

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

In re:)
)
JAMES E. SCOTT, JR.,) Case No. 17-1436
)
Debtor.)

ORDER DENYING MOTION FOR TURNOVER (DOC. 118)

This matter is before the court on the debtor James E. Scott, Jr.’s “amended motion for turnover” (doc. 118) and the response (doc. 120). The court took this matter under submission based upon stipulated facts as agreed to by the parties in open court on February 27, 2019. For the reasons discussed herein, the court denies the motion (doc. 118).

The subject of the turnover motion is a rental house located at 2440 BlueGrass Way, Semmes, Alabama. J.E. Scott Properties, LLC obtained an interest in the house by quit claim deed dated February 1, 2013 which was recorded in probate court on July 14, 2017. (Doc. 123, p.3). J.E. Scott Properties, LLC transferred his interest in the property to debtor Scott pursuant to a deed dated December 15, 2016 and recorded in probate court on July 18, 2017. (*Id.* at p.4). Scott failed to pay the taxes due on the rental house and the state bid in for the property on May 29, 2014. (*See id.* at p.2). The state sold the rental house to Bisby on June 16, 2017 and gave him a deed for the property, which was recorded in probate court on July 5, 2017. (*See id.*).

Scott filed this chapter 13 case on April 7, 2017. His confirmed chapter 13 plan (doc. 73) provides for redemption from the tax sale from Bisby. Bisby did not contest confirmation and filed a secured proof of claim no. 15 in the amount of \$3,193.60, to which Scott has not objected.

The court dismissed Scott’s chapter 13 case on August 3, 2018 for failure to make plan payments (doc. 89). The court granted Scott’s motion to reinstate the case on September 11,

2018 (doc. 100). In the interim, Bisby had obtained possession of the rental house by changing the locks on August 9, 2018. Bisby transferred his interest in the rental house to Netesha Pendleton, LLC pursuant to deed dated August 10, 2018 and recorded on August 10, 2018. (Doc. 124). Bisby has continued to receive payments from the chapter 13 trustee since the case's reinstatement, but he has not yet received the full redemption amount. In his motion, Scott requests that the court order that Bisby and/or Netesha Pendleton, LLC "surrender to property to him and cease all contact with the property." (Doc. 118, ¶8).

The state sold the rental house to Bisby in June 2017 pursuant to Alabama Code § 40-10-132 and gave him a deed pursuant to Alabama Code § 40-10-135. Bisby was entitled to possession of the rental house when he purchased it from the state. *See In re Washington*, 551 B.R. 644, 649-51 (Bankr. M.D. Ala. 2016) ("The tax purchaser is entitled to possession of the land when he purchases it at the tax sale (or from the State)."); *see also generally Thomas v. Benefield*, 494 So. 2d 452 (Ala. Civ. App. 1986).

Bisby did not move for relief from the automatic stay to obtain possession of the rental house. However, once the case was dismissed on August 3, 2018, the automatic stay terminated and Bisby exercised his right to possession of the rental house on August 9, 2018. *See, e.g., In re Holloway*, 565 B.R. 435, 436-39 (Bankr. M.D. Ala. 2017). Reinstatement of the stay once the case was reinstated was not retroactive to the date of dismissal. *See, e.g., id.*; *see also generally In re Lashley*, 825 F.2d 362 (11th Cir. 1987). Bisby thus had a right to possess the rental house when he did so on August 9, 2018, and he and his successor-in-interest were not somehow divested of that right of possession once the stay was reinstated over a month later. Similarly, the binding effect of the confirmed plan disappeared when the case was dismissed. *See, e.g., In re Murphy*, 493 B.R. 576, 581-82 (Bankr. D. Colo. 2013). As in *In re Murphy*, the court declines to hold that reinstatement of the case should bind a creditor to the terms of the previously

confirmed plan where, as here, the rights of the parties have substantially changed during the gap period. *See id.*

As a result, the court denies the motion for turnover (doc. 118). Although Scott does not have the right to possession of the property, he may still be able to redeem the property through his confirmed plan, but that issue is not currently before the court. The court denies the original motion (doc. 107) as moot.

Dated: March 1, 2019


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE