REL: January 21, 2022

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200258

David C. Larsen

v.

WF Master REO, LLC, Mary G. McDonald, Christopher Shaun McDonald, Brian Lee McDonald, Amy Leigh Strickland, Katie Frances Kendrick, and Anthony Bishop, as administrator ad litem for the estate of Donald L. McDonald, deceased

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Mary G. McDonald, Christopher Shaun McDonald, Brian Lee McDonald, Amy Leigh Strickland, Katie Frances Kendrick, and Anthony Bishop, as administrator ad litem for the estate of Donald L. McDonald, deceased

v.

WF Master REO, LLC, and David C. Larsen

2200260

WF Master REO, LLC

v.

David C. Larsen

Appeals from Conecuh Circuit Court
(CV-17-900064)

MOORE, Judge.

These consolidated appeals arise from a final judgment of the Conecuh Circuit Court ("the trial court") entered in an action involving a real-property dispute among, initially, David C. Larsen, WF Master REO, LLC ("WF"), and Donald L. McDonald and Mary G. McDonald ("the McDonalds").[1]

[1]Donald L. McDonald died during the pendency of the underlying action, and the trial court granted Larsen's motion to substitute Anthony Bishop, as administrator ad litem for the estate of Donald L. McDonald, deceased, as a party. Subsequently, the trial court joined Christopher Shaun McDonald, Brian Lee McDonald, Amy Leigh Strickland, and Katie Frances Kendrick, the heirs of Donald L. McDonald, as necessary parties.

Procedural Background

In 1998, the McDonalds purchased a parcel of real property in Repton (which is located in Conecuh County) ("the property"), subject to a mortgage that was assigned through various transactions to Waterfall Victoria Mortgage Trust 2011-1 REO, LLC ("Waterfall"). In 2015, Waterfall, through its agent, began the foreclosure process and scheduled a foreclosure sale. On November 24, 2015, the McDonalds commenced a civil action against Waterfall ("the McDonalds' action") in the trial court, alleging that they had not defaulted on the note secured by the mortgage and asserting claims seeking damages and other relief against Waterfall for instituting the foreclosure proceedings against them. The next day, Waterfall proceeded with the foreclosure sale and sold the property to WF.

In 2016, Waterfall removed the McDonalds' action to the United States District Court for the Southern District of Alabama ("the federal court"). In 2017, the federal court entered a summary judgment in favor of Waterfall on all the claims asserted by the McDonalds. The federal court subsequently denied a postjudgment motion filed by the McDonalds seeking to have the summary judgment altered, amended, or vacated.

Following termination of the litigation in the federal court, WF requested that the McDonalds vacate the property, but they refused.

On September 15, 2017, WF commenced the underlying action against the McDonalds ("the ejectment action") by filing a complaint in the trial court seeking ejectment of the McDonalds from the property. The McDonalds filed an answer to that complaint, alleging that the foreclosure deed was void and asserting counterclaims against WF alleging wrongful foreclosure, slander of title, unjust enrichment, and a claim seeking declaratory relief. WF filed a motion to dismiss the McDonalds' counterclaims based on the doctrines of res judicata and collateral estoppel, but the trial court denied that motion.

In February 2018, WF conveyed the property to Larsen through a special warranty deed. Larsen subsequently intervened in the ejectment action between WF and the McDonalds and filed a complaint against the McDonalds alleging trespass and a claim seeking ejectment and a cross-claim against WF alleging breach of warranty and fraud. WF answered and denied any liability to Larsen. The McDonalds amended their answer

to deny Larsen's claims and to assert their counterclaims against both WF and Larsen.[2]

Apparently, Donald L. McDonald died in August 2019, and the trial court granted Larsen's motions to substitute the administrator ad litem of Donald's estate as a party and to add Donald's heirs as necessary parties. See note 1, supra. Mary G. McDonald, the administrator ad litem of Donald's estate, and Donald's heirs are hereinafter referred to collectively as "the McDonald parties."

After the trial court denied motions for a summary judgment filed by all the parties, and the parties made various amendments to the pleadings, the case proceeded to a bench trial on June 11, 2020. On September 14, 2020, the trial court entered a final judgment in favor of

[2]The McDonalds also had purported to assert claims against Waterfall; however, the McDonalds did not serve Waterfall with process. At the outset of the June 11, 2020, trial, the trial court acknowledged that Waterfall had never been served notice of the action and orally indicated its intention to dismiss Waterfall. The trial court failed to memorialize that intention in its final judgment; however, because Waterfall was never served with process, the trial court's failure to dismiss it as a defendant does not render the trial court's judgment nonfinal. See Chamblee v. Duncan, 188 So. 3d 682, 692 (Ala. Civ. App. 2015).

WF on its ejectment claim against the McDonald parties, against the McDonald parties on their counterclaims against WF and Larsen, and in favor of Larsen on his fraud claim against WF. All the parties filed postjudgment motions to have the final judgment altered, amended, or vacated, which motions were denied. WF and the McDonald parties timely appealed to the Supreme Court of Alabama; Larsen filed a timely cross-appeal. The supreme court transferred the appeals and the cross-appeal to this court, pursuant to Ala. Code 1975, § 12-2-7(6), and this court consolidated the appeals ex mero motu.

The Facts

On December 10, 1998, the McDonalds executed a promissory note, and a mortgage on the property securing the note, in favor of NationsCredit Financial Services Corporation of Alabama. In the note, the McDonalds agreed to pay a total of $67,297.37 at a rate of $621.65 per month from January 15, 1999, to December 15, 2028. Michael Dolan, a senior-litigation associate for Statebridge Company, LLC ("Statebridge"), a loan-servicing firm, testified, and several exhibits introduced into evidence proved, that the note and the mortgage were assigned to various

entities over the years. Beginning on August 1, 2009, the McDonalds began missing their monthly mortgage payments so that they were in default on the note.

