

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-114

CAL MOORE ET AL.

APPELLANTS

V.

KAREN DUNSWORTH and KERRY
McCLENDON

APPELLEES

Opinion Delivered March 27, 2013

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[NO. CV-2006-434-6]

HONORABLE DAVID F. GUTHRIE,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Jim Moore was the last record owner of a five-acre tract of land. He died with many heirs, and there was no administration of his estate. Appellants, three heirs of Jim Moore, redeemed the five acres by paying taxes for the years 1994–2000 and have paid all property taxes thereon since 2001. Appellants were granted a decree in 2006 quieting title in them against all other heirs of Jim Moore. In October 2006, appellants filed a complaint for ejectment against appellees, who ostensibly purchased the property in 1999 from Armand Fremonde, another heir of Jim Moore. After a hearing, the trial court quieted title in appellees based on its finding that appellees had established their claim of adverse possession. Appellants brought an appeal, and we reversed on a pure question of law, holding that appellees' unsuccessful attempt to list the property in their names for ad valorem tax purposes did not satisfy the statutory requirement that one claiming by adverse possession must have paid ad valorem taxes on the property for the seven-year statutory period. *Moore v.*



Dunsworth, 2010 Ark. App. 446. On this basis, we reversed the finding of title by adverse possession and remanded for further consistent proceedings. *Id.* On remand, the trial judge awarded a portion of the property to appellees based on an alternative theory of ownership. On appeal, appellants assert that the trial court's order on remand exceeded the scope of our mandate. We do not agree, and we affirm.

A mandate is the official notice of action issued by the appellate court to the court below, advising the lower court of the action taken by the appellate court, and directing the lower court to have the appellate court's judgment duly recognized, obeyed, and executed. *Wal-Mart Stores v. Regions Bank Trust Dep't*, 356 Ark. 494, 156 S.W.3d 249 (2004). It is axiomatic that a trial court, on remand, is without authority to deviate from the appellate court's mandate, and that any such deviation is void. *Id.*

We find no deviation from our mandate in this case. Our decision was a narrow one, a pure question of law based on undisputed facts, and we held only that appellees failed to establish title to the entire property by adverse possession. We remanded for further consistent proceedings because our holding on the adverse-possession issue left the question of the ownership of the property unresolved. The trial court held no additional hearings and, on the basis of the evidence presented in the former trial, resolved the ownership question by ruling that appellees acquired Armand Fremonde's undivided 5/11¹ interest in the property by virtue of the deed purporting to convey them the entire property, and that the parties are thus tenants in common with each having a right of possession.

¹Approximately forty-five percent.



Despite appellants' argument to the contrary, this was not a new issue raised for the first time on remand: title by deed was pled by appellees and that issue was developed at the only trial held in this proceeding, that being prior to the initial appeal. The trial court's initial opinion, although reversed on the finding of title by adverse possession, also found that appellees came into possession of the land by warranty deed dated March 4, 1999, from Fremonde for the price of \$5,000; that Fremonde had inherited and acquired "about a 40% undivided interest" in the property prior to the conveyance; and that appellees were not made defendants to the 2006 quiet-title action and were not bound by it.

None of these findings were challenged by appellants in the prior appeal, and they are now precluded from doing so by the law-of-the-case doctrine. That doctrine provides that the decision of an appellate court establishes the law of the case for the trial court upon remand, *and for the appellate court itself upon subsequent review*, and is conclusive of every question of law and fact previously decided in the former appeal, as well as every issue that could have been, but was not, decided on the first appeal. *See Jones v. Double "D" Properties, Inc.*, 357 Ark. 148, 161 S.W.3d 839 (2004). Because the question of the propriety of the trial court's rulings regarding title by deed could have been advanced in the prior appeal, but was not, those rulings are law of the case and we are precluded from addressing them in the present appeal.

Affirmed.

GRUBER and WHITEAKER, JJ., agree.

McKissic & Associates, PLLC, by: *Jackie B. Harris*, for appellant.

Burbank Dodson & Barker, PLLC, by: *Don B. Dodson*, for appellees.