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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

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Marian S.A. Tipp

v.

JPMC Specialty Mortgage, LLC

**Appeal from Mobile Circuit Court
(CV-20-901417)**

MITCHELL, Justice.

In July 2009, JPMC Specialty Mortgage, LLC ("JPMC"), foreclosed on a property in Grand Bay that had once been owned by the parents of

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Marian S.A. Tipp. Since that time, Tipp has filed one lawsuit after another seeking to unravel that foreclosure and gain ownership of the property. Tipp's most recent lawsuit against JPMC -- the action underlying this appeal -- was filed in the Mobile Circuit Court in June 2020. After concluding that Tipp's claims were barred by the doctrine of res judicata, the applicable statutes of limitations, and Alabama's abatement statute, § 6-5-440, Ala. Code 1975, the trial court entered summary judgment in favor of JPMC. Because of Tipp's history of litigation against JPMC, the trial court also entered a permanent injunction that prohibits her from initiating any further proceedings related to the foreclosure of the Grand Bay property without first obtaining permission from that court. Tipp appeals. We affirm the judgment.

Facts and Procedural History

When Tipp's mother died in February 2002, Tipp's sister, Carolyn E. Sims, became the sole owner of the Grand Bay property.¹ Later that year,

¹Before her death, Tipp's mother conveyed the Grand Bay property to Sims while reserving a life estate for herself in a portion of the

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Sims obtained a loan secured by a mortgage on the property. That mortgage was eventually obtained by JPMC after the previous mortgage holder went into receivership. By July 2009 Sims had defaulted on the mortgage. At a foreclosure sale that month, JPMC entered the highest bid and was awarded a foreclosure deed. The litigation then began.

A. The 2009 Action

On July 24, 2009, JPMC filed an ejectment action against Sims in the Mobile Circuit Court. A month later, Sims executed a quitclaim deed purporting to convey the Grand Bay property to Tipp, who then intervened in the ejectment action and asserted wrongful-foreclosure, slander-of-title, and trespass claims against JPMC.

JPMC moved the trial court to dismiss Tipp's claims, arguing that she had no real interest in the Grand Bay property because the quitclaim deed on which she based her claims was executed after the foreclosure deed. The trial court granted that motion in July 2010. Tipp did not appeal the dismissal of her claims. One month later, the trial court

property.

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granted JPMC's motion to dismiss its own ejectment claim after JPMC filed notice that Sims had voluntarily vacated the Grand Bay property. JPMC then took possession of the property.

B. The 2011 Action

On February 9, 2011, Tipp brought a new action in the Mobile Circuit Court asserting wrongful-foreclosure, slander-of-title, trespass, and fraud claims against JPMC and other defendants. JPMC moved for summary judgment, arguing that Tipp had no real interest in the Grand Bay property that would allow her to pursue her claims and that, in any event, her claims were barred by the doctrine of res judicata because she had asserted similar claims in the 2009 action and those claims had been dismissed. See generally Ex parte Chestnut, 208 So. 3d 624, 635 (Ala. 2016) (explaining that the doctrine of res judicata bars the relitigation of a matter when a court of competent jurisdiction has already entered a judgment on the merits deciding the same cause of action in a proceeding involving substantially identical parties). The trial court granted the motion in September 2011 and entered summary judgment in favor of JPMC. Tipp appealed that judgment to this Court, and we affirmed it

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without an opinion. Tipp v. JPMorgan Chase Bank, N.A., (No. 1110677, Oct. 12, 2012) 156 So. 3d 997 (Ala. 2012) (table).²

C. The 2013 Action

On February 26, 2013, Sims -- represented by the same attorneys who had represented Tipp in the 2009 and 2011 actions -- filed a new lawsuit in the Mobile Circuit Court making trespass and conversion claims against JPMC. Sims alleged that JPMC had wrongfully entered the Grand Bay property following the 2009 ejectment action and had damaged or destroyed personal property belonging to her. She sought compensatory and punitive damages for those alleged wrongful acts, as well as a judgment declaring (1) JPMC's foreclosure deed void for various alleged procedural deficiencies and (2) her to be the rightful owner of the Grand Bay property. Tipp was not a party to this action.

JPMC moved for summary judgment, arguing among other things that Sims's claims were barred by the doctrine of res judicata. In

²Tipp's appeal of the judgment entered against her in the 2011 action appears to be the last proceeding in which she was represented by counsel. She has since proceeded pro se.

