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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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Shamblin Lane Hamilton

v.

Guardian Tax AL, LLC, and Carol Denise Hamilton

**Appeal from Jefferson Circuit Court
(CV-18-901685)**

MENDHEIM, Justice.

Shamblin Lane Hamilton appeals from a Jefferson Circuit Court judgment concluding that he had no interest in real property located on

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Brookmont Drive in Birmingham ("the property") and ejecting him from the property. We reverse the circuit court's judgment and remand the cause.

I. Facts

On May 4, 1992, Rodney J. Stanfa and Beverly M. Stanfa conveyed the property to Shamblin and Carol Denise Hamilton by general warranty deed. The Hamiltons owned the property in fee simple subject to a mortgage to Compass Bank recorded on November 8, 2003.

On August 31, 2004, Shamblin and Carol were divorced, and by order of the court Shamblin was awarded sole ownership of the property. The divorce judgment provided, in part: "[T]he Agreement of the parties filed in this cause, attached hereto, is hereby ratified and approved and made a part of this decree the same as if fully set out herein and the parties to this cause are ordered to comply herewith." The "Agreement in Contemplation of Divorce" attached to the divorce judgment provided, relevant in part:

"3. [Shamblin] shall become the sole owner of the house and property located [on] Brookmont Drive, ... subject to the mortgage thereon, which [Shamblin] assumes and shall make

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all future payments thereon. [Shamblin] agrees to indemnify and hold [Carol] harmless from paying said indebtedness.

"....

"19. Each party will execute and deliver to the other any documents which may be reasonably required to implement and accomplish the purpose and intent of this agreement, and shall do any and all other things necessary to that end. If either party shall fail to comply with the provision of this paragraph, this agreement shall constitute an actual grant, assignment and conveyance of the property and rights in such matter, and with such force and effect as shall be necessary to effectuate the terms of this agreement.

"20. Except as herein provided, both [Shamblin] and [Carol] do hereby forever waive, release and quit claim to the other all rights ... in and to, or against the property of the other party, or his or her estate, whether now owned or hereinafter acquired by such other party. ..."

On February 19, 2009, the divorce judgment was modified by an agreement of the parties, and an order of the court adopting that agreement declared that Shamblin had assumed sole responsibility of a home-equity line of credit that Shamblin and Carol had jointly executed with Compass Bank. In his filings in the circuit court in this case, Shamblin asserted that he was still making payments on the home-equity line of credit as the litigation ensued. Shamblin also alleged that he had

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paid off the mortgage on the property in 2010, that he had tried to get Carol to give him a quitclaim deed verifying that he was the sole owner of the property, but that she had "failed, refused or neglected" to do so.

The Hamiltons failed to pay the ad valorem real-property taxes on the property, and on May 20, 2014, the State sold the property at auction to Mercury Funding, LLC ("Mercury"), for \$20,699. The Jefferson Probate Court issued a tax deed for the property to Mercury on January 2, 2018.

On January 5, 2018, Mercury conveyed its interest in the property to Guardian Tax AL, LLC ("Guardian"), by quitclaim deed. On April 24, 2018, Guardian filed a complaint for ejectment and to quiet title to the property against the Hamiltons and Compass Bank. In its complaint, Guardian asserted that after the tax sale it "has paid the taxes on the Property, purchased insurance for the Property, commenced/completed preservation improvements on the Property, and/or incurred attorneys' fees in relation to the Property." Guardian indicated in the complaint that Shamblin "may still wrongly claim an interest in the Property and/or be in possession of the Property despite [Guardian's] attempts to gain possession and quiet title."

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On March 11, 2019, Shamblin filed an answer and a counterclaim in response to Guardian's complaint. Specifically, Shamblin denied not paying the ad valorem property taxes on the property, and he asserted that he had "never received or been served any notice of delinquency for ad valorem real property taxes" even though he had retained physical ownership of the property from May 4, 1992, to the present. In his counterclaim, Shamblin asserted a claim for judicial redemption of the property pursuant to § 40-10-83, Ala. Code 1975.¹ On the same date,

¹At the time Shamblin filed his counterclaim in March 2019, § 40-10-83, Ala. Code 1975, provided:

"When the action is against the person for whom the taxes were assessed or the owner of the land at the time of the sale, his or her heir, devisee, vendee or mortgagee, the court shall, on motion of the defendant made at any time before the trial of the action, ascertain (i) the amount paid by the purchaser at the sale and of the taxes subsequently paid by the purchaser, together with 12 percent per annum thereon, subject to the limitations set forth in Section 40-10-122(a); (ii) with respect to property located within an urban renewal or urban redevelopment project area designated pursuant to Chapters 2 or 3 of Title 24, all insurance premiums paid or owed by the purchaser for casualty loss coverage on insurable structures and the value of all permanent improvements made by the purchaser determined in accordance with Section 40-10-122, together with 12 percent per annum thereon;

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March 11, 2019, Shamblin filed a "Motion for Judicial Redemption of Property Sold for Taxes" in which he reiterated his arguments regarding why he had a right to judicially redeem the property pursuant to § 40-10-83.

