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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

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Alvin Darby

v.

Willie Earl Presley

Appeal from Butler Circuit Court
(CV-16-900093)

HANSON, Judge.

Alvin Darby appeals from a judgment of the Butler Circuit Court that, among other things, declared Willie Earl Presley ("Presley") to be the

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sole owner of an eight-acre tract of land located in Butler County ("the property"). We reverse and remand.

The property was deeded to Martha Jane Presley in 1907. Many years thereafter, Martha Jane died intestate and without issue or a surviving spouse. Martha Jane had at least two siblings, Mary Darby and Dave Wallace.¹ After Martha Jane died, Mary Darby's son, Jerry Darby, began paying the annual property taxes on the property. After Jerry Darby died, two of his sons, Alvin Darby and George Darby, continued to pay the property taxes and generally looked after the property. The parties agree, however, that the property is "heir property," meaning that the property is owned by the heirs of Martha Jane -- presumably, in this case, the children of Martha Jane's siblings and/or their descendants -- as tenants in common. See § 35-6A-2(5), Ala. Code 1975 (defining "heirs property"), a part of the Alabama Uniform Partition of Heirs Property Act, § 35-6A-1 et seq., Ala. Code 1975. The parties admit that they cannot

¹The parties knew of no other siblings of Martha Jane, but could not rule out the possibility of there having been other siblings. Mary Darby predeceased Martha Jane.

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identify all the potential cotenants of the property, including their number and respective ownership interests. Nevertheless, the record indicates that there are "a lot" of "heirs" of Martha Jane owning fractional interests in the property that were not joined as parties to the action.²

Sometime around the year 2000, George Darby purported to give Presley permission to place a mobile home on the property. Afterward, Presley cleared approximately one acre of the property, established utility service for the property, had a septic system installed on the property, prepared a pad for the mobile home, installed a driveway approaching the mobile home, and planted a garden on the property. Presley did not sign a lease and was not asked to pay rent, although George claims that he had asked Presley, in lieu of paying rent, to pay the annual property taxes, which Presley did not do except for the years 2016, 2017, and 2018. At the

²For instance, it was undisputed that there are many descendants of Dave Wallace who are believed to hold ownership interests in the property but who were not joined as parties to the action. Moreover, the record indicates that there are living children and grandchildren of Jerry Darby owning interests in the property who were not joined as parties.

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time of the trial in this case, Presley had lived on the property for approximately 19 years.

Alvin and George stopped paying taxes on the property in approximately 2013. On May 29, 2014, Alvin acquired a tax deed to the property at a public tax sale after paying the sum of \$99.35. Presley stated that, in 2015, he had asked George about purchasing two acres of the property but had learned that Alvin and George did not own the property outright. Presley stated that George had told him at that time that Alvin had been attempting to resolve the title issues with regard to the property and had said that Alvin and George would sell Presley a portion of the property once a clear title was obtained.

In 2016, Presley began clearing additional land to expand his garden. George told him he could not expand his garden and ultimately asked Presley to remove his mobile home from the property. On April 29, 2016, Presley, claiming to be an heir to Martha Jane, paid \$197.09 to the Butler County Revenue Commissioner in an effort to redeem the property, and he received a certificate of redemption.

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On September 1, 2016, Alvin commenced an ejectment action against Presley,³ and he later amended his complaint to assert a claim requesting that the trial court set aside the certificate of redemption issued to Presley because, according to Alvin, Presley was not a member of a class of people entitled to redeem the property pursuant to § 40-10-120, Ala. Code 1975.⁴ Presley filed a counterclaim seeking to quiet title to the property and claiming ownership of the property by adverse possession. He later amended his counterclaim to seek a judgment declaring that the certificate of redemption was valid and that he was the owner of the property by virtue of his having redeemed the property.

³Before Alvin commenced his action, George had conveyed his interest in the property to Alvin.

⁴Section 40-10-120(a) provides, in pertinent part, that real estate sold as a result of a tax delinquency may be redeemed within three years from the date of the tax sale by

"the owner, his or her heirs, or personal representatives, ... or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common, including a judgment creditor or other creditor having a lien thereon, or any party thereof ..."

