Rel: July 12, 2019

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2019

1170709

Jere Austill III

v.

Tyler Montana Jul Prescott

1170730

Tyler Montana Jul Prescott

v.

Jere Austill III

Appeals from Baldwin Circuit Court
(CV-16-900541)

BRYAN, Justice.[1]

In case no. 1170709, Jere Austill III appeals from a judgment of the Baldwin Circuit Court ("the trial court") permitting Tyler Montana Jul Prescott to redeem certain real property under §§ 40-10-82 and 40-10-83, Ala. Code 1975. Specifically, Austill argues that, through adverse possession, he had "cut off" Prescott's right to redeem the property. Because we conclude that, by virtue of an adverse judgment in an earlier quiet-title action, Austill is precluded by the doctrine of res judicata from claiming an interest in the property through the extinguishment of Prescott's right of redemption, we affirm the portion of the trial court's judgment that is challenged in Austill's appeal.

In case no. 1170730, Prescott cross-appeals from the trial court's denial of his motion for an award of attorney fees under the Alabama Litigation Accountability Act ("the ALAA"), § 12-19-270 et seq., Ala. Code 1975, arguing that Austill asserted his argument that he cut off Prescott's right of judicial redemption without substantial justification. We

[1]These appeals were assigned to Justice Bryan on March 21, 2019.

conclude that the trial court did not exceed its discretion in denying Prescott's motion, and we affirm that portion of the trial court's judgment.

Background

As noted above, this case involves Prescott's request to redeem certain real property located in Baldwin County ("the property") under §§ 40-10-82 and 40-10-83 and whether his right to redeem the property had been cut off. In First Properties, L.L.C. v. Bennett, 959 So. 2d 653, 654 (Ala. Civ. App. 2006), the Court of Civil Appeals summarized Alabama's redemption law:

> "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)[2], 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

[2]"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)(emphasis added).

> 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)."

In 2007, JSW Properties, LLC ("JSW"), owned the property. JSW did not pay the ad valorem taxes associated with the property, and, in 2008, the property was sold at a tax sale to Plymouth Park Tax Services, LLC ("Plymouth Park"). Plymouth Park later transferred its interest in the property to Propel Financial 1, LLC ("Propel"). Neither Plymouth Park nor Propel paid the required ad valorem taxes associated with the property for 2011, and in 2012 Austill purchased the property at a tax sale and obtained a certificate of purchase. See § 40-10-19(a), Ala. Code 1975 ("As soon after the confirmation of sale is made as may be practicable, the tax collector must make out and deliver to each purchaser ... a certificate of purchase ...."). Later that month, Austill visited the property and installed a no-trespassing sign and four stakes with survey flags at the four corners of the property. See § 40-10-74, Ala. Code 1975 ("Any purchaser of lands at a tax sale other than the state or anyone claiming under him shall

be entitled to possession of said lands immediately upon receipt of certificate of sale from the tax collector ....").

In June 2015, the Baldwin County Probate Judge delivered a tax deed for the property to Austill. See § 40-10-29, Ala. Code 1975 ("After the expiration of three years from the date of the sale of any real estate for taxes, the judge of probate then in office must execute and deliver to the purchaser ... a deed to each lot or parcel of real estate sold to the purchaser ...."). Propel later transferred its interest in the property to Prescott. Although JSW had been dissolved, its "successor in interest" also later conveyed to Prescott JSW's interest in the property via quitclaim deed. By letter dated December 19, 2015, Prescott informed Austill of his intent to redeem the property.

I. The Quiet-Title Action[3]

On December 29, 2015, Austill filed a verified complaint initiating a quiet-title action "to establish the right and

[3]The present appeal does not stem from the quiet-title action. However, the judgment in the quiet-title action is the basis of our conclusion that Austill's challenge to the redemption action is barred by the doctrine of res judicata. Accordingly, a summary of the quiet-title action is necessary. The appellate record from the quiet-title action is included in the record on appeal.

title of [Austill] to [the property] and to clear up all doubts or disputes concerning the same ...." ("the quiet-title action"). Among others, Austill named Prescott as a defendant in the action. Austill sought a judgment declaring that he possessed "the entire and undivided fee simple interest in the [property] with no restrictions thereon."

Among other things, Austill alleged that, since the 2012 tax sale, he had been in adverse possession of the property. Austill stated: "This matter is brought pursuant to ... § 40-10-82." Section 40-10-82 provides:

> "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; but if the owner of such real estate was, at the time of such sale, under the age of 19 years or insane, he or she, his or her heirs, or legal representatives shall be allowed one year after such disability is removed to bring an action for the recovery thereof; but this section shall not apply to any action brought by the state, to cases in which the owner of the real estate sold had paid the taxes, for the payment of which such real estate was sold prior to such sale, or to cases in which the real estate sold was not, at the time of the assessment or of the sale, subject to taxation. 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.)

Acting pro se, Prescott answered Austill's complaint, quoting from the first sentence of § 40-10-82 and arguing that Austill had filed his complaint "prematurely" because he had not adversely possessed the property for three years after becoming entitled to demand a tax deed. Prescott also filed a motion to dismiss Austill's complaint, which elaborated on his answer, citing as support Southside Community Development Corp. v. White, 10 So. 3d 990 (Ala. 2008), and McGuire v. Rogers, 794 So. 2d 1131 (Ala. Civ. App. 2000). In McGuire, 794 So. 2d at 1136, the Court of Civil Appeals quoted from its decision in Ervin v. Amerigas Propane, Inc., 674 So. 2d 543, 544 (Ala. Civ. App. 1995), which, in turn, quoted from this Court's decision in Gulf Land Co. v. Buzzelli, 501 So. 2d 1211, 1213 (Ala. 1987).

In Buzzelli, this Court stated:

> "We have stated many times that the purpose of § 40-10-83[4] 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

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[4]Section 40-10-83, Ala. Code 1975, provides, in part:

> "When the action is against the person for whom the taxes were assessed or the owner of the land at the time of the sale, his or her heir, devisee, vendee or mortgagee, the court shall, on motion of the defendant made at any time before the trial of the action, ascertain (i) the amount paid by the purchaser at the sale and of the taxes subsequently paid by the purchaser, together with 12 percent per annum thereon, subject to the limitations set forth in Section 40-10-122(a)[, Ala. Code 1975]; ... and (iv) a reasonable attorney's fee for the plaintiff's attorney for bringing the action. The court shall also determine the right, if any, of the defendant to recover any excess pursuant to Section 40-10-28[, Ala. Code 1975,] and shall apply a credit and direct the payment of the same as set forth in subsection (b) of Section 40-10-78[, Ala. Code 1975]. Upon such determination the court shall enter judgment for the amount so ascertained in favor of the plaintiff against the defendant, and the judgment shall be a lien on the land sued for. Upon the payment into court of the amount of the judgment and costs, the court shall enter judgment for the defendant for the land, and all title and interest in the land shall by such judgment be divested out of the owner of the tax deed."

In 2018, the legislature enacted Act No. 2018-494, Ala. Acts 2018, which will become effective on January 1, 2020, to, among other things, amend § 40-10-83 to reduce the interest rates provided for therein.

> original owner and can only be cut off by the adverse possession of the tax purchaser. Stallworth v. First Nat. Bank of Mobile, 432 So. 2d 1222 (Ala. 1983); Hand v. Stanard, 392 So. 2d 1157 (Ala. 1980); O'Connor v. Rabren, 373 So. 2d 302 (Ala. 1979).
>
> "Code 1975, § 40-10-82, does establish a 'short statute of limitations' for tax deed cases. This section states that the redemption action must be filed within three years from the date when the purchaser became entitled to demand a deed for the property. We have held that this statute does not begin to run until the purchaser is in adverse possession of the land and has become entitled to demand a deed to the land. Williams v. Mobile Oil Exploration, 457 So. 2d 962 (Ala. 1984). In order for the short period of § 40-10-82 to bar redemption under § 40-10-83, the tax purchaser must prove continuous adverse possession for three years after he is entitled to demand a tax deed. Stallworth, 432 So. 2d at 1224."

501 So. 2d at 1213 (emphasis added). Austill filed a response to Prescott's motion to dismiss, challenging, among other things, the legal basis for Prescott's motion to dismiss and citing in support of his argument, in addition to other cases, Southside; Reese v. Robinson, 523 So. 2d 398 (Ala. 1988); Buzzelli; O'Connor v. Rabren, 373 So. 2d 302 (Ala. 1979); and McGuire. The trial court denied Prescott's motion to dismiss.

With the assistance of counsel, Prescott later filed a "renewed motion to dismiss," pursuant to Rule 12(b)(6), Ala.

R. Civ. P., and an accompanying "brief," arguing, among other things:

> "In order to quiet title to real property under a tax deed, [Austill] must show that no party has the right to redeem the property from the tax sale. In order to foreclose all redemptive rights, the holder of a tax deed must prove that it adversely possessed the property for a period of three years after becoming entitled to demand a tax deed. ... Buzzelli, 501 So. 2d [at] 1213 .... [Austill] has been in possession for four years, but only one of those years came after [Austill] became entitled to demand a tax deed, and this is why the case should be dismissed. Our State's laws regarding a party's rights under a tax deed might be confusing, but they are well settled and the rule that applies in this case is clear."

(Emphasis original.) In support of his argument, Prescott cited, among other cases, Reese; Buzzelli; Karagan v. Bryant, 516 So. 2d 599 (Ala. 1987); and Hand v. Stanard, 392 So. 2d 1157 (Ala. 1980).

Austill filed a response to Prescott's renewed motion to dismiss, in which he argued, among other things:

> "The Supreme Court has applied the rule in [Buzzelli] to require the purchaser of a tax deed to show that they have maintained continuous adverse possession of the tax-sale property for three years to defeat a right of redemption under [§] 40-10-82 without regard to possession by the redemptioner. Southside, supra ....
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> "[Austill,] in the case at hand before this Court[,] would allege that he has met the

> requirements of Southside, supra, in that he has maintained continuous adverse possession of the tax-sale property since on or about the date of purchase ...."

The trial court conducted a hearing on Prescott's renewed motion to dismiss. On March 21, 2016, the trial court entered an order stating: "Based on the authority of Gulf Land v. Buzzelli, 501 So. 2d 1211 (Ala. 1987), and subsequent case authority cited in [Prescott]'s brief, [the] motion to dismiss pursuant to Rule 12(b), filed by [Prescott] is hereby granted."

Austill appealed to this Court. This Court transferred the appeal to the Court of Civil Appeals, pursuant to § 12-2-7(6), Ala. Code 1975. For the first time in his reply brief,[5] Austill argued that the addition of the last two sentences of § 40-10-82 by amendment effective September 1, 2009, altered the statute of limitations for judicially redeeming property.

Specifically, Austill argued that the 2009 amendment to § 40-10-82 provides that the three-year statute of limitations for bringing a judicial-redemption claim begins running when

[5]Appellate briefs filed by Austill in the Court of Civil Appeals in the quiet-title action are also included in the record in this appeal.

the tax-sale purchaser is in adverse possession of the property and becomes entitled to possession of the property, as opposed to when the tax-sale purchaser becomes entitled to a tax deed. Because § 40-10-74 provides that a tax-sale purchaser becomes entitled to possession of the property "immediately upon receipt of a certificate of sale from the tax collector," Austill argued, the 2009 amendment to § 40-10-82 allows a tax-sale purchaser to "cut[] off" the original owner's right of judicial redemption after three years of adverse possession, starting from the point at which the tax-sale purchaser begins adversely possessing the property after obtaining a certificate of sale. Austill asserted: "In other words, by the time the tax deed is issued, both administrative and judicial redemption rights have been lost ...." Although the version of § 40-10-82 as amended in 2009 was in effect throughout the entirety of the quiet-title action and was argued and applied by the parties and the trial court, Austill did not assert an argument based on the language reflected in the 2009 amendment to § 40-10-82 until he filed his reply brief in the Court of Civil Appeals. Austill's reply brief

also included citations to, among other cases, Southside, Reese, Buzzelli, Karagan, and McGuire.

On January 6, 2017, the Court of Civil Appeals unanimously affirmed the trial court's judgment, without an opinion, citing, among other cases, Southside, Reese, and Buzzelli. Austill filed an application for rehearing, which the Court of Civil Appeals denied. With the assistance of new counsel, Austill then petitioned this Court for a writ of certiorari, pursuant to Rule 39(a)(1)(C), Ala. R. App. P., in which he asked this Court to consider the effect of the 2009 amendment to § 40-10-82 as a purportedly material question of first impression requiring a decision from this Court.[6] This Court denied Austill's petition on April 14, 2017, without an opinion.

II. The Redemption Action

[6]Austill's certioari petition was docketed in this Court as case no. 1160411. "[T]his court takes judicial knowledge of its own records." All American Life & Cas. Co. v. Dillard, 287 Ala. 673, 679, 255 So. 2d 17, 21 (1971). Therefore, we take judicial notice of Austill's certiorari petition, which includes a copy of the Court of Civil Appeals' no-opinion order of affirmance citing the authorities upon which it relied in affirming the judgment in the quiet-title action.

In May 2016, shortly before Austill filed a notice of appeal from the trial court's judgment in the quiet-title action, Prescott initiated a separate judicial-redemption action ("the redemption action") in the trial court and, in his complaint, expressed his intent to pay into the trial court the funds required to redeem the property under § 40-10-83. On June 21, 2016, the attorney who represented Austill in the trial court and in the Court of Civil Appeals in the quiet-title action filed a motion to stay proceedings in the redemption action pending a disposition of Austill's appeal in the quiet-title action. Prescott filed a response to Austill's motion, agreeing that the disposition of Austill's appeal in the quiet-title action would affect the outcome of the redemption action and consenting to a stay of proceedings in the redemption action. The trial court entered an order granting Austill's motion.

After this Court denied Austill's petition for a writ of certiorari in the quiet-title action, Austill, with the assistance of his new counsel, filed an answer in the redemption action on April 18, 2017. Among other things, Austill again argued, as he had in the quiet-title action,

that he had extinguished Prescott's right of redemption by adversely possessing the property. This time, however, he asserted his argument regarding the effects of the 2009 amendment to § 40-10-82 that he had raised for the first time in his reply brief to the Court of Civil Appeals in the quiet-title action and again in his petition asking this Court for certiorari review of the Court of Civil Appeals' decision.

Prescott moved for a summary judgment, again asserting, among other things, that he should be allowed to redeem the property, citing as support many of the cases he had cited in the quiet-title action. The trial court denied Prescott's summary-judgment motion. Prescott then filed a "renewed motion for summary judgment" and attached the record from the quiet-title action and the parties' appellate briefs to his motion, asserting, among other things, that, based on the doctrines of res judicata and collateral estoppel, the trial court's judgment in the quiet-title action barred Austill from arguing that he had extinguished Prescott's right of judicial redemption through adverse possession.

The trial court denied Prescott's renewed summary-judgment motion and set the case for trial. During the

ensuing bench trial, Prescott moved for an award of attorney fees under the ALAA, arguing that, because the trial court had dismissed Austill's complaint in the quiet-title action, the arguments asserted by Austill in the redemption action were groundless in fact and in law.

On March 20, 2018, the trial court entered a judgment determining, among other things, that Prescott was entitled to redeem the property and that Austill had "not taken sufficient action to extinguish or foreclose [Prescott]'s redemptive rights." The trial court also denied Prescott's request for an award of attorney fees under the ALAA. Austill appealed; Prescott cross-appealed, challenging the denial of his request for attorney fees.

Analysis

On appeal, Austill argues that the trial court erred by allowing Prescott to redeem the property because, Austill asserts, the language added to § 40-10-82 by the 2009 amendment, specifically the last sentence of § 40-10-82, permitted Austill to cut off Prescott's right of judicial redemption by adversely possessing the property for three years following the 2012 tax sale. In response, Prescott

argues, among other things, that Austill is barred by the doctrines of res judicata and collateral estoppel from raising that argument because, Prescott asserts, Austill's claim that he has extinguished Prescott's right of redemption through adverse possession was already decided against Austill in the quiet-title action. Prescott states: "By the time this lawsuit is concluded, Prescott will have litigated the exact same issue, through appeal, twice." Prescott's brief, at 26-27. Although the portion of the trial court's judgment permitting Prescott to redeem the property addressed the merits of Austill's argument regarding the 2009 amendment to § 40-10-82[7] and was not based on the doctrines of res judicata

[7]The trial-court judge explained his interpretation of § 40-10-82 at the conclusion of the trial in the redemption action. He specifically found that Austill had adversely possessed the property for more than three years, but he concluded that the language in the 2009 amendment to § 40-10-82 "doesn't say it cuts [Prescott] off from being able to redeem within that three[-]year period following the issuance or the time the deed should have been issued." The trial-court judge concluded that the final sentence of § 40-10-82 permits a tax-sale purchaser to "cut off" the original owner's constructive possession of the property so as to obviate the requirement that a tax-sale purchaser make a demand for possession upon the original owner before a tax-sale purchaser can have the original owner "evicted." We presume that the trial-court judge was referring to the procedure for the remedy of ejectment that enforces a tax-sale purchaser's right of possession, both of which are provided for in § 40-10-74.

or collateral estoppel, Prescott argues that we should affirm the trial court's judgment based on those doctrines. Prescott contends in his cross-appeal that Austill's argument is groundless in fact and in law and, therefore, that the portion of the trial court's judgment denying his request for an award of attorney fees under the ALAA should be reversed.

I. Austill's Appeal (no. 1170709)

We first address Prescott's argument that the doctrine of res judicata procedurally bars Austill from asserting the argument raised in his appeal, i.e., that the language added to § 40-10-82 by the 2009 amendment permitted him to extinguish Prescott's right of redemption under the facts of this case. In Lee L. Saad Construction Co. v. DPF Architects, P.C., 851 So. 2d 507, 516-17 (Ala. 2002), this Court explained:

> "Res judicata and collateral estoppel are two closely related, judicially created doctrines that preclude the relitigation of matters that have been previously adjudicated or, in the case of res

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The trial-court judge further concluded that the 2009 amendment to § 40-10-82 "does not change the original first sentence of the section, which says: '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. ...'"

judicata, that could have been adjudicated in a prior action.

> "'The doctrine of res judicata, while actually embodying two basic concepts, usually refers to what commentators label "claim preclusion," while collateral estoppel ... refers to "issue preclusion," which is a subset of the broader res judicata doctrine.'

"Little v. Pizza Wagon, Inc., 432 So. 2d 1269, 1272 (Ala. 1983)(Jones, J., concurring specially). See also McNeely v. Spry Funeral Home of Athens, Inc., 724 So. 2d 534, 537 n.1 (Ala. Civ. App. 1998). In Hughes v. Martin, 533 So. 2d 188 (Ala. 1988), this Court explained the rationale behind the doctrine of res judicata:

> "'Res judicata is a broad, judicially developed doctrine, which rests upon the ground that public policy, and the interest of the litigants alike, mandate that there be an end to litigation; that those who have contested an issue shall be bound by the ruling of the court; and that issues once tried shall be considered forever settled between those same parties and their privies.'

"533 So. 2d at 190. The elements of res judicata are

> "'(1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both actions.'

"Equity Res. Mgmt., Inc. v. Vinson, 723 So. 2d 634, 636 (Ala. 1998). 'If those four elements are present, then any claim that was, or that could have

> been, adjudicated in the prior action is barred from further litigation.' 723 So. 2d at 636. Res judicata, therefore, bars a party from asserting in a subsequent action a claim that it has already had an opportunity to litigate in a previous action."

Austill agrees with Prescott that elements (2) and (3) of the doctrine of res judicata are satisfied in this case. Regarding element (1), a prior judgment on the merits, Austill briefly discusses two decisions from this Court. One of those decisions, he says, supports a conclusion that the trial court's judgment in the quiet-title action dismissing that action under Rule 12(b)(6) did not constitute a judgment on the merits.

Austill first acknowledges that this Court's decision in Sprinkle v. Edwards, 848 So. 2d 217, 219 (Ala. 2002), noted:

> "The United States Supreme Court has stated that '[t]he dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is a "judgment on the merits"' for res judicata purposes. Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 399 n.3, 101 S. Ct. 2424, 69 L. Ed. 2d 103 (1981)(citing Angel v. Bullington, 330 U.S. 183, 190, 67 S. Ct. 657, 91 L. Ed. 832 (1947), and Bell v. Hood, 327 U.S. 678, 66 S. Ct. 773, 90 L. Ed. 939 (1946)). Thus, a dismissal for failure to state a claim pursuant to Federal Rule 12(b)(6) is generally preclusive."

(Emphasis added.) Austill then apparently argues that Sprinkle does not stand for the proposition that a judgment

granting a motion to dismiss filed pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure constitutes a judgment on the merits for res judicata purposes.

In support of his argument, Austill cites Ex parte Scannelly, 74 So. 3d 432, 438 (Ala. 2011), in which this Court stated:

> "'The Rule 12(b)(6) motion ... must be distinguished from a motion for summary judgment under Rule 56, which goes to the merits of the claim -- indeed, to its very existence -- and is designed to test whether there is a genuine issue of material fact. The Rule 12(b)(6) motion ... only tests whether the claim has been adequately stated in the complaint. Thus, ... on a motion under Rule 12(b)(6), the [trial] court's inquiry essentially is limited to the content of the complaint; a motion for summary judgment, on the other hand, often involves the use of pleadings, depositions, answers to interrogatories, and affidavits.'
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> "5B Charles Alan Wright & Arthur C. Miller, Federal Practice and Procedure § 1356, at 372-75 (3d ed. 2004)(footnote omitted)."

(Emphasis omitted.) Austill asserts that Scannelly is "the better case ..., which clearly says that a 12(b)(6) motion does not have preclusive effect." Austill's reply brief, at 21.

Scannelly, however, did not hold that a dismissal under Rule 12(b)(6) is not a judgment on the merits for res judicata purposes. Scannelly involved a plaintiff's purported unilateral dismissal, pursuant to Rule 41(a)(1), Ala. R. Civ. P., of a complaint she had filed in the circuit court. The circuit court later reinstated the plaintiff's action after noting that, before the plaintiff submitted her notice of dismissal, the defendant had filed a motion to dismiss pursuant to Rule 12(b)(6) based on, among other things, the doctrine of res judicata. The circuit court concluded that the defendant's motion to dismiss amounted to a motion for a summary judgment, the filing of which prevented the plaintiff from thereafter unilaterally dismissing her complaint. The plaintiff petitioned this Court "for a writ of mandamus directing the [circuit court] to vacate all orders entered after [the plaintiff] filed a notice of dismissal pursuant to Rule 41(a) ... and for a writ of prohibition restraining that court from future attempts to exercise jurisdiction over [the plaintiff]'s case." Scannelly, 74 So. 3d at 433.

We denied the plaintiff's petition. In so doing, we discussed the distinction between a motion to dismiss filed

pursuant to Rule 12(b)(6) and a summary-judgment motion, as is demonstrated by the portion of the opinion Austill cites in support of his argument. We also noted that the doctrine of res judicata is more commonly raised in the summary-judgment context, as opposed to the motion-to-dismiss context. We held:

> "Thus, despite [the defendant]'s assertions that his motion was a Rule 12(b)(6) motion to dismiss, a review of the substance of the motion shows that it was, in part, a motion seeking a summary judgment based on the affirmative defense of res judicata. Because at the time [the plaintiff] filed her notice of dismissal pursuant to Rule 41(a)(1), [the defendant] had moved for a summary judgment, [the plaintiff] was deprived of the unqualified right to voluntarily dismiss her complaint pursuant to Rule 41."

Scannelly, 74 So. 3d at 439. Therefore, contrary to Austill's assertions, Scannelly did not hold that a trial court's order granting a motion to dismiss filed pursuant to Rule 12(b)(6) does not constitute a judgment on the merits for the purposes of the doctrine of res judicata; indeed, that issue was not even presented or addressed in Scannelly. Scannelly's holding, therefore, is of no assistance to Austill.

We conclude that the trial court's judgment granting the renewed motion to dismiss Prescott filed pursuant to Rule

12(b)(6) in the quiet-title action constituted a judgment on the merits of the quiet-title action. In his complaint in the quiet-title action, Austill sought a judgment declaring that, pursuant to § 40-10-82, he possessed "the entire and undivided fee simple interest in the [property] with no restrictions thereon." Prescott's answer and subsequent motions to dismiss in the quiet-title action generally denied Austill's claim to title through adverse possession under § 40-10-82 and, therefore, properly placed Austill's title to the property in issue in the quiet-title action. See Ally Windsor Howell, Tilley's Alabama Equity § 13:9 (5th ed. 2012)(citing Barry v. Thomas, 273 Ala. 527, 142 So. 2d 918 (1962)); and Rushton v. McLaughlin, 213 Ala. 380, 382, 104 So. 824, 825 (1925).

The trial court's judgment in the quiet-title action was expressly "[b]ased on the authority of ... Buzzelli ..., and subsequent case authority cited in [Prescott]'s brief," which, Prescott had argued, defeated Austill's claim to title to the property through adverse possession as a matter of law. Therefore, the trial court's judgment in the quiet-title action conclusively resolved the claim to title to the property that Austill had asserted therein. See Alabama Power

Co. v. Laney, 428 So. 2d 21, 23 (Ala. 1983)("The quiet title action is designed to 'clear up all doubts or disputes concerning [the land].' Anderson v. Moorer, 372 F.2d 747 (5th Cir. 1967)."); and United States v. Perry, 473 F.2d 643, 646 (5th Cir. 1973)("[I]t is clear that quiet title actions are intended to be as final and reliable as possible."). Thus, the trial court's judgment in the quiet-title action addressed the merits of the basis upon which Austill's complaint requested relief.

Moreover, we note that the trial court's judgment in the quiet-title action did not specify whether the dismissal was with or without prejudice. Rule 41(b), Ala. R. Civ. P., discusses the effect of involuntary dismissals and states, in relevant part:

> "Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits."

(Emphasis added.) The Court of Civil Appeals has interpreted the foregoing language to "necessarily include dismissals

under Rule 12(b)(6)." Havis v. Marshall Cty., 802 So. 2d 1101, 1103 n.2 (Ala. Civ. App. 2001).

In Baker v. City of Guntersville, 600 So. 2d 280, 282 (Ala. Civ. App. 1992), the Court of Civil Appeals reasoned that, for the purposes of applying the doctrine of res judicata, "[a] dismissal for failure to state a claim, as well as a dismissal with prejudice and a dismissal on the grounds that the facts and law show no right to relief, is a dismissal on the merits." See also Smith v. Union Bank & Trust Co., 653 So. 2d 933, 935 (Ala. 1995)("If an action is dismissed 'without prejudice,' there is no adjudication on the merits of the case; the judgment does not bar another lawsuit on the same cause of action unless the words are qualified as to certain claims. In that circumstance, the dismissal would prevent relitigation of the claims not dismissed without prejudice, i.e., the claims dismissed with prejudice. See 50 C.J.S. Judgments § 635 (1947)."); and Calhoun v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 676 So. 2d 1332, 1334 (Ala. Civ. App. 1996)("A dismissal of an action with prejudice constitutes an adjudication on the merits that bars any subsequent litigation.").

This Court has also noted that a judgment of dismissal can have preclusive effect. In Hester v. City of Birmingham, 402 So. 2d 930 (Ala. 1981), multiple plaintiffs sued the City of Birmingham in the Jefferson Circuit Court. The circuit court dismissed the action. The plaintiffs later initiated another action using a substantially similar complaint. The City of Birmingham moved to dismiss the second action based on the doctrine of res judicata, and the circuit court granted the motion to dismiss.

In affirming the circuit court's judgment, this Court reasoned:

> "Res judicata clearly bars this action, which involves identical facts, identical parties, identical subject matter, and resulted in a judgment on the merits. As the Court recently said in McGruder v. B & L Construction Co., Inc., 331 So. 2d 257 (Ala. 1976):
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> > "'It has long been the policy in the courts of Alabama to provide a claimant a day in court, but he will not be allowed to continue to relitigate his claim. The underlying principle of res judicata or estoppel by judgment is based upon public policy and necessity, because it is to the interest of the state that there should be an end to litigation, and that the individual should not be vexed twice for the same cause. Savage v. Savage, 246 Ala. 389, 20 So. 2d 784 [(1945)].

> "'The doctrine of res judicata rests upon the primary principle that matters once adjudicated are settled and determined. Irwin v. Alabama Fuel & Iron Co., 215 Ala. 328, 110 So. 566 [(1926)]; Suggs v. Alabama Power Co., 271 Ala. 168, 123 So. 2d 4 [(1960)]. Those cases are also authority for the rule that to sustain a plea of res judicata or judgment by estoppel, the parties must be the same, the subject matter the same, the point must be directly in question, and the judgment must be rendered on that point.
>
> "'All of these elements were present in the first case, McGruder [v. B & L Construction Co.], 293 Ala. 354, 303 So. 2d 103 [(1974)]. Appellant has had her day in court and the same issues were adjudicated, settled and determined, and this is dispositive of this case. We note that our cases also state that a judgment in a former action between the same parties is not only conclusive of the questions actually litigated, but [also of those] which could have been litigated in the former suit. Reid v. Singer Sewing Machine Co., 218 Ala. 498, 119 So. 229 [(1928)]; Hathcock v. Mitchell, 277 Ala. 586, 173 So. 2d 576 [(1965)].'
>
> "331 So. 2d at 259."

Hester, 402 So. 2d at 931; see also First State Bank of Altoona v. Bass, 418 So. 2d 865, 866 (Ala. 1982)(applying the holding of Hester in determining that a dismissal based on the doctrine of sovereign immunity constituted a judgment on the merits for the purposes of the doctrine of res judicata); and

Parmater v. Amcord, Inc., 699 So. 2d 1238, 1241 (Ala. 1997)("[T]his Court has also held that a dismissal with prejudice is an adjudication on the merits. ... The dismissal with prejudice concluded the rights of the parties, terminated the right of action, and precluded subsequent litigation of the same cause of action.").

In light of the foregoing, we view the trial court's dismissal of Austill's complaint in the quiet-title action as a dismissal with prejudice. As such, the trial court's judgment of dismissal constituted a judgment on the merits of the quiet-title action for res judicata purposes. Therefore, we conclude that element (1) of res judicata is satisfied in this case.

Austill also argues that Prescott fails to satisfy element (4), i.e., the requirement that "the same cause of action [be] presented in both actions," Lee L. Saad, 851 So. 2d 507 at 517. Austill argues:

> "In this case, Austill 1) did not bring the same claim, and 2) could not have feasibly brought the same [claim] of judicial redemption. Austill could not have possibly brought [a] judicial[-]redemption [claim] since he had no standing to redeem the property he never owned and thus never lost to a tax sale."

Austill's reply brief, at 22. But Prescott did not argue that Austill was precluded from claiming title to the property through judicial redemption. Indeed, as Austill points out, the record is devoid of any evidence in either the quiet-title action or the redemption action indicating that Austill possesses a right of judicial redemption.

