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# **SUPREME COURT OF ALABAMA**

**SPECIAL TERM, 2023**

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**SC-2022-0872**

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**Eleanor Williams**

**v.**

**Mari Properties, LLC**

**Appeal from Jefferson Probate Court  
(17BHM02189)**

COOK, Justice.

This is a tax-lien, property redemption case. Eleanor Williams appeals from an order of the Jefferson Probate Court ("the probate court")

vacating its prior order granting her petition to redeem certain real property. The probate court vacated its initial order after determining that it lacked jurisdiction over Williams's petition. We agree that the probate court lacked jurisdiction over Williams's petition, and, for the reasons stated below, affirm that decision.

### Facts and Procedural History

In March 2003, the probate court "rendered a decree for the sale of" certain property located on 45th Street North in Birmingham ("the property") at a tax sale after the owners, Benjamin and Marzella Rosser, had failed to pay ad valorem taxes on the property. The tax sale was held on May 13, 2003, and, after no other parties came forward to bid on the property, the State submitted a bid in the amount of the taxes owed; thereafter, title to the property passed to the State.

Thirteen years later, on August 5, 2016, the State sold its interest in the property to Waynew Global Holdings, LLC ("WGH"), for \$1,000. In February 2017, WGH sold its interest in the property to Mari Properties, LLC ("Mari"), for \$5,000, and Mari recorded its deed to the property with the probate court.

In September 2017, Williams filed in the probate court a petition to

redeem the property pursuant to § 40-10-122, Ala. Code 1975, with which she tendered \$1,100. Williams named WGH and Mari as defendants, although WGH was eventually dismissed from the redemption action. In her petition, Williams asserted that, in March 2003, her parents, the Rossers, died and left the property to her. Williams said that she had lived on the property until around 2010 but that she had not paid the taxes for the property during that time.

Following additional filings, the probate court held a hearing on Williams's petition, after which it entered an order on September 10, 2019, granting Williams's petition for redemption and ordering Williams to pay \$1,100, plus interest, and any taxes previously paid or owed on the property, plus interest, to the Jefferson County tax collector. In addition, the probate court noted that it was retaining jurisdiction to issue any other necessary orders.

On October 8, 2019, Mari filed a motion to vacate the September 10, 2019, order, asserting that the probate court lacked subject-matter jurisdiction over the redemption petition. According to Mari, Williams had been required under § 40-10-120(a) to redeem the property through statutory redemption within three years of the May 13, 2003, tax sale.

Because she had not done so, Mari contended, the only redemption process available to Williams was judicial redemption under §§ 40-10-82 and -83, Ala. Code 1975, and Mari noted that the Jefferson Circuit Court ("the circuit court") was the only court that had exclusive jurisdiction over that process.

On October 9, 2019, Mari filed a notice of appeal to the circuit court. On October 28, 2019, the probate court entered an order transferring the documents in the probate-court record to the circuit court.

Despite Mari's filing of the notice of appeal to the circuit court, the parties continued filing documents in the probate court. On January 3, 2020, Williams filed in the probate court a response in opposition to Mari's motion to vacate, asserting that the probate court had jurisdiction concurrent with the circuit court to consider judicial redemption because, she alleged, Act No. 1144, Ala. Acts 1971, a general act of local application to Jefferson County, provides that the probate court has concurrent jurisdiction with the circuit court regarding matters of equity. A few days later, the probate court entered an order stating that Mari's motion to vacate had been denied by operation of law under Rule 59.1, Ala. R. Civ. P.

On January 10, 2020, Mari filed a renewed motion to vacate the September 10, 2019, order, asserting grounds identical to those contained in its previous motion to vacate. A little over a month later, Williams filed a response in opposition to Mari's renewed motion to vacate, arguing that Mari's motion was due to be denied because, she said, pursuant to § 40-10-120 the probate court had jurisdiction to render a decision on her petition for redemption. She also argued that Mari's motion was due to be denied under principles of res judicata and claim preclusion.

