REL: February 25, 2022

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200264

Mark A. Stiff

v.

Equivest Financial, LLC

Appeal from Jefferson Circuit Court
(CV-18-900776.80)

MITCHELL, Justice.

Equivest Financial, LLC, bought property owned by Mark A. Stiff and Jim Stiff at a tax sale. This Court later declared that sale void. See

Stiff v. Equivest Fin., LLC, [Ms. 1181051, June 26, 2020] ___ So. 3d ___, ___ (Ala. 2020). After we remanded the case for further proceedings, including consideration of Equivest's alternative claim for relief, the trial court entered judgment in Equivest's favor in the amount of $66,181.56, plus court costs. Mark appeals from that judgment, arguing that the trial court erred: (1) by awarding Equivest interest on the amount it bid in excess of the delinquent taxes and (2) by awarding Equivest interest that accrued, and by failing to award him costs that he incurred, after he tendered an offer of judgment. We reject these arguments and affirm the trial court's judgment.

Facts and Procedural History

In January 2013, Doris Stiff died, leaving her house in Hoover to her two sons, Mark and Jim. The Stiff brothers were unable to pay the ad valorem taxes due on the property. In May 2013, Equivest bought the property at a tax-sale auction for $41,545.55 -- an amount of money that included the $3,545.55 necessary to pay off the Stiffs' delinquent taxes and

a $38,000 "excess bid."[1]

After the tax sale, the Stiffs continued to possess the property and rented it out to tenants, while Equivest paid the property taxes year after year. In March 2017, Equivest received a tax deed to the property, as provided by § 40-10-29, Ala. Code 1975.

Equivest eventually filed a complaint in the Jefferson Circuit Court to eject the Stiffs, cut off redemption rights, and quiet title to the property. The Stiffs counterclaimed, seeking judicial redemption of the property and a judgment declaring the tax sale void. Before trial, the Stiffs made a timely offer of judgment under Rule 68, Ala. R. Civ. P., in the amount of $28,500, which Equivest did not accept.

After a bench trial, the trial court upheld the tax sale and ruled that the Stiffs could redeem the property only by paying into the court

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[1]An excess bid (or overbid) is the amount of money a tax-sale purchaser pays the county "for a tax-delinquent property that exceeds the minimum bid requirement" at a public auction. William S. Hereford and James H. Haithcock III, Money for Nothing: Who Is Entitled to the Excess Paid at a Tax Sale?, 73 Ala. Law. 424, 425 (2012). The minimum-bid requirement "is the total of the unpaid taxes, accrued interest and sale-related costs." Id.

$87,419.84. Mark appealed that judgment. We reversed, holding that the tax sale was void, and remanded the case for the trial court to consider Equivest's alternative claim that it was entitled to reimbursement for certain expenses, with interest, under § 40-10-76, Ala. Code 1975. See Stiff, ___ So. 3d at ___.

On remand, the trial court reached several conclusions. First, it held that Equivest was entitled to reimbursement for the amount it had paid to purchase the property, for the taxes it had paid after purchase, and for interest on both amounts at a 12% annual rate -- a total of $104,181.56. Second, the court deducted Equivest's $38,000 excess bid from the judgment against the Stiffs, because Jefferson County had already remitted the excess bid to Equivest's counsel. Finally, the trial court held that the Stiffs were not entitled to offsets based on their previous extension of an offer of judgment. The trial court thus entered judgment in favor of Equivest in the amount of $66,181.56, plus court costs. Mark appealed.

Standard of Review

Because this case involves the application of law to undisputed facts, the standard of review is de novo. See Ex parte Soleyn, 33 So. 3d 584, 587 (Ala. 2009).

Analysis

Mark makes two arguments on appeal. First, he contends that Equivest is not entitled to interest on its excess bid. Second, he argues that Equivest is not entitled to additional interest -- and that he is entitled to court costs -- because Equivest did not accept the offer of judgment he made before trial. Both arguments are unavailing.