In 2010, the note was assigned to Waterfall, who thereby acquired the right to receive payments from the McDonalds. In 2012, the mortgage was assigned to Waterfall. The McDonalds filed separate bankruptcy petitions in 2012 in an effort to forestall foreclosure of the mortgage. Dolan testified that bankruptcy stays precluded Waterfall from making any collection efforts against the McDonalds. On October 13, 2014, after the last of the bankruptcy petitions had been dismissed, Statebridge, acting as the loan-servicing agent for Waterfall, sent the McDonalds a letter notifying the McDonalds that, unless they paid $49,581.67 to bring the note current by a certain date, the entire debt owed would be accelerated and the mortgage would be foreclosed. The McDonalds did not cure the default, so Statebridge, on behalf of Waterfall, accelerated the debt and initiated the foreclosure process.

Statebridge originally published notice of the foreclosure sale in The Evergreen Courant, a newspaper, in May 2015, but the sale did not take

place at that time. The foreclosure sale was rescheduled to November 25, 2015, and notice of the sale was again published in The Evergreen Courant on November 5, 12, and 19, 2015. Dolan testified that, before the foreclosure sale, Statebridge commissioned a broker-price opinion from a local real-estate broker to determine the value of the property and that the real-estate broker had estimated the value of the property to be $40,000. Statebridge set the minimum bid price at the foreclosure sale at $34,000, which was approximately 85% of the value of the property as estimated in the broker-price opinion. At trial, Mary McDonald testified that the property was worth between $135,000 and $138,000 and her son, who resided on the property, estimated that it was worth between $145,000 and $150,000. At the foreclosure sale, WF bid $34,000 to purchase the property; no other bids were received, so WF won the auction. Upon receiving payment, Waterfall executed a foreclosure deed conveying the property to WF.

As noted above, the McDonalds commenced an action against Waterfall regarding the foreclosure on November 24, 2015, the day before the foreclosure sale, and the McDonalds' action was removed to the federal

court in 2016. In the McDonalds' action, the McDonalds asserted 14 counts against Waterfall, all arising from the premise that Waterfall had committed wrongful conduct against the McDonalds in servicing the note, in determining that the McDonalds had defaulted on the note, and in foreclosing the mortgage. In entering a summary judgment for Waterfall, the federal court found that the McDonalds had defaulted on the note as of August 1, 2009; that the note and the mortgage had been validly assigned to Waterfall; that, as a valid assignee, Waterfall was entitled to payment under the note; that Waterfall had complied with its duty under the terms of the mortgage to notify the McDonalds of their default, the acceleration of the debt, and its intent to foreclose the mortgage; that the McDonalds had failed to cure the default by paying the past-due amounts and bringing the note current; that Waterfall had properly instituted foreclosure proceedings against the McDonalds pursuant to the terms of the mortgage; and that proper notice of the foreclosure sale had been given to the McDonalds. Additionally, the federal court concluded that the McDonalds could not maintain a wrongful-foreclosure action because no foreclosure sale had occurred before they filed their complaint.

After the McDonalds' action terminated, WF commenced the ejectment action against the McDonalds. WF did not file a lis pendens notice after commencing the ejectment action. The McDonalds also did not file a lis pendens notice after filing their counterclaim against WF. While the litigation was pending, WF contracted with Auction.com, an Internet-based real-estate auction company, to market and sell the property through a live auction.

Larsen testified that he had earned "an associate's degree in real estate" in 1997; that he had obtained his real-estate broker's license in both Texas and Alabama; and that he had worked in real estate "off and on" for 23 years. Larsen stated that he had previously purchased foreclosed property in Troy, which, he said, he had originally used as a rental home but had used as his primary residence after he retired. Larsen testified that he had sold the Troy property at some point in 2017 and needed a place to live, so he had searched for suitable property on Auction.com.

Larsen testified that he discovered the property at issue after scanning the Auction.com Web site. Larsen stated that the listing

described the property and contained a photograph of the exterior of the house situated on the property but that it did not indicate that anyone occupied the property or that title to the property was the subject of ongoing litigation. Larsen did not search the lis pendens records of the Conecuh Probate Court, did not personally inspect the property, did not conduct any independent research to obtain any additional information about the property, and did not communicate with WF or the McDonalds about the property before submitting a bid to purchase the property.

Larsen stated that he had submitted a bid of $38,357, which was the highest bid for the property. Larsen testified that Auction.com had informed him that WF had accepted the bid and that the property would become his once all "the paperwork" was completed. Larsen testified that, on January 18, 2018, he executed a document entitled "Purchase and Sale Agreement with Joint Closing Instructions" ("the purchase agreement"). The purchase agreement, which was submitted into evidence, did not specifically indicate that the McDonalds were occupying the property or that the property was the subject of ongoing litigation, but it did provide, in pertinent part, as follows:

> "[WF] agrees to sell the Property to [Larsen], and [Larsen] agrees to purchase the Property from [WF] in accordance with the terms of [the purchase agreement] ....
>
> "....
>
> "9. **BUYER'S REPRESENTATIONS AND WARRANTIES**. [Larsen] represents and warrants to [WF] as follows as of the Effective Date:
>
> "....
>
> "(B) Property Condition and Attributes. Prior to entering into this Agreement, [Larsen] had the opportunity to conduct [Larsen's] own due diligence and investigations. ... (I) [WF] does not make, and expressly disclaims, any representation or warranty, express or implied, regarding the Property, and (ii) [Larsen] acknowledges and agrees that [WF] is selling the Property 'As Is, Where Is, With All Faults and Limitations' and [WF] shall have no liability for or any obligation to make any repairs or improvements of any kind to the Property."

(Capitalization and boldface type in original.) Larsen also executed a rider to the purchase agreement that provides, in pertinent part:

> "**AS IS. WHERE IS, WITH ALL FAULTS AND LIMITATIONS' SALE**. [Larsen] acknowledges and agrees that neither [WF] nor any person acting as [WF]'s representative or agent has occupied the Property and that [Larsen] is acquiring the Property 'AS IS, WHERE IS, WITH

> ALL FAULTS AND LIMITATIONS', in its present state and condition, with all defects and faults, whether known or unknown, presently existing or that may hereafter arise including, without limitation:
>
> > "....
> >
> > "(d) The habitability, marketability, tenantability or fitness for a particular purpose of the Property.
>
> "[Larsen] shall hold harmless, indemnify and defend [WF] and its representatives and agents from any claim arising from or relating to the Property. [Larsen] hereby fully and irrevocably releases [WF] and its representatives and agents from any and all claims of any kind whatsoever, whether known or unknown, arising from or relating to the Property. This release includes claims that [Larsen] does not know or suspect to exist in [Larsen]'s favor and which would materially affect [Larsen]'s release of [WF] if such claims were known by [Larsen]. The obligations and agreements of [Larsen] under this section shall survive the close of escrow or the earlier termination of [the purchase agreement]."

(Capitalization and boldface type in original.) Larsen further executed an addendum to the purchase agreement that provides, in pertinent part:

> "15. [Larsen] acknowledges that neither [WF], nor its representatives, agents or assigns has made any warranties or representations implied or expressed, relating to the existence of any tenants or occupants at the Property unless otherwise noted in this addendum. [WF] represents that the Property may have tenants occupying same under an active lease but expressly

> disclaims any warranties regarding the validity, enforceability, performance under or continuation of said lease. [WF], its representatives, agents or assigns shall not be responsible for evicting or relocating any tenants, occupants or personal property at the Property prior to or subsequent to closing unless otherwise agreed to in writing by the parties hereto.
>
> "....
>
> "19. [WF] will deliver possession of the property upon final funding of closing subject to the rights of any tenants or parties in possession."

Dolan testified that the addendum, in particular, was intended to notify a purchaser that the property might be occupied and to absolve WF of any responsibility for removing occupants who remained on the property. Larsen testified that he had read all the foregoing provisions before executing the purchasing agreement.

Pursuant to the purchase agreement, WF was obligated to deliver to Larsen a "transfer deed warranting against title defects arising by, through or under [WF]." On February 6, 2018, WF executed a "Special Warranty Deed" conveying the property to Larsen. The special warranty deed provided, in pertinent part:

> "This instrument is executed without warranty ... of any kind on the part of [WF] ... except that there are no liens or encumbrances outstanding against [the property] ... which were created or suffered by [WF] ...."

Dolan testified that the special warranty deed effectively conveyed title to the property from WF to Larsen.

Larsen testified that, after he had purchased the property but before he had obtained and recorded the special warranty deed, he had learned that the McDonalds were occupying the property. Larsen stated that he had visited the property and had attempted to negotiate with the McDonalds to either resell or rent to them the property but that he ultimately had offered them only $1,000 to $2,000 to vacate the property. Mary McDonald testified that, before Larsen had obtained the special warranty deed, Larsen had been told that the McDonalds would not accept his offer and that they did not intend to vacate the property. Larsen testified that, after his negotiations with the McDonalds had failed, he had contacted the McDonalds' attorney, who, he said, had indicated that the McDonalds would contest his claim to the property. An employee of the McDonalds' attorney testified that that telephone conversation had

occurred at some point before Larsen purchased the property and that Larsen was informed that, if he did purchase the property, he was "buying a lawsuit." According to Larsen, after his informal efforts to remove the McDonalds from the property had stalled, he had researched the records of the Conecuh Probate Court and had found that no lis pendens notice had been filed regarding the property. He testified that he had subsequently learned through his attorney that the ejectment action was pending.

Larsen testified further that he had obtained title insurance for the property and that the title insurer had not identified any problems with the title to the property. According to Larsen, the insurance excluded coverage for "[r]ights or claims of parties in possession not shown on the public record." After discovering the McDonalds' occupancy of the property and the existence of the ejectment action, Larsen did not file a claim with the title-insurance company. Larsen admitted that the litigation between WF and the McDonalds was not an "encumbrance" on the title to the property.

Larsen testified that, despite paying for the property, he had never been able to possess or use it as his residence as he had intended[3] and that he had been forced to obtain other, substandard living arrangements, to expend substantial sums for legal representation, and to endure significant emotional distress. Larsen testified regarding the costs associated with purchasing the property and title insurance and to his opinion of the value of the losses he had sustained resulting from his inability to move onto the property and his having to prosecute his claims against WF and the McDonalds. Larsen requested that the trial court award him damages and attorney's fees to cover those losses.

The Issues

In the September 14, 2020, judgment, the trial court expressly granted the ejectment claim filed by WF and ordered that the McDonald parties vacate the property and expressly denied the McDonald parties'

[3]Larsen checked a box on the purchase agreement indicating that he did not intend to use the property as his personal residence. At trial, he testified that he did not recall checking that box and that it had been his intent throughout the transaction to use the property as his personal residence.

counterclaims. As for Larsen's claims, the trial court determined that Larsen "was a good faith purchaser [of the property] believing he bought the property free and clear while [WF] [k]new of the pending lawsuit yet concealed it." The trial court concluded that Larsen was entitled to recover against WF

> "for the price of the property he paid initially to Auction.com plus any costs associated thereto. Additionally, [Larsen] is entitled to a judgment against [WF], for $25,000.00 for the fraud perpetrated on him when [WF] knew there was pending litigation but allowed the sale to take place on a website without notifying [Larsen] or any other purchaser of the encumbrance."

The judgment awards Larsen the costs associated with the purchase of the property -- $38,357 for the purchase price, $850.50 for closing costs, and $1,182.80 for property taxes -- and orders WF to pay Larsen $25,000 in damages for fraud. The judgment also rescinds the purchase agreement and directs the clerk of the trial court to convey to WF a clerk's deed to the property upon its satisfaction of the monetary judgment against it. Based on the trial court's disposition of the claims that it addressed explicitly, we conclude that those claims not explicitly addressed by the trial court -- Larsen's claims against the McDonalds

alleging trespass and seeking ejectment and Larsen's cross-claim against WF alleging breach of warranty -- were impliedly denied such that the trial court's judgment is final. See Horwitz v. Horwitz, 897 So. 2d 337, 344 (Ala. Civ. App. 2004).

In Larsen's cross-appeal (appeal no. 2200258), Larsen argues that the trial court erred in rescinding the purchase agreement, in denying his claim alleging breach of warranty against WF, in failing to award him any damages or relief from the McDonald parties on his claims alleging trespass and seeking ejectment, in awarding him insufficient damages as to his fraud claim, and in failing to assess attorney's fees against WF. In the McDonald parties' appeal (appeal no. 2200259), the McDonald parties argue that the trial court erred in denying their counterclaims alleging wrongful foreclosure and seeking declaratory relief and in granting WF relief on its ejectment claim.[4] In WF's appeal (appeal no. 2200260), WF

[4]The McDonald parties do not challenge in their brief on appeal the trial court's denial of their counterclaims alleging slander of title or unjust enrichment; thus, any such arguments are waived. See Messer v. Messer, 621 So. 2d 1343, 1344 (Ala. Civ. App. 1993) ("Failure by an appellant to argue an issue in its brief waives that issue and precludes it from consideration on appeal.").

argues that the trial court erred in determining that it had committed fraud upon Larsen and awarding damages to Larsen for that fraud.

Standard of Review

> "When ore tenus evidence is presented, a presumption of correctness exists as to the trial court's findings on issues of fact; its judgment based on these findings of fact will not be disturbed unless it is clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence. J & M Bail Bonding Co. v. Hayes, 748 So. 2d 198 (Ala. 1999); Gaston v. Ames, 514 So. 2d 877 (Ala. 1987). When the trial court in a nonjury case enters a judgment without making specific findings of fact, the appellate court 'will assume that the trial judge made those findings necessary to support the judgment.' Transamerica Commercial Fin. Corp. v. AmSouth Bank, 608 So. 2d 375, 378 (Ala. 1992). Moreover, '[u]nder the ore tenus rule, the trial court's judgment and all implicit findings necessary to support it carry a presumption of correctness.' Transamerica, 608 So. 2d at 378. However, when the trial court improperly applies the law to [the] facts, no presumption of correctness exists as to the trial court's judgment. Allstate Ins. Co. v. Skelton, 675 So. 2d 377 (Ala. 1996); Marvin's, Inc. v. Robertson, 608 So. 2d 391 (Ala. 1992); Gaston, 514 So. 2d at 878; Smith v. Style Advertising, Inc., 470 So. 2d 1194 (Ala. 1985); League v. McDonald, 355 So. 2d 695 (Ala. 1978). 'Questions of law are not subject to the ore tenus standard of review.' Reed v. Board of Trustees for Alabama State Univ., 778 So. 2d 791, 793 n.2 (Ala. 2000). A trial court's conclusions on legal issues carry no presumption of correctness on appeal. Ex parte Cash, 624 So. 2d 576, 577 (Ala. 1993). This court reviews the application of law to facts de novo. Allstate, 675 So. 2d at 379 ('[W]here the facts before the trial court are essentially undisputed and the controversy involves questions

> of law for the court to consider, the [trial] court's judgment carries no presumption of correctness.')."

City of Prattville v. Post, 831 So. 2d 622, 627-28 (Ala. Civ. App. 2002).

Analysis

We begin our analysis by addressing the aspects of the McDonald parties' appeal challenging the trial court's judgment insofar as it denied their counterclaims seeking declaratory relief and alleging wrongful foreclosure. In count four of their counterclaim, the McDonald parties requested a judgment declaring the foreclosure deed to WF void. In an ejectment action, the defendant may collaterally attack a foreclosure sale as void to show that the plaintiff never acquired valid and enforceable title to the property so as to maintain the ejectment action. See Campbell v. Bank of Am., N.A., 141 So. 3d 492 (Ala. Civ. App. 2012). A foreclosure sale is void if: (1) the foreclosing entity had no power of sale; (2) the debt secured by the mortgage was fully paid; (3) the foreclosing entity did not provide notice of the time and place of the foreclosure sale; or (4) the purchase price is so inadequate as to shock the conscience. Id. at 495-96.

In this case, the federal court had already determined in its summary judgment that Waterfall had the power of sale, that the McDonalds had defaulted on the note secured by the mortgage , and that Waterfall had provided proper notice of the time and place of the foreclosure sale. In its summary judgment, the federal court stated:

> "Initially, Statebridge, the mortgage servicer, sent a Notice of Intent to Accelerate to [the McDonalds] on October 13, 2014, which informed [the McDonalds] that their loan was in default, provided the amount due, and gave notice of possible foreclosure. (See Doc. 16-2, pp. 25-32). Moreover, notice of the mortgage foreclosure was published, per the terms of the contract, in The Evergreen Courant on November 5, 12, and 19, 2015. As such, Waterfall has not breached its duty to send proper notice of default, acceleration, and foreclosure.
>
> "Furthermore, Waterfall has provided sworn affidavit testimony that [the McDonalds] defaulted on their mortgage payments, and the correspondence between Statebridge and [the McDonalds'] attorney indicates the default occurred beginning in August 2009. ... Thus, the record indicates [that the McDonalds] breached the contract and, thus, cannot prove their performance under the loan. Because [the McDonalds] have failed to fulfill their contractual obligations to Waterfall, Waterfall's [summary-judgment] motion against [the McDonalds on their claim alleging] ... breach of contract is granted."

In their motion to alter, amend, or vacate the federal court's judgment, the McDonalds asserted that their claims against Waterfall were "simply that [Waterfall] is not the mortgagee and has no valid assignment of the mortgage resulting in [Waterfall's] lacking any authority whatsoever to conduct a sale." The federal court responded by considering Harris v. Deutsche Bank National Trust Co., 141 So. 3d 482 (Ala. 2013), which the McDonalds had cited in their postjudgment motion, and concluding that "ample evidence in the record demonstrates Waterfall received assignment of the mortgage and was, thus, entitled to receive the money secured by the note," which, under Harris, would give Waterfall the power of sale.

We conclude that the doctrine of collateral estoppel precluded reconsideration of the power-of-sale, default, and notice issues in the ejectment action. Our supreme court outlined the doctrine of collateral estoppel in Lee L. Saad Construction Co. v. DPF Architects, P.C., 851 So. 2d 507 (Ala. 2002), as follows:

> "For the doctrine of collateral estoppel to apply, the following elements must be established:

> " ' "(1) that an issue in a prior action was identical to the issue litigated in the present action; (2) that the issue was actually litigated in the prior action; (3) that resolution of the issue was necessary to the prior judgment; and (4) that the same parties are involved in the two actions."
>
> " 'Smith v. Union Bank & Trust Co., 653 So. 2d 933, 934 (Ala. 1995). " 'Where these elements are present, the parties are barred from relitigating issues actually litigated in a prior [action].' " Smith, 653 So. 2d at 934 (quoting Lott v. Toomey, 477 So. 2d 316, 319 (Ala. 1985)).' "

Saad, 851 So. 2d at 520 (quoting Biles v. Sullivan, 793 So. 2d 708, 712 (Ala. 2000)). The first three elements of collateral estoppel clearly apply. As to the last element, "the 'same parties' requirement is not strictly enforced if the party raising the defense of collateral estoppel, or the party against whom it is asserted, is in privity with a party to the prior action. The test for determining if two parties are in privity focuses on identity of interest." Dairyland Ins. Co. v. Jackson, 566 So. 2d 723, 726 (Ala. 1990) (internal citations omitted).

In this case, WF is in privity with Waterfall, as a successor in title, deriving its claim to the property from the foreclosure deed executed by

Waterfall, with an identical interest in enforcing the foreclosure sale. See Samuel v. Federal Home Loan Mortg. Corp., 434 S.W.3d 230, 235 (Tex. App. 2014) (concluding that mortgagee and foreclosure-sale purchaser were in privity so as to prevent relitigation of same wrongful-foreclosure claims by mortgagor in subsequent action against foreclosure-sale purchaser). Thus, the McDonalds were precluded from relitigating the power-of-sale, default, and notice issues in the ejectment action. We acknowledge that the trial court rejected WF's collateral-estoppel defense, but "[appellate] review is not limited to the trial court's reasoning, and we can affirm a ... judgment on any valid legal ground presented by the record, whether that ground was considered by, or even if it was rejected by, the trial court, unless due-process constraints require otherwise." Wheeler v. George, 39 So. 3d 1061, 1083 (Ala. 2009).[5]

[5]Even if the doctrine of collateral estoppel did not apply, we conclude that the evidence proved that Waterfall had acquired the power of sale through valid assignments of the note and mortgage and that the McDonalds were in default on the note. We further conclude that the foreclosure sale was not void based on the fact that Waterfall conducted the foreclosure sale on the 20th day following the first published notice of the sale, although the mortgage required 21 days' notice. See Bullock v. Bishop, 435 So. 2d 24 (Ala. 1983) (holding that a foreclosure sale held on

The federal court did not decide the fourth issue bearing on whether a foreclosure sale is void -- i.e., whether the foreclosure sale had produced a purchase price so inadequate as to shock the conscience -- but we conclude that the trial court did not err by rejecting that claim. The McDonald parties argue that the $34,000 purchase price tendered by WF was only a small fraction of the value of the property, which the McDonald parties' witnesses estimated to be between $135,000 to $150,000.[6] However, WF presented evidence indicating that an independent real-estate broker had opined that the property was worth only $40,000 at the time of the foreclosure sale, which, if accurate, would not render the sales price of $34,000, which was approximately 85% of that value, unconscionably inadequate. See Mt. Carmel Ests. v. Regions Bank, 853

19th day following first publication of notice was valid under Ala. Code 1975, §§ 35-10-8 and 6-8-62, although the terms of the mortgage in that case required 21 days' notice). Under Bullock, the notice provided by Waterfall was legally sufficient.

[6]The McDonald parties also cite a tax assessment valuing the property at $150,000, but we cannot consider that tax assessment because the McDonald parties have not cited to any part of the record in which that document was introduced into evidence. See Rule 28(a)(7) & (g), Ala. R. App. P.; Crutcher v. Wendy's of N. Alabama, Inc., 857 So. 2d 82, 97 (Ala. 2003).