Instead, Prescott argues that Austill is precluded from asserting the claim to title upon which Austill actually relies, i.e., an extinguishment of Prescott's right of redemption through Austill's adverse possession of the property. In other words, Prescott argues that, by asserting his argument that he has extinguished Prescott's right of redemption in the redemption action, Austill is attempting to relitigate the same dispute that was resolved in the quiet-title action. In Old Republic Insurance Co. v. Lanier, 790 So. 2d 922, 928-29 (Ala. 2000), this Court noted the following regarding the "cause-of-action" element of res judicata:

> "In Alabama '[i]t is well-settled that "the principal test for comparing causes of action [for the application of res judicata] is whether the primary right and duty or wrong are the same in each action."' Wesch v. Folsom, 6 F.3d 1465, 1471 (11th Cir. 1993)(emphasis added), cert. denied sub nom. Sinkfield v. Wesch, 510 U.S. 1046, 114 S. Ct. 696, 126 L. Ed. 2d 663 (1994). 'Res judicata applies not

> only to the exact legal theories advanced in the prior case, but to all legal theories and claims arising out of the same nucleus of operative facts.' Id. (emphasis added). 'The question is whether the same evidence substantially supports both actions. ... It is considered the same cause of action when the same evidence is applicable in both actions.' Hughes v. Martin, 533 So. 2d 188, 191 (Ala. 1988). As it is sometimes stated, '"[w]here two successive suits seek recovery for the same injury, a judgment on the merits operates as a bar to the later suit, even though a different legal theory of recovery is advanced in the second suit."' Silcox v. United Trucking Serv., Inc., 687 F.2d 848, 852 (6th Cir. 1982); Harrington v. Vandalia-Butler Bd. of Educ., 649 F.2d 434, 437 (6th Cir. 1981); see also Kale v. Combined Ins. Co. of America, 924 F.2d 1161, 1166 (1st Cir.), cert. denied, 502 U.S. 816, 112 S. Ct. 69, 116 L. Ed. 2d 44 (1991)."[8]

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[8]The dissent in case no. 1170709 points out that a quiet-title action and a redemption action are conceptually distinct proceedings authorized by different statutes. As explained above, however, whether the proceedings are distinct in form is not the test for comparing causes of action for the purposes of applying the doctrine of res judicata, or claim preclusion, in Alabama. See Garris v. South Alabama Prod. Credit Ass'n, 537 So. 2d 911, 914 (Ala. 1989)("Whether the same cause of action exists in the two suits, the fourth element of res judicata, depends on whether the issues in the two suits are the same and on whether the same evidence would support a recovery in both suits. Dominex, Inc. [v. Key], [456 So. 2d 1047 (Ala. 1984)]. See also Geer Brothers, Inc. v. Crump, 349 So. 2d 577 (Ala. 1977), Sessions v. Jack Cole Co., 276 Ala. 10, 158 So. 2d 652 (1963). Regardless of the form of the action, the issue is the same when it is supported in both actions by substantially the same evidence. If it be so supported, a judgment in one action is conclusive upon the same issue in any suit, even if the cause of action is different.").

A review of the record on appeal clearly demonstrates that the disputes between the parties presented in the redemption action and the quiet-title action are based on the same nucleus of operative facts. As noted above, while Austill's appeal was pending in the quiet-title action, he moved for a stay of proceedings in the redemption action, which Prescott agreed was warranted. In his motion, Austill asserted:

> "[Austill] would allege that, given the fact that this pending cause of action, as well as the previous case upon appeal, involve the same subject real property, issues and parties, that the Court cannot adjudicate this pending cause of action until such a time as the Court of Civil Appeals enters its decision on [Austill]'s appeal.
>
> "... [S]ince the issues upon appeal will determine whether or not [Austill] does, in fact, have the legal right to demand qui[et] title to the subject real property, as well as determine [Prescott]'s legal standing to demand judicial redemption, [Prescott]'s rights in this pending cause of action to a possible judicial redemption of the subject real property cannot be determined or ascertained until such a time as [Austill]'s legal rights to the subject real property are finally adjudicated by the Court of Civil Appeals."

(Emphasis added.)

Moreover, we note that Austill does not argue on appeal that the doctrine of res judicata, or claim preclusion, is

inapplicable because the disputes between the parties presented in the quiet-title action and the redemption action were based on a different set of facts. In the portion of his reply brief addressing Prescott's argument based on the doctrine of collateral estoppel, Austill does argue that the evidence necessary to support a claim based on his interpretation of the language reflected in the 2009 amendment to § 40-10-82 is different than the evidence necessary to support a claim under the first sentence of § 40-10-82. Put another way, Austill argues that the "theory of [his] defense [in the redemption action] is different than the allegations made in the [quiet-title action]; Austill presents [in the redemption action] completely different arguments than those presented in [the] quiet[-]title [action]." Austill's reply brief, at 7 (emphasis added). He also states: "[A]lthough Austill believes that he has used a new theory of denying redemption, he obviously admits that he denied [Prescott's right of] redemption [in both actions]." Austill's reply brief, at 19 (emphasis added).

As noted above, "'[r]es judicata applies not only to the exact legal theories advanced in the prior case, but to all

legal theories and claims arising out of the same nucleus of operative facts.' Wesch v. Folsom, 6 F.3d 1465, 1471 (11th Cir. 1993)(emphasis added)." Lanier, 790 So. 2d at 928. Both the quiet-title action and the redemption action dealt with the legal significance of the same nucleus of operative facts, i.e., Austill's purchase of the property at a tax sale, his subsequent possession of the property for a particular number of years, his acquisition of a tax deed, and Prescott's acquisition of the interests of the property's former owners.[9]

In other words, as to the quiet-title action and the redemption action "'the primary right and duty or wrong are the same in each action.'" Lanier, 790 So. 2d at 928 (quoting Wesch, 6 F.3d at 1471). As the foregoing summary of the procedural histories of the quiet-title action and the redemption action demonstrates, the dispute between Austill and Prescott has not changed from the quiet-title action to

[9]Austill does not argue on appeal that Prescott's request to judicially redeem the property was a compulsory counterclaim that Prescott was barred by the doctrines of res judicata or collateral estoppel from asserting in the redemption action. Therefore, we do not consider that question here. Ex parte Professional Bus. Owners Ass'n Workers' Comp. Fund, 867 So. 2d 1099, 1101 (Ala. 2003)("Generally, an appellate court is limited to considering only those issues raised on appeal.").

the redemption action. In the redemption action, each party relies, in large part, upon the same authority in support of his respective position regarding whether Austill had extinguished Prescott's right of redemption as he did in the quiet-title action. Among other cases, the parties still cite Southside, Reese, Buzzelli, Karagan, Hand, O'Connor, and McGuire in their appellate briefs. The only material element that differs between the actions is Austill's relatively newfound argument regarding the effect of the language added to § 40-10-82 by the 2009 amendment.

In his reply brief, Austill spends several pages arguing that he could not have properly raised the significance of the 2009 amendment to § 40-10-82 in the quiet-title action. As noted above, however, Austill did, in fact, raise that argument in the quiet-title action, albeit perhaps too late. In this appeal, Austill argues that the 2009 amendment to § 40-10-82, specifically the last sentence,

> "means that a tax purchaser may cut off the original owner's redemptive rights three years after the tax investor's possession of the property. ... Since ... § 40-10-74 gives a tax investor the right to possess the property as soon as the tax lien is purchased, the legislature intended the tax investor to be able to cut off redemptive rights three years after the tax investor bought the lien."

Austill's brief, at 26.

In the reply brief he filed in the Court of Civil Appeals in the quiet-title action, Austill argued:

> "Purchasers are entitled to possession immediately upon their receipt of a tax purchaser certificate. ... § 40-10-74. ...
>
> "As a result of the 2009 [a]mendment to § 40-10-82, ... it appears clear and inarguable that a purchaser who takes possession immediately upon receipt of a tax purchase certificate, effectively cuts off all judicial redemption rights after three years of continued possession."

A simple comparison of Austill's arguments in each appeal reveals that the claim to title Austill asserts in the redemption action based on the amended language of § 40-10-82 is the same claim to title he asserted in his reply brief to the Court of Civil Appeals in the quiet-title action.

In it no-opinion affirmance of the trial court's judgment in the quiet-title action, the Court of Civil Appeals cited, among other cases, Meigs v. Estate of Mobley, 134 So. 3d 878, 889 n.6 (Ala. Civ. App. 2013), in which it stated: "Arguments not raised in the appellant's initial brief are deemed waived; arguments made for the first time in the reply brief are not addressed by the appellate courts. Huntley v. Regions Bank, 807 So. 2d 512, 516 n.2 (Ala. 2001)." The Court of Civil

Appeals' citation to Meigs apparently indicated that the Court of Civil Appeals declined to consider Austill's argument because it was untimely asserted for the first time in his reply brief.

With the assistance of a new attorney, Austill petitioned this Court to consider the language of the 2009 amendment to § 40-10-82 as a purportedly material question of first impression in the quiet-title action. In his petition, Austill asserted:

> "The material question of first impression [Austill] is asking the Supreme Court to determine is the proper interpretation of § 40-10-82 .... That Code section was amended in 2009 ....
>
> "[Austill] claims that the amended language clearly means that a tax purchaser may quiet title to property after he has adversely possessed the property for three years from the time he was entitled to possession. § 40-10-74 ... gives a tax purchaser the right to immediate possession upon purchase of the property. Because the tax purchaser is entitled to possession upon purchase and because § 40-10-82 ... allows a tax purchaser to cut short the original owner's right to redeem three years after the purchaser is entitled to possession, then through simple syllogistic logic, the tax purchaser can cut short the original owner's right to redeem three years after the tax purchaser purchased the property if he has adversely possessed said property."

(Emphasis added.) We denied Austill's petition in 2017 while the redemption action was pending in the trial court.

The proper application of § 40-10-82 both was the focus of the quiet-title action and is the focus the redemption action, and Austill's interpretation of § 40-10-82 forms the basis for his claim to title in both actions. The language of the 2009 amendment to § 40-10-82 has been in effect throughout the entirety of each action. Because Austill addressed the 2009 amendment to § 40-10-82 on appeal in the quiet-title action, it is clear that he could have done so in the trial court. Indeed, even Austill notes that his former attorney "never even referenced the amended language of [§ 40-10-82] before th[e] last-gasp appellate brief." Austill's reply brief, at 38. The fact that Austill has raised the language of the 2009 amendment to § 40-10-82 in both actions further demonstrates that, for the purposes of applying the doctrine of res judicata, the same cause of action was presented in each action.

To the extent that the matter was not fully litigated by the Court of Civil Appeals, we note:

> "The doctrine of res judicata or claim preclusion applies to quiet title actions. A

> judgment in an action to quiet title bars subsequent litigation on the same cause of action between the same parties or their privies, and is final and conclusive not only as to all issues actually involved and determined, but also as to such matters as should have been litigated and determined, cutting off all claims or defenses of the losing party going to show title in that party, from whatever source derived, and which existed at the time of the suit, whether or not pleaded therein."

50 C.J.S. Judgments § 1189 (2009)(emphasis added; footnotes omitted).

In light of the foregoing, we conclude that, for the purposes of the doctrine of res judicata, the same cause of action was presented in both the quiet-title action and the redemption action. Therefore, all the elements of res judicata, or claim preclusion, are satisfied in this case. Although the trial court's judgment permitting Prescott to redeem the property was not based on the doctrine of res judicata, subject to certain constraints not applicable here,[10] "[t]his Court may affirm a trial court's judgment on 'any

[10]This Court will not affirm a trial court's judgment when "due-process constraints require some notice at the trial level, which was omitted, of the basis that would otherwise support an affirmance, such as when a totally omitted affirmative defense might, if available for consideration, suffice to affirm a judgment ...." Liberty Nat'l Ins. Co. v. University of Alabama Health Servs. Found., 881 So. 2d 1013, 1020 (Ala. 2003).

valid legal ground presented by the record, regardless of whether that ground was considered, or even if it was rejected, by the trial court.'" General Motors Corp. v. Stokes Chevrolet, Inc., 885 So. 2d 119, 124 (Ala. 2003)(quoting Liberty Nat'l Life Ins. Co. v. University of Alabama Health Servs. Found., 881 So. 2d 1013, 1020 (Ala. 2003)). We therefore affirm the portion of the trial court's judgment permitting Prescott to redeem the property. Because we affirm the trial court's judgment based on the doctrine of res judicata, or claim preclusion, we pretermit consideration of Prescott's alternative arguments for affirmance. See City of Birmingham v. Orbitz, LLC, 93 So. 3d 932, 937 (Ala. 2012).[11]

[11]In his special writing concurring in the result, Justice Mitchell expresses concern over our application of the doctrine of res judicata, or, as Justice Mitchell refers to it in his writing, claim preclusion, in this case because it was asserted by Prescott, i.e., the plaintiff in the redemption action. Our doing so under such circumstances, however, is not "unprecedented" in Alabama. ___ So. 3d at ____. This Court and the Court of Civil Appeals have previously applied the doctrine of res judicata when a defendant or defendants seek to relitigate a purported interest in real property that has already been resolved in an earlier action. See Shealy v. Golden, 959 So. 2d 1098, 1104 (Ala. 2006)("Because that claim was dismissed with prejudice, Golden cannot now attempt to recover on that claim, albeit as the defendant in a redemption action filed against him, regardless of his success in his initial prosecution of the claim. The doctrine of res judicata prevents it."); Gatlin v. Joiner, 31 So. 3d 126, 133-

II. Prescott's Cross-Appeal (no. 1170730)

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34 (Ala. Civ. App. 2009)(applying the doctrine of res judicata when asserted by the plaintiff in a trespass action to bar the defendants from relitigating their purported interests in a portion of the property based on a theory that could have been adjudicated in a prior boundary-line action); and Williams v. Moore, 36 So. 3d 533, 540-41 (Ala. Civ. App. 2008)(applying the doctrine of res judicata when asserted by the plaintiffs in a quiet-title action to bar the defendant from asserting a claim to title to the property that was decided adverse to the defendant in an earlier action).

Justice Mitchell appears to be particularly concerned with what he calls "offensive claim preclusion." ___ So. 3d at ____. He cites the Supreme Court of Ohio's decision in O'Nesti v. DeBartolo Realty Corp., 113 Ohio St. 3d 59, 63, 862 N.E.2d 803, 807 (2007), for the proposition that "[o]ffensive claim preclusion involves a situation in which a plaintiff seeks to bar a defendant from raising any new defenses." In this case, however, Prescott does not seek to bar Austill from raising "any new defenses" in the redemption action. Therefore, we need not decide whether Austill is precluded from doing so. See Ex parte Professional Bus. Owners Ass'n Workers' Comp. Fund, 867 So. 2d at 1101 ("Generally, an appellate court is limited to considering only those issues raised on appeal."). Instead, Prescott argues that Austill is procedurally barred from relitigating the same purported interest in the property that was already resolved against Austill in the quiet-title action. Therefore, because Austill's attempt to relitigate his interest in the property in the redemption action presents the same dispute between the parties, i.e., the same cause of action, that was presented in the quiet-title action for the purposes of applying the doctrine of res judicata, the trial court's judgment is due to be affirmed.

We now turn to Prescott's cross-appeal, in which he challenges the portion of the trial court's judgment denying his motion for an award of attorney fees under the ALAA. He argues: "[Austill]'s defense is groundless in law because he knew, but ignored, the effect of the judgment in the quiet[-] title [action] at the time he tendered the adverse possession defense in th[e redemption action]." Prescott's brief, at 21-22.

> "Section 12-19-272(a), Ala. Code 1975, a part of the [ALAA], provides:
>
> > "'Except as otherwise provided in this article, in any civil action commenced or appealed in any court of record in this state, the court shall award, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorneys' fees and costs against any attorney or party, or both, who has brought a civil action, or asserted a claim therein, or interposed a defense, that a court determines to be without substantial justification, either in whole or part....'
>
> "The ALAA defines the phrase 'without substantial justification' to include an 'action, claim, defense or appeal (including any motion) [that] is frivolous, groundless in fact or in law, or vexatious, or interposed for any improper purpose, including without limitation, to cause unnecessary delay or needless increase in the cost of litigation, as determined by the court.' § 12-19-271(1), Ala. Code 1975.

> "....
>
> "... [T]he ALAA states that the award of costs and attorney fees is within the sound discretion of the trial court. § 12-19-273, Ala. Code 1975.
>
> "... Thus, the trial court's determination of the issue whether the claim was 'without substantial justification' 'will not be disturbed on appeal "unless it is clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence."' Morrow [v. Gibson], 827 So. 2d [756,] 762 [(Ala. 2002)(quoting Pacific Enters. Oil Co. (USA) v. Howell Petroleum Corp., 614 So. 2d 409, 418 (Ala. 1993)]."

Shealy v. Golden, 959 So. 2d 1098, 1104-05 (Ala. 2006).

