REL: September 17, 2021

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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

1200080

City of Birmingham

v.

Metropolitan Management of Alabama, LLC

Appeal from Jefferson Circuit Court
(CV-19-301)

PARKER, Chief Justice.

The City of Birmingham ("the City") appeals from the Jefferson

Circuit Court's denial of its motion to vacate a quiet-title judgment in favor of Metropolitan Management of Alabama, LLC ("Metropolitan"). We reverse and remand.

I. Facts and Procedural History

In 1999, the State of Alabama purchased a parcel of property located in Jefferson County ("the property") at a tax sale. According to the City, in 2006 "the City's Director of Finance conducted a public sale, selling and conveying a delinquent demolition assessment against the ... property." The City purchased that assessment interest and, in February 2007, recorded a deed showing the conveyance. In 2017, the property was sold by the State, and Michael Froelich, who was the managing member of Metropolitan, obtained title to the property by a tax deed. Froelich then conveyed the property to Metropolitan by quitclaim deed.

In 2018, Metropolitan commenced an action in the Jefferson Circuit Court to quiet title to the property. Metropolitan named Constance Renee Miller Wambo as a defendant possessing an interest in the property and identified as fictitiously named defendants "any individuals and/or entities who may claim an interest now or in the future in the property ..., whose

true identity is currently unknown to [the] Plaintiff." Metropolitan filed a motion under Rule 4.3, Ala. R. Civ. P., and § 6-6-564, Ala. Code 1975, requesting to serve Wambo and all unknown defendants by publication. In support of that motion, Metropolitan filed an affidavit of Froelich in which Froelich averred that he, after a diligent search with the assistance of an attorney, had been unable to identify any other interest holders. The court granted Metropolitan's motion. Notice of the action was published in the Alabama Messenger four times over four consecutive weeks. No one responded to the notice. As required by statute, the court appointed a guardian ad litem to represent and defend the interests of any unknown interest holders. See § 6-6-562. The guardian ad litem filed a report averring that he had been unable to locate any other interest holders. In November 2019, the court entered a judgment quieting title to the property in Metropolitan, conveying to Metropolitan fee-simple title to the exclusion of all others, voiding any claims of the defendants, and making Metropolitan's claim of interest superior to any other.

In January 2020, Metropolitan's attorney contacted counsel for the City regarding the City's recorded assessment interest, which

Metropolitan later averred it had discovered after entry of the judgment. In June 2020, the City filed a motion to intervene in the quiet-title action and a motion to vacate the judgment as void under Rule 60(b)(4). The court denied the City's motion to vacate without stating grounds. The City appeals.

II. Standard of Review

We review de novo a trial court's ruling on a motion to vacate under Rule 60(b)(4), Ala. R. Civ. P. Bank of Am. Corp. v. Edwards, 881 So. 2d 403, 405 (Ala. 2003).

III. Analysis

The City argues that the circuit court erred in denying the City's motion to vacate the judgment because, it asserts, the judgment was void. In particular, the City contends that the court lacked personal jurisdiction to adjudicate the City's interest in the property because, the City asserts, Metropolitan impermissibly served notice by publication. The City argues that Rule 4.3(b), Ala. R. Civ. P., required Metropolitan to first attempt to serve the City by some other method because the City's "residence" was "known" by Metropolitan. Specifically, the City posits that Metropolitan

had constructive knowledge of the City's interest as well as its "residence" (City Hall) because the deed reflecting the City's assessment interest was recorded and contained a reference to that residence. We agree.

Rule 4.3(b) provides: "When the residence of a defendant is known and the action is one in which service by publication is permitted, service of process must first be attempted by one of the methods of service other than publication as is provided by Rule 4 ...." (Emphasis added.) It is undisputed that Metropolitan did not attempt to serve the City by any method other than publication. And the City contends that its "residence" was "known" by Metropolitan because Metropolitan had constructive notice of the City's recorded deed that contained a reference to that "residence."

Proper recording of an instrument reflecting an interest in real property gives constructive notice of the instrument's contents to all subsequent purchasers of the property. § 35-4-51, Ala. Code 1975; Brown v. First Fed. Bank, 95 So. 3d 803, 814-16 (Ala. Civ. App. 2012). Put another way, knowledge of those contents is imputed to purchasers. Haines v. Tanning, 579 So. 2d 1308, 1310 (Ala. 1991). The City's deed was

recorded in 2007, about 10 years before Froelich conveyed the property to Metropolitan. Therefore, Metropolitan had constructive notice of the deed's contents when Metropolitan acquired the property. Although the deed did not list a street address for the City, it specified that it was prepared by a person whose location was "CITY HALL, BIRMINGHAM, ALABAMA 35203." Moreover, the Rules of Civil Procedure establish that a municipality may be served with process "by serving the chief executive officer or the clerk" of the municipality, Rule 4(c)(8), whose offices would ordinarily be at City Hall. Thus, the contents of the deed included sufficient notice of the City's "residence."

Accordingly, the key issue presented by this case is whether a quiet-title plaintiff's constructive notice of the residence of the holder of an interest in the subject property, based on a recorded instrument reflecting that interest, constitutes "know[ledge]" of the residence under Rule 4.3(b). In resolving this issue, we recognize that due-process principles underlie Rule 4.3's restrictions on service by publication. See generally 16B Am. Jur. 2d Constitutional Law § 980 (2020) (discussing due-process limitations on service by publication). And we are guided by

prior decisions of the United States Supreme Court and this Court applying those due-process principles to similar facts.

