Second, Sylvia has no standing to challenge whether the facially final Judgment is "void" as to Farrell based on a claim of lack of personal jurisdiction. "Courts have a duty to determine if a party has standing prior to addressing the substantive issues of the case." *CACH, LLC v. Askew*, 358 S.W.3d 58, 61 (Mo. banc 2012) (citation omitted). "Standing requires that a party have a personal stake arising from a threatened or actual injury."

State ex rel. Williams v. Mauer, 722 S.W.2d 296, 298 (Mo. banc 1986) (citation omitted). Sylvia has made no attempt in her motion to explain how or why she has a personal stake arising from a threatened or actual injury that would afford her the standing to argue, on Farrel's behalf, that the Judgment was entered against him without personal jurisdiction. Sylvia argues only that a void Judgment as to Farrel would render the Judgment not final because it would no longer dispose of all claims against all parties. This is not a personal stake arising from a threatened or actual injury sufficient to support standing. *See In re B.F.*, 87 P.3d 427, 430-31 (Mont. 2004) (holding that mother in guardianship proceeding had no standing to allege due process rights of fathers were violated because they were not given sufficient notice of proceedings); *Lawson v. Qingdao Taifa Group Co., Ltd.*, 2013 WL 5303741 (S.D. Ind. 2013) ("[A] party does not have standing to assert another party's objections to personal jurisdiction[.]") (citing *In re Athanasios III, L.L.C.*, No. 2:11CV994 DAK, *Memorandum Decision and Order*, 2013 WL 786445, *5 (D. Utah, 2013); *AF Holdings, L.L.C. v. Does 101,058*, 286 F.R.D. 39, 57 (D. D.C. 2012); *Synthes, Inc. v. Marotta*, 281 F.R.D. 217, 229–30 (E.D. Penn. 2012); *Lown Companies, L.L.C. v. Piggy Paint, L.L.C.*, No. 1:11–cv–911, *Memorandum Opinion*, 2012 WL 782671,*2 (W.D. Mich. 2012); *SmithKline Beecham v. Geneva Pharms.*, 287 F.Supp.2d 576, 580 n. 7 (E.D. Pa. 2002) (finding that party defendant lacks standing to contest personal jurisdiction on proposed defendant's behalf). Because the Judgment is final on its face as it disposes of all issues as to all parties and because Sylvia lacks standing to directly challenge whether the Judgment is void as to Farrel based on a claim of lack of personal jurisdiction, her second challenge to the finality of the Judgment is without merit.

Finally, Sylvia argues that the Judgment is void because it was rendered in the absence of Midwest Environmental the record holder of a deed of trust on the Farm and an indispensable (but unnamed) party. This argument does not implicate the finality of the Judgment which plainly resolved all issues as to all named parties. Sylvia's third challenge to the finality of the Judgment is without merit.

The Judgment is final as it resolves all issues as to all parties. Sylvia's motion questioning the finality of the Judgment is denied. We turn to the merits of the appeal.

Standard of Review

"We review the grant of summary judgment *de novo*." *Cox*, 663 S.W.3d 842, 847 (citation omitted). We apply the same criteria as the trial court when deciding whether summary judgment was proper. *Brockington v. New Horizons Enterprises, LLC*, 654 S.W.3d 876, 880 (Mo. banc 2022) (quoting *Green v. Fotoohighiam*, 606 S.W.3d 113, 115 (Mo. banc 2020)). "Summary judgment is only proper if the moving party establishes that there is no genuine issue as to the material facts and that the movant is entitled to judgment as a matter of law." *Id.*; Rule 74.04(c)(6).

Analysis

Appellants raise seven points on appeal. The first three points are direct legal challenges to the Judgment. The final four points argue for various reasons that the 2015 Judgment and all orders or judgments entered in aid of execution on the 2015 Judgment are void necessarily rendering the Judgment void as Albu Farms' ownership of the Farm is derivative of the sheriff's sales that resulted in B.G. acquiring fee simple title to the Farm.

Points One through Three: Appellants' Legal Challenges to the Trial Court's Grant of Summary Judgment.

Appellants' first point on appeal argues that the Judgment was void as to Hilda because it was erroneously entered after her death without substitution and, therefore, that the Judgment is not final because it failed to dispose of all issues as to all parties. This precise argument was raised by Sylvia in her motion questioning finality of the Judgment. Our discussion and rejection of the argument, *supra*, applies equally to the repeated contention now raised as a point on appeal by all of the Appellants.

Point One is denied.

Appellants' second point on appeal argues that the Judgment was void as to Farrel because it was entered without personal jurisdiction over Farrel and that as a result, the Judgment is not final because it failed to dispose of all issues as to all parties. This precise argument was raised by Sylvia in her motion questioning finality of the Judgment. Our discussion and rejection of the argument, *supra*, applies equally to the repeated contention now raised as a point on appeal by all of the Appellants.