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September 2015, the trial court granted JPMC's motion, explaining that Sims was in privity with Tipp and that the claims she was asserting were essentially the same claims that Tipp had asserted and that had been adjudicated in the 2009 and 2011 actions. But, on appeal, the Court of Civil Appeals reversed that judgment, holding that there were genuine issues of material fact about (1) whether Sims and Tipp were substantially identical parties for res judicata purposes; (2) whether there had been a prior adjudication on the merits of Sims's claims; and (3) whether the claims Sims was asserting had been presented in the 2009 or 2011 actions. See Sims v. JPMC Specialty Mortg., LLC, 218 So. 3d 376, 386-87 (Ala. Civ. App. 2016).

After Sims's case was remanded to the trial court, she and JPMC reached a settlement resolving her claims. The exact terms of that settlement are not before this Court, but Tipp states that JPMC deeded the Grand Bay property back to Sims as part of the settlement. In July 2018, the trial court dismissed the 2013 action at the request of the parties. Tipp filed a postjudgment motion trying to set aside the settlement agreement between Sims and JPMC, but the trial court denied

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that motion less than a week later, explaining to Tipp that she was "not a party to this action."

D. The 2018 Action

After learning in June 2018 that Sims and JPMC had reached a settlement, Tipp initiated a new action against JPMC. In her complaint, she again asserted claims for slander of title and trespass while adding an additional claim for conversion. Tipp also challenged the validity of the 2009 foreclosure sale, the judgment entered against her in the 2011 action, and the settlement agreement that Sims and JPMC had executed, arguing that she was entitled to a declaratory judgment naming her the owner of the Grand Bay property.

JPMC moved the trial court to dismiss Tipp's claims on res judicata and statute-of-limitations grounds, and, in August 2018, the court dismissed the action with prejudice. Tipp then filed an appeal with this Court, and, in August 2019, we affirmed the trial court's judgment without an opinion. Tipp v. JPMC Specialty Mortg., LLC, (No. 1180108, Aug. 9, 2019) 312 So. 3d 2 (Ala. 2019) (table). Tipp's petition asking the United States Supreme Court to review her case was likewise

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unsuccessful. Tipp v. JPMC Specialty Mortg., LLC, 589 U.S. ___, 140 S.Ct. 1124 (2020).

E. Early 2020 Attempts to Reopen Previous Actions

Even though final judgments had now been entered in all the previous cases, Tipp, in early 2020, filed a series of motions and appeals attempting to resurrect those actions. Those filings included:

- (1) A January 2020 motion filed in the 2013 action again asking the trial court to set aside the settlement agreement between Sims and JPMC (denied 02/02/2020);
- (2) A February 2020 motion seeking to vacate the judgment entered against her in the 2011 action (denied 02/21/2020);
- (3) A March 2020 motion filed in the 2018 action asking the trial court to vacate the judgment entered against her in that action as well as the judgment entered against her in the 2011 action (denied 03/08/2020);
- (4) A May 2020 appeal filed with the Court of Civil Appeals challenging the judgment in the 2018 action (appeal transferred to this Court, docketed as appeal no. 1190634, and dismissed by order on 06/08/2020); and
- (5) A May 2020 appeal filed with the Court of Civil Appeals challenging the judgment in the 2011 action (appeal transferred to this Court, docketed as appeal no. 1190663, and dismissed by order on 06/30/2020).

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F. The 2020 Federal-Court Action

Undeterred by her lack of success in the state courts, Tipp decided to try her hand in federal court. On June 12, 2020, she filed an action in the United States District Court for the Southern District of Alabama asserting various claims against JPMC and requesting a judgment declaring her the lawful owner of the Grand Bay property. JPMC moved for summary judgment, arguing that Tipp's claims were barred by the doctrine of res judicata, the applicable statutes of limitations, and the Rooker-Feldman doctrine, which provides that federal district courts cannot review state-court final judgments because that task is reserved for state appellate courts or, as a last resort, the United States Supreme Court. See generally District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). JPMC also asked the federal district court to sanction Tipp.

In February 2021, the federal district court dismissed Tipp's claims, citing the Rooker-Feldman doctrine. Tipp v. JPMC Specialty Mortg., LLC, No. 1:20-cv-317-TFM-N, Feb. 19, 2021 (S.D. Ala. 2021) (not selected for publication in Federal Supplement). JPMC states in its brief to this Court

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that its motion for sanctions remains pending before the federal district court.

G. The 2020 Action

We finally come to the action underlying this appeal. On June 30, 2020 -- two weeks after filing the 2020 federal-court action and on the same day this Court dismissed her most recent appeal -- Tipp filed a new complaint asserting forgery, fraud, trespass, and negligence claims against JPMC. Tipp alleged that JPMC had wrongfully taken possession of the Grand Bay property and then had colluded with Sims to keep the property away from Tipp -- even though, Tipp claims, she is its rightful owner.

JPMC denied Tipp's claims and filed counterclaims asking the trial court (1) to enter a permanent injunction enjoining Tipp from taking further action against JPMC or any related companies without first obtaining leave from the trial court and (2) to award JPMC attorney fees and costs under the Alabama Litigation Accountability Act ("the ALAA"), § 12-19-270 et seq., Ala. Code 1975. JPMC later moved the trial court to enter summary judgment in its favor on the claims asserted by Tipp based

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on the doctrine of res judicata, the applicable statutes of limitations, and -- because there was a pending action between the parties in federal district court involving the same facts -- the abatement statute, § 6-5-440.³

Tipp filed a response opposing JPMC's summary-judgment motion, but her response failed to directly address any of the grounds set forth by JPMC in its motion. Instead, Tipp simply restated her position that JPMC had wrongfully taken the Grand Bay property. On November 13, 2020, the trial court granted JPMC's motion in a reasoned order in which it explained that JPMC was entitled to summary judgment on the basis of all three grounds it had argued.

One week later, JPMC moved for summary judgment on its counterclaim for injunctive relief. The trial court granted that motion as well, entering a final judgment that permanently enjoined Tipp or "anyone acting on her behalf" from filing any "complaint, action, claim for relief,

³Section 6-5-440 provides that "[n]o plaintiff is entitled to prosecute two actions in the courts of this state at the same time for the same cause and against the same party." See also Ex parte Compass Bank, 77 So. 3d 578, 587 (Ala. 2011) (explaining that an action pending in federal court abated the "subsequently filed state-court action ... arising out of the same facts").

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cause of action, lawsuit, petition, accusation, charge, writ, affidavit, deed, or any other similar filing or instrument" against JPMC or related entities that was in any way based on the claims asserted in her previous actions against JPMC, or that implicated her claimed ownership of the Grand Bay property, unless she first obtained permission from the trial court.⁴ Tipp then filed this appeal.

Analysis

Tipp challenges both the summary judgment entered on her claims against JPMC and the permanent injunction entered against her. We address each in turn.

A. Summary Judgment Disposing of Tipp's Claims

When a party "appeals from a summary judgment, our review is de novo." Nationwide Prop. & Cas. Ins. Co. v. DPF Architects, P.C., 792 So.

⁴JPMC never moved for summary judgment on the ALAA claim that it asserted, and neither of the trial court's orders entering summary judgment for JPMC addressed that claim. "[W]hen a trial court enters an otherwise final judgment on the merits of a case but fails to address a pending ALAA claim or to reserve jurisdiction to later consider that claim, the ALAA claim is implicitly denied by the judgment on the merits." Klinger v. Ros, 33 So. 3d 1258, 1260 (Ala. Civ. App. 2009) (citing Gonzalez, LLC v. DiVincenti, 844 So. 2d 1196, 1202 (Ala. 2002)).

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2d 369, 372 (Ala. 2000). Thus, we apply the same standard the trial court used, reviewing the record in the light most favorable to the nonmovant to determine whether there is substantial evidence establishing the existence of a genuine issue of material fact that must be resolved by the fact-finder. Id. We further note that in a case like this, where the trial court has set forth multiple grounds supporting the entry of summary judgment, we will affirm that judgment if any of those grounds provides a basis for the judgment. Norvell v. Norvell, 275 So. 3d 497, 506 (Ala. 2018). Here, the trial court's judgment can be affirmed based on the abatement statute.

Section 6-5-440 bars a party from "prosecut[ing] two actions in the courts of this state at the same time for the same cause and against the same party." This Court has held that "[t]he phrase 'courts of this state,' as used in § 6-5-440, includes all federal courts located in Alabama." Weaver v. Hood, 577 So. 2d 440, 442 (Ala. 1991). The Weaver Court further stated that this Court will not "allow a person to prosecute an action in a state court while another action on the same cause and against

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the same parties is pending in a federal court in this State." 577 So. 2d at 442.

JPMC argued in its summary-judgment motion that the claims asserted by Tipp in the federal-court action were based on the same issues and the same underlying allegations asserted in this action -- that JPMC had wrongfully obtained possession of the Grand Bay property through an invalid foreclosure sale and then had later conspired with Sims to fraudulently transfer the property back to her as part of a settlement agreement ending the 2013 action. JPMC supported this argument by submitting a copy of the complaint Tipp had filed in federal court. JPMC thus made a prima facie showing that the abatement statute barred Tipp from pursuing the claims asserted in this action.

At that point, the burden shifted to Tipp to rebut that showing. Nationwide, 792 So. 2d at 372. She failed to meet her burden. Charitably viewed, Tipp's response opposing JPMC's summary-judgment motion tangentially addressed the doctrine of res judicata and the applicable statutes of limitations, but she made no attempt to refute JPMC's argument that the abatement statute barred her action. Indeed, she

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acknowledged neither the statute nor the existence of the federal-court action. Her failure to make any argument about the abatement statute below precludes her from making any such argument on appeal. See Ex parte Ryals, 773 So. 2d 1011, 1013 (Ala. 2000) (explaining that an appellate court may consider an argument against the validity of a summary judgment "only to the extent that the record on appeal contains material from the trial court record presenting that argument to the trial court before or at the time of submission of the motion for summary judgment").⁵ We therefore affirm the judgment entered in favor of JPMC on Tipp's claims based on the abatement statute. That makes it unnecessary to consider the doctrine of res judicata or the statutes of limitations.

⁵Even if Tipp had not waived her ability to challenge the trial court's application of the abatement statute on appeal, the only argument she makes to this Court is that JPMC waived its right to invoke § 6-5-440 by raising it for the first time in its summary-judgment motion. See Regions Bank v. Reed, 60 So.3d 868, 884 (Ala. 2010) (explaining that abatement is an affirmative defense that can be waived if not timely pleaded). But Tipp misrepresents the record. In truth, JPMC asserted in its answer to Tipp's complaint that her action was "barred by the abatement statute."

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B. Permanent Injunction Against Tipp

Tipp next argues that the permanent injunction -- which the trial court entered to halt her legal filings about the Grand Bay property -- was not supported by the evidence. We disagree.

This Court has explained that a permanent injunction is appropriate if the party seeking it can "'demonstrate success on the merits, a substantial threat of irreparable injury if the injunction is not granted, that the threatened injury to the [party seeking the injunction] outweighs the harm the injunction may cause the [other party], and that granting the injunction will not disserve the public interest.'" Sycamore Mgmt. Grp., LLC v. Coosa Cable Co., 42 So. 3d 90, 93 (Ala. 2010) (citation omitted). All of those requirements have been met here.

First, JPMC has demonstrated success on the merits. When JPMC moved for summary judgment on its claim for injunctive relief, it recited Tipp's litigation history and incorporated all the materials it had previously submitted to support its motion for summary judgment concerning Tipp's claims. Those materials were sufficient to establish the success-on-the-merits requirement, because they demonstrated that

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JPMC had already successfully defended itself against Tipp's claims stemming from the July 2009 foreclosure of the Grand Bay property.

Second, JPMC has demonstrated that it faces a substantial threat of irreparable injury. In making that showing, JPMC submitted Tipp's affidavit in one of her previous actions in which she expressly stated that she would continue her fight against JPMC "until the day [she] die[s] or Jesus comes." If Tipp's litigation history was not enough, her affidavit clearly shows that there is a substantial likelihood that Tipp will continue to pursue frivolous litigation against JPMC -- and that JPMC will have to continue expending time and money responding to that litigation -- unless a permanent injunction is entered against her.

Third, the permanent injunction poses no harm to Tipp because the claims she repeatedly asserts against JPMC have already been conclusively decided against her, and the doctrine of res judicata forecloses any possibility that she might one day prevail on them. Moreover, in the event she ever does have a claim involving the Grand Bay property or against JPMC that truly is not precluded, the permanent

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injunction does not prevent her from pursuing that claim -- it only requires her to first obtain leave from the trial court before doing so.

Finally, in light of Tipp's history of litigation and stated intent to continue litigating this case regardless of the many judgments that have been entered against her, the permanent injunction is reasonable and serves the public interest by helping to conserve precious judicial resources. See generally Walden v. ES Capital, LLC, 89 So. 3d 90, 108-09 (Ala. 2011) (explaining that injunctions to halt harassing and vexatious litigation of matters that have already been litigated support the interests of justice and are favored by courts). We therefore uphold the permanent injunction entered by the trial court.

Conclusion

Tipp has pursued litigation against JPMC related to the foreclosure of the Grand Bay property almost continuously since 2009. The trial courts considering her claims have consistently entered judgments against her and have repeatedly explained that her claims have no merit. On multiple occasions, this Court has affirmed those judgments. As we have done before, we now affirm the judgment entered in favor of JPMC on the

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claims Tipp has asserted against it. We also uphold the permanent injunction entered by the trial court barring Tipp from reasserting the same or similar claims in the future.

This is the fifth time this Court has considered an appeal filed by Tipp concerning the Grand Bay property; none of those appeals has presented a winning argument. Should she continue to pursue frivolous litigation against JPMC, either directly or indirectly, and those matters end up back before this Court, we will strongly consider an order requiring her to pay JPMC's attorney fees and costs. See Guthrie v. Fanning, [Ms. 1190852, Dec. 11, 2020] ___ So. 3d ___ (Ala. 2020) (emphasizing this Court's authority to sanction, either on the motion of the appellee or on the Court's own initiative, an appellant whose appeal is determined to be frivolous or without substantial justification).

AFFIRMED.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.