The probate court held a hearing on Mari's renewed motion, after which, on March 6, 2020, it entered an order purportedly vacating the September 10, 2019, order for a lack of jurisdiction. In support of its decision to vacate its prior order, the probate court explained that, although Williams had filed a petition for statutory redemption pursuant to § 40-10-120, the time had passed to redeem under that statute and, thus, Williams should have filed a petition for judicial redemption in the circuit court pursuant to §§ 40-10-82 and -83.

On April 6, 2020, Williams filed a notice of appeal to this Court. This Court dismissed Williams's appeal after determining that the appeal had been taken from a void order. Specifically, this Court noted

that Mari had invoked the circuit court's jurisdiction when it filed its notice of appeal to that court on October 9, 2019. This Court held that, at that point, because the notice of appeal had divested the probate court of jurisdiction, Mari would have needed to seek leave of the circuit court to file its renewed motion to vacate in the probate court. Because it did not do so, this Court held, any subsequent orders entered by the probate court, including its March 6, 2020, order purporting to vacate its September 10, 2019, order granting redemption, were void. See Williams v. Mari Props. LLC, 329 So. 3d 1237 (Ala. 2020).

After this Court issued its decision in Williams, the circuit court noted that the probate court's September 10, 2019, order was not a final order and, thus, remanded the action back to the probate court for that court to enter a final order.

Following that remand, Williams filed a motion in which she asked the probate court to make its September 10, 2019, order granting her petition for redemption final. A hearing was held on Williams's motion, and, on July 26, 2022, the probate court entered an amended order in which it finalized its September 10, 2019, order allowing the redemption.

Shortly thereafter, Mari moved to vacate the amended order

pursuant to Rule 60(b)(4), Ala. R. Civ. P., on the basis that the probate court lacked jurisdiction over Williams's redemption petition. According to Mari, Williams had filed a petition for statutory redemption pursuant to § 40-10-120 but, because the time had passed to redeem under that statute, Williams's only recourse would have been to file a petition for judicial redemption in the circuit court pursuant to §§ 40-10-82 and -83. Because § 40-10-83 does not provide jurisdiction over judicial redemptions to the probate courts and because the probate courts do not enjoy equitable jurisdiction over redemption proceedings in Alabama, Mari asserted, the probate court's amended order granting Williams's petition for redemption was due to be vacated.

Following a hearing, the probate court granted Mari's motion and vacated its July 26, 2022, order after determining that it lacked jurisdiction over Williams's petition. Williams appeals.

#### Standard of Review

"We review issues of subject-matter jurisdiction de novo." Martin v. Martin, 329 So. 3d 1242, 1243 (Ala. 2020).

Discussion<sup>1</sup>

On appeal, Williams contends that, because she had a right to redeem the property through the statutory-redemption process set forth in § 40-10-120, Ala. Code 1975, the probate court had jurisdiction to grant her petition. Alternatively, Williams contends that she had a right to redeem the property through the judicial-redemption process set forth in §§ 40-10-82 and -83, Ala. Code 1975, that, per the Handbook for Alabama Probate Judges (Ala. Law Inst., 10th ed. 2019) ("the Handbook") and Act No. 1144, Ala. Acts 1971, the probate court had jurisdiction concurrent with the circuit court to consider her petition, and, thus, that the probate court's decision is due to be reversed.

In response, Mari contends that Williams was not entitled to relief through the statutory-redemption process set forth in § 40-10-120 because she failed to redeem the property at issue within three years of the May 13, 2003, tax sale. As a result, Mari asserts, the only redemption

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<sup>1</sup>We note briefly that Williams contends that Mari failed to challenge the probate court's subject-matter jurisdiction in a timely manner and thus has waived that argument. However, it is well settled that subject-matter jurisdiction may be raised at any time. See Campbell v. Taylor, 159 So. 3d 4, 11 (Ala. 2014) (recognizing that "'a court's lack of subject-matter jurisdiction may be raised at any time by any party and may even be raised by a court ex mero motu'" (citations omitted)).



process available to her would have been the judicial-redemption process set forth in §§ 40-10-82 and -83. However, Mari contends, because the circuit court -- not the probate court -- has exclusive jurisdiction over that process, and nothing in either the Handbook or Act No. 1144 indicates otherwise, the probate court lacked jurisdiction over Williams's petition and she is, thus, not entitled to relief here.

As an initial matter, we note that circuit courts have subject-matter jurisdiction over equitable matters that "extend[s] ... [t]o all civil actions in which a plain and adequate remedy is not provided in the other judicial tribunals." § 12-11-31(1), Ala. Code 1975. In contrast, "the subject-matter jurisdiction of probate courts 'is limited to the matters submitted to [them] by statute.'" Martin, 329 So. 3d at 1244 (quoting Wallace v. State, 507 So. 2d 466, 468 (Ala. 1987)).

For example, § 12-13-1(a) sets forth the "original and general jurisdiction" of the probate courts and provides as follows:

"(a) The probate court shall have original and general jurisdiction as to all matters mentioned in this section and shall have original and general jurisdiction as to all other matters which may be conferred upon them by law, unless the law so conferring jurisdiction expressly makes the jurisdiction special or limited."

Section 12-13-1(b) provides a list of matters over which the probate courts

have "original and general jurisdiction." Those matters include matters regarding estates, wills, guardianships, dower rights, and name changes.

With regard to actions for redemption of property, our courts have previously stated that a circuit court has jurisdiction over the "judicial redemption" process, see First Props., L.L.C. v. Bennett, 959 So. 2d 653, 654 (Ala. Civ. App. 2006), while "the probate court has, to the exclusion of all other courts, exclusive jurisdiction over the statutory redemption process," see Ex parte Foundation Bank, 146 So. 3d 1, 6 (Ala. 2013).

In Smith v. Smith, 358 So. 3d 402 (Ala. Civ. App. 2022), the Court of Civil Appeals explained the distinction between the statutory-redemption process and the judicial-redemption process as follows:

"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 1975), and 'judicial redemption' under §§ 40-10-82 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."

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

358 So. 3d at 404 (quoting Mitchell v. Curry, 70 So. 3d 353, 354 n.2 (Ala. Civ. App. 2010)) (emphasis added).

The statutory-redemption process is governed by § 40-10-120 and that Code section provides, in relevant 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 disability; and such redemption may be of any part of the lands so sold, which includes the whole of the interest of the redemptioner. ..."

(Emphasis added.)

Relying on the language from § 40-10-120(a) quoted above, Williams contends that the probate court had jurisdiction over her petition to redeem the property. According to Williams, the use of the

word "or" in the emphasized portion of § 40-10-120(a) quoted above indicates that she could seek statutory redemption in this case either before title passed out of the State or within three years of the subsequent "sale" of the property to WGH. Because the relevant "sale" in this case was the sale of the State's interest in the property to WGH in 2016 rather than the State's receipt of the property following its bid in 2003, Williams contends that her petition, which was filed in September 2017, was timely filed within three years of the "sale" under § 40-10-120(a).

Contrary to Williams's contentions, however, the language of § 40-10-120(a) makes clear that, under that Code section, real estate sold for taxes and "purchased by the state may be redeemed at any time before the title passes out of the state" while real estate sold for taxes and "purchased by any other purchaser[]" may be redeemed at any time within three years from the date of the sale ...." (Emphasis added.) Accordingly, property sold at a tax sale may be redeemed under one of two distinct scenarios -- either (1) before title passes out of the State or (2) after the property has been purchased "by any other purchaser" that is not the State.

In the present case, the record indicates that, in March 2003, the

probate court "rendered a decree for the sale of" the property at a tax sale after the Rossers had failed to pay ad valorem taxes on the property. On May 13, 2003, after no other parties came forward to bid on the property, the State submitted a bid in the amount of the taxes owed, and thereafter the property passed to the State.