So. 2d 160 (Ala. 2002). In rejecting the claim that Waterfall sold the property for too low a price, the trial court evidently concluded that the property was not worth the amounts advocated by the McDonald parties but, rather, was worth an amount more in line with the estimate proffered by the broker. It was the duty of the trial court, as the trier of fact, to resolve any conflicts in the evidence. Harden v. Harden, 418 So. 2d 159, 161 (Ala. Civ. App. 1982). "[T]his court is not permitted to reweigh the evidence on appeal or to substitute its judgment for that of the trial court." Sellers v. Sellers, 893 So. 2d 456, 461 (Ala. Civ. App. 2004). Accordingly, we affirm the trial court's judgment insofar as it denies the McDonald parties' counterclaim seeking to have the foreclosure sale declared void.

As to the McDonald parties' wrongful-foreclosure claim, the trial court correctly determined that it lacked merit. Wrongful foreclosure occurs when " 'a mortgagee uses the power of sale given under a mortgage for a purpose other than to secure the debt owed by the mortgagor.' " Jackson v Wells Fargo Bank, N.A., 90 So. 3d 168, 171 (Ala. 2012) (quoting Reeves Cedarhurst Dev. Co. v. First Am. Fed. Sav. & Loan Ass'n, 607 So. 2d 180, 182 (Ala. 1992)). In this case, the McDonald parties alleged that

the "servicing agents" for WF and Larsen had "initiated" and "conducted" the foreclosure proceedings and that "[t]he power of sale was exercised for a purpose other than to secure the debt owed by [the McDonalds], as [the McDonalds were] current on the debt at the time of the sale." The evidence in the record indicates that Waterfall was the mortgagee and that Statebridge, acting as the servicing agent for Waterfall, conducted the foreclosure proceedings solely to secure the debt owed by the McDonalds, who had been in default since August 1, 2009. Mary McDonald herself testified that the McDonalds had defaulted on the note and that they had filed bankruptcy petitions solely for the purpose of delaying foreclosure proceedings. The wrongful-foreclosure claim is not supported by any evidence and is, in fact, refuted by undisputed evidence. Therefore, we affirm the trial court's judgment insofar as it denies the McDonald parties' wrongful-foreclosure counterclaim.

We next address that aspect of Larsen's cross-appeal challenging the trial court's final judgment insofar as it implicitly denied his breach-of-warranty claim against WF. As noted earlier, in the special warranty deed conveying the property to Larsen, WF warranted only that "there are

no liens or encumbrances outstanding against [the property] ... which were created or suffered by [WF] ...." In his breach-of-warranty cross-claim against WF, Larsen contended that WF had breached the covenant for quiet enjoyment and the covenant against encumbrances "because WF had suffered and was continuing to suffer the encumbrance on the title posed by the McDonalds' refusal to quit possession for over two years after foreclosure and by the McDonalds' counterclaim in the instant matter." However, as a matter of law, an invalid claim by a third party to the title to a parcel of real property does not constitute an encumbrance.

> "As regarding the covenant of freedom from encumbrances, '[a]n encumbrance that is invalid is not within the covenant against encumbrances, though it is upon record.... If the purchaser expends money in removing the apparent encumbrance, he cannot recover even nominal damages in an action upon such a covenant.' 7 Thompson, Thompson on Real Property § 3187, at 317. In regard to the covenant against encumbrances, the court in Boulware v. Mayfield, 317 So. 2d 470, 472 (Fla. App. 1975), said, '[t]he existence of an invalid and unenforceable claim is not a breach even though it constitutes a cloud on title' (quoting 4 Tiffany Real Property § 1013 (3d ed. 1975)).
>
> "The covenant of warranty requires that the 'apparent cloud on the title ... be shown to be valid before the grantor will be liable....' 7 Thompson, Thompson on Real Property § 3196, at 355.

> " 'This covenant is merely a guarantee that there are no valid claims outstanding against the property conveyed. If an invalid or inferior claim is asserted, the covenantor has no liability.... A breach of this covenant occurs when, and only when, the grantee suffers an eviction under paramount title.' 6A Richard R. Powell, Powell on Real Property § 900[2][d] (1993)."

James v. McCombs, 936 P.2d 520, 524-25 (Alaska 1997); cf. Callon Institutional Royalty Invs. I v. Dauphin Island Prop. Owners Ass'n, 569 So. 2d 343, 345 (Ala. 1990) (recognizing that the covenant for quiet enjoyment is "breached in a third party situation only if the third party attacking title in fact has paramount title ....").

The conveyance of a valid foreclosure deed terminates all rights of the mortgagor in the property covered by the mortgage, see Ex parte GMAC Mortg., LLC, 176 So. 3d 845, 850 (Ala. 2013), subject only to the mortgagor's statutory right of redemption. See McGowan v. Clayton, 679 So. 2d 1136, 1139 (Ala. Civ. App. 1996). In this case, after Waterfall effectively conveyed the property to WF by foreclosure deed, and the McDonalds failed to redeem the property, the McDonalds never had a valid claim to the title to the property, and their insistence on litigating

that invalid claim did not encumber the title to the property, a fact even Larsen acknowledged in his testimony. We, therefore, affirm the judgment insofar as it implicitly denied Larsen's breach-of-warranty claim against WF.