In this case, we conclude that the trial court did not exceed its discretion in denying Prescott's motion for an award of attorney fees. Although, for res judicata purposes, the same cause of action was present in both the quiet-title action and the redemption action, the judge who presided over the redemption action did not participate in the quiet-title action. See id. at 1105. Moreover, although Austill's attorney in the redemption action assisted Austill with his certiorari petition to this Court in the quiet-title action and, therefore, had knowledge of the final disposition of the quiet-title action, the record in this appeal indicates that Austill's attorney displayed candor to the trial court

regarding the unsuccessful outcome of the quiet-title action. In the answer the attorney filed on Austill's behalf after this Court had denied his certiorari petition in the quiet-title action, Austill's attorney stated:

> "The Court of Civil Appeals denied [Austill]'s appeal without decision; [Austill] then filed for reconsideration which was denied, and then filed a petition for certiorari. All of these efforts failed. It must be noted, however, [Austill] does not know on what grounds [his] efforts failed since all [appellate] decisions were without opinion.
>
> "Despite these failures, [Austill] believes that the law is so clear that he must present his good-faith argument herein that the time for redemption has already run. [Austill] thus makes this good-faith argument in defense of [Prescott]'s complaint for redemption with full acknowledgment that the Supreme Court of Alabama denied [Austill]'s petition for certiorari and thus confirmed the Court of Civil Appeal[s'] affirmation of the lower court's dismissal of [Austill]'s previous case. Nonetheless, [Austill] believes this argument is so plain[] and obvious that it is rightful for him to raise it again in good faith."

(Emphasis added.)

As we explained in Lee L. Saad, 851 So. 2d at 516-17, res judicata is a judicially developed doctrine that is based on public-policy considerations. As Austill points out on appeal, the trial court denied Prescott's renewed summary-judgment motion, in which Prescott asserted the doctrine of

res judicata as a basis for permitting him to redeem the property, and the trial court's judgment ultimately granting Prescott that relief was not based on res judicata. Although we conclude that the doctrine bars Austill from relitigating the issue raised in this appeal, we cannot conclude that the trial court exceeded its discretion in determining that Austill did not assert his argument in the redemption action without substantial justification, especially in light of Austill's candor to the trial court regarding the effect and disposition of the quiet-title action and his request that he be permitted to assert the argument in "good faith." The portion of the trial court's judgment denying Prescott's motion for an award of attorney fees under the ALAA is, therefore, affirmed.

1170709 -- AFFIRMED.

Shaw, J., concurs.

Parker, C.J., and Bolin and Mitchell, JJ., concur in the result.

Sellers, Mendheim, and Stewart, JJ., dissent.

1170730 -- AFFIRMED.

Shaw, J., concurs.

Parker, C.J., and Bolin, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur in the result.

MITCHELL, Justice (concurring in the result in case no. 1170709).

I concur in the result only. I write separately to address 1) the main opinion's preclusion analysis and 2) the dissent's analysis of the merits.

I. Austill's Defense is Barred by Issue Preclusion

I agree with the main opinion's conclusion that Jere Austill III is precluded from relitigating whether he has met the requirements under § 40-10-82, Ala. Code 1975, as amended in 2009 ("the amended short statute"),[12] to extinguish Tyler Montana Jul Prescott's right under § 40-10-83, Ala. Code 1975 ("the judicial-redemption statute"), to redeem the real property at issue ("the property"). The main opinion, however, decides this case on the basis of claim preclusion. I do not believe that claim preclusion applies here. Instead,

[12]The phrase "short statute" comes from this Court's past characterizations of § 40-10-82 as a "short statute of limitations." See, e.g., Gulf Land Co. v. Buzzelli, 501 So. 2d 1211, 1213 (Ala. 1987). This writing refers to all versions of § 40-10-82 enacted before the 2009 amendment as "the short statute."

I would affirm the trial court's judgment based on a straightforward application of issue preclusion.[13]

This Court has long recognized the principle that a final judgment in one case may have preclusive effects in subsequent litigation. These effects can generally be classified as either "claim preclusion" or "issue preclusion." These doctrines prevent the relitigation of matters that have been previously adjudicated, serve to instill confidence in the courts, and promote judicial economy, repose of litigants, and the finality of judgments.[14] Lee L. Saad Constr. Co. v. DPF Architects, 851 So. 2d 507, 516 (Ala. 2002); Ex parte Smith, 683 So. 2d 431, 436 (Ala. 1996); Hughes v. Martin, 533 So. 2d 188, 190 (Ala. 1988); Federated Dep't Stores v. Moitie, 452 U.S. 394, 401 (1981).

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[13]Though our preclusion doctrines are long-established, this Court has sometimes used different terminology to describe them. The main opinion uses the term "res judicata" as synonymous with claim preclusion and the term "collateral estoppel" as synonymous with issue preclusion. This Court has previously described claim preclusion and issue preclusion as subsets of "res judicata." See, e.g., Marshall Cty. Concerned Citizens v. City of Guntersville, 598 So. 2d 1331, 1332 (Ala. 1992). In the interest of clarity, I use the terms "claim preclusion" and "issue preclusion" in this special writing.

[14]Claim preclusion also applies to claims that could have been litigated in a prior action. See Lee L. Saad Construction, 851 So. 2d at 516.

As their names suggest, claim preclusion and issue preclusion have different preclusive scopes and effects. Claim preclusion prevents the relitigation of claims. For instance, if Party A sues Party B alleging negligence involving a vehicle collision, and the court finds insufficient evidence of Party B's liability, Party A may not subsequently sue Party B alleging negligence or any other claim arising out of the same vehicle collision. If Party A attempted to sue Party B again on those claims, Party B could prevail by pleading and establishing the affirmative defense of claim preclusion. Issue preclusion, on the other hand, prevents the relitigation of issues. For instance, if it is determined during the original litigation between Party A and Party B that Party A was not legally intoxicated at the time of the collision, and Party A's sobriety at the time of the collision is at issue in a future case brought by Party B against Party A, Party B may be able to proceed with his claims against Party A, but he should not be able to relitigate the issue of Party A's intoxication at the time of the collision.

In this case, Prescott argues that Austill's defense under the amended short statute was already litigated in Austill's prior action to quiet title ("the quiet-title action") and that the doctrines of claim preclusion and issue preclusion bar the relitigation of that matter.[15] Under Alabama law, a party may establish claim preclusion by showing: (1) a prior judgment on the merits; (2) rendered by a court of competent jurisdiction; (3) with substantial identity of the parties; and (4) with the same cause of action presented in both actions. Equity Res. Mgmt., Inc. v. Vinson, 723 So. 2d 634, 636 (Ala. 1998). A party may establish issue preclusion by showing: (1) that an issue in a prior action was identical to the issue being 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

[15]Prescott also contends that Austill's amended-short-statute defense is barred by the law-of-the-case doctrine, which "[g]enerally ... provides that when a court decides upon a rule of law, that rule should continue to govern the same issues in subsequent stages in the same case." Ex parte Discount Foods, Inc., 789 So. 2d 842, 846 n.4 (Ala. 2001). But the law-of-the-case doctrine does not require the law of one case to apply in a different case. Therefore, the law-of-the-case doctrine is inapplicable here.

two actions. Smith v. Union Bank & Trust Co., 653 So. 2d 933, 934 (Ala. 1995). To determine whether either doctrine applies here, we must review what was actually litigated and adjudged in the quiet-title action.

The judgment in the quiet-title action was issued in response to a Rule 12(b)(6), Ala. R. Civ. P., motion. Accordingly, our review of what was actually decided in the quiet-title action is informed by the allegations pleaded in the operative complaint, the legal issues raised in Prescott's Rule 12(b)(6) motion, and the substance of the Baldwin Circuit Court's order granting Prescott's motion to dismiss. Austill initiated the quiet-title action on December 29, 2015. In his amended complaint, Austill alleged that he had been in open and notorious possession of the property since May 15, 2012, when he purchased the property at a tax sale, and that he had received a tax deed on June 10, 2015. Austill named several defendants, including Prescott, and invoked the amended short statute, claiming that his three years of adverse possession cut off the rights of all others who might claim an interest in the property. Austill also attached his tax deed to the amended complaint.

In seeking to dismiss Austill's complaint, Prescott argued that the quiet-title action was premature because, he said, Austill had not adversely possessed the property "for a period of three years after becoming entitled to a tax deed," and, therefore, "various parties still [had] the right to redeem the [p]roperty from the tax sale." In support of his motion, Prescott relied on, among other cases, Gulf Land Co. v. Buzzelli, 501 So. 2d 1211 (Ala. 1987), which held that the limitations period set forth in the amended short statute did not begin to run until the tax purchaser was entitled to demand a deed for the property. Although Prescott asserted in his motion to dismiss that Austill had not extinguished his judicial-redemption right, his motion did not depend on the existence of that right. In fact, Prescott presented no evidence tending to show that judicial redemption was available to him.[16] In granting Prescott's motion to dismiss, the Baldwin Circuit Court expressly relied on Buzzelli. Following the dismissal of the quiet-title action, Prescott

[16]Even if Prescott had submitted such evidence, the Baldwin Circuit Court could not have considered it in ruling on Prescott's motion to dismiss.

initiated this action, seeking judicial redemption of the property pursuant to the judicial-redemption statute.

The main opinion seeks to decide this case by applying a version of claim preclusion that I believe may cause confusion in future cases. The main opinion is correct that claim preclusion requires the same cause of action to be presented in both actions. The main opinion is also correct that claim preclusion bars more than just "exact legal theories advanced in the prior case." __ So. 3d at __ (internal quotation marks and emphasis omitted). Indeed, claim preclusion can bar claims that were not raised but that arise out of the same nucleus of operative facts addressed in prior litigation. In this case, however, Austill has not brought a claim. Despite the absence of a claim by Austill, the main opinion concludes that the quiet-title action and this action involve the same cause of action because they are based on the "same evidence" and the "primary right and duty or wrong are the same in each action." __ So. 3d at __ (internal quotation marks and emphasis omitted). I disagree.

The court in the quiet-title action did not adjudicate a judicial-redemption claim by Prescott. Instead, the court

adjudicated Austill's claim to quiet title against the defendants Austill identified as having an interest in the property. The court concluded that, based on the allegations in Austill's complaint, he had not extinguished all rights of the defendants under the amended short statute. No other finding was necessary to the trial court's decision in the quiet-title action.

The main opinion maintains that the quiet-title action and this action are based on the same evidence. I note, however, that no evidence (other than the tax deed attached to Austill's complaint) could have been considered in deciding whether to dismiss Austill's quiet-title claim. Judgment for a claimant on a judicial-redemption claim would likely require additional evidence pertaining to the claimant's ownership. In particular, under the judicial-redemption statute, judgment may not be entered for a claimant seeking judicial redemption until 1) the court calculates various sums the claimant owes and 2) the claimant pays those sums. No evidence concerning such payments was before the trial court in the quiet-title action. Thus, while the quiet-title action and this action involve overlapping issues of fact and law, the claims in the

two actions are distinct and necessitate different bodies of evidence. Accordingly, the claim-preclusion doctrine should not apply.

The application of claim preclusion by the main opinion stands out for other reasons as well. Although claim preclusion is typically used as a shield by a defendant against a claim that has already or could have already been litigated in a prior action, see, e.g., Restatement (Second) of Judgments §§ 17-20 (1982), the main opinion permits claim preclusion to be used by Prescott as a sword. This offensive application of claim preclusion is disfavored by courts in other jurisdictions and appears to be unprecedented in this Court.[17] See St. Paul Mercury Ins. Co. v. Williamson, 224 F.3d

[17]The main opinion challenges this observation by citing Shealy v. Golden, 959 So. 2d 1098 (Ala. 2006). __ So. 3d at __ n.11. But Shealy did not apply offensive claim preclusion. In that case, a redemptioner challenged a trial court's inclusion of costs associated with a promissory-note deficiency in the total redemption price. In previous litigation, a court had dismissed with prejudice a breach-of-contract claim by the promissory-note holder for money owed on the note. This Court thus held that the note holder was precluded from attempting "to recover on that claim, albeit as the defendant in a redemption action filed against him." 939 So. 2d at 1104. Thus, despite the fact that the note holder was a defendant in Shealy, the Court's application of claim preclusion could hardly be classified as "offensive." Indeed, the note holder's claim to an increased redemption price, for which he

425, 439 (5th Cir. 2000)(noting that claim preclusion "is typically a defensive doctrine" and rejecting plaintiff insurance company's attempt to use state court's finding that defendant insured, as plaintiff in state-court case, had fraudulently staged an accident, as precluding a defense to insurance company's claim of malicious prosecution in federal court). See also Stone v. Department of Aviation, 296 F. Supp. 2d 1243, 1249 (D. Colo. 2003), rev'd on other grounds, 453 F.3d 1271 (10th Cir. 2006) ("As a general rule, courts will not apply the doctrine of [claim preclusion] offensively."); O'Nesti v. DeBartolo Realty Corp., 113 Ohio St. 3d 59, 64, 862 N.E.2d 803, 808 (2007) ("[T]he use of offensive claim preclusion is generally disfavored ...."); Suryan v. CSE Mortg., L.L.C., No. 0452, Aug. 25, 2017(Md. Ct. Spec. App. 2017)(not reported in A.3d)("Maryland has not recognized the offensive use of [claim preclusion], and in those jurisdictions where its use has been attempted, it

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was required to put forth evidence of a promissory-note deficiency, see id. at 1103, was functionally a counterclaim seeking compensation for breach of contract. That is why the Court characterized the note holder as attempting to "recover on [a] claim." Id. at 1104. Because that claim had already been adjudicated, this Court held it was barred by the doctrine of claim preclusion and accordingly reduced the redemption price entered by the trial court.

generally has been rejected."). In the rare cases in which courts have permitted offensive claim preclusion, the preclusion has been based on judgments that the claimants won as claimants in a prior action. See, e.g., Presidential Bank, FSB v. 1733 27th St. Se. LLC, 318 F. Supp. 3d 61, 70-79 (D.D.C. 2018) (applying claim preclusion to strike 11 of defendants' 12 affirmative defenses based on confessed judgment that plaintiff had obtained against defendants in prior action); Koval v. Henry Kirkland Contractors, Inc., No. 01-06-00067-CV, Feb. 15, 2008 (Tex. App. 2008) (not reported in S.W.3d)(holding that bankruptcy court's judgment that plaintiff had valid lien against defendant's property prevented same defendant from litigating same plaintiff's request to certify the judgment in state probate court); Bedgood v. Cleland, 554 F. Supp. 513, 518 (D. Minn. 1982) (permitting plaintiffs who were part of a national class action to file a separate action in their home state requesting enforcement of the ruling in the national class action under claim-preclusion principles, as opposed to forcing them to travel to the state where the national class-action proceedings occurred). I am not aware of any instance

in which a court has permitted a successful defense in one action to be parlayed into a cause of action in another case against which the prior plaintiff is estopped from waging a defense. Yet the main opinion appears to sanction such a practice.

