

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In re:)
)
George M. Rivers,) Case No. 23-12785
)
Debtor.)

ORDER SETTING MOTION FOR RELIEF FROM STAY FOR FURTHER STATUS

This chapter 13 bankruptcy case is before the court on the motion for relief from stay (doc. 53) filed by Janine Carter (“Mrs. Carter”). The court held a hearing on the motion on March 19, 2025, and heard testimony from Mrs. Carter’s husband Gary Carter and the debtor George M. Rivers.

The motion relates to real property located at 20275-B Soshee Road, Mt. Vernon, Alabama, which is owned by the debtor’s mother, Eula Rivers. The debtor lives in a mobile home on the Mt. Vernon property and has been in possession of the property at all relevant times, continuing to date. According to his bankruptcy schedules, the debtor owns the mobile home. The Mt. Vernon property was sold to the State of Alabama for 1997 and 1998 income taxes. (*See* Ex. 1, admitted at the hearing held on March 19). On November 16, 2022, Mrs. Carter, who lives in Kissimmee, Florida, obtained a tax deed for the Mt. Vernon property from the State Land Commissioner of Alabama for \$835.15.¹ Mrs. Carter now requests relief from stay to proceed with a pending state court ejectment action to eject the debtor from the Mt. Vernon property.

The November 2022 delivery of the tax deed to Mrs. Carter extinguished legal title in the Mt. Vernon real property by Eula Rivers. *See In re Washington*, 551 B.R. 644, 649 (Bankr.

¹ The State originally purchased the property for unpaid income taxes in 2007; the State Land Commissioner then sold the property to Mrs. Carter under Alabama Code § 40-10-134. That does not change the redemption analysis herein, however. *See In re Washington*, 551 B.R. 644, 648-49 (Bankr. M.D. Ala. 2016).

M.D. Ala. 2016). But Eula Rivers (not the debtor at this point, as outlined in further detail below) can still redeem the property under Alabama Code § 40-10-83. The tax deed did not convey title to the mobile home on the property. *See Green Tree-AL LLC v. Dominion Resources, L.L.C.*, 104 So. 3d 177, 185 (Ala. Civ. App. 2011) (“[T]he redemption statutes apply to the redemption of land, or real property, which the manufactured home is not.”).

The general rule is that an action to redeem property from a tax sale must be brought within three years after the tax purchaser becomes entitled to a deed. *See* Ala. Code § 40-10-82. But two overlapping rules in Alabama extend that time in this case. The first is in Alabama Code § 40-10-82: “There shall be no time limit for recovery of real estate by an owner of land who has retained possession.” *See also O’Connor v. Rabren*, 373 So. 2d 302, 306 (Ala. 1979). Here, possession by a tenant (the debtor) equates to possession by a landlord (the debtor’s mother). *See, e.g., Brunson v. Bailey*, 16 So. 2d 9, 11 (Ala. 1943).

The second rule extending the time here is that the three year “short statute of limitations” to redeem does not begin to run until the tax sale purchaser is in adverse possession of the land:

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. 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. This statute applies to cases where the land is purchased from the State, as well as to instances where the purchase is made from the tax collector.

Gulf Land Co., Inc. v. Buzzelli, 501 So. 2d 1211, 1213 (Ala. 1987) (internal citations omitted). A tax deed purchaser thus must show that she has “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.” *See McGuire v. Rogers*, 794 So. 2d 1131, 1136 (Ala. Civ. App. 2000).

As discussed above, the debtor has lived at the Mt. Vernon property at all relevant times. In fact, Mrs. Carter is seeking relief from stay from this court to eject the debtor from possession of the property. She does not contend that she has adversely possessed the property at any time, much less for the three continuous years required to cut off a right of redemption. *See generally In re Ferrouillat*, 558 B.R. 938 (Bankr. S.D. Ala. 2016); *In re Washington*, 551 B.R. 644.

The Carters have not made any improvements to the property or incurred any insurance premiums related to the property.² Under Alabama Code § 40-10-83, in order to redeem, the redemptioner must pay the purchase price that Mrs. Carter paid (\$835.15) plus 12% interest from the date of sale (November 16, 2022) to the date of payment. *See* Ala. Code § 40-10-83; 40-10-122(a)(1).³ The purchase price continues to accrue interest at the statutory rate of 12%. While Mr. Carter argued that he and his wife are entitled to damages and out-of-pocket expenses stemming from multiple round trips from Florida to the Mt. Vernon property, from alleged false criminal charges that Eula Rivers levied against him, and from state court filing fees related to ejectment, those type damages are not provided for by Alabama redemption law.

Counsel proposed for the debtor to pay any redemption amount through his chapter 13 plan. *See generally In re Ferrouillat*, 558 B.R. 938; *In re Washington*, 551 B.R. 644. The problem with this argument, however, is that only “the owner of the land at the time of the sale for taxes . . . , his or her heir, devisee, vendee or mortgagee” is entitled to redeem under Alabama

² The Carters believed they had received tax bills for \$50 each, but the court checked the public records of the Mobile County tax assessor, which show that no taxes have been assessed or paid on the property since 2016.

³ The rate is 8% for sales related to taxes delinquent after January 1, 2020, but the taxes here were for 1997-1998.

Code § 40-10-83. The debtor is not the owner of the property and is not an heir, because his mother is still alive and appeared in court with him on the date of the hearing. His mother has not devised the property to him, either.

This brings the court to Mrs. Carter's motion for relief from stay and whether relief is warranted under Bankruptcy Code § 362. The court finds that the Mt. Vernon property is necessary for the debtor's effective reorganization under Code § 362(d)(2)(B) because it is where he lives. But the court also finds that Mrs. Carter's interest in the Mt. Vernon property is not being adequately protected under Code § 362(d)(1).

The court can see several ways of handling this situation:

- (1) Eula Rivers can pay Mrs. Carter a lump sum of \$835.15, plus interest at 12% for November 16, 2022 forward in return for a quitclaim deed.
- (2) Eula Rivers can file an action to redeem in circuit court. Of course, that action will require a state court filing fee of several hundred dollars.
- (3) Eula Rivers can convey the property to her son through a quitclaim or other appropriate deed, and the debtor can then seek to redeem the property through his chapter 13 plan for \$835.15, plus statutory interest of 12%.
- (4) Eula Rivers can file her own chapter 13 bankruptcy and seek to redeem the property through her own case. This course of action will probably cost Ms. Rivers a bankruptcy attorney's fees of \$4,500 plus filing fees and will require her to pay the trustee for at least three years.

It would obviously be much less expensive to redeem the property outside bankruptcy, and the court encourages the debtor and his family to attempt to do so. The court sets the motion for a status hearing on May 7, 2025, at 8:30 a.m., Courtroom 2 West, 113 St. Joseph Street,

Mobile, AL 36602, to discuss how the parties are going to proceed. Mrs. Carter and/or her husband do not have to appear in person for the hearing but may appear telephonically by calling 1-650-479-3207, Meeting ID 2312 961 7319.

Dated: April 21, 2025


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE