

Rel: October 6, 2023

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0112

Janice Morrison

v.

Torry May, Sr., and Angela Pompey May

**Appeal from Mobile Circuit Court
(CV-18-149)**

WISE, Justice.

Janice Morrison, the plaintiff/counterclaim defendant below, appeals from the Mobile Circuit Court's judgment in favor of Torry May, Sr., and Angela Pompey May, the defendants and counterclaim plaintiffs below. We reverse the trial court's judgment and remand this case for proceedings consistent with this opinion.

Facts and Procedural History

This case involves two parcels of property -- Lots 24 and 25 in the Colgin Addition to the Oakdale Subdivision in Mobile. The address for Lot 24 is 1502 Plover Street and the address for Lot 25 is 1204 Partridge Street. Morrison's parents, Joseph Lee Reddick and Yolanda S. Reddick, purchased Lot 25 in 1955. Lot 24 was deeded to Yolanda by Yolanda's mother, Jamie N. Steward, in 1961. Morrison testified that she was born in 1950 and that her parents built the house on Lot 25 when she was a little girl. The house was initially located solely on Lot 25. Morrison testified that her parents built an addition to the house around the time when she was a teenager. The addition to the house was located on Lot 24. Morrison's parents also added a driveway, a storage building, and a fence that were located partially on Lot 25 and partially on Lot 24.

In 2008, the Reddicks executed a mortgage on Lot 25 in favor of GMAC Mortgage, LLC, f/k/a GMAC Mortgage Corporation ("GMAC"). Yolanda died in 2009. Shortly after Yolanda's death, Joseph went to live with one of his daughters in Georgia. Joseph died at some point later. Conflicting testimony was presented as to whether any of

Morrison's family members had lived in the house after Joseph left to live with his daughter in Georgia.

The 2009 taxes were not paid on Lot 24, and Lot 24 was subsequently sold at a tax sale. The State purchased Lot 24 at the tax sale on May 27, 2010.

GMAC subsequently foreclosed on Lot 25, and the Federal National Mortgage Association ("Fannie Mae") purchased Lot 25 at the foreclosure sale on December 13, 2012. Fannie Mae received an auctioneer's deed for Lot 25, and it recorded that deed on January 4, 2013. On February 26, 2013, the Mays purchased Lot 25 from Fannie Mae, and they received a special warranty deed for Lot 25. The Mays testified that the real-estate agent who had showed them the house had told them that the property that came with the house included everything that enclosed within the fence. However, the Mays did not obtain a survey of the property when they purchased Lot 25.

On June 28, 2013, Morrison purchased Lot 24 from the State for \$525.75, and she received a tax deed for that property. Morrison continued to pay the taxes on Lot 24 after the purchase.

The Mays testified that, when they purchased Lot 25, the house had been vandalized and the electrical and plumbing materials had been ripped out of the house. Torry testified that they did some demolition work in the house after purchasing Lot 25. However, they waited until the redemption period ended before they started making improvements to the house. Torry testified about improvements he had made to the house and testified that he had not expanded the part of the house that sits on Lot 24. The Mays also constructed a gazebo inside the fenced area of Lot 24.¹

Morrison testified that, at the time she purchased Lot 24, she did not know that parts of the house, the driveway, and the storage shed were located on Lot 24 and that she did not discover that information until sometime later. At some point in 2018, Morrison was mowing grass on Lot 23, which she owns with two of her sisters and which is adjacent to Lot 24. She testified that she walked up the driveway on Lot 24, that Torry told her to get off his property, that she told Torry that it was not his property, that she telephoned law-enforcement officers, and that the law-enforcement officers told her that the property

¹The parties refer to this structure as a gazebo. A subsequent survey referred to this structure as an open deck.

dispute was a civil matter. Torry stated that, when Morrison confronted him, she was yelling about his stealing her parents' house and that he told her that he had "bought it straight out fair."

