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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2016-2017

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Bobby Ward

v.

All South Rental Homes, Inc., and Gary Alan Smith

**Appeal from Jefferson Circuit Court
(CV-15-904679)**

MOORE, Judge.

Bobby Ward appeals from a judgment entered by the Jefferson Circuit Court ("the trial court") permitting All South Rental Homes, Inc., and Gary Alan Smith (hereinafter referred to collectively as "All South") to redeem certain

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real property located in Jefferson County ("the property") after the property had been sold for unpaid taxes. We affirm the trial court's judgment.

Procedural History

On December 7, 2015, All South filed a complaint seeking permission to redeem the property, which had been purchased by Ward from the State of Alabama, which had purchased the property at a tax sale. Ward answered the complaint on December 16, 2015. On December 17, 2015, Ward filed a motion for a summary judgment. All South responded to the summary-judgment motion on January 13, 2016. Ward filed a reply to All South's response on January 16, 2016.

On January 29, 2016, the trial court entered a judgment granting Ward's summary-judgment motion, concluding that All South did not have a right to redeem the property. On February 28, 2016, All South filed a postjudgment motion. The trial court entered an order setting aside its summary judgment on May 23, 2016, and setting a hearing to determine the amount required for All South to redeem the property. After a hearing, the trial court entered a judgment providing

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that All South could redeem the property by paying Ward \$4,206.07.

On June 23, 2016, Ward filed his notice of appeal to the Alabama Supreme Court; that court subsequently transferred the appeal to this court, pursuant to Ala. Code 1975, § 12-2-7(6).

Facts

The undisputed facts indicate that, after All South failed to pay the ad valorem taxes due on the property, the State of Alabama offered the property for sale on May 22, 2012. After no bids were offered, the property was purchased by the State. On August 7, 2015, the State sold the property to Ward. Ward received an ad valorem tax deed; that deed was recorded on August 24, 2015. On August 28, 2015, Ward entered into a three-year lease agreement regarding the property with Brooke Holloway, and, at the time of the entry of the trial court's judgment, Holloway had been in possession of the property since that date.

Discussion

On appeal, Ward first argues that All South was not entitled to redeem the property pursuant to §§ 40-10-82 and

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40-10-83, Ala. Code 1975, because, he says, All South was not in possession of the property at the time of redemption.

Section 40-10-82 provides:

"No action for the recovery of real estate sold for the payment of taxes shall lie unless the same is brought within three years from the date when the purchaser became entitled to demand a deed therefor; but if the owner of such real estate was, at the time of such sale, under the age of 19 years or insane, he or she, his or her heirs, or legal representatives shall be allowed one year after such disability is removed to bring an action for the recovery thereof; but this section shall not apply to any action brought by the state, to cases in which the owner of the real estate sold had paid the taxes, for the payment of which such real estate was sold prior to such sale, or to cases in which the real estate sold was not, at the time of the assessment or of the sale, subject to taxation. There shall be no time limit for recovery of real estate by an owner of land who has retained possession. If the owner of land seeking to redeem has retained possession, character of possession need not be actual and peaceful, but may be constructive and scrambling and, where there is no real occupancy of land, constructive possession follows title of the original owner and may only be cut off by adverse possession of the tax purchaser for three years after the purchaser is entitled to possession."

"Section 40-10-82[, Ala. Code 1975,] has been construed as a 'short' statute of limitations (Williams v. Mobil Oil Exploration & Producing Southeast, Inc., 457 So. 2d 962 (Ala. 1984)), and does not begin to run until the purchaser of the

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property at a tax sale has become entitled to demand a deed to the land Gulf Land Co. v. Buzzelli, 501 So. 2d 1211 (Ala. 1987).'" Southside Cmty. Dev. Corp. v. White, 10 So. 3d 990, 992 (Ala. 2008) (quoting Reese v. Robinson, 523 So. 2d 398, 400 (Ala. 1988)); see also McGuire v. Rogers, 794 So. 2d 1131, 1136 (Ala. Civ. App. 2000). In Southside, under similar circumstances, our supreme court determined that "the three-year statutory period of § 40-10-82 ... begins to run when the tax purchaser becomes entitled to a deed," not "when the property is transferred to the State for failure to pay taxes." 10 So. 3d 991. Moreover, this "short" statute of limitations does not depend on whether the proposed redemptioner has retained possession of the property. Southside, 10 So. 3d at 992; McGuire, 794 So. 2d at 1136.

In this case, Ward became entitled to a deed to the property on the date that he purchased the property from the State. See, e.g., O'Connor v. Rabren, 373 So. 2d 302, 307 (Ala. 1979) ("After the expiration of three years from the date of sale, a purchaser other than the state is entitled to a deed ([Ala.] Code 1975, § 40-10-29), and land bid in for the state may be sold and the purchaser given a deed. [Ala.]

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Code 1975, §§ 40-10-132, -135."). Because All South sought to redeem the property within three years of the time Ward became entitled to a deed, we cannot conclude that the trial court erred in allowing All South to redeem the property. Southside, 10 So. 3d at 992; McGuire, 794 So. 2d at 1136.

Ward also argues that All South cannot eject him from the property because he has a deed to the property. He cites Thomas v. Benefield, 494 So. 2d 452 (Ala. Civ. App. 1986), in support of his argument. In Thomas, this court held that because the plaintiffs in that case did not have legal title to the property, their ejectment action could not be successful against the tax-sale purchaser. Thomas, 494 So. 3d at 452-53. We note, however, that this court specifically stated that the issue of redemption had not been raised in the record and that this court, therefore, would not address that remedy. Thomas, 494 So. 2d at 453.

In the present case, however, All South did not seek to eject Ward or his tenant from the property; instead, it sought to exercise its right to redeem the property. Therefore, we conclude that Ward's argument on this point is misplaced.

Conclusion

Based on the foregoing, we affirm the trial court's judgment.

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AFFIRMED.

Thompson, P.J., and Pittman, Thomas, and Donaldson, JJ.,
concur.