We acknowledge Valerie's additional argument that because she and Farrel are married any question about the validity of the Judgment against Farrel impacts her directly because "[i]t is impossible . . . to cancel *only* Valerie's interest in the [Farm] without *also* canceling Farrel's interest." Valerie is essentially arguing that she has a personal stake arising from a threatened or actual injury that should permit her to assert that the Judgment is void as to Farrel for want of personal jurisdiction because any interest that Valerie and Farrel have in the Farm is as tenants by the entirety. We are not persuaded. The concept of tenancy by the entirety is associated with an ownership

interest in property by virtue of a conveyance or that is documented in a fashion where legal title or ownership is established. *See, e.g, In re Baker's Estate*, 359 S.W.2d 238, 244 (Mo. App. Springfield 1962) (noting that a bank account was personal property held by husband and wife as tenants by the entirety); *White v. Roberts*, 637 S.W.2d 332, 334-35 (Mo. App. E.D. 1982) (noting that funds from certificates of deposit jointly owned by husband and wife are presumptively held as tenants by the entirety); *In re O'Neal's Estate*, 409 S.W.2d 85, 91 (Mo. 1966) (citations omitted) (noting bank account where signature account provided for ownership with right of survivorship, choses in action payable to husband and wife, and promissory note endorsed to husband and wife, were presumptively tenancy by the entirety property); *Cullum v. Rice*, 162 S.W.2d 342, 344 (Mo. App. K.C. 1942) (noting that "deed in such form as by the common law would create a joint tenancy in two grantees would in the same form create an estate of entirety in husband and wife").

The uncontroverted summary judgment record establishes that the sole and only "interest" in the Farm that has ever been asserted by Valerie on her own behalf, or on Farrel's behalf, is the ability to live on the Farm by virtue of their familial relationship with Hilda. That "interest" is one of convenience and is not grounded in a legally enforceable possessory or ownership right let alone an interest or right that is held as tenancy by the entirety property. Valerie's marriage to Farrel does not put her in a position where she has a personal stake arising from a threatened or actual injury that affords her standing to assert that the Judgment is void as to Farrel for want of personal jurisdiction. *See State ex rel. Williams*, 722 S.W.2d 296, 298.

Point Two is denied.

Appellants' third point on appeal argues that the Judgment is void for lack of an indispensable party. Specifically, the Appellants argue that it was error for the Judgment to conclude that "Defendants to this action, *or any other party*, do not hold title, estate or any interest in said real property," because Midwest Environmental is the record holder of a deed of trust on the Farm and was thus an indispensable party to a Judgment that purports to cancel its deed of trust. (emphasis added).

This argument is not preserved for our review. Appellants never alleged that an indispensable party had not been joined while this matter was pending in the trial court. "It is well recognized that a party should not be entitled on appeal to claim error on the part of the trial court when the party did not call attention to the error at trial and did not give the court the opportunity to rule on the question." *Interest of S.M.W.*, 658 S.W.3d 202, 210 (Mo. App. W.D. 2022) (quoting *Brown v. Brown*, 423 S.W.3d 784, 787 (Mo. banc 2014)). "This requirement is intended to eliminate error by allowing the trial court to rule intelligently and to avoid the delay, expense, and hardship of an appeal and retrial." *Id.* (citation omitted). In addition, to the extent Appellants are challenging whether the italicized language should have been included in the Judgment they were required to raise this concern in a Rule 78.07(c) motion[12] after the Judgment was entered. They did not raise this issue in their Rule 78.07(c) motion leaving their claim of error regarding the language of the Judgment not preserved for our review.

[12]Rule 78.07(c) requires: "[i]n all cases, allegations of error relating to the form or language of the judgment . . . must be raised in a motion to amend the judgment in order to be preserved for appellate review."

Appellants attempt to overcome their failure to preserve this claim of error for our review by arguing that the absence of an indispensable party is a jurisdictional requirement that defeats a trial court's subject matter jurisdiction. They rely on *Eastern Missouri Laborers' Dist. Council v. City of St. Louis* for the proposition that this "jurisdictional requirement . . . must be addressed . . . even though none of the parties on appeal raise it." *Eastern Missouri Laborers' Dist. Council v. City of St. Louis*, 951 S.W.2d 654, 656 (Mo. App. E.D. 1997). *Eastern Missouri Laborers'* however, was addressing claims seeking declaratory relief pursuant to section 527.110 and was influenced by language in the statute that requires "all persons shall be made parties who have or claim any interest which would be affected by the declaration." *Id.* B.G.'s second amended petition did not assert a claim for declaratory relief. In any event, the rationale in *Eastern Missouri Laborers'* is suspect in light of *J.C.W. ex rel. Webb v. Wyciskalla*, which held that the Missouri Constitution specifies only two jurisdictional limits on a court's power to act: personal jurisdiction and subject matter jurisdiction. *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 252-254 (Mo. banc 2009). Personal jurisdiction refers to the power of courts to "require a person to respond to a legal proceeding that may affect the person's rights or interests," while subject matter jurisdiction refers to "the court's authority to render a judgment in a particular category of case." *Id.* at 252-253 (citation omitted). *Webb* held that the concept of "jurisdictional competence," that had been theretofore confused with subject matter jurisdiction, does not in fact implicate the court's constitutional authority to decide a matter and at most implicates whether the court has exceeded its statutory or other authority to render a

particular judgment in a particular case subjecting the error to routine appellate review. *Id.* at 254. A claim that an indispensable party has not been joined in an action does not implicate a trial court's subject matter jurisdiction to entertain or decide the action.[13] *See Empire District Electric Company v. Coverdell*, 484 S.W.3d 1, 26 n.28 (Mo. App. S.D. 2015) (observing that Rule 55.27(g)(2) was amended in 2011, effective January 1, 2012, to remove the language that had permitted the defense of failure to join a party indispensable under Rule 52.04 to be raised "at trial on the merits, or an appeal," supporting the conclusion that the defense must be raised as an affirmative defense in a responsive pleading to be preserved and not waived).