(iii) with respect to any property which contains a residential structure at the time of the sale regardless of its location, all insurance premiums paid or owed by the purchaser for casualty loss coverage on the residential structure and the value of all preservation improvements made by the purchaser determined in accordance with Section 40-10-122, together with 12 percent per annum thereon, subject to the limitations set forth in Section 40-10-122(a); and (iv) a reasonable attorney's fee for the plaintiff's attorney for bringing the action. The court shall also determine the right, if any, of the defendant to recover any excess pursuant to Section 40-10-28 and shall apply a credit and direct the payment of the same as set forth in subsection (b) of Section 40-10-78. Upon such determination the court shall enter judgment for the amount so ascertained in favor of the plaintiff against the defendant, and the judgment shall be a lien on the land sued for. Upon the payment into court of the amount of the judgment and costs, the court shall enter judgment for the defendant for the land, and all title and interest in the land shall by such judgment be divested out of the owner of the tax deed."

§ 40-10-83 was amended effective January 1, 2020, primarily to change the interest rate allowed under the statute from 12% to 8%.

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On March 20, 2019, Shamblin filed a "Motion to Show Cause" regarding why he should be permitted to redeem the property. In that motion, Shamblin alleged, among other things:

"On March 11, 2019[, Guardian] requested a continuance of the Status Conference scheduled for 11:00 am next day ... to pursue settlement amongst the Parties. [Guardian's] Attorney was himself blind-sided by [Carol's] claim the next day that the matter had been settled with [Guardian's] out-of-State Attorneys in Georgia and that [Carol] had redeemed the Property, without recourse to [Shamblin]."

Shamblin then argued that he, not Carol, had a right to redeem the property because he was the owner of, and in possession of, the property.

On September 12, 2019, Guardian and Carol filed a "Joint Stipulation of Dismissal" in which they requested dismissal of Guardian from this action because a settlement agreement purportedly had been reached between Guardian and Carol. The joint stipulation explained:

"As a part of that agreement, Guardian assigned and transferred all of its interest in this cause of action and in the property that is the subject of this lawsuit to Carol D. Hamilton. Likewise, Carol D. Hamilton has agreed to accept the liability for any claims raised in the suit, agreeing to indemnify and defend Guardian against those claims. Therefore, Guardian and Carol D. Hamilton stipulate to the dismissal of Guardian and any claims against Guardian -- including the claims or counterclaims that were raised, or

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could have been raised -- with prejudice under Ala. R. Civ. P. 41(a). This stipulation is not intended to end the action, but is intended to dismiss Guardian as a party to the action."

Guardian and Carol did not submit along with their joint stipulation any documentation regarding their settlement agreement or the quitclaim deed transferring Guardian's interest in the property to Carol.

On September 23, 2019, Shamblin filed an objection to the joint stipulation of dismissal that raised several arguments regarding why Shamblin believed the dismissal of Guardian as a party was not appropriate, including the fact that no evidence of the terms of the settlement agreement or of the transfer of interest in the property had been submitted to the circuit court.

On December 30, 2019, the circuit court entered an order concerning Shamblin's motion for judicial redemption of the property. The opening paragraph of that order provided:

"This Cause came before this Court on November 13, 2019, for hearing on a Motion For Judicial Redemption For Property Sold For Taxes filed by Defendant Shamblin Lane Hamilton. Appearing for [Guardian] was the Honorable Jeff Chapman, and appearing for [Shamblin] was the Honorable Enefaa Fenny. All parties having had the opportunity to present testimony and evidence, and the Court having

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considered the same, it is hereby ORDERED, ADJUDGED and DECREED as follows:"

(Capitalization in original; emphasis added.) In that order, the circuit court declared that "[Shamblin] has been in actual physical possession of the Property at all times relevant to this case and is still in undisturbed possession at the filing of this Motion." Based on that finding, the circuit court concluded that, under § 40-10-83, Shamblin "is entitled to judicially redeem the Property." Accordingly, the circuit court ordered Guardian to submit a statement of lawful charges within 14 days of the entry of the order and for Shamblin to submit a response within 14 days thereafter and to pay into the court charges that were undisputed.

The following day, December 31, 2019, the circuit court entered an order declaring that the joint stipulation of dismissal was moot. The same day, the circuit court also entered another order declaring that Shamblin's motion to show cause why he should be permitted to redeem the property also was moot.

On January 9, 2020, Guardian filed a motion seeking a 14-day extension for complying with the circuit court's December 30, 2019, order

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"in order to be able to present a statement of charges to the court." On January 10, 2020, the circuit court granted Guardian's request for a 14-day extension, meaning that it had until January 27, 2020, to file its statement of lawful charges. However, on February 11, 2020, Carol, with Guardian's consent, filed a "Motion to Alter, Amend or Vacate and Renewed Motion to Substitute and Dismiss" in which she requested that the circuit court vacate its orders of December 30 and December 31, 2019, on the basis that those orders failed to account for the fact that Guardian had transferred its interest in the property by quitclaim deed to Carol as part of their settlement. Accordingly, Carol requested that she be realigned as the plaintiff and then be given ample time to submit a statement of lawful charges. Carol also requested that Guardian be dismissed with prejudice from the action.

On February 11, 2020, Shamblin filed an objection to Carol's motion, arguing, among other things, that her motion was untimely under Rule 59(e), Ala. R. Civ. P. The following day, Shamblin filed a motion to show cause why Guardian and Carol should not be held in contempt because they had failed to comply with the circuit court's discovery orders

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and its December 30, 2019, order requiring the submission of a statement of lawful charges on the property. On February 12, 2020, Shamblin filed a "Motion for an Order to Deposit Undisputed Charges with the Clerk of Court" in which he asserted that on July 30, 2018, Guardian had sent a statement of lawful charges to Shamblin that requested the sum of \$45,457.56.² Shamblin stated that he did "not dispute the sum of \$32,216.97 which includes the excess bid amount of \$18,000.00." Shamblin therefore requested an order from the circuit court requiring him to pay \$32,216.97 to the circuit clerk, setting a date for Guardian to prove any disputed amount of lawful charges, and stating that Shamblin was entitled to a refund of the excess bid amount from "the Jefferson County Tax Collector."

On February 28, 2020, Guardian and Carol filed a joint response to Shamblin's contempt motion in which they contended that the circuit court's failure to address the settlement between Guardian and Carol had

²Shamblin attached to his motion a copy of the document containing the \$45,457.56 figure. The document is dated July 30, 2018, but it is labeled "Settlement Worksheet."

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caused their delay in responding to court orders. They reiterated that, in their view, "[a]s part of that settlement, ... [Carol] would be substituted as Plaintiff and in Guardian's place." They also contended that, "because Guardian no longer has an interest in the property, ... the sole party from which [Shamblin] could redeem the property is [Carol]." Finally, they insisted that Carol's motion to alter, amend, or vacate the December 30, 2019, order was still pending, so, they insisted, issuing contempt sanctions would be premature.

On March 3, 2020, the circuit court held a hearing on outstanding motions in the action.³ On June 26, 2020, the circuit court entered a judgment quieting title to the property in favor of Carol and ordering Shamblin to be ejected from the property. The circuit court's judgment provided:

³Guardian's counsel requested, and subsequently received, permission from the circuit court to appear by telephone at the March 3, 2020, hearing because, Guardian asserted, "[Carol], and not Guardian, is the real party in interest, [so] any arguments to be made on the motions pending before the Court on March 3, 2020, would be made by [Carol's] counsel."

"This cause was submitted upon the pleadings, the written and oral motions made in open court, and oral arguments of the parties. Upon consideration thereof, it is ORDERED, ADJUDGED and DECREED by the Court as follows:

"1. The Complaint was filed on the 4th day of April 2018 in this cause against Defendants Shamblin Hamilton and Carol Hamilton, seeking to quiet title and eject the Defendants living in the property.

2. [Guardian] had acquired the property from the purchaser at a tax sale held on May 20, 2014.

"3. The parties, having Answered, appeared in open court for a status conference on the 12th day of March, 2019 to discuss all pending items before the court.

"4. At said hearing, Defendant Carol Hamilton advised the court that she had reached a settlement agreement with [Guardian] to redeem and purchase the property at issue by paying to [Guardian] a sum satisfactory to [Guardian] to acquire all [Guardian's] rights in the property.

"5. All parties consented to discuss and argued all relevant items in open court, and the Court took argument on the issues.

"6. The Court hereby finds as follows:

"a. The Court takes judicial notice that the [Hamiltons] were previously married and possessed joint ownership of the property in question, with both parties listed on the deed with rights of survivorship at the time of the tax sale, and both

remained on the warranty deed at the time this cause was commenced.

"b. The Court takes judicial notice that the [Hamiltons] were divorced and that the property was awarded to Defendant Shamblin Hamilton, with a second mortgage/line of credit in both parties' names remaining, secured by the property at issue here.

"c. The Court takes judicial notice that the deed of said property was never altered in any way following said divorce and per Ala. Code 1975, § 40-10-8. The books and records of the probate office are prima facie evidence in this cause. As such, this Court finds Defendant Carol Hamilton, though no longer an owner as joint tenant with rights of survivorship with Defendant Shamblin Hamilton, did have a redeemable interest in the property as defined by Ala. Code 1975, § 40-10-120.^[4]

⁴Section 40-10-120(a), Ala. Code 1975, provides, in part:

"(a) Real estate which hereafter may be sold for taxes and purchased by the state may be redeemed at any time before the title passes out of the state or, if purchased by any other purchaser, may be redeemed at any time within three years from the date of the sale by the owner, his or her heirs, or personal representatives, or by any mortgagee or purchaser of such lands, or any part thereof, or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common, including a judgment creditor or other creditor having a lien thereon, or on any part thereof; and an infant or insane person entitled to redeem at any time before the expiration of three years from the sale may redeem at any time within one year after the removal of the

"d. In open court, [Guardian] represented that [Guardian] and Defendant Carol Hamilton entered into a Settlement Agreement whereby [Guardian] had transferred all [its] rights, interests, and title to Defendant Carol Hamilton and [Guardian] further stated they were in agreement to treat the agreement as a judicial redemption and/or to stipulate to the substitution and realignment of parties if this Court did not view this agreement as dispositive.

"e. This Court, having found that Defendant Carol Hamilton held a redeemable interest in the property; that Defendant Shamblin Hamilton has failed to redeem the property; and that [Guardian] and Defendant Carol Hamilton having entered into an agreement, finds that Defendant Carol Hamilton has judicially redeemed the property at issue in this cause ... and is entitled to judgment in her favor.

"f. This Court recognizes Defendant Carol Hamilton, having acquired all [Guardian's] rights in the property and having been assigned [Guardian's] interest in this cause, and hereby enters judgment in favor of Defendant Carol Hamilton and against Defendant Shamblin Hamilton to quiet title and ejects Defendant Shamblin Hamilton from the premises.

"g. It is further ORDERED that any interest Defendant Shamblin Hamilton has in said premises, including his possessory interest, was terminated by the Settlement Agreement of the other parties and any interest he may have claimed is hereby extinguished, and Defendant Shamblin Hamilton is divested of same.

disability; and such redemption may be of any part of the lands so sold, which includes the whole of the interest of the redemptioner. ..."

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"h. It is further ORDERED that Defendant Shamblin Hamilton has thirty (30) days from the date of this Order (July 26, 2020) to vacate the property. If Defendant Shamblin Hamilton fails to vacate said property within the time specified in this Order, the Sheriff is directed to remove Defendant Shamblin Hamilton by any lawful means."

(Capitalization in original.) On July 18, 2020, Shamblin filed a postjudgment motion asking the circuit court to alter, amend, or vacate its June 26, 2020, judgment. On July 20, 2020, Shamblin filed a motion to stay enforcement of the June 26, 2020, judgment pending a ruling on his postjudgment motion. On July 31, 2020, Carol filed responses to those motions. The circuit court never ruled on Shamblin's postjudgment motion; accordingly, it was denied by operation of law pursuant to Rule 59.1, Ala. R. Civ. P., on October 16, 2020.⁵ Shamblin filed his appeal on October 23, 2020.

II. Standard of Review

The parties disagree as to the proper standard of review for this appeal. Shamblin contends for a de novo standard because, he asserts,

⁵The circuit court also never ruled on Shamblin's motion to stay enforcement of the June 26, 2020, judgment.

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the issue to be determined is a question of law -- who has a right to redeem the property under § 40-10-83: Shamblin or Carol? See, e.g., Ex parte Jarrett, 89 So. 3d 730, 732 (Ala. 2011) (observing that, " '[w]here the facts are not in dispute and we are presented with pure questions of law, this Court's standard of review is de novo'" (quoting State v. American Tobacco Co., 772 So. 2d 417, 419 (Ala. 2000))). In contrast, Carol and Guardian contend that the ore tenus standard applies because "[t]he case was submitted with ore tenus evidence and testimony." Carol and Guardian's brief, p. 11. See, e.g., Yeager v. Lucy, 998 So. 2d 460, 462 (Ala. 2008) (" "When a judge in a nonjury case hears oral testimony, a judgment based on findings of fact based on that testimony will be presumed correct and will not be disturbed on appeal except for a plain and palpable error."'" (quoting Smith v. Muchia, 854 So. 2d 85, 92 (Ala.2003), quoting in turn Allstate Ins. Co. v. Skelton, 675 So. 2d 377, 379 (Ala. 1996))).

The Court is frankly mystified by Carol and Guardian's asserted position. In its June 26, 2020, judgment, the circuit court began by stating: "This cause was submitted upon the pleadings, the written and

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oral motions made in open court, and oral arguments of the parties. Upon consideration thereof, it is ORDERED, ADJUDGED and DECREED by the Court as follows:" (Capitalization in original; emphasis added.) The remainder of that judgment indicated that all the facts relied upon by the circuit court in reaching its decision were based on two sources: (1) "judicial notice" from previous legal proceedings and (2) statements made by counsel for the parties at hearings in this case. A motion by Guardian seeking to appear by telephone at the March 3, 2020, hearing that preceded the entry of the June 26, 2020, judgment observed that "any arguments to be made on the motions pending before the Court on March 3, 2020, would be made by [Carol's] counsel." (Emphasis added.) Nothing in the record even hints that testimony of any kind was received during the March 3, 2020, hearing. The only affidavit of any kind submitted in this case was from Shamblin's counsel in support of the contempt motion seeking sanctions based on the alleged failure of Guardian and Carol to comply with the circuit court's discovery orders. No other "testimony" of any kind is included in the record. Carol and Guardian's brief on appeal is bereft of any quotation of, citation to, or

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allusion to testimony presented in the circuit court. Their sole support for their contention is introductory language in the December 30, 2019, order that stated: "All parties having had the opportunity to present testimony and evidence, and the Court having considered the same, it is hereby ORDERED, ADJUDGED and DECREED as follows:" (Capitalization in original; emphasis added.) However, on its face that statement merely indicates that the parties could have presented testimony, not that any party did, in fact, do so. Indeed, nothing in the remainder of the December 30, 2019, order cited testimony as a basis for the circuit court's rulings in that order. Moreover, the December 30, 2019, order was in Shamblin's favor, and, according to Carol and Guardian, it was not the final judgment by the circuit court in this case, so its passing reference to "testimony" is irrelevant to the standard for reviewing the June 26, 2020, judgment. In sum, there is no indication in the record that the circuit court heard ore tenus evidence in this case. The June 26, 2020, judgment appears to have been based on exactly what the circuit court stated it was: the pleadings, motions, and arguments of the parties. Accordingly, the appropriate standard of review is the de novo standard.

III. Analysis

We begin by addressing Shamblin's argument that the circuit court's December 30, 2019, order was a final, appealable order, that Carol's February 11, 2020, motion was an untimely postjudgment motion under Rule 59(e), Ala. R. Civ. P., because it was filed 43 days after the entry of the December 30, 2019, order, and that therefore the circuit court erred in altering and/or vacating its December 30, 2019, order with its June 26, 2020, judgment. Shamblin notes that Rule 54(a), Ala. R. Civ. P., states that a "[j]udgment" as used in these rules includes a decree and any order from which an appeal lies." Shamblin then asserts that "[t]he order of the trial court dated December 30, 2019, is a 'decree and any order from which an appeal lies.'" Shamblin's brief, p. 41.

However, Shamblin does not explain why the December 30, 2019, order was an appealable order.

"An appeal ordinarily lies only from a final judgment. Ala. Code 1975, § 12-22-2; Bean v. Craig, 557 So. 2d 1249, 1253 (Ala. 1990). A judgment is generally not final unless all claims, or the rights or liabilities of all parties, have been decided. Ex parte Harris, 506 So. 2d 1003, 1004 (Ala. Civ. App. 1987). The only exception to this rule of finality is when

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the trial court directs the entry of a final judgment pursuant to Rule 54(b), Ala. R. Civ. P. Bean, 557 So. 2d at 1253."

Faulk v. Rhodes, 43 So. 3d 624, 625 (Ala. Civ. App. 2010).

The December 30, 2019, order clearly was not a final judgment because, although the circuit court determined that Shamblin had a right to redeem the property, the amount required to redeem the property had not been determined. The December 30, 2019, order expressly directed Guardian to submit a statement of lawful charges and directed Shamblin to then submit a statement of undisputed charges and to pay the undisputed amount into the circuit court. Thus, the December 30, 2019, order did not dispose of all the rights and liabilities of the parties.⁶ It is also clear that the circuit court did not direct the entry of a final judgment pursuant to Rule 54(b) in the December 30, 2019, order. Accordingly, the December 30, 2019, order was not appealable. Because that order was

⁶Our courts have ruled in redemption cases involving § 40-10-83 that an order that determines the right of redemption and the amount required for redemption may be final before the redemptioner has paid the redemption amount. See, e.g., Moorer v. Chastang, 247 Ala. 676, 680, 26 So. 2d 75, 78-79 (1946); Prescott v. Milne, 308 So. 3d 906, 911 (Ala. Civ. App. 2019). That is not the situation here, and no contention has been made that this case is similar to those cases.

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interlocutory, Carol's February 11, 2020, motion seeking a modification of that order was not untimely, and the circuit court was permitted to alter the December 30, 2019, order by entering the June 26, 2020, judgment. See, e.g., Nationwide Mut. Fire Ins. Co. v. Pabon, 903 So. 2d 759, 765 (Ala. 2004) (stating that an "order remain[s] subject to revision at any time before the trial court enter[s] its final judgment").

Shamblin's primary argument in this appeal is that he was entitled to redeem the property under § 40-10-83 and that the circuit court erred in concluding instead that Carol had a right to redeem that she exercised through executing a settlement agreement with Guardian. To evaluate Shamblin's contention, we review the principles involved in tax-sale redemptions.

"Under Alabama law, after a parcel of property has been sold because of its owner's failure to pay ad valorem taxes assessed against that property (see § 40-10-1 et seq., Ala. Code 1975), the owner has two methods of redeeming the property from that sale: 'statutory redemption' (also known as 'administrative redemption'), which requires the payment of specified sums of money to the probate judge of the county in which the parcel is located (see § 40-10-120 et seq., Ala. Code

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1975), and 'judicial redemption' under §§ 40-10-82^[7] and 40-10-83, Ala. Code 1975, which involves the filing of an original civil action against a tax-sale purchaser (or the filing of a counterclaim in an ejectment action brought by that purchaser) and the payment of specified sums into the court in which that action or counterclaim is pending. See generally William R. Justice, 'Redemption of Real Property Following Tax Sales in Alabama,' 11 Cumb. L. Rev. 331 (1980-81)."

First Props., L.L.C. v. Bennett, 959 So. 2d 653, 654 (Ala. Civ. App. 2006).

"The right to statutorily redeem property sold for taxes expires three years after the date of the sale" Henderson v. Seamon, 261 So. 3d 1203, 1206 (Ala. Civ. App. 2018). See also Daugherty v. Rester, 645 So. 2d 1361, 1364 (Ala. 1994) ("We follow O'Connor v. Rabren, 373 So. 2d 302 (Ala. 1979), and hold that the phrase 'three years from the date of the sale' in § 40-10-120, [Ala. Code 1975,] means three years from the date of the sale at the courthouse and the issuance of the certificate of purchase.").

⁷Section 40-10-82, Ala. Code 1975, establishes "a 'short statute of limitations' for tax-deed cases, pursuant to which, 'to bar redemption under § 40-10-83, the tax purchaser must prove continuous adverse possession for three years after he is entitled to demand a tax deed.'" US Bank Tr., N.A. v. Trimble, 296 So. 3d 867, 869 (Ala. Civ. App. 2019) (quoting Gulf Land Co. v. Buzzelli, 501 So. 2d 1211, 1213 (Ala. 1987)). Section 40-10-82 is not implicated in this case.

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"We have stated many times that the purpose of § 40-10-83 is to preserve the right of redemption without a time limit, if the owner of the land seeking to redeem has retained possession. This possession may be constructive or scrambling, and, where there is no real occupancy of the land, constructive possession follows the title of the original owner and can only be cut off by the adverse possession of the tax purchaser."

Gulf Land Co. v. Buzzelli, 501 So. 2d 1211, 1213 (Ala. 1987).

"The rights and remedies of the parties following a valid tax sale may be summed up as follows. After confirmation of the sale, the purchaser, or the state if the land is bid in for the state, is entitled to a certificate of purchase. Code 1975, §§ 40-10-19, -20. The purchaser (other than the state) is then immediately entitled to possession, and 'if possession is not surrendered within six months after demand therefor,' the purchaser (other than the state) may bring an action in ejectment or other action for possession. Code 1975, § 40-10-74. After the expiration of three years from the date of sale, a purchaser other than the state is entitled to a deed [Code 1975, § 40-10-29], and land bid in for the state may be sold and the purchaser given a deed. Code 1975, §§ 40-10-132, -135.

"The original owner, or his successor in interest, may redeem the land within three years from the date of sale to a purchaser other than the state, or any time before title passes out of the state if the land was sold to the state. Code 1975, § 40-10-120. Once that initial redemption period expires, only those original owners or their successors who have possession may redeem, without limit of time. Code 1975, § 40-10-83; Tensaw Land & Timber Co. v. Rivers, [244 Ala. 657, 15 So. 2d 411 (1943)]. "

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O'Connor v. Rabren, 373 So. 2d 302, 307 (Ala. 1979) (footnote omitted; emphasis added).

"In 1946, in Moorer v. Chastang, 247 Ala. 676, 26 So. 2d 75 (1946), the Court laid out the following requirements necessary to obtain redemption under what is now § 40-10-83: First, there must be possession of the land by the complainant within the meaning of the statute. Moorer, 247 Ala. at 679, 26 So. 2d at 78. Second, the complainant must belong to the class permitted under the statute to redeem. Moorer, 247 Ala. at 680, 26 So. 2d at 78. Third, there must be a claim by the opposing party under a tax sale. Id. Fourth, there must not be a suit pending to enforce or test the opposing party's claim. Id."

State Dep't of Revenue v. Price-Williams, 594 So. 2d 48, 52 (Ala. 1992).

Shamblin bases his right to redeem under § 40-10-83 on his assertion that he has been the owner in possession of the property since May 4, 1992. Carol and Guardian argue that they

"certainly contested this issue [that Shamblin was the owner in possession] before the trial court in hearings and testimony, but [Shamblin] did not order a transcript or include a Rule 10[, Ala. R. App. P.,] statement.^[8] [Shamblin] may therefore

⁸Carol and Guardian refer to Rule 10(d), Ala. R. App. P., which gives the appellant a right to "prepare a statement of the proceedings in lieu of the usual transcript," Adams v. Adams, 335 So. 2d 174, 177 (Ala. Civ. App. 1976), "[i]f no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable." Rule 10(d), Ala. R. App. P.

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disagree with the limited factual findings the trial court made following the hearings, but [he has] failed to make a showing here that the [June 26, 2020,] order is wholly unsupported by any credible evidence or is plainly erroneous and manifestly unjust. Indeed, the record confirms that [Carol] is the owner of the property by virtue of the quitclaim deed from Guardian."

Carol and Guardian's brief, p. 14.

We find Carol and Guardian's argument wholly unpersuasive. To begin with, their argument relies upon their assertion that testimony was presented in the circuit court, but we have already concluded in Part II of this opinion that the record categorically refutes that assertion. Furthermore, no filing from Carol and Guardian in the circuit court objected to or even suggested that Shamblin's assertion in his counterclaim that he was the owner in possession of the property was false. Indeed, the very fact that Guardian sought to eject Shamblin from the property belies any notion that Carol and Guardian "contested" that Shamblin was in physical possession of the property. Submissions in the record show (1) that Shamblin was awarded sole ownership of the property by a divorce judgment entered on August 31, 2004, and that he was solely responsible for the mortgage on the property from that time

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forward; (2) that Shamblin assumed sole responsibility for repaying a home-equity line of credit connected with the property under a modified divorce judgment entered on February 19, 2009; and (3) that Shamblin paid off the mortgage on the property in 2010. Those facts presumably explain why the circuit court in its December 30, 2019, order concluded that "[Shamblin] has been in actual physical possession of the Property at all times relevant to this case and is still in undisturbed possession at the filing of this Motion." That finding was never contradicted in the circuit court's June 26, 2020, judgment. Finally, Carol and Guardian's contention that the record shows that Carol "is the owner of the property by virtue of the quitclaim deed from Guardian" does not conflict with Shamblin's contention that he is the owner in possession of the property; it merely indicates that Carol is the title holder to the property, not that she is in physical possession of the property.

Based on the foregoing, we agree with Shamblin that he is the owner in possession of the property and that he appears to meet the requirements necessary to obtain redemption under § 40-10-83. What remains for evaluation is the circuit court's conclusion in its June 26,

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2020, judgment that Carol exercised a right of redemption by executing a settlement agreement with Guardian and that, in doing so, she extinguished any right of redemption or possession of the property previously held by Shamblin. The circuit court reasoned and concluded as follows in its June 26, 2020, judgment: (1) because "the deed of [the] property was never altered in any way following [Shamblin and Carol's] divorce," Carol "did have a redeemable interest in the property as defined by Ala. Code 1975, § 40-10-120"; (2) Guardian and Carol represented to the circuit court that they had "entered into a Settlement Agreement whereby [Guardian] had transferred all [its] rights, interests, and title to Defendant Carol Hamilton and [Guardian] further stated they were in agreement to treat the agreement as a judicial redemption"; (3) "Shamblin Hamilton has failed to redeem the property"; (4) Carol had "judicially redeemed the property at issue in this cause"; and (5) "any interest Defendant Shamblin Hamilton has in said premises, including his possessory interest, was terminated by the Settlement Agreement of the other parties and any interest he may have claimed is hereby extinguished."

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Multiple problems exist with the circuit court's reasoning and conclusions. First and foremost, assuming that the circuit court was correct that Carol initially possessed a right to redeem the property under § 40-10-120 because her name remained on the deed to the property after Shamblin and Carol's divorce, that right of redemption was extinguished three years after the tax sale that occurred on May 20, 2014. See, e.g., Daugherty, 645 So. 2d at 1364; Henderson, 261 So. 3d at 1206. The owner in possession was the only party that retained a right of redemption after Mercury was awarded the tax deed to the property on January 2, 2018, (and passed it to Guardian three days later). See, e.g., Buzzelli, 501 So. 2d at 1213; O'Connor, 373 So. 2d at 307. As we have explained, the owner in possession was Shamblin, not Carol, and the circuit court never found otherwise. Therefore, Carol did not possess a right of redemption at the time Guardian commenced this action or any time thereafter. Second, Carol and Guardian never submitted the terms of their settlement agreement into evidence, and there is no transcript of the hearings in which counsel for Carol and Guardian described the terms of the settlement agreement to the circuit court. Thus, although it is true that

