

Rel: February 16, 2024

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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

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CL-2023-0643

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Howard Ross

v.

Jason Baker, Misty Baker, and Tina Benson

Appeal from Madison Circuit Court  
(CV-23-40)

MOORE, Presiding Judge.

Howard Ross appeals from a judgment entered by the Madison Circuit Court ("the circuit court") dismissing his unlawful-detainer action. We reverse the circuit court's judgment and remand the case with instructions.

On December 8, 2022, Ross commenced in the Madison District Court ("the district court") an unlawful-detainer action against Misty Baker, Jason Baker, and Tina Benson ("the tenants"), the tenants of a condominium unit Ross claimed he owned, based on an alleged default under the lease; he asserted in his complaint that the tenants had failed to pay two months' rent due under the lease. On December 28, 2022, the tenants filed an answer denying the material allegations in the complaint. On March 20, 2023, the district court conducted a trial, and, on March 21, 2023, the district court entered a judgment dismissing the action.

In the judgment of dismissal, the district court determined that Ross was not the owner of the condominium unit and that Ross was not a licensed attorney who could file a complaint on behalf of any third party who allegedly owned the condominium unit. The district court concluded that Ross had filed a void pleading. See Ex parte Williams, 89 So. 3d 135, 139 (Ala. Civ. App. 2011) (discussed infra).

On March 22, 2023, Ross appealed the judgment of dismissal to the circuit court. On March 29, 2023, Ross filed a motion for a summary

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judgment. On May 16, 2023, the circuit court set the case for a trial to be held on May 30, 2023, and indicated that it would hear all pending motions on that date. On May 19, 2023, the tenants filed a response to the motion for a summary judgment.

On May 30, 2023, the circuit court conducted a hearing on the case. At the outset of the hearing, the circuit court noted that there was a question as to Ross's ownership of the condominium unit and indicated that ownership needed to be resolved before Ross could proceed further without an attorney. Ross responded that "there's no question of ownership in an eviction action," citing Ross v. Lewis, 44 So. 3d 1106, 1109 (Ala. Civ. App. 2010), another appeal in which Ross was the appellant, and that he was not prepared to prove his ownership of the condominium unit. The circuit court insisted that Ross needed to prove his ownership of the condominium unit to proceed without an attorney.

Ross was correct that his ownership of the condominium unit was not properly in dispute. Pursuant to the 2018 lease submitted by Ross, upon which he based the unlawful-detainer action, Ross was designated as the lessor, or landlord, of the condominium unit. Section 35-9-1, Ala.

Code 1975, provides that "[t]he tenant cannot dispute his landlord's title, nor attorn to another claimant while in possession, except in cases provided otherwise in this Code." Section 6-6-336, Ala. Code 1975, a part of the article governing actions for forcible entry and unlawful detainer, provides, in pertinent part, that "[t]he estate or merits of the title cannot be inquired into on the trial of any complaint filed under this article ...." Generally speaking, pursuant to §§ 35-9-1 and 6-6-336, in an unlawful-detainer action, "tenant-defendants may not validly assert that third parties, rather than their landlords, hold title to leased properties." Ross, 44 So. 3d at 1109. Therefore, the tenants could not validly deny that Ross owned the condominium unit.

Nevertheless, the parties complied with the circuit court's directive to provide proof of ownership of the condominium unit for the limited purpose of determining whether Ross could proceed without an attorney. The circuit court received sworn testimony from Ross regarding his ownership of the condominium unit. Additionally, each party submitted exhibits regarding title to the condominium unit. Ross testified that his exhibits showed that he was the owner of the condominium unit by virtue

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of a 1998 deed and a 2015 circuit-court judgment clearing his title to the condominium unit. The tenants submitted documents purporting to show that Ross was not the title owner of the condominium unit. The circuit court determined that Ross had failed to prove that he owned the condominium unit. On May 30, 2023, following the hearing, the circuit court entered an order stating:

"This matter came before the Court on this date for trial on the Petition for Unlawful Detainer by [Ross] as well as his Motion for Summary Judgment. Because [Ross] appeared pro se the Court took testimony and admitted documents regarding ownership of the property as ownership was challenged by [the tenants].