On June 7, 2018, Morrison filed a complaint against the Mays in the Mobile Circuit Court, seeking a temporary restraining order, a preliminary injunction, and a permanent injunction. In her complaint, Morrison alleged, in pertinent part:

"7. Plaintiff avers that she has contacted and notified the Defendants on more than one occasion informing them that they do not own [Lot 24] and that they continue to trespass upon said property.

"8. Plaintiff has on more than one occasion related to Defendants that the trees and other items which Defendants continue to cut down or destroy are located on Plaintiff's property.

"9. The intrusion onto the Plaintiff's property is an unauthorized intentional act by the Defendants.

"10. Despite knowledge that Plaintiff owns the property, Defendants have continued to trespass on the land, to cut down trees on Plaintiff's land, and to dump trash on Plaintiff's land. Additionally, Defendants continue to park vehicles and lawn equipment on Plaintiff's property.

"11. Further, despite knowing that the property belongs to Plaintiff, [Torry]. built a gazebo on Plaintiff's property. In addition, [Torry] has destroyed a fence on Plaintiff's property.

"12. Plaintiff has learned that a portion of the homeplace structure, which starts on Defendant's property, is encroaching on Plaintiffs property to a great degree. Additionally, Defendants' fence encroached on Plaintiff's property.

"13. Plaintiff has tried to employ a surveyor to map the property to determine the extent of the encroachment. However, Defendants have continued to refuse access for such survey.

"14. This action seeks and Plaintiff requests an IMMEDIATE TEMPORARY RESTRAINING ORDER, pursuant to Rule 65, [Ala. R. Civ. P.], that orders Defendants to immediately cease encroaching on Plaintiff's property and destroying trees and other property, pending a hearing on a preliminary and permanent injunction and trial on the merits of this case."

On July 20, 2018, the Mays filed their answer to the complaint. On December 3, 2019, the Mays filed their "Counter Claim and Joinder of Indispensable Party, which they subsequently amended." In count one of the amended counterclaim, the Mays sought "reformation of mortgage, foreclosure deed, and [the May's] deed and joinder of GMAC Mortgage LLC." In count two of the amended counterclaim, the Mays asserted that they were seeking to redeem Lot 24 pursuant to § 40-10-120, Ala. Code 1975. Finally, in count three of the amended counterclaim, the Mays sought to quiet title to Lot 24 "pursuant to § 6-6-540 et seq. and § 40-10-82," Ala. Code 1975. In the amended

counterclaim the Mays also sought to join "Ditech Financial as assignee of GMAC Mortgage LLC" as an indispensable party.

After conducting a bench trial, the trial court ordered a survey and an appraisal of Lots 24 and 25.

On August 11, 2022, the trial court entered its final judgment in which it stated:

"This matter came before the Court for bench trial. The Court heard testimony from four witnesses, and exhibits were entered into evidence. Plaintiff's Complaint seeks a permanent injunction against Defendants' encroachment upon her property -- Lot 24. Defendants' Counterclaim seeks: Count One -- Reformation of the Mortgage¹; Count Two -- Redemption from Tax Sale; and Count Three -- Quiet Title.

"Following the trial, this Court first ordered a survey be conducted, then an appraisal. The survey ... reveals that the majority of Lot 24 is occupied by a portion of Defendants' home, the driveway to their home, and an outbuilding and gazebo/deck 'belonging to' their home.

"....

"(1) Defendants purchased what they now know to be Lot 25 -- not Lots 24 and 25 -- at a foreclosure sale on February 26, 2013.^[2] They have been in continuous possession since that date.² Defendants' home sits

²The evidence actually established that Fannie Mae purchased Lot 25 at the foreclosure sale and that the Mays subsequently purchased that property from Fannie Mae.

primarily upon lot 25, with the rear approximately 15 feet of the home, the driveway, and part of an outbuilding on Lot 24. Since purchasing the property, Defendants have made significant improvements to the home itself and built the gazebo/deck at the rear of the concrete driveway, also on Lot 24.