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"attorneys are officers of the court and their statements require no oath," Grayson v. Hanson, 843 So. 2d 146, 150 (Ala. 2002), there is no evidence of the amount Carol gave to Guardian to "acquire[] all [Guardian's] rights in the property" as the circuit court put it. For that matter, there is no record evidence demonstrating that Carol actually possesses the tax deed from Guardian. Third, even assuming that Carol paid Guardian to acquire its rights in the property and that Carol does possess the tax deed to the property, a settlement agreement between Carol and Guardian could not extinguish the right of redemption held by Shamblin under § 40-10-83 because his right is based on his status as the owner in possession, a status that could not be affected by the settlement agreement between the other parties in this action. Fourth, because Carol did not possess a right of redemption at the time she executed the settlement agreement with Guardian, and because Shamblin possessed a right of redemption under § 40-10-83, at most the settlement agreement simply empowered Carol to step into Guardian's shoes as the plaintiff in this action seeking ejectment and to quiet title -- which is the relief that Carol and Guardian requested in their September 12, 2019, joint

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stipulation of dismissal⁹ and what Guardian argued for in its January 9, 2020, motion for an extension to comply with the December 30, 2019, order to submit a statement of lawful charges. Finally, the circuit court's finding that Shamblin had failed to redeem the property ignored the fact that Guardian never submitted a statement of lawful charges following the entry of the circuit court's December 30, 2019, order, so Shamblin did not know the amount required for exercising his right to redeem the property.

Based on the foregoing, we conclude that the circuit court erred in determining that Carol redeemed the property through her settlement agreement with Guardian and extinguished Shamblin's right to redeem the property. For all that appears in the record, Shamblin possesses a right to redeem the property under § 40-10-83 by virtue of his being an

⁹Indeed, Carol and Guardian emphasized that "[t]his stipulation is not intended to end the action, but is intended to dismiss Guardian as a party to the action." Despite this, the circuit court in its June 26, 2020, judgment treated the settlement agreement as an act that disposed of all issues in this case.

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owner in possession of the property. Therefore, the circuit court's judgment is due to be reversed.

IV. Conclusion

We reverse the circuit court's June 26, 2020, judgment, and the case is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

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

Mitchell, J., concurs specially.

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MITCHELL, Justice (concurring specially).

I concur with the majority opinion. As it correctly notes, the undisputed evidence indicates that Shamblin Lane Hamilton is the owner in possession of the property at issue. Accordingly, he has the right to redeem that property under § 40-10-83, Ala. Code 1975.

As support for the principle that § 40-10-83 permits an owner in possession of property to redeem that property at any time, the majority opinion cites State Department of Revenue v. Price-Williams, 594 So. 2d 48, 52 (Ala. 1992), and O'Connor v. Rabren, 373 So. 2d 302, 307 (Ala. 1979). Portions of these cases suggest that an owner can redeem under § 40-10-83 only if he or she is in possession of the disputed property. But cases decided after Price-Williams and O'Connor make clear that possession is not a prerequisite for seeking judicial redemption under § 40-10-83. See, e.g., McGuire v. Rogers, 794 So. 2d 1131, 1136 (Ala. Civ. App. 2000) (explaining that the "application of § 40-10-83 employed in O'Connor has been displaced by the more recent Gulf Land [Co. v. Buzzelli, 501 So. 2d 1211 (Ala. 1987),] and its progeny" and rejecting a claim that a property owner could not redeem under § 40-10-83 because

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she was not in possession of the property). See also Southside Cmty. Dev. Corp. v. White, 10 So. 3d 990, 992 (Ala. 2008) (recognizing that, under Gulf Land, a lack of possession does not categorically bar an owner's action seeking judicial redemption under § 40-10-83).

I previously discussed my view of § 40-10-83 in Austill v. Prescott, 293 So. 3d 333, 362 (Ala. 2019) (Mitchell, J., concurring in the result), in which I explained that an owner of property whose possession had been cut off by a tax purchaser's adverse possession nevertheless had a right to judicially redeem the property:

"[I]n my view, a tax purchaser may cut off the possession of a property owner by adversely possessing the property for three years. But cutting off possession does not, by itself, extinguish the owner's judicial-redemption right. Instead, once the owner's possession is cut off, the owner has three years from the date the tax purchaser became entitled to demand a tax deed to judicially redeem the property. If the right of judicial redemption is not exercised within those three years, then the right is extinguished. Of course, if the owner remains in possession of the property (i.e., the tax purchaser never cuts off the owner's possession), then the owner may redeem at any time."

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(Emphasis added.) Thus, an owner may be able to judicially redeem property under § 40-10-83 even if he or she does not retain possession of the property.

Of course, the appeal now before us does not involve a claim of adverse possession; Shamblin's possession of the property has not seriously been disputed. Because I understand the majority opinion to be citing Price-Williams and O'Connor for the proposition that an owner in possession of property always has a right to redeem that property under § 40-10-83 -- and not for the proposition that only an owner in possession of property has a right to redeem under § 40-10-83 -- I join that opinion.