Even if we could overlook Appellant's failure to preserve the claim raised in their third point on appeal for our review, we would reject the argument on its merits. First, B.G. was under no obligation to defend his title to the Farm against all potential claims by other interested parties. *Spicer v. Spicer*, 568 S.W.3d 480, 488 (Mo. App. E.D. 2019) (holding that wife was not obligated to defend her title to property in a quiet title action "against all potential claims by other interested parties."); *Moss v. Moss*, 706 S.W.2d 884,

[13]Appellants cite to *Pauli v. Spicer* where the Eastern District treated the failure to join an indispensable party in a prior lawsuit as a jurisdictional requirement that required the court to declare a prior judgment to be void. *Pauli v. Spicer*, 445 S.W.3d 667, 667-674 (Mo. App. E.D. 2014). But *Pauli* is easily distinguishable. In *Pauli*, parties against whom a prior judgment was sought to be enforced sought a determination that the judgment was void because they were necessary and indispensable parties to the prior action (it impaired their rights) and they had not been joined in the action. *Id.* The Eastern District agreed and found their claim of failure to join themselves as an indispensable party to the prior action to be jurisdictional in nature because it was rooted in the "general principle of jurisprudence that one is not bound by a judgment *in personam* entered in litigation to which he was not designated as a party or made a party by service of process or entry of appearance." *Id.* (citation omitted). *Pauli* did not hold, as Appellants suggest, that every claim of failure to join an indispensable party is jurisdictional in nature as to render a judgment void for lack of subject matter jurisdiction.

887 (Mo. App. W.D. 1986) (holding that in a quiet title action, "it is not necessary that plaintiff establish an indefeasible title against the whole world, but only that its title is good as against the defendants" (quoting *Gillenwaters Bldg. Co. v. Lipscomb*, 482 S.W.2d 409, 413 (Mo. 1972))). Second, the uncontroverted summary judgment record establishes that at the time B.G.'s quiet title action was asserted and at the time the Judgment was entered the deed of trust on the Farm granted in favor of Midwest Environmental by Magnum was no longer in existence having been ordered released, and declared to be null, void, and of no legal effect whatsoever by a sanctions order entered in aid of execution in the Prior Lawsuit. The Judgment cannot be said to have cancelled a deed of trust that had already been declared null and void and ordered released. Though Appellants' claim that the trial court erroneously rejected their defense that the 2015 Judgment and all orders and judgments in aid of execution on the 2015 Judgment are void, Midwest Environment does not have a deed of trust in its favor on the Farm unless we agree with Appellants' contention. And ironically, if we agree with Appellants' contention then (according to Appellants) the current Judgment is void rendering their concern that Midwest Environmental was an indispensable party to the underlying action nonsensical.

Point Three is denied.

Points Four through Seven: Appellants' Claims that the 2015 Judgment and Orders and Judgment in Aid of Execution on the 2015 Judgment are Void, and that the Judgment from which this Appeal is Taken is Therefore Void.

Appellants' fourth, fifth, sixth, and seventh points on appeal each argue, for different reasons, that the 2015 Judgment and all of the orders and judgments entered to

execute on the 2015 Judgment (including the 2018 Magnum Garnishment Judgment) are void. Appellants argue that as a result the Judgment that is the subject of this appeal is void because Albu Farms only holds title to the Farm by virtue of sheriff's sales that were conducted to execute on the 2015 Judgment and the 2018 Magnum Garnishment Judgment.

The trial court's February 21, 2022 interlocutory order granting partial summary judgment to B.G. (Albu Farms' predecessor) expressly rejected Appellants' (and at that time Hilda's) contention that judgment could not be entered in favor of B.G. on his quiet title and ejectment claims as a matter of law because B.G.'s title to the Farm was a derivative of the void 2015 Judgment. That ruling was effectively incorporated into the Judgment which granted final summary judgment in favor of Albu Farms on the quiet title and ejectment claims. The overarching issue thus posed by points Four through Seven on appeal is whether the trial court erroneously granted summary judgment in favor of Albu Farms and against Appellants for quiet title and ejectment because judgment could not be entered as a matter of law on the claims due to void judgments and orders entered in the Prior Lawsuit. We review this issue *de novo*. *Cox*, 663 S.W.3d 842, 847.