We next address WF's appeal challenging the trial court's final judgment on Larsen's fraud claim against WF. In his amended cross-claim, Larsen specifically pleaded, in pertinent part:

> "28. At the time of the negotiation, and again by the terms of the Special Warranty Deed, WF willfully represented to Larsen that the property was not subject to encumbrances suffered by WF during its ownership; or alternatively WF willfully suppressed material facts, i.e. that the subject property was so encumbered; said encumbrance being particularly described as the refusal of the McDonalds to quit possession, the pending litigation filed by WF for ejectment of the McDonalds, and the counterclaims of the McDonalds accusing WF of wrongful foreclosure and seeking that WF's foreclosure deed be set aside.
>
> "29. Said representations were false and WF knew they were false.
>
> "30. Said suppression was of a material fact that WF was under an obligation to communicate, said obligation arising under the law concerning lis pendens notice, Ala. Code (1975) § 35-4-131, and under the particular circumstances of the negotiations between the parties.

> "31. Larsen believed the said representations and relied on them and acted upon them by purchasing the subject property from WF, even though doing so was to his detriment."

At trial, Larsen presented evidence intended to support his cross-claim, including evidence demonstrating that WF did not disclose in its listing on Auction.com the McDonalds' occupancy of the property and the existence of the ejectment action. The trial court determined that WF was liable to Larsen for fraudulently failing to disclose those facts in the Auction.com listing. In its appeal, WF argues that the trial court erred in finding that it had committed fraud upon Larsen because it had notified Larsen that it was selling the property "as is" and that it was not making any warranty as to the property other than the covenant against encumbrances.

Our supreme court has outlined the elements of fraudulent suppression as follows:

> " '(1) the defendant had a duty to disclose an existing material fact; (2) the defendant concealed or suppressed that material fact; (3) the defendant's suppression induced the plaintiff to act or refrain from acting; and (4) the plaintiff suffered actual damage as a proximate result. Freightliner, LLC v. Whatley Contract Carriers, LLC, 932 So. 2d 883, 891 (Ala. 2005).'

> Coilplus-Alabama, Inc. v. Vann, 53 So. 3d 898, 909 (Ala. 2010)."

Alabama Psychiatric Servs., P.C. v. 412 S. Ct. St., LLC, 81 So. 3d 1239, 1247 (Ala. 2011). The third element requires the party asserting a claim of fraudulent suppression to prove that he or she reasonably relied upon the defendant and was induced to act or to refrain from acting by the defendant. See generally Foremost Ins. Co. v. Parham, 693 So. 2d 409 (Ala. 1997). If a party purchases real property pursuant to a purchase agreement that indicates that the property is being sold "as is," that party, by agreeing to that term, cannot later claim that he or she reasonably relied on any prior representation regarding the state or condition of the property; under those circumstances, any fraud claim based on that prior representation fails as a matter of law. See Teer v. Johnston, 60 So. 3d 253 (Ala. 2010).

In this case, Larsen essentially claimed that he would not have purchased the property had he known of the occupancy of the property by the McDonalds and of the litigation between WF and the McDonalds over the McDonalds' claim to title to the property. However, in the purchase

agreement, WF clearly and unequivocally indicated that the property was being sold "as is" and that it was not making any warranties or representations regarding the property, other than the covenant against encumbrances. Moreover, in the addendum to the purchase agreement, WF specifically informed Larsen that the property might be occupied and that WF would not be responsible for taking the necessary legal action to have the occupants removed. Nevertheless, Larsen agreed to purchase the property subject to any defects or faults, including any condition that rendered the property unfit for any particular purpose, such as the immediate use of the property as his residence. Larsen could not, after agreeing to purchase the property "as is" and subject to the occupancy of third parties, validly claim that he had been fraudulently induced into purchasing the property by WF's alleged failure to disclose the McDonalds' occupancy of the property and the ejectment action. See Teer, supra. Consequently, Larsen's fraud claim against WF fails as a matter of law, and the trial court's judgment is reversed insofar as it finds WF liable to Larsen for fraud and, as a result, awards damages to Larsen.[7]

[7]In light of our determination, we pretermit any discussion of whether WF had an affirmative duty to Larsen to disclose that the

Because of our resolution of WF's appeal challenging the trial court's final judgment on Larsen's fraud claim, Larsen's appellate arguments that the damages award on that claim is insufficient and that he should have been awarded attorney's fees is rendered moot, and, as to those issues, we dismiss his cross-appeal. See Fitzpatrick v. Hoehn, 262 So. 3d 613, 628 (Ala. 2018). We agree with Larsen, however, that the trial court erred in rescinding the purchase agreement.

Rescission is an equitable remedy whereby a court may restore the parties to a real-estate contract induced by fraud to the status quo ante, so that each party is returned to the position that the party would have occupied had the conveyance not been made. See Putman Constr. & Realty Co. v. Byrd, 632 So. 2d 961, 967 (Ala. 1992). In its final judgment, the trial court effectively ordered rescission of the purchase agreement as a remedy on Larsen's fraud claim against WF. However, because WF did not commit fraud, the trial court had no legal basis for rescinding the purchase agreement. Furthermore, Larsen never requested such relief.

McDonalds were occupying the property or that they had filed a civil action to contest WF's title to the property.

Throughout the underlying proceedings, Larsen maintained that he was the rightful owner of the property but that he was entitled to damages to compensate him for fraud relating to the alleged undisclosed defect in the property preventing him from access. See Southern Bldg. & Loan Ass'n v. Argo, 224 Ala. 611, 613, 141 So. 545, 546 (1932) ("It is a well-settled principle of law that where one is induced by fraud to enter into a contract he may rescind by restoring benefits and recover payments, or affirm, retain benefits, and sue in deceit for damages."). Therefore, we reverse the judgment insofar as it orders WF to repay Larsen the consideration, closing costs, and property taxes he paid for the property and requires the trial-court clerk to convey the property to WF by clerk's deed.