A bench trial was conducted on February 19, 2019. At trial, Presley abandoned his adverse-possession claim and, instead, argued that he was an heir of Martha Jane and, like Alvin, owned an undivided interest in the property that had entitled him to redeem the property.⁵ Alvin disputed Presley's relation to Martha Jane at trial but admitted that he was uncertain as to the identities of all the descendants of Martha Jane who might own interests in the property. George testified similarly on Alvin's behalf. Presley testified that he had always believed that he was an heir of Martha Jane, but he did not otherwise specifically describe his relationship to Martha Jane or how his purported ownership interest in the property had devolved from her to him.

On September 6, 2019, the trial court entered a final judgment. In support of its judgment, the trial court made certain findings of fact, including a finding that Presley was a descendant and heir of Martha Jane. The trial court held that, because of that fact, Presley's redemption

⁵We note that, in addition to claiming to be an heir of Martha Jane, Presley also claimed to be a "creditor" under § 40-10-120(a) because of his having made improvements to the property.

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of the property was valid, that Presley was entitled to prevail as to Alvin's ejectment claim, and that Presley was the sole owner of the property by virtue of his having redeemed the property. This appeal followed.⁶

On appeal, Alvin contends that the trial court erred in declaring Presley to be the sole owner of the property.⁷ In support of his position, Alvin cites the general rule that "[r]edemption from a tax sale by one cotenant inures to the benefit of all the cotenants, who, after the redemption, may rehabilitate their cotenancy." Ex parte Walker, 739 So. 2d 3, 5 (Ala. 1999). Presley, for his part, agrees with Alvin that he did not become the sole owner of the property by virtue of his redemption of the

⁶Alvin's appeal was transferred by the supreme court to this court pursuant to § 12-2-7(6), Ala. Code 1975.

⁷On appeal, Alvin does not challenge the trial court's finding that Presley is an heir of Martha Jane and a cotenant of the property. Thus, Alvin has waived that issue. Nevertheless, Alvin's unilateral decision not to challenge this aspect of the judgment cannot properly be deemed to have altered the property rights of the nonparty cotenants, whose ownership shares might be affected by the inclusion of Presley as an additional cotenant. See John H. Peterson, Sr., Enters., Inc. v. Chaney, 486 So. 2d 1307, 1308 (Ala. Civ. App. 1986) (holding that judgment entered on a stipulation in sale-for-division case was void when interested tenant in common had not been properly served and had not been a party to the stipulation).

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property. Nevertheless, he contends that he is entitled to ownership of the portion of the property upon which he has made improvements, and he requests that we remand the case with instructions for the trial court to consider partitioning the property and awarding him ownership of that improved portion of the property.

Before addressing the merits of the parties' arguments as to the ownership of the property, we must first consider whether the parties' failure to join the other cotenants as parties to the action constitutes a defect requiring reversal of the judgment. Although the failure to join indispensable parties was not raised by the parties in the trial court or on appeal, "[t]his defect can be raised for the first time on appeal by the parties or by the appellate court ex mero motu." Capitol Farmers Market, Inc. v. Delongchamp, [Ms. 1190103, Aug. 28, 2020] ___ So. 3d ___, ___ (Ala. 2020) (quoting J.C. Jacobs Banking Co. v. Campbell, 406 So. 2d 834, 850 (Ala. 1981)).

With respect to the application of Rule 19, Ala. R. Civ. P., regarding the joinder of necessary and indispensable parties, this court has explained:

"Rule 19 provides:

"(a) Persons to Be Joined if Feasible. A person who is subject to jurisdiction of the court shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

"(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be

prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.'

"Rule 19(a) defines who is a necessary party to an action. Prime Lithotripter Operations, Inc. v. LithoMedTech of Alabama, LLC, 855 So. 2d 1085, 1092 (Ala. Civ. App. 2001); Adams v. Boyles, 610 So. 2d 1156, 1157 (Ala. 1992). See also Committee Comments on 1973 Adoption of Rule 19. Certain necessary parties are also indispensable parties under Rule 19(b):

" 'A party is an indispensable party pursuant to Rule 19(b), Ala. R. Civ. P., if: (1) he is a necessary party under the definition of Rule 19(a); (2) he cannot be made a party to the action; and (3) the trial court concludes that in equity and good conscience the action cannot proceed without the absent party.'