Appellants' contention that the 2015 Judgment and the execution orders and judgments thereinafter entered are void is an affirmative defense. An "'affirmative defense' defense is defined as 'a defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's . . . claim, even if all the allegations in the complaint are true.'" *Ressler v. Clay County*, 375 S.W.3d 132, 140 (Mo. App. W.D. 2012) (quoting BLACK'S

LAW DICTIONARY 482 (9th ed. 2009)) (internal brackets omitted). Here, Appellants do not contest the material uncontroverted facts set forth in B.G.'s motions for summary judgment in support of his claims of quiet title and in ejectment. But they argue that despite the truth of those factual assertions, the claims of quiet title and ejectment are defeated by their assertion that the 2015 Judgment is void.

Rule 55.08 requires a party raising an affirmative defense to plead the defense in their answer or reply. "A pleading that sets forth an affirmative defense or avoidance shall contain a short and plain statement of the facts showing that the pleader is entitled to the defense or avoidance." Rule 55.08. To be properly asserted in a pleading, therefore, additional facts not necessary to support the plaintiff's asserted claims but which themselves are sufficient to establish a defense to liability on those claims must be pleaded. *State ex rel. Nixon v. Consumer Automotive Resources, Inc.*, 882 S.W.2d 717, 720-21 (Mo. App. E.D. 1994) (citing *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 383 (Mo. banc 1993)). "Bare legal conclusions fail to inform the plaintiff of the facts relied upon and, thus, fail to further the purpose protected by Rule 55.08." *Id.* at 721 (citing *ITT*, 854 S.W.2d 371, 383). "Generally, failure to plead an affirmative defense results in waiver of that defense." *Id.* (citing *Lucas v. Enkvetchakul*, 812 S.W.2d 256, 263 (Mo. App. S.D. 1991)).

A plaintiff's ability to secure summary judgment on a claim the plaintiff has asserted depends not only on establishing the viability of the claim as a matter of law but also on establishing the non-viability of *properly pled* affirmative defenses to the claim as a matter of law. *Id.* at 720 (citing *ITT*, 854 S.W.2d at 371). However, if a defendant's

answer is silent as to an affirmative defense or fails to properly plead the defense by assertion of facts sufficient to support the defense, then the defense has been waived and will not defeat a plaintiff's motion for summary judgment. *Id.* at 721 (holding that where defendant's answer was silent as to any affirmative defenses defendant could not raise an affirmative defense for the first time in response to plaintiff's motion for summary judgment, and plaintiff was not obligated to show that the defense failed as matter of law in order to secure summary judgment); *Ditto, Incorporated v. Davids*, 457 S.W.3d 1, 16-17 (Mo. App. W.D. 2014) (holding that where affirmative defense of equitable estoppel were raised by bare legal assertions in an answer the defense was insufficiently asserted to satisfy the pleading requirements of Rule 55.08, and the defense was thus not preserved for determination in the lawsuit); *Glasgow Enterprises, Inc. v. Bowers*, 196 S.W.3d 625, 630 (Mo. App. E.D. 2006) (because an affirmative defense must be properly pled in an answer to be considered in connection with a motion for summary judgment, defendant's failure to raise affirmative defense to plaintiff's quiet title action in defendant's answer cannot be relied on to defeat plaintiff's motion for summary judgment). The failure to raise an affirmative defense at all or properly in a responsive pleading is not remediated by raising the defense along with sufficient facts to support the defense in summary judgment pleadings. *Ditto, Incorporated*, 457 S.W.3d 1, 16-17 (citing *Jones v. Landmark Leasing, Ltd.*, 957 S.W.2d 369, 375-76 (Mo. App. E.D. 1997) (rejecting argument that facts sufficiently pled to support an affirmative defense in summary judgment pleadings will cure the failure to properly plead the defense in an answer)); *see also Chouteau Auto Mart., Inc. v. First Bank of Missouri*, 148 S.W.3d 17,

26 (Mo. App. W.D. 2004) (holding that raising an affirmative defense in summary judgment pleading fails to satisfy the requirements of Rule 55.08 and does not operate to amend an earlier filed answer); *Glasgow*, 196 S.W.3d 625, 630 (holding that an "attempt to raise an affirmative defense for the first time in a response to a motion for summary judgment, without seeking leave to amend the pleadings, is not sufficient to plead the defense"). "The holdings in these cases merely align with the unambiguous dictate of Rule 55.08 that all applicable affirmative defenses be pled in a responsive pleading along with 'a short and plain statement of the facts showing that the pleader is entitled to the defense.'" *Ditto, Incorporated*, 457 S.W.3d 1, 17 (emphasis omitted).

We "will affirm the trial court's [grant] of summary judgment on any ground supported by the record, whether relied on by the trial court or not." *Estes as Next Friend for Doe v. Board of Trustees of Missouri Public Risk Management Fund*, 623 S.W.3d 678, 687 (Mo. App. W.D. 2021) (citation omitted); *see also Wilson v. City of St. Louis*, 662 S.W.3d 749, 754 (Mo. banc 2023) (holding that the court "reviews the grant of summary judgment *de novo* and will affirm if summary judgment was appropriate on any basis supported by the record.") (citation omitted). Though the trial court's interlocutory summary judgment order did not address whether Appellants' answers to B.G.'s second amended petition properly asserted the affirmative defense of a void judgment, we are bound to explore that issue.