"The Court finds that [Ross] has failed to prove to the Court that he is the owner of the residence as stated in the complaint. For this reason [Ross] is barred from appearing in this matter without counsel and shall not appear again without the benefit of properly licensed legal counsel.

"This matter is continued and shall be reset for trial by separate Order of the Court."

In that same order, the circuit court rescheduled the trial for July 24, 2023.

On June 15 and 16, 2023, Ross filed additional documents purporting to prove his ownership of the condominium unit and

requesting that the circuit court reconsider its order denying him the right to proceed in the unlawful-detainer action without an attorney. On its own motion, the circuit court struck those filings and ordered Ross to obtain legal representation within 30 days or suffer dismissal of the action. On July 24, 2023, Ross appeared for trial without counsel, and the circuit court entered a judgment dismissing the action for failure to prosecute. On September 1, 2023, Ross timely filed a notice of appeal to this court.

On appeal, Ross argues that the circuit court erred in dismissing the unlawful-detainer action based on his failure to retain counsel. Ross contends that he had a right to represent himself in the underlying proceedings. We agree.

In Ex parte Williams, supra, Lola B. Rogers, the executive director of the Selma Housing Authority, filed a complaint in the name of the housing authority alleging an unlawful-detainer claim against Michael A. Williams. Williams moved to dismiss the complaint on the ground that Rogers was not an attorney and, thus, could not validly file a complaint on behalf of the housing authority. After the Dallas Circuit Court denied

the motion to dismiss, Williams petitioned this court for a writ of mandamus ordering dismissal of the case. This court granted the petition, holding that the complaint was a legal nullity because the housing authority was a corporation that could be represented only by a licensed attorney. Because Rogers was not a licensed attorney and was not otherwise authorized by statute to file an unlawful-detainer complaint on behalf of the housing authority, this court determined that the complaint she had filed had not invoked the jurisdiction of the Dallas Circuit Court.

Unlike in Ex parte Williams, however, Ross did not file a complaint against the tenants on behalf of any third party. Ross named himself as the plaintiff. His unlawful-detainer claim was based on the 2018 lease, which designated Ross as the lessor of the condominium unit. Ross was asserting only his own interest as the lessor of the condominium unit. Article I, § 10, of the Alabama Constitution of 2022 provides "[t]hat no person shall be barred from prosecuting or defending before any tribunal in this state, by himself or counsel, any civil cause to which he is a party." "This constitutional right of self-representation before the courts allows

a person to represent himself -- to appear pro se -- without endangering the interests of others by a lack of familiarity and training in the law." Ex parte Ghafary, 738 So. 2d 778, 779 (Ala. 1998). No constitutional provision or statute prohibits an individual from representing himself or herself as the plaintiff in an unlawful-detainer action before the circuit court. The circuit court had no legal basis for requiring Ross to retain counsel to prosecute his unlawful-detainer claim.

The circuit court dismissed the case pursuant to Rule 41(b), Ala. R. Civ. P., because it concluded that Ross was failing to prosecute the claim through a licensed attorney as purportedly required by law and as ordered by the circuit court; however, Ross did not have to retain a licensed attorney to represent his own interests in the unlawful-detainer action. The circuit court erred in ordering him to do so and, thus, exceeded its discretion in dismissing the case when Ross failed to comply with that order. See Atkins v. Shirley, 561 So. 2d 1075, 1077 (Ala. 1990). (holding that an appellate court can reverse a Rule 41(b) involuntary-dismissal order when the trial court exceeds its discretion in entering the dismissal order).



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Based on the foregoing, we reverse the circuit court's judgment, and we remand the case to the circuit court with instructions that it take such other actions as are consistent with this opinion.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Edwards, Hanson, and Fridy, JJ., concur.