"(2) Defendants waived a survey on the property prior to purchasing and closing.

"(3) Plaintiff paid \$525.75 and received a tax deed for Lot 24 from the State of Alabama on June 28, 2013.³ She has continuously paid taxes on the property since 2014, totaling \$565.94 through 2021.⁴

"(4) Plaintiff filed this lawsuit on June 18, 2018.

"(5) The subject property is described as follows:

"Legal Description: LOT 24 COLGINS ADD TO OAKDALE
DBK 115 P 361 ON N/S PLOVER ST 50
FT W OF PARTRIDGE ST THEN N 136
FT 6 IN THEN W 50 THEN S 135 FT
ON N/S PLOVER ST THE N 50 FT E
TO BEG #SEC 28 T4SR1W #MP29 10 28
4 005

Street address: 1502 Plover Street, Mobile, AL 36605

Key Number: 935983

Parcel Number: 2910284005045XXX

"Plaintiff's sole cause of action is for injunctive relief from Defendants/Counter-Plaintiffs' 'encroachment' upon Lot 24. Defendants/Counter-Plaintiffs seek to redeem, quiet title, and obtain exclusive possession.

"Ala. Code § 40-10-82, known as Judicial Redemption, states, in pertinent part:

"'No action for recovery of real estate sold for the payment of taxes shall lie unless the same is brought within three years from the date when the purchaser became entitled to demand a deed therefor.... There shall be no time limit for recovery of real estate by an owner of land who has retained possession. If the owner of land seeking to redeem has retained possession, character of possession need not be actual and peaceful, but may be constructive and scrambling and, where there is no real occupancy of land, constructive possession follows title of the original owner and may only be cut off by adverse possession of the tax purchaser for three years after the purchaser is entitled to possession.'

"Defendants/Counter-Plaintiffs have never been the 'owner' of Lot 24, nor have they ever paid taxes on Lot 24; however, it cannot be disputed that since February 26, 2013, they have been in continuous, actual possession of, and have a great interest in the majority of Lot 24. Consequently, Plaintiff has not been in adverse possession of Lot 24 for three years. See Tabor v. Certain Lands, 736 So. 2d 622 (Ala. Civ. App. 1999) (holding that the owner and owner's predecessor remained in possession of land, as required for owner to indefinitely retain right to redeem property on which there was tax deed, where there was no evidence of possession by purchaser of tax deed); Tanner v. Case, 142 So. 2d 688 (Ala. 1962) (holding that failure to prove actual, open, adverse possession for the statutory period is fatal to one claiming under the tax deed).

"This case does not fit squarely into any precedent this Court has been able to find, due to the fact that the lot where the vast majority of the house sits -- Lot 25 -- is the only piece of the 'entire property' that was subject to the foreclosed mortgage and, therefore, all that was 'available' for Defendants to purchase. Nowhere in the history of Plaintiff's parents' establishment of this homeplace were the lots ever combined for purposes of ownership or mortgage. Granted that a survey by Defendants would likely have prevented this entire situation. However, the Court is only able to consider the facts and claims before it.

"NOW, THEREFORE, based upon the foregoing, the Court hereby ORDERS, ADJUDGES, AND DECREES as follows:

- "1. Judgment is entered in favor of Defendants and against Plaintiff on Plaintiff's claim for temporary and permanent injunction.
- "2. Judgment is entered in favor of Defendants/Counter-Plaintiffs as to Count Two -- Redemption from Tax Sale. Angela May and Torry May, Sr. (the Mays) have properly exercised their right to judicial redemption and are entitled to possession and title of the Property against Plaintiff and all others as a matter of law, upon satisfaction of the conditions set out below.
- "3. Pursuant to Ala. Code § 40-10-83, Plaintiff is entitled to recover (a) \$525.75, the amount paid at the tax sale, plus \$565.94, the amount of taxes subsequently paid by her, together with eight percent per annum thereon; and (b) \$2,000 as a reasonable attorney's fee for Plaintiff's attorney for bringing the action. The Court further

awards the costs of this action to Plaintiff, including filing fees (court costs), 1/2 cost of the survey paid ... to a third party, and 1/2 cost of the appraisal paid ... to a third party. The total of this award shall be a judgment in favor of Plaintiff to be paid by Defendants into the Mobile County Clerk of the Court within 60 days from the date of this Order. Pursuant to § 40-10-83, said judgment shall be a lien on the subject property.

- "4. Upon the payment into the Mobile County Clerk of the Court of the full amount of the judgment and all costs set out in paragraph 3 above, this Court will enter an Order quieting title in favor of the Mays, and all title and interest in the property shall by such Order be divested out of Plaintiff as owner of the tax deed.
- "5. Count One of the Counterclaim is DISMISSED WITH PREJUDICE.

"

"¹Defendants/Counter-Plaintiffs did not pursue this claim against indispensable party, GMAC/Ditech.

"²Defendants' Amended Counterclaim sets forth the following, which is undisputed by Plaintiff: Plaintiff's parents purchased Lot 25 in 1955. Plaintiff's mother, individually, purchased Lot 24 in 1961. In 1956, Plaintiff's parents built a home and expanded it in 1990. Lots 24 and 25 are each approximately 50' x 135', and the home sits on both lots. In 2012, [GMAC] foreclosed on the home. It appears the tax records for the lots and home may not have been correct, and that the foreclosed mortgage was only on Lot 25. Although Defendants counterclaimed for

'Reformation of the Mortgage, Foreclosure Deed, and Defendants' Deed they offered no evidence at trial to support this claim.

"³Plaintiff grew up in the subject home; therefore, the Court infers she knew she was purchasing a piece of property with a driveway and attached or appurtenant structures to her parents' home on Lot 25.

"⁴Mobile County Revenue Commissioner Tax Payments for Key Number 935983."

On September 11, 2022, Morrison filed "Plaintiff's and Counter-Defendant's Rule 52(b)[Ala. R. Civ. P.] Motion to Amend the Judgment of August 11, 2022 or Alternatively Rule 59(a)[Ala. R. Civ. P.] Motion for New Trial, or Alternatively Rule 59(e) Motion to Alter, Amend, or Vacate the Judgment." On September 26, 2002, the Mays filed a "Notice of Filing Payment Per Order of August 11, 2022." Subsequently, on November 3, 2022, the trial Court entered an order quieting title to Lot 24 in favor of the Mays. On November 9, 2022, the trial court entered an order denying Morrison's postjudgment motion. This appeal followed.

Standard of Review

"'"Because the trial court heard ore tenus evidence during the bench trial, the ore tenus standard of review applies. Our ore tenus standard of

review is well settled. "'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.'" Smith v. Muchia, 854 So. 2d 85, 92 (Ala. 2003) (quoting Allstate Ins. Co. v. Skelton, 675 So. 2d 377, 379 (Ala. 1996)).

"'...'

"'... However, 'that presumption [of correctness] has no application when the trial court is shown to have improperly applied the law to the facts.' Ex parte Board of Zoning Adjustment of Mobile, 636 So. 2d 415, 417 (Ala. 1994)."

"'Kennedy v. Boles Invs., Inc., 53 So. 3d 60, 67-68 (Ala. 2010).'

"'Mitchell v. K & B Fabricators, Inc., 274 So. 3d 251, 260 (Ala. 2018)."

Childs v. Pommer, 348 So. 3d 379, 387 (Ala. 2021).

Discussion

Morrison argues that the trial court erroneously held that the Mays were entitled to redeem Lot 24 pursuant to § 40-10-82 and § 40-10-83, Ala. Code 1975. Specifically, she contends:

"Under Ala. Code § 40-10-82, [the] Mays cannot 'redeem' from the 2010 tax sale of Lot 24 to the State of Alabama because [the] Mays did not own Lot 24 in 2010 when the State of Alabama sold it for unpaid 2009 ad valorem taxes. Indeed, [the] Mays never purchased Lot 24 from anyone at any time; [the] Mays did not adversely possess Lot 24 for the requisite 10-year time; and [the] Mays did not even claim to know that they were trespassing on another person's property (Lot 24) before Morrison objected to their presence and filed suit to remove them from Lot 24. (R. 65; 85). [The] Mays have never assessed or paid taxes on Lot 24."

