

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

In re:)
)
KIM GEZEL CASS,) Case No. 18-3703
)
Debtor.)

ORDER ON MOTION FOR RELIEF FROM STAY
AND MOTION FOR INSTRUCTIONS

This case is before the court on the motion for relief from stay (doc. 20) filed by creditors Michael Williams and Shontal Taite (“the tax sale purchasers”) and the “motion for instructions” (doc. 62) filed by debtor.

The tax sale purchasers obtained a tax certificate in December 2015 and then a tax deed dated August 18, 2016 for debtor’s home at 1228 Wilkins Road, Mobile, Alabama. Under Alabama Code § 40-10-74, any purchaser of lands at a tax sale other than the state or anyone claiming under him is entitled to possession of the lands immediately upon receipt of the certificate of sale from the tax collector -- however, subject to all rights of redemption. In August 2017, the tax purchasers filed an ejectment action against the debtor in the circuit court of Mobile County for possession of the property, and debtor counterclaimed seeking judicial redemption.

On August 7, 2018, the circuit court entered an order, a copy of which is attached as Exhibit A, establishing the redemption amount (\$16,763.17 plus per diem interest of \$3.86 after 8/3/18) and entering judgment in favor of the tax purchasers for possession of the property plus money damages if the debtor failed to pay the redemption amount within thirty days. The debtor failed to redeem the property within that time, the tax purchasers requested a writ of possession from the circuit court, and the debtor filed this chapter 13 bankruptcy on September 12, 2018.

Under the *Rooker-Feldman* doctrine, a federal court may not review and reverse a state court civil judgment because only the U.S. Supreme Court has appellate jurisdiction over judgments of state courts in civil cases; however, the doctrine applies only to fully completed, non-appealable state court orders. *In re Bertram*, 2018 WL 5797725 (11th Cir. 2018). The circuit court's judgment was not final when the debtor filed this bankruptcy case because the 42-day appeal time under Alabama Rule of Appellate Procedure 4(a) had not run. This court thus previously (doc. 44) modified the stay to allow the debtor to appeal the circuit court judgment if she so desired and to allow the judgment to become final if she did not.

The debtor did not appeal the circuit court judgment, the appeal time has run, and the circuit court judgment establishing the redemption amount and granting possession to the tax sale purchasers is now final and non-appealable. The *Rooker-Feldman* doctrine thus applies to the state court's judgment. As a result, this court will enforce the state court's judgment that the tax sale purchasers are entitled to possession of the subject property and establishing the redemption amount.

The more complicated question is whether the debtor can still redeem despite missing the deadline set by the circuit court to do so in order to retain possession of her home. The debtor has raised this issue in the "motion for instructions" (doc. 62). If she still has it, the debtor's right to redeem is clearly property of her bankruptcy estate. *In re Ferrouillat*, 558 B.R. 938, 942-43 (Bankr. S.D. Ala. 2016). As part of the confirmation process the court must also decide the issue of whether the debtor still has a right to redeem. The debtor seeks to redeem her home through a Chapter 13 plan (docs. 10, 19, 48, 52, and 55), although her attorney said at the hearing that debtor has raised the funds necessary to redeem in lump sum outside the bankruptcy. *See In re Washington*, 551 B.R. 644 (Bankr. M.D. Ala. 2016) (redemption for tax sale through Chapter 13 plan allowed). The tax purchasers have objected to confirmation on the ground, among others, that the debtor can no longer redeem her property (doc. 41).

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. Ala. Code § 40-10-82. However, 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 (Ala. 1979).

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. *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. 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. *Merchants National Bank of Mobile v. Lott*, 255 Ala. 133, 50 So. 2d 406 (1951).

Gulf Land Co., Inc. v. Buzzelli, 501 So. 2d 1211, 1213 (Ala. 1987). “[O]ur 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.” *McGuire v. Rogers*, 794 So. 2d 1131, 1136 (Ala. Civ. App. 2000).

The debtor lives in the house and has been in possession of the property in question at all relevant times, continuing to date. In fact, the tax purchasers are seeking relief from stay from this court in order to eject her from possession of the property. The tax purchasers do not

contend that they have adversely possessed the property at any time, much less for the three continuous years required to cut off the debtor's right of redemption.