A. Whether Equivest is Entitled to Interest on Its Excess Bid

Mark's first argument raises a question of first impression for this Court: When a tax sale has been set aside (for any reason other than that taxes were not due), is the tax-sale purchaser entitled to recover interest on the amount of the excess bid it paid at the sale? The trial court said yes, awarding Equivest interest on its excess bid of $38,000. Mark asks us to reverse that aspect of the award. He argues that, as a matter of

common sense,[2] he is not obligated to pay interest on an excess bid "where there is no valid sale." Mark's brief at 12. Mark's argument has some intuitive appeal, but the scope of a delinquent taxpayer's[3] statutory payment obligations is ultimately determined by the text of the relevant statute. Bare appeals to intuition, unmoored from statutory language, are insufficient.

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[2]Mark also argues that this result is dictated by the holding in Lee & Howard, LLC v. Wood, 206 So. 3d 645 (Ala. Civ. App. 2016), a case in which a property-owning LLC sought a refund on interest it had paid on an excess bid under § 40-10-160, Ala. Code 1975. The Court of Civil Appeals held that, "[b]ecause the tax sale of the property [was] deemed to be valid, the redemption amount of the property was properly based on the purchase price of the property at the tax sale" and that the LLC was not due a refund. Id. at 648. Mark argues that the Court of Civil Appeals' holding in that case creates an "implication that where the tax sale is not deemed to be valid, no interest should be due on the amount of the overbid." Mark's brief at 14. We disagree. Lee & Howard deals with a different section of the tax-sale statutes -- a section that provides a remedy for taxpayers who have paid taxes that were not due -- and has no application here.

[3]We use the term "delinquent taxpayer" throughout this opinion for simplicity's sake but note that, under the tax-sale statutes, the party claiming adversely to the tax title or seeking to redeem lands sold for taxes may, in some cases, be a party with an interest in the land who was not actually the original owner of the land responsible for paying the ad valorem taxes on the land. See §§ 40-10-78 and 40-10-120.

The applicable version of § 40-10-76 provides that, when a tax-sale purchaser sues to recover a property and its "recovery is defeated on the ground that [the tax] sale was invalid for any reason other than that the taxes were not due,"[4] the tax-sale purchaser may move the court to

> "ascertain the amount of taxes for which the lands were liable at the time of the sale and for the payment of which they were sold, with interest thereon from the date of sale, and the amount of such taxes on the lands, if any, as the [tax-sale purchaser] ... has, since such sale, lawfully paid ..., with interest thereon from the date of such payment, the interest on both amounts to be computed at the rate of 12 percent per annum, subject to the limitations set forth in Section 40-10-122(a)."

(Emphases added.) The statute further provides that the trial court must then enter "judgment against the defendant[s]" -- that is, the delinquent taxpayers -- "in favor of the [tax-sale purchaser] for the amount ascertained and the costs of the action."[5] The question facing this Court

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[4]The tax sale here was declared invalid because of where it took place, not because the taxes "were not due." See Stiff v. Equivest Fin., LLC, [Ms. 1181051, June 26, 2020] ___ So. 3d ___, ___ (Ala. 2020). The parties do not dispute that the Stiffs owed taxes and were delinquent on those taxes.

[5]Section 40-10-76, Ala. Code 1975, was amended effective January

is whether the first "amount" ascertained under § 40-10-76, on which the delinquent taxpayer must pay interest, includes the excess bid.

Mark and Equivest press competing interpretations of the statute. Mark argues that he is not responsible for paying interest on the excess bid under § 40-10-76 because the tax sale was invalidated and "[t]he statute does not indicate that the court is to make any determination as to an overbid or include interest on any overbid." Mark's reply brief at 5. In other words, Mark says that the word "amount" means only the amount of the delinquent ad valorem taxes.

Equivest urges a different interpretation -- that a distinction exists between "the amount of taxes" and "the payment of which they were sold." Equivest's brief at 13-14. Equivest essentially argues that the statute requires payment of "the amount [1] of taxes for which the lands were liable at the time of the sale and [2] for the payment of which they were sold, with interest." See § 40-10-76. On this reading, the statute requires

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1, 2020. Although the relevant text of the statute that is quoted and discussed in this opinion remains generally unchanged, the interest rate on amounts awarded under § 40-10-76 was reduced to eight percent.

the delinquent taxpayer to reimburse the tax-sale purchaser for the amount of delinquent taxes due at the time the property was sold and for the "payment," including any excess, made by the tax-sale purchaser at the tax sale.

Both Mark's and Equivest's interpretations are plausible when the statutory text is viewed in isolation. As a result, we are faced with an ambiguity. See Deutsche Bank Nat'l Tr. Co. v. Walker Cnty., 292 So. 3d 317, 326 (Ala. 2019) (explaining that "[i]f the language of a statute is not 'plain,' " it is ambiguous); S&S Distrib. Co. v. Town of New Hope, 334 So. 2d 905, 907 (Ala. 1976) (explaining that " '[a] statute or portion thereof is ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses' " (quoting State ex rel. Neelen v. Lucas, 24 Wis. 2d 262, 267, 128 N.W.2d 425, 428 (1964))). Because the applicable language of § 40-10-76 is ambiguous, we must turn to certain rules of construction to determine the statute's meaning. See Deutsche Bank, 292 So. 3d at 326.

If the applicable language of § 40-10-76 is read in isolation, Mark might appear to have the better argument. Normally, a postpositive

phrase is best read to modify only "the nearest reasonable referent." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts § 20, at 152 (Thomson/West 2012). In § 40-10-76, the nearest referent of the postpositive phrase "for the payment of which they were sold" is the word "taxes," not the word "amount." But while the nearest-reasonable-referent principle is a helpful rule of thumb, it is not absolute. Rather, it "is only an aid to construction and 'will not be adhered to where extension to a more remote [referent] is clearly required by a consideration of the entire act' " or legislative scheme. White v. Knight, 424 So. 2d 566, 568 (Ala. 1982) (quoting 82 C.J.S. Statutes § 334 (1953)).[6]

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[6]In White, the Court was considering whether to apply the last-antecedent principle, which is related to the nearest-reasonable-referent principle. The only difference between the two is that the last-antecedent principle applies to pronouns (because, technically, only pronouns have antecedents), whereas the nearest-reasonable-referent principle is broader and encompasses adjectives, adverbs, adverbial and adjectival phrases, and so on. See Ray v. McCullough Payne & Haan, LLC, 838 F.3d 1107, 1111 (11th Cir. 2016). But the "point [of both principles] is the same: ordinarily, and within reason, modifiers and qualifying phrases attach to the terms that are nearest." Grecian Magnesite Mining, Indus. & Shipping Co. v. Commissioner of Internal Revenue Serv., 441 U.S. App. D.C. 351, 356, 926 F.3d 819, 824 (D.C. Cir. 2019).

To determine whether the nearest-reasonable-referent principle has force here, we must examine the statutory provision in context, looking at the statute as a whole as well as the overall statutory framework in which it sits. See Bean Dredging, L.L.C. v. Alabama Dep't of Revenue, 855 So. 2d 513, 517 (Ala. 2003) ("When interpreting a statute, [we] must read the statute as a whole because statutory language depends on context."); Ex parte Alfa Fin. Corp., 762 So. 2d 850, 853 (Ala. 1999) ("[O]ur rules of statutory construction direct us to look at the statute as a whole to determine the meaning of certain language that is, when viewed in isolation, susceptible to multiple reasonable interpretations."); League of Women Voters v. Renfro, 292 Ala. 128, 131, 290 So. 2d 167, 169 (1974) ("Where statutes are in pari materia [dealing with the same subject] they should be construed together to ascertain the meaning ... of each.").