Morrison's brief at 22.

"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. 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.').

"'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)]."

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)."

Hamilton v. Guardian Tax AL, LLC, 342 So. 3d 172, 181-82 (Ala. 2021)

(footnote omitted).

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

"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."

Assuming without deciding that the Mays had an equitable interest in Lot 24 that would have supported a right to redeem pursuant to § 40-10-120, the Mays did not follow the procedure for statutory redemption by filing specified sums of money in the Mobile Probate Court, as set forth in § 40-10-122(a), Ala. Code 1975. Rather, they filed a counterclaim for redemption of Lot 24 in Morrison's action in the circuit court.

The only remaining remedy that would have been available to the Mays was judicial redemption pursuant to §§ 40-10-82 and 40-10-83, Ala. Code 1975.

Section 40-10-82, provides, in pertinent part:

"No action for the recovery of real estate sold for the payment of taxes shall lie unless the same is brought within three years from the date when the purchaser became entitled to demand a deed therefor.... There shall be no time limit for recovery of real estate by an owner of land who has retained possession. If the owner of land seeking to redeem has retained possession, character of possession need not be actual and peaceful, but may be constructive and scrambling and, where there is no real occupancy of land, constructive possession follows title of the original owner and may only be cut off by adverse possession of the tax purchaser for three years after the purchaser is entitled to possession."

(Emphasis added.)

In this case, the State initially purchased Lot 24 the tax sale on May 27, 2010. Morrison subsequently purchased Lot 24 from the State and received a tax deed for that property on June 28, 2013. However, the Mays did not file their counterclaim seeking to redeem Lot 24 until December 13, 2019. Thus, the Mays filed their counterclaim to redeem Lot 24 more than three years after Morrison received a tax deed for the property.

In its judgment, the trial court found that the Mays were entitled to redeem Lot 24 pursuant to § 40-10-82 because they were in possession of that property Morrison had not adversely possessed Lot 24 for a period of three years. However, the exception to the three-year limitations period in § 40-10-82, provides that there is "no time limit for recovery of real estate by an owner of land who has retained possession." (Emphasis added.) Additionally, the final sentence of § 40-10-82 provides that, "where there is no real occupancy of the land, constructive possession follows title of the original owner and may only be cut off by adverse possession of the tax purchaser for three years after the purchaser is entitled to possession." (Emphasis added.) In this case, the undisputed evidence established that the Mays had never been owners of Lot 24 and never ever held title that property. Thus, the exception to the three-year limitations of actions set forth in § 40-10-82, does not apply in this case.

Because the Mays filed their counterclaim to redeem Lot 24 after the expiration of the time to redeem that property set forth in § 40-10-82, the trial court erred when entered its August 11, 2022, judgment determining that the Mays had properly exercised the right to redeem

Lot 24 pursuant to § 40-10-82, and when it subsequently entered its November 3, 2022, order quieting title to Lot 24 in favor of the Mays.

Conclusion

For the above-stated reasons, we reverse the trial court's August 11, 2022, judgment and November 3, 2022, order and remand this case for proceedings consistent with this opinion.³

REVERSED AND REMANDED.

Parker, C.J., and Shaw, Mendheim, Mitchell, and Cook, JJ., concur.

Bryan and Stewart, JJ., dissent.

Sellers, J., dissents, with opinion.

³In its August 11, 2022, judgment, the trial court also decided in favor of the Mays and against Morrison on Morrison's claim for injunctive relief. However, it appears that this holding may have been based on its finding that the Mays had properly exercised the right to redeem Lot 24. Although we are reversing the trial court's August 11, 2022, judgment, our decision is based solely on our holding that the Mays did not timely commence their action to redeem Lot 24. We do not address the merits of Morrison's underlying claim for injunctive relief.