The legal file does not include the answers filed by Appellants (or by Hilda) to B.G.'s second amended petition. The legal file does include the trial court's docket sheet. It notes that B.G.'s second amended petition was filed on August 9, 2021; that Hilda,

through her attorney, filed an answer to the second amended petition on September 6, 2021; and that Sylvia, Valerie, and Dallas, acting *pro se*, filed an answer to the second amended petition on September 7, 2021. Without having the answers in the legal file, we are unable to determine whether Appellants properly pleaded any affirmative defenses let alone the affirmative defense of a void judgment negating B.G.'s right to recover on the claims of quiet title and ejectment as a matter of law.[14] "The purpose of the legal file is to give the appellate court exact copies of the relevant documentary record necessary to decide the issues on appeal and to facilitate the accessibility of those documents." *Edwards v. Northeast Ambulance and Fire Protection District*, 549 S.W.3d 523, 529 (Mo. App. E.D. 2018) (citations and quotations omitted). Appellants' failure to include their answers to the second amended petition in the legal file renders us unable to confirm

[14]This is not the only glaring issue with Appellants' legal file which Appellants were responsible for preparing pursuant to Rule 81.12(b). If, as here, an appellant cannot create a system-generated legal file, Rule 81.12(b)(2) describes the method for preparing the legal file. Among other things, that Rule requires the legal file to include only the last amended petition and to not set forth any abandoned pleadings. Rule 81.12(b)(2)(C)-(D). The Rule requires that "[n]o part of the legal file when once set forth in the legal file should be repeated in any other part of the legal file." Rule 81.12(b)(2)(D). The Rule requires the legal file to include "exact copies of the pleadings and other portions of the trial record previously reduced to written form." Rule 81.12(b)(2)(C). Here, Appellants' legal file is eleven volumes. It includes abandoned pleadings and pleadings that are extraneous to the issues on appeal. It repeatedly includes the same documents on multiple occasions making it extremely difficult to locate in the index the key pleadings central to disposition of the issues on appeal. And the multiple volumes of the legal file include numerous pleadings from the Prior Lawsuit with no means of confirming that these documents were ever filed as a part of the pleadings in the instant case leaving this court to discern whether the documents are properly a part of the legal file. "It is always the Court's preference to resolve an appeal on its merits." *Edwards v. Northeast Ambulance and Fire Protection District*, 549 S.W.3d 523, 530 (Mo. App. E.D. 2018) (citation omitted). "The preference is so strong, this Court went beyond its required duties and invested an inordinate amount of time combing through the Appellant[s'] legal file in the hopes that doing so would permit a decision on the merits." *Id.* (citation omitted). "However, this effort revealed [the] fatal error to Appellant[s'] appeal[regarding] the omission of documents necessary for a review on the merits" of points Four through Seven on appeal. *Id.*

that the affirmative defense of void judgments and orders in the Prior Lawsuit was properly pled as to permit it to be raised in response to B.G.'s summary judgment motions. *Id.* at 531-533. For this reason alone, we are obligated to affirm the trial court's grant of summary judgment.[15]

We also affirm the trial court's grant of summary judgment on the claims of quiet title and ejectment because it did not commit error when it rejected the defense that the 2015 Judgment and orders and judgments in aid of execution of the 2015 Judgment are void.

> The taking of proceedings in the action in which a judgment is rendered to have the judgment vacated or reversed or modified by appropriate proceedings either in the trial court or in an appellate court is a direct attack upon the judgment. So also, the taking of independent proceedings in equity to prevent the enforcement of the judgment is a "direct attack" . . . Where a judgment is attacked in other ways than by proceedings in the

[15]It is not this court's customary practice to look behind the legal file to locate omitted pleadings by reviewing the trial court's record via CaseNet. But, given the vociferous hostility between the parties in this case, we have done so. Our review of CaseNet confirms that the answer Hilda filed to the second amended petition included no separately delineated section asserting affirmative defenses. The closest her answer came to hinting at an affirmative defense was in paragraph 5 where Hilda alleged: "Deny paragraph nine [of B.G.'s second amended petition] as underlying problems exist with the purported judgment of plaintiff and attempted execution thereon;" and in paragraph 14 where Hilda alleged: ". . . [B.G.] claims an interest in the property derived from a defective execution sale and is not entitled to unlawful detainer as a remedy." Neither assertion satisfies the requirements of Rule 55.08 with respect to proper pleading of sufficient facts to support an affirmative defense that judgments and orders in the Prior Lawsuit are void.

Similarly, the answer filed by Valerie, Sylvia, and Dallas, *pro se*, included no separately delineated section asserting affirmative defenses. The closest their joint answer came to hinting at an affirmative defense was in paragraph 27 where they admit the assertions in paragraph 27 of B.G.'s second amended petition that B.G. "claims a title, estate or interest in the [Farm], as [B.G.] claim to be the fee simple absolute owner of the [Farm] and further claims that the [Farm] is not subject to any encumbrance of any type whatsoever[,]" but go on to allege: "However, [B.G.] does not own any interest in the [Farm]. [B.G.'s] claim of title is the result of several void execution sales that relied upon an invalid judgment." This bare legal assertion does not allege facts at all let alone sufficient facts to support a properly pleaded affirmative defense that judgments and orders in the Prior Lawsuit are void negating B.G.'s right to recover on his claims as a matter of law.