In this case, the broader statutory context shows that Equivest's interpretation is, in fact, correct: the "amount" ascertained under § 40-10-76 includes the excess bid, and Mark must pay interest on that amount. The applicable version of § 40-10-76 provides that the interest on the "amount" must be "computed at the rate of 12 percent per annum, subject

to the limitations set forth in Section 40-10-122(a)." See note 5, supra. The phrase "subject to" imposes a requirement on § 40-10-76, subordinating it to § 40-10-122(a), Ala. Code 1975. See Scalia & Garner, Reading Law, § 13, at 127 (explaining that when the phrase "subject to" is used in a provision, "[t]he provision to which [it] accord[s] priority prevails"). The applicable version of § 40-10-122(a), in turn, provides that when land is sold at a tax sale to a party other than the State, the delinquent taxpayer may redeem the land by depositing with the court

> "the amount of money for which the lands were sold, with interest payable at the rate of 12 percent per annum from date of sale, and, on the portion of any excess bid that is less than or equal to 15 percent of the market value as established by the assessing official, together with the amount of all taxes which have been paid by the purchaser, which fact shall be ascertained by consulting the records in the office of the tax collector, or other tax collecting official, with interest on the payment at 12 percent per annum."[7]

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[7]Section 40-10-122, Ala. Code 1975, was amended effective January 1, 2020. Although the relevant text of the statute that is quoted and discussed in this opinion, which now appears in § 40-10-122(a)(1), remains generally unchanged, the interest rate on the amounts awarded under § 40-10-122 was reduced to eight percent.

(Emphasis added); see also § 40-10-120, Ala. Code 1975 (describing when and by whom land may be redeemed). The emphasized language -- which limits the portion of the excess bid on which a delinquent taxpayer must pay interest to 15 percent of the property's market value -- is the only limiting language § 40-10-122(a) contains.

Because this language is the only limitation in § 40-10-122(a), the reference to it in § 40-10-76 must mean that the ascertained "amount" includes the excess bid -- capped at "15 percent of the market value" of the land. To interpret the statute in any other way would render meaningless the Legislature's directive in § 40-10-76 that interest on the ascertained amount is "subject to the limitations set forth in Section 40-10-122(a)" and would flout the maxim that statutes must "be considered as a whole, and every word given effect if possible." Ex parte Beshears, 669 So. 2d 148, 150 (Ala. 1995).

Equivest's interpretation finds further support in § 40-10-122(a)'s description of the amount of money a delinquent taxpayer must deposit with the court to redeem the land -- i.e., "the amount of money for which the lands were sold." Section 40-10-122(a) clearly contemplates the excess

bid, and its language parallels § 40-10-76's directive to ascertain the amount of the "payment of which they were sold." In both sections, the Legislature uses more expansive language to describe the total payment, as distinct from the mere amount of delinquent taxes.[8]

The language of § 40-10-78, Ala. Code 1975 -- which lays out the administrative procedures governing claims brought under § 40-10-76 -- offers further proof that the calculation under § 40-10-76 includes the excess bid. Section 40-10-78(a) instructs that the delinquent taxpayer may "tender the amounts required in [§ 40-10-76] to be ascertained by the court, with interest as therein prescribed," or, if the tax-sale purchaser refuses the tender, may "pay such amounts into court." Section 40-10-78 continues:

> "(b) If the party is entitled to recover an excess pursuant to Section 40-10-28 [the statute governing the disposition of excess arising from a tax sale], the court shall ascertain the amount of the tender after allowing a credit

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[8]Or, at the very least, by adding "subject to the limitations set forth in Section 40-10-122(a)" to § 40-10-76, the Legislature determined that the statute could bear the meaning of the "amount" ascertained including the excess bid.

> for any such amount and shall direct the county treasurer, or other holder of the excess, to pay the amount of the excess to the court."

(Emphasis added.)

Section 40-10-78's provision for a credit in the amount of the excess bid supports the conclusion that the amount calculated under § 40-10-76 includes the excess bid. If it did not, § 40-10-78's allowance of such a credit would either be pointless surplusage or would result in a windfall to the delinquent taxpayer, who would not have to tender the excess but would still be credited for that amount. Neither result makes sense; the former would render statutory language meaningless, and, as explained below, the latter would frustrate the entire statutory scheme by rewarding delinquent taxpayers at the expense of tax-sale purchasers.

Instead, the most sensible interpretation of § 40-10-78 is that the amount ascertained under § 40-10-76 must include any excess bid, but the statute provides -- as a matter of grace -- a mechanism by which a cash-strapped delinquent taxpayer may avoid having to come up with the excess bid out of his own pocket when he tenders the ascertained amount to the tax-sale purchaser or into the court. Section 40-10-78 accomplishes

this by allowing the excess bid to be credited against the total ascertained amount (which includes the excess bid and interest on the excess bid) and then requiring the county to tender the excess directly to the court, leaving the delinquent taxpayer responsible only for the balance of the ascertained amount. This explains why the trial court offset Equivest's excess bid from the ascertained amount owed by the Stiffs -- a decision that Mark, unsurprisingly, does not contest on appeal.

For all these reasons, Equivest's interpretation is the only reading that harmonizes § 40-10-76 with §§ 40-10-122(a) and 40-10-78. That alone justifies resolving this case in Equivest's favor. See League of Women Voters, 292 Ala. at 131, 290 So. 2d at 169 ("Where possible, statutes should be resolved in favor of each other to form one harmonious plan and give uniformity to the law.").

But even if that were not enough, Equivest's reading of the statute has the crucial advantage of being the only interpretation that furthers the "text's manifest purpose." See Scalia & Garner, Reading Law § 4, at 63. As this Court has long recognized, the purpose underlying the tax-sale statutes is "to encourage the purchase of property for delinquent taxes."

Sheffield City Co. v. Tradesmans Nat'l Bank, 131 Ala. 185, 191, 32 So. 598, 600 (1901); see also Ross v. Rosen-Rager, 67 So. 3d 29, 44 (Ala. 2010) ("[T]he purchasing of tax-sale property is ... a laudable practice, one to be encouraged, rather than discouraged." (emphasis omitted)). In Alabama, tax-delinquent properties are sold at auctions. As a result of the competitive bidding process inherent in the nature of auctions, tax-sale purchasers often pay more than the amount of delinquent taxes to buy the property. Allowing tax-sale purchasers to recover interest on the excess bid encourages the practice of purchasing property for delinquent taxes. When a text is subject to multiple interpretations -- as it is here -- we will adopt the interpretation that furthers, rather than frustrates, the statute's purpose. See John Deere Co. v. Gamble, 523 So. 2d 95, 100 (Ala. 1988) ("In deciding between alternative meanings to be given to an ambiguous or uncertain statutory provision, we will ... presume that the legislature intended a rational result, ... one that advances the legislative purpose in adopting the legislation."); Crowley v. Bass, 445 So. 2d 902, 904 (Ala. 1984) ("It is a well established rule of statutory interpretation that the law favors rational and sensible construction.").

We therefore hold that, under § 40-10-76, a tax-sale purchaser is entitled to recover interest on the amount of its excess bid that, subject to the limitation in § 40-10-122(a), does not exceed "15 percent of the market value" of the land. The trial court correctly ruled in Equivest's favor on this issue.[9]

B. Offer of Judgment

Mark next argues that he is entitled to relief under Rule 68, Ala. R. Civ. P., which provides, in part:

> "At any time more than fifteen (15) days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued."

[9]It is unclear from the record whether the trial court limited the interest award on the excess bid to "the portion of [the] excess bid that is less than or equal to 15 percent of the [property's] market value as established by the assessing official." But Stiff has not raised the issue of whether the interest on the excess bid was properly limited and thus we do not address it.

Under this rule, if the adverse party does not accept the offer and "the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer."

Before trial, Mark made a timely offer of judgment in the amount of $28,500; he contends that, at the time he made the offer, the total amount of taxes and interest due to Equivest was $28,364.66. Consequently, Mark says, the trial court erred by (1) awarding to Equivest interest that accrued after he tendered the offer of judgment and (2) failing to award him costs that he incurred after Equivest did not accept that offer.

Because we hold that interest accrues on the amount of the excess bid under § 40-10-76 and affirm the trial court's judgment in the amount of $66,181.56, plus court costs, Mark is due no relief under Rule 68. The judgment Equivest obtained was more favorable than his offer of judgment in the amount of $28,500. Therefore, Mark's arguments that the trial court erred in awarding Equivest interest that accrued, and by

not awarding him costs that he incurred, after his offer of judgment both fail.[10]

Conclusion

The "amount" that a court must ascertain under § 40-10-76, and on which a delinquent taxpayer must pay interest, includes the excess bid. This interpretation gives effect to all the language in § 40-10-76 and harmonizes it with other provisions in the tax-sale statutes, particularly §§ 40-10-122(a) and 40-10-78. It is also the only plausible interpretation that furthers, rather than frustrates, the tax-sale statutes' purpose of encouraging participation in tax auctions. In addition, because the amount that Mark proposed to tender in his offer of judgment was not more favorable than the amount rightfully obtained by Equivest, it is clear that Equivest is entitled to interest that accrued, and that Mark is not

[10]Mark points out that the trial court held that interest continued to accrue because he did not comply with § 40-10-78, which sets out the administrative process for actions under § 40-10-76. Mark's brief at 16. The trial court was correct on this point, but we need not address more fully whether interest accrues after an offer of judgment, because Mark is not due relief under Rule 68.

entitled to court costs that he incurred, after he made the offer of judgment. We therefore affirm the trial court's judgment.

AFFIRMED.

Wise and Stewart, JJ., concur.

Parker, C.J., and Bolin, Sellers, and Mendheim, JJ., concur in the result.

Shaw and Bryan, JJ., dissent.

SHAW, Justice (dissenting).

I respectfully dissent. The issue in this case is whether, when the sale of land in a tax-sale is invalid, Ala. Code 1975, § 40-10-76, requires a tax-sale purchaser to be awarded a judgment against the landowner[11] for only the taxes paid in the tax sale and subsequently on the land, with interest, or whether it requires that the tax-sale purchaser be awarded a judgment against the landowner for the total amount paid in the tax sale, with interest, which would include any excess bid amount in addition to the taxes. The applicable version of § 40-10-76 provides:

> "If, in any action brought by the purchaser ... to recover the possession of lands sold for taxes, a recovery is defeated on the ground that such sale was invalid ..., the court shall ... ascertain the amount of taxes for which the lands were liable at the time of the sale and for the payment of which they were sold, with interest ..., and the amount of such taxes on the lands ... the [purchaser] ... has, since such sale, lawfully paid ..., with interest thereon from the date of such payment, the interest on both amounts to be computed at the rate of 12 percent per annum, subject to the limitations set forth in Section 40-10-122(a); and the court shall thereupon render

[11]As noted in footnote 3 in the main opinion, a party challenging a tax-sale title under § 40-10-76 or seeking redemption of land may be a party who was not the original owner of the land. For purposes of this writing, I will refer to the party as the "landowner."

> judgment against the defendant in favor of the plaintiff for the amount ascertained and the costs of the action, which judgment shall constitute a lien on the lands ...."[12]

(Emphasis added.)

Lands are sold in a tax sale by the government to pay taxes that are owed. This Code section governs what occurs when such a tax sale is found to be invalid. It requires the court to ascertain two amounts, and interest is added to "both amounts." The first amount ascertained, the one at issue in this case and emphasized above, is "the amount of taxes for which the lands were liable at the time of the sale and for the payment of which they were sold, with interest."[13] (Emphasis added.) Again, the proceeds of the tax sale, which are paid to the government, are to pay the taxes, and so the court determines the taxes owed at the time of the sale ("taxes for which the lands were liable at the time of the sale") that were

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[12]As the main opinion observes, § 40-10-76 has been amended since the initiation of the underlying proceedings. See note 5, supra.

[13]The second amount ascertained is "the amount of such taxes on the lands ... the [tax-sale purchaser] ... has, since such sale, lawfully paid ..., with interest," and is not at issue in this case.

paid ("for the payment of which") by selling the lands ("they were sold"). Stated differently, § 40-10-76 instructs the court to determine the amount of taxes owed on the land and thus paid in the sale; "for the payment of which" refers to the payment of the tax liability through the tax sale. The amount ascertained does not include the taxes owed plus a separate amount that was paid for the lands, that is, the total amount that might have been paid, which could be more than just the taxes owed if there was an excess bid. Section 40-10-76, by its plain language, does not require the court to ascertain the total amount paid in the sale and add interest to that amount. I see no ambiguity in this language and nothing to construe. IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992) ("If the language of the statute is unambiguous, then there is no room for judicial construction.").[14]

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[14]Under § 40-10-76, when there is an invalid sale, ownership of the tax debt does not transfer back to the government; instead, it is converted to a judgment and property lien in favor of the tax-sale purchaser, and the government keeps the payment of the taxes. What happens to any excess bid paid in the tax sale, however, is not specified in § 40-10-76. Under Ala. Code 1975, § 40-10-28, as amended effective August 1, 2013 (after the May 2013 tax sale in this case), an excess from a "sale" could be paid to the landowner. In this case, however, there was no "sale" -- it was void --

The main opinion holds that § 40-10-76 is ambiguous as to whether it requires the tax-sale purchaser to be awarded a judgment on only the taxes paid in the sale or on the entire payment that was made, which would include an excess bid. It construes § 40-10-76 in conjunction with Ala. Code 1975, § 40-10-122(a),[15] to find that § 40-10-76 requires the court to enter a judgment against the landowner for the total amount paid in the tax sale, including the excess bid, with interest.[16]

Section 40-10-122 governs how a landowner redeems property sold

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and the government returned the excess to the tax-sale purchaser. Section § 40-10-28 is inapplicable, and for that reason, Ala. Code 1975, § 40-10-78(b), which references § 40-10-28, is inapplicable as well.

[15]As the main opinion observes, § 40-10-122, like § 40-10-76, has been amended since the initiation of the underlying proceedings. See note 7, supra.

[16]Further, § 40-10-76 refers to "limitations" set out in § 40-10-122(a), and the only "limitation" identified by the main opinion in § 40-10-122(a) is on the amount of an excess bid. Section 40-10-76, however, does not provide for payment of an excess bid or of interest on such bid at all, so there would appear to be no limitation on § 40-10-76 by § 40-10-122(a). The main opinion identifies this as another ambiguity in § 40-10-76 and construes § 40-10-76 by adding a requirement to pay the excess bid and interest on that bid so that a limitation in § 40-10-122(a) could have effect. Such a limitation, however, would still have no effect when there was no excess bid in the sale.

in a valid tax sale. In a redemption, the landowner pays what he or she owes to recover the property. Section 40-10-122(a) specifies this as "the amount of money for which the lands were sold." A landowner is assessed interest on this amount, including on an excess bid that might have been paid (with certain limitations, if applicable). It would appear that, by virtue of a valid tax sale, the landowner essentially is treated as if he or she had received a "loan" for the total amount paid in the tax sale. When the property is redeemed, § 40-10-122(a) authorizes the tax-sale purchaser to be compensated for the total amount of the sale, with interest.

A redemption after a valid tax sale is entirely different from what occurs when there was no valid sale in the first place. There is a logical difference between these scenarios and why the legislature specified in § 40-10-122(a) that, when lands are properly sold in a tax sale, the landowner, to regain his or her prior interest, must pay the entire sale price, but did not require in § 40-10-76 that, when there is no tax sale, the landowner be liable for an excess bid, which was not paid as part of a valid sale in the first place. There is no need to import the requirement of § 40-10-122(a) to pay interest on an excess bid made in a valid sale into § 40-

10-76, under which the tax sale itself, and thus any bids or payment, were not valid in the first place. Although every word in a statute should be given effect "if possible," Ex parte Beshears, 669 So. 2d 148, 150 (Ala. 1995), I do not believe judicial construction of § 40-10-76 to require it to say something contrary to its plain language is possible in this case.

Bryan, J., concurs.