"855 So. 2d at 1092.

"Our supreme court discussed the application of Rule 19 in Liberty National Life Insurance Co. v. University of Alabama Health Services Foundation, P.C., 881 So. 2d 1013 (Ala. 2003):

" 'We have discussed the application of Rule 19 as follows:

" "'Rule 19, Ala. R. Civ. P., provides for joinder of persons needed for just adjudication. Its purposes include the promotion of judicial efficiency and the final determination of litigation by including all parties directly interested in the controversy. Hooper v. Huey, 293 Ala. 63, 69, 300 So. 2d 100, 105 (1974), overruled on other grounds, Bardin v. Jones, 371 So. 2d 23 (Ala. 1979).'"

" 'Dawkins v. Walker, 794 So. 2d 333, 336 (Ala. 2001) (quoting Byrd Cos. v. Smith, 591 So. 2d 844, 846 (Ala. 1991)).

" "'Rule 19, [Ala.] R. Civ. P., provides a two-step process for the trial court to follow in determining whether a party is necessary or indispensable. Ross v. Luton, 456 So. 2d 249, 256 (Ala. 1984), citing Note, Rule 19 in Alabama, 33 Ala. L. Rev. 439, 446 (1982). First, the court must determine whether the absentee is one who should be joined if feasible under subdivision (a). If the court determines that the absentee should be joined but cannot be made a party, the provisions of (b) are used to determine whether an action can proceed in the absence of such a person. Loving v. Wilson, 494 So. 2d 68 (Ala. 1986); Ross v. Luton, 456 So. 2d 249 (Ala. 1984). It is the plaintiff's duty under this rule to join as a party

anyone required to be joined. J.C. Jacobs Banking Co. v. Campbell, 406 So. 2d 834 (Ala. 1981).

" " 'If such persons are not joined, the plaintiff must, under subsection (c) of Rule 19, [Ala. R. Civ. P.], state their names and the reasons why they are not joined. If there is a failure to join a person needed for just adjudication by a litigant then under subsection (a) of Rule 19, the trial court shall order that he be made a party.'

" " 406 So. 2d at 849-50. ...

" " 'We note that the interest to be protected must be a legally protected interest, not just a financial interest. Ross, supra; see Realty Growth Investors v. Commercial & Indus. Bank, 370 So. 2d 297 (Ala. Civ. App. 1979), cert. denied, 370 So. 2d 306 (Ala. 1979). There is no prescribed formula for determining whether a party is a necessary one or an indispensable one. This question is to be decided in the context of each particular case. J.R. McClenney & Son v. Reimer, 435 So. 2d 50 (Ala. 1983), citing Provident Tradesmens Bank & Trust Co. v.

Patterson, 390 U.S. 102, 88 S. Ct. 733,
19 L. Ed. 2d 936 (1968)."

" 'Holland v. City of Alabaster, 566 So. 2d 224, 226-27 (Ala. 1990) (emphasis omitted). "The absence of a necessary and indispensable party necessitates the dismissal of the cause without prejudice or a reversal with directions to allow the cause to stand over for amendment." J.C. Jacobs Banking Co. v. Campbell, 406 So. 2d 834, 850-51 (Ala. 1981). See also Stamps v. Jefferson County Bd. of Educ., 642 So. 2d 941, 945 (Ala. 1994) (Almon, J., concurring in part and dissenting in part).'

"881 So. 2d at 1021-22.

" ' "There is no prescribed formula to be mechanically applied in every case to determine whether a party is an indispensable party or merely a proper or necessary one. This is a question to be decided in the context of the particular case." ' Melton v. Harbor Pointe, LLC, 57 So. 3d 695, 700 (Ala. 2010) (quoting J.R. McClenney & Son, Inc. v. Reimer, 435 So. 2d 50, 52 (Ala. 1983)). '[M]atters concerning Rule 19, Ala. R. Civ. P., and its joinder provisions may be raised for the first time on appeal or may be raised by [an appellate court] ex mero motu.' Jamison, Money, Farmer & Co. v. Standeffer, 678 So. 2d 1061, 1067 (Ala. 1996)."

Hall v. Reynolds, 60 So. 3d 927, 929-30 (Ala. Civ. App. 2010).