> original action to have it vacated or reversed or modified or by a proceeding in equity to prevent its enforcement, the attack is a "collateral attack."

Flanary v. Rowlett, 612 S.W.2d 47, 49 (Mo. App. W.D. 1981) (quoting RESTATEMENT OF JUDGMENTS 11 cmt. a (1942)). Sylvia and Dallas were not parties to the Prior Lawsuit nor do they claim they were required to be. They are thus unable to directly attack the 2015 Judgment by availing themselves of relief pursuant to Rule 74.06(b) which permits a court to relieve "***a party*** or his legal representative from a final judgment or order" for the reasons therein described. Rule 74.06(b) (emphasis added). Nor are they able to directly attack the 2015 Judgment by availing themselves of relief pursuant to Rule 74.06(d) which permits an independent action in equity to "relieve ***a party*** from a judgment or order or to set aside a judgment for fraud upon the court." Rule 74.06(d) (emphasis added). Though Valerie is a party to the Prior Lawsuit, and though the 2015 Judgment was entered against her, she has not sought to directly attack the 2015 Judgment by availing herself of relief pursuant to either Rule 74.06(b) or (d).

Instead, all three Appellants have opted to wage their battle against the 2015 Judgment and the judgments and orders in aid of execution of the 2015 Judgment by collateral attack. "A collateral proceeding may not generally be used to contradict or impeach a final judgment." *Taylor v. Taylor*, 47 S.W.3d 377, 384 (Mo. App. W.D. 2001) (citing *La Presto v. La Presto*, 285 S.W.2d 568, 570 (Mo. 1955)). There is but one exception to this settled principle. "[A] judgment which is void ***on the face of the record*** is entitled to no respect, and may be impeached at any time in any proceeding in which it is sought to be enforced or in which its validity is questioned by anyone ***with rights or interests it conflicts***." *La Presto*, 285 S.W.2d 568, 570 (citations omitted) (emphasis

added). "Because courts favor finality of judgments, the concept of a void judgment is narrowly restricted." *Mottet v. Director of Revenue*, 635 S.W.3d 862, 865 (Mo. App. W.D. 2021). "A judgment may be void because ***the record discloses on its face*** that the court exceeded its jurisdiction and rendered a particular judgment which it was wholly unauthorized to render under any circumstances, and in such event the rule against collateral attack does not apply." *La Presto*, 285 S.W.2d 568, 570 (citations omitted) (emphasis added). In other words, a judgment is void if the "court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in manner inconsistent with due process." *Kerth v. Polestar Entertainment*, 325 S.W.3d 373, 388 (Mo. App. E.D. 2010) (citation and emphasis omitted). However, these narrow grounds for collaterally attacking a judgment as void on its face can be asserted ***only by a person*** "***whose rights are affected***." *Id.* (emphasis added).

We begin by discussing the first criteria for collaterally attacking a judgment as void--whether the person so asserting has rights or interests which are affected by the allegedly void judgment. We can discern no rationale for distinguishing between the rights or interests required to collaterally attack a judgment as void, and the rights or interests required to establish standing to assert a claim. *See CACH, LLC*, 358 S.W.3d 58, 61.

Here as previously discussed, the uncontroverted summary judgment record establishes that the sole and only "interest" in the Farm that has ever been claimed by Valerie, Sylvia, or Dallas is the ability to live on the Farm by virtue of a familial relationship with Hilda. But, Hilda held only a life estate in the Farm and is now

deceased. Valerie, Sylvia, and Dallas do not claim any right or interest in the Farm by virtue of her death. Nor could they as the uncontroverted summary judgment record establishes that upon Hilda's death the remainder interest in the Farm would have passed to Magnum but for the intervening acquisition of fee simple title to the Farm by B.G. through sheriff's sales. Valerie, Sylvia, and Dallas do not claim any right or interest in the Farm through Magnum. In short, Appellants' only right or interest in the Farm is at best born of the desire not to have to move from the place Hilda permitted them to live. This "interest" is not grounded in a legally protectable, enforceable, or recognized possessory or ownership right. Appellants do not, therefore, have protectable rights or interests in the Farm sufficient to authorize a collateral attack on the 2015 Judgment in this proceeding which sought to quiet title in the Farm and to eject Appellants from the Farm.