The main opinion's approach is unnecessary because Prescott is due to prevail under a straightforward application of issue preclusion. First, the question of whether Austill has adversely possessed the property for long enough under the amended short statute to extinguish the rights of other parties -- which was litigated in the quiet-title action -- is identical to the issue that Austill asks us to resolve in this appeal. Second, as evident from the parties' briefing on Prescott's motion to dismiss in the quiet-title action and the Baldwin Circuit Court's subsequent order, this issue was actually litigated and decided in the quiet-title action.[18] Third, the Baldwin Circuit Court's dismissal of Austill's quiet-title claim appears to have been based solely on Prescott's invocation of Buzzelli and related cases, thus

[18]A dismissal for failure to state a claim may qualify as a judgment on the merits for issue-preclusion purposes. See Restatement (Second) of Judgments § 27 cmt. d (1982).

indicating that the circuit court's determination on this issue was dispositive for purposes of its judgment. Finally, both Austill and Prescott were parties to the quiet-title action. All elements of issue preclusion are satisfied here, and the main opinion does not contend that issue preclusion is inappropriate. Because issue preclusion applies to the only issue Austill now raises on appeal, the application of issue preclusion would dispose of this appeal in favor of Prescott.[19]

Although my disagreement with the main opinion may seem semantic, I am concerned that the main opinion erroneously and needlessly decides this case based on claim preclusion, a doctrine that is understood to sweep more broadly than issue

[19]Austill's main argument in support of his contention that issue preclusion does not apply is that, in the quiet-title action, he relied only on a portion of the amended short statute that existed before the 2009 amendment. In this case, his defense is based upon the new language in the amended short statute. Therefore, says Austill, the issues being litigated are not identical. But the amended short statute reads exactly the same now as it did when the Baldwin Circuit Court determined in the quiet-title action that Austill had not possessed the property long enough to cut off the rights of other potential claimants. The mere fact that Austill did not press every possible theory of statutory interpretation available to him at the time does not deprive Prescott of his issue-preclusion argument. If it did, issue preclusion would essentially cease to exist -- any particular issue could be litigated in perpetuity until the parties expended every possible theory.

preclusion. See O'Nesti, 113 Ohio St. 3d at 63, 862 N.E.2d at 807 ("Offensive claim preclusion involves a situation in which a plaintiff seeks to bar a defendant from raising any new defenses ...."(emphasis added)).[20] It is also difficult to predict what effects this new application of claim preclusion would have in future cases. Traditional principles of issue preclusion neatly dispose of this case, and I believe we should affirm the trial court's judgment on that basis.

II. The Amended Short Statute and Judicial Redemption

The dissent, having found no procedural hurdles to reaching the merits of this case, would conclude that Austill's three years of adverse possession extinguished Prescott's judicial-redemption right. As explained above, I

[20]The main opinion attempts to distinguish its application of claim preclusion from the type of claim preclusion in O'Nesti by claiming that "Prescott does not seek to bar Austill from rasing 'any new defenses.'" __ So. 3d at ___ n.11. But that is precisely what Prescott attempts to do by asserting claim preclusion, which, in the disfavored offensive context, bars defenses that were raised or that could have been raised in prior litigation. If, as the main opinion asserts, the same claim that was litigated in the quiet-title action is being litigated in the judicial-redemption action, any pertinent defense could have also been litigated in the quiet-title action. The result is that all defenses are barred. See O'Nesti, 113 Ohio St. 3d at 61, 862 N.E.2d at 806 ("The thrust of [plaintiffs'] argument is that [defendant] is barred by claim preclusion from raising any defenses.").

believe a determination based on the merits is barred by issue preclusion. Nevertheless, I address the dissent's discussion of the merits here and offer what I believe is the correct reading of the amended short statute.

A. Statutory Texts

A resolution of this case on the merits would first require us to examine the texts of the amended short statute and the judicial-redemption statute. The amended short statute provides, in relevant 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.) The emphasized portion of the amended short statute was added by the legislature in 2009. The remaining language has, with the exception of the removal of a comma, stood unchanged since 1887. See Ala. Code of 1887, § 606.

The judicial-redemption statute provides, in relevant part:

> "When the action is against the person for whom the taxes were assessed or the owner of the land at the time of the sale ... the court shall, on motion of the defendant made at any time before the trial of the action, ascertain [the amount of money owed by the owner of the land to the tax purchaser]. Upon such determination the court shall enter judgment for the amount so ascertained in favor of the plaintiff against the defendant, and the judgment shall be a lien on the land sued for. Upon the payment into court of the amount of the judgment and costs, the court shall enter judgment for the defendant for the land, and all title and interest in the land shall by such judgment be divested out of the owner of the tax deed."

The relevant portions of the judicial-redemption statute have not changed substantively since its first codification in 1907. See Ala. Code of 1907, § 2312.

In this case, Prescott has sued for title under the judicial-redemption statute. Austill contends that the amended short statute requires us to conclude that his three years of adverse possession extinguished any right Prescott might have had to judicial redemption.

B. Statutory Histories

The short statute was first codified in 1876.[21] The "action[s] for [] recovery" contemplated by the short statute, though not expressly stated in the statute, were initially limited to challenges by a landowner to the validity of a tax sale and actions by a tax purchaser for the ejectment of delinquent owners in possession of the purchased property. See, e.g., Jones v. Randle, 68 Ala. 258, 260 (1880) ("The intention [of the short statute] was to prescribe a short limitation for testing the validity of [tax] sales, thereby encouraging purchasers, and forcing an early determination of their legality."). This Court explained as much in Pugh v. Youngblood, 69 Ala. 296, 299 (1881):

> "By the common law a purchaser at tax sale ... was bound to prove a strict compliance with [tax-sale legal requirements] ... or he could not recover the lands, and lost the sum he had bid and paid. The consequence was, that it was but seldom such titles could be supported, and they became almost, if not quite valueless. ... Therefore, the legislature deemed it wise to declare ... not that the recitals of the [tax deed] should be conclusive, but that they should be prima facie evidence of the facts recited -- of the regularity of all proceedings.

[21]When first codified, the short statute read: "No action for the recovery of real property for the non-payment of taxes shall lie, unless the same be brought within five years after the date of the sale thereof ...." Ala. Code of 1876, § 464.

> "... To give repose to all such titles, however irregular may have been the sales, when accompanied by possession; or if not accompanied by possession, to quiet all litigation springing from them within a limited, defined period .... If for that period the purchaser or his assignee permits the owner to remain in possession, claiming title, ... the statute intervenes and bars his right of recovery; and if the owner permits the purchaser for that period to remain in possession, claiming title, ... the statute protects the possession."

The short statute did not originally contemplate an action under the judicial-redemption statute, because the judicial-redemption statute did not come into existence until 1907 and was not recognized as giving rise to an independent cause of action until 1921.

When the judicial-redemption statute was first codified, tax-delinquent property owners already enjoyed, as they do now, a period during which they could administratively redeem property sold to tax purchasers. See Ala. Code of 1887, § 592; Ala. Code of 1907, § 2296; Ala. Code 1975, § 40-10-29. In Green v. Stephens, this Court recognized that the judicial-redemption statute created yet another avenue of redemption. 198 Ala. 325, 326, 73 So. 532, 533 (1916)(noting that the judicial-redemption statute "arms the owner whose land has been sold for taxes with a right of redemption in addition to

and different from that previously extended to defaulting taxpayers"). And although the text of the judicial-redemption statute contemplates that the delinquent property owner's redemptive action be exercised as a defense after the owner is sued for possession, this Court held in Georgia Loan & Trust Co. v. Washington Realty Co., 205 Ala. 288, 289, 87 So. 794, 795 (1921), that "[t]he law does not require the owner ... in possession ... to wait for the purchaser to file ejectment suit in order to put [the judicial-redemption statute] into operation." See also Karagan v. Bryan, 516 So. 2d 599, 600 (Ala. 1987) ("Although the [judicial-redemption statute] speaks only in terms of the original owner raising redemption as a defensive matter in an action brought by the tax purchaser, this Court has held that an owner in possession need not wait to be sued, but may bring an original bill to quiet title."). Thus, Alabama has recognized judicial redemption as a cause of action for landowners for nearly a century.

For most of this time, the short statute had no effect on actions brought under the judicial-redemption statute. That is because the "action[s] for ... recovery" referenced in the

short statute did not include actions for judicial redemption. This exclusion of judicial redemption from the short statute was consistent with the way the Court interpreted the judicial-redemption statute in at least two ways. First, as the dissent recognizes, this Court extended the judicial-redemption right only to landowners in possession of subject property. See, e.g., Bobo v. Edwards Realty Co., 250 Ala. 344, 346, 34 So. 2d 165, 167 (1947) ("[T]o enforce a redemption [pursuant to the judicial-redemption statute], the owner ... must have remained in some sort of actual or constructive possession of the land since the tax sale."). There was a certain logic to this requirement. The judicial-redemption statute had been adopted as a defense to ejectment actions by tax purchasers. Presumably no ejectment action would be necessary if the owner had surrendered possession. Because judicial redemption was an option only for owners in possession, there was no "recovery of real estate" to be had under the short statute.

Second, owners in possession were under no time constraints to exercise their judicial-redemption rights. See, e.g., Tensaw Land & Timber Co. v. Rivers, 244 Ala. 657, 659,

15 So. 2d 411, 413 (1943) ("The purpose of [the judicial-redemption statute] was to save an owner of land sold for its taxes the right to redeem it without limit of time provided he has such possession of it, as may be sufficient for that purpose."). Because owners in possession were the only class of owners eligible to exercise judicial-redemption rights and had no time limit for doing so, the short statute's limitation period had no application to actions for judicial redemption.

In O'Connor v. Rabren, 373 So. 2d 302 (Ala. 1979), this Court began to connect the short statute and the judicial-redemption statute. In O'Connor, delinquent landowners attempted to recover their property from a tax purchaser through judicial redemption. Consistent with precedent, the Court held that the landowners could not judicially redeem because they were not in possession. In doing so, however, the Court noted in dicta that the short statute "operates to bar redemption rights under [the judicial-redemption statute]." 373 So. 2d at 307. The Court did not elaborate on how a time-bar on judicial-redemption rights could be harmonized with the rule that owners in possession had an unlimited time to exercise such rights. Moreover, this

statement appears to have been irrelevant to the Court's holding. Nevertheless, this linkage between the short statute and the judicial-redemption statute set the stage for further precedential development.

The possession requirement for judicial redemption survived this initial linkage but was eventually eliminated. In cases such as Hand v. Stanard, 392 So. 2d 1157, 1160 (Ala. 1980), and Stallworth v. First National Bank of Mobile, 432 So. 2d 1222, 1224 (Ala. 1983), this Court appears to have used the limitations period set out in the short statute as a means of determining when a tax purchaser had cut off the possession required for judicial redemption. But in Gulf Land Co. v. Buzzelli, 501 So. 2d 1211, 1213 (Ala. 1987), this Court held that an owner not in possession of the subject property could recover under the judicial-redemption statute. This was true even if the tax purchaser had been in adverse possession of the property, provided that the limitations period in the short statute had not run. See id. Shortly afterwards, in Karagan, the Court stated the rule more succinctly: "[T]he question of whether [an owner is] in possession at the time he

file[s] suit is immaterial under the rule of [Buzzelli] ...." 516 So. 2d at 601 (emphasis added).

This Buzzelli/Karagan rule continued essentially intact up to the enactment of the amended short statute. In 2000, the Court of Civil Appeals noted that Buzzelli's extension of the right of judicial redemption to owners not in possession displaced cases like O'Connor, which ostensibly barred such actions. See McGuire v. Rogers, 794 So. 2d 1131, 1136 (Ala. Civ. App. 2000). The last word of this Court before the enactment of the amended short statute came in Southside Community Development Corp. v. White, 10 So. 3d 990 (Ala. 2008). In Southside, a tax purchaser claimed that an original owner's lack of possession prevented the owner from filing an action for judicial redemption. The Court cited Buzzelli in observing that lack of possession did not categorically bar an owner's action for judicial redemption. Id. at 992. Southside was decided on December 5, 2008. Less than six months later, on May 14, 2009, the amended short statute was enacted; it became effective September 1, 2009. The amended short statute reenacted the entire text of the short statute and added some language. In relevant part, the reenacted

language reads: "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 ...."

C. Statutory Analysis

In cases of statutory interpretation, we are guided first and foremost by the text of the statute. See IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992) ("Words in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says."). Relatedly, "[s]tatutes are to be considered as a whole, and every word given effect if possible." Ex parte Beshears, 669 So. 2d 148, 150 (Ala. 1995). And when the legislature reenacts a statute or a portion of a statute that we have already interpreted, canons of statutory construction, as well as our long-established caselaw, counsel against attempts to offer new or obsolete interpretations that run counter to precedent in place at the time of reenactment.

The reenactment canon creates a presumption that when a legislature reenacts a statute that a court has previously interpreted a particular way, the legislature concomitantly adopts that interpretation in the reenacted statute. See Bryan Garner et al., The Law of Judicial Precedent 346 (2016). A related principle, set forth in the prior-construction canon, counsels that when a legislature incorporates provisions of an older law into a new law, the legislature is presumed to have intended that those provisions receive the same interpretation in the new law as they did in the old. Id. See also Working v. Jefferson Cty. Election Comm'n, 2 So. 3d 827, 840 (Ala. 2008) ("'[W]hen the legislature readopts a code section ... prior decisions of this court permeate the statute, and it is presumed that the legislature deliberately adopted the statute with knowledge of this court's interpretation thereof.'" (quoting Edgehill Corp. v. Hutchens, 282 Ala. 492, 495-96, 213 So. 2d 225, 227-28 (1968))); Barnewall v. Murrell, 108 Ala. 366, 377, 18 So. 831, 836 (1895) ("It is an elementary rule of statutory construction that reenacted statutes must receive the known, settled construction which they received when previously of force; for

it must be presumed that the legislature intended the adoption of that construction, or they would have varied the words, adapting them to a different intent."). These canons and precedents counsel us to presume that the reenacted portion of the amended short statute incorporates the interpretations of this Court at the time of the statute's enactment, as expressed in Buzzelli, Karagan, and Southside.

Of course, this presumption may be rebutted by the additional language in the amended short statute. As recited above, the new language of the amended short statute states:

> "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."

Rather than rebut our presumption, however, the new language in the amended short statute reinforces it.

"Under the rules of statutory construction, we must consider the statute as a whole and must construe the statute reasonably so as to harmonize the provisions of the statute."

McRae v. Security Pac. Hous. Servs., Inc., 628 So. 2d 429, 432 (Ala. 1993). The first sentence of the new language -- "There shall be no time limit for recovery of real estate by an owner of land who has retained possession" -- when harmonized with the remainder of the amended short statute, supports Prescott's contention that possession of property is not a categorical prerequisite to judicial redemption. Presuming, as our interpretive canons instruct, that the limitations period reenacted in the amended short statute (i.e., "three years from the date when the purchaser became entitled to demand a deed") applies to actions for judicial redemption, the first sentence of the new language simply creates an exception to the generally applicable limitations period. It would make little sense to include this special rule for owners in possession if they constituted the only class of owners eligible for judicial redemption. Put another way, if only owners in possession can exercise judicial-redemption rights, and they have no time limit within which to do so, the three-year limitations period loses all meaning when applied to judicial-redemption actions. The first sentence of the new

language makes sense only if it is understood as an exception to the general rule.

The second sentence of the new language provides a method by which a tax purchaser may adversely possess unoccupied land.[22] Defining when adverse possession begins is important because the Court has long read into the short statute's limitations period a requirement that the three-year clock does not begin running until the tax purchaser has taken possession. This adverse-possession requirement predates the enactment of the judicial-redemption statute.[23] See Smith v. Cox, 115 Ala. 503, 510, 22 So. 78, 80 (1897) (holding that the tax purchaser "must not only have been the purchaser with a

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[22]The dissent contends that this writing ignores the second sentence of the new language and champions an interpretation of the amended short statute that leaves that sentence "no area of operation." __ So. 3d at ___ (Mendheim, J., dissenting in case no. 1170709). I disagree. This writing submits sound explanations for the added language that are in accord with applicable canons of statutory construction. See also infra, __ So. 3d at ___ n.24. The dissent offers no reasons why these explanations would not suffice to give effect to the last sentence of the amended short statute.

[23]The dissent makes several arguments premised on the idea that the adverse-possession requirement is linked to the judicial-redemption statute. The fact that the adverse-possession requirement predates the enactment of the judicial-redemption statute undermines this premise.

tax deed ... but must have been in the occupancy thereof, under such a deed, for the period prescribed by the statute, to bar a suit by the owner in ejectment"). Even after the enactment of the judicial-redemption statute, this requirement continued to be invoked long before this Court recognized any connection between the short statute and the judicial-redemption statute. See, e.g., Long v. Boast, 153 Ala. 428, 431, 44 So. 955, 955-56 (1907) ("[T]he limitation does not begin to run until possession of the land is taken ...."); Loper v. E.W. Gates Lumber Co., 210 Ala. 512, 513, 98 So. 722, 723 (1923) (holding as insufficient defense to ejectment failing to allege that defendant had not been in possession under tax title for requisite amount of time); Odom v. Averett, 248 Ala. 289, 292, 27 So. 2d 479, 481 (1946) ("[T]he [short statute] does not begin to run until possession of the land is taken.").[24] Thus, the new language of the amended

[24]Possession may also be important when applying the amended short statute to actions other than actions for judicial redemption. As discussed in Pugh, supra, long before the enactment of the judicial-redemption statute, the short statute governed the length of time a tax purchaser could permit an owner to remain in possession before the tax purchaser lost his or her right to recovery. 69 Ala. at 299. There is no reason to believe the amended short statute does not govern that length of time as well. While an action in ejectment seems the more intuitive way for the tax purchaser

short statute gives definition to the long-standing adverse-possession requirement.

In any case, none of the new language in the amended short statute rebuts the presumption that the legislature, when it reenacted the entire text of the short statute, adopted this Court's most recent interpretations of that text. Therefore, in my view, a tax purchaser may cut off the possession of a property owner by adversely possessing the property for three years. But cutting off possession does not, by itself, extinguish the owner's judicial-redemption right. Instead, once the owner's possession is cut off, the owner has three years from the date the tax purchaser became entitled to demand a tax deed to judicially redeem the property. If the right of judicial redemption is not exercised within those three years, then the right is extinguished. Of course, if the owner remains in possession of the property (i.e., the tax purchaser never cuts off the owner's possession), then the owner may redeem at any time.

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to secure possession, the amended short statute may provide another avenue by which a tax purchaser may secure possession when the property is not occupied, thereby preventing the limitations period from extinguishing the tax purchaser's rights.

In this case, Austill was a tax purchaser and adversely possessed the property for three years, thereby cutting off Prescott's possession. But cutting off Prescott's possession did not extinguish his judicial-redemption right. Instead, it put Prescott on a three-year clock that began to run as of May 15, 2015, the date Austill was entitled to demand a tax deed. That clock would have expired and Prescott's judicial-redemption right would have been extinguished on May 15, 2018, but Prescott filed this action on May 23, 2016, well before the deadline. Accordingly, under what I believe is the correct reading of the amended short statute, Prescott's judicial-redemption right was not extinguished, and his claim for title was not time-barred.

D. Responding to the Dissent

The dissent insists that Austill's three years of adverse possession extinguished Prescott's judicial-redemption right under the amended short statute. In reaching that conclusion, the dissent does not give effect to important canons of construction and offers no explanation for the reenactment of the first sentence of the amended short statute. See IMED, 602 So. 2d at 346 ("Words used in a statute must be given

their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says.").

The dissent contends that the amended short statute's newly added language must mean that cutting off an owner's possession extinguishes that owner's judicial-redemption right. According to the dissent, the new language would be pointless if it had no effect on an owner's right of judicial redemption. But the new language does affect judicial-redemption rights, just not in the way the dissent says it does. As noted above, this Court has long read a possession requirement into the short statute's limitations period. Although the limitations period can only begin to run, at the earliest, when the tax purchaser is entitled to demand a deed, the tax purchaser must have possession before the clock can run. The new language in the amended short statute, therefore, prescribes a method by which a tax purchaser may take possession of unoccupied property (i.e., by adversely possessing the property for three years), thus cutting off the owner's possession and putting the owner on the three-year clock for exercising his or her right of judicial redemption.

Next, the dissent contends that our caselaw before the enactment of the amended short statute required owners seeking judicial redemption to be in possession of their property. In doing so, the dissent misapprehends this Court's cases leading up to 2009. To be sure, possession was a requirement for judicial redemption for many decades. Cases like Buzzelli and Karagan dispensed with that requirement, however, and Southside enshrined the connection between the short statute and the judicial-redemption statute just before the enactment of the amended short statute.

The dissent claims that the Court has not dispensed with the possession requirement for judicial redemption. It argues that the possessory requirement was not at issue in Karagan because the original property owner in that case was still in possession of the property. Although Karagan did conclude, in dicta, that the owner seeking judicial redemption "retained at least a scrambling possession," 516 So. 2d at 601, the Court held that the question of possession was "immaterial" under the rule of Buzzelli. Id.

The dissent also attempts to limit the import of Southside, the very last case from this Court to interpret the

short statute before the 2009 reenactment and amendment. That case, says the dissent, did not concern the possessory element of judicial redemption; instead, the dissent asserts, Southside turned on the fact that, because the tax purchaser had not adversely possessed the property for the requisite three years, the owner could still regain possession before the limitations period ran. The dissent's description, however, is at odds with Southside's approval of McGuire's holding that "'adverse possession of the tax-sale property'" for the statutory period was required to "'defeat a right of redemption under [the judicial-redemption statute] without regard to possession by the redemptioner.'" 10 So. 3d at 992 (emphasis added).

The dissent points to State Department of Revenue v. Price-Williams, 594 So. 2d 48 (Ala. 1992), decided after Buzzelli and Karagan, as an example of the Court's applying the possession requirement for judicial redemption and as evidence that this Court did not actually dispose of that requirement. It is true that Price-Williams, relying on pre-Buzzelli/Karagan cases, described "possession ... within the meaning of the statute" as a "requirement[] necessary to

obtain redemption under" the judicial-redemption statute. 594 So. 2d at 52. But, unlike in Buzzelli and Karagan, the amended short statute was not discussed in Price-Williams. It is highly unlikely that the Price-Williams Court sought to overrule precedent regarding a statute that was not even placed at issue or discussed in the opinion. Moreover, even if we accept, for the sake of argument, that Price-Williams marked the end of the Buzzelli/Karagan regime, that regime was revived under Southside.

The dissent concludes by positing that O'Connor provided the "legislature's inspiration for [the] last phrase of the amended [short] statute," which provides that a tax purchaser may cut off the possession of an owner of unoccupied land by adversely possessing the land for "three years after the purchaser is entitled to possession." __ So. 3d at ___ (Mendheim, J., dissenting in case no. 1170709). The text of the statute, however, does not support this conclusion. If the legislature had been seeking to codify O'Connor's interpretation of the short statute, the legislature could have passed a law expressly stating that possession is always required in order to exercise judicial redemption on

unoccupied land. Such clear, unequivocal language would have been especially appropriate if, as the dissent contends, the legislature had been seeking to return to an interpretive regime announced 30 years prior that had since been discredited in our courts. See McGuire, 794 So. 2d at 1136 (noting that O'Connor had been displaced by Buzzelli and its progeny).

To accept the reading of the amended short statute offered by the dissent would mean that the legislature adopted a law in 2009 that curtailed the redemption rights of individual landowners and nullified the line of cases from this Court that protected those rights. I do not accept that interpretation. Instead, through enactment of the amended short statute, the legislature codified and thus strengthened the protection of individual property rights -- a protection I believe remains in effect today.

Conclusion

We do not resolve the meaning of the amended short statute in this case because of a procedural barrier. The state of judicial-redemption law will continue to be uncertain until this Court pronounces authoritatively the meaning of the

amended short statute and its relationship to the judicial-redemption statute. In my view, the only way to read and apply the amended short statute is in accordance with its text, its codification and precedential history, and established canons of statutory construction. The reading of the amended short statute I offer here will hopefully help to guide discussion in a future case in which we are able to reach the merits.

Parker, C.J., concurs.

MENDHEIM, Justice (dissenting in case no. 1170709 and concurring in the result in case no. 1170730).

I dissent from the main opinion in case no. 1170709 because I do not believe that Jere Austill III's defense to Tyler Montana Jul Prescott's redemption action is foreclosed by the doctrine of res judicata. I also disagree with the trial court's interpretation of § 40-10-82, Ala. Code 1975, because I believe that this Court must give a meaningful effect to all portions of that statute, and doing so would result in a reversal of the trial court's judgment in favor of Prescott. Because I would reverse the trial court's judgment in case no. 1170709, I concur in the result reached by the main opinion that the trial court's ruling against Prescott on his Alabama Litigation Accountability Act ("ALAA") claim is due to be affirmed.

A. The Nonapplicability of the Doctrine of Res Judicata

With respect to the issue whether Austill's defense is precluded by the doctrine of res judicata, I must first respectfully disagree with the main opinion's description of what transpired in the quiet-title action. The main opinion gives the impression that Austill filed the quiet-title action

under the auspices of § 40-10-82, Ala. Code 1975. I certainly grant that Austill initially purported to file his action in view of § 40-10-82. However, § 40-10-82 does not create an action of any kind; rather, it is a limitation on redemption actions filed pursuant to § 40-10-83. So, if Austill actually did file the quiet-title action under § 40-10-82, then his complaint was a dead-letter from the start and the trial court's judgment settled nothing other than that Austill had not filed a claim recognized in law at all. Such a conclusion would necessarily thwart the main opinion's res judicata analysis and conclusion.

In reality, the substance of Austill's claim clearly was one in the nature of a quiet-title action under § 6-6-540, Ala. Code 1975. See, e.g., Bailey v. Faulkner, 940 So. 2d 247, 253 (Ala. 2006) (observing that "'[t]he substance of the allegation, and not its form, determines the character of a complaint'" (quoting Holland v. Fidelity & Deposit Co. of Maryland, 225 Ala. 669, 670, 145 So. 131, 132 (1932))). Indeed, in his response to Prescott's renewed motion to dismiss, Austill corrected his mistaken citation to § 40-10-82 and confirmed that he was filing a statutory quiet-title

action. It is vital to keep this fact in mind when assessing whether Austill's defense in the redemption action should be foreclosed by res judicata.

Additionally, after the main opinion concludes its initial discussion of what transpired during the quiet-title action and transitions to discussing the redemption action, the opinion states that in his answer to Prescott's redemption complaint "Austill again argued, as he had in the quiet-title action, that he had extinguished Prescott's right of redemption by adversely possessing the property." ___ So. 3d at ___ (emphasis added). However, Austill never argued to the circuit court in the quiet-title action that he had "extinguished" Prescott's right of redemption through his adverse possession of the property. Instead, Austill had presented two arguments to the circuit court. First, he argued that Prescott's motion to dismiss should not be considered because Prescott had not demonstrated that he was successor-in-interest of JSW Properties, LLC, to the property and therefore had no rights in the property. Second, Austill argued that he had fulfilled the statutory requirements because "he has maintained continuous adverse possession of

the tax sale property since on or about the date of purchase."[25] He further asserted that the right of redemption requires "retained possession" but that none of the defendants, including Prescott, had ever had possession of the property. In other words, the gist of both of Austill's arguments to the circuit court in the quiet-title action was that none of the defendants had a possessory interest in the property, which, as we shall see, is tangentially related to the only issue before a circuit court when adjudicating an action to quiet title: the nature of the plaintiff's possessory interest in the subject property. To be clear, Austill never argued to the circuit court in the quiet-title action the issue he raises as a defense in Prescott's redemption action.[26]

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[25]In support of this contention, Austill for some reason cited Daugherty v. Raster & Southern Power, Inc., 645 So. 2d 1361 (Ala. 1994), a case that interpreted § 40-10-120, Ala. Code 1975, the statute concerning statutory redemption, not judicial redemption.

[26]This fact -- that the issue before the circuit court in the redemption action was never argued, and therefore not "actually litigated," in the quiet-title action -- is presumably the reason the main opinion eschews the approach taken in Justice Mitchell's special writing that Austill's defense is barred by the doctrine of collateral estoppel. See, e.g., Walker v. City of Huntsville, 62 So. 3d 474, 487 (Ala. 2010) ("'For the doctrine of collateral estoppel to apply, the

In the analysis portion of the main opinion, the Court provides a lengthy discussion of an argument Austill presented in the reply brief of his appeal to the Court of Civil Appeals in the quiet-title action, as well as in his petition for a writ of certiorari to this Court, which this Court eventually denied. However, as the main opinion admits, the Court of Civil Appeals was not required to, nor does it seem that it actually did, consider Austill's reply-brief argument about the amended language in § 40-10-82. Moreover, it is almost axiomatic that "[a] denial of certiorari should never be considered as an expression by the reviewing court on the merits of the controversy." Ex parte McDaniel, 418 So. 2d 934, 935 (Ala. 1982). Thus, again to be clear, the merits of

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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.'" (quoting Lee L. Saad Constr. Co. v. DPF Architects, P.C., 851 So. 2d 507, 520 (Ala. 2002) (internal quotation marks omitted))). In his special writing, Justice Mitchell describes the issue in the quiet-title action as "whether Austill has adversely possessed the property for long enough under the amended short statute to extinguish the rights of other parties." ___ So. 3d at ___. But, as I explain, the issue actually litigated in the quiet-title action was simply whether Austill, on the face of the complaint, could sustain his claim for quiet title.

Austill's argument concerning the impact of the amended language in § 40-10-82 was never determined by any court in the quiet-title action.

Although the main opinion contains a lengthy rundown of Austill's arguments in the quiet-title action, the opinion eventually rests its conclusion that res judicata is applicable on the fact that Austill could have raised in the quiet-title action the argument he now employs as a defense in the redemption action. ___ So. 3d at ___. If this is the case, it is entirely irrelevant what Austill actually argued in the quiet-title action.[27] Instead, the relevant issue is what was actually determined by the circuit court's dismissal of Austill's quiet-title complaint, or, to put it in res judicata parlance, was the same cause of action actually

[27]I would add that the only way the argument Austill belatedly made on appeal in the quiet-title action could be relevant is to establish that Austill clearly knew that his defense in the redemption action was barred by the judgment in the quiet-title action. Indeed, Prescott uses it to contend that Austill's defense in the redemption action was groundless in law and "without substantial justification" under the ALAA. § 12-19-272(a), Ala. Code 1975. I take this Court's unanimous affirmance of the trial court's denial of Prescott's claim for attorney fees under the ALAA as an indication that, like me, the other members of the Court do not believe that Austill's argument in the judicial-redemption action was frivolous.

presented in both actions? In this regard, I believe that the main opinion confuses the law on whether a ruling on a motion to dismiss can constitute an adjudication on the merits for purposes of res judicata with the actual merits in the quiet-title action. This Court has stated that a ruling on a Rule 12(b)(6), Ala. R. Civ. P., motion can be an adjudication on the merits, but this general observation concerning a Rule 12(b)(6) dismissal begs the question of what the merits actually were in this instance. See, e.g., Coggins v. Carpenter, 468 F. Supp. 270, 280 (E.D. Pa. 1979) (observing that "the dismissal of an action pursuant to a Fed. R. Civ. P. 12(b)(6) motion to dismiss by a court of competent jurisdiction is a valid, final judgment on the merits for purposes of Res judicata if that dismissal was based upon the ultimate and controlling issues and if the parties had an opportunity to appeal and assert their rights" (emphasis added)).

I believe that the doctrine of res judicata does not bar Austill's defense because of two basic facts: (1) an action to quiet title to property and an action for redemption of property are distinct claims, and (2) the judgment entered in

the quiet-title action was rendered pursuant to Prescott's Rule 12(b)(6) motion to dismiss Austill's complaint for failure to state a claim upon which relief could be granted. These points matter because of their bearing on what was actually before the circuit court for determination, and what was actually decided by its dismissal, of Austill's quiet-title action. See, e.g., Hammermill Paper Co. v. Day, 336 So. 2d 166, 168 (Ala. 1976) ("The question here is whether the point in litigation in this action was directly in question in the prior action; more importantly, could it have been directly in question?").

It is beyond cavil that an action to quiet title and an action for redemption are distinct actions. Compare § 6-6-540, Ala. Code 1975, with §§ 40-10-83 and 40-10-120, Ala. Code 1975. The main opinion avoids this fact, as I think it must in order to find the doctrine of res judicata applicable in this action.

A quiet-title action exists

> "not to institute an action of ejectment, but it is an action merely to summon the party who makes some claim to the property to come into court and show the nature of his claim. Unless the counterclaim seeks some affirmative result, the sole question for the court to decide is whether the defendant has any

> title or any interest in the property. It is a right given to the party in peaceable possession to force the other party to show whether he has a valid claim."

Ally Windsor Howell, Tilley's Alabama Equity § 13:2 (5th ed. 2012) (citing Whittaker v. Van Hoose, 157 Ala. 286, 288-89, 47 So. 741, 741 (1908) (emphasis added)). I note that Prescott did not file a counterclaim for redemption in the quiet-title action.[28] Therefore, the only subject in issue in the quiet-title action on Prescott's motion to dismiss was whether there existed any set of facts under which Austill could quiet title in the property. See, e.g., Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993) (noting that "a Rule 12(b)(6) dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief").

"Section 6-6-540, Ala. Code 1975, provides:

> "'When any person is in peaceable possession of lands, whether actual or constructive, claiming to own the same, in

[28]It is clear that a claim to redeem property can be brought in response to a suit to quiet title. See, e.g., Singley v. Dempsey, 252 Ala. 677, 684, 42 So. 2d 609, 615 (1949) ("It is settled that a bill filed under the statute to quiet title (§ 1109, Title 7, Code 1940), also may seek affirmative relief under § 296, Title 51, Code 1940 [the predecessor to § 40-10-83, Ala. Code 1975].).

> his own right or as personal representative or guardian, and his title thereto, or any part thereof, is denied or disputed or any other person claims or is reputed to own the same, any part thereof, or any interest therein or to hold any lien or encumbrance thereon and no action is pending to enforce or test the validity of such title, claim, or encumbrance, such person or his personal representative or guardian, so in possession, may commence an action to settle the title to such lands and to clear up all doubts or disputes concerning the same.'

"Rule 8, Ala. R. Civ. P., provides that a complaint is sufficient if it puts a defendant on notice of the claims asserted against him or her. A rule or statute, however, may qualify the rule of generalized notice pleading. Bethel v. Thorn, 757 So. 2d 1154, 1158 (Ala. 1999). Section 6-6-541, Ala. Code 1975, sets forth the required contents of a complaint in a quiet-title action, stating:

> "'The complaint authorized by Section 6-6-540 must describe the lands with certainty, must allege the possession and ownership of the plaintiff and that the defendant claims, or is reputed to claim, some right, title, or interest in, or encumbrance upon, such lands and must call upon him to set forth and specify his title, claim, interest, or encumbrance and how and by what instrument the same is derived and created.'"

Childers v. Darby, 163 So. 3d 323, 327 (Ala. 2014) (emphasis added).

In his quiet-title complaint, Austill specifically described the property and alleged that he had purchased the property at a tax sale, that he possessed the tax deed to the property, and that he had maintained adverse possession of the property for almost four years. Those averments satisfied the requirements of Rule 8, Ala. R. Civ. P., and § 6-6-541, Ala. Code 1975, for pleading a quiet-title action. The circuit court in the quiet-title action went beyond this baseline for stating a claim to quiet title by determining that on its face Austill's complaint showed that the time for redemption under § 40-10-82 had not passed. Even so, at most what was properly before the circuit court at that stage of the litigation was whether Austill alleged facts sufficient to potentially establish that he was in peaceable possession of the property.

> "To establish a prima facie case in a quiet-title action, the plaintiff must prove that he or she is in peaceable possession of the real property. § 6-6-540. '[W]hat constitutes peaceable possession ... must be left for determination on the facts of each particular case.' Webb v. Griffin, 243 Ala. 468, 471, 10 So. 2d 458, 460 (1942).
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> "The term 'peaceable possession' was defined as follows in George E. Wood Lumber Co. v. Williams, 157 Ala. 73, 76-77, 47 So. 202, 203 (1908):
>
> > "'So the question arises, what is peaceable possession? It cannot mean that

> it is peaceable unless there be some legal proceeding in progress to test the title or right to possession; for the object of the statute is to allow the party who is in possession, and who cannot force the adversary claimant to institute any proceeding, to bring said party into court in order to determine whether he has any just claim to the property. The word "peaceable," then, refers to the character of his possession. So long as his possession is so clear that no one is denying the fact of his actual or constructive possession, it is peaceable, although some other person may be denying his right to possession.'"

Childers, 163 So. 3d at 327–28 (emphasis added).

The foregoing illustrates that the main opinion fails to appreciate what was in issue in the quiet-title action in stating that "Prescott's answer and subsequent motions to dismiss in the quiet-title action generally denied Austill's claim to title through adverse possession under § 40-10-82 and, therefore, properly placed Austill's title to the property in issue in the quiet-title action." ___ So. 3d at ___. The main opinion also explains it this way: "[T]he trial court's judgment in the quiet-title action conclusively resolved the claim to title to the property that Austill had asserted therein." ___ So. 3d at ___. This simply is not the case.

The circuit court's ruling addressed only the issue whether, on the face of the allegations in the complaint, any of the defendants in the action potentially had a sufficient interest of any kind in the subject property to defeat Austill's claim to peaceable possession. Prescott asserted, based on the first sentence of § 40-10-82, that any redemption claim he might have must survive for at least three years after Austill was entitled to the tax deed and that that period had not expired so there was no set of facts upon which Austill could quiet title to the property. The circuit court in the quiet-title action did not, and could not, determine whether Prescott actually had a right to redeem the property because Prescott never filed a redemption claim in the quiet-title action, and a Rule 12(b)(6) motion tests the sufficiency of the allegations in the complaint, not any allegations or evidence presented by a defendant.[29] Thus, at most the judgment in the quiet-title action settled that Austill could

[29]See Nance, 622 So. 2d at 299 ("The appropriate standard of review under Rule 12(b)(6) is whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle [him] to relief.").

not establish peaceable possession of the property on the face of his complaint.

Once Prescott filed his judicial-redemption action, the question before the trial court was whether Prescott met the requirements for judicial redemption. One of the prerequisites for judicial redemption -- as is discussed in more detail in Part B of this special writing -- is "possession of the land by the complainant within the meaning of the statute." Singley v. Dempsey, 252 Ala. 677, 684, 42 So. 2d 609, 615 (1949). Austill defended against Prescott's claim for redemption by contending that Prescott did not meet the requirement of possession under the judicial-redemption statutes because Austill had cut off Prescott's constructive possession of the property by adversely possessing the property for three years after he was entitled to possession as the tax purchaser. This issue was not, and could not have been, determined through the Rule 12(b)(6) dismissal of Austill's quiet-title action.

In my view, given that the litigation was at the motion-to-dismiss stage, the circuit court in the quiet-title action mistakenly tested Austill's claim under § 40-10-82 rather than

under §§ 6-6-540 and -541, which set out the requirements for alleging a claim for quiet title. Even so, the decision in the quiet-title action, relying upon the facts as alleged in Austill's complaint, turned entirely on when Austill filed his action in relation to when he was entitled to the tax deed. In contrast, the redemption action turned on whether Prescott had possession of the property within the meaning of § 40-10-82 when he filed his action. This latter issue -- which included whether Austill had established adverse possession of the property for the requisite period provided in § 40-10-82 -- was not adjudicated on the motion to dismiss in the quiet-title action. The causes of action were different; the judgments determined different issues. Therefore, because the same cause of action was not presented or decided in the first suit, Austill is not procedurally barred by the doctrine of res judicata from raising his present defense against Prescott's claimed right to redeem the property.

B. The Best Interpretation of § 40-10-82

I now turn to the substance of the matter in this action: Whether Austill's adverse possession of the subject property for three years before Prescott filed this redemption action

cut off Prescott's right to redeem the subject property. The trial court concluded that Austill did not cut off Prescott's right of redemption, and it therefore ruled in Prescott's favor. The trial court's conclusion hinges on this Court's erstwhile interpretation of § 40-10-82, Ala. Code 1975, succinctly summarized in Gulf Land Co. v. Buzzelli, 501 So. 2d 1211, 1213 (Ala. 1987): "In order for the short period of § 40-10-82 to bar redemption under § 40-10-83, the tax purchaser must prove continuous adverse possession for three years after he is entitled to demand a tax deed." (Emphasis added.) Prescott filed his redemption action on May 23, 2016, only one year after May 15, 2015, the date Austill was entitled to receive the tax deed. Consequently, it is undisputed in this case that Austill had not adversely possessed the subject property for three years after he was entitled to the tax deed.

The problem with this seemingly straightforward application of § 40-10-82 in this case is that it completely fails to account for the last sentence of the post-2009 amendment of the statute, which provides, in part: "[W]here 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.) This sentence matters because the trial court concluded that Austill adversely possessed the subject property from approximately the date he was entitled to possession, May 15, 2012, up through the date Prescott filed his redemption action on May 23, 2016.[30] In other words, under a straightforward application of the last sentence of § 40-10-82, Austill cut off Prescott's constructive possession of the subject property before Prescott filed his redemption action.

Ignoring the import of the last sentence of § 40-10-82, as the trial court's ruling did (and as Justice Mitchell does in his special writing), has the effect of removing any possessory requirement to invoke the right of judicial redemption. But if possession is irrelevant to the judicial

[30]Prescott contends to this Court that Austill "failed to produce evidence that he adversely possessed the property." Prescott's appellate brief, p. 46. However, the trial court specifically concluded after the bench trial that Austill established adverse possession of the property beginning around May 26, 2012. Prescott fails to demonstrate that this factual conclusion was plainly and palpably erroneous. Moreover, Prescott stipulated in his renewed motion to dismiss in the quiet-title action that Austill had adversely possessed the property for four years.

right of redemption, what is the point of § 40-10-82 stating that a tax purchaser can cut off a property owner's possession of the tax-sale property on the date the tax purchaser is entitled to possession? In other words, why does § 40-10-82 even discuss a tax purchaser's ability to cut off a property owner's possession if such an act has no effect on a property owner's right of judicial redemption? The interpretations of § 40-10-82 put forward by the trial court and Justice Mitchell leave no area of operation for the last sentence of § 40-10-82.

Neutering the last sentence of § 40-10-82 runs contrary to "the duty of the Court to harmonize and reconcile all parts of a statute so that effect may be given to each and every part: conflicting intentions in the same statute are never to be supposed or so regarded unless forced on the Court by unambiguous language." Leath v. Wilson, 238 Ala. 577, 579, 192 So. 417, 419 (1939). "[W]e must presume '"that every word, sentence, or provision was intended for some useful purpose, has some force and effect, and that some effect is to be given to each, and also that no superfluous words or provisions were used."'" Simcala, Inc. v. American Coal

Trade, Inc., 821 So. 2d 197, 200-01 (Ala. 2001) (quoting Ex parte Children's Hosp. of Alabama, 721 So. 2d 184, 194 (Ala. 1998), quoting in turn Sheffield v. State, 708 So. 2d 899, 909 (Ala. Crim. App. 1997)). See also Ex parte Welch, 519 So. 2d 517, 519 (Ala. 1987) ("'A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.'" (quoting 2A Norman J. Singer, Sutherland Statutes and Statutory Construction § 46.06 (4th ed. 1984))).

But more than running afoul of our rules of statutory interpretation, the failure to give proper operation to the last sentence of § 40-10-82 runs contrary the basic understanding of judicial redemption from its inception. Grasping this understanding requires explaining the types of redemption available to an owner whose property is sold because of a tax delinquency.

> "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),[31] 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).

Statutory redemption is available for the first three years after the tax sale and requires only that the owner pay the specified amount for the property into the probate court of the county in which the property is located. On the other hand, judicial redemption extends the redemption period for owners who retain possession of their property, but they must file an action against the tax purchaser to vindicate their right of redemption. Eliminating the possession requirement

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[31]Section 40-10-120(a), Ala. Code 1975, provides, in part, that "[r]eal estate which hereafter may be sold for taxes ... if purchased by any other purchaser [than the State], may be redeemed at any time within three years from the date of the sale by the owner ... or by any person having an interest therein ...."

from judicial redemption has the effect of obliterating any meaningful distinction between these two types of redemption.

Although §§ 40-10-82 and 40-10-83 address judicial redemption, this type of redemption has largely been shaped by a labyrinth of decisions from this Court. As one commentator has observed in reference to § 40-10-83: "The text of this statute sits, like a tip of an iceberg, atop a body of case law that transforms the section into an additional and distinct right of redemption." William R. Justice, Redemption of Real Property Following Tax Sales in Alabama, 11 Cum. L. Rev. 331, 336 (1980).

One example of how the statutory law on judicial redemption "has been expanded by case law," State Dep't of Revenue v. Price-Williams, 594 So. 2d 48, 51 (Ala. 1992), is central to the dispute in this case. The version of § 40-10-82 before the 2009 amendment made no reference to adverse possession by the tax purchaser. The text simply stated that the triggering date for the "short statute of limitations" was the date on which the tax purchaser was entitled to demand the tax deed, which, as I have noted, is three years from the date of the tax sale.

> "The courts have added another requirement that must be met before the statute will operate as a bar. Even though the section makes no mention of possession, the courts looked to its general purpose as a statute of limitations and held that the tax-sale purchaser must have actual, adverse possession before the short statute begins to run."

Justice, 11 Cum. L. Rev. at 342. See, e.g., Grice v. Taylor, 273 Ala. 591, 593, 143 So. 2d 447, 449 (1962) ("[T]he statute does not begin to run until the purchaser is in adverse possession and has become entitled to demand a deed to the property from the Judge of Probate."); Singley, 252 Ala. at 681, 42 So. 2d at 612 ("[T]he date on which the purchaser is entitled to demand a deed is not alone determinative of the time when the statute begins to run. It cannot begin to run before that time, but it does not necessarily begin to run on that date unless the purchaser is then in actual adverse possession of the property."); Odom v. Averett, 248 Ala. 289, 292, 27 So. 2d 479, 481 (1946) ("[T]he statute begins to run in favor of the purchaser at a tax sale when he became entitled to demand a deed therefor, but this court has held that the statute does not begin to run until possession of the land is taken."); Howard v. Tollett, 202 Ala. 11, 12, 79 So. 309, 310 (1918) ("This statute ... does not begin to run until

the possession of the land sold at the tax sale is taken or acquired.").

The reason for this Court's insertion of an adverse-possession requirement by a tax purchaser was that, as I have already stated, the Court had made it clear that judicial redemption, unlike statutory redemption, was available only to owners in possession of the subject property. Because it was a given that possession was a requirement of judicial redemption, and that an owner in possession had an unlimited right to judicially redeem, the only way there could be a short statute of limitations under the original language of § 40-10-82 was if adverse possession was an implied requirement for a tax purchaser to extinguish an owner's judicial right of redemption.[32]

What constituted possession for purposes of judicial redemption was liberally construed by the Court.

> "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

[32]I would add that Justice Mitchell's contention in his special writing that the first sentence of § 40-10-82 is devoid of meaning if possession is a prerequisite to the right of judicial redemption does not square with an adverse-possession requirement in the pre-2009 version of the statute.

> 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. Stallworth v. First Nat. Bank of Mobile, 432 So. 2d 1222 (Ala. 1983); Hand v. Stanard, 392 So. 2d 1157 (Ala. 1980); O'Connor v. Rabren, 373 So. 2d 302 (Ala. 1979)."

Buzzelli, 501 So. 2d at 1213 (emphasis added).

This possessory requirement has been part of the understanding of judicial redemption from its inception in Alabama. In Green v. Stephens, 198 Ala. 325, 326–27, 73 So. 532, 533 (1916), overruled on other grounds as recognized in Threadgill v. Home Loan Co., 219 Ala. 411, 412, 122 So. 401, 401 (1929), in discussing § 2312 of the Alabama Code of 1907, a predecessor of § 40-10-83,[33] the Court explained:

> "Its language is plain and its purpose to a certain extent too obvious to be mistaken. It arms the owner whose land has been sold for taxes with a right of redemption in addition to and different from that previously extended to defaulting taxpayers. The right is created with a view to its exercise in cases where valid tax titles have been made, and the original owner remains in possession ...."