Under those circumstances, the second scenario provided in § 40-10-120(a) never came into play, and, thus, Williams's only option under that Code section was to redeem the property before the State sold it to WGH. Because Williams did not redeem the property "at any time before the title passe[d] out of the state," she was not entitled to statutory redemption.

Having determined that Williams cannot seek statutory redemption under § 40-10-120(a) due to the passage of time, her only remaining option, under the legal principles quoted above, would be to seek redemption through the judicial-redemption process set forth in §§ 40-10-82 and -83. However, as noted above, a circuit court, not a probate court, has jurisdiction over a judicial-redemption action, and it is undisputed that Williams filed her petition for redemption in the probate court.

Nevertheless, relying on excerpts from the Handbook and Act No. 1144, Ala. Acts 1971, Williams contends that the probate court had jurisdiction to consider her petition for redemption because, she says, "the probate court in Jefferson County has concurrent jurisdiction with the circuit court to hear any proceeding," including judicial-redemption proceedings. Williams's brief at 16. She therefore contends that the probate court's amended order vacating its September 10, 2019, order granting her petition for redemption is due to be reversed.

In Alabama, it is well settled that a probate court ""generally does not possess jurisdiction to determine equitable issues."" Martin, 329 So. 3d at 1244 (quoting Suggs v. Gray, 265 So. 3d 226, 230 (Ala. 2018), quoting in turn Lappan v. Lovette, 577 So. 2d 893, 896 (Ala. 1991)). Additionally, this Court has held that "[t]he subject-matter jurisdiction of probate courts 'is limited to the matters submitted to [them] by statute.'" Martin, 329 So. 3d at 1244 (quoting Wallace, 507 So. 2d at 468, citing in turn Mosely v. Tuthill, 45 Ala. 621 (1871)).

The Handbook is not a binding or substantive source of legal authority. But even if it were, contrary to Williams's assertions, the Handbook does not indicate that the probate court in Jefferson County

has concurrent equitable jurisdiction with the circuit courts over petitions for redemption. In addressing the jurisdiction of the probate court in Jefferson County, the Handbook provides, in relevant part:

"[T]he probate courts of Jefferson, Mobile, and Shelby [C]ounties have concurrent jurisdiction with the circuit courts of those counties to hear any proceeding brought by a trustee or beneficiary concerning the administration of a trust."

1 Handbook for Alabama Probate Judges at 9 (emphasis added). Nowhere in the Handbook does it say that the probate court in Jefferson County has concurrent jurisdiction with the circuit courts over redemption matters.

Additionally, Section 2 of Act No. 1144 also does not give the probate court in Jefferson County in concurrent equitable jurisdiction with the circuit courts over petitions for redemption. Rather, it states, in relevant part:

"The Judges of such Probate Courts, where the Judge of Probate is learned in the law, shall have the same powers and authority which Judges and Registers of the Circuit Courts of this State now have, in equity, in connection with the administration of estates in the Circuit Courts, in equity, and in connection with other and additional matters of which such Probate Courts have original or general jurisdiction."

Id. (emphasis added).

Thus, contrary to Williams's assertions, Act No. 1144 provides

equity jurisdiction only "in connection with the administration of estates in the Circuit Courts, in equity, and in connection with other and additional matters of which such Probate Courts have original or general jurisdiction." In other words, it provides equity jurisdiction to the probate court in Jefferson County but only in those areas where probate courts already have original and general jurisdiction as provided in § 12-13-1. As established previously, redemption proceedings are not among the matters listed in § 12-13-1(b) over which probate courts have original and general jurisdiction. Therefore, Williams has failed to demonstrate that the probate court had jurisdiction over her redemption petition.

#### Conclusion

Based on the foregoing, the probate court's determination that it lacked subject-matter jurisdiction over Williams's petition to redeem the property is affirmed.

AFFIRMED.

Parker, C.J., and Wise, Sellers, and Stewart, JJ., concur.