

THE SUPREME COURT OF ALABAMA
Oral Argument Docket for February 5, 2019

NOTE TO ATTORNEYS: You should report to the Clerk's office at least 15 minutes prior to the call of the docket at which time your case is set for oral argument. Julia Jordan Weller, Clerk.

9:00 A.M.

1. **1170709** (985)

Jere Austill III v. Tyler Montana Jul Prescott.

ORAL ARGUMENT LIMITED TO 20 MINUTES EACH SIDE.

Petitioner/Appellant

Henry J Walker, Jr

Respondent/Appellee

Grant Blackburn

1170730 (985)

Tyler Montana Jul Prescott v. Jere Austill.

ORAL ARGUMENT LIMITED TO 20 MINUTES EACH SIDE.

Petitioner/Appellant

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SUPREME COURT OF ALABAMA
Oral Argument
Tuesday, February 5, 2019

1170709 -- Jere Austill III v. Tyler Montana Jul Prescott
1170730 -- Tyler Montana Jul Prescott v. Jere Austill

Attorney for Jere Austill: Henry J. Walker, Jr.

Attorney for Tyler Montana Jul Prescott: Grant Blackburn

Facts:

Jere Austill III purchased at a tax sale on May 15, 2012, an undeveloped residential lot in Gulf Shores, which lot was owned by Tyler Montana Jul Prescott. Austill alleges that he has adversely possessed the property since the date of the tax sale. Prescott commenced an action on May 23, 2016, more than four years after the tax sale, seeking to judicially redeem, or recover, the property. The Baldwin Circuit Court entered a judgment in Prescott's favor, allowing him to judicially redeem the property. Austill appeals from the judgment in favor of Prescott. Prescott cross-appeals, asserting that the trial court erred in denying his claim for attorney fees under the Alabama Litigation Accountability Act.

Issue:

This case primarily concerns whether Prescott still possesses the right to judicially redeem the property that Austill purchased at a tax sale on May 15, 2012, or whether Austill cut off Prescott's right of judicial redemption by adversely possessing the property for three years before Prescott commenced his action for redemption. Prescott's right of redemption hinges on the interpretation of § 40-10-82, Ala. Code 1975, which 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."

1170709 and 1170730

(Emphasis added.) The emphasized portion of the above-quoted statute constitutes the substantive language that was added to § 40-10-82 through a 2009 amendment. This Court has not interpreted § 40-10-82 since its amendment in 2009.

Two other statutes are implicated in this case. First, § 40-10-29, Ala. Code 1975, provides that a tax purchaser, such as Austill in this case, is entitled to a tax deed three years after the tax sale. Second, § 40-10-74, Ala. Code 1975, provides that a tax purchaser is entitled to possession of the property purchased at the tax sale immediately upon completion of the sale.

Prescott's argument:

Prescott argues that his right to judicially redeem the property does not expire until three years after Austill was entitled to the tax deed. Prescott bases his argument on his understanding that § 40-10-82 requires a tax purchaser to adversely possess the property in question for three years after the tax purchaser is entitled to the tax deed in order to extinguish the owner's right of judicial redemption. Prescott relies upon the following language in the statute: "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"

Austill's argument:

In contrast, Austill asserts that Prescott's right to redeem the property was cut off at the time he was entitled to the tax deed. Austill's interpretation of § 40-10-82 centers on the following language in the statute: "[C]onstructive 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." Austill argues that, in order for a tax purchaser to cut off an original owner's (or successor's) right to redeem property purchased at a tax sale, a tax purchaser is required to demonstrate adverse possession of the purchased property for three years after the tax purchaser is entitled to possession, not adverse possession for three years after the tax purchaser is entitled to the tax deed of the purchased property.