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# **SUPREME COURT OF ALABAMA**

**OCTOBER TERM, 2022-2023**

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**SC-2022-0906**

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**Alex C. Galea and Jane Galea**

**v.**

**Secretary of Veterans Affairs**

**Appeal from Tuscaloosa Circuit Court  
(CV-20-900016)**

MITCHELL, Justice.

Alex C. Galea and Jane Galea fell behind on the mortgage payments for their house in Tuscaloosa ("the property"); as a result, the property

was sold at a foreclosure sale. The property was eventually conveyed to the Secretary of Veterans Affairs ("SVA"), which sent formal notice to the Galeas demanding they vacate the property. After the Galeas refused to do so, SVA initiated an ejectment action in the Tuscaloosa Circuit Court. The trial court ultimately entered a summary judgment in favor of SVA. The Galeas appealed. We affirm.

### Facts and Procedural History

In October 1998, the Galeas purchased the property. To finance the purchase, they obtained a loan from New South Federal Savings Bank secured by a mortgage on the property. In the years that followed, the Galeas' mortgage was conveyed to EverBank and then to Green Tree Servicing, LLC. Green Tree Servicing later merged with Ditech Financial, LLC.

In early 2019, the Galeas defaulted on their loan. Ditech notified the Galeas that it was initiating foreclosure proceedings, and a foreclosure sale was conducted in October 2019. Ditech was the highest bidder at the sale and obtained a foreclosure deed to the property. Seven weeks later, Ditech conveyed the property to SVA.

In December 2019, SVA mailed formal notice to the Galeas demanding that they vacate the property. After the Galeas failed to do so, SVA initiated this ejectment action. For reasons that are not clear from the record, nothing appears to have happened in the case for the next 21 months, but, in October 2021, the Galeas filed a handwritten answer alleging that the foreclosure was illegal and that they had evidence to support their position.

Six months later, SVA moved for summary judgment, arguing that it held legal title to the property and was entitled to immediate possession. SVA additionally argued that the Galeas had waived their redemption rights by refusing to vacate the property. See § 6-5-251(c), Ala. Code 1975. In support of its summary-judgment motion, SVA submitted an affidavit from an SVA employee detailing her knowledge of the relevant facts. The exhibits to that affidavit included copies of (1) the deed conveying the property to the Galeas; (2) the mortgage and promissory note executed by the Galeas in conjunction with their purchase of the property; (3) various documents memorializing the assignment of the Galeas' mortgage over the years; (4) the letter notifying the Galeas that Ditech was initiating foreclosure proceedings; (5) the

foreclosure-sale notice published in The Northport Gazette; (6) the foreclosure deed conveying the property to Ditech; (7) the warranty deed conveying the property to SVA; and (8) the letter SVA sent to the Galeas demanding that they vacate the property. The trial court set SVA's summary-judgment motion for a hearing.

Six days before the hearing, Jane filed a handwritten motion to continue, stating that she had just learned of the hearing and that she needed more time to hire an attorney. She also repeated her claim that the underlying foreclosure sale was improper. The trial court granted the motion to continue, and the rescheduled hearing was held seven weeks later. Jane appeared at that hearing without an attorney and again asked the trial court to continue the matter so that she could have more time to find one. The trial court granted her request.

Another three weeks went by without an attorney filing an appearance on behalf of the Galeas. SVA then moved the trial court to set another date for the summary-judgment hearing. The trial court granted SVA's motion and set a hearing date five weeks later. At that hearing, Jane again appeared without an attorney. No transcript of the hearing is contained in the record, but the trial court's judgment notes

that the Galeas "did not offer any valid testimony or evidence" to dispute the facts put forth by SVA. Accordingly, the trial court granted SVA's motion and entered a summary judgment holding that SVA was entitled to possession of the property and directing the circuit clerk's office to issue a writ of possession in SVA's favor. The trial court further ordered the Galeas to vacate the property immediately and held that they had waived their redemption rights by refusing to vacate the property within the time allowed by § 6-5-251. Continuing to proceed pro se, the Galeas appealed.

#### Standard of Review

When a party "appeals from a summary judgment, our review is de novo." Nationwide Prop. & Cas. Ins. Co. v. DPF Architects, P.C., 792 So. 2d 369, 372 (Ala. 2000). We therefore apply the same standard the trial court used -- we must determine whether there is substantial evidence establishing the existence of a genuine issue of material fact that must be resolved by the fact-finder. Id. "Substantial evidence" is "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Florida, 547 So.

2d 870, 871 (Ala. 1989). We further note that, in reviewing a summary judgment, we view the evidence in the light most favorable to the nonmovant and entertain such reasonable inferences as the jury would have been free to draw. Jefferson Cnty. Comm'n v. ECO Pres. Servs., L.L.C., 788 So. 2d 121, 127 (Ala. 2000).

### Analysis

As the party asserting an ejectment claim, SVA had the ultimate burden of establishing (1) that it held legal title to the property and (2) that the Galeas were nonetheless withholding possession of it. Steele v. Federal Nat'l Mortg. Ass'n, 69 So. 2d 89, 93 (Ala. 2010). SVA submitted evidence tracing the chain of title to the property from the time the Galeas purchased it in 1998 to when it was purchased by Ditech at a foreclosure sale in 2019 and then conveyed to SVA by warranty deed seven weeks later. SVA additionally submitted evidence showing that the Galeas had refused its demand to vacate the property. That evidence was sufficient to make a prima facie showing that SVA was entitled to a writ of possession. The burden therefore shifted to the Galeas to put forth substantial evidence to rebut that showing. See Lands v. Ward, 349 So. 3d 219, 222 (Ala. 2021) ("[I]f the moving party establishes the absence of

a genuine issue of material fact, the burden shifts to the nonmoving party to present substantial evidence that a genuine issue of material fact exists.").

The Galeas could have met their burden by submitting evidence showing that there were irregularities in the foreclosure process that were sufficient to render the foreclosure sale void. See, e.g., Tidmore v. Citizens Bank & Trust, 250 So. 3d 577, 582 (Ala. Civ. App. 2017). But even though the Galeas stated in their answer that they had evidence to prove that the foreclosure sale here was illegal, they apparently never submitted that evidence to the trial court. Indeed, as the trial court noted in its judgment, the Galeas "did not offer any valid testimony or evidence" that would refute the evidence submitted by SVA. (Emphasis added.) As this Court has previously explained, "[b]are allegations, unsupported by affidavits or other evidentiary showings, do not create triable issues of fact when the party moving for summary judgment has supported its motion with affidavits or other probative, admissible evidence." McGee v. Liberty Mut. Ins. Co., 554 So. 2d 1023, 1024 (Ala. 1989). Accordingly, in the absence of any evidence to refute SVA's showing that it had a right

to possess the property, the trial court properly entered summary judgment in its favor.

Conclusion

The Galeas lost their property in a foreclosure sale after they defaulted on a loan secured by a mortgage on the property; they then refused to vacate the property after its new owner SVA demanded they do so. SVA brought an ejectment action against the Galeas, and, after they failed to submit any evidence countering SVA's showing that it had a legal right to take immediate possession of the property, the trial court entered a summary judgment in favor of SVA. On appeal, the Galeas have not identified any error in that judgment. It is therefore affirmed.

AFFIRMED.

Parker, C.J., and Shaw, Wise, Bryan, Stewart, and Cook, JJ., concur.

Sellers and Mendheim, JJ., concur in the result.