Moreover, this court has noted:

" 'Rule 19, Ala. R. Civ. P., provides for joinder of persons needed for just adjudication. Its purposes include the promotion of judicial

efficiency and the final determination of litigation by including all parties directly interested in the controversy. Where the parties before the court adequately represent the absent parties' interests and the absent parties could easily intervene should they fear inadequate representation, no reason exists why the trial court could not grant meaningful relief to the parties before the court. Also, joinder of absent parties is not absolutely necessary where determination of the controversy will not result in a loss to the absent parties' interest or where the action does not seek a judgment against them....

" '[The supreme court] has also held, however, that in cases where the final judgment will affect ownership of an interest in real property, all parties claiming an interest in the real property must be joined.'

"Byrd Cos. v. Smith, 591 So. 2d 844, 846 (Ala. 1991) (citations omitted). See also Johnston v. White-Spunner, 342 So. 2d 754 (Ala. 1977) (when a trial court is asked to determine property rights of property owners not before the court, the absent property owners are indispensable parties ...)."

Allbritton v. Dawkins, 19 So. 3d 241, 243-44 (Ala. Civ. App. 2009).

In this case, the trial court held that Presley was a cotenant entitled to redeem the property and that, by virtue of his redemption, he was the sole owner of the property. To the extent that the trial court's judgment determined Presley's ownership of the property to be exclusive and, thus,

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superior to any competing interests of the other heirs of Martha Jane, the judgment necessarily affected the property rights of all the tenants in common. Accordingly, the absent cotenants were necessary parties that should have been joined in the action if feasible. See, e.g., Rule 19(a), Ala. R. Civ. P.; Hall, 60 So. 3d at 931 (all tenants in common were necessary parties in action to establish boundary line); Davis v. Burnette, 341 So. 2d 118, 120 (Ala. 1976) (joint tenant was necessary party to action seeking reformation of a deed); Russell v. Bell, 160 Ala. 480, 483-84, 49 So. 314, 315 (1909) (holding that cotenants were indispensable parties to a suit for partition of real property); 7 Charles A. Wright et al., Federal Practice and Procedure 1621 (3d ed. 2001) (stating general rule that, under Rule 19, Fed. R. Civ. P., which is substantially similar to Rule 19, Ala. R. Civ. P., "when all cotenants will be affected by the judgment or when the absence of some of them will prevent complete justice from being rendered to everyone interested in the land, all the cotenants must be joined").

In Hall, this court, upon determining that absent tenants in common were necessary parties in that case, reversed the judgment and remanded

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the case with instructions for the trial court in Hall to conduct further proceedings pursuant to Rule 19. This court directed:

"Because the record indicates that Hall and the other heirs of David Hall share an ownership interest in the Hall property, the other heirs of David Hall should have been joined in the action if it was feasible. That is, the other heirs of David Hall are at least necessary parties under Rule 19(a). However, the other heirs of David Hall were not joined and no determination was made regarding whether it was feasible to join them or, if it was not feasible, whether the action should proceed in their absence. Therefore, we reverse the trial court's judgment, and we remand the case for the trial court to conduct further proceedings consistent with this opinion and the procedure proscribed by Rule 19."

60 So. 3d at 931-32. See also Capitol Farmers Market, ___ So. 3d at ___ (reversing judgment and remanding case for trial court to determine whether necessary party could be joined and, if not, whether action could proceed); Loving v. Wilson, 494 So. 2d 68, 70-71 (Ala. 1986) (remanding case for compliance with Rule 19, Ala. R. Civ. P.).

Likewise, in this case, the record establishes there are heirs of Martha Jane owning undivided interests in the property that were not made parties to this action. Given the nature of the claims at issue, which sought to decide the ownership of the property, all the tenants in common

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are necessary parties to be joined in this action if feasible. The record indicates that the trial court conducted no Rule 19 necessary-party/indispensable-party analysis in this case. Accordingly, the judgment of the trial court is reversed, and the case is remanded with instructions for the trial court to determine whether the absent tenants in common can be identified and feasibly joined in the action; to determine, if that identification and joinder cannot take place, whether the action can properly proceed in the absence of the absent tenants in common; and to conduct other proceedings consistent with this opinion.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Moore and Donaldson, JJ., concur.

Edwards, J., concurs in the result, without writing.