The tax sale purchasers' circuit court action was for ejectment, not an action to quiet title under Alabama Code § 6-6-560. The debtor counterclaimed for judicial redemption. The circuit court judgment did not quiet title in the tax purchasers or purport to cut off the debtor's right of redemption; it simply established the redemption amount and set a deadline by which the debtor had to redeem or the tax purchasers would be entitled to enforce a judgment for possession -- possession to which they were entitled upon receipt of the tax sale certificate as provided by Alabama Code § 40-10-74. However, the fact that the tax purchasers are legally entitled to possession and now have a judgment for possession does not cut off the owner's right to redemption, as set out in Alabama Code § 40-10-74 (tax purchaser's right to eject owner is "subject, however, to all rights of redemption provided for in this title"). The tax purchasers have not claimed or proven that they have adversely possessed the property at any time. To hold that a tax purchaser's judgment for possession somehow cuts off the owner's right of redemption would be contrary to Alabama Code §§ 40-10-74, 40-10-82, and the case law cited above. The court thus finds that the debtor's right of redemption has not expired and that she can redeem until the tax purchasers have continuously adversely possessed the property for three years.

The court notes the debtor's right to redeem may not do her much practical good if she cannot do so very quickly because the court is granting relief from stay on the ejectment claim and she may lose possession of her home shortly. Further, the court is not yet reaching the issue of whether the debtor's chapter 13 plan is confirmable.

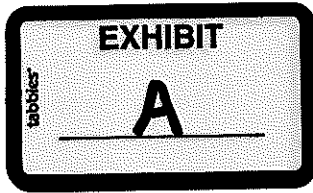
For the reasons stated above, the court orders as follows:

1. The tax purchasers' motion for relief from stay is granted to allow them to pursue possession of the real estate at 1228 Wilkins Road, Mobile, Alabama pursuant to the judgment entered in the Circuit Court of Mobile County, Civil Action No. CV-2017-901998. Any further relief from stay is denied. The 14-day stay of Bankruptcy Rule 4001(a)(3) is not waived, so this relief from stay is not effective until 14 days from entry of the order.

2. The court grants the debtor's motion for instructions and overrules the tax purchasers' objection to confirmation to the following extent: Because the tax purchasers have not been in continuous adverse possession of the subject property for three years, the court holds that the debtor is still entitled to redeem the property by paying the redemption amount (including interest) as established by the circuit court to the tax purchasers in care of their attorney as provided by the circuit court's order. The court declines to calculate that amount mathematically since it has already been established by the circuit court. The court is not ruling on confirmation of debtor's plan or any other grounds for objection to confirmation.

Dated: February 4, 2019


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE



IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

MICHAEL WILLIAMS and
SHONTAL TAITE,

Plaintiffs,

v.

KIM CASS, et al,

Defendants,

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CIVIL ACTION NO.
CV 2017-901999.00

ORDER

This case is before the Court on the Plaintiffs' Motion for Summary Judgment and the Defendant Kim Cass's request to redeem the property at issue in this case from a tax sale in accordance with §40-10-83, Code of Ala. (1975). Upon consideration of the motion and the arguments of counsel, the Court ORDERS as follows:

1. As of August 3, 2018 the amount required to redeem the property from the tax sale is \$16,763.17. Interest accrues at the rate of \$3.86 per day.

2. The Defendant Kim Cass shall have thirty (30) days from the date of this Order to redeem the property from the tax sale by paying the amounts set forth in Paragraph 1 (including accrued interest) to the Plaintiffs in care of their counsel of record.

3. Should the Defendant fail to redeem the property as provided in Paragraph 2, then the Plaintiffs' Motion for Summary Judgment is GRANTED and the Plaintiffs shall have judgment against the Defendant Kim Cass as follows:


a. For possession of the property located at 1228 Wilkins Road, Mobile, Alabama 36618 more particularly described as follows:

Lot 1, Purnell Subdivision, according to plat thereof recorded in Map Book 113, Page 109 in the records of the Judge of Probate, Mobile County, Alabama.

b. For money damages in the amount of \$10,130.79, plus costs.

4. The provisions of Paragraph 3 of this Order shall be effective immediately, without further Order of this Court, upon the Plaintiffs' filing a Notice of Noncompliance stating that the Defendant has failed to pay the redemption amounts as set forth above.

DONE this 7th day of August, 2018.



ROBERT H. SMITH
CIRCUIT JUDGE