(Emphasis added.) See, e.g., Stallworth v. First Nat'l Bank of Mobile, 432 So. 2d 1222, 1224 (Ala. 1983) ("In order for

[33]The judicial-redemption statute, with minor amendments, dates back to 1907. See Ala. Code of 1907, § 2312.

plaintiff to obtain relief under this redemption statute, there are certain primary requisites: first, possession of the land by the plaintiff within the meaning of the statute ...."); Tanner v. Case, 273 Ala. 432, 435, 142 So. 2d 688, 692 (1962) ("The complainant must have such possession as will require some nature of suit by the purchaser at tax sale to recover it from him, but it need not be such peaceable possession as will quiet title; it may be scrambling possession. Constructive possession is sufficient, provided of course the tax purchaser has not been in actual, adverse possession for the requisite period."); Bobo v. Edwards Realty Co., 250 Ala. 344, 346, 34 So. 2d 165, 167 (1947) ("The trend of our decisions seems to have been rested on the theory that to enforce a redemption in equity under the Code section the owner, taxpayer or other statutory designee must have remained in some sort of actual or constructive possession of the land since the tax sale."); Tensaw Land & Timber Co. v. Rivers, 244 Ala. 657, 659, 15 So. 2d 411, 413 (1943) ("The purpose of that statute was to save to an owner of land sold for its taxes the right to redeem it without limit of time provided he has such possession of it, as may be sufficient for that purpose.");

Morris v. Card, 223 Ala. 254, 257, 135 So. 340, 342 (1931) ("Section 3108, Code of 1923 [predecessor to § 40-10-83], conferred an additional right of redemption in cases where valid tax titles have been made and the original owner remains in possession ...."); Burdett v. Rossiter, 220 Ala. 631, 633, 127 So. 202, 203 (1930) ("We have construed our statute, now Code, § 3108, to confer an additional and distinct right of redemption 'in cases where valid tax titles have been made, and the original owner remains in possession.'" (quoting Green, 198 Ala. at 326-27, 73 So. at 55)).

The most definitive explication from this Court of this possessory principle can be found in one of the cases Buzzelli cited for the proposition: O'Connor v. Rabren, 373 So. 2d 302 (Ala. 1979). In O'Connor, adjoining parcels of property owned by George O'Connor and William O'Connor were purchased at a tax sale by Maggie Rabren on June 5, 1972. On, June 12, 1975, tax deeds to the parcels were issued to Rabren. In July 1976, the O'Connors filed an action seeking to redeem the parcels. In addressing the issue of redemption, this Court first observed that "[t]he O'Connors' suits for redemption came four years after the [tax] sales. Thus, their only right to redeem

is under Code 1975, § 40-10-83." 373 So. 2d at 306. The Court then noted that "[t]he O'Connors do not claim actual or scrambling possession, but rest their right to redeem under § 40-10-83 on constructive possession, as record title holders." Id. The O'Connor Court concluded, however, that "Mrs. Rabren has exercised actual possession sufficient to defeat the constructive possession of the O'Connors and bar their right to redeem under § 40-10-83." Id. The Court further explained:

> "The land was described by Mrs. Rabren and her witnesses as beach-type property with large oak trees on it. Neither of the O'Connors had ever been on the property except William O'Connor, who stated he looked at it one time and that it was sand dunes covered with scrub brush. Mrs. Rabren and her relatives and friends used the land for fishing and camping, especially in the summer. They cleaned garbage from the land on several occasions and put up 'no trespassing' signs. They also cleaned out underbrush, and spoke with neighbors on either side of the lots. Mrs. Rabren assessed the land and paid taxes on it since the tax sales.
>
> "Considering the nature of the property, we think these are acts of actual, adverse possession. To establish adverse possession, land need only be used in a manner consistent with its character. ... The acts of possession in the instant case ... serve to defeat the O'Connors' constructive possession. Without possession, the O'Connors have no right to redeem under § 40-10-83.

> "We note that Mrs. Rabren's possession is authorized under Code 1975, § 40-10-74. A purchaser at a valid tax sale has the right to possession immediately upon receipt of the tax sale certificate. This right of possession may be enforced by ejectment or other proper remedy for recovery of possession, and may be defended once possession is obtained, subject to any rights of redemption."

373 So. 2d at 306 (emphasis added).

The O'Connors attempted to counter the fact of Rabren's adverse possession of the parcels by arguing that "their right to redeem is preserved by Code 1975, § 40-10-82." 373 So. 2d at 307. This Court disagreed, stating:

> "The O'Connors' reliance upon this section is misplaced; we find nothing in it creating or preserving a right to redeem, only a provision barring such a right.
>
> "We conclude that there is ample evidence to support the trial court's denial of relief. The O'Connors are unable to redeem because they have no possession, regardless as to whether or not the tax sales were valid."

Id. (some emphasis added). See also Bobo, 250 Ala. at 346, 34 So. 2d at 167 (observing that "where there had never been any real occupancy of the land" "the right [of redemption] of the true owner or his statutory title successor would not be cut off by the scrambling possession of the tax purchaser (or his successor in title) or by any other character of possession

short of that as would be sufficient to comply with the law of adverse possession").

O'Connor dictates that when a tax purchaser adversely possesses wild or undeveloped property[34] for three years after the tax purchaser is entitled to possession, the tax purchaser deprives the owner of constructive possession of the purchased property. The language in the final sentence of the post-2009 amendment of § 40-10-82 codifies this understanding into the

[34]Our cases indicate that the phrase "where there is no real occupancy of land" means wild or undeveloped property. See, e.g., Tanner, 273 Ala. at 437, 142 So. 2d at 693 ("The lands involved in this proceeding were described as wild, open timber lands. Where such is the case and there has never been any real occupancy of the land, possession is regarded as constructive and follows the title of the original owner."); Bobo, 250 Ala. at 346, 34 So. 2d at 167 ("The principle has also been settled that where there had never been any real occupancy of the land, no one having been in actual possession thereof, the possession is regarded as constructive and follows the title of the original owner. And in land of this character the right of the true owner or his statutory title successor would not be cut off by the scrambling possession of the tax purchaser (or his successor in title) or by any other character of possession short of that as would be sufficient to comply with the law of adverse possession."); Tensaw Land & Timber Co. v. Rivers, 244 Ala. at 659, 15 So. 2d at 413 ("And since the land was wholly unimproved, in a wild state, the question relates to the nature of possession of that sort of land which will justify an enforcement of the right here involved. ... When the land has never been occupied in a true sense, the possession is constructive and follows the title, since no one is in the actual possession.").

law of judicial redemption by stating that "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." This understanding fits into the overall idea of a right of judicial redemption, which is predicated on the owner having possession of the property. Where the owner is not in possession, the owner lacks the right to invoke judicial redemption.[35] I would add that the idea that a tax purchaser can divest an owner of wild or

[35]In his special writing, Justice Mitchell contends that possession is no longer an element of the right of judicial redemption and that "[t]he new language in the amended short statute ... prescribes a method by which a tax purchaser may take possession of unoccupied property (i.e., by adversely possessing the property for three years), thus cutting off the owner's possession and putting the owner on the three-year clock for exercising his or her right of judicial redemption." ___ So. 3d at ___ (Mitchell, J., concurring in the result in case no. 1170709) (emphasis added). But why would adverse possession be necessary to "put[] the owner on the three-year clock for exercising his or her right of judicial redemption" if possession is not a prerequisite to the right of judicial redemption? If possession is not an element, then the legislature's 2009 amendment was entirely unnecessary because the plain language of the first sentence of § 40-10-82 prescribes the date a tax purchaser receives the tax deed as the beginning of the "three-year clock." The inclusion of adverse possession in the amended language only makes sense if the legislature was aware of, and was acknowledging, the traditional understanding that possession was a requirement for an owner to judicially redeem property.

undeveloped property of the right to judicially redeem the property before the three-year statute of limitations has expired encourages the productive use of land and provides owners of previously occupied property a longer period in which to redeem the property.[36]

I also note that O'Connor cannot simply be discounted as merely an outlier in our judicial-redemption caselaw. Buzzelli itself cited O'Connor for the possessory principle, and, as I have endeavored to illustrate, numerous other cases have repeatedly stated the principle. Nonetheless, I admit that a few cases, if not examined closely, could be interpreted as contradicting the principle O'Connor so well explains. Those cases are Southside Community Development Corp. v. White, 10 So. 3d 990 (Ala. 2008), Karagan v. Bryant,

[36]Justice Mitchell argues that this interpretation of the current version of § 40-10-82 fails to account for "the reenactment of the first sentence of the amended short statute." ___ So. 3d at ___ (Mitchell, J., concurring in the result in case no. 1170709). But, as I have explained, the last sentence of current version of § 40-10-82 applies only in situations "where there is no real occupancy of land." In other words, the legislature has determined that, in such situations, a tax purchaser can extinguish an owner's judicial right of redemption earlier than is otherwise permitted under the first sentence of § 40-10-82. Thus, the last sentence of the amended statute concerns a specific subset of properties sold at tax sales; it does not eliminate the operation of the first sentence in all other situations.

516 So. 2d 599 (Ala. 1987), and McGuire v. Rogers, 794 So. 2d 1131 (Ala. Civ. App. 2000).

One problem with employing Karagan or Southside for the proposition that possession is not a prerequisite to judicial redemption is that those cases were not actually speaking to the issue of possession by the property owner. It must be remembered that under the pre-2009 version of § 40-10-82, in order to extinguish the right of redemption there must have been a lack of any possessory interest by the owner and three years of adverse possession by the tax purchaser from the date the tax purchaser was entitled to the tax deed. In Southside, a tax purchaser sued the owner to quiet title before having aversely possessed the property for the requisite three years from the date he was entitled to the tax deed. The Court had previously concluded that "[t]his redemption statute does not necessarily exclude an owner who has relinquished possession and afterwards regained it." Bobo, 250 Ala. at 347, 34 So. 2d at 168. Thus, the three-year period from the date the tax purchaser obtained the deed could not be shortened because an owner who did not have possession at the time the tax purchaser filed an action conceivably could regain possession

before the expiration of the three-year period. The Southside Court's concern was not the possessory element; it instead was focused on when did the three-year period begin in cases where the property first had been transferred to the State, or as the Court itself described it: "The issue presented by this case is whether the three-year statutory period of § 40-10-82 begins to run when the property is transferred to the State for failure to pay taxes, or, instead, begins to run when the tax purchaser becomes entitled to a deed." Southside, 10 So. 3d at 991.

In Karagan, as in Southside, the focus was on the three-year limitations period following entitlement to the tax deed, yet the Court still explained that the original property owner had at least constructive possession of the property. See Karagan, 516 So. 2d at 601 ("We need not decide whether Greger [the original owner] remained in actual or merely constructive possession after he was taken to the hospital in December 1985.") Once again, the possessory element was not in issue in Karagan because of the specific facts presented.

The Court of Civil Appeals in McGuire, 794 So. 2d at 1136, cited Reese v. Robinson, 523 So. 2d 398 (Ala. 1988), for the

proposition that "our Supreme Court has applied the rule in Gulf Land to require the purchasers of a tax deed to show that they have maintained continuous adverse possession of the tax-sale property for three years to defeat a right of redemption under § 40-10-83 without regard to possession by the redemptioner." But the Reese Court never stated that possession was not a prerequisite to a right of redemption. In fact, the Reese Court explained that the evidence showed that the owner, Robinson, did have a possessory interest in the property during the three-year period after the tax purchaser, Reese, was entitled to the deed. See Reese, 523 So. 2d at 400-01. The issue in Reese, as in Southside, was whether Reese had adversely possessed the property for three years after he was entitled to the tax deed, the second requirement for a tax purchaser to extinguish an owner's right of redemption under the pre-2009 version of § 40-10-82.

In contextualizing what was stated in Southside, Karagan, and McGuire so as not to reach the unwarranted conclusion that they somehow changed the century-old understanding that possession was a requirement for judicial redemption, it is also worth noting this Court's decision in State Department of

Revenue v. Price-Williams, 594 So. 2d 48 (Ala. 1992). Price-Williams was decided after both Karagan and Reese, and in it the Court stated that the first "requirement[] necessary to obtain redemption under ... § 40-10-83" is that "there must be possession of the land by the complainant within the meaning of the statute." Id. at 52. The Price-Williams Court further noted that "[t]his Court has gradually expanded the nature of possession required to constitute an 'owner in possession' under § 40-10-83. Possession may be 'actual,' 'constructive,' 'scrambling,' or 'peaceable.'" Id. Price-Williams is notable not only for its repetition of the requirements for judicial redemption, but also for its citation of Karagan without any indication that Karagan contradicted the possession requirement for judicial redemption. See id.[37]

[37]Additionally, I note that articles discussing Alabama's property-redemption law published after Southside have continued to interpret our cases as stating that an owner must retain possession in order to invoke judicial redemption. See William S. Hereford, Reducing Alabama State-Owned, Tax-Delinquent Properties, 48 Cumb. L. Rev. 213, 225 (2018) ("The second period, which has been referred to as the 'judicial redemption' period, begins at the conclusion of the statutory period and continues as long as the former owner retains the level of 'possession' identified by statutory and case law." (citing O'Connor)); Andrew S. Olds, Saving Alabama's Urban Neighborhoods: Revisions to Alabama's Property Tax Sale Laws, 44 Cumb. L. Rev. 497, 508-09 (2014) ("The main

It also must not be forgotten that Southside Community Development and Karagan interpreted § 40-10-82 before it was amended in 2009. Nearly every aspect of the amended language can be found in Stallworth v. First National Bank of Mobile, 432 So. 2d 1222, 1224 (Ala. 1983),[38] except that the 2009 amendment to the statute added the phrase "for three years after the purchaser is entitled to possession" following the

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idea behind judicial redemption is that an owner who has retained possession of the property may redeem the property at any time. ... Therefore, the three-year limitation period is only effective if the tax purchaser is in possession of the property." (footnotes omitted)); Gary E. Sullivan, Alabama Tax Certificate Investors Beware: Negotiating Through the Labyrinth of, and Important Limitations to Recovering Money in, the Redemption Process, 73 Ala. Law. 416, 418 (2012) ("Judicial redemption is available to owners who have retained possession of the land sold at a tax sale." (footnotes omitted)).

[38]The Stallworth Court stated:

> "The purpose of § 40-10-83 is to preserve the right of redemption without limit of time, if the owner of the land seeking to redeem has retained possession. O'Connor v. Rabren, 373 So. 2d 302 (Ala. 1979); Moorer [v. Chastang, 247 Ala. 676, 26 So. 2d 75 (1946)]. The character of possession need not be actual and peaceable, but may be constructive and 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. Hand v. Stanard, 392 So. 2d 1157 (Ala. 1980)."

432 So. 2d at 1224.

phrase "adverse possession of the tax purchaser." The question that arises is: What was the legislature's inspiration for that last phrase of the amended statute? I believe that O'Connor provides the answer and that once this is understood the purpose of the amended language becomes clear.

The first sentence added into § 40-10-82 by the 2009 amendment provides: "There shall be no time limit for recovery of real estate by an owner of land who has retained possession." (Emphasis added.) In other words, the amended version of § 40-10-82 expressly states that there is no statute of limitations on the right of judicial redemption for a property owner who has "retained possession" of his or her property. The first part of the next sentence then explains the "character," or definition, of what constitutes "retained possession" for purposes of the right of judicial redemption: "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 ...." Finally, the remaining portion of the last sentence of the amended statute explains how a tax purchaser can cut off

possession from the property owner who is "seeking to redeem" the property: "[W]here 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."

The inescapable conclusion from the language added to § 40-10-82 in 2009 is that possession is a prerequisite to the right of judicial redemption of property. Applying that language to the facts in this case as determined by the trial court, Austill cut off Prescott's possessory interest in the property by adversely possessing the property for three years from the date he was entitled to possession. Once Prescott's possessory interest in the property was extinguished, so was his right to judicially redeem the property. Prescott filed this redemption action after his right to judicial redemption had been extinguished. Accordingly, I believe that the trial court erred by ruling in Prescott's favor and that the judgment should have been reversed. Therefore, I dissent in case no. 1170709.

Sellers and Stewart, JJ., concur.