Next, we address the ejectment claims; in their appeal, the McDonald parties challenge the judgment in favor of WF on its ejectment claim, and, in his cross-appeal, Larsen challenges the trial court's implicit denial of his ejectment claim. With regard to an action seeking ejectment, which is governed by Ala. Code 1975, § 6-6-280, our supreme court has stated that, "[t]o recover the land, the plaintiff must prove title and right of possession to the time of the trial." Pridgen v. Elson, 242 Ala. 230, 232,

5 So. 2d 477, 478 (1941). Because WF had validly conveyed the title to the property to Larsen, and that conveyance was not properly rescinded, WF did not hold title and a right of possession to the property at the time of trial. "If, pending the suit, the plaintiff's title expires, he may proceed to recover [only] the mesne profits up to the time his right to possession ended." Pridgen, 242 Ala. at 232, 5 So. 2d at 478-79. WF did not seek mesne profits and damages for waste or any other injury to the property during WF's ownership. Thus, at the time of trial, WF had no actionable claim for ejectment against the McDonald parties. The trial court erred in granting WF's claim for ejectment, as the McDonald parties argue in their appeal. Instead, because Larsen was the title holder with a right of possession at the time of trial, the trial court should have granted Larsen's ejectment claim, as Larsen argues in his appeal.[8] Thus, we reverse the judgment insofar as it addresses the ejectment claims and

[8]Although Larsen does not cite any legal authority on this point as required by Rule 28(a)(10), Ala. R. App. P., this court may consider the argument because it is easily discernible. See Thoman Eng'rs, Inc. v. McDonald, 57 Ala. App. 287, 290, 328 So. 2d 293, 295 (Civ. 1976).

instruct the trial court on remand to amend the judgment to reflect that Larsen, not WF, prevailed on his ejectment claim.

Finally, we address Larsen's argument that the trial court erred in failing to award him damages on his ejectment and trespass claims against the McDonald parties. We note that Larsen does not cite any legal authority in his brief to support his claim that the McDonalds committed trespass by remaining on the property after he acquired title. Larsen also does not cite to any legal authority demonstrating that the damages he requests are recoverable in a trespass or ejectment action. Larsen asks this court for "technical latitude" regarding the format of his brief, but citation to legal authority is not a mere technicality, it is an integral part of the appellate process informing the appeals court precisely of the legal bases supporting the appellant's argument that the trial court erred. In the absence of an argument supported by legal authority, an alleged error of law committed by a trial court, not self-evident to the appellate court, see Ex parte Dekle, 991 So. 2d 1257, 1262 (Ala. 2008), is considered "essentially unchallenged on appeal." Walden v. Hutchinson, 987 So. 2d 1109, 1120 (Ala. 2007). " '[W]here no legal authority is cited or

argued, the effect is the same as if no argument had been made.' " Steele v. Rosenfeld, LLC, 936 So. 2d 488, 493 (Ala. 2005) (quoting Bennett v. Bennett, 506 So. 2d 1021, 1023 (Ala. Civ. App. 1987) (emphasis added in Steele)). An appellant waives the right to appellate review of a ruling on a question of law when the appellant fails to cite any legal authority on that point as required by Rule 28(a)(10), Ala. R. App. P. Slack v. Stream, 988 So. 2d 516, 533-34 (Ala. 2008). This court cannot cure that deficiency by performing legal research and creating legal arguments for the appellant. See Spradlin v. Spradlin, 601 So. 2d 76, 78-79 (Ala. 1992). Accordingly, we affirm the trial court's judgment insofar as it denies Larsen's trespass claim against the McDonalds and fails to award Larsen any damages on his trespass and ejectment claims.

Conclusion

In conclusion, in WF's appeal (appeal no. 2200260), we reverse the judgment finding WF liable for fraud. In the McDonald parties' appeal (appeal no. 2200259), we affirm the judgment insofar as it denied their counterclaims, but we reverse the judgment insofar as it granted WF's ejectment claim. In Larsen's appeal (appeal no. 2200258), we dismiss

those aspects of the appeal challenging as insufficient the damages award on his fraud claim against WF and the failure to award attorney's fees; we affirm the judgment to the extent that it implicitly denied his breach-of-warranty claim against WF, denied Larsen's trespass claim against the McDonald parties, and failed to award damages against the McDonald parties on his trespass and ejectment claims; and we reverse the judgment insofar as it effectively rescinded the purchase agreement and denied Larsen's ejectment claim against the McDonald parties.

2200258 -- CROSS-APPEAL DISMISSED IN PART; AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

2200259 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

2200260 -- REVERSED AND REMANDED.

Thompson, P.J., and Edwards and Fridy, JJ., concur.

Hanson, J., concurs specially.

HANSON, Judge, concurring specially.

I concur in the main opinion. Although the application of Alabama collateral-estoppel rules to the federal court's judgment is seemingly in tension with the principle that "[f]ederal law determines the effects under the rules of res judicata of a judgment of a federal court," Restatement (Second) of Judgments § 87 (Am. Law Inst. 1982), it is consistent with the view of the United States Supreme Court -- the ultimate arbiter of federal law -- that "the law that would be applied by state courts in the State in which the federal diversity court sits" is to govern the preclusive effects of judgments entered by federal courts exercising jurisdiction based upon the parties' diversity of citizenship. Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 508 (2001). Because Alabama law provides that "[a] judgment in a former action between the same parties is not only conclusive of the questions actually litigated, but also of any matter that could have been litigated in that prior suit," First State Bank of Altoona v. Bass, 418 So. 2d 865, 866 (Ala. 1982), the McDonalds' inadequate-purchase-price contention, which the main opinion rejects on the merits, was arguably never viable in the ejectment action.