In Schroeder v. City of New York, 371 U.S. 208 (1962), New York City instituted a proceeding to divert a river at a point 25 miles upstream from a particular landowner. The landowner's name and address were "readily ascertainable from both deed records and tax rolls," id. at 210, but the city only published notice of the proceeding in the city record and newspapers and posted notices on trees and poles along the river (not on the landowner's property). The published and posted notices did not contain the landowner's name. The Supreme Court held that the city's actions "did not measure up to the quality of notice which the Due Process Clause of the Fourteenth Amendment requires." Id. at 211.

Closer to the facts of this case, in Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983), a county conducted a tax sale after publishing an announcement of the sale and mailing notice to the property owner. However, the county did not directly notify the holder of a mortgage on the property, whose mortgage had been recorded in the local records. Under state law, the purchaser at the tax sale obtained a lien

superior to the mortgage. The Supreme Court held that the county's method of notice failed to satisfy due process as to the mortgagee, explaining: "When the mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address, or by personal service. ... [U]nless the mortgagee is not reasonably identifiable, constructive notice alone does not satisfy" due process. Id. at 798. Further, the Court noted that, although the deed did not contain the mortgagee's address, it could presumably have been ascertained by reasonably diligent efforts. Id. at 798 n.4.

This Court discussed the holding of Mennonite in a case with similar facts, Special Assets, L.L.C. v. Chase Home Finance, L.L.C., 991 So. 2d 668 (Ala. 2007). There, fire districts held sales of two properties for unpaid fire-service charges. Each property had a recorded mortgage on it, but the fire districts made no attempt to provide notice of the impending sales to the mortgagee by mail or personal service. (The mortgagee was the same for both properties.) Instead, the fire districts published notice of the sales in local newspapers. Relying on Mennonite, the trial court ruled that the

fire districts' method of service failed to satisfy due process. On appeal to this Court, the sale purchasers argued that the mortgagee had not been "readily identifiable" because the mortgages did not contain an address for the mortgagee. Id. at 672. We rejected that argument, noting that the mortgagee's address was on file with the Secretary of State and that the purchasers did not argue that that fact was insufficient to render the mortgagee readily identifiable. Id. at 673-74. We also noted that the purchasers did not point to any evidence that the mortgagee had failed to properly record the mortgages or that a reasonable search of the probate records would not have disclosed the mortgages. Id. at 674 n.8.

In light of the due-process holdings of Schroeder and Mennonite, as well as the law's imputation to purchasers of knowledge of contents of recorded documents, we conclude that such constructive notice of a defendant's residence generally suffices for "know[ledge]" of that residence under Rule 4.3(b). We emphasize, however, as we did in Special Assets, that Metropolitan does not provide any reason why a reasonable probate-records search would not have disclosed the City's deed. Likewise, Metropolitan does not argue that the contents of the deed were

insufficient to put Metropolitan on notice of the City's "residence."

Because Metropolitan had knowledge of the City's residence, Metropolitan's service by publication without first attempting another means of service failed to comply with Rule 4.3(b). "Failure of proper service under Rule 4 deprives a court of jurisdiction and renders its judgment void." Ex parte Pate, 673 So. 2d 427, 428-29 (Ala. 1995); see also Whitfield v. Sanders, 366 So. 2d 258 (Ala. 1978) (holding that improper service by publication rendered judgment void); Shaddix v. Shaddix, 603 So.2d 1096 (Ala. Civ. App. 1992) (same).[1] "[I]f [a] ... judgment is void because the trial court lacked subject-matter or personal jurisdiction or because the entry of the judgment violated the defendant's due-process rights, then the trial court has no discretion and must grant relief under Rule 60(b)(4)." Allsopp v. Bolding, 86 So. 3d 952, 957 (Ala. 2011).

In seeking affirmance of the circuit court's order, Metropolitan argues that the City's motion to vacate was untimely. Metropolitan asserts that a motion alleging a "mistake" by Metropolitan's counsel, the

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[1]Metropolitan does not assert that the City had actual notice of the quiet-title action before the judgment was entered.

guardian ad litem, or the circuit court had to be filed within the four-month period applicable to motions under Rule 60(b)(1). However, this argument is irrelevant because the City did not proceed on a theory of mistake under 60(b)(1). Instead, the City's motion was brought under Rule 60(b)(4), and, correspondingly, the substance of its argument was that the judgment was void. Metropolitan does not develop any argument showing that the City should have been limited to alleging mistake. And because the motion was based on voidness of the judgment, it could be filed at any time. Ex parte Full Circle Distrib., L.L.C., 883 So. 2d 638, 642-43 (Ala. 2003).

Accordingly, the circuit court erred by denying the City's motion to vacate the judgment.[2]

IV. Conclusion

We reverse the circuit court's denial of the City's motion to vacate the judgment and remand for further proceedings consistent with this opinion.

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[2]Because we reverse the judgment based on the City's argument discussed above, we pretermit discussion of the City's other arguments.

REVERSED AND REMANDED.

Shaw, Bryan, Mendheim, and Mitchell, JJ., concur.