Of course, even though Appellants have no legally protectable rights or interests in the Farm sufficient to authorize a collateral attack on the 2015 Judgment, Valerie nonetheless is a judgment debtor in the 2015 Judgment and, thus, has a "right or interest" that is conflicted by said judgment. *La Presto*, 285 S.W.2d 568, 570. As a party to the 2015 Judgment Valerie could have filed a motion in the Prior Lawsuit pursuant to Rule 74.06(b) or an independent action in equity pursuant to 74.06(d) directly attacking the 2015 Judgment. It follows that Valerie has the right to collaterally attack the 2015 Judgment in an appropriate collateral proceeding. Valerie is no doubt motivated to collaterally attack the 2015 Judgment in ***this*** proceeding because if her collateral attack is successful the practical reality is that she will be able to avoid being ejected from the

Farm and will be able to continue living there even though she does not have an ownership interest in the Farm and has claimed no legal right to possession of the Farm. Though the connection between a collateral attack on the 2015 Judgment and this proceeding is tenuous at best, we conclude that as a party to the 2015 Judgment Valerie has a sufficient right or interest conflicted by the 2015 Judgment to permit her to collaterally attack the 2015 Judgment as void in this proceeding. That conclusion does not extend, however, to Sylvia and Dallas who are not parties to the 2015 Judgment.

Points Four through Seven are thus denied as to Sylvia and Dallas because under no circumstance can they establish that they have a right or interest that is conflicted by the allegedly void 2015 Judgment. Because Valerie survives this threshold criteria for collaterally attacking a prior judgment as void, we turn our attention to the second essential criteria for a collateral attack on a judgment as void--whether Valerie has established that the record discloses on its face that the court in the Prior Lawsuit exceeded its jurisdiction and rendered the 2015 Judgment and the judgments and orders in aid of execution on the 2015 Judgment even though it "lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process." *Kerth*, 325 S.W.3d 373, 388 (emphasis omitted).

Point Four on appeal claims that ***if*** the 2015 Judgment is void because it was entered against Farrel in violation of Farrel's due process rights, it was never a final judgment because it failed to dispose of all issues as to all parties. Point Five on appeal claims that the 2015 Judgment is void because it was entered against Farrel in violation of his due process rights specifically the right to a meaningful opportunity to be heard.

Point Six on appeal claims that the 2015 Judgment is void because it was entered against Valerie in violation of her due process rights specifically the right to a meaningful opportunity to be heard. Point Seven on appeal claims that the 2018 Magnum Garnishment Judgment is void because it was a special order in aid of execution and was thus reliant on the void 2015 Judgment for its validity. We address Points Four and Five together before addressing Points Six and Seven.

Point Four on appeal depends on Point Five. We need not address the finality of the 2015 Judgment (Point Four) unless we agree that the 2015 Judgment is void because Farrel was denied due process (Point Five). The trial court's Judgment in favor of Albu Farms necessarily incorporated the trial court's February 21, 2022 partial summary judgment order expressly rejecting the defense that the 2015 Judgment was void. The February 21, 2022 partial summary judgment order expressly found that the 2015 Judgment was valid and binding on Farrel and did not violate his due process rights. As previously noted we review the grant of summary judgment *de novo,* though in doing so "we review the record in the light most favorable to the party against whom judgment was entered, and give the non-movant the benefit of all reasonable inferences from the record." *Cox*, 663 S.W.3d 842, 847 (Mo. App. W.D. 2023) (quoting *Show-Me Inst. v. Off. of Admin.*, 645 S.W.3d 602, 607 (Mo. App. W.D. 2022)) (internal brackets omitted).

Valerie's argument that Farrel was denied due process because he was not given a meaningful opportunity to be heard is not established on the face of the record even when affording Valerie the benefit of every reasonable inference. "At its core, procedural due process requires the opportunity to be heard at a meaningful time and in a meaningful

manner." *Jaeger v. Resources for Human Development, Inc.*, 605 S.W.3d 586, 588 n.3 (Mo. App. W.D. 2020) (internal quotations and citation omitted). To deprive a person of a property interest due process requires that they "receive notice and an opportunity for a hearing appropriate to the nature of a case." *Id.* (quoting *Moore v. Bd. of Educ. Of Fulton Pub. Sch. No. 58*, 836 S.W.2d 943, 947 (Mo. banc 1992)). The records from the Prior Lawsuit submitted by Appellants in connection with their defense of B.G.'s motions for summary judgment establish that Farrel was duly served with process in the Prior Lawsuit by publication. Farrel's subsequent failure to answer, to respond to discovery, or to otherwise participate in the litigation is not attributed to any wrongdoing by the trial court in the Prior Lawsuit and is instead attributed to Valerie's alleged misunderstanding that she could not sign pleadings for Farrel as Farrel's power of attorney. That misunderstanding was not an impediment to Farrel's ability to actively participate in the Prior Lawsuit had he chosen to do so. He did not.[16] Farrel's choice was a voluntary one and does not rise to the level of a due process violation. In fact, the face of the record establishes that Farrel retained counsel at some point during the Prior Lawsuit. Though he did so after the trial court struck the defendants' pleadings and entered an interlocutory default judgment against Hilda, Valerie, and Farrel as a sanction for failing to respond to discovery, Farrel plainly had the opportunity to be heard at that time and at all prior times. Moreover, Farrel could have appealed the 2015 Judgment but did not do so. The

[16]The record on appeal suggests that Farrel has been criminally charged in connection with actions or omissions related to one or more of the loans that led B.G. to file the Prior Lawsuit. Whether or not that is true is immaterial to this case though the pending charge could explain Farrel's lack of active participation in the Prior Lawsuit and in the instant case.

face of the record does not establish a violation of Farrel's due process rights as it does not establish that Farrel was deprived of the opportunity to be heard at a meaningful time and in a meaningful manner. The 2015 Judgment is not void based on an alleged violation of Farrel's due process rights. Because the 2015 Judgment is not void as to Farrel, the argument in Point Four that the 2015 Judgment failed to resolve all issues as to all parties is rendered moot.

Points Four and Five are denied.

Point Six on appeal argues that the 2015 Judgment is void for violating Valerie's due process rights by "[striking] Valerie's answers and [denying] her the right to defend herself in violation of her due process right to be heard at a meaningful time and in a meaningful manner." Valerie argues that the trial court in the initial foreclosure action improperly struck Valerie's pleadings and denied her request for a hearing before entering the 2015 Judgment, thus, violating Valerie's due process rights. Furthermore, Valerie contends that although she filed an appeal from the 2015 Judgment to this court, the appeal was involuntarily dismissed in violation of her due process rights.

Here, the face of the record establishes, and the trial court's February 21, 2022 interlocutory order granting partial summary judgment found, that Valerie had the opportunity to be heard at a meaningful time and in a meaningful manner in the Prior Lawsuit. Valerie was duly served in the Prior Lawsuit. Valerie filed an answer and actively participated by filing motions and other pleadings in the Prior Lawsuit. Valerie was aware of and filed pleadings defending against B.G.'s request that she and the other defendants in the Prior Lawsuit be sanctioned for their repeated obstructive behavior in

refusing to respond to discovery. The sanctions order striking Valerie's (and all defendants' pleadings) and entering an interlocutory default judgment was issued after notice and a hearing at which Valerie appeared. All of the defendants, including Valerie, sought reconsideration of the interlocutory default judgment which was denied after a hearing. After the 2015 Judgment was entered, Valerie filed multiple motions seeking to set aside the 2015 Judgment all of which were denied. Valerie then filed an appeal from the 2015 Judgment in this court. That appeal was dismissed for want of prosecution after Valerie was granted six extensions of time to file her opening brief but failed to do so and after ample notice of the court's intent to dismiss the appeal was provided to Valerie. After her appeal was dismissed, Valerie took no action to seek rehearing or reconsideration of this court's dismissal order and made no effort to seek further review of the dismissal order from the Missouri Supreme Court resulting in the issuance of our mandate. The face of the record fails to establish that Valerie was deprived of her due process right to a meaningful opportunity to be heard in the Prior Lawsuit. Instead, the face of the record unequivocally establishes that Valerie had a meaningful opportunity to be heard, and was in fact heard, at every step of the proceedings in the Prior Lawsuit. *See Jaeger*, 605 S.W.3d 586, 588 n.3. Valerie's claim that the 2015 Judgment is void because it was entered in deprivation of her due process rights is without merit.

Valerie's real complaint appears to be her belief that the trial court in the Prior Lawsuit committed error by entering a default judgment against her (and the other defendants) as a sanction. But a judgment is not "void" merely because it is alleged to be erroneous. *A.D.D. v. PLE Enterprises, Inc.*, 412 S.W.3d 270, 276 (Mo. App. W.D.

2013). Though the collateral attack of a prior judgment is appropriate when the judgment is void because of a deprivation of due process appearing from the face of the record "a subsequent action will not be tolerated as a subterfuge or facade for litigating an issue to which a former final judgment is conclusive." *State ex rel. Gen. Credit Acceptance Co., LLC v. Vincent*, 570 S.W.3d 42, 48 (Mo. banc 2019).

Point Six is denied.

Finally, Point Seven on appeal alleges that the 2018 Magnum Garnishment Judgment is void because it was a special order in aid of execution that was necessarily reliant on the validity of the void 2015 Judgment. The sheriff's sale at which Magnum's remainder interest in the Farm was sold was in aid of execution on the 2018 Magnum Garnishment Judgment.

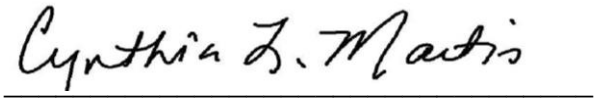
Because we have already determined that the 2015 Judgment is not void Point Seven on appeal is without merit.

Point Seven is denied.

Conclusion

Sylvia's motion questioning whether this appeal must be dismissed for want of a final judgment is dismissed. The trial court's Judgment is affirmed. This Opinion's inclusion of the legal description of the Farm as to which title has been quieted in favor of Albu Farms and as to which ejectment of Appellants and others named in the Judgment has been ordered is sufficient to permit recordation of the Opinion in the Boone County Recorder of Deeds Office. *See Medical Plaza One*, 552 S.W.3d 165 n. 19. Moreover, to avoid any confusion we exercise our authority pursuant to Rule 84.14 to

enter the judgment the trial court should have entered to show that the Judgment is amended to include the legal description of the Farm.



Cynthia L. Martin, Judge

All concur.