SELLERS, Justice (dissenting).

I respectfully dissent. This appeal involves two parcels of property, Lot 24 owned by Janice Morrison and Lot 25 owned by Torry May, Sr., and Angela Pompey May. The trial court entered a judgment finding that the Mays had exercised their right to redeem Lot 24, pursuant to § 40-10-82, Ala. Code 1975, and quieting title to Lot 24 in their favor. The majority reverses the judgment because the Mays did not timely commence their action to redeem until "after the expiration of the time to redeem [the] property set forth in § 40-10-82." ___ So. 3d at ___. Thus, the majority holds that the trial court erred in quieting title to Lot 24 in favor of the Mays. Notably, and most troubling, in remanding the case, the majority provides no guidance to the trial court regarding an equitable remedy for solving the dispute concerning Lot 24 based on the determination that § 40-10-82 does not apply. Despite the inapplicability of that statute, it is clear to me that the trial court's quieting title to Lot 24 in favor of the Mays was an appropriate equitable remedy. The purpose of a quiet-title action is to determine as between the parties to that action who holds the better title. "In an action to quiet title, when the trial court hears evidence ore tenus, its

judgment will be upheld unless it is palpably wrong or manifestly unjust." Woodland Grove Baptist Church v. Woodland Grove Cmty. Cemetery Ass'n, 947 So. 2d 1031, 1036 (Ala. 2006). Under the facts and circumstances presented, I cannot conclude that the trial court's equitable remedy was wrong, much less unjust. When the Mays purchased Lot 25, they reasonably believed that the house, the driveway, and the outbuilding were located on that lot. But, according to a court-ordered survey, they discovered that approximately 15 feet of the house, the driveway, the outbuilding, and a gazebo encroached upon the majority of Lot 24 -- meaning the residential area was located on both Lot 25 and a substantial portion of Lot 24. At trial, Morrison requested that the trial court enter a permanent injunction ordering that the structures encroaching upon Lot 24 be removed, which obviously would require demolishing, among other things, a portion of the house. The Mays, on the other hand, sought to redeem, to quiet title to, and to obtain exclusive possession of Lot 24. In attempting to apply the law to the facts, the trial court expressly indicated in its judgment that this case did not "fit squarely into any precedent" because the lot on which the vast majority of the house sits -- Lot 25 -- is the only piece

of the "entire property" that was subject to the mortgage that had been foreclosed on by GMAC Mortgage, LLC, and, therefore, all that was subsequently "available for [the Mays] to purchase." In considering who had better title to Lot 24, the trial court indicated that Morrison had grown up in the house and that it could be inferred that, at the time Morrison purchased Lot 24, "she knew she was purchasing a piece of property with a driveway and attached or appurtenant structures to her parents' home on Lot 25." In other words, the trial court inferred that Morrison knew that Lot 24 was not unimproved but, rather, that it contained a significant portion of a house also located on a different lot. Unlike the Mays, to whom, the trial court determined, no such knowledge could be imputed, Morrison, the trial court determined, was well aware that the structures encroached on Lot 24; accordingly, the trial court further determined, Morrison should not benefit from such knowledge by obtaining the relief she sought against the Mays. Thus, rather than issuing a permanent injunction forcing the Mays to remove the encroachments and to demolish a portion of the house, the trial court ordered relief that I can only describe as Solomonic: in exchange for quieting title to Lot 24 in favor of the Mays, the Mays would

reimburse Morrison the amount that she had paid for Lot 24, the taxes and interest she had paid on Lot 24, attorney fees, and one-half of the cost of the court-ordered survey and appraisal. Because I believe that the trial court properly exercised its equitable powers to prevent what it considered to be an unfair and unjust result, I would affirm its judgment quieting title to Lot 24 in favor of the Mays.